

**SUPERVISORY AND REGULATORY GUIDELINES: 2002-02****Managed Branches****Issued: 23rd January 2002****Amended: 22nd March 2012****GUIDELINES FOR MANAGED BRANCHES****1. INTRODUCTION**

- 1.1 The Central Bank of The Bahamas (*"the Central Bank"*) is authorized to license and supervise 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. The Central Bank is charged with the responsibility of reviewing bank and trust company practices in The Bahamas. Additionally, the Central Bank has the duty, in collaboration with the financial institutions, to promote and maintain high standards of conduct and management in the provision of banking and trust services in and from within The Bahamas.
- 1.2 Since 30th June 2004, the Central Bank's policy¹ has been that no licensee will be permitted to operate in or from within The Bahamas without a physical presence appropriate to the business of that institution.
- 1.3 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

- 2.1 These Guidelines outline the Central Bank's policy for the minimum requirements for the management and operation of branches of foreign banks and/or trust companies without a physical presence in The Bahamas ("Managed Branches").

¹ This policy is set out in the **Guidelines for the Requirements for the Transition of Managed Banks to Full Physical Presence**, which was issued in 2001

3. APPLICABILITY

- 3.1 Unless a specific exemption is granted by the Central Bank, all managed branches permitted to operate without a physical presence in The Bahamas must comply with these specific requirements. **No managed branch that currently operates through a full physical presence in The Bahamas will be permitted to take advantage of the policy detailed in these Guidelines.**

4. POLICY FOR THE CONTINUATION OF THE MANAGEMENT OF BRANCHES

- 4.1 Generally, most of the managed branches of foreign bank and/or trust companies that have been established to operate from within The Bahamas, either through Management Agreements with third-party Managing Agents in The Bahamas or through arrangements with affiliated banks and/or trust companies with a full physical presence in The Bahamas, have served principally as vehicles for the booking of business initiated by the head office or other offices of their parents or by affiliates of their parents. These managed branches have traditionally been established to hold such activities as overnight booking of deposit accounts, wholesale on and off-balance sheet business, portions of larger transactions held throughout their parent organizations, etc. and as legal vehicles through which such transactions could be easily segregated from the other business of the parent organizations.
- 4.2 The Central Bank requires that all managed branches must be supervised, in keeping with international best practices, as part of the consolidated supervision conducted by the home country supervisor of their parent banking organizations, and, in some cases, by host country supervisors in locations from which they are managed and controlled. The Central Bank also recognizes that the reliability of such supervision differs from country to country. Therefore, the Central Bank has made judgments to differentiate the quality of such home/host country supervision.
- 4.3 The Central Bank has determined that, effective 31 March 2002, only parent banking and/or trust organizations headquartered in jurisdictions that are deemed to be supervised in accordance with the following **Criteria (see Section 5)**, will be permitted to continue to operate managed branches, under the license granted to their parent foreign bank and/or trust company, from within The Bahamas without maintaining a full physical presence in The Bahamas subsequent to 30 June 2004.
- 4.4 In the future, the Central Bank will not permit any foreign bank and/or trust company to operate a managed branch from within The Bahamas unless its parent organization already maintains or establishes a subsidiary or branch with a full

physical presence in The Bahamas and meets the **Criteria** and **Operating Requirements** set forth below (see Sections 5 and 6).

- 4.5 Going forward, the Central Bank will permit existing managed branches to continue operating from within The Bahamas, but only through appropriate Management Agreements with third-party Managing Agents or Management Agreements with affiliated banks and/or trust companies that already have a full physical presence in The Bahamas, if they fully meet the following **Criteria** and **Operating Requirements in Sections 5 and 6**. Managed branches that do not fully meet these requirements will be required to convert to a separately incorporated, licensed bank and/or trust company with a full physical presence or wind-up their operations.

