

SAINT CHRISTOPHER AND NEVIS
STATUTORY RULES AND ORDERS

No. 15 of 2002

**FINANCIAL SERVICES (EXCHANGE OF INFORMATION) REGULATIONS,
2002**

The Minister, with the concurrence of the Premier of Nevis, hereby makes these regulations in exercise of the powers conferred on him by section 16 of the Financial Services Commission Act, No. 17 of 2000.

1. **CITATION AND COMMENCEMENT.** (1) These regulations may be cited as the Financial Services (Exchange of Information) Regulations, 2002.

(2) These regulations shall come into operation on the 14th day of June 2002.

2. **INTERPRETATION.** In these regulations, unless the context otherwise requires,

“Act” means the Financial Services Commission Act, No. 17 of 2000;

“foreign regulatory authority” means an authority which, in a country or territory outside of Saint Christopher and Nevis, exercises regulatory functions corresponding to any similar functions of the regulatory authority;

“regulatory authority” means the Financial Services Commission established by section 3 of the Act;

“regulatory functions” mean the statutory functions of a regulatory authority, not being functions of assessing, imposing or collecting taxes.

3. **MATTERS TO BE CONSIDERED IN RELATION TO REQUEST FOR ASSISTANCE.** (1) Subject to sub-regulation (2), the powers conferred by regulation 4 are exercisable by the regulatory authority for the purpose of assisting a foreign regulatory authority which has requested assistance in connection with inquiries being carried out by it or on its behalf in respect of any regulatory functions.

(2) The regulatory authority shall not exercise the powers conferred by regulation 4 unless the regulatory authority is satisfied that the assistance requested by the foreign regulatory authority is for the purposes of its regulatory functions.

(3) The regulatory authority, in deciding whether to exercise the powers conferred by regulation 4, shall take into account whether

- (a) the assistance is necessary for the purpose of enabling or assisting a foreign regulatory authority in the exercise of its regulatory functions;
- (b) the assistance requested by the foreign regulatory authority may be granted under any agreement to which Saint Christopher and Nevis and the foreign state requesting authority are parties;
- (c) the foreign regulatory authority requesting the assistance has given a written undertaking to provide corresponding assistance to an authority exercising regulatory functions in Saint Christopher and Nevis;
- (d) the nature and seriousness of the matter to which the inquiries relate and the importance to the inquiries of the information sought in Saint Christopher and Nevis warrant disclosure of the information;
- (e) the assistance cannot be obtained by other means;
- (f) the relevant country or territory has enacted similar laws with relation to the exchange of information.

(4) If there are public interest considerations in the giving of the assistance sought by the foreign regulatory authority, the regulatory authority shall obtain written direction from the Attorney General before providing the information requested.

(5) Where the regulatory authority requires a written undertaking from a foreign regulatory authority under sub-regulation (2), the undertaking shall be in such form as the regulatory authority may determine.

(6) The regulatory authority may decline to exercise the powers conferred under regulation 4 unless the foreign regulatory authority undertakes in writing to make such contributions towards the cost of the exercise of those powers as the regulatory authority considers appropriate.

4. POWERS OF REGULATORY AUTHORITY TO REQUIRE INFORMATION TO BE FURNISHED. (1) If in accordance with the requirements of regulation 3 the regulatory authority is satisfied that assistance should be provided with respect to a request by a foreign regulatory authority, it may, in writing, request any person

- (a) to furnish it with information with respect to any matter relevant to the inquiries to which the request relates;
- (b) to produce any documents relevant to the inquiries to which the request relates; or
- (c) to provide it with any assistance in relation to the inquiries to which the

request relates as a regulatory authority may specify.

(2) If a person fails to comply with a request issued under sub-regulation (1) within three days from the date of the request or such longer period as the regulatory authority may permit, the Attorney General, at the request of the regulatory authority, may apply to a Judge in Chambers for an order requiring the person to comply with the request.

(3) Where documents are produced pursuant to this regulation, the regulatory authority may take copies or extracts from them.

(4) A person shall not under this regulation be required to disclose information or produce a document that he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege, except that a barrister or solicitor may be required to furnish the name and address of his client.

(5) A person shall not be required to disclose any information or produce any document under these regulations if to do so would expose him to prosecution for an offence.

(6) Where a person claims a lien on a document, its production under this regulation is without prejudice to his lien.

(7) In this regulation, "document" includes information recorded in any form, and in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of its legible form.

5. RESTRICTION ON THE DISCLOSURE OF INFORMATION.

(1) Subject to sub-regulation (2) information which

(a) is supplied by a foreign regulatory authority in connection with a foreign request for assistance; or

(b) is obtained by virtue of the exercise of powers under these regulations;

shall not be disclosed by the regulatory authority or by any person who obtains the information directly or indirectly from it, without the consent of the person from whom the regulatory authority obtained the information and, if different, the person to whom it relates.

(2) Information obtained in accordance with these regulations may be disclosed

(a) pursuant to an order of a court of competent jurisdiction in Saint Christopher and Nevis;

(b) to the regulatory authority;

- (c) to a foreign regulatory authority for purposes of its regulatory functions;
- (d) to any person for the purpose of discharging any duty or exercising any power under these regulations;
- (e) if the information is or has been made available to the public from other sources;
- (f) in a summary or collection of information framed in such way as not to enable the identity of a person to whom the information relates to be ascertained.

6. **IMMUNITY FROM SUIT.** No suit shall lie against the regulatory authority or any person acting under its authority for any thing done by him, in good faith, in the exercise of any power or the performance of any function under these regulations.

7. **OFFENCES AND PENALTIES.** (1) A person commits an offence if the person,

- (a) fails to comply with an order of the court made pursuant to regulation 4(2); or
- (b) intentionally furnishes false information in purported compliance with any such direction or order.

(2) A person commits an offence if the person mutilates, obliterates or in any way destroys or does anything to prevent the production of a document, or does anything to impede the provision of information in relation to any matter relevant to any inquiry being a matter relevant to a request for assistance made by any foreign regulatory authority.

(3) A person who contravenes regulation 5 commits an offence.

(4) A person who commits an offence under this regulation shall be liable, on summary conviction, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years or both.

8. **NEGATIVE RESOLUTION.** These regulations shall be subject to negative resolution of the National Assembly of Saint Christopher and Nevis.

Made by the Minister this 14th day of June 2002.

DENZIL LLEWELYN DOUGLAS
Minister of Finance