

Regulation for Offshore Banks Operating in the Special Economic Zone

CHAPTER ONE

PRELIMINARY

- Introduction** 1. This Regulation is issued pursuant to paragraph (a) of section 55 and paragraph (b) of section 81 of Law No. 24/2014 (Special Economic Zone Act).
- Short Title** 2. This Regulation shall be cited “Regulation for Offshore banks operating in the Special Economic Zone.”
- Commencement** 3. This Regulation shall come into effect from the date of its publication in the Government Gazette.

CHAPTER TWO

LICENSING

- Prohibition** 4. No person shall engage in the offshore banking business in a special economic zone, unless they have a licence issued by the Authority.
- Licence Applications** 5. (a) An application for license to engage in the offshore banking business in a special economic zone established under Law no. 24/2014 (Special Economic Zone Act) shall be applied for in writing to the Board of Investments, and shall be in such form and shall contain such information as prescribed by the Authority.
- (b) In the case of an application for licence, the information submitted with the application shall include, but need not be limited to the following.
- (1) An authenticated copy of Memorandum of Association, Articles of Association and corporate governance documents of the applicant, and of its audited annual balance sheets and profit and loss statements for the last 3 (three) years.

- (2) A description of the proposed capital funds of the applicant, the sources of such funds and the amount that has been paid in.
- (3) The premise or the address at which the applicant proposes to do business, and the name under which the applicant intends to conduct offshore banking business.
- (4) The names, places of permanent residence, business and professional backgrounds, and other information determined by the Authority, of each proposed major shareholder and board of director of the applicant.
- (5) The names, places of permanent residence, educational and professional backgrounds, and other information determined by the Authority, of each proposed executive officer of the applicant.
- (6) For each major shareholder and executive officer, an affidavit duly signed by the individual stating any convictions for crimes or no conviction, and any involvement in a managerial function in an insolvent company or a company subject to insolvency proceedings, if any.
- (7) A business plan describing the objectives and business activities intended for the proposed entity, including a description of its organizational structure and internal controls including measures appropriate to counter Money -laundering and the financing of terrorism.
- (8) Projected balance sheets, profit and loss accounts and cash flow statements for the first 3 (three) years of operations shall also be submitted.
- (9) In the case of an application by a foreign bank, a statement from the foreign supervisory authority responsible for the prudential supervision of the foreign entity to the effect that it has no objection to the proposed establishment of offshore banking business in the Maldives by the applicant. This statement also shall state that it will exercise consolidated supervision over the applicant.

- (c) The Authority shall, within 7 (seven) days of receipt of an application forwarded by the Board of Investment that was made under paragraph (a) of this section, provide notice to the applicant on whether or not the application is complete. If the application is deemed incomplete, the Authority shall inform the applicant of all missing information and documents and provide the applicant with a time period during which the applicant shall provide the missing information. Where the applicant fails to provide the requisite within the specified period, the Authority shall have the discretion to reject such an application.
- (d) The Authority shall, within 30 (thirty) days of its receipt of a complete application, grant or deny the requested licence. This period shall commence to run when the Authority notified to the applicant under subsection (c) that the application is a complete application, or when the applicant completes the incomplete application within the time frame provided by the Authority.
- (e) Applications for licences shall be accompanied by an application processing fee of 3,000 (three thousand) American Dollars or any other amount as may be determined by the Authority.

**General
Licensing
Requirements**

- 6. (a) Licence shall be granted only to companies registered in the Republic of Maldives or another country.
- (b) Licence may be granted to a foreign bank only if all its branches and officers are subjected to consolidated supervision, by the supervisory authority in the country in which the foreign bank maintains its head office, to a level determined to be adequate by the Authority
- (c) Offshore banks licensed under this Regulation shall provide 60 (sixty) days prior written notice to the Authority and to its customers of the closing of its business and they shall file with the Authority at the time of submitting such notice a plan providing for the orderly transfer or termination of the business.

**Conditions of
Licensing**

- 7. (a) The Authority may impose additional licence conditions when granting a license or subsequent to the initial licensing may modify or waive any conditions of licensing in writing.

