

# Guidance Notes on Setting up an International Bank in Saint Lucia

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## General

An international bank can be established in St. Lucia under the International Banks Act, 1999 (the Act). This is the legislation that governs the operation of international banks doing business from St. Lucia. The Act, and regulations made there under, outline the requirements and procedure to be followed in applying for a licence.

The first step is an application to the Minister of International Financial Services (the Minister) for his consent to incorporate an international business company in St. Lucia for the purpose of carrying on international banking business from St. Lucia. This process is essentially the due diligence exercise on the parent company and the individuals involved and is carried out by the Financial Services Supervision Unit (FSSU).

At the time of submitting the application for consent, the substantive application for a banking licence is also submitted to the Minister through the Director of International Financial Service (the Director) who is the head of the FSSU. This exercise is an assessment of the banking business intended to be carried out and involves a business plan with all the relevant technical and commercial data.

Normally, a decision on both applications will be given at the same time. The approval of the banking licence at this time will be subject to the incorporation and capitalisation of the company.

## Types of Licence

Applications will be considered for two (2) types of licence. The first is the Class 'A' Licence. This is a general banking licence without restriction as to with whom the bank can do business. The other type of licence is a Class 'B' licence. This licence restricts the persons with whom the bank can do business. The application for a Class B licence must include a list in the form of an undertaking of the persons with whom the bank will be doing business. With the permission of the Director, this list may be modified after the bank has been established.

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## Capital Requirements

The Act stipulates minimum capital requirements for each type of licence. In addition to the capital requirement, each bank is also required to maintain a deposit of \$100,000.00 in an approved bank (not necessarily in St. Lucia). The licensed bank will be required to give a written undertaking that it will keep and maintain that deposit free and clear of all encumbrances during the currency of the licence.

In the case of a Class A licence the minimum paid up capital requirement is \$1,000,000.00. In the case of a class B licence the minimum paid up capital requirement is \$250,000.00. The Minister reserves the right to vary the level of initial capital required in certain circumstances e.g. Where deposits or loans are expected to be extremely large at or near inception, or where the nature of the capital is sufficiently illiquid so as to give rise to concern in this regard.

### Capital Adequacy Criteria

The Financial Services Supervision Unit of St. Lucia has adopted the risk-based approach to assess the capital adequacy of international banks licensed in St. Lucia under the International Banks Act.

The framework is as follows:-

- i) All assets recorded on the balance sheet of a financial institution as well as their off-balance sheet exposures are assigned to broad risk categories.
- ii) The total of the risk adjusted assets, both on and off balance sheet, is compared to the level of an institution's capital.
- iii) The qualifying capital comprises Tier I or Core Capital and Tier II or Supplementary Capital.
- iv) The ratio of capital (Tier I and Tier II) to risk weighted assets should be a minimum of 8% of which the core element (Tier I) should be at least 4%.

Detailed below are the Constituents of Capital, the Risk Weights for On-Balance Sheet Assets and the Credit Conversion Factors for Off-Balance Sheet Items

### Constituents of Capital

#### A. Tier 1 Capital or Core Capital consists of Equity and Disclosed Reserves i.e.:

- (i) Issued and fully paid ordinary shares/common stock and related surplus (share premium).

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- (ii) Fully paid perpetual non-cumulative preference shares and related surplus.
- (iii) Statutory Reserves as required by the Banking Act or the International Banks Act.
- (iv) Capital Reserves excluding Asset Revaluation Reserves.
- (v) General Reserves excluding General Reserves or Provisions for losses on assets.
- (vi) Retained Earnings as stated in the audited financial statements.

Note that the \$100,000 statutory cash deposit is not included in the calculation of capital.

## **B. Tier 2 Capital or Supplementary Capital consists of:**

- (i) Fixed asset revaluation reserves arising from a formal revaluation of the financial institution's real estate property but limited to one revaluation every five years and up to 20% of Tier 1 Capital.
- (ii) Securities revaluation reserves which arise from the practice of holding securities in the balance sheet valued at historic cost. The difference between the historic cost and the market value is discounted by 55%.
- (iii) General Provisions or General Reserves for losses on assets i.e. provisions and reserves not ascribed to specific assets. General provisions or general loan loss reserves made for specific assets are not eligible for inclusion in capital. General provisions or general loan loss reserves which qualify for inclusion in Tier II do so subject to a limit of 1.25% of risk-weighted assets.
- (iv) Hybrid debt capital instruments, i.e. a range of instruments that combine characteristics of equity capital and of debt e.g. perpetual cumulative preference shares, long term preference shares, perpetual subordinated term debt and mandatory convertible debt instruments, they should meet the following requirements:-
  - they should be unsecured, subordinated and fully paid.
  - they should not be redeemable at the discretion of the holder.
  - they should be available to absorb losses.
  - service obligations attached to the instrument should be deferrable.

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- (v) Subordinated debt includes conventional unsecured subordinated debt capital instruments with a minimum original fixed term to maturity of over five years and limited life redeemable preference shares. Such instruments are subordinated to the claims of both depositors and general creditors and are limited to a maximum of 50% of Tier I capital.

