



I assent,

SAMUEL WEYMOUTH TAPLEY SEATON

Governor-General.

22nd March, 2021.

SAINT CHRISTOPHER AND NEVIS

No. 8 of 2021

AN ACT to amend the Virtual Assets Act, No. 1 of 2020.

[Published 26th March 2021, Extra-Ordinary Gazette No. 15 of 2021.]

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

1. **Short Title.**

This Act may be cited as the Virtual Assets (Amendment) Act, 2021.

2. **Interpretation.**

In this Act, unless the context otherwise requires the expression "Act" means the Virtual Assets Act, No. 1 of 2020.

3. **Amendment of Act.**

The Act is amended by inserting immediately after section 3, the following new section, 3A.

“ 3A. **Categorisation of Virtual Assets.**

A virtual asset is a regulated business for the purposes of the Proceeds of Crime Act.”.

4. **Amendment of section 4 of the Act.**

The Act is amended in section 4 by replacing it as follows:

“ **4. Requirements for Registration.**

(1) Subject to subsection (2), a person shall not offer or operate in or from St. Kitts and Nevis virtual asset business without being registered under this Act.

(2) Subject to subsection (5), a person who immediately before the commencement of this Act was operating a virtual asset business may continue to operate that virtual asset business for sixty days from the date of commencement of this Act.

(3) Where a person continues to operate in accordance with subsection (2) that person shall within 7 days of the commencement of this Act make an application for registration pursuant to section 6.

(4) Where an application made for registration under subsection (3) is not granted or withdrawn, the person shall cease to operate the virtual asset business within 14 days of the date of the notice received by the person from the Authority

(5) Notwithstanding the provisions of subsection (2), the Authority may, if it is in the public interest, order a person to cease offering or operating virtual asset business until an application made for registration is determined.

(6) Pursuant to subsection (2), a person who immediately before the commencement of this Act was operating a virtual asset business and does not make an application for registration shall cease to operate that virtual asset business.

5. Amendment of section 7.

Section 7 of the Act is amended by replacing the section with the following

“ **7. Grant and refusal of application for registration.**

(1) The Authority shall on receipt of an application made under section 6, cause a review of the application and consider whether to grant or refuse to grant registration.

(2) The Authority shall not grant registration unless the Authority is satisfied that the

- (a) person is a fit and proper person to be engaged in virtual asset business;
- (b) application is in order and the application fee prescribed in Schedule 1 has been paid;
- (c) requirements of this Act have been complied with; and
- (d) person would be able to fulfil the obligations of a registrant under this Act.

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- (3) The Authority may request further information or documents from a person for the purpose of considering whether to approve or refuse registration.
- (4) The Authority shall notify the applicant in writing
 - (a) of the approval of the application for registration; or
 - (b) of the refusal of the application for registration and provide the reason for the refusal unless to do so would be contrary to public interest.
- (5) For the purposes of this section in considering whether a person is “fit and proper” the Authority shall have regard to
 - (a) the financial status or solvency of the person or any officer, executive, principal representative, beneficial owner, significant shareholder, director or management of the person;
 - (b) the person’s educational or other qualifications or experience having regard to the type of virtual asset business the person intends to be involved in;
 - (c) the reputation, financial integrity, and probity of:
 - (i) the person, if the person is an individual;
 - (ii) any officer, executive, significant shareholder, director or management, if the person is a company; or
 - (iii) any principal representative;
 - (d) whether the interests of a client of the person are or are likely to be in any way threatened by any director, officer, principal representative, or significant shareholder of the person holding his or her position;
 - (e) whether a person or any principal representative, director, officer, or significant shareholder of the person is engaged in any business practices or conducted his or herself in a manner that would appear to be improper, deceitful or otherwise discredit the business practice of the person; and
 - (f) any other matter as may be prescribed by Regulations.
- (6) Without prejudice to the generality of subsection (5), regard may be had to the previous conduct and activities in business or financial matters of the person in question and in particular to any evidence that the person has —
 - (a) committed an offence involving fraud or other dishonesty;
 - (b) contravened any provision made by or under an enactment designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or the management