- (b) Each Offshore bank shall be subject to undertake the following.
- (1) The bank shall comply with the capital adequacy and with all other prudential requirements of this Regulation as well as with all directives and instructions issued by the Authority.
 - (2) The bank shall maintain appropriate internal controls, audit procedures and other appropriate systems and policies to manage the risks of its business.
 - (3) The bank shall not engage in criminal activities, including criminal breach of trust, fraud, money laundering and the financing of terrorism.
 - (4) The bank shall operate its business only under the name that has been approved by the Authority.
 - (5) The bank shall conduct its offshore banking business activities by an office established in the place licensed by the Authority.
 - (6) Major shareholders, members of board directors, branch manager and executive officers of the bank shall at all times be fit and proper according to the standards stipulated by the Authority.

- | | | |
|---|----|--|
| Opening another office, branch or a subsidiary | 8. | No offshore bank shall open another office or branch in a place other than the office permitted by the Authority, without the prior approval of the Authority. Nor shall an offshore bank open a subsidiary without the prior approval of the Authority. |
| Merger | 9. | No bank shall merge or consolidate with any other bank or acquire, in whole or in part, either directly or indirectly, the assets of, or assume the liabilities of, any other bank except with the prior approval of the Authority. |

CHAPTER THREE

CAPITAL, AND RULES FOR CONDUCTING OFFSHORE BANKING BUSINESS IN A SOUND AND

PRUDENT MANNER

- Capital**
10. (a) An offshore bank shall at all times maintain a minimum unimpaired paid-up capital or assigned capital of not less than 60,000,000 (sixty million) Maldivian Rufiyaa, or such higher amount as may be specified by the Authority.
- (b) An offshore bank shall at all times maintain their capital adequacy ratio not below than the ratio specified by the Authority, unless otherwise authorised by the Authority.
- General Banking Principles**
11. (a) An offshore bank must conduct their affairs in a sound and prudent manner and in accordance with any conditions attached to their licence, and the regulations, instructions, rulings and orders issued by the Authority.
- (b) Each offshore bank must maintain adequate capital and liquidity for discharge of liabilities; and shall make adequate provision for debt, for depreciation of assets, and for other losses. The banks also shall maintain adequate accounting and other records of business observe effective controls of risks and ensure that their assets are and liabilities are sufficiently diversified to ensure sustained operations.
- (c) Offshore banks must follow standards and procedures which may be determined by the Authority with regard to section (b). Offshore Banks shall also be subjected to any prudential requirements set by the Authority to ensure that the banks conduct themselves in sound and prudent manner, including procedures and methods of calculation to be followed in their application with regard to capital adequacy; asset-classification; suspension of interest accrual and provisions for loan losses; limits on credits extended to single borrowers, groups of connected borrowers, and connected persons; transactions with related parties; foreign currency open position limits; inter-bank placements; liquidity management; and other such prudential matters.
- Banking Activities**
12. (a) Unless otherwise stated in this Regulation, an offshore bank, except those licensed to conduct investment banking business, may engage in any or all of the following activities subject to any conditions of its banking licence.
- (1) receiving money deposits or other repayable funds, with

or without any interest or any service charge;

- (2) extending credits whether secured or not by collateral, including without limitation all form of credit; factoring, with or without recourse; financing of commercial transactions, including purchasing negotiable instruments at discount without recourse; and financial leasing services;
- (3) buying and selling for its own account or for the account of customers including underwriting and brokerage services: money market instruments including cheques, bills of exchange, promissory notes and certificates of deposit; foreign currencies; bullion; exchange and interest rate instruments; stocks and other securities; and other derivatives relating to currencies, stocks, bonds, precious metals or Interest rates. Any securities underwriting activities shall be conducted subject to a limit on the bank's commitment of 15% (Fifteen percent) of the bank's capital base and reserves per issue, and any other conditions imposed by the Authority under paragraph (b) of this section in connection with a bank's provision of underwriting services generally, or, on a case-by-case basis, in connection with particular underwriting commitments undertaken by a bank.
- (4) acting as agent or broker in connection with the sale of insurance;
- (5) entering into contingent commitments, including guarantees and letters of credit, for its own account and for the account of customers;
- (6) providing clearing, settlement and transfer services for money, securities, payment orders and payment instruments such as cheques, credit, debit and other payment cards, travellers' cheques and bank drafts, wire transfers, and pre-authorized debits and credits;
- (7) money brokering;
- (8) providing trust services;
- (9) providing safe deposit box services;

