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**SUPERVISORY AND REGULATORY GUIDELINES: 2006-0**  
**Requirements for Overseas Operations**  
**11<sup>th</sup> April, 2006**

**GUIDELINES FOR THE ESTABLISHMENT OR ACQUISITION OF  
OVERSEAS BRANCHES, SUBSIDIARIES  
AND REPRESENTATIVE OFFICES**

**I. INTRODUCTION**

The Central Bank of The Bahamas (“the Central Bank”) is responsible for the licensing, regulation and supervision of banks and trust companies operating in and from within The Bahamas pursuant to The Banks and Trust Companies Regulation Act, 2000 and The Central Bank of The Bahamas Act, 2000. Additionally, the Central Bank has the duty, in collaboration with financial institutions, to promote and maintain high standards of conduct and management in the provision of banking and trust services.

All licensees are expected to adhere to the Central Bank’s licensing and prudential requirements and ongoing supervisory programmes, including periodic on-site inspections, and required regulatory reporting. Licensees are also expected to conduct their affairs in conformity with all other Bahamian legal requirements.

**II. PURPOSE**

These Guidelines outline the Central Bank’s policy with regard to the establishment or acquisition of overseas branches, subsidiaries and representative offices (outward authorization). These Guidelines outline the major considerations of the Central Bank in assessing applications for overseas branches, subsidiaries and representative offices and the information which would normally be required in support of the application. The Central Bank may require the applicant to provide additional information, as necessary, for the proper review of an application for outward authorization.

**III. APPLICABILITY**

These guidelines apply to all licensees.

**IV. DEFINITIONS**

An Overseas Branch is defined as an operating entity which does not have a separate legal status and is thus an integral part of the parent bank and/or trust company, which is incorporated in a country other than that of the branch.

An Overseas Subsidiary is defined as a legally independent institution, wholly-owned or majority-owned, by a bank and/or trust company, which is incorporated in a country other than that of the subsidiary.

An Overseas Representative Office is defined as an office engaged solely in carrying out public relations on behalf of a banking and/or trust group. It acts as a liaison between the head office of the group and the banking and financial institutions, private and public companies, and commissions in a country other than that of the head office.

Home Regulator is defined as the regulatory body responsible for the licensing and consolidated supervision of a banking and/or trust organization which has established a branch, subsidiary, or representative office in another country, the “host” country.

Host Regulator is defined as the regulatory body responsible for conducting supervision of branches, subsidiaries and representative offices of foreign banks and/or trust entities which are resident in the host country.

Managed branches, subsidiaries, or representative offices are entities that have no physical presence (as defined in the Central Bank’s Physical Presence Guidelines) in the country where they are incorporated and licensed.

## **V. SUPERVISORY APPROACH TO OUTWARD AUTHORIZATION**

In accordance with Section 5 of the Banks and Trust Companies Regulation Act, 2000, no licensee should establish, an overseas branch, subsidiary or representative office without the prior written approval of the Governor.

Applications for outward authorization should be submitted in writing to the Central Bank. The following factors will be considered:-

- (1) With regards to the licensee (applicant):-
  - (a) the size, nature and reputation of the applicant;
  - (b) the fitness, propriety & managerial capacity of the applicant to expand its banking and/or trust business overseas in a prudent and reputable manner;
  - (c) the business record and experience of the applicant;

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- (d) the impact on the capital adequacy of the applicant will be assessed together with the ability of the applicant to fund the establishment or acquisition of a branch, subsidiary or representative office abroad;
  - (e) the nature and sufficiency of the financial resources of the applicant to provide continuing financial support to the branch, subsidiary or representative office overseas, should it be necessary. The financial condition and likely future requirements of the entity in terms of possible injections of capital and liquidity will also be considered to ensure that there will not be undue hardship on the financial resources of the licensee;
  - (f) the history of compliance of the applicant with Bahamian financial legislation and Central Bank directives, requirements and guidelines;
  - (g) the applicant must have demonstrated by the quality of their operations in The Bahamas that they are capable of assuming the role of parent to an overseas branch, subsidiary, or representative office. Hence, as a rule, the Central Bank generally requires that:-
    - (i.) licensees be in good standing with the Central Bank at the time it submits an application to establish a branch, subsidiary or representative office; and
    - (ii.) licensees have conducted business in The Bahamas over a time period which allows the Central Bank to assess its readiness to establish a branch, subsidiary or representative office abroad.
  - (h) exceptions to the requirements of (g) above may be made in instances where:-
    - (i.) the licensee was granted approval at the time of its licensing to establish overseas operations; or
    - (ii.) the licensee's parent is of sufficient financial strength and has indicated its undertaking to support the licensee's operations in The Bahamas and overseas.
- (2) With regards to the proposed overseas branch, subsidiary, or representative office:-
- (a) the soundness and feasibility of the business plan;
  - (b) the supervisory regime of the host country, particularly its implementation of international regulatory standards and codes; and
  - (c) the character, competence and experience of those who will operate the branch, subsidiary or representative office overseas.

