

The Central Bank of The Bahamas

GUIDANCE NOTICE

USE OF THE WORDS “BANK”, “TRUST”, “TRUST COMPANY”, “TRUST CORPORATION”, “SAVINGS”, OR “SAVINGS AND LOAN” OR ANY OTHER DERIVATIVES IN ENGLISH OR ANY OTHER LANGUAGE (PROHIBITED WORDS) IN THE NAME OF A COMPANY

Section 7 of the Banks and Trust Companies Regulation Act (BTCRA) provides that:

“7. (1) Except with the approval of the Governor no person, other than a licensee acting under and in accordance with the terms of his licence, shall-

(a) use or continue to use the words "bank", "trust", "trust company", "trust corporation", "savings" or "savings and loan" or any of their derivatives either in English or in any other language, in the description or title under which such person is carrying on business from within The Bahamas whether or not such business is carried on in The Bahamas;

...

(2) Except with the approval of the Governor-

(a) the Registrar General shall not register a company;

...

with a name which contains the words "bank", "trust", "trust company", "trust corporation", "savings" or "savings and loan" or any of their derivatives either in English or in any other language.

(3) Before giving his approval under subsection (1) or (2) the Governor may require of any such person such references and such other information and particulars as may be prescribed.”

The purpose of this guidance note is to give guidance on the Central Bank’s (“the Bank”) policy on the granting of specific consents for the use of prohibited words by any company, other than a licensee of the Bank.

The Bank’s general policy is that the Bank will not give consent for the use of a prohibited word where its use could mislead the public into believing that the company in question is, or may be, a licensee of the Bank or that it is under the direct supervision of the Bank.

The Bank will obviously not give consent where the use of a prohibited word was part of an apparent deliberate attempt to mislead or defraud members of the public. Otherwise, in

exercising discretion whether to grant consent, the Bank will take into account the following criteria:

- a. the extent to which use of a prohibited word is indicative of banking business or trust business and therefore its use could mislead the public into thinking that the company is a licensee of the Bank;
- b. the nature of the activity actually carried on by the company, i.e. whether the company carries on an activity which is akin to banking business or trust business or is authorised by the law of The Bahamas to carry on such respective business;
- c. whether the company concerned is part of a larger group whose parent company is incorporated in or outside The Bahamas and has a well-established brand name, which includes a banking name (and the use of that name is not unlawful in the place where the parent company is incorporated).

The Bank will regard the first of the above criteria as over-riding. That is, regardless of the nature of the business of the company, the Bank considers that there are certain names which are clearly misleading in their own right and for which the Bank should not give consent. This is because it could blur the distinction between a licensee of the Bank and entity not licensed by the Bank in the minds of the public, and create an unfortunate precedent, which could be exploited by unscrupulous companies.

Where a name or description is not clearly misleading, but could be depending on the context, the Bank will have regard to criterion (b) above. That is, if the company engages in an activity which is akin to banking business or trust business (even if it does not involve soliciting or taking of deposits), the Bank will not normally give consent for the use of a prohibited word, even if its use is not clearly misleading.

Criterion (c) above will be regarded as subsidiary to the other two. That is, where the company concerned wishes to use a prohibited word which is not clearly misleading and the company does not engage in activity which is akin to banking business or trust business, the use of a name which is the existing well-established brand name of its parent company may be an additional factor which would influence the Bank to grant consent to the use of the name in question.

The Bank may attach conditions to its consent for the use of a prohibited word. Such conditions may include, but are not limited to, the following:

- a. the company should not engage, now or in the future, in activities which are akin to banking business or trust business;
- b. the company should provide the Bank with a copy of its audited accounts and annual report each year; and
- c. the company should agree to provide the Bank with whatever additional information may be required from time to time for the purpose of ascertaining whether the conditions attached to a specific consent are being fulfilled;

Persons wishing to use a prohibited word as part of their business name, need to apply for the Bank's consent. Applications should be made to the Bank in advance of using that name or description to carry on business in The Bahamas. Each application will be considered on its own merits. The applicant should provide to the Bank information required under the Banks and Trust Companies (Restriction on Use of Banking Names and Descriptions) Regulations, 2002.

An application for approval to use a prohibited word should be sent to the following address:

The Inspector of Banks and Trust Companies
Central Bank of The Bahamas
Bank Supervision Department
Market Street
P.O. Box N-4868
Nassau, The Bahamas

After receiving the application, the Bank will, as soon as practicable, issue either a consent with appropriate conditions (if any) attached or a refusal of consent to the applicant.

The conditions for consent should be observed at all times by the company concerned. Non-compliance with the conditions may result in withdrawal of the consent by the Bank.

Any questions regarding this guidance note should be directed to:

The Policy Unit
Bank Supervision Department
The Central Bank of The Bahamas
Market Street
P.O. Box N 4868
Nassau, Bahamas
Tel (242) 302-2615
Fax (242) 356-3909
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