(10) providing services as portfolio manager of securities or as financial adviser or as financial agent or consultant;

(11) providing financial information and credit reference services; and

(12) Any other activity authorized by the Authority

(b) Offshore banks seeking to engage in the activities listed in subparagraphs (a) (3), (4), (8) and (10) of this section, shall obtain approval of the Authority prior to engaging in such activities. However, such approval shall not be required in connection with the purchase and sale of money market instruments as referred to in subparagraph (a) (3) and foreign exchange. In approving requests for authority to engage in these activities, the Authority shall consider the following:

(1) whether the applicant has the financial resources, management capacity, technical knowledge, risk management procedures and other requisites to offer such services in a safe and sound manner;

(2) whether the interests of the bank's depositors and other creditors will be prejudiced through the bank's engagement in the activity; and

(3) whether the provision of these services in the manner proposed will be pro-competitive and otherwise further the public interest.

The Authority may, in its discretion, condition its approval as it believes appropriate.

(c) Each offshore bank licensed to conduct investment banking business may in compliance with their licensing conditions, engage in all activities under paragraph (a) of this section except for accepting deposits stipulated in paragraph (a) (1). Moreover, the limitation given under paragraph (3)(a) shall not apply to the said offshore banks licensed to conduct investment banking business.

Change in Major 13. Every offshore bank shall, within 3 (three) days of such change, provide details to the Authority if there is a change in the major shareholders of

- Shareholders** the bank.
- Confidentiality** 14. It shall be prohibited for the Authority, employees of the Authority, offshore banks, employees of offshore banks, their appointed external auditor, or any other person who has access to the records, books, accounts and any other such documents of an offshore bank, to directly or indirectly disclose to a third party information on the offshore bank, their major shareholders, beneficial owners and customers, without a decision of a Court of law or without the consent of the person whom the information is with regard to.
- Exceptions to Confidentiality** 15. The provisions of section 14 of this Regulation shall not apply to disclosure of information in the following cases:
- (1) Disclosure of information to facilitate the performance of duties of the external auditors of the offshore bank.
 - (2) Disclosure of information and documents requested by the Authority.
 - (3) Any disclosure pursuant to the reporting obligation under the Prevention of Money Laundering and Financial Terrorism Act.
 - (4) An offshore bank's disclosure of all or some information on a customer's transactions to prove the bank's claim in a judicial proceeding between it and its customer regarding these transactions.

CHAPTER FOUR

BOARD OF DIRECTORS, MANAGEMENT AND INTERNAL AUDIT

- Board of Directors** 16. (a) The board of directors of an Offshore bank shall have overall responsibility for establishing the policies and procedures under which the affairs of the bank shall be governed and for overseeing the activities of management. In particular, the board of directors shall establish the risk-management policies for all major functions of the bank, including the lending, investments, asset-liability management, audit, internal control systems and accounting standards of the bank.
- (b) The board of directors shall consist of not less than 5 (Five)

directors, and shall be an uneven number.

- (c) All members of the board of directors must be fit and proper persons according to the standards set by the Authority.
- (d) The members of the board of directors shall act honestly and in good faith, and be loyal to the best interests of the bank. In carrying out their functions they shall exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. In the event that members of the board of directors fail to exercise such care, diligence, skill and loyalty in protecting and promoting the interests of the bank, they may be held personally liable in damages to persons who suffer injuries that are caused by their failure to exercise such care, diligence, skill and loyalty. A case may be filed in the Court against members of boards of directors seeking damages for such failure.

- Management** 17. (a) The board of directors of an offshore domestic bank shall appoint one of its members as the managing director or chief executive officer of the bank. The board of directors of an offshore foreign bank operating in the Maldives shall appoint a designated branch manager. The managing director or the chief executive officer or the designated branch manager shall be responsible for implementation of the decisions of the board of directors and for the management of the day-to-day operations of the bank.
- (b) Each Offshore bank shall also appoint suitably qualified persons as executive officers responsible for major aspects of the Offshore bank's operations, including lending, internal audit, compliance with the applicable laws, regulations, instructions, directives and procedures and asset and liability management. The board of directors may designate from among its own members appropriate committees of the board to oversee the activities listed in this paragraph and other activities of the bank.
- (c) A person to be appointed to serve in the position of managing director, chief executive officer, branch manager, and other executive officers must be fit and proper persons according to the standards set by the Authority

- Internal Audit** 18. Each Offshore Bank shall conduct internal audit on a regular basis. The Board of Directors shall include in the Audit Charter the responsibilities, duties and conditions of the internal auditors.

