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SAINT CHRISTOPHER AND NEVIS

No. of 2020

A BILL to provide for the regulation of virtual asset business from Saint Christopher and Nevis and with persons in Saint Christopher and Nevis and for related matters;

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:

Short title

1. This Act may be cited as the Virtual Asset Bill, 2020.

Interpretation

2. (1) In this Act

“Authority” means the Financial Services Regulatory Commission established under section 4 of the Financial Services Regulatory Commission Act;

“client” includes a potential client;

“Commission” means the Financial Services Regulatory Commission established pursuant to section 4 of the Financial Services Regulatory Commission Act, Cap. 21:09;

“fiat currency” means currency issued by the relevant body in a country or by a government as legal tender and that is not backed by any commodity;

“Minister” means the Minister with responsibility for finance;

“Ministry” means the Ministry of Government with the responsibility for finance;

“person” includes a sole corporation, a body incorporated or unincorporated, a firm, an association and a partnership;

“prospectus” means any document, statement, advertisement or notice that provides information for the purpose of offering to the public and a client, subscription to or purchase of a virtual asset;

“registrant” means a person registered under section 8;

“significant shareholder” means a person who either alone or with an affiliate or connected person, is entitled to hold more than ten per cent of the virtual asset business or to exercise or control more than ten per cent of the total voting rights at any general meeting of the virtual asset business or another company of which the virtual asset business is a subsidiary;

“virtual asset” means a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes and does not include digital representations of fiat currency or security; and

“virtual asset business” means the conduct of one or more of the following activities or operations for or on behalf of another person

- (a) exchange between a virtual asset and fiat currency;
- (b) exchange between one or more forms of virtual assets;
- (c) transfer of a virtual asset whether or not for value;
- (d) safekeeping or administration of a virtual asset or instruments enabling control over a virtual asset; and
- (e) participation in and provision of financial services related to an issue or sale of a virtual asset;

(2) For the purposes of this section

“security” has the same meaning as in section 2 of the Securities Act Cap. 21.16.

Application of Act.

3. This Act applies to any person who whether before or after the commencement of this Act offers or operates virtual asset business to residents of Saint Christopher and Nevis or from Saint Christopher and Nevis.

Requirement for registration

4. (1) Subject to subsection (2) and section 6, a person shall not offer or operate in or from within Saint Christopher and Nevis, virtual asset business without being registered under this Act.

(2) Subject to subsection (4), a person who immediately before the commencement of this Act was operating virtual asset business may continue to operate that virtual asset business for fourteen days from the date of commencement of this Act if within that period an application is made for registration.

(3) Where an application made for registration under subsection (2) is not granted or where an application for registration is withdrawn, the person shall cease to operate the virtual asset business within fourteen days.

(4) Despite 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.

Registers

5. (1) The Authority shall keep a register of registered, suspended or revoked registrants which shall contain the following:

- (a) name and address of the registrant;
- (b) type of virtual asset business the registrant conducts;
- (c) date of registration;
- (c) status of registration; and
- (d) date of suspension if status of registration is suspended.

(2) The Authority shall keep a register of registrants whose registrations have been revoked which shall provide details of the revocation, including the

- (a) name of the former registrant; and
- (b) date of revocation of registration.

(3) The Authority shall keep a register of the issue or sale of virtual assets which shall provide the

- (a) name and address of the registrant responsible for the issue or sale;
- (b) description of the virtual asset;
- (c) date of approval of the prospectus related to the issue or sale;
- (d) date of the publication of the prospectus; and
- (e) date the issue or offer for sale ends.

(4) The registers shall be made available to the public and published on the website of the Authority or the Ministry.

Application for registration

6. (1) A person who intends to provide virtual asset business shall apply to the Authority for registration on the prescribed form.

