



Financial Supervisory Commission

Practice Note No. 1a – 2004 **Bank Licensees – Physical Presence**

This Practice Note is intended to provide guidance on the criteria that the Financial Supervisory Commission (FSC) will use in determining a bank's compliance with the physical presence requirements provided in Section 23 of the Banking Act 2003 (the Act). It is also relevant to Sections 4(a) and (b) of the Act.

Before the FSC issues a domestic or international banking license, it must be satisfied that the bank has or will have premises in the Cook Islands and that it does or will carry on banking business under its licence from those premises. This involves two elements. Firstly that it has suitable office premises for the purpose and secondly that its establishment is commensurate with the nature and size of its business. That means that, for international licensees, the FSC must be satisfied that the Cook Islands operations are not merely booking offices with the real operational control and management situated offshore. While, with the FSC's concurrence, it is permissible for an international licensee to have a branch or agent offshore with authority to write business on its behalf, under Section 29 of the Act, the FSC may give its consent to such an arrangement only if the authorities in the country concerned agree and provide adequate supervision of the branch or agent.

Thus fundamental to determining whether a banking institution meets the criteria is whether qualified and meaningful mind and management (that is the management, administration and primary books and records) of the banking institution are located in the Cook Islands. The existence only of local agents or low-level officers and/or staff will not be considered by the FSC as meeting the criteria nor will the situation where the primary books (i.e. those that are audited) are held elsewhere. Moreover, the requirements outlined in this Practice Note must be maintained by a banking institution on an on-going basis.

The Board of Directors of each licensee is responsible for ensuring compliance with the requirements outlined in this Practice Note.

1. Administration:

- A. The bank's Board of Directors (except where the licensee is a branch of a foreign bank) must include at least one individual who is a full-time resident of the Cook Islands and who is able and normally does attend and participate in regular meetings of the Board.



- B. The licensee's Board of Directors¹ must appoint:
- (i) an individual as Chief Executive Officer, or other similar title, who shall be primarily responsible for the operations of the licensee on a day-to-day basis and for the implementation and enforcement of board policies;
 - (ii) an individual as Compliance Officer as required by Section 17 of the Financial Supervisory Commission Act 2003, provided the appointment of the Compliance Officer may be delegated by the board to the Chief Executive Officer; and
 - (iii) an individual as Money Laundering Reporting Officer as required by Section 18 of the Financial Transactions Reporting Act 2003.
- C. Persons appointed under paragraph 1B of this Practice Note must:
- (i) be, or will be within 30 days or such longer period as the Commission may approve after their appointment, full-time residents of the Cook Islands;
 - (ii) be "fit and proper" persons for their respective roles.
- D. The bank's Board of Directors must ensure that the bank has the capacity (staff in terms of numbers and quality) in the Cook Islands to maintain the records of the bank, to carry out day-to-day bank operations and to implement appropriate risk management policies and procedures. Because bank risk management systems normally require separation of the execution and recording of transactions, the absolute minimum staff number required for small banking operation is likely to be two experienced, skilled people with appropriate back-up to cover absences. Larger operations would be expected to have larger staff.
- E. The bank's Board of Directors must delegate the necessary authority to their bank's Cook Islands staff to perform their on-going duties and responsibilities.

2. Book and Records:

- A. The bank must physically maintain its primary official records in the Cook Islands. These records must include, but are not limited to:
- (i) customer accounts and account statements;
 - (ii) the bank's primary accounting records;
 - (iii) the bank's general (non-customer) files;

¹ As used here and elsewhere in this Practice Note, where the bank is a branch of a foreign bank, these actions may be taken by a properly authorised senior officer of the bank's head/home office.



- (iv) customer account files including those relating to opening and identification information and documentation, for all types of business engaged in by the bank, 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 customers; due diligence documentation on all new facilities/accounts must be updated in accordance with the business activities of the bank;
 - (v) information on transactions in all customer accounts and relevant customer correspondence sufficient to properly monitor the accounts for suspicious activity;
 - (vi) information on transactions carried out for non-customers sufficient to properly monitor the transactions for suspicious activity;
 - (vii) information that substantiates the nature and the value of all assets, liabilities and off-balance sheet activities and transactions, and ordinary and extraordinary income and expenses of the bank (e.g., client credit files and documentation, investment account files and statements, files on assets under management/trust, etc.);
 - (viii) full detailed records of the bank's own revenue and expenditure, all assets and liabilities including commitments and contingencies and all other off-balance sheet items;
 - (ix) the corporate records of the bank and the minutes of shareholders' and directors' meetings and other documents that record the business affairs of the bank;
 - (x) correspondence with the FSC, FIU and other supervisory and/or regulatory authorities, and records on monitoring compliance with applicable laws, regulations, prudential statements and practice notes;
 - (xi) reports prepared by the bank's Internal and External Auditors, Compliance Officer, and Money Laundering Reporting Officer;
 - (xii) all policies, procedures and operating manuals, including those for know-your-customer and anti-money laundering; and
 - (xiii) information on employee training programs and training manuals.
- B. The records of the bank may be maintained in a format(s) as approved by the bank's Board of Directors. The format(s) selected must be capable of readily producing complete and accurate financial, management and regulatory reports²; allow for the review and monitoring of all transactions; and, provide complete and readily accessible information to permit an audit or on-site examination of the bank's business at the bank's office(s) in the Cook Islands by the bank's external auditor, the FSC, the FIU or other supervisory and/or regulatory authorities.

² The FSC may implement periodic reporting requirements to collect financial, statistical and/or other information on the condition, performance and/or activities of the licensee.



- C. All records of the bank must be maintained in English. Where there has been correspondence in a language other than English, the files should include both the copies of the original correspondence with English translations appended.
 - D. The records of the bank must normally be updated as of the close of each day to record and reflect the impact of transactions during the business day on the financial condition and operating performance of the bank.
3. Dedicated Facilities:
- A. The bank must maintain and manage in the Cook Islands, premises and equipment necessary for the operation and administration of the bank's affairs, including, but not limited to:
 - (i) appropriate, separate, dedicated and secure physical office space, including adequate desk and other necessary workspace, accessible to the general public either directly or through a public corridor;
 - (ii) appropriate, separate and secure facilities (e.g., filing cabinets, electronic storage facilities, etc.) for the custody and storage of records;
 - (iii) appropriate separate communications facilities, including separate telephone line, fax machine and internet/e-mail (as necessary); and,
 - (iv) appropriate equipment necessary to record and process all of the bank's business transactions and activities as of the close of business each day.
 - B. As a general rule, a bank must be open to the public for business at its Cook Island premises on normal business days. The exact hours the bank will be open must be posted on the door of the premises and must be appropriate for the nature of its business.

This Practice Note is issued effective 10 May 2004 and hereby replaces Practice Note No. 1 issued 18 August 2003.