

The Central Bank of The Bahamas



GENERAL INFORMATION AND APPLICATION GUIDELINES FOR PRIVATE TRUST COMPANIES AND THEIR REGISTERED REPRESENTATIVES

Issued: January 10, 2007

Amended: May 2, 2007

Please submit all required documents to:

The Bank Supervision Department
The Central Bank of The Bahamas
Market Street
P.O. N-4868
Nassau, Bahamas

Tel: (242) 302-2615

Fax: (242) 356-3909

Email: banksupervision@centralbankbahamas.com

Website: www.centralbankbahamas.com

Applications are not considered complete until all supporting documents are received.

Disclaimer: These Guidelines do not constitute financial or other professional advice. You should consult your professional adviser if you require financial advice. These Guidelines are subject to periodic review and amendment by The Central Bank of The Bahamas.

I. INTRODUCTION & APPLICABILITY

The Central Bank of The Bahamas (“*the Central Bank*”) is responsible for the licensing, regulation and supervision of banks and trust companies operating in and from within The Bahamas. The Central Bank of The Bahamas (Amendment) Act, 2006 (“*the CBA*”), the Banks and Trust Companies Regulation (Amendment) Act, 2006 (“*the BTCRA*”) and the Banks and Trust Companies (Private Trust Companies) Regulations, 2007 (“*the PTCR*”) provide for the regulation of Private Trust Companies (“*PTCs*”).

These Guidelines outline the Central Bank’s policy with regard to the approval of Registered Representatives of PTCs and their ongoing regulation and supervision. They also provide general information on PTCs and necessary requirements for their establishment.

II. DEFINITIONS

Bahamas Agent is a Registered Representative who provides administrative services to a PTC under a service agreement.

Designated Person is the individual or individuals (whether living or deceased) described as such within a Designating Instrument provided that if more than one Designated Person is described as such, each Designated Person must be related to a Designated Person so described by consanguinity or some other family relationship. Settlers of assets administered by a PTC must be related to a Designated Person(s). A Designated Person may also be a settlor of such assets.

A **Designating Instrument** is an instrument in the form specified in the First Schedule to the PTCR.

Private Trust Company is a company incorporated under the provisions of the Companies Act or the International Business Companies Act, which by its Memorandum and Articles of Association

- i. acts as a trustee only for a trust or trusts created or to be created by or at the direction of a Designated Person(s) or an individual or individuals who are related by consanguinity or other family relationships to the Designated Person described within the Designating Instrument or, if there is more than one Designated Person so described, to a Designated Person, which Designated Person or Designated Persons need not be named in such company’s Memorandum and/or Articles of Association;
- ii. is required to have a Registered Representative; and
- iii. is not the subject of a notice of withdrawal made under section 4(7) of the BTCRA.

A **Registered Representative** is either (i) a licensee of the Central Bank or (ii) a Financial and Corporate Service Provider (duly licensed under the Financial and Corporate Services Providers Act, 2000 (“*the FCSPA*”) whose business is limited to acting as a Registered Representative and who has been approved by the Governor to provide private trust services pursuant to Section 3 of the BTCRA. A licensee or an approved Financial and Corporate Service Provider may authorise one of its officers, who must be resident in The Bahamas, to provide one or more of these services:

- i. secretary of a PTC;
- ii. director of a PTC; or
- iii. Bahamas Agent of a PTC.

Special director means a person (who need not necessarily be resident in The Bahamas) of good reputation who also possesses at least five years' experience in a discipline relevant to the administration of trusts which, in this context, shall include one or more of law, finance, commerce, investment management or accountancy.

III. PURPOSE

Under the BTCRA, the Central Bank issues public trust company, restricted trust company and nominee trust company licences. The 2006 amendments to the CBA and the BTCRA and the recently introduced PTCR create a unique type of trust company known as a PTC, which is exempt from the licensing requirements of the BTCRA otherwise applicable to the preceding list of trust companies. The regulatory regime for a PTC is designed to ensure high standards of business conduct, professionalism and competence for PTCs, while offering an appropriate level of regulatory oversight consistent with the limited activities of such companies. PTCs are, by their nature, often formed for acting as trustee of a single trust, or a group of related trusts. PTCs provide a convenient means of transferring control and influence over family business interests, wealth and assets as the Board of Directors of a PTC would normally consist of family members of the settlor.

Additional benefits of PTCs include flexibility, easier and faster decision-making, a greater degree of control over assets by the settlor, confidentiality and the ability to hold high-risk assets.

IV. REGULATORY FRAMEWORK FOR PRIVATE TRUST COMPANIES

PTCs are exempted pursuant to section 3(4) of the BTCRA and regulation 3(1) of the PTCR from the licensing requirements for trust companies. PTCs are also exempted under section 6 (1) of the BTCRA from seeking the Governor's prior approval for the transfer or disposal of shares of the company, provided that the Registered Representative shall at all times maintain a current share register of all shareholders of the PTC.

