



UNDERSTANDING THE ESCROW PROCESS

In a transaction involving a significant amount of funds, it is quite the norm to establish the credibility of the parties involved, prior to the processing of the transaction. Understanding the concept of Escrow helps to minimize the reputational and financial risks involved in conducting business with new or unknown parties, moving the process along more smoothly and in good faith. Escrow is typically linked to real estate but it can extend to other financial transactions.

What is Escrow?

Escrow is a contractual arrangement where an independent third party (Escrow Agent) is hired to receive or disburse assets, dependent upon conditions agreed to by the transacting parties. Cash, securities, funds and other assets can all be held in escrow.

ESCROW



Who is an Escrow Agent?

The Escrow Agent helps to make the transaction safer by ensuring that all parties meet their obligations before the completion of the transaction. The funds or assets are held by the Escrow Agent until he/she receives the appropriate instructions or until the predetermined contractual obligations have been fulfilled.

The following entities can conduct Escrow business for Citizenship By Investment (CBI) as Agents under Section 3 of the St. Christopher and Nevis Citizenship (CBI Escrow Accounts) Act, 2017.

- * **A Bank or other entity** whose business includes the provision of trust or custodial services and who is licensed under the Banking Act.
- * **A Registered Trust Company or any other entity** whose business is the provision of trust or custodial services and has paid up capital of at least EC\$1,000,000.00.
- * **An Attorney-at-Law** who is the holder of a valid practicing certificate in accordance with the Legal Profession Act and has indemnity insurance of at least EC\$1,000,000.00 with a Company Registered under the Insurance Act.
- * **A Chartered Accountant** who is the holder of a valid practicing certificate in accordance with the provisions of the institute of Chartered Accountants of the Eastern Caribbean and has indemnity insurance of at least EC\$1,000,000.00 with a Company Registered under the Insurance Act.

All Escrow Agents should also have a full time/part time certified/chartered accountant employed at the institution and should be licensed by the Financial Services Regulatory Commission to act as an Escrow Agent.

Any person who contravenes Section 3 commits an offense and is liable on indictment to a fine not exceeding five hundred thousand dollars or to a term of imprisonment not exceeding five years or both.

Topics Discussed:

- ⇒ **What is Escrow?**
- ⇒ **Who is an Escrow Agent?.**
- ⇒ **Conflicts of Interest**
- ⇒ **Requirements for Escrow Agent Licence**
- ⇒ **Duties of Escrow Agents**
- ⇒ **Supervision of Escrow Agents**
- ⇒ **FSRC's Authority**

Conflicts of Interest

An Escrow Agent who has any of the following direct or indirect interests in the transactions of the parties to the contractual agreement shall **NOT** act as an Escrow Agent for that transaction. This includes the following:

- Service Provider in relation to the Escrow Agreement.
- Developer in relation to the Escrow Agreement
- Vendor in relation to the Escrow Agreement.

Requirements for Escrow Agent Licence

An Application for an Escrow Agent Licence must be submitted to the FSRC along with the following documents.

1. Certified or Notarized copies of the following Certificates or Licence
 - a. Practicing certificate (Attorneys)
 - b. Practicing certificate (Accountants)
 - c. Licence (Entity)
2. Certified or Notarized copies of identification documents for Directors and Senior Managers.
3. Original Police Certificate/Affidavit
4. Two (2) Original Letters of Reference (One (1) from a financial institution and the other from a professional.)
5. Résumé
6. Most recent audited Financial Statements of the Company/Entity. For a new Company/Entity, evidence of Paid Up Capital is required.
7. Indemnity Insurance in the amount of EC\$1,000,000.00. (Attorneys/Accountants only)

Fees

New Escrow Agents are required to pay a non-refundable Application Fee of EC\$1,080.00 or US\$400.00.

The Licensing and Annual Renewal Fees are EC\$5,400.00 or US\$2,000.00 and are payable on or before January 31st of each year.

The FSRC has the authority to renew, refuse, revoke or suspend the Licence of an Escrow Agent.

