

NATIONAL RESERVE BANK OF TONGA

Prudential Statement No.12

BANK LICENSING REQUIREMENTS

Introduction

1. This statement is issued in terms of Section 15(3) of the Financial Institutions Act, 2004.
2. This policy outlines the minimum license application requirements that applicants must submit to the Reserve Bank as part of their proposal to set up a bank or a credit institution in Tonga.
3. This Prudential Statement applies to all applications to conduct banking business in Tonga. No person may carry on banking business in Tonga without being in possession of a current valid banking license issued under section 8(2) of the *Financial Institutions Act 2004*. "Banking business" is defined in the *National Reserve Bank of Tonga Act 1988* as:
 - a. *the business of receiving funds through the acceptance of deposits of money payable upon demand or after a fixed period or after notice, or any operation through the frequent sale or placement of bonds, certificates, notes or other securities, and the use of such funds either in whole or in part for loans or investments for the account and at the risk of the person doing such business; and;*
 - b. *any other activity recognized by the Reserve Bank as customary banking practice which a financial institution engaging in the activities described in (i) may additionally be authorized to do by the Reserve Bank.*
4. "Financial institution" is defined in the same Act as an institution doing banking business.
5. Because of the special nature of banking business and the high degree of trust and confidence implicit in the relationships that arise in this field, an exceptionally high standard of care is required both by financial institutions themselves, and by the regulatory and supervisory authorities, to protect the public against the risk of doing business with structurally unsound or imprudently conducted institutions. These standards apply to the identity of major shareholders and directors and management personnel and to their professional record, business and other connections, as well as to the financial structure, supportive capability and proven competence of the institutions concerned.
6. Applications for licenses to carry on banking business are therefore subjected to most thorough scrutiny, and the subsequent performance of licensed institutions is closely supervised.
7. Applicants may appoint an established firm of public accountants or legal practice familiar with Tonga law and institutions to represent them in the formal matters required for consideration of the application.

8. The following are minimum requirements that applicants must submit to the NRBT as part of their proposal to set up a bank or a credit institution in Tonga.
9. The minimum requirements have been divided into two categories, firstly, requirements under the *Financial Institutions Act 2004* and secondly, requirements specified by the Reserve Bank. In addition, general instructions on how to complete the application forms (Forms 1, 2, 3 and 4) are also outlined in this Guideline.

I. Primary requirements detailed in the *Financial Institutions Act 2004 (FI Act)*

10. Application letter – Letter of Intent. It must be signed by the applicant’s Board of Directors, or an authorised representative of the applicant, and evidence of his/her authority is to be provided. It is to be accompanied by two certified copies of the completed forms (Form 1 to 4), annexes, attachments and other supporting documents and addressed to:

The Governor
National Reserve Bank of Tonga
Private Mail Bag No. 25
Nuku’alofa

11. Application fees
 - a. Banks :TOP10, 000
 - b. Credit Institutions : TOP10, 000

This is to be paid by bank cheque. Personal cheques will not be accepted. Payment of prescribed fees must accompany the application. The application fee is non-refundable.

12. Name of proposed financial institution – section 4(1) of the *Financial Institutions Act 2004* requires the inclusion of the word “bank” in the title of the financial institution. Also, it requires the name to not closely resemble the name of an existing bank and is likely, in the Reserve Bank’s opinion, to mislead the public. In addition, section 58 of the *National Reserve Bank of Tonga Act 1988* requires the written consent of the Cabinet for a financial institution conducting banking business in the Kingdom by a name which includes any of the words “Central”, “Kingdom”, “National”, “Reserve”, “Royal”, “State”, “Tonga”, or their equivalent in any other language. Applicant shall refer to the name of the proposed bank in connection with which the Application and other information or documents are being completed.
13. Evidence that the applicant is a company, which may be locally incorporated or an overseas company – certificate of incorporation. If the applicant intends to apply for local incorporation under the Companies Act, the applicant must register under a name that excludes the word “bank” given section 4(2) of the *Financial Institutions Act 2004* requires only banks licenced under the Act to use the word “bank” in its name. The applicant may later change its name to include the word “bank” only upon the issuance of a licence under the *Financial Institutions Act 2004*.
14. Where the applicant is a financial institution and an overseas company, evidence of:
 - a. incorporation in home country;
 - b. current financial institution license in home country;
 - c. relevant law and regulatory requirements relating to licensing and supervision of financial institution in home country;