Under section 7 of the BCTRA a PTC may not use or continue to use the words "trust", "trust company", or "trust corporation" or any of their derivatives in its name, unless approved by the Governor. The Central Bank has issued a guidance note on the use of "prohibited words", which provides guidance on the Central Bank's current policy on the granting of specific consents for the use of prohibited words by any company, other than a licensee of the Central Bank (A copy of this guidance note can be found on the Central Bank's website in the Bank Supervision Section under "Notes and Notices"). Notwithstanding the foregoing, the Central Bank will have no objection to the use of the initials ("P.T.C") at the end of the name of a Private Trust Company.

Registered Representatives are the main points of contact for the Central Bank in relation to PTCs. A Registered Representative is required to have and maintain a minimum paid up share capital of not less than fifty thousand dollars (\$50,000) and pay an annual fee of \$2,500. Under the regulatory framework for PTCs, an approval granted to a Registered Representative under Regulation 6 of the PTCR is valid until the 31st December of the year in which it is granted, but is renewable as of the 1st January in each year thereafter for a further period of one year. Pursuant to sections 11, 13, and 18 of the BTCRA, the Central Bank in carrying out its regulatory and supervisory oversight of Registered Representatives, can, inter alia:

- i. issue directions for the adherence of PTCs and their Registered Representatives;
- ii. take remedial action where necessary;

- iii. require the provision of information and documents;
- iv. conduct onsite examinations, and investigations, where necessary; and
- v. require co-operation with a relevant supervisory authority under certain circumstances.

A Registered Representative may act as a Bahamas Agent for a PTC by entering into a service agreement with the company to provide administrative services to the company.

V. PROCEDURES AND DOCUMENTATION FOR APPLICATIONS

All applications for approval to act as a Registered Representative must be made in writing to the Bank Supervision Department of the Central Bank in the manner prescribed in this guideline. The Central Bank may require an applicant to provide such further information as it considers necessary to enable the Governor to determine the merits of the application.

Registered Representative

A company (other than a licensee) seeking approval to act as a Registered Representative shall in addition to completing the application form (see Appendix II), provide the following information to the Central Bank:

- a.) Certificate of incorporation as a regular company under the Companies Act 1992;
- b.) Certified copies of the applicant's Memorandum and Articles of Association;
- c.) Names, addresses, telephone and fax numbers of its shareholders, directors and senior officers and its registered office in The Bahamas;
- d.) A certified copy of the applicant's current Financial and Corporate Service Providers licence;
- e.) Most recent audited financial statements;
- f.) One bank and two character references in original form from sources satisfactory to the Governor, a police certificate and copies of the first four pages of passport - which must include the page with photo identification (with respect to the shareholders, directors and senior officers of the applicant);
- g.) History, activity, present structure and organization of the company; and
- h.) Such other particulars as the Governor may require.

Only applications where all supporting documents have been submitted will be reviewed by the Governor for approval determination. The Central Bank will then advise the applicant of the determination and where approved, any conditions of the approval. Any approval granted in this regard should be prominently displayed on the premises where the Registered Representative conducts its business.

In the event that any information or particulars provided by a Registered Representative in its application changes, the Registered Representative should notify the Central Bank in writing within thirty days of such change(s). All approvals are valid until the 31st December of the year in which they are granted and renewable as of the 1st January in each year thereafter for a further period of one year.

VI. FIT AND PROPER REQUIREMENTS

PTCs are required under Regulation 4 (1) (b) of the PTCR to have at least one Special Director at all times, except where a licensee of the Central Bank is providing the services of a secretary, director or Bahamas Agent to a PTC.

PTCs and their Registered Representatives should also ensure that all persons associated with the company are fit and proper. In assessing the fitness and propriety of these persons, PTCs and their Registered Representatives should have regard to the Central Bank's Fit and Proper Guidelines. These Guidelines may be accessed on the Central Bank's website at <http://www.centralbankbahamas.com>.

VII. ADMINISTRATIVE AND FILING REQUIREMENTS

Registered Representative Certification

Registered Representatives are required to certify to the Governor, within six months of the date of coming into force of the PTCR, that the PTC qualifies for an exemption by virtue of the restriction specified in Regulation 3(1) of the PTCR (see Appendix III). In the case of a PTC that was incorporated after the date of coming into force of the PTCR, such certification to the Governor must be made within three months of its incorporation. However, the Governor may extend the time for such certification for such further period not exceeding twelve months as he thinks expedient.

