



NEVIS FINANCIAL SERVICES (REGULATION & SUPERVISION) DEPARTMENT GUIDELINES ON THE ESTABLISHMENT OF AN INTERNATIONAL BANK IN NEVIS

OVERVIEW

An international bank can be established in Nevis under the Nevis International Banking Ordinance, 2014 (“NIBO”). This is the legislation that governs the operation of international banks conducting business from Nevis. The Ordinance, and Regulations made there under, outline the requirements and procedures to be followed in applying for a license.

An applicant for a license under this Ordinance must submit an application in the prescribed form to the Minister of Finance (the Minister) for his consent to incorporate an international business company in Nevis for the purpose of carrying on international banking business from Nevis. This process is essentially the due diligence exercise on the parent company and the individuals involved and is carried out by the Financial Services Regulatory Commission (FSRC)-Nevis Branch.

At the time of submitting the application for consent, the person who intends to apply for a license under this Ordinance may submit a proposal to the Minister for a license, and the Minister may indicate in a preliminary report on the recommendation of the Regulator whether or not a subsequent application based on the proposal would be favorably received by him based on relevant technical and commercial data. With every proposal a non-refundable administrative fee shall be paid.

It is the duty of the Minister to submit a preliminary report within ninety (90) days of the receipt of the proposal from a prospective licensee. The approval of the banking license at this time will be subject to the incorporation and capitalization of the company.

ELIGIBILITY REQUIREMENT

To deter the establishment of brass plate banks and to protect the reputation of the jurisdiction, section 8 of the Ordinance provides that no license can be issued to an individual. An international banking license can only be issued to an eligible company or qualified foreign bank.

AN ELIGIBLE COMPANY INCLUDES:

- ❖ a body corporate which has been incorporated under the Companies Ordinance, CAP 7.06 which is a wholly owned subsidiary of a bank which is indigenous to St. Kitts and Nevis and regulated by the Eastern Caribbean Central Bank; or
- ❖ a subsidiary of qualified foreign bank which has been incorporated under the Companies Ordinance; or





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- ❖ a body corporate which has been incorporated under the Companies Ordinance of which the chief executive officer at the time of its application for a license, has at least ten years' experience in banking or finance.

A QUALIFIED FOREIGN BANK IS:

- ❖ a bank which was originally incorporated and registered in a jurisdiction other than St. Christopher and Nevis that upon commencement of this Ordinance is licensed under the Banking Act; or
- ❖ a foreign bank with minimum capitalization and assets as prescribed by the Minister, that is not licensed under the Banking Act but is licensed to do domestic banking in its jurisdiction of incorporation;
- ❖ a financial institution approved by the Minister, that is directly or indirectly a wholly owned foreign subsidiary of a bank which is incorporated in a jurisdiction other than St. Christopher and Nevis.

INCORPORATION REQUIREMENTS UNDER THE COMPANIES ORDINANCE

As stated earlier an Eligible Company must be incorporated under the Companies Ordinance as a company limited by shares and have the word 'bank' included as part of its name, however, approval must be first granted by the Minister of Finance (see section 17 of NIBO). The following are the requirements to incorporate under the Companies Ordinance:

A company may be formed by any person whom section 4(2) of the Companies Ordinance does not disqualify from involvement in company formation. Section 4(2) disqualifies persons who are under 18 years, bankrupt or of unsound mind.

Also note that non-nationals who desire to be Directors of a domestic company should first receive an Alien Land Holding License authorizing them to be directors of said company. Application forms are available from the Ministry of Agriculture or an Attorney-at-law.

An Attorney-at-Law must make a Statutory Declaration which confirms that none of the persons signing the Articles of Incorporation is a disqualified individual. In addition, the following forms are required,





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Name Search and Reservation, Form 26; Articles of Incorporation, Form 1/Form 2; Notice of Address or Change of Address of Registered Office, Form 4; Notice of Directors or Change of Directors, Notice of Secretary, Form 9; and a copy of Alien Land Holding License for each director who is a non-national (if applicable).

These forms are prescribed under the Fourth Schedule to the Companies Regulations, 1999.

Fees associated to the incorporation are as follows:

- ❖ Name reservation fee of \$25.00 which is required to secure pre-approval of a corporate name,
- ❖ Application for incorporation fee of \$750.00 which is payable to the Nevis Island Administration,
- ❖ Fees will also be payable to an Attorney-at-Law for professional services.

CAPITAL REQUIREMENTS

NIBO stipulates minimum capital requirements of not less than two million dollars (USD \$2,000,000.00), or such greater sum as the Minister may reasonable determine in Regulation. In addition to the capital requirement, each bank is also required to have deposited or invested the sum of two hundred thousand dollars (USD \$200,000.00) in the following manner:

- ❖ treasury bills issued by the Government of St. Christopher and Nevis or the Nevis Island Administration;
- ❖ bonds and debentures issued by the Government of St. Christopher and Nevis or the Nevis Island Administration;
- ❖ deposits with a bank licensed under the Banking Act; or
- ❖ deposits with a financial institution approved by the Minister

The licensed bank will be required to give a written undertaking not to dispose of, pledge, hypothecate, release or otherwise encumber the deposit or investment without prior notification and approval by the Minister.