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- of companies or against financial loss due to the conduct of a discharged or un-discharged bankrupt;
- (c) an employment record which leads the Authority to believe that the person carried out an act of impropriety in the handling of his employer's business;
 - (d) engaged in or has been associated with any other business practices or otherwise conducted himself in a manner as to cast doubt on his competence and soundness of judgment;
 - (e) been convicted of an offence under this Act;
 - (f) suspended or is about to suspend payment in respect of, or is unable to meet, its obligations as they fall due;
 - (g) been declared insolvent or is likely to become insolvent, if the person is a company;
 - (h) been declared bankrupt locally or abroad and is an un-discharged bankrupt, if the person is an individual;
 - (i) been removed or suspended by a regulatory authority from serving as a director or officer in any body corporate locally or abroad;
 - (j) has failed to satisfy any judgment or order of a court locally or abroad including the repayment of a debt.

6. Amendment of section 9.

Section 9 of the Act is amended by inserting the following new subsections (7), (8), (9) and 10

“ (7) A registrant shall be required to conduct an enterprise-wide risk assessment to determine its risk for money laundering, terrorist financing and the financing of the proliferation of weapons of mass destruction.

(8) A registrant shall submit its application for a proposed compliance officer or a proposed money laundering reporting officer to the Commission for approval.”.

(9) A registrant with registered office outside of Saint Christopher and Nevis shall appoint and have in place at all times, a person who is ordinarily resident in Saint Christopher and Nevis to be its principal representative and the principal representative shall

- (a) be responsible for the daily management of the place of business in Saint Christopher and Nevis;
- (b) act as liaison between clients of the registrant and other offices of the registrant or its affiliates, other than offices located in, or affiliates incorporated in, Saint Christopher and Nevis;

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- (c) act as liaison between the registrant and the Authority on all matters arising in connection with the virtual asset business in Saint Christopher and Nevis;
- (d) receive all notices and other documentation from the Authority on behalf of the registrant;
- (e) advise and guide the registrant as to its responsibilities and obligations to ensure compliance with this Act and any guidelines or regulations issued under it;
- (f) submit to the Authority on behalf of the registrant, all required information and documentation under this Act or any guidelines or regulations issued under it, in a timely manner;
- (g) disclose to the Authority any information or explanations that the Authority may reasonably require for the purpose of verifying any information which should be taken into account in considering any matter arising in connection with the virtual asset business in Saint Christopher and Nevis; and
- (h) carry out any other responsibilities as may be prescribed by Regulations.

7. Amendment of Act.

The Act is amended by inserting a new section 9A. as follows

“ 9A. Fiduciary Duties of a Registrant.

(1) A registrant shall place in escrow, with a registered trust company or with an entity or person whose business is the provision of trust or custodial services, assets to discharge financial obligations to clients of the registrant and such assets shall be equivalent to fifteen per cent of the total value of client funds held by the registrant.

(2) Subject to the requirements of section 6, a registrant shall write to the Authority for approval of any changes in the business of the registrant including

- (a) names of any director, officer, principal representative or significant shareholder;
- (b) nature and scope of the virtual asset business; and
- (c) address and contact information of the registered office and any other place of business within and outside the jurisdiction of Saint Christopher and Nevis.

(3) A registrant shall submit to the Authority quarterly reports providing

- (a) the number of accounts held by the registrant;
- (b) the value of the accounts held by the registrant; and

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- (c) a statement of the assets held in escrow.
- (4) A registrant shall
 - (a) maintain adequate accounting records and prepare financial statements in respect of each financial year in accordance with generally accepted accounting principles;
 - (b) keep a copy of such accounting records and financial statements at its place of business in Saint Christopher and Nevis.
- (5) A registrant shall
 - (a) communicate information on its website or in any publication made available to the public regarding the virtual asset business in a complete and comprehensible manner, so a client can evaluate the features, costs and risks of the virtual asset business the registrant offers or operates; and
 - (b) where there are any changes to the information communicated pursuant to paragraph (a), reflect the change or issue a notice of the change within 7 days using the same medium used to communicate the information in paragraph (a).
- (6) A registrant who fails to comply with a requirement imposed by subsection (2) or subsection (3) shall be liable to an administrative penalty of \$5000.