(2) A person shall make an application for registration in writing and provide the following –

- (a) the name and address of the registered office of the person;
- (b) the address of the place of business of the person in Saint Christopher and Nevis;
- (c) a statement setting out the nature and scope of the virtual asset business including but not limited to the date operations commenced, website address where the person conducts virtual asset business from or intends to conduct virtual asset business from and the name of any other country where the person offers or intends to offer virtual asset business;

- (d) particulars of the management and any person authorised to represent the person in Saint Christopher and Nevis ;
- (e) the name and address of any affiliated company within and outside of Saint Christopher and Nevis;
- (f) the names and addresses of directors, significant shareholders and beneficial owners;
- (g) the anti-money laundering and counter terrorism financing manual;
- (h) the name and qualifications of a proposed compliance officer;
- (i) policies and procedures for data protection, security and confidentiality;
- (j) cyber-security safeguards;
- (k) a sample of the initial prospectus being offered;
- (l) a risk assessment for the services and products to be offered;
- (g) any other information the Authority may reasonably require for the purpose of determining the application.

(3) An application shall be accompanied by –

- (a) proof of payment of the application fee prescribed in Schedule 1;
- (b) certified copies of the instruments by which the person is constituted or established;
- (c) proof of registration to do business in Saint Christopher and Nevis.

(4) A false or misleading declaration made in an application or false or misleading documents submitted in support of an application shall—

- (a) render an application void; and
- (b) prohibit the person from making another application within a period of two years.

(5) The requirements of section 6(2) (d) in relation to a fit and proper person shall be equally applicable to a person who is authorised to represent the authorised person in Saint Christopher and Nevis.

Grant and refusal of application for registration

7. (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 fee prescribed in Schedule 1 has been paid; and
- (c) requirements of this Act have been complied with.

(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 person of the approval or refusal of the application for registration in writing.

(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, significant shareholder, beneficial owner, person with a significant interest, director or management of the person;
- (b) educational or other qualifications or experience having regard to the type of virtual asset business the person intends to be involved in;
- (c) ability to offer the type of virtual asset business competently, ethically and fairly;
- (d) the reputation, financial integrity, and probity of
 - (i) the person, if the person is an individual; or
 - (ii) any officer, executive, shareholder, director or management, if the person is a company;
- (e) whether the interests of a client of the person are or are likely to be in any way threatened by any director, officer or significant shareholder of the person holding his or her position;
- (f) whether a person or any 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
- (g) any other terms or conditions as may be prescribed.

Registration

8. (1) Where the Authority approves an application under section 7 the person shall pay the registration fee prescribed in Schedule 1.

(2) The Authority upon being satisfied that the registration fee has been paid shall

- (c) register the registrant in the register for a period of two years; and
- (b) issue a certificate of Registration in the form as set out in Schedule 2.

(3) For each year a registrant would like to continue registration, the registrant shall renew registration by paying the registration fee.

Requirements of a registrant

9. (1) The Authority shall require a registrant to retain assets in Saint Christopher and Nevis to discharge financial obligations to clients of the registrant equivalent to the obligations of the registrant.

(2) Despite subsection (1), the Authority may accept a legal undertaking from a registrant that assets held outside the jurisdiction are held for the discharge of financial obligations to clients of the registrant.

(3) A registrant shall provide the Authority notice in writing of any changes in the business of the registrant including but not limited to the

- (a) names of any director, officer 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.

(4) A registrant shall institute procedures to ensure that accounting records and business operations systems comply with the Financial Services Regulatory Commission Act, Cap. 21.09.

(5) A registrant shall implement and maintain measures

- (a) to comply with the Data Protection Act No. 5 of 2018 and to ensure that the collection, storage, use and disclosure of personal information of a client is
 - (i) legitimate and for purposes related to the business of the registrant; and
 - (ii) protected from unauthorized access; and
- (b) to protect the operations of the registrant and personal information collected and stored by the registrant from cyber threats.

