



Guide to Doing Business in Turks & Caicos Islands

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I THE COUNTRY AT A GLANCE

- A. English is the official language. However, there are a number of expatriate residents who speak Spanish, French and Creole (spoken in Haiti).
- B. The United States dollar is the currency of the Turks and Caicos Islands (TCI).
- C. The TCI lie about 575 miles southeast of Miami, