

Licensing and On-Going Requirements of Banks and Trust Companies in the Cayman Islands

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This note provides a summary of the types of banking and trust licences available in the Cayman Islands together with an outline of the initial and on-going licensing requirements.

More than 40 of the world's top 50 banks have chosen to establish banking operations in the Cayman Islands. The advantages of banking in the Cayman Islands include tax neutrality, confidentiality, asset protection, an effective and balanced regulation regime based on international standards and political and economic stability. Establishing a bank or placing assets in the Cayman Islands enables banks the best opportunity to maximise the potential of their assets and gives them a competitive advantage to compete in the international financial markets, maximise the potential of their assets and gives them a competitive advantage to compete in the international financial markets.

The Cayman Islands Monetary Authority (**CIMA**) is responsible for the licensing and regulation of financial service providers in the Cayman Islands. CIMA is responsible for both the processing of bank and trust licence applications and the continuing supervision of licensees.

According to the most recent statistics published by CIMA, as of March 31, 2015 there were 12 class A banks and 183 class B banks licenced by CIMA in the Cayman Islands. The majority of the 183 class B banks are Cayman Islands branches of foreign banks.

| Type of Licence

Banking Licences

"Banking business" is defined by the Banks and Trust Companies Act (Revised) (**BTC Act**) the business of receiving (other than from a bank or trust company) and holding on current, savings, deposit or other similar account money which is repayable by cheque or order and may

be invested by way of advances to customers or otherwise”.

There are four classes of banking licences:

Class A Licence - Unrestricted Licence

This class of licence permits the holder to carry on local and overseas banking business and is usually only available to a branch or affiliate of a major international bank. The applicant must maintain a fully staffed office in the Cayman Islands with personnel who are experienced in local and international banking and/or trust operations.

Class A Licence - Restricted Licence

This is a restricted form of the above class A licence and imposes restrictions as to the carrying on of banking business within the Cayman Islands. This licence may also include permission to provide principal office services (i.e. the provision of a place of business, including resources, staff, facilities, books and records) to other licensees (permission can be granted for either 5 or more licensees or less than 5 licensees). This licence may also include permission to provide "private banking services" (i.e. banking business conducted with persons of a high net worth of over CI \$800,000 (approximately US \$1,000,000) or such amount as may be determined by CIMA) to residents of the Cayman Islands.

Class B Licence - Unrestricted Licence

This permits the holder to carry on only offshore banking business with overseas clients (i.e. non-Cayman Islands residents). Business may be carried on in the Cayman Islands for clients from outside the Cayman Islands. An unrestricted class B licence is normally only granted to a branch or affiliate of an existing bank operating in a well regulated jurisdiction. The holder of a class B licence may not:

- take deposits from any person resident in the Cayman Islands, other than another licensee, or an exempted or ordinary non-resident company which is not carrying on business in the Cayman Islands;
- invest in any asset which represents a claim on any person resident in the Cayman Islands, except a claim resulting from:
 - a loan to an exempted or ordinary non-resident company not carrying on business in the Cayman Islands;
 - a loan by way of mortgage to a member of its staff or to a person possessing or being deemed to possess Caymanian status under the Immigration Act (Revised) for the purchase or construction of a residence in the Cayman Islands to be owner occupied;

- a transaction with another licensee; or
- the purchase of bonds or other securities issued by the Cayman Islands Government, a body incorporated by statute, or a company in which the Cayman Islands Government is the sole or majority beneficial owner; or
- without the written approval of CIMA, carry on any business in the Cayman Islands other than the one for which the class B licence has been obtained (i.e. the holder must carry on its business in accordance with the business plan filed with CIMA on its application for its licence, as that business plan may be subsequently amended with its approval).

Class B Licence - Restricted Licence

This is a restricted form of the above class B licence and incorporates a further restriction that the licensee shall not receive or solicit funds by way of trade or business other than from certain named and approved non-resident clients. Generally such client base should be limited to related parties and should not exceed 20 clients. This type of licence is normally used for an in-house bank either to provide intra-group treasury services or to administer a family banking business.

Trust Licences

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

Unrestricted Trust Licence

This allows the holder to carry on trust business within and outside of the Cayman Islands but subject to such conditions as may be imposed by CIMA. Traditionally the services provided by trust companies are the incorporation and management of companies and the establishment and administration of trusts.

Restricted Trust Licence

This allows the holder to carry on trust business with a restriction that the licensee shall not undertake trust business for persons other than those listed in the undertaking accompanying the application for the licence.