PTCs Annual Certification

The directors of a PTC are required to submit an annual certification to their Registered Representative, which stipulates that the company continues to qualify as a PTC. Registered Representatives should obtain from the directors of each PTC for which they provide services, a duly completed Compliance Certificate (see Appendix IV) on or before 31st December of each year. The Compliance Certificate should indicate that:

- a.) the company continues to qualify as a PTC;
- b.) all officers and directors associated with the company continue to be fit and proper persons;
and
- c.) the company continues to comply with all applicable requirements.

Record Keeping

Registered Representatives are required to maintain in The Bahamas in relation to each PTC for which they provide private trust services, the following documents and information:

- i. Memorandum and Articles of Association;
- ii. Designating Instrument (see Appendix V);
- iii. Curriculum vitae of the Special Director of each PTC, if any, from time to time acting in such capacity;
- iv. Trust instruments for each trust (including sub-trusts or appointed trusts) administered by the PTC;
- v. An acknowledgement in the form set out in Appendix VI;
- vi. A list of all PTCs for which they act as Registered Representatives;
- vii. Verification information on the settlor, which includes any nominee settlor, and all persons providing the funds or assets, which are subject to the trust or trusts

- administered by the PTC, the designated person(s), the protector of any trusts of which the PTC is trustee and any vested beneficiaries of such trusts; and
- viii. A current share register of all shareholders in the PTC.

Where a PTC acts as trustee for a trust that has a nominee settlor, the Registered Representative must, in addition to obtaining and keeping the verification information and documents set out in (i) – (viii) above, obtain and keep verification information and documents on the ultimate source of the funds or assets provided by the nominee.

In addition to the information listed above, a Registered Representative is entitled to receive on request, from each PTC for which it provides private trust services, the following information about transactions conducted in the company's capacity as trustee:

- (a) The nature of the transaction;
- (b) The amount of the transaction and the currency in which it was denominated;
- (c) The date on which the transaction was conducted;
- (d) The parties to the transaction; and
- (e) Where applicable, the person or entity through which the transaction was conducted and any other persons or entities directly involved in the transaction.

Where a PTC fails to comply with a Registered Representative's request regarding the information stated above, such Registered Representative should within ten days from the date of the request, notify such non-compliance to the Governor.

VIII. VERIFICATION OF IDENTITY

A Registered Representative should, in relation to each PTC for which it acts as Registered Representative, verify the identities of the following persons in accordance with relevant provisions under the BTCRA and underlying regulations, the Financial Transactions Reporting Act, 2000 (*"the FTRA"*) (as amended) and the, the Financial Transactions Reporting Regulations, 2000 (*"FTRR"*) (as amended) and maintain in The Bahamas, information and documents relating to such verification:

1. The settlor (including any nominee settlor) and the ultimate beneficial owner of the funds or assets subject to the trust or trusts administered by the private trust company.
2. The Designated Person(s);
3. The protector of any trusts of which the PTC is trustee; and
4. A person who has a vested interest under any trust of which the private trust company is trustee.

IX. SUSPICIOUS TRANSACTIONS REPORTING

Registered Representatives are subject to Suspicious Transactions Reporting obligations under the FTRA, the Proceeds of Crime Act, 2000 (*“the POCA”*) and the Anti-Terrorism Act, 2004. A Registered Representative is therefore required to report to the Financial Intelligence Unit any transaction or proposed transaction that the Registered Representative knows, suspects or has reasonable grounds to suspect involves proceeds of criminal conduct as defined in the POCA.

X. ONSITE EXAMINATIONS

Pursuant to section 13(2) of the BTCRA, Registered Representatives are subject to on-site examinations by the Central Bank to check processes and systems for AML/CFT, Customer Due Diligence, Corporate Governance and overall Safety and Soundness. These will be carried out using a risk-based approach. If warranted, PTCs will also be examined to verify the veracity of information pertaining to their operations.

END

APPENDIX I

Banking and Related Financial Legislation of The Bahamas

Applicants may find the following legislation useful in the application process.

| |
|--|
| Banks and Trust Companies Regulation Act, 2000 Chapter 316 |
| Banks and Trust Companies (Private Trust Companies) Regulations, 2007 |
| Banks and Trust Companies (Restriction on Use of Banking Names and Descriptions) Regulations, 2002 |
| Central Bank of The Bahamas Act, 2000 Chapter 351 |
| Exchange Control Regulations Act, 1952 Chapter 360 |
| Exchange Control Regulations, 1956 |
| Companies Act, 1992 Chapter 308 |
| Proceeds of Crime Act, 2000 Chapter 93 |
| Proceeds of Crime (Designated Countries and Territories) Order, 2001 |
| Financial Transactions Reporting Act, 2000 Chapter 368 |
| Financial Transactions Reporting Regulations, 2000 |
| Financial and Corporate Service Providers Act, 2000 Chapter 369 |
| Financial Intelligence Unit Act, 2000 Chapter 367 |
| Financial Intelligence (Transactions Reporting) Regulations, 2001 |
| International Business Companies Act, 2004 Chapter 309 |
| Anti-Terrorism Act, 2004 |

