



SUPERVISORY AND REGULATORY GUIDELINES: 2003-01
Minimum Physical Presence Requirements

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**GUIDELINES FOR THE MINIMUM PHYSICAL PRESENCE REQUIREMENTS
FOR BANKS AND TRUST COMPANIES LICENSED IN THE BAHAMAS**

1. 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, including all requirements under the “Suspicious Transactions Guidelines relating to the Prevention of Money Laundering and the Financing of Terrorism”, issued by the Financial Intelligence Unit and endorsed by the Central Bank. Additionally, licensees should comply with ongoing supervisory programmes, including periodic on-site examinations, and required regulatory reporting. Licensees are also expected to conduct their affairs in conformity with all other Bahamian legal requirements.

2. PURPOSE

These Guidelines outline the Central Bank’s minimum requirements for licensees to qualify as being “physically present” in The Bahamas, and are effective immediately. Additional requirements may be imposed on all or individual licensees at the discretion of the Central Bank.

3. APPLICABILITY

All licensees are expected to comply with the requirements detailed in these Guidelines, unless the Governor grants specific exception.

Specific exceptions to these Guidelines:

- Managed licensees are exempted from the provisions of these Guidelines if they satisfy the criteria outlined in the:-
 - *Guidelines for Managed Branches; or*
 - *Guidelines for Managed Licensees¹.*

However, where exempted licensees intend or are required to establish a physical presence in The Bahamas, they must satisfy the minimum requirements in these Guidelines.

4. MINIMUM PHYSICAL PRESENCE REQUIREMENTS

Licensees are expected to have the following arrangements in place to satisfy the Central Bank's physical presence requirements:-

A. Governance and Management Arrangements

1. Licensees must conform, as appropriate to the nature of their particular business and structure, to the Central Bank's *Guidelines for the Corporate Governance of Banks and Trust Companies Licensed to do Business within and from within The Bahamas*, as well as to all other applicable guidelines;
2. The licensee's Board of Directors (in the case of subsidiaries and stand-alone entities) or parent bank (in the case of branches of foreign banks) are expected to appoint a minimum of two executive officers to be directly responsible for the licensee's management and day-to-day operations in The Bahamas². These executive officers must reside in The Bahamas;
3. The licensee's Board of Directors (in the case of subsidiaries and stand-alone entities) or parent bank (in the case of branches of foreign banks) are expected to delegate the necessary level of authority to the licensee's officers and employees in The Bahamas to permit them to satisfactorily perform their ongoing management and operating functions; and
4. The licensee's Board of Directors (in the case of subsidiaries and stand-alone entities) is expected to include a minimum of one non-executive director who is a resident of The Bahamas. This non-executive director should not be an officer or

¹ These Guidelines replace and supersede the Guidelines with Respect to the Requirements for the continuation of the Management of Restricted Banks and Trust Companies (Currently without a Physical Presence) issued on 17th May 2002 and amended on 15th November 2004.

² This is commonly referred to as the 'four eyes principle'.

employee of or otherwise be connected³ to the licensee, parties related to the licensee, or its other directors, management, or persons exercising voting control over 5% or more of the share capital of the licensee. Non-executive directors are expected to take an active interest and role in directing the affairs of the licensee.

B. Records and Record-Keeping Arrangements

1. A licensee **must** maintain the records/documentation specified in paragraphs four (4) and five (5) below.
2. These records must be kept either in the English language or be readily convertible into the English language. Documents required to be translated in response to on-site examination requests may be translated by an employee of a licensee. The translated document should be certified by a senior member of the licensee's management (preferably Senior Officer I/Senior Officer II) with sufficient authority to certify documents maintained by the licensee prior to submission to the examiners.
3. These records **may be** retained as originals or certified copies in paper or electronic form or on microfilm. Where certified copies of documents are retained, the certifier should be a senior member of the licensee's management team with sufficient authority to certify documents maintained by the licensee. The certification should indicate that the copies of documents are identical with the corresponding originals and should ideally be contemporaneous with the date of the copy.
4. A licensee **must** maintain the following records/documentation at its premises in The Bahamas:
 1. Client account opening and due diligence documentation including identification information, sufficient to confirm compliance with all statutory and regulatory know-your-customer requirements, for all client facilities maintained in The Bahamas by the licensee;
 2. Information on all current client transactions and relevant correspondence sufficient to monitor properly the accounts and other facilities for suspicious activity conducted through the licensee;
 3. Corporate records of the licensee and minutes of shareholders' and directors meetings;
 4. Correspondence with the Central Bank, and records on monitoring compliance with the Central Bank's licensing and other requirements;

³ For example, such relationships would include, acting as attorney, external auditor for the licensee or being a major customer of the licensee.