#### 4. Consolidated Supervision Requirement

The Central Bank acknowledges that an essential element of successful supervision is its ability to supervise entire banking groups on a consolidated basis. This includes its ability to review banking and non-banking activities conducted by its licensees, either directly or indirectly (through branches, subsidiaries or representative offices) and activities conducted at both domestic and foreign offices. On an ongoing basis, the Central Bank aims to ensure that entities within banking and/or trust groups, on a consolidated basis:-

- (a) are adequately organized;
- (b) have adequate risk management systems and appropriately identify, limit and monitor risks inherent in their business activities;
- (c) comply with capital adequacy and risk management requirements; and
- (d) observe reporting duties and other requirements of the Central Bank and the host supervisory authority.

Effective consolidated supervision of overseas branches, subsidiaries and representative offices can not be achieved without the host regulator's cooperation in the exchange of supervisory and other information. Hence, *the Central Bank may require that the host regulator sign a Memorandum of Understanding with the Central Bank as condition of final approval to the establishment of a branch or subsidiary.* The Memorandum would generally be guided by the Central Bank's Model Memorandum of Understanding (<http://www.centralbankbahamas.com/public/MOU10.08.04.pdf>).

To further ensure the conduct of effective consolidated supervision, the Central Bank will not approve applications for the establishment of managed branches, subsidiaries and representative offices abroad unless:-

- (a) the host regulator has no objection to its establishment; and
- (b) the mind & management of the operations are conducted from the location of the licensee in The Bahamas.

#### VI. REQUIREMENTS FOR ESTABLISHING AN OVERSEAS BRANCH

Applications to establish an overseas branch should comprise of the following:-

- (1) An application letter advising of:-
  - (a) the purpose/rationale for establishing the branch;
  - (b) the proposed name of the branch;

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- (c) the proposed location of branch activities and whether a physical presence will be maintained at that location; and
  - (d) the principle activities which it seeks to carry on through the branch and the targeted clients;
- (2) An indication of the level of the applicant's involvement and participation in managing and monitoring the business of the branch, (e.g. management and staff members performing duties);
  - (3) The pre and post acquisition organizational chart of the applicant's group;
  - (4) The proposed management<sup>1</sup>;
  - (5) Information on the Statutory Auditors<sup>1</sup>;
  - (6) Information on the Business Rules and Internal Organization<sup>1</sup>;
  - (7) A comprehensive business plan<sup>1</sup>;
  - (8) Board of Directors' Resolution authorizing the establishment of the branch; and
  - (9) A letter from the host regulator indicating their approval or non-objection to the establishment of a branch in their country.

## **VII. REQUIREMENTS FOR ESTABLISHING AN OVERSEAS SUBSIDIARY**

Applications to establish a subsidiary abroad should comprise of the following:-

- (1) An application letter advising of:-
  - (a) the name of the subsidiary;
  - (b) the place where it would established and whether it would maintain physical presence at that location;
  - (c) the rationale for establishing the subsidiary;
  - (d) the proposed ownership structure; and
  - (e) the short and long term objectives and business strategy of the subsidiary.;
- (2) The business plan of the subsidiary (including primary business activities, projected financial statements, inclusive of balance sheet, profitability, capital adequacy, etc., for the first three years of business activity);

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<sup>1</sup> See requirements of the Central Bank of the Bahamas' General Information and Guidelines for Licence Applications for Banking and/or Trust Companies

