

NEVIS OFFSHORE BANKING ORDINANCE 1996

Preliminary

Short title

1. This Ordinance may be cited as the Nevis Offshore Banking Ordinance, 1996.

Interpretation

2. In this Ordinance

“auditor” means an auditor described in section 43 and includes a partnership of auditors.

“business” in relation to a licensee means offshore banking business of the licensee;

“director,” means a director within the meaning of section 32;

“licensee” means a body corporate that holds a subsisting licence under this Ordinance to carry on an offshore banking business from within Nevis;

“Minister” means the Minister responsible for Finance in the Nevis Island Administration;

“offshore banking” has the meaning given that expression in section 4;

“permanent secretary” means the permanent secretary in the Ministry of Finance in the Nevis Island Administration;

“prescribed” means prescribed by regulations;

“share” in relation to a company includes stock of the company.

- (2) A reference in this Ordinance to a resident of Nevis refers to a person described in section 86, and a reference to a person resident outside Nevis refers to a person described in section 87.

Purposes of Ordinance

- 3.(1) The purposes of this Ordinance are

- (a) to encourage the development of Nevis as a responsible offshore financial centre;
- (b) to provide incentives by way of tax reduction, exemptions and benefits for offshore banking carried on from within Nevis; and

(2) This Ordinance shall receive such fair and liberal construction interpretation as will best ensure the attainment of its purposes.

PART I - Offshore Banking

Offshore banking

4.(1) Offshore banking is

- (a) receiving foreign funds through
 - (i) the acceptance of foreign money deposits payable upon receipt demand or after a fixed period or after notice,
 - (ii) the sale or placement of foreign bonds, certificates, notes or other debt obligations or other securities, or
 - (iii) any other similar activities involving foreign money or foreign securities, and
- (b) either in whole or in part using foreign funds so acquired for loans, advances and investments whether in Nevis or elsewhere.

(2) Offshore banking also includes, for the purpose of this Ordinance, any other activity, which the minister may, by regulations, declare to be an activity related or ancillary to an activity described in subsection (1).

Prohibition without licence

5. No person shall engage in offshore banking in or from within Nevis at any time when he is not a licensee.

Issue of licences.

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6. No licence may be issued under this Ordinance to any person other than an eligible company or qualified foreign bank.

Eligible company

7.(1) A body corporate is an eligible company if it is a wholly owned subsidiary of a local bank regulated by the Eastern Caribbean Central Bank that is licensed under the Banking Act to do banking business in Nevis.

(2) For the purposes of subsection (1) a local bank means a bank indigenous to St. Kitts and Nevis.

Qualified foreign bank

8. A qualified foreign bank is

- (a) a foreign bank that upon the commencement of this Ordinance is licensed under the Banking Act,
- (b) a foreign bank with minimum capitalisation and assets, as prescribed by the Minister, that is not licensed under the Banking Act but is licensed to do domestic banking in its jurisdiction of incorporation,
- (c) a financial institution, approved by the Minister, that is directly or indirectly a wholly owned foreign subsidiary within the meaning of section 13(6), of a foreign bank described in paragraph (a) or (b) above.

PART II - Licensing Requirements

Consent of Minister

9.(1) Notwithstanding the Companies Act, no company may be incorporated under that Act for the purpose of doing offshore banking from within Nevis unless its incorporation has or been consented to by the Minister.

(2) Notwithstanding anything in its memorandum or articles of association, no company incorporated under the Companies Act before the commencement of this Ordinance has capacity to do offshore banking from within Nevis unless its memorandum and articles of association are, or are amended, to the satisfaction of the Minister.

Application requirements

10.(1) An eligible company must

- (a) be incorporated under the Companies Act as a company limited by shares,
- (b) have objects or business activities restricted to off-shore banking from within Nevis,
- (c) have at least one director who is a citizen of St. Kitts and Nevis with a residence in Nevis;
- (d) have memorandum and articles of association acceptable to the Minister,
- (e) have authorised and paid up capital in accordance with the requirements of section 22.

(2) Every applicant for a licence under this Ordinance must

- (a) show that it is an eligible company or a qualified foreign bank,
- (b) give the names and address of its directors,
- (c) give particulars of the off-shore banking it proposes to do from within Nevis,
- (d) give the names of any shareholders who are residents of Nevis and the number of shares held directly or indirectly by residents of Nevis, and
- (e) provide such other information of a financial or other nature as the Minister may require in any particular case.

(3) An application for a licence by an eligible company must be accompanied by a certified copy of the memorandum and articles of association of the applicant.

(4) An application for a licence and all documents submitted pursuant to this Ordinance in support of the application must be signed by the directors of the company making the application.

(5) An application for a licence by a qualified foreign bank must be accompanied by such documents as are prescribed by the Minister.

Tentative applicants

11.(1) Any person who intends to apply for a licence under this Ordinance may submit a proposal to the Minister for a licence, and the Minister may indicate whether or not a subsequent application based on the proposal would be favourably received by him.

(2) Nothing done by the Minister under subsection (1) precludes him from later refusing an application for a licence that was based on a proposal considered by him pursuant to that section on grounds that the applicant withheld material information or that the proposed application was made in bad faith.

Director's qualification

12. Where a company has appointed a citizen of St. Kitts and Nevis who is a resident of Nevis to its board of directors under this Ordinance, that director need not subscribe for nor acquire any shares of the company.

Examination of applicants

13.(1) On receipt of an application for a licence under this Ordinance, the Minister may cause such investigation to be made of the applicant, its financial circumstances, and any associates or affiliates of the applicant, as the Minister considers necessary in the public interest.

(2) In particular, the Minister shall require an examination to be made of

- (a)* the financial status and history of the applicant and any of its directors associates or affiliates,
- (b)* the character and experience of the directors thereof,
- (c)* the adequacy of its capital for the purpose of the business it intends to carry on,
- (d)* the needs of the public or persons it intends to serve, and
- (e)* its earning prospects and its prospects as an employer.