## C. Deductions from Capital

From Tier 1:

Goodwill arising from the acquisition of assets

From Total Capital:

Investments in subsidiaries engaged in banking and financial activities which are not consolidated in national systems (deductions will be made against total capital base and such investments would not be included in total assets).

Other Intangible Assets e.g. the capitalization of formation and other preliminary expenses.

## Risk Weights for On-Balance Sheet Assets

### A. Zero Percent Risk Weight

- a) Local and foreign currency.
- b) Deposits at the ECCB i.e. reserve account balances and special deposits.
- c) Treasury Bills and other securities issued or guaranteed by Central Government.
- d) Claims on local governments, statutory boards and other public sector entities in CARICOM and approved foreign countries and loans to these entities, all guaranteed by the Central Government.
- e) Claims on CARICOM and approved foreign Central Banks and Central Governments and other obligations fully guaranteed by these entities.
- f) Claims fully secured by cash on deposit at the reporting institution or Central Government securities and guarantees.

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## B. Twenty Percent Risk Weight

- a) Claims on domestic financial institutions and other financial institutions incorporated in CARICOM or approved foreign countries and loans guaranteed by such institutions.
- b) Claims on multilateral development banks and claims guaranteed or collateralized by securities issued by such banks.
- c) Bankers' acceptances held as part of an institution's investment portfolio.
- d) Cash items in the process of collection.

## C. Fifty Percent Risk Weight

Loans fully secured by mortgages on residential properties that are or will be occupied by the borrower or that are rented.

## D. One Hundred Percent Risk Weight

- a) Claims on the private sector.
- b) Other loans and advances.
- c) Premises, plant and equipment and other fixed assets.
- d) Real estate and equity investments.
- e) Capital instruments issued by other financial institutions (unless deducted from capital).
- f) All other assets.

## Audit requirement

The application must include confirmation from an approved auditor (can be an auditor from outside of St. Lucia with consent of the Minister), in the form of a letter, that he has agreed to carry out the annual audit required under the Act.

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## Local Attorney Requirement

The regulations require that an attorney practicing in St. Lucia be appointed. A letter from the attorney accepting the engagement must be included with the application.

## Resident Director Requirement

An international bank must have at least two directors one of whom must be a resident of St. Lucia. All directors must be natural persons. Most registered agents provide this service.

## Local Management Requirement

The Act does not mandate the appointment of a local manager. However, the application form calls for particulars of how banking management services are to be provided. Registered Agents are not permitted by the Director, to be involved in management of a bank.

## Corporate Management Requirement

The International Business Companies Act requires the appointment of a Registered Agent in St. Lucia, who will incorporate the company and provide the registered office. The Registered Agent also maintains the various registers (shareholders, directors and corporate secretary), which must be kept in St. Lucia. This is part of the service that most registered agents provide. A corporate secretary must also be appointed and whilst this does not necessarily have to be in St. Lucia, this is generally preferred.

## The Application for Consent to incorporate the Bank

This may be prepared by your registered agent in St. Lucia. In order to do so you will need to provide the following information and documentation:-

- (i) Particulars of the applicant (in some cases this will be the parent company of the proposed bank).
- (ii) Particulars of the shareholders and directors of the applicant/parent company. In the case of a public company quoted on a recognised stock exchange, this will not normally be necessary.
- (iii) Particulars of the company to be incorporated, (the proposed company), i.e. the name, address, nature of the business, the names of the proposed directors.

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- (iv) A due diligence questionnaire to be completed by each director and shareholder of the proposed company. Where the parent company is not a public quoted company, the shareholders and directors of the parent company who will not participate in the proposed company must also complete a questionnaire. If there are a large number of such shareholders, only those holding more than ten percent (10%) of the issued shares need to complete the questionnaire.
- (v) A notarised copy of:-
  - i. the photo page of the passport;
  - ii. the driver's licence
  - iii. of each director / shareholder.
- (vi) Confirmation of the current home address of the directors and shareholders, e.g. a copy of a current utility bill.
- (vii) A police report on each director and shareholder of the parent company and of the proposed company.
- (viii) A banker's reference for each director and shareholder.
- (ix) A lawyer's reference for each director and shareholder.
- (x) An accountant's reference for each director and shareholder.
- (xi) Curriculum Vitae for each director and shareholder.

## The Application for a Banking License

Again, this may be completed by the registered agent in St. Lucia. In order to do this you will need to provide the following information and documentation:-

- (a) The class of licence required.
- (b) The amount of share capital of the proposed company and the par value of each share.
- (c) The method of raising the share capital (e.g. cash investment by parent company).