8. Amendment of Act.

The Act is amended by inserting a new section 12A. as follows:

“ **12.A Audit and financial statements.**

- (1) A registrant shall appoint annually an auditor who shall be a chartered accountant, a certified public accountant, a member of the Institute of Chartered Accountants of the Eastern Caribbean or some other professionally qualified accountant satisfactory to the Authority to perform an audit and the duties of the auditor shall
 - (a) be to examine the books and records and to make a report on the annual financial statements and financial position; and
 - (b) include discharging all or any of the following requirements if the Authority requires the registrant;
 - (i) to submit additional information in relation to the audit of the registrant as the Authority considers necessary;
 - (ii) to carry out any other examination or establish any procedure in any particular case;
 - (iii) to submit a report on any of the matters referred to in paragraphs (i) and (ii);

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- (iv) to submit a report on the financial and risk management controls of the registrant; and
 - (v) to provide an opinion on whether suitable measures to counter money laundering and to combat the financing of terrorism have been adopted by the registrant and are being implemented in accordance with the applicable laws.
- (2) For the purposes of subsection (1)(b)(i) the additional information required may include
- (a) the volume of transactions relating to the virtual asset business;
 - (b) a report as to whether proper records of the transactions in relation to the virtual asset business have been maintained; and
 - (c) a report as to whether the registrant has complied with the provisions of this Act and any other written laws as the Authority may determine.
- (3) A registrant shall within four (4) months of the end of the financial year submit the audited financial statements to the Authority.
- (4) The audited financial statements shall cover a period of not more than eighteen months beginning on the date of the commencement of operations, or if the registrant has previously prepared audited financial statements, beginning at the end of the period covered by the most recent audited financial statements.
- (5) The external auditor shall immediately make a report to the registrant and the Authority, if in the course of the performance of the external auditor's duties, the external auditor is satisfied that
- (a) there has been a serious breach or non-compliance with the provisions of this Act;
 - (b) there is evidence:
 - (i) that a criminal offence involving fraud or other dishonesty may have been committed; or
 - (ii) of any suspicious transaction as referred to in the Proceeds of Crime Act, the FIU Act, the Anti-Terrorism Act, the Anti-Proliferation (Financing of Weapons of Mass Destruction) Act or any regulations made pursuant to these laws.
- (6) The Authority may appoint and instruct an external auditor who shall be a chartered accountant, a certified public accountant, a member of the Institute of Chartered Accountants of the Eastern Caribbean or some other professionally qualified accountant to conduct an independent audit of a registrant to report the findings or results to the Authority.
- (7) An external auditor shall not be liable for breach of any duty solely by reason of compliance with the provisions of subsections (1), (2) or (5) or any other request for information by the Authority.

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(8) A registrant shall comply with the requirements of the legislation referred to in subsection (5)(a)(ii) and institute procedures to ensure that accounting records and business operations comply with that legislation.

(9) Where a registrant fails to comply with the provisions of subsection (1) or subsection (3), the registrant commits an offence and shall be liable upon conviction to a fine not exceeding one hundred thousand dollars.

(10) Notwithstanding the provisions of subsection (1), where the Authority becomes aware of the contravention in subsection (1), the Authority may provide an opportunity to the registrant to discharge its liability by taking one or more of the following actions:

- (i) issue a written warning to the registrant;
- (ii) conclude a written agreement with the registrant, providing for a program of remedial action; or
- (iii) issue a cease and desist order that requires the registrant or the person responsible for its management to cease and desist from the practice or violations specified in the order.