Prospectus for issue or sale of a virtual asset

10. (1) A registrant shall not participate in or provide financial services related to the issue or offer for sale of a virtual asset without —

- (a) submitting a prospectus to the Authority for approval at least 14 days before the proposed date of its publication;
- (b) approval of the prospectus by the Authority; and
- (c) publishing the approved prospectus prior to the issue or offer for sale.

(2) A prospectus shall be prepared in accordance with the requirements in Schedule 3 and submitted to the Authority for approval no less than 14 days before the proposed date of its publication.

(3) The Authority may approve a prospectus if it complies with the requirements of this Act.

(4) An approved prospectus shall be valid for a period not exceeding twelve months from the date of approval.

(5) A person shall have the right to withdraw purchase or subscription to an issue or offer for sale, in addition to any other remedy, where a prospectus contains a misrepresentation or false information.

(6) A person shall exercise the right under subsection (5) as soon as practicable once knowledge of the misrepresentation or false information came to the knowledge of that person.

(7) A registrant shall be liable to pay compensation to a person who relied on a prospectus containing a misrepresentation or false information to purchase or subscribe to an issue or offer for sale and suffers loss as a result.

Powers of the Authority regarding a prospectus

11. (1) The Authority may waive the inclusion of certain information required for a prospectus if the Authority considers that

- (a) disclosure of this information would be contrary to the public interest;
- (b) the disclosure of such information would be seriously prejudicial to the registrant, provided that the omission of such information is not likely to mislead the public as to facts and circumstances essential for an informed assessment of the registrant or virtual asset; or
- (c) the information is not essential to influence the assessment of the financial position and prospects of the registrant or virtual asset.

(2) The Authority shall have the power to

- (a) order an amendment to include information in addition to the requirements in Schedule 3, prior or subsequent to approval of a prospectus;
- (b) suspend an issue or offer for sale where an order for amendment is made subsequent to the approval of a prospectus under paragraph (a);
- (c) suspend or cancel an issue or offer for sale of a virtual asset if in the public interest; and
- (d) issue a notice advising the public of any order made under paragraph (a) or (b).

(3) The Authority shall not be liable to any action for damages suffered as a result of any prospectus approved by the Authority.

Amendment to a prospectus

12. (1) The registrant shall submit to the Authority for approval any proposed amendment to a prospectus.

- (2) The registrant shall immediately upon approval under subsection (1)—
 - (a) publish the details of the amendment; and
 - (b) issue a notice of the amendment to any person who purchased or subscribed to an issue or offer for sale.
- (3) Where a notice is issued pursuant to subsection (2), a copy of the notice and evidence of the issuance of that notice shall be submitted to the Authority.

(3) A person who purchased or subscribed to an issue or offer for sale prior to an amendment to a prospectus, shall have the right to withdraw the purchase or subscription within 30 days of the date the notice was issued to that person

(6) A registrant shall communicate information regarding the virtual asset business and any updates or changes to that information in a complete, comprehensible and balanced and coherent manner, so a client can evaluate the features, costs and risks of the virtual asset business the registrant offers or operates.

General powers of the Authority

13. (1) The Authority may by notice in writing to a registrant or director, officer or significant shareholder of a registrant, require information to be provided to the Authority within the time and in the form as may be specified in the notice for the purpose of determining compliance with this Act, the Financial Services Regulatory Commission Act and any other legislation that would be relevant for the purposes of anti-money laundering or counter terrorist financing obligations.

(2) The Authority shall have the power to examine or cause an examination of a registrant for the purposes of determining if a registrant is complying with this Act.

(3) For the purposes of examining the registrant, the Authority shall have

- (a) full access to the registered office or place of business of a registrant, and to the books and records relating to its business;
- (b) the right to call upon
 - (i) any director, officer or any other employee of the registrant; or
 - (ii) any other person with information regarding the registrant,to furnish any information and explanation which the Authority may consider necessary.

(4) The Authority may cooperate with any local or foreign authority as necessary for the performance of duties and the exercise of its powers.