(3) For the purposes of this section, “associate” means, when used to indicate a relation with any person

- (a)* a company of which that person beneficially owns or controls, directly or indirectly, shares or securities convertible into shares carrying more than ten per cent of the voting rights under all circumstances or by reason of occurrence of an event that has occurred and is continuing, or a currently exercisable option or right to purchase those shares or convertible securities;

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- (b) a partner of that person acting on behalf of the partnership of which they are partners;
 - (c) a trust or estate in which that person has a substantial beneficial interest or in respect of which he serves as a trustee or in a similar capacity;
 - (d) a spouse or a child of that person; or
 - (e) a relative of that person or of the spouse of that person if the relative has the same residence as that person.
- (4) For the purpose of this section
- (a) one company is affiliated with another company if one of them is the subsidiary of the other or both are subsidiaries of the same holding company or each of them is controlled by the same person;
 - (b) if two companies are affiliated with the same company at the same time, they are affiliated with each other at that time.
- (5) A company is the holding company of another if that other company is its subsidiary.
- (6) A company is a subsidiary of another company if it is controlled by that other company.

Duty to issue or refuse licence

14.(1) It is the duty of the Minister to issue or refuse a licence under this Ordinance to an applicant.

- (a) within three months of the receipt of the application, or
- (b) if additional information is required by the Minister, within fourteen days of the receipt by him of that additional information.

(2) When the Minister is of the opinion that it is in the public interest to do so, he may issue a licence under this Ordinance to the applicant upon payment of the prescribed fee.

Licence and conditions

15.(1) A licence issued under this Ordinance must show the kinds of off-shore banking to be done from within Nevis by the licensee.

(2) A licence under this Ordinance is subject to such conditions as the Minister may specify in respect of the offshore banking to be done by the licensee from within Nevis.

(3) A licence under this Ordinance remains valid until revoked pursuant this Ordinance but it is a condition of every licence that an annual fee be paid by every class of licensee in the amount and at the time prescribed.

(4) It is a condition of a licence under this Ordinance that the licensee will notify the Permanent Secretary of the creation by it of any subsidiary company within the meaning of section 13 and that it will notify the Permanent Secretary whenever it opens a place of business outside Nevis.

(5) Subsection (4) does not apply to a licensee that is a qualified foreign bank but the licensee shall not, without notifying the Permanent Secretary of its intention to do so, create any subsidiary company within the meaning of section 13 to carry on offshore banking from within Nevis.

Other special conditions

16. (1) It is a condition of a licence under this Ordinance that

- (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;
 - (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 licence,
 - (iv) alter its memorandum or articles of association, or
 - (v) transfer any of its shares;
- (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 offshore banking services, or
- (d) the licensee that is a qualified foreign bank will, in the manner and to the extent prescribed, separate offshore banking activities from its other activities in Nevis and keep separate records of its offshore banking activities and will permit and assist in an audit of all its undertakings in Nevis by auditors approved by the Minister.

(2) Before giving an approval to any matter mentioned in subsection (1) the Minister shall carry out such of the investigations specified in section 13 as he thinks required.

(3) Paragraphs (a) and (b) of subsection (1) and subsection (2) do not apply to a licensee that is a qualified foreign bank.

Display of licence

17. A licensee shall display in a conspicuous place at each place where it does business a copy of its current licence under this Ordinance.

Revocation of licence

18.(1) The Minister may revoke a licence if the licensee

- (a) does not within six months after the issuance of its licence commence business;
- (b) fails to comply with a condition of its licence;
- (c) is in breach of any duty or obligation imposed upon it by this Ordinance or commits an offence under this Ordinance; or
- (d) ceases to carry on business under its licence.

(2) When the Minister intends to revoke a licence under subsection (1) it is his duty to give the licensee notice of his intention and a reasonable opportunity to show cause why the licence should not be revoked.

(3) The Minister must give notice in writing to the licensee of the revocation of the licence.

Right of appeal

19.(1) Any person who is aggrieved by the revocation of a licence by the Minister under section 18 may, within twenty-one days of the giving of the notice under section 18(3), appeal the revocation to a judge of the High Court, in chambers, whose decision thereon is final.

(2) Where the Minister revokes a licence and there is no appeal or where there is an appeal and the appeal is disallowed, the notice of the revocation must be published in the Gazette and in a newspaper of general circulation in Nevis.

Misleading name

20. No licensee may be granted a licence under a name of an existing bank trust company or other company carrying on business in Nevis or elsewhere as would in the opinion of the Minister mislead or confuse the persons for whom it intends to provide any or all of its services.

Service on licensee

21.(1) Before it does any offshore banking from within Nevis a licensee must deposit with the Permanent Secretary

- (a)* a duly executed instrument that appoints the Permanent Secretary as its agent for the acceptance of service of documents in any action arising out of the operations of the licensee; and
- (b)* a certificate setting out the name and address of any person in Nevis to whom documents related to the licensee and served on the Permanent Secretary are to be forwarded.

(2) It is the duty of the Permanent Secretary to ensure that all process, instruments and other documents served on him pursuant to subsection (1) in respect of a licensee are forwarded within ten days to the person named in a certificate described in paragraph (1) (b) in the case of that licensee.

Financial obligation

22.(1) A licence may be issued under this Ordinance to an eligible company when

- (a)* the authorised capital of the company is at least two million dollars; and
- (b)* capital to an amount of not less than one million dollars has been subscribed and paid-up in cash, such cash shall be deposited in an account maintained by the Permanent Secretary at the Eastern Caribbean Central Bank.

(2) For the purposes of this section and section 13, a licensee is controlled by another company or by an individual or government, if at the relevant time it is effectively controlled directly or indirectly by that other company, individual or government

- (a)* through being an associate within the meaning of section 13 of that other company, individual or government;

- (b) through being an affiliate within the meaning of section 13 of that other company;
- (c) through the holding of shares of an incorporated body, but subject to subsection (4);
- (d) through the holding of membership in an unincorporated body;
- (e) through voting trusts or other agreements relating to the voting of shares;
- (f) through the holding by an unincorporated body of a substantial portion of the licensee's borrowings;
- (g) through management control of an unincorporated body; or
- (h) through any other similar means.

(4) A company is controlled by a person if shares of the company that carry voting rights sufficient to elect a majority of the directors of the company are held, directly, other than by way of security only, by or on behalf of that person.

(5) Whether or not any licensee is effectively controlled directly or indirectly by persons who are residents of Nevis is a question of fact determinable by the Minister whose decision thereon is final for the purposes of this Ordinance.

Reserves

23.(1) Subject to subsection (2), a licensee shall maintain a reserve fund and shall out of its net profits of each year and before any dividend is paid transfer to the fund a sum equal to not less than twenty-five per cent of those profits whenever the amount of the reserve fund is less than the paid-up capital of the licensee.