5. Reports prepared by the licensee's internal and external auditors pursuant to the licensee's compliance and/or operational review processes;
 6. Information on employee training programmes and copies of training manuals; and
 7. Policies, procedures and operating manuals, including those with respect to know-your-customer/anti-money laundering and countering the financing of terrorism.
5. A licensee may maintain the following records at their premises in The Bahamas **or** use record-keeping systems at premises located outside The Bahamas, provided the conditions set out in paragraph 6 are met. However, where such records are maintained outside The Bahamas, a licensee **must** ensure that staff located in The Bahamas, locally appointed external auditors and Central Bank personnel have direct access on an **immediate, real-time basis** to these records. Further, the licensee's external auditor will be required to validate regularly and independently the accuracy and sufficiency of these records. These records include the following:
1. Accounts books, files and other documents that record all of the business affairs of the licensee; and
 2. Any other information that substantiates the nature and the value of all assets, liabilities and off-balance sheet activities and transactions and ordinary and extraordinary income and expenses (e.g., client credit files and documentation, investment account files and statements, files on assets under management/trusts, etc.).
6. A licensee may not use record-keeping systems located outside The Bahamas to fulfil these requirements unless it can satisfy the Inspector that the confidentiality and security of the records are maintained.
7. Records must be kept current, in accordance with international best practices and the needs of the business of the licensee. The licensee must implement a program to safeguard and back-up all records and the manual, automated, and electronic information maintenance and reporting systems necessary to support these records.

(A) Back-up Storage Facilities must:

- be a secure environment, ensuring the safety, privacy, and confidentiality of information stored; and
- be accessible to the Central Bank.

(B) Private Residence

In the case of restricted licensees, the Central Bank in certain instances may allow the use of private residences for back-up storage purposes. The Central Bank recognizes that the limited operations and the “restricted” nature of the business of these entities, (i.e. not dealing with the public), may make it more economically viable for utilizing this means of back-up storage. Restricted licensees seeking to avail themselves of this form of back-up storage arrangement should notify the Central Bank of their intention to do so. Further, in addition to meeting the conditions stipulated in (A) above, the licensee must satisfy the Central Bank that the back-up storage facility will be:

- used to store back-up data only; and
- kept separate from and not connected to the private residence.

The licensee’s compliance with the requirements of (A) and (B) above will be verified during the course of its on-site examination. The Central Bank therefore reserves the right to require that the licensee find an alternate back-up storage facility, if the Central Bank is not satisfied that the conditions mentioned at (A) and (B) above are satisfactorily met.

8. When two or more licensees operate from the same physical premises and/or by employing the same accounting and record-keeping systems, the records for each licensee must be completely segregated from each other and from the records of any other licensee, which might share those systems.
9. Records on completed transactions may be maintained in paper, automated and/or electronic format. The format(s) selected must be capable of producing complete and accurate financial, management, and regulatory reports; allow review and monitoring of all transactions; and, provide sufficient information to permit an audit of the licensee’s business or an on-site examination of the licensee by the Inspector at its office in The Bahamas. (These requirements may be modified subject to developments in policies applicable to electronic record-keeping.).
10. Licensees **must** also comply with the record retention requirements of Part IV of the Financial Transactions Reporting Act, 2000, which provides inter alia that identification and transaction records be maintained for a minimum period of five years after identity has been verified or after the completion of a transaction, as the case may be.
11. Licensees **must** be capable of retrieving the records/documentation specified in paragraphs four (4) and/or five (5) within a day (1), if the records are kept at its premises in The Bahamas and within two (2) working days, if kept outside The Bahamas.

C. Premises and Facilities Arrangements

1. Physical facilities to be maintained in The Bahamas must include:
 - (a) Appropriate, dedicated and secure office space consistent with the needs of the licensee;
 - (b) Appropriate and secure facilities (e.g. filing cabinets, electronic storage facilities, etc.) for the custody and storage of records;
 - (c) Appropriate communications facilities; and
 - (d) Dedicated mechanical and/or electronic facilities necessary to record and process the licensee's business activities.
2. Premises must bear appropriate exterior identification of the licensee's presence; and
3. Telephone and other numbers, and postcodes and mailing and street addresses must be publicly available.