Nominee (Trust) Licence

This permits the holder to conduct trust business where it is the wholly owned subsidiary of another licensee holding a trust licence nominee.

Interrelation of Banks and Trust Companies

Although the services provided by trust companies are different from those offered by banks there are a number of important interrelated areas. For this reason many financial institutions in the Cayman Islands offer both trust and banking services and a number operate as integrated units. This is also reflected in the annual licence fee structure.

Type of Company

In the case of a branch operation, the existing overseas bank or trust company must be registered under the Companies Act (Revised) (**Companies Act**) as a foreign company with a place of business in the Cayman Islands. There is a prescribed procedure requiring, amongst other things, copies of corporate documents and names and addresses of directors. In other cases a Cayman Islands company is incorporated as an exempted, ordinary non-resident or ordinary company.

An ordinary company should be used in the case of a class A banking licence, as such a company is permitted to carry on local business. An ordinary company must, unless it is licensed under certain other acts (such as the BTC Act), be at least 60% Caymanian owned and controlled or licensed under the Local Companies (Control) Act (Revised).

For a class B banking licence where a branch operation is not contemplated, it is preferable to use an exempted company. An exempted company is the most common offshore company in the Cayman Islands. A company may apply to be registered as exempted if its objects are to be carried out mainly outside the Cayman Islands. An exempted company may not trade in the Cayman Islands with any person, firm or corporation except in furtherance of the business of the exempted company carried on outside the Cayman Islands, nor may an exempted company own land in the Cayman Islands without the consent of the Financial Secretary. It should be noted that these restrictions do not prevent an exempted company effecting and concluding contracts in the Cayman Islands and exercising in the Cayman Islands all of its powers necessary for the carrying on of its business outside the Cayman Islands.

Licensing Policy Restrictions and Requirements

Supervisory Authority Approval - New Licences

Where the applicant is a branch or subsidiary of a bank established and licensed in another jurisdiction, a banking licence will not be granted unless the supervisory authority in that jurisdiction confirms:

- that it has no objection to the establishment of the Cayman Islands branch or subsidiary;
- that the applicant will be included in the consolidated supervision of the parent entity;
- that there are no regulatory concerns with respect to the parent entity or its management;

- the frequency and scope of on-site examinations conducted by the home regulator and the date of the bank's most recent examination;
- details of any restrictions on cooperating and sharing information with the Cayman Islands, including but not limited to, the assessment, resolution or recovery of financial institutions that fall under its consolidated supervision; and
- that the prudential and operational framework of the home regulator assesses such risk areas including corporate governance, capital adequacy, large exposures, related party exposures and liquidity.

Capitalisation

For new unrestricted banking and/or trust licences the initial paid-up capital must be at least CI \$400,000 (approximately US \$500,000) or its equivalent in another currency. The minimum capital requirement for restricted licences is CI \$20,000 (approximately US \$25,000). However, higher figures may be required by CIMA depending on the nature and scope of the proposed operation.

Shareholders

The issue or transfer of shares of a licensed bank or trust company (and of most other licensees under the regulatory laws of the Cayman Islands) is prohibited without a parent company (and ultimate parent, if applicable) and will be regarded, for this purpose, as a transfer of a beneficial interest in the shares of the bank itself.

However, a licensee may be exempted from this requirement for prior consent if its shares are publicly traded on a stock exchange approved by CIMA. Any such exemption is subject to the conditions that the licensee must, as soon as reasonably practicable: (a) notify CIMA of any change of control of the licensee, any acquisition by a person or group of persons of shares representing more than 10% of the issued share capital or total voting rights of the licensee or its parent company (or ultimate parent company, if applicable); and (b) provide CIMA with such information, within such period of time as CIMA may require, to enable CIMA to assess whether each of the transferees of the shares is a fit and proper person to have control of the licensee, or ownership of the shares.

Directors and Senior Officers

The BTC Act provides that a licensee shall at no time have less than two directors. Generally CIMA will require each director to have a minimum of five years relevant experience at a senior level. At the time of licensing, CIMA requires that all directors and senior officers meet a fit and proper persons assessment and there is a similar requirement in connection with the subsequent appointment of any additional directors or other senior officers (with respect to a Cayman

Islands branch, if there are a significant number of directors and senior officers, CIMA will consider accepting full due diligence on only those who will be directly involved in the operations of the branch). Licensees must apply to CIMA for its prior written approval of all director and senior officer appointments, although a licensee may apply to CIMA for an exemption from this requirement.