The non-refundable fee for the review of a suspended, revoked or refusal of license is EC\$1,080.00 or US\$400.00.



Duties of an Escrow Agent



An Escrow Agent is required to perform the following tasks to ensure that all parties meet their obligations in accordance with local legislation and international guidelines.

1. Prepare an Escrow Agreement.

An Escrow Agreement is a legal document that outlines the terms and conditions between parties involved in an escrow arrangement. It defines the arrangement by which one party deposits an asset with the escrow agent, who, in turn, makes a delivery to another party (the beneficiary) if and when the specified conditions of the contract are met.

2. Open a separate Escrow Account, for each Escrow Agreement, in the name of the Escrow Agent.

3. Keep all Escrow Funds, for each development, separate from any other funds or accounts held by the Escrow Agent.

4. Transfer monies, property and interests held in the Escrow Account to the Beneficiary in accordance with the terms of the Escrow Agreement.

5. Issue evidence of all transactions, including proof of asset transfer, to the Beneficiary to both parties in writing.

6. Prepare a Release Notice to be signed by the parties involved authorizing the transfer of funds or assets in accordance with the terms of the Escrow Agreement.

7. Provide written notice regarding all monetary transactions and the balance held in the Escrow Account to all parties.

8. Close the Escrow Account and notify parties when the terms of the agreement have been fulfilled or if the agreement has been terminated.

Record Keeping

Escrow Agents are expected to maintain proper records and supporting documents for each Escrow Agreement in relation to the receipt and transfer of funds by the Escrow Agent.

An up to date Register of Escrow Agreements should be kept at the Agent's Registered Office or at another location available for inspection by the FSRC.

The Register should show and explain all transactions with respect to the Escrow Agreement and should be sufficient to allow a financial statement to be prepared.

Copies of relevant documents and Escrow Agreements should be kept for a period of at least seven (7) years from the date of filing the final entry in the Register relative to that Escrow Account.

An Escrow Agent, non compliant with the record keeping requirements shall, upon indictment, be liable to a fine not exceeding EC\$2,500.00.

Supervision of an Escrow Agent

The FSRC is the named Regulatory Body responsible for the supervision of the enforcement of the St. Christopher and Nevis Citizenship (CBI Escrow Accounts) Act and shall be the licensing body for Escrow Agents under this Act.

In accordance with the aforementioned Act, Escrow Agents are required to submit Monthly Reports and Annual Financial Statements to the FSRC.

Monthly Report

The monthly report should entail a list of all escrow accounts held by the Agent, the beginning and ending monthly balance of each escrow account, notes of all transactions made in relation to each escrow account and copies of all underlying documents for each escrow account. This report should be submitted no later than five (5) business days after the end of the month.

Annual Audited Financial Statements

Annual Audited Financial Statements should include details of each escrow account held by the Agent and should be submitted no later than 90 days after the end of the calendar year.

FSRC's Authority

The FSRC has the authority, in its supervisory capacity, to enter the premises used by an Escrow Agent to inspect records and documentation relating to the Escrow business for the sole purpose of ensuring compliance with the Escrow Act and Anti Money Laundering/Countering the Financing of Terrorism (AML/CFT) Regulations.

If upon inspection, the FSRC has found reasonable grounds or evidence to suspect that any of the following has been occurring, the FSRC may freeze funds held in escrow for no more than five (5) business days to conduct further investigations into the matter.

- * The Escrow Agent is operating in a matter contrary to the provisions of the Act.
- * The Escrow Agent is operating in a manner that is likely to jeopardize the money held in escrow.
- * One (1) or more parties in the Escrow Agreement reported that the Escrow Agent is not fulfilling the terms as stipulated in the Agreement.
- * A person or entity, purporting to be an Escrow Agent is not a licensed Escrow Agent.



REFERENCES

- * <https://www.thestreet.com/personal-finance/real-estate/what-is-escrow-14638366>
- * <https://www.thebalance.com/what-is-escrow-315826>
- * St. Christopher & Nevis Citizenship (CBI) Escrow Accounts Act, 2017

