



MANAGED INSTITUTIONS GUIDELINES: 2002-03
Managed Restricted Banks and Trust Companies
17th May, 2002
Amended 15th November, 2004

**GUIDELINES WITH RESPECT TO THE REQUIREMENTS FOR THE
CONTINUATION OF THE MANAGEMENT OF RESTRICTED BANKS AND
TRUST COMPANIES (CURRENTLY WITHOUT A PHYSICAL PRESENCE)**

I. INTRODUCTION

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.

As a part of the Central Bank’s ongoing programme to introduce and strengthen international best practices for the management and operation of licensees, the Central Bank has adopted a general policy requiring that, beyond 30 June 2004, no licensee will be permitted to operate in or from within The Bahamas without a physical presence appropriate to the business of that institution. This policy is articulated in the **“Guidelines for the Requirements for the Transition of Managed Banks to Full Physical Presence”**, dated 18 May 2001, as amended. Subsequently, managed branches of foreign banks that satisfy specific criteria outlined in the **“Guidelines with Respect to the Requirements for the Continuation of the Management of Branches of Foreign Banks (Currently without a Physical Presence)”**, dated 23 January 2002, were granted exemptions to this general policy for physical presence.

II. PURPOSE

These Guidelines outline the Central Bank’s policy for the minimum requirements for the continuation of the management and operation of banks and trust companies that currently operate under **restricted bank and/or trust company** licenses issued by the Central Bank, but without maintaining a physical presence in The Bahamas.

III. APPLICABILITY

Unless a specific exception is granted by the Governor, all managed restricted licensees that currently operate without a physical presence in The Bahamas will be expected to

comply with these specific requirements. These guidelines do not apply to restricted nominee trust licensees.

IV. COMPLIANCE WITH BAHAMIAN LEGISLATION

The Central Bank also recognizes that each restricted licensee is a “financial institution” pursuant to section 3(1)(a) of the Financial Transactions Reporting Act, 2000. Consequently, all of the requirements, as appropriate, of the Financial Transactions Reporting Act, 2000, the Financial Intelligence Unit Act, 2000, the Financial Transactions Reporting Regulations, 2000, and the Financial Intelligence (Transactions Reporting) Regulations, 2001, and their amendments, are applicable to the operations of these restricted banks and trust companies.

V. POLICY FOR THE CONTINUATION OF THE MANAGEMENT OF RESTRICTED BANKS AND TRUST COMPANIES

The Central Bank has determined that, as a general rule, effective **31st March, 2003**, only the restricted licensees that satisfy and have complied with the **Criteria** listed below will be permitted to operate from within The Bahamas without maintaining a full physical presence in The Bahamas. Managed restricted licensees that do not satisfy these **Criteria** must either establish a full physical presence or wind up their operations. No restricted licensee that currently operates through a physical presence in The Bahamas, including restricted nominee trusts, will be permitted to take advantage of the policy detailed in the Guidelines herein.

The Central Bank will permit restricted licensees that currently operate without a full physical presence in The Bahamas to continue operating from within The Bahamas, only if they are managed through appropriate Management Agreements with approved third-party Managing Agents and if they fully satisfy the following **Criteria** and **Operating Requirements**.

VI. CRITERIA

- (a) The approved Managing Agent for the licensee is a public bank or trust company with a full physical presence in The Bahamas and is licensed by the Central Bank;
- (b) The Board of Directors (the “Board”) of the licensee agrees to provide the Inspector of Banks and Trust Companies (“the Inspector”) with the particulars, updated as necessary, on how, from what location(s) outside of The Bahamas (if applicable), and by whom the licensee is ultimately directed and controlled;

- (c) The Board of the licensee agrees to provide the Inspector with periodic and special supervisory and regulatory reports (e.g., additional financial reporting) and other information on the operations of the licensee in the form, content, and timing specified by the Inspector;
- (d) The Board of the licensee agrees to provide to the Inspector an annual certification that the licensee is in compliance with all of the terms and conditions of its licence;
- (e) The Board of the licensee agrees to mandate that its external auditor provide to the Inspector an annual certification that the licensee is in compliance with all of the terms and conditions of its licence;
- (f) The Board of the licensee 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), as appropriate to its business, and agrees to periodically certify that it continues to be in compliance; and
- (g) The Board of the licensee agrees to commission, at the licensee's expense, upon a request by the Inspector, independent auditors or other professionals to perform special reviews of its operations, including implementation of know-your-customer /anti-money laundering policies and procedures and any other supervisory and regulatory requirements.