5. CRITERIA

- 5.1 As per section 4, the following criteria must be met:-

- (a) the ultimate parent of the managed branch (the licensee) is a financially strong, well-managed organization, approved by the Inspector of Banks and Trust Companies (“the Inspector”), that:
- is subject to consolidated supervision by a supervisor(s) located in one of the following approved jurisdictions²: Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States; or
 - is subject to consolidated supervision by a supervisor(s) located in another jurisdiction that, as determined at the discretion of the Inspector, conducts effective consolidated supervision in accordance with the Basel Core Principles of Banking Supervision and the Basel Capital Accord; or
 - is a parent banking or trust organization that the Inspector, at his discretion, has specifically approved.
- (b) the parent agrees to provide the Inspector with the particulars on how, from what location(s) outside of The Bahamas, and by whom the licensee is managed, controlled, and audited in the home/host country;

² i.e. the members of the Basel Committee on Banking Supervision.

- (c) the parent obtains and provides to the Inspector a written assurance from the home/host country supervisor in the location from which the licensee is managed and controlled and where its records are maintained that the Inspector may, at his discretion and after giving proper notice to that home/host country supervisor, conduct on-site examinations of the licensee;
- (d) the parent agrees to provide the Inspector with periodic (e.g., annual audited and quarterly un-audited) consolidated financial information on the organization in a form and content satisfactory to the Inspector;
- (e) the parent agrees to provide the Inspector with periodic regulatory reports (e.g., financial reporting, home/host country examination reports) and other information on the operations of the licensee in a form, content, and timing specified by the Inspector;
- (f) the parent provides a formal written assurance to the Inspector that the licensee and its officers and staff will comply with all of the laws and regulations of The Bahamas (e.g., know-your-customer/anti-money laundering) and agrees to periodically, but at least annually, certify that the licensee is in compliance;
- (g) the parent agrees to reimburse the Central Bank for the travel and relevant administrative costs associated with the on-site examinations of the licensee at the location from which it is managed and controlled; and,
- (h) the parent agrees to commission, at its own expense, upon a direction from the Inspector, independent auditors or other professionals to perform special reviews of the licensee's implementation of know-your-customer /anti-money laundering policies and procedures and any other supervisory and regulatory requirements.

6. OPERATING REQUIREMENTS

The following operating requirements are applicable to all managed branches that meet the criteria specified above. Only those licensees that satisfy the criteria above may avail themselves of the arrangements described below.

6.1 CORPORATE GOVERNANCE

- 6.1.1 The parent of the managed branch must appoint a minimum of two senior officers (generally referred to as the Senior Officer I and Senior Officer II), who may be officers of the Managing Agent or the affiliated bank and/or trust company and who are residents of The Bahamas, to be responsible for the operations of the licensee in The Bahamas, pursuant to the terms of a Management Agreement.

- 6.1.2 Senior officers may serve in this capacity for no more than two managed branches. The appointment of these senior officers is subject to the prior approval of the Central Bank.

Qualifications of Senior Officers

- 6.1.3 These senior officers, who must be experienced bankers, trust officers, and/or accountants/auditors with appropriate bank/trust company audit/management experience, must:
- (a) be knowledgeable in the types of banking/trust company business activities performed by the licensee; and
 - (b) be familiar with the business affairs and activities of the licensee, and be able to expeditiously obtain information and responses to the Inspector's inquiries about all aspects of the licensee's operations from the licensee.

Responsibilities of Senior Officers

- 6.1.4 Acting on behalf of the parent bank and/or trust company, and pursuant to the terms of the Management Agreement, the senior officers will be responsible for:
- (a) the administration and maintenance of all records held in The Bahamas, as per section 6.2;
 - (b) facilitating compliance by the parent bank and/or trust company with all applicable Bahamian laws, regulations, policies, guidelines, directives, etc.;
 - (c) performing and assuming any responsibilities on behalf of the licensee, pursuant to the terms of the governing Management Agreement.
 - (d) relations with and reporting to all appropriate supervisory and regulatory authorities in The Bahamas; and
 - (e) other matters as may be agreed between the parent bank and/or trust company, the Managing Agent, and/or the Inspector.
- 6.1.5 The parent of the licensee must provide a comprehensive description of the background of each proposed senior officer that is sufficient to allow a determination that they meet the **Qualifications** and **Responsibilities**, as indicated above, to the Central Bank. Such information should relate to

previous management level or equivalent experience in the range of businesses that will be conducted by the licensee; other management/administrative experience; special language skills (if appropriate to the licensee in question); knowledge of pertinent laws, regulations, and supervisory and regulatory requirements; and, other necessary skills and experience. A detailed *curriculum vitae* must also be provided.

