



**FINANCIAL SUPERVISORY COMMISSION
COOK ISLANDS**

**GUIDANCE NOTE
MANAGED TRUSTEE COMPANY BUSINESSES**

Issued: 31 January 2018

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Glossary of Terms

Compliance Officer – as defined in section 7 of the Act and appointed pursuant to section 17 of the Financial Supervisory Commission Act 2003

Management Agreement – written agreement entered into by the MTC and its Manager setting out the terms of engagement and the services to be provided by the Manager

Manager – a *trustee company* licensed to carry on *trustee company business* under the Act

MTC – Managed Trustee Company

Money Laundering Reporting Officer – as defined in section 4 of the Financial Transactions Reporting Act 2017 and appointed pursuant to section 13 of the Financial Transactions Reporting Act 2017

the Act – Trustee Companies Act 2014

the Regulations – any Regulations issued under Part 15 of the Act

the Commission – Financial Supervisory Commission

trustee company – as defined in section 4 of the Trustee Companies Act 2014

trustee company business – as defined in section of the 5 Trustee Companies Act 2014

1. Introduction

This Guidance Note is issued pursuant to section 120 of the Act.

The purpose of this Guidance Note is to set out the Commission's expectations in relation to the licensing, regulation, supervision and day to day operations of a MTC.

For the purposes of this Guidance Note, a MTC is a *trustee company* carrying on *trustee company business* utilising the services of a Manager to carry on its business.

An applicant seeking to establish a MTC shall submit *TCA Form 1 – Trustee Company Licence Application* to the Commission together with any additional information the Commission may require in accordance with the provisions of the Act and Regulations. The application should include details of the business functions and activities to be outsourced by the MTC to its Manager.

A MTC will need to engage a Manager to provide certain services, some of which are discussed below. In order to comply with section 15 of the Act (delegation of functions of by trustee companies), the Manager should also be the secretary of the MTC.

2. Regulatory Regime

A MTC is a *trustee company* in its own right and will therefore be subject to the same regulatory regime as any other *trustee company* operating in the Cook Islands. A MTC may however rely on its Manager in order to meet those of its regulatory responsibilities as specified in the Management Agreement, but the MTC remains ultimately responsible for compliance with all regulatory obligations.

3. Corporate Governance

The responsibility for corporate governance of a MTC rests with its board of directors. Such directors are required to be natural persons. Each director will be required to demonstrate appropriate qualifications, experience, competency and a skill set complimentary to the business.

A MTC is not required to have a Cook Islands resident director on its board.

The Commission will expect the board of a MTC to meet regularly and the MTC must maintain proper records of its activity including board minutes and reports.

4. Compliance Function and AML/CFT

A MTC must have a Cook Islands resident *Compliance Officer* and a Cook Islands resident *Money Laundering Reporting Officer*. The *Compliance Officer* and the *Money Laundering Reporting Officer* can be the same person and must be an employee (or employees) of the Manager.

5. Policies and Procedures

A MTC is responsible for the operation of its *trustee company business* and must have in place policies, procedures, systems and controls appropriate to its business operation and in compliance with the regulatory regime.

The Commission expects the policies, procedures, systems and controls in place to be documented and to be available upon request from the Manager.

6. Management Agreement

A MTC and its Manager shall have in place a Management Agreement, a copy of which is to be filed with the Commission. The Agreement must set out which trustee company functions have been delegated to the Manager as per section 15 and details of the arrangement between the MTC and the Manager. The Management Agreement should be reviewed periodically to ensure that it remains current and accurately reflects the arrangement between the MTC and the Manager and complies with the requirements of the regulatory regime.

Any amendment to the Management Agreement shall be notified in writing to the Commission with an amended copy of the Management Agreement being filed with the Commission within 3 days of such amendment.

7. Premises

A MTC is not required to establish its own physical presence in the Cook Islands but the Commission expects the MTC to use the offices of the Manager, as may be required in order to operate its *trustee company business* and comply with the requirements of the regulatory regime.

8. Retention of Records

Any records, information or documentation required to be kept by or be available from a MTC pursuant to the regulatory regime must be available at the premises of the Manager within the time frames provided by law or such other time as specified by the Commission or other authorised body.

9. Termination of Services

A MTC must notify the Commission immediately in writing where notice of termination has been given, by either the MTC or the Manager, of the Management Agreement or any of the services provided by the Manager pursuant to the Management Agreement.

Where the MTC wishes to appoint another Manager either to replace an existing Manager, whether in part or in full, or to work in conjunction with an existing Manager, the MTC must obtain the approval of the Commission to such appointment, and file a copy of the relevant Management Agreement, prior to such appointment commencing.

10. Supervision

A MTC will be subject to the same regulatory supervision as any *trustee company* licensed to carry on *trustee company business* under the Act and so will be subject to periodic on-site examinations by the Commission or other authorised body. The Commission will expect a director of the MTC to be present in the Cook Islands where such examinations are carried out.