Additionally, the international bank shall maintain a reserve fund and shall out of its net profits of each year and before any dividend is paid, transfer to the fund a sum equal to not less than twenty five (25%) percent of those profits whenever the amount of the reserve fund is less than the paid up capital of the international bank.





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This stipulation will not apply to an international bank whom has shown to the satisfaction of the Minister that the aggregate reserves of the international bank are adequate in relation to its business.

For the purposes of this Ordinance, the international bank shall maintain its reserve fund at a bank approved by the Regulator.

AUDIT REQUIREMENT

The annual balance sheets and accounts of an approved international bank must be audited at least once in every financial year by an auditor who shall conduct the audit in accordance with the international financial reporting standards. The annual audited financial statement must bear on its face the certificate of the auditor.

It is the duty of the auditor appointed to submit a report to the shareholders of the international bank and to the Regulator. The International Bank should ensure that no later than three months after the close of its financial year or such longer period as the Regulator may allow, that copies of its Annual Audited Financial Statements be forwarded to the Regulator and its shareholders. The report must also be read to the shareholders at the annual meeting of the international bank.

The auditor in their report must state whether the auditor has obtained all the information and explanations needed and provide an opinion on all relevant financial statements for the period under review. The auditor must also note in his report any instances where the operations of the international bank may not be in compliance with the requirements of the Ordinance or the Regulations. The international bank must ensure that a copy of the report of the auditor be displayed in a conspicuous place at its office in Nevis.

RESIDENT DIRECTOR REQUIREMENT

An international bank shall have at least three (3) directors all of whom are natural persons and one (1) of whom is a citizen of St. Christopher and Nevis and who is resident in Nevis. Additionally, the International bank shall, before the appointment of a director or other senior officer, apply to the Regulator for written approval of the appointment.





LOCAL OFFICE REQUIREMENT

Under this Ordinance, a license to operate an international bank will not be granted unless that company has a place of business in Nevis approved by the Regulator which will be its registered office. The company under no circumstances shall cease to have a place of business in Nevis; or change its place of business without the written approval of the Regulator. Additionally, the appointment of a Registered Agent is also required.

THE APPLICATION FOR A BANKING LICENSE

Section 9 of the Ordinance sets out the application requirements for an international banking license.

1. An applicant must:

- ❖ submit an application in the prescribed form to the Minister;
- ❖ show that it is an Eligible Company or qualified foreign bank;
- ❖ give the names and addresses of its directors;
- ❖ give particulars of the international banking it proposes to do from within Nevis;
- ❖ give the names of any directors who are residents of Nevis;
- ❖ give a statement of the name, address, qualification and experience of its Senior Management;
- ❖ provide such other information of a financial or other nature as the Regulator may require in any particular case,
- ❖ tender with the application a non-refundable application fee of USD 6000.00,
- ❖ submit the name and registered office of its appointed auditor, and
- ❖ submit the name and registered office of its appointed compliance officer.

2. Submit a business plan which includes the following information:

- ❖ overview of the investment and lending policies, standard and procedures in respect of the licensee's portfolio of investments and loans.



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- ❖ a detailed explanation of the “Know Your Customer” policies and procedures.
- ❖ source of initial and future capital for expansion, in the form of a capital plan and funding policies, including an estimate of future capital requirements. The capital should meet the business requirements of the licensee proposed by-laws;
- ❖ projected staff complement and an organization chart showing reporting lines for senior positions and key responsibilities and a description of the functions the individuals will perform;
- ❖ where an internet platform (e-commerce) would form the key delivery structure of the licensee, the risk impact that this technology would pose, for both the applicant and its clients, must be identified and addressed to the satisfaction of the FSRC. The business plan must address:
 - ❖ how customers, employees and vendors will be authenticated and authorized to prevent repudiation and fraud;
 - ❖ The physical and logical network security, including security of the web site; security of customer information;
 - ❖ management of systems capacity; encryption of communications; provision of EDP audits; and
 - ❖ continuing and contingency costs related to the development and maintenance of IT plans;
- ❖ description of any material outsourcing arrangements in the group, with partners, or with third parties, that may be anticipated, including any data processing functions that may be conducted outside the licensing territory;
- ❖ the intended financial year end for the licensee;
- ❖ detailed provisioning policies and a description of the general allowances that are anticipated in executing its business plan; and





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- ❖ contingency plans resulting from variations associated with key assumptions used in developing the business plan (provided sensitivity analysis showing the results on the business plan under various scenarios).