CHAPTER FIVE

ACCOUNTS AND FINANCIAL STATEMENTS

- Accounting Principles and Financial Statements**
19. (a) Each Offshore bank shall maintain proper accounts, records and other documents as required for orderly operations.
- (b) Each Offshore bank shall prepare their financial statements consisting of their balance sheets, profit and loss accounts, annual cash flow statements, and statements of changes in capital accounts in a manner that gives a true and fair view of the financial position of the bank. The banks shall also prepare these statements in conformity with the International Financial Reporting Standards, and in compliance with any special requirements set by the Authority.
- Auditing the Annual Financial statement**
20. (a) Each Offshore bank shall appoint an external auditor who is qualified and experienced in the audit of banks. The appointed external auditor shall be an auditor acceptable by Authority.
- (b) Each Offshore bank shall audit their annual financial statements by the external auditor.
- Reporting their annual financial statements**
21. Each Offshore bank shall within 4 (four) months after the end of their Financial year, send a copy of each bank's audited financial statements and annual report to the Authority. The bank shall also provide any additional information or documents requested by the Authority in relation to their annual report or annual financial statement.

CHAPTER SIX

SUPERVISION

- Providing Information and supervision**
22. (a) Each offshore bank shall furnish any information requested by the Authority, in such form and detail and at such time specified by the Authority.
- (b) The Authority may at any time cause an on-site examination of an offshore bank to be made by one or more officers of the Authority, or by any other person or persons appointed by the Authority for the purpose of determining the condition and

performance of the bank, the adequacy of management and the board's policies for managing risk, and the extent to which it complies with the provisions of laws and regulations regarding the management of its activities, and any other matters deemed relevant by the Authority.

- (c) An offshore bank shall provide, and corroborate in writing when necessary, any additional information or documents if requested by the Authority. Where such additional information or documents require attestation in writing, an attestation shall also be provided along with the requested information or documents to the Authority.
- (d) Any person authorized to carry out an examination under this section shall be subject to confidentiality requirements and may require any member of the board of director, executive officer, employee or agent of an offshore bank, or its subsidiaries or affiliates, to provide access to all necessary books, accounts, documents, and records. The requested information shall be submitted to the bank examiner in a timely manner.
- (e) Bank examiners shall prepare a report based on the results of the examination and shall submit the report to the board of directors of the bank.

CHAPTER SEVEN

CORRECTIVE MEASURES AND ADMINISTRATIVE PENALTIES

**Corrective
Measures and
Administrative
Penalties**

- 23. (a) The Authority may take any measure or impose any administrative penalties stipulated in paragraphs (b) of this section, as applicable, in cases where it determines that an offshore bank, an executive officer of an offshore bank or any other person has engaged or is engaging in an unsafe or unsound banking operation, or has violated the provisions of this regulation, conditions of licensing, instruction or order issued by the Authority.
- (b) If any of the person stated in paragraphs (a), have violated or the Authority has reason to believe that they will violate any of the matter stipulated in paragraph (a), the Authority may take one or more of the following measures or impose one or more of the

following administrative penalties.

- (1) send a written warning to the bank;
- (2) require the bank to take affirmative action to correct the violations;
- (3) give orders to the bank to cease and desist from particular actions and activities;
- (4) Impose additional conditions in carrying on the Bank's business;
- (5) require that the bank cease some of its operations;
- (6) advice to suspend or remove from office the chief executive officer, managing director, or other executive officer or an agent responsible for its major activities of the bank , depending on the seriousness of the violation;
- (7) require that the bank remove the chairman or any of the members of the bank's board of directors;
- (8) Where the Authority believes that the chief executive officer, managing director, or executive officer or agent responsible for its major activities of the bank, is personally responsible for the violation, the Authority they may impose penalties on them.
- (9) impose an administrative penalty, provided that, at the discretion of the Authority, administrative penalties may be imposed on a daily basis until the violation has eased or compliance is obtained. Such administrative penalties may be of an amount between 10,000/- (ten thousand) Maldivian Rufiyaa and 100,000/- (one hundred thousand) Maldivian Rufiyaa on a daily basis. However, the total aggregate administrative penalty imposed shall not exceed 5 % (five percent) of the bank's paid-up capital;
- (10) Revoke the offshore bank's licence.

