

SAINT CHRISTOPHER AND NEVIS

STATUTORY RULES AND ORDERS

1997, No. 29

The Financial Services (Professional Bodies) Order, 1997.

AN ORDER made by the Minister under sections 219 and 221 of the Companies Act, 1996 - 22; sections 73 and 75 of the Limited Partnerships Act 1996 - 24; and sections 105 and 107 of the Trusts Act, 1996 - 23.

1. Citation and commencement

- (1) This Order may be cited as the Financial Services (Professional Bodies) Order, 1997.
- (2) This Order shall come into force on 3rd of April, 1997.

2. Interpretation

- (1) In this Order unless the context otherwise requires -
 - “the Acts” means the Acts under which this Order is made;
 - “authorised person” means a person authorised to carry on finance business under the principal Order;
 - “this Order” means this Order as amended, or as extended or applied, by or under any other Order made under the Acts;
 - “principal Order” means the Financial Services (Regulations) Order, 1997 - 25, as amended, or as extended or applied, by or under any other Order made under the Acts.
- (2) Subject to sub-section (1), any words defined in the Acts and in the principal Order shall, if not inconsistent with the subject or context, bear the same meaning in this Order.
- (3) A references in this Order to an enactment is a reference to that enactment as amended, and includes a reference to that enactment as extended or applied by or under any other enactment, including any other provision of that enactment.

3. Authorisation by certification

- (1) Notwithstanding any provision to the contrary in the principal Order, a person holding an authorisation certificate issued for the purpose of this Order by a recognised professional body is an authorised person and the provisions of the principal Order shall, *mutatis mutandis*, apply to such person as if he is an authorised person otherwise than by virtue of the certification.
- (2) An authorisation certificate may be issued by a recognised professional body to an individual, a company or a partnership.
- (3) An authorisation certificate issued to a partnership –
 - (a) shall be issued in the name of the partnership; and
 - (b) shall authorize the carrying on of finance business in that name by the partnership to which the authorisation certificate is issued, by any partnership which succeeds to that business or by any person who succeeds to that business having previously carried it on in partnership;

and, in relation to an authorisation certificate issued to a partnership constituted under the law of any country or territory under which a partnership is not a legal person, references in this Order to the person who holds the authorisation certificate or is certified shall be construed as references to the persons or person for the time being authorised by the authorisation certificate to carry on finance business as mentioned in paragraph (b).

4. Professional bodies

- (1) In this Order a “professional body” means a body which regulates the practice of a profession and references to the practice of a profession do not include references to carrying on a business consisting wholly or mainly of finance business.
- (2) In this Order references to the members of a professional body are references to the individuals who, whether or not members of the body, are entitled to practice the profession in question and, in practicing it, are subject to the rules of that body.
- (3) In this Order references to the rules of a professional body are references to the rules (whether or not laid down by the body itself) which the body has power to enforce in relation to the practice of the profession in question and the carrying on of finance business by persons practicing that profession or which relate to the grant, suspension or withdrawal of authorisation certificates under section 3, the admission and expulsion of member or otherwise to the constitution of the body.
- (4) In this Order references to guidance issued by a professional body are references to guidance issued or any recommendation made by it to all or any class of its members or persons seeking to become members, or to persons or any class of persons who are or are seeking to be certified by the body, and which would, if it were a rule, fall within sub-section (3).

5. Application for recognition

- (1) A professional body may apply to the Financial Secretary for an order declaring it to be a recognised professional body for the purpose of this Order.
- (2) Any such application –
 - (a) shall be delivered to the Director General;
 - (b) shall be in such form as the Financial Secretary may direct; and
 - (c) shall be accompanied by such information as the Financial Secretary may reasonably require for the purpose of determining the application.
- (3) At any time after receiving an application and before determining it the Financial Secretary may require that applicant to provide additional information.
- (4) The directions and requirements given or imposed under sub-sections (2) and (3) may differ as between different applications.
- (5) Any information to be provided under this section shall, if the Financial Secretary so requires, be in such form or verified in such manner as he may specify.
- (6) Every application shall be accompanied by a copy of the applicant’s rules and of any guidance issued by the applicant which is intended to have continuing effect and is issued in writing or other legible form.

6. Grant and refusal of recognition

- (1) The Financial Secretary may, on an application duly made in accordance with section 5 and after being furnished with all such information as he may require under that section, make or refuse to make an order (“a recognition order”) declaring the applicant to be a recognised professional body.
- (2) The Financial Secretary may make a recognition order if it appears to him from the information furnished by the body making the application and having regard to any other information in his possession that the requirements of sub-section (3) and of the Schedule to this Order are satisfied as respect that body.
- (3) The body must have rules which impose acceptable limits on the kinds of finance business which may be carried on by persons certified by it and the circumstances in which they may carry on such business and which preclude a person certified by that body from carrying on any finance business outside those limits unless that person is an authorised person otherwise than by virtue of the certification.
- (4) Where the Financial Secretary refuses an application for a recognition order he shall give the applicant a written notice to that effect, stating the reasons for the refusal.
- (5) A recognition order shall state the date on which it takes effect.

