



Formation & Licencing of a Bank or Trust Company

HIGGS & JOHNSON
Counsel & Attorneys-at-Law



Contents

Preface	2
1. Bank or Trust Company Defined	3
2. Who May Own a Bank or Trust Company in The Bahamas	3
3. Procedures and Documentation	4
4. Timeframe	4



Preface

Set out below is some useful information the formation and licencing of a bank or trust company. This summary is by no means exhaustive and does not purport to contain all applicable qualifications and exceptions or to be a complete review of issues pertaining to banks and trust companies.

The Bahamas is one of the world's largest international financial centres, with progressive legislation and a cohesive regulatory structure. With convenient air travel, a highly-skilled workforce, modern infrastructure, and a politically sound government, The Bahamas has become the jurisdiction of choice for banking and financial services. The jurisdiction's commitment to maintaining a tax neutral platform, offering exemption from taxes on income, capital gains, profits, gifts, inheritance and estate, taxes, and common law and statutory recognition of confidentiality in customer relations contributes to its global success in banking and financial services. With an asset base in excess of \$200 billion, The Bahamas' banking centre is positioned among the top ten countries in the world, behind the United States, Switzerland, and the United Kingdom. The international community has continued to affirm The Bahamas as a safe jurisdiction for the deposit of financial assets of both individuals and corporations.

Banks and trust companies in The Bahamas are supervised by The Central Bank of The Bahamas ("the Central Bank"), a responsive regulator which ensures the highest standards of operations and conduct in the financial services industry. The Bahamas has instituted Know-your-customer procedures and has passed a series of laws in relation to banks and in conformity with international concerns, including but not limited to legislation geared towards eradicating international financial crime e.g. the Financial Transactions Reporting Act, 2007 and the Proceeds of Crime Act, 2008. The private sector also has in place regulations to govern banks and trust companies. The Association of International Banks and Trust Companies of The Bahamas also governs itself and its operations by its code of conduct, which deters the use of financial operations for criminal activities and maintains confidentiality in banking and financial affairs.

Bank or Trust Company Defined

The Banks and Trust Companies Regulation Act, 2000 defines "banking business" as "the business of accepting deposits of money which may be withdrawn or repaid on demand or after a fixed period or after notice and employing those deposits in whole or in part by lending or otherwise investing them for the account and at the risk of the person accepting them."

"Trust business" is defined as "the business of acting as trustee, executor or administrator."

Who May Own a Bank or Trust Company in The Bahamas

Individuals may participate in the ownership of banks, but only with a minimum 25% participation from a Central Bank approved financial institution. The Central Bank also favours granting licenses to the branches and subsidiaries of established, reputable banks and trust companies originating from jurisdictions with similar regulatory controls in place. Parallel-owned banks, i.e. where a bank in one jurisdiction has the same or similar ownership as a bank in another jurisdiction and where one is not a subsidiary of the other, are not eligible to apply for licensing.

An exception is made however for "family banks" i.e. banks or trust companies which have a restricted licence and only conduct business or seek/accept deposits from the primary shareholder(s) and his/her or their "immediate family members." Immediate family members are limited to the spouse and/or children of the primary shareholder (s). While this can be a planning tool for Canadian residents, it should be noted that care must be taken to ensure that the bank or trust company qualifies for exempt surplus treatment under the Canada-Bahamas Tax Information Exchange Agreement.

License Classifications

There are four classes of licenses issued by the Central Bank:

- *Public License:* A public bank and/or trust company is one which is permitted to carry on banking and/or trust business with members of the public.
- *Restricted License:* A restricted bank and/or trust company is one which is allowed to carry on business for certain specified persons which are usually named in the license.
- *Nominee Trust License:* A nominee trust license restricts the services that may be offered by a licensee to the provision of nominee services only. Nominee services include the holding of securities and other assets in the licensee's name and the provision of corporate directors and officers on behalf of its parent company's clients.
- *Non-Active License:* A non-active bank or trust company is one which is either in voluntary liquidation and requires monitoring of its winding up or one that is an approved dormant licensee.

Procedures and Documentation

Any person or company wishing to carry on banking or trust business is required to make an application to the Governor of the Central Bank for the grant of a license. The Central Bank licenses all banks and trust companies operating in and from within The Bahamas.

In the case of a bank or trust company making application for a license to operate a subsidiary, branch or representative office or in the case of a corporate applicant which is not a bank or trust company, the following information is required:

- name of the corporate applicant (if not a bank or trust company);
- address of head or parent office of the corporate applicant including mailing address;
- for a subsidiary bank or trust company, the corporate name;
- address of the proposed office in The Bahamas;
- scope of activities proposed;
- an outline of planned business activities in The Bahamas;
- where the applicant is a body corporate:
 - History, activity, present structure and organization;
 - Annual reports (including audited consolidated financial statements) of the corporate applicant or parent for the three consecutive financial years immediately preceding the date of application;
 - Unaudited consolidated financial statements of the applicant or parent as at the end of the most recent quarter prior to submission of the application, certified by a director or senior officer.

In the case of individual applicants for a license to operate a bank or trust company, applications may be made as a group (so long as the group consists of more than five individuals), the following information is required:

- name of each individual making application;
- business and personal address of each individual applicant including mailing address;
- proposed corporate name of the bank or trust company;

- address of the proposed entity in The Bahamas;
- purpose of opening the bank or trust company;
- a description of planned business activities; and
- where the application is made by a group;
 - date of formation, history, present structure and organization of the group applicant, and details of all business activities of the group;
 - detailed comments regarding the position within the group, of any dominant member(s) of the group;
 - ~ a current statement of assets and liabilities, certified by public accountant and prepared no earlier than three months prior to the date of application for each member of the group who is to acquire, own, hold or exercise voting control of share capital in excess of 10% of the share in a proposed licensee or
 - ~ A concise net worth statement certified by a public accountant for each member of the group who is to acquire, own, hold or exercise voting control of share capital in a proposed licensee of 10% or less, and which statement indicates that the individual member's net worth is at least five (5) times the value of the shares to which the individual member is subscribing.

Corporate and other applicants are also required to provide a host of other documentation to enable the Central Bank to assess the soundness of the applicant and the integrity of its members. The Central Bank has promulgated "*General Information and Guidelines for License Applications*" which sets out the procedures and documentation necessary for license applications (see specifically Part 2, page 7). This can be found on the Legal Guides page of the website for your information.

Timeframe

The typical timeframe for processing a license application is 2 months; however, the time frame is dependent upon the nature of the application.

Should you require more specific advice in connection with the formation of a bank and/or trust company, please contact a member of the Financial Services Law & Regulation Group which is listed under the Practice Groups page of the website.