CHAPTER EIGHT

RESOLUTION PROCESS

24. (a) Where the Authority determines that an offshore bank fails to comply with prudential requirements for safe and sound banking operations, after considering its implication to the financial sector, the Authority may initiate a resolution process of the offshore bank.
- (b) The Authority shall set and publish the circumstances in which a resolution process of an offshore bank may be initiated, the procedure and the rules that will be followed in the resolution process, as well as the powers and the measures that the Authority shall have with respect to a resolution process that the Authority may undertake.

CHAPTER NINE

ANCILLARY PROVISIONS

- License Fee** 25. (a) Each Offshore bank shall pay the Authority an annual license fee of 30,000 (thirty thousand) American Dollars or any other amount as may be determined by the Authority.
- (b) The annual fees for each year shall be made to the Authority not later than by the end of the month of January. Where an offshore bank fails to pay the annual fee within the given duration, the Authority shall have the discretion to revoke the license or charge an administrative penalty on a daily basis until the fee is paid.
- (c) There shall be no refund of any license fee paid to the Authority in the event that a license is revoked or suspended.
- Services which may be provided to residents** 26. (a) Offshore banks shall not provide any other services to residents except for the following cases.
- (1) Providing banking services to a bank, a financial company, a leasing company or an insurance company which is licensed or authorized by the Authority.
- (2) Investing in securities of a bank, a financial company and a leasing company which is licensed or authorized by the Authority.

(3) Providing credit to residents, with the approval of the Authority and in the manner authorised, through a bank licensed under Law no. 24/2010 (Maldives Banking Act),

(b) An offshore bank may invest in treasury securities.

Compliance with the Prevention of Money Laundering and Financial terrorism regulations

27. Every offshore bank shall fully comply with the regulations enforced and the directions given by the Authority, in relation to prevention of money laundering and financial terrorism.

Definitions

28. Unless otherwise specified in this Regulation, the following words and terms shall have meaning assigned to them below.

“residents” shall mean following Natural or Legal Persons active in the Maldives economy.

(a) Every Natural Person who is expected to live in the Maldives for at least one year or more; or.

(b) Every Legal Person who is expected to carry out an Economic Activity in the Maldives for at least one year or more.

“Board of Investment” refers to the ‘Board of Investment’ created under section 56 of the Act.

“Act” refers to Law No. 24/2014 (Special Economic Zone Act)

“Banking business” means

(a) the business of accepting money, in the form of deposits or other funds, and the use of such deposits or funds, either in whole or part, for -

(1) granting credits or investments

(2) the business of acquiring, under an agreement with a person, an asset from a supplier for the purpose of

letting out the asset to the person, subject to payment of instalments together with an option to retain ownership of the asset at the end of the contractual period;

- (b) Investment banking business;
- (c) Islamic Banking Business;
- (d) Any other business determined by the Authority.

“Offshore bank” means a person holding a licence under this Regulation to engage in the Offshore banking business,

“Offshore Banking Business” refers to banking business that ordinarily provides banking services only to non-residents, in a currency other than the Maldivian Rufiyaa.

“Authority” means the Maldives Monetary Authority established under Law No. 6/81 (Maldives Monetary Authority Act)

“major shareholder” means a person who, directly or indirectly, holds a minimum of 10% (ten percent) of the capital or the voting rights of a legal entity, or who through other means, in the opinion of the Authority, is able to control the legal entity of which he is deemed to be a major shareholder.

“executive officer” means a person who is an employee of an Offshore bank, regardless of title, participates in policy-making functions, or is responsible for any material portion of the business activities of an Offshore bank, or is authorized to commit the bank’s funds by making loans or investments. The term includes the members of the board of directors, the president, the managing director, vice president, the chief lending officer, the chief financial officer, the chief executive officer, general manager and the treasurer of a bank.