7. Revocation of recognition

- (1) A recognition order under section 6 may be revoked by a further order made by the Financial Secretary if at any time it appears to him –
 - (a) that sub-section (3) of section 6 or any requirements of the Schedule to this Order is not satisfied in the case of the body to which the recognition order relates; or
 - (b) that the body has failed to comply with any obligation to which it is subject by virtue of this Order.
- (2) An order revoking a recognition order shall state the date on which it takes effect and that date shall not be earlier than 3 months after the day on which the revocation order is made.
- (3) Before revoking a recognition order the Financial Secretary shall give written notice of his intention to do so to the recognised professional body, take such steps as he considers reasonably practicable for bringing the notice to the attention of members of the body and publish it in such manner as he thinks appropriate for bringing it to the attention of any other persons who are in his opinion likely to be affected.
- (4) A notice under sub-section (3) shall state the reasons for which the Financial Secretary proposes to act and give particulars of the rights conferred by sub-section (5).
- (5) A body on which a notice is served under sub-section (3), any member of the body and any other person who appears to the Financial Secretary to be affected may, within 3 months after the date of service or publication, or within such longer time as the Financial Secretary may allow, make written representations to the Financial Secretary and, if desired, oral representations to a person appointed for that purpose by the Financial Secretary; and the Financial Secretary shall have regard to any representations made in accordance with this sub-section in determining whether to revoke the recognition order.
- (6) If in any case the Financial Secretary considers it essential to do so in the interest of the public, he may revoke a recognition order without regard to the restrictions imposed by sub-section (2) and notwithstanding that no notice has been given or published under sub-section (3) or that the time for making representations in pursuance of such a notice has not expired.
- (7) An order revoking a recognition order may contain such transitional provisions as the Financial Secretary thinks necessary or expedient.
- (8) A recognition order may be revoked at the request or with the consent of the recognised professional body and any such revocation shall not be subject to the restrictions imposed by sub-sections (1) and (2) or the requirements of sub-sections (3) to (5).
- (9) On making an order revoking a recognition order the Financial Secretary shall give the body written notice of the making of the order, take such steps as he considers reasonably practicable for bringing the making of the order to the attention of members of the body and publish a notice of the making of the order in such manner as he thinks appropriate for bringing it to the attention of any other persons who are in his opinion likely to be affected.

8. Compliance order

- (1) If at any time it appears to the Financial Secretary –
 - (a) that sub-section (3) of section 6 or any requirements of the Schedule to this Order is not satisfied in the case of a recognised professional body; or
 - (b) that such body has failed to comply with any obligation to which it is subject by virtue of this Order,he may, instead of revoking the recognition order under section 7, make an application to the Court under this section.
- (2) If on any such application the Court decides that sub-section (3) of section 6 or the requirement in question is not satisfied or, as the case may be, that the body has failed to comply with the obligation in question it may order the body to take such steps as it directs for securing that that sub-section or requirement is satisfied or that that obligation is complied with.

9. Notification requirements

- (1) The Financial Secretary may make regulations requiring a recognised professional body to give forthwith notice to the Director General of the occurrence of such events relating to the body, its members or persons certified by it as are specified in the regulations and such information in respect of those events as is so specified.
- (2) The Financial Secretary may make regulations requiring a recognised professional body to furnish to the Director General at such times or in respect of such period as are specified in the regulations with such information relating to the body, its members and persons certified by it as is so specified.
- (3) The notices and information required to be given or furnished under the foregoing provisions of this section shall be such as the Financial Secretary may reasonably require for the exercise of the functions of the Director General under this Order.
- (4) Regulations under the foregoing provisions of this section may require information to be given in a specified form and to be verified in a specified manner.
- (5) Any notice or information required to be given or furnished under the foregoing provisions of this section shall be given in writing or in such other manner as the Financial Secretary may approve.
- (6) Where a recognised professional body amends, revokes or adds to its rules or guidance it shall within 7 days give written notice to the Director General of the amendment, revocation or addition; but –
 - (a) notice need not be given of the revocation of guidance other than such as is mentioned in sub-section (6) of section 5 or of any amendment of or addition to guidance which does not result in or consist of such guidance as is there mentioned; and
 - (b) notice need not be given in respect of any rule or guidance, or rules or guidance of any description, in the case of which the Financial Secretary has waived compliance with this sub-section by notice in writing to the body concerned;and any such waiver may be varied or revoked by a further notice in writing.
- (7) Contravention of, or of regulations under, this section shall not be an offence.