VII. OPERATING REQUIREMENTS

Only those organizations that satisfy the above criteria may avail themselves of the arrangements described below.

A. CORPORATE GOVERNANCE

1. The Board of the licensee must include a minimum of one resident, non-executive director who is not a director, officer, or employee of the Managing Agent, but who is able to take an active interest in the affairs of the licensee. This director must be approved by the Governor. Restricted trust companies whose operations are limited to conducting business on behalf of one client or clients who are members of the same family are exempted from this requirement.
2. The Board of the licensee must appoint a minimum of two senior officers, who may be officers of the Managing Agent 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.

Qualifications

These senior officers (generally referred to as the Authorized Agent and Deputy Authorized Agent), who may be experienced bankers, trust officers, and/or accountants/auditors with appropriate banking/trust company audit/management experience, must:

- (a) Have knowledge of the types of banking/trust company business activities performed by the licensee;
- (b) Be familiar with the business affairs and activities of the licensee, throughout the term of the Management Agreement, and be able to respond expeditiously to the Inspector's inquiries about all aspects of the licensee's operations; and
- (c) Be available to perform, and capable of assuming, any subsidiary responsibilities on behalf of the licensee, pursuant to the terms of the governing Management Agreement.

Responsibilities

Acting on behalf of the licensee, and pursuant to the terms of the Management Agreement, these senior officers will be responsible for:

- (a) The operations, administration, and maintenance of the books and records of the licensee held in The Bahamas;
- (b) Compliance with all applicable laws, regulations, prudential standards, and supervisory policies, guidelines, directives, etc.;
- (c) Relations with and reporting to all appropriate supervisory and regulatory authorities in The Bahamas; and
- (d) Other matters as may be agreed between the Board of the licensee, the Managing Agent, the Governor, and/or the Inspector.

Senior officers may serve in this capacity for managed restricted licensees on behalf of no more than two licensees. The appointment of these senior officers must be approved by the Governor.

The licensee must furnish to the Governor a comprehensive description of the background of each proposed senior officer that is sufficient to allow a determination that they satisfy the **Qualifications** and **Responsibilities**, as indicated above. 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 for each proposed senior officer.

3. The Board of the licensee must appoint both a Compliance Officer and a Money Laundering Reporting Officer, pursuant to the requirements of regulation 5 of the Financial Intelligence (Transactions Reporting) Regulations, 2001; these functions may be performed by the same individual. The appointee(s) must be a resident(s) of The Bahamas and may be an employee(s) of the Managing Agent. The position of Compliance Officer and/or Money Laundering Reporting Officer may be filled by one of the two senior officers that are responsible for the licensee's operations.
4. The Board of the licensee must ensure that appropriate arrangements are made for maintaining the required records and performing other operational and administrative services at the office of its Managing Agent in The Bahamas, pursuant to the terms of the Management Agreement.
5. The Board 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.

B. RECORDS MANAGEMENT

General Records Requirements

1. The licensee must maintain its official records in The Bahamas. Official records will be maintained either in the English language or so as to enable the records to be readily convertible into the English language. These official records will include, but not be limited to:-
 - (a) Accounts, books, files, and other documents that register the business affairs of the licensee;
 - (b) 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.);
 - (c) Accounting records necessary to produce summary trial balances of assets, liabilities, and off-balance sheet activities, and profit and loss statements;

(see the attached Appendix for a listing of the minimum official accounting records that must be maintained, as applicable);

- (d) Reports prepared by the licensee's internal and external auditors and compliance and/or operational review processes;
 - (e) All policy, procedures, and operating manuals, including those related to know-your-customer/anti-money laundering;
 - (f) Information on employee training programs and training manuals, including know-your-customer/anti-money laundering training;
 - (g) Corporate records and the minutes of shareholders' and directors' meetings;
 - (h) Correspondence with the Central Bank and records on monitoring compliance with the Central Bank's licensing and other requirements; and,
 - (i) Correspondence and records relating to other Bahamian regulatory requirements.
2. The official records may be maintained in manual, 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 location in The Bahamas.
3. The general methodology and format for maintaining the licensee's official records, including a program to safeguard and provide for the back-up of all records, must be approved by the Inspector. For particular types of products or services (e.g., trade finance, factoring, etc.) that require special handling of or arrangements for records and documents at other locations, the Inspector will consider the practical handling of such transactions in the licensee's proposed methodology.
4. The official records must be continuously updated in keeping with relevant international best practices. The Appendix provides the minimum frequency that will be acceptable for such updates. These records must be certified periodically by the licensee's external auditor.
5. The licensee may use the record keeping systems of the Managing Agent, but the official records of each licensee must be maintained completely separate from those of the Managing Agent and other licensees.

