



Turks & Caicos Islands Financial Services Commission

Guideline on Bank Licensing

Last Amended: 1 July 2016

1. Introduction

- 1.1 This Guideline is issued by the Turks & Caicos Islands Financial Services Commission (“the Commission”) pursuant to Section 43 of the Financial Services Commission Ordinance 16.01 (2007) (“the FSC Ordinance”) and in furtherance of its responsibility to regulate and supervise licensees under the FSC Ordinance, and monitor compliance with relevant Ordinances. Section 43(4) of the FSC Ordinance provides that the Commission may take into account any failure to follow guidelines in determining whether there has been a contravention of that Ordinance, any financial services Ordinance, or of any Code issued under the FSC Ordinance.
- 1.2 The Guideline, which may be subject to periodic review, sets out the Commission’s approach to the licensing of banks, and applies to prospective applicants seeking to carry on banking business in the Islands. The Guideline is not intended to be exhaustive. It outlines the minimum criteria to be addressed by applicants and the basic information and documentation to be submitted in support of an application for a banking licence.
- 1.3 In addition to the coverage of this Guideline, applicants should also be prepared to comply with all other relevant guidance issued by the Commission¹.

2. Legal Basis

- 2.1 The Turks and Caicos Islands Banking Ordinance 1979 as revised (the “Banking Ordinance”), provides at Section 5 for the Commission to consider and determine on applications for licences to conduct banking business. Section 4 of the Financial Services Commission Ordinance 2007 (the “FSC Ordinance”) further establishes the Commission as the sole body authorized to supervise and regulate licensees in accordance with inter alia, the FSC Ordinance and the Banking Ordinance. The Commission is also responsible to monitor financial services businesses’ compliance with relevant sections of the Anti-Money Laundering Regulations and the Code.
- 2.2 Banking business is defined in Section 2 of the Banking Ordinance as *“the business of accepting deposits of money which may be withdrawn or repaid on demand or after a fixed period or after notice, and the employment of those deposits in whole or in part by lending or any other means for the account and at the risk of the person accepting such deposits.”*
- 2.3 Section 4(2) of the Banking Ordinance provides for two (2) classes of licence:
 - (i) **National Banking Licence**, which permits the conduct of banking activities within the Islands with, and on behalf of Belongers and others ordinarily and temporarily resident; and;

¹ Applicants may either contact the Commission or consult its website for more information on the full suite of guidance applicable.

- (ii) **Oversea Banking Licence**, which permits the conduct of international banking activities with non-residents.

- 2.4 A bank may apply to hold both categories of licence, provided that it can demonstrate to the Commission that domestic and international banking business will be dealt with under separate accounting arrangements or that the business under each licence will be conducted through separate legal entities.
- 2.5 Under the law, only entities licensed to carry on banking business will be permitted to use the word “*bank*” or a cognate expression in their registered business names.

3. The Commission’s Approach to Licensing

- 3.1 The Commission is committed to maintaining and promoting the safety and stability of the banking system in the Islands, both for the protection of the depositing public and the wider national economy. To that end, information submitted as part of the licensing process will be subject to rigorous scrutiny and analysis.
- 3.2 The law provides the Commission with the discretion to grant or refuse applications to conduct banking business. The granting of a banking licence is not a right. However, under normal circumstances the Commission will not refuse to grant a licence where it deems all the criteria set out in Schedule I of the Banking Ordinance and in these Guidelines to be satisfied. Notwithstanding, it reserves the right to grant, with or without conditions, or to refuse to grant a licence for reasons not set out in the Guidelines where in the opinion of the Commission it is in the best interests of the Islands and its people to do so. Section 6(1) of the Banking Ordinance provides that decisions made by the Commission with respect to licensing are final and are not subject to appeal. Where an applicant becomes aware during the licensing process, of any condition or situation which may materially affect the proposed bank’s ability to meet the minimum licensing requirements, this information should be promptly communicated to the Commission so that corrective action can be agreed and implemented.
- 3.3 The Commission expects successful applicants to be able to meet all legal and prudential requirements from the moment of licensing. Once licensed, a bank must comply with all relevant Ordinances and regulations and is subject to the Commission’s ongoing oversight. The Commission may, as and when it deems necessary, introduce or amend prudential requirements for banks in order to safeguard depositors’ interests or to maintain stability in the banking sector.