- 6.1.6 Pursuant to the requirements of Regulation 5 of the Financial Intelligence (Transactions Reporting) Regulations, 2001, the parent of the licensee must appoint a Compliance Officer (CO) and a Money Laundering Reporting Officer (MLRO) for the licensee. These functions may be performed by the same individual. The appointee(s) may be a senior officer(s) of the parent at the location from which the licensee is managed and controlled and its records maintained. The MLRO is subject to the prior approval of the Central Bank (see Guidelines for Assessing the Fitness and Propriety of Money Laundering Reporting Officers (MLRO) in The Bahamas) and must be properly registered with the Financial Intelligence Unit of The Bahamas, pursuant to the requirements of Regulation 5 of the Financial Intelligence (Transactions Reporting) Regulations, 2001.
- 6.1.7 The parent of the licensee must ensure that appropriate arrangements are made for maintaining any required records of the licensee and performing other operational and administrative services at its office in The Bahamas, pursuant to the terms of the Management Agreement.
- 6.1.8 The parent of the licensee must appropriately delegate the necessary authority to their senior officers in The Bahamas to perform their ongoing functions pursuant to the terms of the Management Agreement.

6.2 RECORDS MANAGEMENT

- 6.2.1 The parent of the licensee must maintain, in The Bahamas:
- (a) the corporate records pertaining to the licensee;
 - (b) correspondence with the Central Bank, and records on monitoring compliance with the Central Bank's licensing and other requirements;
 - (c) correspondence and records relating to other Bahamian regulatory requirements, where relevant to the operations of the branch; and,

- (d) a listing and description of all products/services provided/offered by the licensee, as well as separate notifications and descriptions to the Inspector when new products/services are to be offered.

Know-Your-Customer/Anti-Money Laundering Compliance

6.2.2 The parent of the licensee must satisfy the Inspector, through on-site examination and periodic (i.e. at least annually) certification from the parent, that the following are maintained at or readily accessible through the location from which the licensee is managed and controlled:

- (a) all records necessary to ensure compliance with the Financial Transactions Reporting Act, 2000, the Financial Intelligence Unit Act, 2000, the Financial Transactions Reporting Regulations, 2000, the Financial Intelligence (Transactions Reporting) Regulations, 2001, and any subsequently enacted/amended laws or modified/issued regulations related to know-your-customer/anti-money laundering requirements;

(b) these records will include:

- all client relationships that remain active or potentially active; and
- all accounts and facilities that have been terminated, but for which the required retention period has not yet expired.

6.2.3 It should be noted that the records required in accordance with the above-referenced laws and regulations will include, at a minimum, the following:

- client account opening and identification information and documentation, for all types of business engaged in by the licensee, both on and off-balance sheet, sufficient to confirm compliance with all statutory and regulatory know-your-customer requirements; includes due diligence documentation on all existing clients; due diligence documentation on all new facilities/accounts must be conducted in accordance with the business activities of the licensee³;

³ If the branch is referred business from a financial institution(s) in a location in a country listed in the First Schedule of the Financial Transactions Reporting Act, 2000, as amended, the licensee may obtain certification that the necessary verification of identity, pursuant to the requirements of the Financial Transactions Reporting Act, 2000, as amended, has taken place for that business, in lieu of maintaining the identification documents in the location at which the branch is managed and controlled.