(11) Where the registrant fails to rectify the contravention after the intervention of the Authority pursuant to subsection (2), the Authority may inform a police officer of the alleged contravention and the police officer may lay an information before a Magistrate in respect of the offence.

(12) The powers of the Authority in this section shall be without prejudice to its powers under the Financial Services Regulatory Commission Act.

9. **Amendment of section 13.**

The Act is amended in section 13 by inserting immediately after subsection (5), the following new subsections

“ (6) A person who contravenes the provisions of subsection (1) shall be liable to an administrative penalty not exceeding ten thousand dollars (\$10,000.00) and to a further penalty of two hundred dollars for each day that the contravention remains outstanding.

(7) Where an administrative penalty is levied on a registrant the payment of the penalty shall discharge the registrant from further liability under this Act for the contravention for which the penalty was levied.

(8) An administrative penalty levied on a registrant may be recovered as a civil debt by the Authority.”.

10. **Amendment of Act.**

The Act is amended by replacing sections 14 to 16 as follows:

“ 14. **Fees.**

- (1) Any fee paid in accordance with this Act is non-refundable.
- (2) The registration fee prescribed in Schedule 1 shall be for the period January 1 to December 31.
- (3) The fee for renewal of a registration shall be the same as the fee for registration.
- (4) Fees under this Act shall be payable to the Authority as proof of payment submitted to the Authority.
- (5) Where a registrant fails to pay the fee for renewal of registration on or before January 31 of the year for that renewal, the registrant shall be liable to a late fee of \$100 for each day that the renewal fee remains outstanding.
- (6) Where three months has elapsed from the due date for renewal and the fee for renewal remains outstanding, the registration shall lapse and the registrant shall be required to make a new application to conduct virtual asset business pursuant to this Act.

15. **Revocation and suspension of registration.**

- (1) The Authority may if necessary suspend registration by giving 10 days written notice to the registrant, if the registrant
 - (a) has contravened a provision of this Act;
 - (b) has been registered pursuant to an application where a false declaration was made;
 - (c) ceases to operate or offer virtual asset business in excess of 90 days;
 - (d) made a request for revocation or suspension to the Authority;
 - (e) enters liquidation, is wound up or otherwise dissolved;
 - (f) is no longer a fit and proper person to be a registrant;
 - (g) is conducting business in a manner that is detrimental to the public interest or clients;
 - (h) misrepresents or provides false information in a prospectus; or
 - (i) is convicted of an offence.
- (2) Where a registrant fails to rectify the issues which caused its suspension, within 30 days of the issuance of the notice referred to in subsection (1), the Authority may revoke the registration.
- (3) Notwithstanding the provisions of subsection (1) and (2), the Authority may suspend or revoke a registration without notice if it determines that it is in the public interest or to protect clients.

(4) Any notice issued under this section shall specify the reasons for the revocation or suspension.

16. Offences and penalties.

- (1) A person commits an offence if that person
 - (a) directly or indirectly makes a false or misleading declaration or omits to disclose a material fact for the purpose of gaining or retaining a client;
 - (b) directly or indirectly makes a false declaration in an application for registration;
 - (c) offers or operates virtual asset business in or from Saint Christopher and Nevis without being registered under this Act; or
 - (d) otherwise contravenes a provision of this Act for which a penalty is not provided.

(2) A person who commits an offence under this Act for which no penalty is provided shall be liable on summary conviction to a fine not exceeding fifty thousand dollars and to imprisonment for a term not exceeding 2 years.

(3) Where an administrative penalty is levied on a registrant, the payment of the penalty shall discharge the registrant from further liability under this Act for the contravention for which the penalty was levied.

(4) An administrative penalty levied on a registrant may be recovered as a civil debt by the Authority.”.

ANTHONY MICHAEL PERKINS
Speaker

Passed by the National Assembly this 18th day of March, 2021.

SONIA BODDIE-THOMPSON
Clerk of the National Assembly