(2) Subsection (1) does not apply to a licensee for whom it is shown to the satisfaction of the Minister that the aggregate reserves of the licensee are adequate in relation to its business.

Dividends

24 . A licensee shall not declare or pay a dividend if there are reasonable grounds for believing that

- (a) the licensee is, or would after the payment be, unable to pay its liabilities as they become due, or

- (b) the realizable value of the licensee's assets would thereby be less than the aggregate of its liabilities and capital.

PART III - Abandoned Property

Abandoned property

25.(1) Property of the following kinds held or owing in the course of its business by a licensee in respect of which no activity has been evidenced for a period of ten years is abandoned property:

- (a) any general deposit, that is a demand saving or matured time deposit made with the licensee together with any interest or dividends but exclusive of legal charges;
- (b) funds that were paid towards the purchase of shares or other interests in a licensee;
- (c) any sum payable on cheques or other instruments on which the licensee is liable;

and in respect of which the licensee has, by registered mail to the latest known address of the lessee, given notice of its intention to deliver the contents into the custody of the Nevis Island Administration and the lessee has failed to respond within a period of one year.

(2) Activity is evidenced in respect of the property described in subsection (1) if the owner thereof has

- (a) within ten years of the date of deposit increased or decreased the amount of the deposit or presented a passbook or other record for the crediting of interest in respect of the deposit;
- (b) within ten years of paying funds for the purchase of shares or other interest mentioned in subsection (1)(b), increased or decreased the amount of the funds or presented a document or book for crediting of dividends in respect thereof;
- (c) within ten years of making the last deposit, inquiry or communication concerning any item mentioned in subsection (1), corresponded with the licensee concerning the items or otherwise indicated an interest in the items as evidenced by a memorandum about them by the licensee.

Disposal of abandoned property

26.(1) A licensee shall, once in each financial year, report to the Permanent Secretary all its holding of abandoned property within the meaning of this Ordinance and shall, from time to time, deposit with or convey to the Nevis Island Administration in the prescribed manner all abandoned property.

(2) When a licensee has deposited with or conveyed to the Nevis Island Administration any abandoned property, the licensee is relieved from any liability to the beneficial owners thereof to the extent of the value of the property deposited or conveyed to the Nevis Island Administration.

(3) Within thirty days after reporting to the Permanent Secretary pursuant to subsection (1), the Permanent Secretary shall give notice by registered mail to the beneficial owner of the property, at his latest known address; but with the approval of the High Court on application thereto, the Permanent Secretary may be exempted from mailing the copy of the notice to the owner.

Sale of abandoned property

27.(1) The Nevis Island Administration may sell at public auction any property that has been conveyed to it under section 26 after the expiration of thirty days from the latest of the date of publication of the notice referred to in section 26(3) and the mailing of the copy of the notice to the owner, as the case may be.

(2) The public auction may be held after such reasonable advertising of the sale as the Nevis Island Administration considers suitable.

Payment to Consolidated Fund

28. The Permanent Secretary shall pay into the Nevis Island Consolidated Fund all money received by the Nevis Island Administration as abandoned property and the proceeds of the public auction of any abandoned property less, in each case

- (a)* such amount as the Minister considers necessary to reserve for the payment of claims later made and approved by him; and
- (b)* amounts deducted by the Permanent Secretary as approved by the Minister for reasonable expenses incurred in connection with the publishing and mailing of notice, service charges, and the sale of abandoned property.

Claims against property

29.(1) A person who claims a beneficial interest in any abandoned property deposited with or conveyed to the Nevis Island Administration may make a claim for the value thereof within the prescribed time and in the prescribed manner.

(2) When the Minister is satisfied that a claimant is entitled to the abandoned property, the Nevis Island Administration shall deliver up the property, or make payment for the value thereof, as the case requires.

Notice to claimants

30.(1) When the Minister admits or refuses a claim under section 29, he shall forthwith notify the claimants of his decision.

(2) A person aggrieved by a refusal of his claim for abandoned property by the Minister may within twenty-one days of receiving notice of the refusal, appeal the decision to a judge of the High Court in chambers who may make such order thereon as he considers equitable.

Offence re abandoned property

31. A licensee that fails to report to the Permanent Secretary any abandoned property in its possession or that fails to deposit with or convey to the Nevis Island Administration any abandoned property as required by this Ordinance, is guilty of an offence and liable on summary conviction to a fine not exceeding twenty five thousand dollars.

PART IV - Administration Of Licensees

Director

32. For the purpose of this Ordinance,

- (a)* “director” means an individual occupying the like position and performing the like functions of a director under the Companies Act, however his position is designated.
- (b)* a reference to “directors” refers to the board of directors or the body directing the affairs of a company or firm.

Office of director

- 33.** A director of a licensee cease to hold office as a director thereof
- (a) if he becomes bankrupt or suspends payment to his creditors;
 - (b) if he is convicted in Nevis of an offence triable on indictment; or
 - (c) if he is convicted outside Nevis of an offence that would be triable on indictment had it been committed in Nevis;
 - (d) if he becomes of unsound mind.

Disqualification of director

34. A person who has been a director of a licensee whose licence is revoked under this Ordinance shall not, without the prior approval of the Minister act or continue to act as a director of any other licensee.

Disclosure of interest

35.(1) A director of a licensee who is interested, directly or indirectly in an advance or loan from the licensee shall as soon as possible declare the nature of his interest to its directors at a meeting thereof.

(2) Subsection (1) does not apply when the interest of a director in an advance or loan consists only of being a creditor of or having an interest in a firm that is interested in an advance or loan from the licensee if, in either case, the interest of the director is not a substantial interest.

(3) A declaration by a director of a licensee that he is interested in any advance or loan that may, after the date of the declaration, be made by the licensee is a sufficient declaration of interest in relation to any advance or loan made after the declaration, if

- (a) the declaration specified the nature and extent of the interest; and
- (b) the interest of the director is not different in nature from, or greater than, the nature and extent so specified in the declaration at the time any advance or loan is made.

Declaration of interest

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36.(1) A director of a licensee who holds any office or has any interest in any property whereby, directly or indirectly, his functions under this Ordinance are likely to be in conflict with his personal interests shall declare the nature, character and extent of that office or interest to the directors at a meeting thereof.