- information on transactions in all client accounts and relevant client correspondence sufficient to properly monitor the accounts for suspicious activity;
 - information on transactions carried out for non-clients sufficient to properly monitor the transactions for suspicious activity;
 - reports prepared by the licensee's internal and external auditors and compliance and/or operational review processes related to compliance with the above-referenced laws and regulations at the licensee;
 - all policy, procedures, and operating manuals related to know-your-customer/anti-money laundering; and,
 - information on employee know-your-customer/anti-money laundering training programs and training manuals.
- (c) these records, which may be maintained in manual, automated, and/or electronic format, will be capable of producing complete and accurate regulatory reports, if required; allow review and monitoring of all transactions; and, provide sufficient information to allow an audit of the licensee's business, an on-site examination of the licensee by the Inspector, or an investigation by the Financial Intelligence Unit.
- (d) these records will be maintained either in written form in the English language or so as to enable the records to be readily accessible and convertible into written form in the English language;
- (e) these records will be updated in accordance with international best practices; and,
- (f) the records will be reviewed annually by the licensee's internal auditor.

Recordkeeping

- 6.2.4 The parent of the licensee must also satisfy the Inspector, through on-site examination and periodic (i.e. at least annually) certification from the parent, that adequate other documentary and accounting records and related information are maintained at or readily accessible through the location that is responsible for the management and control of the licensee to allow for the on-site examination by the Inspector of all of the business activities booked at the licensee.

- 6.2.5 The parent of the licensee 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.
- 6.2.6 In maintaining the records of the licensee at the location responsible for its management and control, the parent must ensure that the records are maintained completely separate from those of any other office(s) of the licensee or its affiliates and it is readily and reliably able to provide any requested information to the Inspector and to the Financial Intelligence Unit.

6.3 REQUIREMENTS FOR MANAGING AGENTS

- 6.3.1 A Managing Agent may be a third-party organization or an affiliated bank and/or trust company with a full physical presence in The Bahamas.
- 6.3.2 Third-party Managing Agents must be approved by the Central Bank. Bahamian-incorporated banks and/or trust companies with unrestricted licenses and a full, well-established presence in The Bahamas may apply to the Inspector for authorization to act as third-party Managing Agents. Applicants will be required to demonstrate that they have the overall experience and the managerial and technical resources and expertise to act as Managing Agents. The Inspector will generally expect that applicants will have been in operation for a minimum of five (5) years and have a minimum capitalization of \$5 million, although the Inspector may also take into account prior substantive experience as a Managing Agent that may override, in some cases, strict conformity with these minimums.
- 6.3.3 For foreign banks and/or trust companies that have affiliated banks or trust companies with a full physical presence in The Bahamas, arrangements may be made to fulfill the role of Managing Agent for their managed branches through the offices of those affiliated banks or trust companies, under a Management Agreement between the parent bank and/or trust company and the affiliated company.

6.4 THE MANAGEMENT AGREEMENT

- 6.4.1 A comprehensive Management Agreement, detailing all of the Managing Agent's responsibilities, must be executed between the Managing Agent and the licensee's parent bank. This Agreement must be approved by the Inspector.

- 6.4.2 Such agreements may contain, as applicable, but would not necessarily be limited to, arrangements covering:
- (a) the general scope of the agreement;
 - (b) the services to be provided;
 - (c) the responsibilities of the Managing Agent and the senior officers of the parent bank and/or trust company;
 - (d) the responsibilities of the parent bank and/or trust company and its parent organization;
 - (e) the responsibilities for the relationships with all appropriate supervisory, regulatory, and other governmental authorities, including provision of information by the Managing Agent on behalf of the licensee, representation and regulatory reporting;
 - (f) recordkeeping, files maintenance, and other operational and administrative activities, as necessary;
 - (g) legal jurisdiction and interpretation;
 - (h) prevention of conflicts of interest; and
 - (i) terms of service, including remuneration and other consideration, conditions of termination, and indemnification.

6.5 PHYSICAL FACILITIES

- 6.5.1 Physical and other facilities should be consistent with the needs of the operations of the licensee in The Bahamas.