▪ Group and Corporate Structure

- 3.4 The Commission’s licensing process involves rigorous assessment of the suitability of a bank’s proposed owners – both corporate and individuals. This takes into account the fitness and probity of the owners, including their financial strength and track record in banking business. The assessment will take proportionality into account in the sense of the owners’ ability, whether actual or potential, to exert influence over a TCI bank’s management and its operations.
- 3.5 Where an applicant is part of a group, the Commission will take into account the suitability of the group structure within which a prospective TCI bank would be situated and the Commission’s ability to effectively supervise and take enforcement action in that context. Specifically, the Commission will seek to establish that a proposed structure would permit effective consolidated supervision and full supervisory reach, up to the ultimate beneficial owner(s). It bears emphasis that ownership structures obfuscated by

revolving nominee, holding or trust arrangements or other cumbersome arrangements would not meet this standard. To this effect, the Commission will only approve banking structures which would allow it to satisfy guidance and recommendations set out by the Basel Committee on Banking Supervision (BCBS) and the Financial Action Task Force (FATF).

3.6 In summary, when assessing the suitability of a group structure, the Commission will consider the following:

- (i) The complexity and/or opacity of the group structure and whether the structure may impede supervisory reach;
- (ii) The nature and extent of the activities of other group entities;
- (iii) The group's overall strategic plans and direction;
- (iv) The potential for crystallization of risks owing to factors such as contagion or connected lending.

▪ **Fitness and Probity**

3.7 The continued stability and strength of the TCI banking industry relies on the maintenance of high standards of fitness and probity: hence the need to ensure that all persons engaged in banking business in the Islands have the requisite skills, knowledge and experience and are likely to act with probity and exercise good judgment. The standards are especially high for those persons who are in a position to wield influence or control over a bank or whose actions and decisions could materially affect the bank's condition.

3.8 The onus is firmly on the applicant to demonstrate to the satisfaction of the Commission that all of its proposed owners and key officers are fit and proper persons. The attainment of qualifications alone will not satisfy the required standard. An applicant and its owners and key officers should be able to demonstrate a suitable track record earned in a prudentially regulated banking environment, at a level which is compatible with the application for a licence in TCI. Applicants are expected to familiarize themselves with the minimum requirements set out in the "Fit and Proper Guidelines" issued by the Commission and to provide full and relevant information to enable the Commission to reach a proper judgment. The criteria set out in the referenced Guidelines are minimum requirements intended to guide applicants, and are not intended to be exhaustive.

3.9 It bears emphasizing that compliance with the fit and proper standard is not only a requirement for the granting of a licence, but is an ongoing obligation. It is each licensee's responsibility to demonstrate during the course of its ensuing business that its owners, directors and employees continue to maintain the fit and proper standard as well as any additional requirements which the Commission may see fit to apply from time to time.

▪ **Governance, Risk Management, Compliance and Controls**

3.10 Applicants must provide proof satisfactory to the Commission that the entity will, from the commencement of business, be a going concern and have an effective and appropriate governance framework in place, commensurate with the size and nature of the entity and its specific risk profile.

3.11 Applicants must satisfy the Commission that their proposed risk management and internal control systems are adequate and appropriate and that they are able to identify, measure, monitor and mitigate risk exposures. Applicants should be able to demonstrate a capacity to implement and enforce appropriate

policies to cover all material risks including credit, market, operational and liquidity risk exposures. The Commission must also be satisfied that a prospective bank's compliance function will be adequate and appropriate and will be capable of satisfying all legal, regulatory and prudential requirements.

- 3.12 Applicants are further required to demonstrate to the Commission's satisfaction, the adequacy and integrity of proposed information and accounting systems. The applicant should explain how management will keep abreast of the bank's condition in a timely and regular manner and satisfy the Commission that the bank will be able to submit the requisite periodic prudential returns to the Commission, on time and free from errors.
- 3.13 In the case of a group structure, the Commission expects full and swift cooperation from a bank's parent to achieve conformity with TCI's prudential and regulatory requirements and will take into account a parent's reputation and track record in dealing with other regulatory authorities.

▪ **Audit Arrangements**

- 3.14 Prospective bank licensees must demonstrate a readiness to engage an approved auditor, taking cognizance of minimum guidance issued by the Commission on the appointment of external auditors and provide verification that the auditor is willing to be appointed.

▪ **Capital**

- 3.15 Section 10 of the Banking Ordinance and Section 3 of the subsidiary Regulations prescribe a minimum amount of paid up share capital. Financial Ordinances and Regulations impose further prudential requirements, for example with respect to the maintenance of liquid capital, to which all banks must comply. Applicants must provide evidence satisfactory to the Commission that the proposed bank will meet all the minimum capital requirements from the commencement of business in TCI and will be able to maintain that position during the course of its business.
- 3.16 Beyond the referenced minimum requirements, capital levels must be commensurate with the nature and scale of the institution's operations, and must be sufficient to protect the interests of depositors and other creditors against losses. As such, an applicant is required to demonstrate that its capital planning and monitoring process is robust and is capable of responding to changes in the entity's risk profile.