6. The licensee may not use the record keeping systems located at its parent company/owners to satisfy these requirements unless it can satisfy the Inspector that the records are able to be reliably accessed on an immediate, real-time basis and that the accuracy and sufficiency of such records is regularly and independently validated by the licensee's external auditor.

Records for Know-Your-Customer/Anti-Money Laundering Compliance

7. The licensee must ensure that the following are maintained at the office maintained by the Managing Agent:
 - (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 amending or subsequently enacted laws or regulations related to know-your-customer/anti-money laundering requirements;
 - (b) These records will include:
 - (i) All client relationships that remain active or potentially active; and
 - (ii) All accounts and facilities that have been terminated, but for which the required retention period has not yet expired.
 - (c) It should be noted that the records required in accordance with the above-referenced laws and regulations will include, at a minimum, the following:
 - (i) Client account opening and identification documentation sufficient to confirm compliance with all statutory and regulatory know-your-customer requirements for all types of business activities (both on and off balance sheet) engaged in by the licensee;
 - (ii) Due diligence documentation on all existing clients; due diligence documentation on all new facilities/accounts must be conducted in respect of the business activities of the licensee¹;
 - (iii) Information on transactions in all client accounts and relevant client correspondence sufficient to properly monitor the accounts for suspicious activity; and

¹ If the licensee is referred business from a financial institution(s) located in a country listed in the First Schedule of the Financial Transactions Reporting Act, 2000, as amended, the licensee may obtain written 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 licensee is managed and controlled.

(iv) Information on transactions carried out for non-clients sufficient to properly monitor the transactions for suspicious activity.

(d) These records will be maintained either in the English language or maintained so as to enable the records to be readily convertible into written form in the English language.

C. REQUIREMENTS FOR MANAGING AGENTS

Managing Agents must be approved by the Governor. Bahamian-incorporated banks and trust companies with unrestricted licenses and a full, well-established presence in The Bahamas may apply to the Inspector for authorization to act as Managing Agents. The Inspector will implement a process for such applications. 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 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, in some cases, override strict conformity with these minimums.

D. THE MANAGEMENT AGREEMENT

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

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 licensee;
- (d) The responsibilities of the licensee and its Board and management;
- (e) The responsibility of the Managing Agent and senior officers for the licensee's compliance with all of the laws and regulations of The Bahamas, including adherence to know-your-customer/anti-money laundering laws and regulations;

- (f) 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;
- (g) Record keeping, files maintenance, and other operational and administrative activities, as necessary;
- (h) Legal jurisdiction and interpretation;
- (i) Prevention of conflicts of interest; and
- (j) Terms of service, including remuneration and other consideration, conditions of termination, and indemnification.

E. PHYSICAL FACILITIES

The Managing Agent will maintain and manage premises and equipment necessary for the administration of the licensee's affairs, including, but not necessarily be limited to:

- (a) Appropriate, dedicated, and secure physical office space, including adequate desk and other necessary workspace;
- (b) Appropriate, separate, and secure facilities (e.g., filing cabinets, electronic storage facilities, etc.) for the custody and storage of official records;
- (c) Appropriate communications facilities, including separate telephone line, fax machine, and internet/e-mail (as necessary); and
- (d) The dedicated manual, mechanical, and/or electronic facilities necessary to record and process all of the licensee's business activities, including, if appropriate, dedicated, secure access terminals for bi-lateral on-line record keeping and data/information transmission.

The arrangements for dedicated facilities must be approved by the Inspector.

Appendix

Type of Records	Minimum Frequency of Update
1. Detailed trial balance (on and off-balance sheet).	Weekly
1. Detailed trial balance (on and off- balance sheet), after adjusting entries and including details of adjusting entries.	Monthly
3. Month-end balance sheet with supporting schedules, providing details of all assets, liabilities, and off-balance sheet accounts.	Monthly
4. Monthly income/expense statements, with supporting schedules.	Monthly
5. Monthly general ledger report, showing all activity on all accounts.	Monthly
6. Copies of all correspondent (<i>nostro</i> and <i>vostro</i>) account statements and reconcilements.	Monthly
7. Schedule of all related parties with whom the licensee does business, including a description of transactions done during the month and the month-end balance of each account with interest rate and terms.	Monthly
8. List of all current credit lines.	Monthly
9. Lists of negotiated and non-negotiated letters of credit.	Monthly
10. Demand and fixed deposits maturity schedule.	Monthly