- (3) The funding strategy of the subsidiary (including the extent of support from the parent, e.g. by means of injecting capital or issuing guarantees, letters of comfort or other assurances);
- (4) The degree of the applicant's involvement and participation in managing and monitoring the business of the subsidiary, e.g. the number, due diligence & qualification particulars regarding the applicant's directors to be appointed to the Board of Directors;
- (5) The statutory auditors, (i.e. name and address of proposed auditors and, where appropriate, details of arrangements for the review of the operations of the subsidiary);
- (6) Information as to whether the subsidiary will be subject to the supervision of the financial sector regulator in the host country;
- (7) Limits, controls and reporting procedures to be established by the applicant over the activities of the subsidiary;
- (8) The management structure (e.g. proposed management, any specialised committees, etc.);
- (9) The key business rules and internal control systems of the subsidiary;
- (10) Organizational chart of the licensee's banking group, inclusive of the proposed subsidiary;
- (11) The Board of Directors' Resolution authorizing the establishment of the subsidiary; and
- (12) A letter from the host regulator indicating that their approval or non-objection to the establishment of a subsidiary in their country.

### **VIII. REQUIREMENTS FOR ACQUIRING FIFTY-ONE PERCENT OR MORE OF AN OVERSEAS ENTITY**

Applications to acquire 51% or more of an entity abroad should comprise of the following:-

- (1) An acquisition letter advising of:-
  - (a) the name of the entity;
  - (b) the place and date of incorporation or establishment;
  - (c) the primary activities of the entity;

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- (d) the rationale for acquiring the entity;
  - (e) the percentage of the shareholding to be acquired and the proposed ownership structure;
  - (f) the location of the operation and whether a physical presence will be maintained at that location; and
  - (g) the cost of acquisition (including any goodwill) or investment and how it will be funded.;
- (2) Financial information on the entity, inclusive of its audited financial statements for last three years and unaudited financials for the four quarters prior to the application date (e.g. balance sheet, profitability, capital adequacy ratios, etc. should be displayed);
  - (3) The short and long term objectives and business strategy for the entity;
  - (4) The business plan for the entity (including projected financial statements for the first three years of business activity);
  - (5) The funding strategy of the entity (including the extent of support from the parent, e.g. by means of injecting capital or issuing guarantees, letters of comfort or other assurances);
  - (6) The degree of the applicant's involvement and participation in managing and monitoring the business of the entity, (e.g. number, due diligence & qualification particulars regarding the applicant's directors to be appointed to the Board of Directors);
  - (7) The statutory auditors, i.e. name and address of proposed auditors and, where appropriate, details of arrangements for the review of the operations of the entity;
  - (8) Limits, controls and reporting procedures to be established by the applicant over the activities of the entity;
  - (9) The proposed management structure (e.g. proposed management and any specialised committees);
  - (10) The key business rules and internal control systems of the entity;
  - (11) Information as to whether the subsidiary will be subject to the supervision of a banking regulator in its place of incorporation or establishment;
  - (12) Organizational chart showing the structure of the direct and indirect shareholdings of the applicant analysed according to holdings of voting rights and/or shares;
  - (13) Copy of the act, charter, certificate of incorporation and Memorandum and Articles of Association of the entity, as may be appropriate, verified by statutory

- declaration made by a director or the secretary duly authenticated under public seal of the jurisdiction in which the applicant has been incorporated;
- (14) The Board of Directors' Resolution authorizing the acquisition;
  - (15) Certificate of Good Standing or equivalent document from the host regulator regarding the entity's history of performance and compliance; and
  - (16) Letter from the host regulator indicating their approval or non-objection to the acquisition of the entity.