3. In addition to the above information, an applicant who is an Eligible Company must also:

- ❖ have objects or business activities restricted to international banking from within Nevis;
- ❖ have articles of incorporation and bylaws;

If the applicant is a Qualified Foreign Bank it must also submit:

- ❖ copies of the incorporation documents of the bank;
- ❖ the names of the directors of the bank;
- ❖ the names of the principal shareholders of the bank;
- ❖ a certificate showing that the home banking supervisor of the jurisdiction in which it was incorporated, formed or organized has no objection to its application for a license to do international banking business in Nevis, and
- ❖ evidence satisfactory to the Regulator that it is subject to a comprehensive supervision on a consolidated basis by the appropriate authorities in its jurisdiction of incorporation.

Other requirements may apply, depending on the nature of the application and the specific risks that the application poses. These requirements will be discussed with an applicant in each case (e.g., e-commerce and its inherent technological risks).

DUE DILIGENCE AND FIT AND PROPER REQUIREMENTS

Once an application is made and all requirements are satisfied, in order for approval to be granted the Minister will direct the Regulator to conduct an examination. The Regulator will conduct due diligence enquiries on the character of every director and every shareholder having more than five percent of the shares to ensure that only fit and proper persons are concerned in the management and control of the company. The cost of this due diligence must be borne by the applicant. The cost normally ranges from US\$2500 to US\$7500 for each proposed director, shareholder and senior management personnel. This cost must be paid to the Nevis Island Administration upon receipt of this application.





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During the examination of the application the Regulator may also carry out such investigation and inquiry as is required of the financial circumstances of the applicant corporation and of its affiliates or associates. In particular, the examination focuses on the financial status and history of the applicant corporation and any of its directors, affiliates and associates; the character and experience of the directors or proposed directors; the adequacy of its capital; the needs of the public or persons it intends to serve, its earnings prospects and prospects as an employer in Nevis.

In compliance with international standards in relation to effective banking supervision NIBO outlines the criteria for determining fit and proper status of any proposed director, shareholder or manager of an International Bank. Therefore, during the Regulator's examination of the character of each of these individuals, consideration will be given to:

- ❖ that person's probity, competence and soundness of judgment for fulfilling the responsibilities of that position;
- ❖ the diligence with which that person is fulfilling or likely to fulfill the responsibilities of that position; and
- ❖ whether the interests of depositors or potential depositors of the Licensee are, or are likely to be in any way threatened by that person holding the position.

Regard may also be had to the previous conduct and activities in business and financial matters of the person in question and, in particular, to any evidence that the person has:

- ❖ committed an offence involving fraud, dishonesty or violence;
- ❖ contravened any provision made by or under any legislation designed for protecting members of the public against a financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking or other financial services or the management of companies or against financial loss due to the conduct of a discharged or undischarged bankrupt;
- ❖ engaged in any business practices appearing to be deceitful, oppressive or otherwise improper or reflects discredit on that person's method of conducting business;





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- ❖ an employment record which leads one to believe that the person carried out an act of impropriety in the handling of his employer's business; or
- ❖ engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment.

Additionally, a personal questionnaire must be completed by each director, beneficial owner, senior officer, compliance officer and other key staff.

APPLICATION PROCESSING TIME

The Law requires that the Minister must issue or refuse a license within three months of the receipt of the application, or if additional information is required by the Minister, then within fourteen (14) days of the receipt of the additional information the Minister may attach terms and conditions to the license, if required in public interest.

CONDITIONS OF LICENSE

A license issued under this Ordinance is valid until the 31st day of December of the year in which it is issued and renewable on or before the 31st day of January in the following year upon payment of the prescribed fee. The licensee is also prohibited from establishing any subsidiary or branch within or outside Nevis or offer or provide any services on the Internet without approval of the Minister.

It is also a condition of this license that the Licensee will not, without the approval of the Minister on the recommendation of the Regulator enter into a merger, amalgamation or consolidation, or transfer otherwise than in the ordinary course of its business, the whole or any substantial part of its assets or liabilities, change its name from that set out in its license, alter its articles of incorporation and bylaws, transfer any of its shares or alter its share structure, take any action to reduce or impair in any respect its capital, or repurchase its own shares or take any action which may have a similar effect.

REVOCATION OF LICENSE

The Minister may revoke the license if a licensee does not commence the international banking business within six months of the issuance of the license, contravenes a condition of the license; is





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convicted of an offence under this Ordinance or the Anti-Money Laundering Regulations, Anti-Terrorism (Prevention of Terrorist Financing) Regulations or the Financial Services (Implementation of Industry Standards) Regulations or ceases to carry on the international banking business for which the license was issued.