These pieces of legislation may be accessed electronically at <http://laws.bahamas.gov.bs> or obtained in hard copy form by contacting:

GOVERNMENT PUBLICATIONS OFFICE

**P. O. Box N-7147
Nassau, Bahamas
Phone (242) 322-2410
Fax (242) 328-8294**

APPENDIX II



**REGISTERED REPRESENTATIVE
Application Fact Sheet**

Please complete and submit this page along with all supporting documents outlined in Section V of this Guideline:

| | |
|--|---------------------------------------|
| Name of Applicant: | |
| Address of Applicant: (including mailing address) | |
| Address of Registered Office: | |
| Name and Address of Senior Officer 1: | Name and Address of Senior Officer 2: |
| Telephone: | |
| Fax: | |
| Email: | |
| Current Capital: \$ | |
| Signature of Presenter: _____ Date _____ | |
| Name of Presenter: _____ | |
| For Official Use Only | |
| Application Received by: _____ Date: _____ | |
| Application Reviewed by: _____ Date: _____ | |
| Comments: | |

We, the directors of [COMPANY NAME], certify that the information contained in this application is correct and accurate to the best of our knowledge. We understand that any untrue, misleading or incomplete information may affect the success of this application. We also authorise the sharing of information between the Central Bank of The Bahamas and the Inspector of Financial and Corporate Service Providers where and when both regulators deem it fit to do so.

On behalf of [COMPANY NAME: Registered Representative]

Date



APPENDIX III

REGISTERED REPRESENTATIVE

CERTIFICATION

We the directors of [COMPANY NAME], a Registered Representative of [NAME OF PRIVATE TRUST COMPANY] established under the laws of the Commonwealth of The Bahamas pursuant to the Companies Act 1992 hereby declare that [NAME OF PRIVATE TRUST COMPANY] qualifies for an exemption by virtue of the restriction specified in Regulation 3(1) of the Bank and Trust Companies (Private Trust Companies) Regulations, 2007. Attached is a briefing sheet on [NAME OF PRIVATE TRUST COMPANY].

Signed:

On behalf of [COMPANY NAME: Registered Representative]

Date:

Acknowledged by:

[INSERT COMPANY NAME]



APPENDIX IV

COMPLIANCE CERTIFICATE

We, the undersigned directors (the "Directors") of [COMPANY NAME], a Private Trust Company established under the laws of the Commonwealth of The Bahamas pursuant to the Banks and Trust Companies Regulation Act, 2000 (the "Company") hereby declare that between [DATE] and [DATE]:

1. The Company has served only as trustee for trust or trusts for Designated Person or Designated Persons or an individual or individuals who are related by consanguinity or other family relationships to the Designated Person or Designated Persons and has not carried on any business or activity which was prohibited; and
2. The Directors have acted honestly and in good faith with a view *to* the best interest of the Company.

And we each make this solemn declaration conscientiously believing it to be true.

Director

Director

APPENDIX V

DESIGNATING INSTRUMENT

[INSERT COMPANY NAME]

I, [DIRECTOR], hereby confirm that in relation to [INSERT COMPANY NAME] a Company [incorporated/to be incorporated] under the laws of The Bahamas, the Designated Person or Designated Persons for the purposes of Section 2 of the Act shall be: [INSERT INDIVIDUAL (S) NAME (S)].

Signed:

DIRECTOR

Acknowledged by:

[INSERT COMPANY NAME]

APPENDIX VI



**FORM OF ACKNOWLEDGEMENT TO BE EXECUTED BY
SETTLOR OR DONOR OF TRUST**

I, [INSERT SETTLOR/DONOR'S NAME], hereby acknowledge that in relation to [INSERT COMPANY NAME] (the "Company") a company [incorporated/to be incorporated] under the laws of The Bahamas:

- (i) that Company's directors are not required by law to possess or exhibit expertise in trust administration and, therefore, said directors may, in fact, not be possessed of or exhibit such skill,
- (ii) that Company is not required by law to provide any fidelity bond,
- (iii) that the capital of the Company is not required to by law to exceed Five Thousand Dollars and may, therefore, be minimal; and
- (iv) that Company is not required by law to perform an annual audit.

Accordingly, accepting the foregoing and fully understanding the legal implications hereof, I hereby waive any and all rights of complaint in respect of these matters.

Signed:

Settlor

Acknowledged by:

[INSERT COMPANY NAME]