(5) Where the Authority intends to share confidential information pursuant to subsection (4), the Authority shall enter into an agreement with the other authority to provide for the maintenance of the confidentiality of the information and use of the information only for the purposes for which the information is being disclosed.

Fees

14. (1) Any fees paid pursuant to this Act shall not be refundable.

(2) The registration fee prescribed in Schedule 1 shall be paid to the Authority and shall be in respect of the period January 1 to December 31.

(3) The applicant shall pay the registration fee due within thirty (30) working days of January 1.

Revocation and suspension of registration

15. (1) The Authority may if necessary suspend or revoke 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 30 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; or
- (g) is conducting business in manner that is detrimental to the public interest or clients.

(2) Despite subsection (1) the Authority may revoke or suspend registration without notice if it is in the public interest or to protect clients.

(3) The notice under subsection (1) shall specify the reasons for the suspension or revocation.

Offences and penalties

16. (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.

(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 one hundred thousand dollars and imprisonment for a period not exceeding five years .

Power to amend Schedules

17. The Minister may on the recommendation of the Authority by Order published in the *Gazette* amend the Schedules.

Regulations and guidelines

18. (1) The Minister may on the recommendation of the Authority make regulations to give effect to the provisions of this Act and without limiting the generality of the foregoing may make regulations respecting:

- (a) records to be kept and reports to be made to the Authority;
- (b) forms necessary for the administration of this Act;
- (c) policies, procedures and systems for identifying, monitoring and controlling such risks as the Authority shall specify;
- (d) capital and liquidity requirements; and
- (e) any other matter required for the efficient administration of this Act.

(2) The Authority may issue guidelines to give effect to the provisions of this Act and without limiting the generality of the foregoing, may issue guidelines respecting:

- (a) policies, practices and procedures for evaluating financial soundness of registrants;
- (b) corporate governance;
- (c) disclosure; and
- (d) anti-money laundering and combating the financing of terrorism matters.

SCHEDULE 1

(Sections 6, 8, 14)

FEES

PARTICULARS	FEE
Application Fee	\$[x]
Registration Fee	\$[x]

SCHEDULE 2

(Section 8)

CERTIFICATE OF REGISTRATION

VIRTUAL ASSET ACT, []

(No. [] of [])

CERTIFICATE OF REGISTRATION

No. []

.....carrying on business under the name of
of is registered under the Virtual asset Act, [] to carry on virtual asset
business within and/or from Saint Christopher and Nevis.

Registered on thisday of..... [] by

.....
[Head of the Authority]

SCHEDULE 3

(Section 10)

REQUIREMENTS FOR A PROSPECTUS

A prospectus shall be in English and include the following —

- (1) Background of registrant and business the registrant responsible for publishing the prospectus is involved in, including but not limited to financial information, and identity of any officer, executive, significant shareholder, director or management.
- (2) Description of the virtual asset the prospectus is concerned with, including but not limited to the functionality, characteristics and purpose.
- (3) The date and that date is to be taken as the date of the publishing of the prospectus, unless otherwise stated in the prospectus.
- (4) The date the issue or sale ends.
- (5) The amount and currency of the issue or sale and the payment terms for subscription or purchase.
- (6) Purpose of the issue or sale.
- (7) Financial information of the registrant including but not limited to financial statements and past financial performance of the virtual asset.
- (8) Financial projections for the virtual asset and the issue or sale including but not limited to minimum and maximum targets for the issue or sale and use of the proceeds of the issue or sale.
- (9) Any risks or restrictions associated with the registrant, virtual asset or virtual asset business the prospectus is concerned with.
- (10) Measures for the protection of data and safeguards against cyber threats.
- (11) Purchaser's rights in relation to the offer or sale.
- (12) Signature of an authorized person on behalf of the registrant.

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A. MICHAEL PERKINS

Speaker

Passed by the National Assembly this day of , 2020.

.....
SONIA BODDIE-THOMPSON

Clerk of the National Assembly