- d. being subject to comprehensive supervision and regulation on a consolidated basis by the appropriate authorities in home country and such authorities have no objection to the applicant carrying on banking business in Tonga.
15. Minimum capital of no less than TOP2 million (after establishment expenses) in the following structure:
- a. if incorporated in Tonga, paid up capital;
 - b. if incorporated abroad, assigned capital in Tonga;
- This capital requirement must be deposited with a bank that is currently licenced by the Reserve Bank under the *Financial Institutions Act 2004*.

II. Other Primary licensing requirements specified by the Reserve Bank (*Refer to Form 1*)

16. Ownership Structure

- a. brief history of the applicant and related entities
- b. initial level and structure of capital and commitment to observe minimum capital requirements of the Reserve Bank or advised individually to the financial institution. Where applicant is an overseas company, evidence of ability to maintain a minimum unencumbered capital for the applicant's business in Tonga should a licence be granted.
- c. list of shareholders showing whether they are foreign or local, number and percentage of voting shares in proposed financial institution, names of other shareholders within second degree of consanguinity or affinity
- d. a commitment from shareholders holding more than 10% of voting shares that they will provide additional capital as necessary and that the shareholding represents a long term commitment
- e. bio-data sheets for individuals holding more than 10% of the voting shares together with an audited statement or for corporate shareholders audited annual accounts for the last three years (*Refer to Form 2*)

17. Board and Management

- a. list of directors
- b. an organizational chart showing the names and positions of senior officers and offshore reporting lines where appropriate
- c. bio-data sheets for directors and senior management¹ together with a declaration by the authorized representative that the proposed directors and senior management are not disbarred in terms of Section 26 of the *Financial Institutions Act 2004* (*Refer to Form 3*).

18. Business of the applicant – the applicant's business must be "banking business" as per the *National Reserve Bank of Tonga Act 1988*. It must at no time involve any activities other than those permitted activities stated in Section 27 of the *Financial Institutions Act 2004*, or other activities as the Reserve Bank may specify. The applicant is to provide a business plan covering at least the first three (3) years of operations. (*Refer to Form 4 for the format of the business plan*).
- a. outline of proposed activities and scale of operations including details of any specialized services proposed and of any relevant expertise

¹ Senior management is defined as the chief executive, the country head of a foreign incorporated licenced financial institution, the senior officer outside Tonga with responsibility for overseeing the Tongan operations of a foreign incorporated licenced financial institution, managers reporting directly to the chief executive or country head, managers with direct or matrix reporting responsibilities offshore

- b. detailed projections of profit and loss statements, balance sheets, and cash flow statements for each of the first three years of operation. The basis on which these assumptions are made must be included.
- c. location of head office and outline of branch network envisaged and the time frame over the network will be established
- d. proposed date for commencement of operations.

19. Prudential Management

- a. A board resolution on an agreement to organize a financial institution
- b. Signed and notarized constitution or memorandum and articles of association
- c. Economic justification: the business case for establishing a financial institution in Tonga. Particular emphasis should be placed on impacts on the financial system, its components and the economy. Feasibility studies conducted should be attached. (*Refer to Form 4*)
- d. external auditor's certificates verifying the level of capital of the applicant
- e. an outline of detailed operational expenses expected to be incurred, and projected establishment costs. These require confirmation by an external auditor.
- f. a Board resolution or written undertaking (if foreign incorporated) appointing authorized representative for the purposes of the application
- g. Signed declaration from the Board of Directors and/or authorized representative of the applicant that all information included on Forms 1-4 including enclosures and attached documents are true and correct, and that the Reserve Bank may revoke the license if it is granted on the basis of information that was false or misleading in any material particular. Any information or document that is false or misleading in any material particular in connection with an application shall be considered as an offence as provided under Section 6(4) of the FI Act.