(2) A declaration required under this section shall be made

(a) at the first meeting of the directors that is held after the acquisition by the declarant of that relevant office or interest, or

(b) if the declarant was not at that time a director, after he becomes a director.

(3) A director to whom this section or section 35 applies shall in any event notify the Secretary of the licensee of his interest so that the Secretary may convene a meeting of the Board of Directors for the purpose of considering the declaration, unless a meeting of the Board of Directors is already scheduled to be held within 14 days following the receipt of notification by the Secretary of the Director's declaration.

Recording declaration

37. A director of a licensee who has declared any interest referred to in section 35 or 36 shall

(a) cause the declaration made by him thereunder to be brought up and read at the next meeting of the directors after it was given; and

(b) cause the declaration to be recorded in the minutes of the meeting at which it was made or read or both.

Offence

38. A director of a licensee who contravenes section 34, 35 or 36 is guilty of an offence and liable on conviction to a fine not exceeding five thousand dollars or to imprisonment for twelve months or to both.

Insider information

39.(1) A person who has acquired confidential information concerning a licensee

(a) as a director, officer, employee or auditor of the licensee,

(b) as a custodian of the licensee, or

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- (c) as an employee of the Nevis Island Administration

shall not disclose that information to any person except as permitted under subsection (2) or use that information for any personal benefit not related to the duties through which the information was acquired.

(2) Subsection (1) does not apply to the giving of confidential information

- (a) when the information is a general credit rating of a person that is supplied by a director, officer or employee of the licensee following a bona fide business request;
- (b) when the information is given with the written authorization of the beneficiary or his legal representative;
- (c) when the information is lawfully required to be disclosed by an order of the High Court, or
- (d) when the information is lawfully disclosed pursuant to any other enactment.

(4) In this section “confidential information” means information concerning the identity of a depositor or concerning the assets, liabilities, transactions or other information in respect of a depositor.

PART V - Audit And Inspection

Financial Statements

40.(1) A licensee shall, in respect of its business, submit to the Permanent Secretary in prescribed form

- (a) not later than twenty-one days after the end of each three month period, a quarterly statement of the assets and liabilities of the licensee; and
- (b) within such time as the Minister may determine, such other returns as the Permanent Secretary requires

(2) The Minister may require a licensee to submit such further information as he considers necessary for the proper understanding of any statement or return furnished by the licensee pursuant to subsection (1) and the further information shall be submitted within such time and in such manner as the Minister requires.

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Confidentiality

41.(1) No statement, return or information shall be required by the Permanent Secretary or the Minister with respect to the affairs of any particular offshore banking customer of a licensee, but the Minister may seek and be informed of the names of any residents of Nevis who are customers of the licensee.

(2) No statement, returns or information furnished or submitted by a licensee in respect of its business shall be communicated or disclosed except to the Minister and such public officers and other persons as may be prescribed.

Publication of balance sheets

42.(1) Not later than four months after the close of its financial year or such longer period as the Minister may allow, a licensee shall forward to the Permanent Secretary copies of its balance sheet and profit and loss account and the full and correct names of the directors of the licensee.

(2) The balance sheet and the profit and loss account must bear on its face the certificate of an auditor.

Auditor

43. In this Ordinance, unless the context otherwise requires-

“auditor” means a person who

- (a)* is qualified as an accountant by examination of, one of the institutes of Chartered Accountants or Certified Accountants in England and Wales, Ireland or Scotland, the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants and holds a current practising certificate if required by his institute to do so; or
- (b)* possesses such other qualification in accountancy, banking or other similar qualification equivalent to the qualification set forth in paragraph (a) as the Minister may, by order, approve and is in good standing with respect to such qualification.

Annual auditing

44.(1) The annual balance sheets, and accounts of a licensee shall be audited at least once in every financial year by an auditor appointed by the licensee from a list of auditors maintained by the Permanent Secretary.

(2) It is the duty of the auditor appointed pursuant to subsection (1) to submit a report to the shareholders of the licensee and to the Permanent Secretary.

(3) The report of the auditor shall state whether the auditor has obtained all the information and explanations he needed and in addition state whether in his opinion the balance sheet and accounts exhibit a true and correct view of the assets and liabilities of the licensee as at the date of the statement, and the income and expenditure of the licensee for the year then ended.

(4) It is the duty of the auditor to note in his report any instances where the operations of the licensee might not in the opinion of the auditor be in compliance with the requirements of this Ordinance or any regulations made hereunder, the conditions of the licensee's licence or its memorandum or articles of association.

(5) The report of the auditor shall be read with the report of the directors to the shareholders at the annual meeting of the licensee.

(6) A copy of the report of the auditor shall be displayed by the licensee in a conspicuous place at its office in Nevis.

(7) If the Permanent Secretary has reasonable grounds for not being satisfied with the annual report of an auditor appointed by a licensee, the Permanent Secretary may appoint another auditor to make an independent report.

(8) When a licensee fails to appoint an auditor pursuant to this section, the Permanent Secretary may appoint an auditor who has all the powers of an auditor appointed by the licensee to carry out an audit.

(9) The remuneration of an auditor shall be paid by the licensee to which he is appointed and, if the auditor is appointed under subsection (7) or (8), his remuneration shall be such amount as the Minister determines.

Prohibited auditors

45. No person may be appointed an auditor of a licensee

(a) if he has any proprietary interest in the licensee,

(b) if he is a director, or agent of the licensee or of an affiliate of the licensee, within the meaning of section 13; or

(c) if he is an officer or employee of the Nevis Island Administration.

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Examination by Minister

46.(1) When the Minister has reasonable grounds to believe that a licensee is not in a sound financial condition or that it is not acting in compliance with this Ordinance, the Minister may apply to the High Court for an order to examine the affairs of the licensee.

(2) The High Court may, having regard to the purposes of this Ordinance, grant an application under subsection (1) subject to such conditions as the High Court considers appropriate in all the circumstances.

(3) When the High Court grants an application under subsection (2) the Minister shall appoint a fit and proper person to examine the licensee.

Powers of examiners

47.(1) Subject to subsection (2), a licensee shall produce for an examiner appointed under section 46 by the Minister at such time as the examiner fixes, all books, minutes, cash, securities, vouchers and other documents and records relating to its assets, liabilities and business generally and shall give the examiner such information concerning its affairs and business as he may request.

