

Fact Sheet

Carrying on Trustee Company Business

The Cook Islands has been a leader in the provision of trustee, fiduciary and corporate services for over three decades. It has created and developed a strong wealth management industry based on innovative and robust laws supported by experienced and reputable professionals and a judiciary known for respecting the rule of law. The following explains how to become a provider of trustee, fiduciary and corporate services under Cook Islands law.

Licensing

Companies seeking to carry on “trustee company business” in the Cook Islands must be licensed pursuant to the Trustee Companies Act 2014 (the “Act”). License applications are to be made to the Financial Supervisory Commission (the “Commission”), the body responsible for administering the Act, using prescribed forms.

The Act defines “trustee company business” as the provision of registration services to one or more offshore entities. A company provides registration services to an offshore entity if it:

a) registers an offshore entity under any law of the Cook Islands; or

b) provides a person or service that must be provided, as a matter of the laws of the

Cook Islands, by a licensed trustee company, c) provides trustee or fiduciary services.

An offshore entity is any entity, trust or other structure established under any of the following Cook Islands statutes: International Companies Act 1981-82; International Trusts Act 1984; International Partnership Act 1984; Limited Liability Companies Act 2008; Foundations Act 2012; or that is licensed under the Insurance Act 2008, Banking Act 2011 or Captive Insurance Act 2013.

The Licensee (the applicant)

The license applicant must be a company incorporated under the Cook Islands Companies Act 1970-71 or registered as a foreign company under that Act. It must have a paid up share capital of no less than NZD250,000. The ultimate beneficial ownership of such companies may be local and/or foreign, with foreign ownership requiring registration with and approval from the Cook Islands Business Trade and Investment Board pursuant to the Development Investment Act 1995-96. All key persons (shareholders, directors, anyone having executive control, compliance officers) of the licensee must be approved as fit and proper by the Commission in accordance with the requirements of the Act.

The licensee may appoint one or more subsidiaries to undertake its trust company business. Any such subsidiary will not need to be licensed and will only require approval from the Commission where it is not incorporated in the Cook Islands and is not at all times wholly managed and controlled by the licensee.

The licensee must maintain professional indemnity insurance cover to the value of at least three times its trustee company business annual fee revenue or thirty times the annual fee revenue received from its largest customer, whichever is the greater. Any such cover does not however need to exceed NZD10,000,000.

The licensee may establish a physical presence in the Cook Islands and carry on trustee company business within the Cook Islands. Alternatively, the licensee may have its license and trustee company business managed in the Cook Islands by another licensed trustee company, whereby having its own physical presence is not required.

The License

The Commission may grant a trustee company business license subject to conditions and can revoke a license in given circumstances. The license comes into effect on the date it is granted and continues in force until the date it is revoked by the Commission. A fee of NZD5,200 is payable upon making a license application and an annual fee of NZD5,200 is payable thereafter on the anniversary of the granting of the license.

Managed Trust Companies

A managed trustee company (“MTC”) in the Cook Islands is one that is licensed under the Act but does not have a physical presence in the Cook Islands. Instead, it has its trustee company business managed by a licensed trustee company (“LTC”) that has a physical presence. A MTC is required to submit a full licensing application to the Commission and will be subject to the same regulatory and anti-money laundering legislation as a LTC.

The MTC is not required to have a resident director, although the Commission may require a director be present for any audit or onsite inspection. It can conduct its business and keep its records at the offices of the LTC. That LTC can also provide the money laundering reporting officer and compliance officer (as required by legislation) to the MTC.

A MTC provides the licensee the benefits of having a trustee company business license without the cost of establishing and maintaining an office in the Cook Islands. It allows the licensee time to develop its business before deciding to establish a physical presence.

Private Trustee Companies

The Cook Islands does, in limited circumstances, permit the carrying on of trustee company business without licensing under the Act.

Section 5(3) of the Act provides that a Cook Islands international company (incorporated pursuant to the International Companies Act 1981-82) does not carry on trust company business where it acts as trustee of no more than three Cook Islands international trusts.

This form of private trustee company (“PTC”) is very popular amongst families wishing to retain management and control of the family wealth management structure. The administration of the structure is often outsourced by the PTC to a Cook Islands licenced trustee company.

An individual, company or other entity not ordinarily resident in the Cook Islands can act as co-trustee alongside a licensed trustee.

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