

MANAGED INSTITUTIONS GUIDELINES: 2002-02
Managed Branches of Foreign Banks
23 January 2002

**GUIDELINES WITH RESPECT TO THE REQUIREMENTS
FOR THE CONTINUATION OF THE MANAGEMENT OF
BRANCHES OF FOREIGN BANKS
(CURRENTLY WITHOUT A PHYSICAL PRESENCE)**

INTRODUCTION

General Policy with Respect to Managed Banks and Trust Companies

The Central Bank of The Bahamas (“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.

To implement this policy, the Central Bank requires that:

- on or before 31 December 2001, the affected licensees must have implemented all arrangements described in sections A through E of the “**Guidelines for the Requirements for the Transition of Managed Banks to Full Physical Presence**”, dated 18 May 2001, as amended; and,
- on or before 30 June 2004, the affected licensees must have themselves assumed full responsibility for their Bahamian operations. Management Agreements will no longer be applicable to such operations beyond this date.

However, the Central Bank is now implementing the following special policy covering the minimum requirements for the continuing operation from within The Bahamas of branches of foreign banks whose parent banking organizations are located in jurisdictions that are deemed to be well supervised. Unless a specific exception is granted by the Governor, all branches of foreign banks that currently operate without a physical presence in The Bahamas will be expected to comply with the requirements that are detailed below.

Background

Section 4 of the Banks and Trust Companies Regulation Act, 2000, authorizes the Central Bank to license foreign banks to operate branches in and from within The Bahamas. The Central Bank is issuing special minimum requirements that are applicable to branches of foreign banks that do not currently operate from within The Bahamas through a full physical presence. The special requirements applicable to these branches are set forth later in these Guidelines.

Generally, most of the branches of foreign banks 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 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 the branch's parent or by affiliates of the parent. These 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 the parent organization, etc., and as legal vehicles through which such transactions could be easily segregated from the other business of the parent organizations.

The Central Bank requires that all such branches must be supervised, in keeping with international best practices standards, as part of the consolidated supervision conducted by the home country supervisor of the licensee's parent banking organization, and, in some cases, by host country supervisors in locations from which such branches 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.

Compliance with Bahamian Legislation

The Central Bank also recognizes that each 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 branches.

Policy for the Continuation of the Management of Branches

The Central Bank has determined that, effective 31 March 2002, only parent banking organizations headquartered in jurisdictions that are deemed to be supervised in accordance with the **Criteria**, following, will be permitted to continue to operate branches, under the license granted to their parent foreign bank, from within The Bahamas without maintaining a full physical presence in The Bahamas subsequent to 30 June 2004.

In the future, the Central Bank will not license any foreign bank 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 jurisdiction and meets the **Criteria and Operating Requirements** set forth below for the managed branch. No 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.

Going forward, the Central Bank will permit the branches of foreign banks that currently operate without a full physical presence to continue operating from within The Bahamas, but only through appropriate Management Agreements with third-party Managing Agents or Management Agreements with affiliated banks or trust companies that already have a full physical presence in this jurisdiction, if they fully meet the following **Criteria and Operating Requirements**. If they do not fully meet these **Criteria and Operating Requirements**, branches of foreign banks will be required to convert to a separately-incorporated, licensed bank with a full physical presence or close out its operations.

Criteria:

- the ultimate parent 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 jurisdictions¹: Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, the United Kingdom, and the United States; or,
 - is subject to consolidated supervision by a supervisor(s) located in another jurisdiction that, as determined by the Inspector, at his discretion, conducts effective consolidated supervision in accordance with the Basel Core Principles of Banking Supervision and the Basel Capital Accord; or,
 - is a parent banking organization that the Inspector, at his discretion, has specifically approved.
- the parent agrees to provide the Inspector with the particulars on how, from what location(s) outside of The Bahamas, and by whom the branch is managed, controlled, and audited in the home/host country;
- the parent obtains and provides to the Inspector a written assurance from the home/host country supervisor in the location from which the branch operation 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 all of the records of the branch;

¹ i.e., the members of the Basel Committee on Banking Supervision.

- the parent agrees to provide the Inspector with periodic (e.g., annual audited and quarterly un-audited) consolidated financial information on the organization in form and content satisfactory to the Inspector;
- 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 branch in the form, content, and timing specified by the Inspector;
- the parent provides a formal written assurance to the Inspector that the branch 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 the branch is in compliance;
- the parent agrees to reimburse the Central Bank for the travel and relevant administrative costs associated with the on-site examinations of the records of the branch at the location from which it is managed and controlled; and,
- the parent agrees to commission, at their own expense, upon a request of 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 for the branch.

For licensees meeting all of these criteria, the operating requirements detailed in the following section are applicable.

OPERATING REQUIREMENTS

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

A. CORPORATE GOVERNANCE

1. The parent bank must appoint a minimum of two senior officers, who may be officers of the Managing Agent or the affiliated bank or trust company and who are residents of The Bahamas, to be responsible for the operations of the branch 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 bank/trust company audit/management experience, must:

- be knowledgeable in the types of banking/trust company business activities performed by the licensee;
- be familiar with the business affairs and activities of the licensee, throughout the term of the Management Agreement 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; and,
- 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 parent bank, and pursuant to the terms of the Management Agreement, these senior officers will be responsible for:

- the administration and maintenance of all records held in The Bahamas;
- facilitating compliance by the parent bank with all applicable Bahamian laws, regulations, policies, guidelines, directives, etc.;
- relations with and reporting to all appropriate supervisory and regulatory authorities;
- other matters as may be agreed between the parent bank, the Managing Agent, and/or the Inspector.

Senior officers may not serve in this capacity for branches on behalf of more than two licensees. The appointment of these senior officers must be approved by the Governor.

The parent bank 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 meet 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 bank 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.
2. The parent bank must appoint a branch Compliance Officer and a branch 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) may be a senior officer(s) of the parent bank at the location from which the branch is managed and controlled and its records maintained. The branch Money Laundering Reporting Officer 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
 3. The parent bank must ensure that appropriate arrangements are made for maintaining any required records of the branch and performing other operational and administrative services at its office in The Bahamas, pursuant to the terms of the Management Agreement.
 4. The parent bank 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

1. The parent bank must maintain, in The Bahamas:
 - the corporate records pertaining to the branch;
 - correspondence with the Central Bank, and records on monitoring compliance with the Central Bank's licensing and other requirements;
 - correspondence and records relating to other Bahamian regulatory requirements; and,
 - a listing and description of all products/services provided through the branch, 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

2. The parent bank must satisfy the Inspector that the following are maintained at or readily accessible through the location from which the branch is managed and controlled:
 - 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;
 - 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.

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 through the branch, 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 licensee²;
- 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 branch;
- all policy, procedures, and operating manuals related to know-your-customer/anti-money laundering; and,

² 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 employee know-your-customer/anti-money laundering training programs and training manuals.
- 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 branch's business, an on-site examination of the branch by the Inspector, or an investigation by the Financial Intelligence Unit.
- 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;
- these records will be updated in accordance with international best practices; and,
- the records will be reviewed annually by the licensee's internal auditor;

Recordkeeping

3. The licensee must also satisfy the Inspector 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 branch to allow for the on-site examination by the Inspector of all of the business activities booked at the branch.
4. In maintaining the records of the branch at the location responsible for its management and control, the parent bank must ensure that the records are maintained completely separate from those of any other office(s) of the licensee or its affiliates and the foreign bank is readily and reliably able to provide any requested information to the Inspector and to the Financial Intelligence Unit.

C. REQUIREMENTS FOR MANAGING AGENTS

A Managing Agent may be either a third-party organization or an affiliated bank or trust company with a full physical presence in The Bahamas.

Third-party 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 third-party 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.

For foreign banks 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 branches through the offices of those affiliated banks or trust companies, under a Management Agreement between the parent bank and the affiliated company.

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 licensee's parent bank. This Agreement must be approved by the Inspector.

Such agreements may contain, as applicable, but would not necessarily be limited to, arrangements covering:

- the general scope of the agreement;
- the services to be provided;
- the responsibilities of the Managing Agent and the senior officers of the parent bank;
- the responsibilities of the parent bank and its parent organization;
- 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;
- recordkeeping, files maintenance, and other operational and administrative activities, as necessary;
- legal jurisdiction and interpretation;
- prevention of conflicts of interest; and,
- terms of service, including remuneration and other consideration, conditions of termination, and indemnification.

E. PHYSICAL FACILITIES

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