▪ **Foreign-owned Banks**

- 3.17 While the Commission will give due and fair consideration to applications to set up stand-alone banks, it particularly encourages applications from well-established foreign banks which are already subject to supervision by regulatory authorities with whom the Commission has already established, or is able to establish Memoranda of Understanding.
- 3.18 Such foreign-owned banks seeking to conduct banking business in the Islands must operate as locally incorporated subsidiaries. In this regard the Commission will not license a subsidiary of a foreign-owned bank without the prior written consent of the relevant home regulatory authority. The Commission also requires the home regulatory authority to provide written agreement to exercise consolidated supervision over the entire group (including all financial entities operating in the TCI) and undertake to co-operate with the Commission in the sharing of regulatory information.
- 3.19 Unless otherwise explicitly provided for in law, foreign-owned banking subsidiaries are subject to the same legislative and prudential requirements as local banks.

4. Application Procedures

- 4.1 Parties with serious intent to submit an application for a licence to conduct banking business are invited to discuss their plans with the Commission at an early stage, prior to making a formal application.
- 4.2 The Commission requires that applicants submit a formal written application, signed by two Directors, along with the minimum information and supporting documentation set out in Appendices below. The Commission reserves the right to request any additional information it deems necessary.
- 4.3 Applicants should note that the Commission's review process is consultative and may vary in length, depending upon the nature and substance of each application. At the conclusion of the assessment process, applicants will be formally advised of the Commission's decision in writing.
- 4.4 Application packages may be delivered to the Commission's offices or submitted electronically to fsc@tcway.tc.

Minimum documentation/information required to commence the application process

Information pertaining to an applicant for a licence

1. Name of applicant (as well as any former names under which the applicant has been registered or traded).
2. Date and country of incorporation.
3. Address of principal place of business or head office.
4. Certified or authenticated copy of the memorandum and articles of association.
5. Brief history and highlights of banking operations/experience².
6. Current group chart³ [including ultimate parent, holding companies, affiliates and subsidiaries] and proposed group chart, should the licensing application for the new bank be approved.
7. Overview of applicant's board and committee structure.
8. Name and address of each of the applicant's (direct and indirect) subsidiaries, as well as any enterprise/venture in which it has a ten (10) per cent or greater shareholding, either directly or indirectly.
9. Audited financial statements for the last three (3) consecutive years, for each institutional shareholder.
10. Written undertaking from controllers, to provide additional capital, should the need arise.
11. Personal Declaration Questionnaire⁴ for each individual shareholder with ten (10) per cent of voting shares or greater, and for each of the applicant's directors and senior officers.
12. Name and address of applicant's external auditor.
13. External audit confirmation of capital and capital ratios (where the applicant is a regulated entity).
14. Name and address of applicant's principal bankers.

Information pertaining to the proposed licensee

15. Name of the proposed bank, accompanied by a copy of the Company Search Results form confirming availability of the name.
16. Intended registered address of the proposed bank.
17. Memorandum and articles of association.
18. Type of licence being applied for.
19. Name and address of the proposed auditor.
20. Name and particulars (including nationality and address) of each proposed director (where different from the applicant).
21. Job descriptions (outlining duties and required qualifications/skills/experience) for each principal and/or senior officer.
22. Name, particulars (including nationality and address) and curriculum vitae of the proposed principal officer(s).
23. Three-year business plan to cover details of the following:
 - (i) Business objectives and rationale for the licence application;
 - (ii) Market/niche which the proposed bank intends to serve;

² An applicant may choose to highlight for example, a list of jurisdictions where it has material direct or subsidiary/branch/agency operations and the size of business assets in each jurisdiction; number of staff in each jurisdiction; or any other relevant information which will enhance the Commission's understanding of the applicant's business.

³ This chart should include all entities in the control chain (with percentages owned).

