

# **Turks & Caicos Islands Financial Services Commission**

## **Statement of Bank Licensing Policy (Annual Report 2009)**

The Turks & Caicos Banking Ordinance of 1979, as amended, regulates the business of banking in and from within the jurisdiction. It provides for two classes of license: a National license under which domestic business may be conducted with Belongers and residents; and an Oversea license under which business may be conducted from the jurisdiction with other persons (but not with Belongers or residents). Institutions may be granted both a National and an Oversea license in appropriate cases; however, separate accounting arrangements must be applied.

The Banking Ordinance must also be read in conjunction with the Financial Services Commission Ordinance 2007('the FSC Ordinance') which, among other matters, provides for the Commission to administer the various financial services Ordinances and to supervise and regulate licensees, and monitor their compliance with the financial services Ordinances as well as with the Anti-Money Laundering Regulations and related provisions.

Section 4(2) of the FSC Ordinance also provides that, in discharging its functions, the Commission may take into account any matter which it considers to be appropriate; but also requires that it shall, in particular, have regard to:

- a) the protection of the public, whether within or outside the Islands, against financial loss arising out of the dishonesty, incompetence, malpractice or insolvency of persons engaged in financial services business in the Islands;
- b) the protection and enhancement of the reputation of the Islands as a financial services centre; and
- c) the reduction of financial crime and of other unlawful activities relating to financial services.

Section 4(3) further clarifies that, for the purposes of section 4(2), 'the public' includes both customers and potential customers of persons engaged in financial services business.

The Financial Services Commission believes that it will be of assistance to the market and to intending applicants for banking licenses for it to provide some clarification of the policy that it applies in judging the acceptability of applications for such licenses.

The Commission is committed to maintaining and promoting the safety and stability of the banking system in the Islands, both to protect the wider national economy and to protect the general public from undue risk of financial loss. To that end, it recognizes that high licensing standards are a necessary part of ensuring effective regulation and supervision of licensed banks. The Commission has to satisfy itself in each case that applicants are 'fit and proper' persons, that they have a sound business plan and that they

can be expected to conduct their activities with proper prudence and banking skills. Where it is unable to be so satisfied, applications are rejected. Accordingly, all applications for banking licenses are subject to rigorous scrutiny and analysis.

In the case of Oversea licenses, applicants should be able (in the case of applications for a branch presence) to demonstrate a successful track record of similar business as a bank in a jurisdiction that is recognized internationally as implementing banking supervision in full conformity with the Basel Core Principles for Effective Banking Supervision. An application from a subsidiary of such a foreign bank will also comply with the Commission's licensing policy. All applicants for Oversea licenses must be able to demonstrate that they have the support of the banking regulatory authorities in their 'home' jurisdiction. The home regulatory authority will also have to confirm to the Commission that the TCI operations will be fully covered by its consolidated prudential supervision of the bank or the group to which it belongs.

Where an applicant for an Oversea license also wishes to apply for a National license, additional considerations are taken into account by the Commission. In particular, the Commission is conscious of the relatively small scale of the domestic banking market. While the Commission believes very firmly in the benefits for consumers, for the market and for the wider economy of ensuring adequate competition in the provision of banking services, it must equally take into account the potential impact on costs confronting the sector as a whole, as well as the profitability (and hence potentially the stability) of individual licensed institutions. Accordingly, it needs to strike an appropriate balance between those factors. In reviewing such applications, therefore, the Commission looks very carefully at the potential impact on staff and other costs. It also looks carefully for evidence in the business plan that the applicant would introduce additional services into the domestic market or has legitimate expectations of being able to increase the volume of local business (for example, by bringing back to the market some business that may have been conducted offshore in the past).

Applicants for stand-alone National banking licenses must involve at least 51% Belonger ownership. Such applications raise rather different considerations. The Commission is supportive of efforts to maintain and increase the degree of local control over the financial services sector, subject always to the need to ensure that regulatory standards are met. Such applications are not, therefore, subject to an evaluation of market competition in the way that applies where an Oversea licensee seeks to enter the National market.

However, where any new venture is concerned, the Commission needs to be satisfied that the applicant has a viable business plan, the resources necessary to support the business through its start-up phase, and an effective management team to ensure that the operations will be conducted with prudence and integrity as well as with appropriate banking skills. The difficulties of meeting the necessary standards should not be underestimated. For example, the Commission has identified that the difficulties can be particularly acute where such an applicant has no track-record of successful lending. Where an applicant can demonstrate no relevant track-record, the Commission is unlikely

to be prepared to grant a license. Instead, it may encourage an applicant to begin by building up a track-record of successful lending, making use of the funds of the principals themselves or of funds borrowed by them, before returning to seek at a rather later stage a license permitting the applicant to conduct lending business on the basis of deposits.

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