(2) An examiner may not have access to, nor shall he be given access to, the name or the account of any depositor if the depositor is not a resident of Nevis.

Access by court order

48. Notwithstanding section 47 (2), the High Court may, on the application of the Minister, order the production of information protected under that section if the court is satisfied that it is required in the public interest by the examiner for the proper performance of his functions under this Ordinance and that there are no other lawful means of acquiring the information.

Offence and penalty

49. If any of the matters referred to in section 47 are not produced, or the information relating thereto is not given, to the examiner by the licensee, the licensee is guilty of an offence and liable on summary conviction to a fine of five thousand dollars and in addition, to a further fine of five hundred dollars for each day during which the offence continues.

Remedial action

50.(1) When the Minister is of the opinion that an examination of a licensee indicates that the licensee is carrying on its business in an unlawful manner or is in an unsound financial condition, the Minister may

- (a) require that the licensee immediately take such remedial measures as he considers necessary; and
- (b) appoint a person who in his opinion has had training and experience in the business of the licensee concerned, to advise the licensee on the action to be taken to remedy the situation, or
- (c) suspend the licence of the licensee for a period not exceeding three months.

(2) A person appointed under subsection (1)(b) shall be paid by the Nevis Island Administration such remuneration as the Minister may determine, which remuneration shall be charged to the licensee concerned.

PART VI - Offences

Unlicensed offshore banking

51.(1) A person who does offshore banking from within Nevis during any period in which he does not hold a licence under this Ordinance is guilty of an offence and liable on conviction to a fine not exceeding two hundred and fifty thousand dollars.

(2) Any director or officer of a company that does offshore banking from within Nevis without a licence under this Ordinance is guilty of an offence and liable on conviction to a fine not exceeding fifty thousand dollars or to imprisonment for five years or to both such fine and imprisonment.

(3) Subject to subsection 4 a person who holds any funds obtained from doing offshore banking business from within Nevis during any period in which he did not hold a licence under this Ordinance shall repay those funds in accordance with the direction of the Minister.

(4) The High Court may order any profits derived from the conduct of offshore banking from within Nevis without a licence under this Ordinance to be forfeited to the Nevis Island Administration.

Misleading advertising

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52.(1) A licensee that engages in advertising practices that are likely to mislead concerning

- (a) the relationship of the licensee with the Nevis Island Administration or any department or office thereof;
- (b) the true interest rate paid on deposit or charged or credit;
- (c) the true returns on the management of investments;
- (d) the insured or guaranteed status of deposit or other liabilities or of investments managed by it; or
- (e) the financial condition of the designated institution;

is guilty of an offence and liable on conviction to a fine not exceeding ten thousand dollars.

(2) A licensee shall, in respect of its business, furnish the Permanent Secretary with copies of all its advertisements.

False statement and obstruction

53. A director, officer, employee or agent of a licensee, who, with intent to deceive,

- (a) makes any false or misleading statement or entry in a book, account, record, report or statement of the licensee or omits a statement or entry that should be made therein, or
- (b) obstructs
 - (i) the carrying out by an auditor of his proper function under this Ordinance, or
 - (ii) the examination of a licensee as required pursuant to this Ordinance

is guilty of an offence and liable on summary conviction to a fine not exceeding fifty thousand dollars or imprisonment for five years or to both.

Disclosure of confidential information

54. A person referred to in section 39(1) who discloses confidential information contrary to that section is guilty of an offence and liable on conviction to a fine not exceeding twenty thousand dollars or to imprisonment for twelve months or both.

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Contravention of section 42

55. A licensee that contravenes section 42 is guilty of an offence and liable on conviction to a fine not exceeding twenty thousand dollars and in addition to a further fine of one thousand dollars for each month during which the offence continues after a conviction is obtained.

PART VII - General

Extending time

56. At the request of a licensee, the Minister may extend the time within which any document or information required from the licensee under this Ordinance must be sent to the Permanent Secretary.

Regulations

57. The Minister may make such regulations as are necessary for the purpose of this Ordinance and, in particular, may make regulations in respect of such acts, matters or things as are required by this Ordinance to be prescribed.

Use of “bank” in names

58.(1) Subject to subsection (2) no person other than a licensee may, without the approval of the Minister use the word

- (a)* “bank” or any of its derivatives in any language, or
- (b)* any other word indicating the doing of offshore banking from within Nevis,

in the name, description or title under which that person carries on business or intends to carry on business in Nevis or make any representation to that effect in any bill head, letter paper, notice or advertisement.

(2) Subsection (1) does not apply

- (a)* to a bank licensed under the Banking Act;

(b) to a qualified foreign bank or eligible company that is applying for a licence under this Ordinance as a licensee;

(3) A person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding twenty thousand dollars.

PART VIII - Winding-up

Voluntary winding-up

59.(1) Except with the prior written approval of the Minister no licensee may be wound-up voluntarily.

(2) Approval for a voluntary winding-up of a licensee may be given by the Minister only if he is satisfied that

(a) the licensee is solvent and has sufficient assets to repay its depositors and other creditors without delay; and

(b) subject to subsection (3), the winding-up has been approved by the holders of at least two-thirds of the outstanding voting shares of the licensee.

(3) Where the Minister finds in respect of a licensee that there is imminent danger of its insolvency, the Minister may waive the requirement for shareholder approval of the winding-up of the licensee voluntarily, if

(a) the winding-up is to be effected in whole or in part through the sale of any of the assets of the licensee to another licensee; and

(b) the deposit liabilities of the licensee to be wound-up are to be assumed by that other licensee.

Commencement of voluntary winding-up

60. When a licensee receives the approval of the Minister to its voluntary winding-up, the licensee shall

(a) cease to do business immediately and retain only such staff as is necessary for an orderly winding-up;

(b) repay its depositors and other creditors; and

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- (c) wind-up all operations undertaken before the receipt of the approval to wind-up.

Notice of winding-up

61.(1) Within thirty days of the receipt of the approval of the Minister to the winding-up a notice of voluntary winding-up which must contain the prescribed information, shall be sent by the licensee in the prescribed manner or by personal service, to the depositors and creditors of the licensee and other persons having any interest in its funds or other property.

(2) The notice described in subsection (1) shall also be published in the Gazette and placed in a conspicuous place on the premises of each office or branch of the licensee to be wound-up.