⁴ Available on the Commission's website

- (iii) Market analysis conducted and identified growth prospects the bank will pursue in its first three (3) years of operation;
 - (iv) Business model and service/product offerings;
 - (v) Financial projections (balance sheet, profit and loss statement and cash-flow) for the first three (3) years of operation, inclusive of key ratios, detailed assumptions and factoring start-up costs;
 - (vi) Sources and types of funding (including contingency arrangements);
 - (vii) Proof of ability to satisfy start-up capital requirements;
 - (viii) Management structure, staff complement and reporting lines; and
 - (ix) SWOT or other analytical assessment of risks to which the bank will be exposed and the risk management and control systems that will be implemented to counter these exposures.
24. Provisional policies and procedure manuals to cover, at minimum:
- credit risk (including lending limits, related party lending, large exposures, asset quality, impairment and provisioning);
 - liquidity risk management;
 - anti-money laundering/counter-terrorist financing (AML/CTF);
 - market risk; and
 - operational risk (including, as appropriate, coverage of business continuity [including disaster recovery] and outsourcing arrangements).
25. Outline of arrangements for information and accounting system(s).
26. Details of internal audit arrangements.
27. Written undertaking to comply with all legal, regulatory and prudential requirements in the Islands.

Where the proposed bank will be a subsidiary of an overseas parent, the applicant will also be required to provide the following:

- 28. Outline of reporting lines between the proposed bank and its overseas parent.
- 29. Description of how the risk management and control systems will integrate into those of its overseas parent.
- 30. Draft policy/(ies) on how information will be reported between the proposed bank and its overseas parent.
- 31. Written consent from the relevant home regulatory authority for establishment of the TCI subsidiary.
- 32. Written undertaking from the parent bank's home regulatory authority to conduct consolidated supervision over the entire group (including all financial entities operating in the TCI) and further, to co-operate with the Commission in the sharing of regulatory information with the Commission.

Where the proposed bank will provide off-shore banking services, the applicant will also be required to provide the following:

- 33. Written undertaking from the applicant that the proposed bank will not solicit funds from or conduct business with or on behalf of domestic customers, unless licensed to do so;
- 34. Proof sufficient to the Commission that where the proposed bank will hold both National and Oversea licences, domestic and off-shore accounts will be segregated and accounted for in separate books.

Other

35. Name(s), position(s) and contact information (email and telephone) of the principal officer assigned to liaise with the Commission regarding the application.
36. Name and particulars of the firm appointed to act as company manager or authorized agent on behalf of the applicant.
37. Letter authorizing the Commission to discuss the application with, and request information in relation to the application from the applicant's appointed agent or company manager.
38. Certified copies of the corporate resolution of the applicant's Board (or its ultimate parent's, in the event that the applicant is a subsidiary) authorizing establishment a subsidiary in the Islands.

Supplementary questionnaire for institutional applicants

1. Has the applicant or any company in the same group held a licence from a supervisory body to carry on financial services related business? If yes, please provide details.

Yes

No

2. Has any licence granted under 1. above ever been revoked or suspended? If yes, please provide details.

Yes

No

3. Has the applicant or any company in the same group been refused or withdrawn an application to carry on financial services business? If yes, please provide details.

Yes

No

4. Has the applicant or any company in the same group failed to satisfy a judgment debt under a court order? If yes, please provide details.

Yes

No

5. Has the applicant or any company in the same group made any compromise, settlement or other arrangement with its creditors within the last ten (10) years, or otherwise failed to satisfy creditors in full? If yes, please provide details.

Yes

No

6. Has a receiver, administrative receiver or substantial equivalent ever been appointed in relation to any affairs of the applicant or any company in the same group? If yes, please provide details.

Yes

No

7. Has a petition ever been served for administrative order in relation to the applicant or any company in the same group or has the substantial equivalent of such a petition been served in any jurisdiction in the last ten (10) years? If yes, please provide details.

Yes

No

8. Has a notice of resolution for the voluntary liquidation of the applicant or any company in the same group been given or has the substantial equivalent of such a notice been given in any jurisdiction in the last ten (10) years. If yes, please provide details.

Yes

No

9. Has a petition been served for the compulsory liquidation of the applicant or any such company in the same group or has the substantial equivalent of such a petition been served in any jurisdiction in the last ten (10) years. If yes, please provide details.

Yes

No

10. Has the applicant or any company in the same group knowingly been the subject of investigation or inquiry by any government department or agency, professional association or regulatory authority of any jurisdiction? If yes, please provide details.

Yes

No

11. Has the applicant or any company in the same group ever been censured, prosecuted, disciplined, issued a formal warning or made the subject of a court order in the last (10) years. If yes, please provide details.

Yes

No

12. Has the applicant or any company in the same group been refused entry to any professional body concerned with the financial activities? If yes, please provide details.

Yes

No

13. Is the applicant or any company in the same group engaged in or entering into any litigation which may materially affect the applicant's resources? If yes, please provide details.

Yes

No