#### **IX. REQUIREMENTS FOR ESTABLISHING AN OVERSEAS REPRESENTATIVE OFFICE**

Applications to establish a representative office abroad should comprise of the following:-

- (1) An application letter:-
  - (a) detailing the purpose for establishing a representative office and where it would be located (i.e. identification of the host country);and
  - (b) describing how the representative office will be operated, i.e. primary functions, proposed personnel resources and administrative arrangements;
- (2) The Board of Directors' Resolution authorizing the establishment of a representative office in the host country;
- (3) Letter from host regulator indicating their approval or non-objection to the establishment of the representative office;
- (4) A written undertaking from the applicant or statement signed by the directors of the applicant that the conditions/requirements to the operation of a representative office will be adhered to;
- (5) Comprehensive information on the proposed resident manager of the representative office, inclusive of curriculum vitae, two character references, one financial reference and a police certificate;
- (6) A written acknowledgement from the resident manager of the representative office that is domiciled in the host country, stating that he/she understands the conditions applicable to the operation of the representative office and that he/she will uphold the conditions; and

- (7) The name and position of the officer in the applicant's office to whom the resident manager will report and an outline of how the operations of the representative office are to be monitored, to ensure that the conditions attached to the operation of the office are observed.

## **X. OPERATING CONDITIONS FOR REPRESENTATIVE OFFICES**

Where approval has been granted for the establishment of a representative office, the following conditions would normally apply:-

- (1) The business of the representative office must be confined to the conduct of purely liaison activities. Examples include conducting research into the host country's economy; liaising with customers of the licensee in the host country; the provision of factual information relating to the licensee's products and services upon request, etc.;
- (2) The representative office must not conduct any form of banking or trust business, such as: soliciting deposits; receiving deposits (which may include allowing customers of the licensee to deposit moneys into any account in the name of the representative office); granting loans; drawing, accepting, endorsing or discounting bills of exchange; establishing letters of credit; dealing in or issuing securities; dealing in derivatives products; buying or selling foreign exchange or executing any documentation for any of the foregoing purposes; acting as trustee or trust administrator;
- (3) The representative office may not engage in any commercial activity (other than pure marketing). It may not issue invoices for the services rendered. This means that the representative office is not allowed to act on its own behalf by using its employees or office for any kind of trading or business; nor may it be granted a power of attorney to act on the behalf of the licensee;
- (4) The representative office must not accept any orders on behalf of the licensee. Accordingly, the representative office's activities must be limited to transferring information to customers on behalf of the licensee, and to transferring offers, bids, acceptance, inquiries, etc., from customers to the licensee;
- (5) The representative office must not engage directly in financial transactions (whether within The Bahamas or overseas), except transactions which are necessary for and incidental to the maintenance of its office in the host country;
- (6) The name of the licensee should be used by the representative office only in conjunction with the description "representative office". This includes on office signage, letterheads, advertising, business cards, etc;

- (7) The activities of the representative office must be kept separate from those of any financial enterprise operating in the host country;
- (8) Any proposed closure or change in the location of a representative office, or change in the resident manager, must be advised to the Central Bank;
- (9) The resident manager of the representative office must inform the Central Bank of any significant developments adversely affecting its or the licensee's financial soundness and/or reputation globally;
- (10) The resident manager of the representative office must provide to the Central Bank a copy its financial accounts (in English) on an annual basis;
- (11) The Central Bank must be advised of any change in the licensee's or resident manager's oversight of the representative office;
- (12) Evidence that its representative office has been registered in the host country must be provided to the Central Bank as soon as possible after approval to open a representative office has been granted (also annual notification of registration may be necessary should the representative office registration be renewed annually);
- (13) The licensee must provide the Central Bank with an annual statement confirming that the representative office is in compliance with the conditions of its approval. This statement should be signed by the executive of the licensee responsible for oversight of the representative office, or by the resident manager of the representative office;
- (14) The licensee must ensure that the representative office comply with all applicable laws and must inform the Central Bank in writing of any breach or alleged breach of an applicable law and, in addition, must inform the Central Bank in writing of any event which results or might reasonably be expected to result in the cancellation or suspension of the representative office's registration; and
- (15) The representative office must provide the Central Bank with information that it may request from time to time relating to the operations of the office.

## **XI. NOTICE OF REVOCATION**

The Central bank may revoke its approval for the establishment or acquisition of an overseas branch, subsidiary or representative office should the Bank be of the opinion that the licensee's operations/viability and the interests of depositors or potential depositors or trust clients are threatened by the continuation of the branch, subsidiary or representative office abroad.

## **XII. REJECTION OF APPLICATION**

Notwithstanding submission of all required documents, the Central Bank reserves the right to reject an application if it is considered that the interests of depositors or potential depositors or trust clients of the licensee would be threatened by its establishment of an overseas branch, subsidiary or representative office.

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