Settlement of claims

62.(1) The approval of the Minister to the voluntary winding-up of a licensee does not adversely affect the rights of a depositor or other creditor of the licensee to settlement in full of his claim nor the rights of any person having an interest in the funds or property of the licensee to settlement of that interest.

(2) All claims made by persons described in subsection (1) shall be settled by the licensee concerned within such time as the Minister may determine.

Distribution of remaining assets

63.(1) The assets of a licensee being voluntarily wound-up that remain after settlement of the claims described in section 62 are to be distributed among the shareholders of the licensee in proportion to their respective rights.

(2) Notwithstanding subsection (1) , no distribution of the remaining assets of a licensee may be made

- (a) before all claims of depositors and other creditors have been settled or, in the case of a disputed claim, before the licensee has deposited with the Nevis Island Administration sufficient funds to meet any liability that could arise under that claim;
- (b) before any funds that are payable to a depositor or other creditor who has made his claim have been deposited with the Nevis Island Administration;
or

- (c) before any funds or property held by the licensee that could not be returned, in accordance with section 62, to the persons who have an interest therein have been deposited with or transferred to the Nevis Island Administration, together with the relevant records.

Interruption of winding-up

64.(1) If the Minister determines that the assets of a licensee that is being voluntarily wound-up are not sufficient for the full discharge of the obligations of the licensee or that the completion of such a winding-up is being unduly delayed, the Minister may seize the management and control of the licensee by posting a notice to that effect on the premises of the licensee and by putting persons appointed by the Minister into the offices of the licensee.

(2) When the Minister seizes the management and control of a licensee under subsection (1) he shall immediately begin proceedings for the compulsory winding-up of the licensee or its re-organisation, in accordance with this Ordinance.

Seizure in other cases

65.(1) Notwithstanding section 64, the Minister may seize the management and control of a licensee in any of the following circumstances, namely

- (a) when the realizable value of the licensee's assets is less than the aggregate of its liabilities and capital accounts or the licensee's financial condition suggests that it will shortly be in that circumstance;
- (b) when its business is being conducted in an imprudent manner or is not being conducted in accordance with this Ordinance;
- (c) when the licensee refuses to submit to inspection of its records or operations by an auditor appointed under section 44 or an examiner appointed under section 46; or
- (d) when its licence has been revoked or suspended under this Ordinance.

(2) A seizure of the management and control of a licensee under this section is effected by placing a notice to that effect on the premises of the licensee and by putting persons appointed by the Minister into the offices of the licensee.

(3) A licensee aggrieved by a seizure under this section may institute proceedings in the High Court for recovery of the administration and control of the institution and the High Court may make such order in respect thereto as to it seems just and consistent with the purposes of this Ordinance.

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Duty of Minister

66. Within thirty days after the Minister has seized the administration and control of a licensee under this Ordinance, the Minister shall begin proceedings in the High Court

- (a) for the compulsory winding-up of the licensee; or
- (b) for the reorganisation of the licensee.

Power of High Court

67. The High Court may in respect of proceedings by the Minister under section 66 order

- (a) the compulsory winding-up of the licensee;
- (b) the reorganisation of the licensee subject to such terms and conditions as the court may determine; or
- (c) the return of the management and control of the licensee to its shareholders, directors and officers subject to such safe-guards or conditions, if any, as the court may consider for the purposes of this Ordinance.

Notice of application

68.(1) Forthwith after he makes an application to the High Court under section 66 in relation to a licensee, the Minister shall give notice of the application

- (a) to the directors and shareholders of the licensee, and
- (b) to the depositors and other creditors of the licensee.

Appointment of custodian

69. If the High Court orders the compulsory winding-up or reorganisation of a licensee pursuant to an application under section 67, the High Court shall appoint a custodian to be responsible to the Court and to supervise the winding-up or re-organisation of the licensee.

Functions of custodian

70.(1) In respect of the licensee for which he has been appointed, the custodian has the exclusive power and duty to manage and control the affairs of the licensee.

(2) Without limiting his powers or duties under subsection (1) , the custodian may, in respect of the licensee for which he has been appointed,

- (a)* continue or discontinue its operations;
- (b)* stop or limit the payment of its obligations;
- (c)* employ staff;
- (d)* execute any instrument in its name;
- (e)* initiate, defend and conduct in its name any action or proceeding to which the licensee is or might be a party;
- (f)* end the seizure of the licensee by restoring it to its directors and shareholders; and
- (g)* re-organise or wind-up the licensee in accordance with this Ordinance.

Inventory of assets

71.(1) Forthwith after assuming management and control of a licensee, the custodian shall make an inventory of its assets and forward a copy of the inventory to the Registrar of the High Court.

(2) The copy of the inventory forwarded to the Registrar shall be kept available at all reasonable times for the inspection of interested persons.

Reorganisation

72.(1) Where the re-organisation of a licensee has been ordered by the High Court, the custodian shall develop a plan of re-organisation and deliver a copy thereof to each of the depositors and other creditors of the licensee who under the plan would not receive full restitution or payment of their claims.

(2) The copy of the re-organisation plan must be accompanied by a notice requiring that objections to the plan be delivered to the custodian not later than thirty days after the last of the copies have been delivered under subsection (1).

(3) If within the time limited therefor by subsection (2) the custodian does not receive objections in writing to the re-organisation from persons who in the aggregate hold at least one-third of the total amount of deposits and other liabilities of the licensee, the custodian may carry out the re-organisation plan referred to in subsection (1).

(4) When an objection to the re-organisation plan is received from one-third or more of the persons described in subsection (3), the custodian shall submit further re-organisation plans in like manner until such time as fewer than one-third of the persons described in subsection (3) object within the time limited therefor or he may refer the matter back, at anytime to the High Court for further directions.

(5) The High Court may extend the time limited by subsection (1) and upon cause shown may exempt the custodian from delivering the plan to some or all of the persons mentioned in subsection (1).

Content of plan

73. A re-organisation plan developed by the custodian of a licensee must, so far as it is practicable to do so

- (a) be equitable to all classes of depositors;
- (b) provide for bringing in new funds to establish adequate ratios between
 - (i) capital and deposits, and
 - (ii) liquid assets and deposits; and
- (c) provide for the removal of any directors or any officer or employee responsible for the circumstances that led to the seizure of the licensee.