20. Other

- a. a Board resolution or written undertaking (if foreign incorporated) stating that if granted a license, depositors and creditors of the Tongan operation shall have priority with respect to the assets of the licenced financial institution in the case of bankruptcy or dissolution of the parent company of head office [refer Section 35(1) of the *Financial Institutions Act 2004*].
- b. a Board resolution or written undertaking (if foreign incorporated) stating that if granted a license, the applicant will comply with all rules, regulations, laws and prudential requirements from the commencement of the operations.
- c. a Board resolution or written undertaking (if foreign incorporated) stating that if granted a license, the applicant will comply with all rules, regulations, laws and prudential requirements from the commencement of the operations.
- d. a Board resolution or written undertaking (if foreign incorporated) stating that if granted a license, the applicant will comply with all rules, regulations, laws and prudential requirements from the commencement of the operations.
- e. in the case of an applicant who is foreign incorporated, a written undertaking to keep the Reserve Bank informed of any significant developments adversely affecting its financial soundness and/or reputation globally, and to provide promptly to the Reserve Bank copies of its published financial accounts and any significant media releases.
- f. detailed policies and procedures for measuring, monitoring and controlling credit, interest rate, foreign exchange, liquidity, money laundering/financing of terrorism, and operational risks including a copy of the Business Continuity/Disaster Recovery Plan intentions for internal and external audit of the Tongan operations.

- g. an outline of accounting and information controls designed to ensure the integrity and security of data so that managers are continuously and accurately informed of the condition of the financial institution and that information is provided to the Reserve Bank in a timely and accurate manner [refer to Sections 16 & 17 of the *Financial Institutions Act 2004*].
- h. an outline of information and accounting systems and “back-up” facilities.

III. GENERAL INSTRUCTIONS – Bank Licensing Forms 1, 2, 3, and 4

- 21. Terms used will have the same interpretation as in the *Financial Institution Act 2004*. As needed the Forms provide interpretation for other terms not included in the FI Act.
- 22. Submission of incomplete Form(s) and/or failure to pay prescribed fees will result in the delay in the consideration of the application until all requirements are complied with.
- 23. Do not leave any item blank or unanswered. Indicate if Not Applicable (NA), No/None as may be appropriate. Print legibly in ink or type responses to the items listed in the forms, including all information included in documents and annexes.
- 24. Should the allotted response space be insufficient for the information needed to complete or answer a particular item in any of the required licensing forms, additional sheets may be added. The additional sheet (blank form attached as “Bank License-AS”) must be keyed by number and letter to the appropriate form and item number indicating specific column titles, if any, for the response to be provided.
- 25. Other Documentation required under Attachment 1 of Form 3 (Confidential Financial Statement and Confirmation Inquiry Form) must be submitted and these form part of the Application.
- 26. Specific instructions on details of information and documents required are listed in detail in this ‘Guideline’ and also incorporated in each of the required Form.
- 27. For inquiries, you may contact the Governor, Deputy Governor or Head of Financial Institutions & Markets at telephone no. (676) 24-057 or email nrbt@reservebank.to. However, it should be emphasized that the completeness and correctness contained in the Form is the responsibility of the Applicant.

IV. ONGOING REQUIREMENTS

- 28. Once a bank is licensed it is subject to regular inspection and review by the Reserve Bank as part of its ongoing prudential supervision of licensees.
- 29. The application fee specified in paragraph 11, or any other prescribed annual licence fees required by the Reserve Bank, are to be paid upon grant of a licence and annually thereafter.

Compliance with Prudential Statement No. 12

30. This statement is effective from 1 May 2014. Non-compliance with the requirements of this Prudential Statement will be subject to corrective actions as provided under section 33 of the Financial Institutions Act 2004 and the administrative penalties outlined in Prudential Statement No.3 Administrative Penalties.

National Reserve Bank of Tonga

April

2014

