



Trustee Company Licensing

Setting up a Trustee Company in the Cook Islands

The Trustee Companies Act 1981-82

The Trustee Companies Act is the Act governing the establishment and operation of trustee companies in the Cook Islands. The Act provides for a company to carry on business as a trustee company in the Cook Islands, servicing only non-residents of the Cook Islands. A “company” is defined in section 2 of the Trustee Companies Act as a company limited by shares and:

- “(a) incorporated under the Companies Act 1970-71 (Cook Islands) or registered as an overseas company under that Act; or
- (b) incorporated under the International Companies Act 1981-82 or registered as a foreign company under that Act”

Section 2 of the Trustee Companies Act also contains the definition of “carrying on business”

Application

Application for registration is made to the Financial Supervisory Commission (“the Commission”) for provisional registration on payment of the prescribed fee, which is currently \$NZ5,000 (see attached Schedule for list of more common fees). The Commission must be provided with all agreements affecting the management, shareholding, profit sharing or control of the applicant, notwithstanding that such agreements may not be in existence at the date of application. In addition, the Commission requires certain documents for due diligence, which are listed below.

Section 5B of the Trustee Companies Act sets out the criteria which an applicant for a licence must satisfy.

“5B. Applicant to satisfy criteria - (1) No application shall be granted by the [Commission] unless the [Commission], is satisfied that the applicant complies with those matters set out in the following subsections.

(2) Where 75 per cent or more of the legal and beneficial ownership of the share capital of the applicant is vested in Cook Islanders or permanent residents, those persons in whom the total share capital is vested, and the officers of the applicant, shall possess the required professional qualifications, expertise, competence, and integrity to enable the applicant to carry on business in the Cook Islands as a trustee company.

(3) Where more than 25 per cent of the legal or beneficial ownership of the share capital of the applicant is vested in persons other than Cook Islanders or permanent residents, those persons in whom the total share capital is vested, the officers of the applicant, and the applicant (as the case may be), shall satisfy the following -

- (a) each person in whom share capital is vested (whether legal or equitable) and every officer shall have had substantial previous experience in the nature of carrying on business as defined in section 2;
- (b) each shareholder and officer shall be of good character and standing;
- (c) the applicant shall be able to commence carrying on business as a trustee company within 3 months of provisional registration under section 5C;
- (d) the applicant shall disclose particulars to the [Commission] of the nature of the business to be transacted by the applicant, the volume of such business, and the applicant's proposal to expand such business to markets in geographical areas other than those adequately served by existing trustee companies;
- (e) the administration and management of the applicant's business shall occur within the Cook Islands;
- (f) the persons to be employed by the applicant shall be of such number and have such professional qualifications, competence, and experience as are necessary for the applicant to carry on business as a trustee company;
- (g) the business of the applicant shall not be detrimental to the interests of the Cook Islands;
- (h) the applicant shall have sufficient financial means as will enable the applicant to carry on business as a trustee company;

(4) For the purposes of this section -

- (a) “**Cook Islander**”, means a person belonging to that part of the Polynesian race indigenous to the Cook Islands and includes a person descended from a Cook Islander.
- (b) “**permanent resident**”, means a person who has been granted a certificate conferring on him the status of a permanent resident pursuant to the Entry Residence and Departure Act 1971-72.”

Applications for registration are considered by the Board of the Commission at its monthly meetings. Applications will not be put before the Board until they are regarded as being complete. The Board has the right to grant or reject applications.

Upon provisional registration a fee of \$ NZ20,000 is payable, with an annual fee of \$NZ5,000 thereafter.

Capital

A trustee company must have a share capital of not less than \$250,000 when the application is made.

Accounts and Audit

The accounts of a trustee company must be audited at least once every year and a copy of the auditor's report submitted to the Commission within 6 months of the end of the financial year of the trustee company.

Transfer of Shares

A trustee company may not transfer nor issue, legally or beneficially, any of its shares without the prior approval of the Commission.

Revocation of Registration

A trustee company's licence may be revoked if the Commission is of the opinion that the trustee company is in breach of any of the provisions of the Act; has contravened any other Act which imposes duties or obligations upon it or has committed a criminal offence and the Commission considers it is undesirable that the company continue to be registered. The company has the right to appeal to the High Court of the Cook Islands to vary or reverse the revocation.

With respect to the **establishment of a trustee company**, the Commission requires the following for **due diligence** purposes:

- Copy of Certificate of Incorporation and Memorandum and Articles of Association if the proposed owner is a corporate;
- Copy of list of directors and members for owners of the corporate referred to in the preceding paragraph;
- Police certificates, copy of passports or picture identification cards and detailed curriculum vitae for the directors highlighting their relevant industry experience;
- Professional references for those referred to in the preceding paragraph, such references to be from referees who have had a working relationship with the person for at least two years;
- Police certificates, copy of passports or ID cards, detailed curriculum vitae and professional references for any ex-patriate staff who may operate the establishment from the Cook Islands, and
- Other documents as the Commission may require.

SCHEDULE

Trust and Trustee Companies Fees as at June 2007

Function	Fee in United States Dollars unless otherwise stated
1. Application to carry on business as a trust company	5,000 (New Zealand dollars)
2. Annual Registration (a) for the first year (b) for the second and subsequent years	20,000 (New Zealand dollars) 5,000
3. Application to register a trust	200
4. Application to renew registration	200
5. For every late renewal of registration, after the statutory limit (90 days).	50 (New Zealand dollars)