Application for order by custodian

74. If, in the course of the re-organisation of a licensee, it appears to the custodian that circumstances render the plan or its execution undesirable, he may apply to the High Court for an order

- (a) to modify the plan, or
- (b) to wind-up the licensee compulsorily.

Compulsory winding-up

75.(1) Where the High Court under section 67 or 74 orders the compulsory winding-up of a licensee, the custodian appointed therefor by the Court may, subject to subsection (2), perform the functions of the licensee.

(2) The custodian of a licensee described in subsection (1) may not, without an order of the High Court to do so,

- (a)* sell any assets or transfer any property of the licensee that has a value exceeding one hundred thousand dollars;
- (b)* create a security interest in any asset or property of the licensee in favour of a creditor who extends a new credit to the licensee;
- (c)* compromise or release any claim the amount of which exceeds one hundred thousand dollars; or
- (d)* pay any claim other than one in respect of an obligation incurred by the custodian in the exercise of his winding-up functions before the schedule referred to in section 79(c) has been approved by the High Court.

Termination of service contracts

76. Subject to any other law governing conditions of employment, the custodian of a licensee that has been ordered by the High Court to be compulsorily wound-up shall terminate not later than nine months after the order of the High Court

- (a)* any employment contract of the licensee;
- (b)* any contract for services which the licensee is a party, and
- (c)* any obligations of the licensee as a lessee of property.

Right of lessor

77. A lessor of any property referred to in section 76

- (a)* must be given notice of not less than ninety days of the intended termination of the obligations of a licensee thereunder;
- (b)* has no claim for rent thereunder other than rent accrued on the date of the termination of the obligation of the licensee; and

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- (c) has no right to damages by reason only of any termination of the obligations of the licensee, notwithstanding any term of the lease to the contrary.

Statements of accounts

78.(1) Within sixty days after an order for the compulsory winding-up of a licensee, the custodian shall deliver a statement of account to any depositors and other creditors.

(2) The statement of account is a statement of the nature and amount for which a claim of a person described in subsection (1) is shown on the books of the licensee.

(3) A notice specifying that any objection to the statement of account is to be made on a date specified in the notice, not being later than sixty days after the delivery of the notice, must accompany the statement of account.

(4) The High Court on application of the custodian for cause shown may exempt the custodian from delivering a statement of account to any person mentioned in subsection (1).

Claims

79. Not later than ninety days after the last day specified in the notice for filing claims against a licensee being compulsorily wound-up, the custodian shall

- (a) reject any claim, of which he doubts the validity;
- (b) determine the amount, if any, owing to each known depositor or other creditor and the priority of his claim under this Ordinance;
- (c) prepare for filing with the High Court a schedule of the actions proposed to be undertaken for the purpose of the compulsory winding-up of the licensee;
- (d) notify each person whose claim is allowed in full; and
- (e) publish, once a week for three consecutive weeks in a newspaper of general circulation in Nevis,
 - (i) a notice of the date and place where the schedule referred to in paragraph (c) will be available for inspection, and
 - (ii) the date, not being earlier than thirty days from the date of the publication, on which the custodian will file that schedule with the High Court.

Objections

80.(1) Within twenty days of the filing of a schedule under section 79, a depositor or other creditor or shareholder of the licensee concerned, or other interested person, may file with the High Court any objection he has to any action proposed in the schedule referred to in section 79(c).

(2) After notice served on the custodian and such interested parties as the High Court may require, the High Court shall hear the objection and make such order thereon as it considers just in the circumstances.

(3) When the High Court allows an objection, the order must set out the manner in which the schedule referred to in section 79(c) is to be modified.

Distribution of assets

81.(1) When a schedule has been filed under section 79 in respect of a licensee, the custodian may make a partial distribution to the claimants against the licensee whose claims are undisputed or allowed by the High Court, if the custodian establishes an adequate reserve for the payment of disputed claims against the licensee.

(2) As soon as practicable after all objections against the distribution proposed by the custodian have been heard and determined, final distribution of the assets of the licensee concerned shall be made by the custodian.

Priority of claims

82.(1) The following claims have priority against the general assets of a licensee being compulsorily wound-up under this Ordinance

- (a)* firstly, the necessary and reasonable expenses incurred by the custodian in carrying out his functions under this Ordinance;
- (b)* secondly, the wages and salaries of the officers and employees of the licensee that accrued during the three months immediately preceding the seizure of the licensee under this Ordinance;
- (c)* thirdly, any monies owing to the Nevis Island Administration;
- (d)* fourthly, the other deposits.

(2) After payment of all other claims against the licensee, with interest at such rate as the High Court determines, all remaining claims against the licensee that were not filed within the time limited therefor under this Ordinance may then be paid.

(3) Where the amount available to pay the claims of any class of claimant specified in this section in respect of priorities is not sufficient to provide payment in full to claimants in that class, the amount available shall be distributed by the custodian on a pro rata basis among the claimants in that class.

Distribution to shareholders

83. The assets of a licensee being compulsorily wound-up that remain after the final distribution to claimants pursuant to section 82 shall be distributed by the custodian among the shareholders of the licensee in proportion to their respective rights.

Abandoned funds

84.(1) Any funds of a licensee being compulsorily wound-up under this Ordinance that remain unclaimed after the final distribution under section 82 and not subject to distribution under any other provision of this Ordinance shall be deposited with the Nevis Island Administration by the custodian of the licensee.

(2) Funds deposited with it under subsection (1) must be held by the Nevis Island Administration for ten years unless earlier claimed by a person entitled thereto.

(3) On the expiration of the ten years referred to in subsection (1) in respect of any funds, those funds remaining unclaimed become abandoned property.

Completion of winding-up

85.(1) When all the assets of a licensee being wound-up have been distributed or dealt with as required by this Ordinance, the custodian shall render an audited statement to the High Court.

(2) If the High Court is satisfied with the audited statement rendered by the custodian in respect of a licensee being wound-up, it may by order direct the Registrar of the companies to strike the name of the licensee from the register of companies under the Companies Act and publish notice thereof in the Gazette.

(3) When its name is struck off the register of companies the licensee is thereupon dissolved and its licence under this Ordinance is revoked.