10. Temporary recognition order

- (1) The St. Kitts and Nevis Bar Association and the St. Kitts-Nevis Association of Chartered Accountants shall be granted a temporary recognition order under this section.
- (2) An order issued under sub-section (1) shall expire on the earlier of the day on which it is replaced by a recognition order made under section 6 or on which the period of 12 months from the day on which this Order takes effect expires.
- (3) An order issued under sub-section (1) which is not replaced by a recognition order made under section 6 shall for the purpose of this Order be deemed to have been revoked by an order made under sub-section (6) of section 7 on the relevant expiration day referred to in sub-section (2).

11. Functions of the Director General

In addition to his functions under the principal Order, the Director General shall also examine and make recommendations to the Financial Secretary with respect to all applications for recognition, revocations of recognition and compliance orders made under this Order.

Made by the Minister this 3rd of April, 1997.

Denzil L. Douglas
Minister of Finance

SCHEDULE

Requirements for Recognition of Professional Bodies

1. Statutory status

- (1) The body must –
 - (a) regulate the practice of a profession in the exercise of statutory powers; or
 - (b) be recognised (otherwise than under this Order) for a statutory purpose by a Minister of the Federal Government; or
 - (c) be specified in a provision contained in or made under an enactment as a body whose members are qualified to exercise functions or hold offices specified in that provision.

2. Certification

- (1) The body must have rules, practices and arrangements for securing that no person can be certified by the body for the purpose of this Order unless the conditions set out in sub-sections (2) and (3) are satisfied.
- (2) The certified person must be either –
 - (a) an individual who is a member of the body; or
 - (b) a person managed and controlled by one or more individuals each of whom is a member of a recognised professional body and at least one of whom is a member of the certifying body.
- (3) Where the certified person is an individual his main business must be the practice of the profession regulated by the certifying body and he must be practicing that profession otherwise than in partnership; and where the certified person is not an individual that person's main business must be the practice of the profession or professions regulated by the recognised professional body or bodies of which the individual or individuals mentioned in paragraph (b) of sub-section (2) are members.
- (4) In the application of sub-sections (2) and (3) to an authorisation certificate which is to be or has been issued to a partnership constituted under the law of any country or territory under which a partnership is not a legal person, references to the certified person shall be construed as references to the partnership.

3. Safeguards for clients

- (1) The body must have rules regulating the carrying on of finance business by persons certified by it which, together with the statements of principle, rules, regulations and codes of practice to which those persons are subject afford an adequate level of protection for clients.
- (2) In determining in any case whether an adequate level of protection is afforded for clients of any description, regard shall be had to the nature of the finance business carried on by persons certified by the body, the kinds of clients involved and the effectiveness of the body's arrangement for enforcing compliance.

4. Taking account of costs of compliance

The body must have satisfactory arrangements for taking account, in framing its rules, of the cost to those to whom the rules would apply of complying with those rules and any other controls to which they are subject.

5. Monitoring and enforcement

- (1) The body must have adequate arrangements and resources for the effective monitoring of the continued compliance by persons certified by it with the conditions mentioned in section 2 and rules, practices and arrangements for the withdrawal or suspension of certification (subject to appropriate transitional provisions) in the event of any of those conditions ceasing to be satisfied.
- (2) The body must have adequate arrangements and resources for the effective monitoring and enforcement of compliance by persons certified by it with the rules of the body relating to the carrying on of finance business

The Financial Services (Professional Bodies) Order, 1997 - 29.

and with any statements of principles, rules, regulations or codes of practice to which those persons are subject in respect of business of a kind regulated by the body.

- (3) The arrangements for enforcement must include provision for the withdrawal or suspension of certification and may include provision for disciplining members of the body who manage or control a certified person.
- (4) The arrangements for enforcement may make provision for the whole or part of that function to be performed by and to be the responsibility of a body or person independent of the professional body.
- (5) The arrangements for enforcement must be such as to secure a proper balance between the interests of persons certified by the body and the interest of the public; and the arrangements shall not be regarded as satisfying that requirement unless the persons responsible for enforcement include a sufficient number of persons who are independent of the body and its members and of persons certified by it.
- (6) The arrangements for monitoring may make provision for that function to be performed on behalf of the body (and without affecting its responsibility) by any other body or person who is able and willing to perform it.

6. Investigation of complaints

- (1) The body must have effective arrangements for the investigation of complaints relating to –
 - (a) the carrying on by persons certified by it of finance business in respect of which they are subject to its rules; and
 - (b) its regulation of investment business.
- (2) Sub-section (4) of section 4 applies also to arrangements made pursuant to this section.

7. Promotion and maintenance of standards

The body must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of finance business and to co-operate, by the sharing of information and otherwise, with the Director General and any other authority, body or person having responsibility for the supervision or regulation of finance business.