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- (d) Certified evidence of capital and deposit requirement. This takes the form of a notarised declaration by the shareholder of the proposed company stating how it is proposed to capitalise the company and an undertaking that the shareholder will provide the capital and deposit required after the company has been incorporated. Where possible the shareholder should provide proof that the capital exists.
- (e) A duly completed and executed 'Statutory Declaration' in the prescribed form, a copy of which is attached, by each director and senior manager of the proposed company. Please note that this declaration must be notarised.
- (f) A notarised certified copy of the incorporation /constitutional documents of the parent company.
- (g) Particulars of any shareholders loans to the proposed company.
- (h) Three (3) years (at least) projected income statement of the proposed company.
- (i) Comparative financial statements of the last three (3) years for the parent company.
- (j) Financial statements for the parent company for the current year up to the end of the month before the application is being made.
- (k) In the case of the re-domiciliation of an existing company, (9) and (10) above must be supplied in relation to that company.
- (l) The business plan for the proposed company. The business plan should include:
  - An organisational chart showing the group structure, where the Applicant is a member of a group.
  - An economic benefits chart showing the flow of economic benefits where this is not plain and obvious from reading of the business plan;
  - A detailed feasibility study explaining why the proposed company wishes to establish an international bank and the assumptions underlying the financial projections.
  - A clearly defined list of intended depositors (in the case of applicants for a Class B licence);
  - A detailed account of how interest has been calculated;
  - Detailed assumptions (including security measures and risk management procedure) pertaining to derivative contracts, e-banking, etc. in which the proposed company may become engaged;



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- A full account of the proposed company proposed Investment Strategy including evidence that the proposed company will maintain a well-balanced and diversified portfolio.
- Details of the Applicant's administrative controls, showing the division between operational and administrative functions and indicating the checks in place
- A risk analysis report evidencing that the applicant has analysed the risks inherent in the types of activity proposed
- Detailed information on the proposed company correspondent banking relationships, including information on the correspondent banks themselves.
- Where the Applicant is an existing bank detailed Capital Adequacy Computation Worksheets based on the assets included in each projected balance sheet and computed in accordance with Basle principles.
- Detailed Capital Computation Worksheets based on the Capital items in each projected balance sheet.
- Requisite authorisations and consents from the home regulator or that of a parent company, as appropriate.
- The business record, competence and experience of the persons who will operate and manage the bank.
- Details of the nature and sufficiency of the financial resources of the parent company and the bank, and
- Details of the soundness and feasibility of the plans of the bank for the conduct and development of the bank's business.

If necessary your registered agent may be able to assist in compiling the business plan or any part of it. In any event, the registered agent will review the business plan and projections to ensure that they meet the expectations of the Director.

Details of corporate structure. This requires information as to any other companies within a group, e.g. parent, associate companies and subsidiary companies.

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## The Application to Incorporate

Once the consent to incorporate has been granted, the registered agent will proceed to incorporate the company based on the information provided for the applications. An international bank would normally be exempt from taxation in St. Lucia. There is an option however, to elect to pay income tax at the rate of 1% which may have advantages in some situations.

When the company has been incorporated, the registered agent will prepare the minutes, resolutions and other organisational documents needed to:-

- (a) appoint the directors
- (b) issue the shares
- (c) open bank accounts
- (d) secure the statutory deposit required under the Act, and
- (e) meet any other requirements.

## Redomiciliation

Where a company is being redomiciled into St. Lucia from another jurisdiction the registered agent will need the following additional information and documentation:-

- (a) a copy of the Memorandum and Articles of the company;
- (b) a copy of the Certificate of Incorporation of the company;
- (c) a duly executed resolution of the board of directors of the company authorising the redomiciliation of the company into St. Lucia;
- (d) a Certificate of Good Standing from the company registry of the Country from which the company is moving; and
- (e) a copy of the organisational documents and respective registers of the company, up to the date of the redomiciliation.

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## After the Grant of the License

After the license has been granted the Director will expect to have been provided with the following within ninety (90) days of the grant of the licence:

- (a) original (or notarised) bank statement showing that the capital has been injected into the company where the capital is cash, or other evidence of capitalisation as the case may be;
- (b) original (or notarised) certificate of deposit showing that the \$100,000.00 security deposit is being held at an approved bank; and
- (c) a duly executed Agreement of Undertaking by the company in favour of the Government of St. Lucia in respect of the security deposit.

The law firm or registered agent can prepare item (3) above and forward same for execution by the parties.

## Books and Records

Every licensed bank is expected to maintain permanently at its principal office in St. Lucia books of accounts and records of its banking business.

## Reporting Requirements

Operators are expected to know and comply with the various reporting requirements under the Act, the Regulations and conditions of the licence.

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## Government and Professional Fees

### (A) Application/Licence/Incorporation

#### 1. CLASS A

(i) Government Fees	\$25, 800.00
(ii) Professional Fees	\$15,000.00 to \$20, 500.00

#### 2. CLASS B

(i) Government Fees	\$15, 800.00
(ii) Professional Fees	\$15,000.00 to \$20, 500.00

### (B) Annual Fees

#### 1. CLASS A

(i) Government Fees	\$25, 300.00
(ii) Registered Agent/Directorship Fees	\$10,000.00 to \$12, 350.00

#### 2. CLASS B

(i) Government Fees	\$15, 300.00
(ii) Registered Agent/Directorship Fees	\$10,000.00 to \$12, 350.00

Note: In the year of incorporation there is only one set of Government Fees, i.e. the amount paid at incorporation will cover up to 31<sup>st</sup> December of the year of incorporation. The annual fees in the year of incorporation will be applied pro-rata up to 31<sup>st</sup> December in the year of incorporation.