PART IX - Residence

Residents of Nevis

86.(1) For the purposes of this Ordinance, the following are residents of Nevis, namely:

- (a)* an individual ordinarily resident in Nevis or a citizen of St. Kitts and Nevis with a residence in Nevis;
- (b)* any incorporated or other body, incorporated, formed or organised in Nevis the majority of the shares or other ownership of which is not beneficially held by persons resident outside Nevis;
- (c)* any incorporated or other body, wherever incorporated, formed or organised, that is controlled within the meaning of section 22 by a person described in paragraph (a) or (b);
- (d)* any incorporated body or other body that is controlled within the meaning of section 22 by a body described in paragraph (c) or by the Nevis Island Administration or any agency thereof;

(2) A reference in this Part to any beneficial interest, or to any thing being beneficially owned or held includes ownership through a trustee, legal representative, agent or other intermediary.

Persons resident outside Nevis

87. A person is resident outside Nevis for the purpose of this Ordinance if he is not a resident of Nevis within the meaning of section 86.

PART X - Tax Exemptions

Exemption from tax

88.(1) Except as provided by this Part, no income tax, capital gains tax or other direct tax shall be levied in Nevis upon the profits or gains of a licensee in respect of the offshore banking it does from within Nevis.

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(2) Except as provided by this Part, no income tax, capital gains tax or other direct tax shall be levied in Nevis in respect of any dividends or earnings attributable to the shares or securities of a licensee that are beneficially owned by another licensee or by a person who is not a resident of Nevis.

(3) Except as provided by this Part, no estate, inheritance, succession or similar tax shall be levied in Nevis in respect of any shares, securities or assets of a licensee that are beneficially owned by a person who is not a resident of Nevis.

(4) Except as provided by this Part, no tax or duty shall be levied upon the increment in value of the property or other assets in Nevis of a licensee other than upon such of them as are distributed to residents of Nevis.

Transfer of assets exemption

89.(1) Except as provided by this Part, no tax or duty shall be levied upon a licensee, its shareholders or transferees in respect of the transfer of all or any part of its securities or other assets to another licensee or to a person who is not a resident of Nevis.

(2) Where a person who is not a resident of Nevis or a licensee transfers shares of a licensee that are held by that person or licensee to another person who is not a resident of Nevis or to another licensee, the transfer is exempt from the payment of any tax or duty thereon.

(3) Except as provided by this Part,

(a) no income tax or capital gains tax, and

(b) no other direct tax

shall be levied or collected in Nevis in respect of any dividend, interest or other return from any shares, securities, deposits or other borrowing of a licensee or any assets managed by the licensee if the dividend, interest or other returns are in respect of shares, securities deposits or other borrowings or assets beneficially owned by a person who is not a resident of Nevis; but the onus of establishing ownership lies upon the licensee

Withholding tax and report re dividends etc.

90.(1) Notwithstanding any provision of the Income Tax Act, but subject to subsection (2), no licensee need withhold any portion of any dividend, interest or other returns payable to any person in respect of any borrowings of the licensee or in respect of that person holding shares or securities of the licensee.

(2) All dividends, interest or other returns attributable to the shares or securities of or the management of assets by a licensee that are payable to a resident of Nevis and known as such by the licensee shall be reported to the Inland Revenue Department.

Tax on profits

91.(1) By way of income tax but in lieu of income tax at the rates in the Income Tax Act, there shall be levied and paid to the Inland Revenue Department upon the profits and gains of a licensee, in respect of the offshore banking business done by it from within Nevis, tax at the following rates

- (a) 2½% on all profits and gains up to ten million dollars;
- (b) 2% on all profits and gains in amounts exceeding ten million dollars but not exceeding twenty million dollars;
- (c) 1½% on all profits and gains in amounts exceeding twenty million dollars but not exceeding thirty million dollars; and
- (d) 1% on all profits and gains in amounts exceeding thirty million dollars.

(2) Except in so far as this Ordinance operates to exempt a licensee from liability to income tax under the Income Tax Act, the provisions of that Act apply *mutatis mutandis* to a licensee.

Tax agreement

92.(1) Notwithstanding section 91, a licensee and the Minister may enter into an agreement determining the amount to be paid as income tax in lieu of other taxes on income by the licensee in respect of the business it does from within Nevis.

(2) An agreement under subsection (1) may not provide for any amount in lieu of other taxes if it would result in the licensee paying less than it would if it were to pay tax pursuant to section 91.

Service Fees etc.

93.(1) When a tax levied in Nevis is in the nature of a service charge or utility charge for a service provided by the Nevis Island Administration, a licensee is not exempt from that charge under this Part.

(2) A service or utility charge includes a charge or fee levied or imposed for the issuance of any incorporation, registration or licence required in Nevis.

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Customs duty

94. The Minister may by order exempt a licensee in respect of its business from all or so much of any duty payable under the Customs Act in respect of any goods imported by the licensee in respect of its business as the Minister deems expedient, if the licensee in respect of its business satisfies the Minister that the goods concerned are not being made or manufactured in Nevis, are essential as equipment or fixtures for doing business from within Nevis and are not merely goods that will be used up or expended in the ordinary course of business.

Employee benefits

95.(1) Where the Minister is satisfied that a licensee must use the services of specially qualified persons in order to do its business effectively from within Nevis and that

- (a)* it is unable to acquire those services in Nevis, and
- (b)* it is unable to retain or hire those services from outside Nevis without special tax benefits being made available

the Minister may authorise an offshore benefit provision for the employment of those specially qualified persons.

(2) An offshore benefit provisions is one whereby a prescribed percentage of an employee's or contractor's salary or fees from a licensee

- (a)* is exempt from any duty or tax in Nevis;
- (b)* may be paid in a foreign currency;
- (c)* may be paid in some other prescribed manner in another currency or otherwise;

notwithstanding the provision of any other law to the contrary.

PART XI - Miscellaneous and Consequential

Application of Companies Act

96.(1) The provisions of the Companies Act relating to the winding-up of a company do not apply to a licensee.

Bankruptcy Act

97. The Bankruptcy Act does not apply to a licensee.

Banking Act

98. The Banking Act does not apply to a licensee in respect of its offshore banking business.

Exemptions

99. The provisions of this Ordinance set out hereunder do not apply to a licensee that is a qualified foreign bank, namely:

- (a)* sections 20 to 24;
- (b)* sections 33 to 37;
- (c)* Part VIII.

Commencement

100. This Ordinance comes into operation on a day to be fixed by the Minister.