Section 3 of the BTC Act lists the criteria that CIMA will look at when assessing the fitness and propriety of persons to be appointed as directors and senior officers. These are:

- honesty, integrity and reputation;
- competence and capability; and
- financial soundness.

CIMA has a regulatory procedure when assessing the fitness and propriety of persons who have applied to act as a director. CIMA also has a statement of guidance which assists applicants in compliance with the procedure and information required in order for CIMA to make a decision on the fitness and propriety of a person.

In addition, for branches with a physical presence in the Cayman Islands, the appointment of any local manager and deputy manager would require prior approval from CIMA.

Any proposed directors and/or senior officers who are to be appointed to a licensee will need to complete a CIMA personal questionnaire and will need to provide CIMA with notarised evidence of identity (e.g. a photograph page of a passport), at least two character references, one financial reference and a police clearance certificate or affidavit of no convictions.

Authorised Agents

A licensee is either required to (a) maintain a place of business in the Cayman Islands and have two individuals resident in the Cayman Islands to be its agents; or (b) if a licensee does not maintain its own local staffed office, it must have its registered office situated at a class A bank or trust company and the authorised agents should be employees of such bank or trust company.

Banking Names

Care should be taken in the adoption of a proposed name. The Companies Registrar of the Cayman Islands will refuse to incorporate any company whose name includes the words "bank" or "trust" (or any similar word which in the Registrar's opinion suggests any such activities) without approval from CIMA. In addition as a general rule, a name will be unacceptable if it is shown to be the same as that used by another bank anywhere in the world, or if it so closely resembles another name as to cause confusion, whether deliberate or not. Equally unacceptable

will be names which suggest a status or association which does not exist. A licensee may not change its name without prior approval from CIMA.

Auditors

A licensee is required to have its accounts audited annually by an auditor approved by CIMA and a copy of the audited accounts must be forwarded to CIMA within three months of the end of the licensee's financial year. Audited financial statements are not required to be publicly available, although they are required to be filed with CIMA.

Supervisory Issues

CIMA, acting through its Banking Supervision Division, has a statutory duty, under the Monetary Authority Act (Revised) to maintain a general review of banking practice in the Cayman Islands and to monitor the business of each licensee. CIMA's continuing supervision of licensed banks is based on off-site analysis and on-site inspections. CIMA conducts, among other things, analysis of regular audited and un-audited financial statements, meetings with management and periodic reports or examinations by auditors on specific areas of internal controls.

CIMA has a regulatory handbook, which includes its policies and procedures for carrying out its regulatory and co-operative functions, and has power, under the Monetary Authority Act (Revised), to issue rules (which are binding on licensees) and statements of guidance (which are not binding, but compliance with which is expected). All banks licensed in the Cayman Islands are subject to provisions of the Proceeds of Crime Act (Revised), the Money Laundering Regulations and Guidance Notes issued by CIMA in relation thereto.

Capital Adequacy

The statutory minimum risk adjusted capital adequacy ratio for a bank incorporated in the Cayman Islands is 10%, but CIMA has the power to increase this. In practice, CIMA requires a minimum ratio of 12% for banks that are subsidiaries subject to consolidated supervision in another jurisdiction and 15% for banks which are not subject to such consolidated supervision. No separate minimum ratio is prescribed for Cayman Islands branches of banks regulated in another jurisdiction, but such banks are required to comply with the ratio prescribed by the regulators in their home jurisdictions.

Annual Review

To complement the above reporting requirements, it is generally considered necessary that, in the case of most private institutions, arrangements are made for a director or senior manager to visit CIMA at least once every six months initially and thereafter every twelve months to discuss the affairs of the licensee. In addition, authorised agents must ensure that their contact with their clients is such as to enable them to effectively perform the role of intermediary

between CIMA and the licensee.

On-Site Inspections outside the Cayman Islands

CIMA may seek reimbursement for reasonable out-of-pocket expenses and related matters with respect to any on-site inspections outside the Cayman Islands. This will be particularly relevant to any class B bank that is either a Cayman Islands branch or a subsidiary of a foreign bank, that has little or no physical presence in the Cayman Islands.

Notification of Changes in Operations

Licences are issued to institutions on the basis that it is acceptable for them to carry on the type of business specified in the licence application. Any significant change in the range or type of activity undertaken will require an amendment to the licensee's business plan and may necessitate a review of the status of the licence. Therefore, institutions should discuss matters with CIMA before embarking on any major shift in policy relating to their Cayman Islands operations.

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