SUPERVISION AND ENFORCEMENT

The Regulator of International Banking is responsible for the regulation and supervision of International Banks licensed under the Ordinance and to ensure that all licensees adhere to the provisions of the Ordinance, the Anti-Money Laundering Regulations 2011, Anti-Terrorism (Prevention of Terrorist Financing) Regulations 2011 or the Financial Services (Implementation of Industry Standards) Regulations 2011.

The Regulator is also authorised to conduct on-site and off-site examinations to confirm that the regulatory, administrative and prudential requirements are complied with. If it is found that an International Bank is conducting business in a manner that is contrary to the provisions of the Ordinance, detrimental to the public interest or to the interest of its depositors, the Ordinance provides for certain enforcement action to be taken against that Bank. This includes the revocation or suspension of the international banking license.

TAX EXEMPTIONS

The Nevis Island Administration will not impose any tax upon the profits or gains of an International Bank in respect of the international banking it conducts from the island of Nevis. However, it will be subject to any service charge or utility charge for any service provided by the Nevis Island Administration.

Assessment Criteria

The Financial Services Regulatory Commission (FSRC)-Nevis Branch is guided by the concept of consolidated supervision contained in the *Core Principles for Effective Banking Supervision*, released by the Basel Committee on Banking Supervision. In order for it to be able to assess its ability to supervise, examine and regulate the licensee effectively, FSRC will need to examine the proposed corporate structure and corporate affiliations.

Therefore, applicants for licenses must provide information on the nature and extent of the current and proposed financial services activities of the major shareholders and their affiliates (other than





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the proposed licensee), and on the nature and degree of supervision applied to those activities. The specific factors that the FSRC will consider in assessing the level of risk posed by the corporate structure and its impact on the ability of the FSRC to supervise (referred to as “supervisability”) are outlined below.

(a) *Activities of the Licensee*

- ❖ The financial services activities of the international bank

(b) *Systemic Importance of the Licensee*

- ❖ The absolute size or intended role of the international bank relative to the size of the financial sector of the island of Nevis.

(c) *Predominant Nature of the Group’s Financial Activities*

- ❖ The extent of the applicant’s financial services activities, having regard to the:
 - complexity of the corporate structure of the group;
 - strategic direction of the group and the nature of the planned financial services of the group;
 - potential for prudential concerns such as contagion, connected lending among members of the group, etc.;
 - existence and extent of financial services activities within the group that are in regionally separate locations; and
 - branding to be used by the licensee and the extent that it is different and distinct from the branding used for the other activities of the group, so as to identify possible contagion concerns.

(d) *Independence of Licensee*

- ❖ The extent to which the international bank is an independent and self-sustaining operation with the authority to make decisions independent of the group. In making this determination, the FSRC-Nevis Branch will consider:





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- the extent to which directors on the board of the licensee are independent from the boards of the other entities in the group; and
- the extent to which the management of the bank is unique to the licensee

(e) ***Regulatory Oversight of the Group***

- The extent to which the regulatory and supervisory practices of the Home Supervisors and the supervisors of the affiliates within the corporate group conform to Basel Core Principles.

Upon Onsite Examination and Supervision the Regulator shall –

- ❖ regularly evaluate the condition, solvency and liquidity of all licensees;
- ❖ establish appropriate and prudent standards for conducting safe and sound international banking business;
- ❖ set prudent and appropriate capital adequacy requirements not less than those established in the Basel Capital Accord and its Amendments;
- ❖ evaluate international banks' policies, practices and procedures related to the granting of loans and making of investments and the on-going management of the loan and investment portfolios;
- ❖ ensure that international banks have management information systems that enable management to identify portfolio concentration in line with established limits;
- ❖ ensure that international banks have in place and use systems that accurately measure, monitor and adequately control market and other risks;
- ❖ ensure that international banks establish and adhere to adequate policies, practices and procedures for evaluating the quality of assets and the adequacy of loan-loss provisions and loan-loss reserves;
- ❖ ensure that international banks have in place internal controls adequate to the nature and scale of their operations, and adequate policies, practices and procedures, including strict know-your-customer rules that promote high ethical and professional standards, and so prevent the use of the international bank for criminal purposes;
- ❖ cooperate with inspectors and supervisors in other jurisdictions to the extent necessary for the purposes of cross border supervision consistent with the policy established by the Basel Committee on Banking Supervision.





THE REVIEW PROCESS

The Regulator will review the draft application and, as required, will contact the applicant to discuss its completeness, status, and outstanding issues. Where necessary, the Regulator may request additional information to complete the application assessment. The Regulator will not consider an application complete until all requested information is received and it is in a form satisfactory to the FSRC-Nevis Branch. Delays in regulatory approval often result from incomplete information being filed.

N.B. The Minister may make Regulations that are necessary for the carrying into effect of the Ordinance, section 84 of NIBO. Should you require further information please contact the Regulator of International Banking at the Financial Services Regulatory Commission- Nevis Branch.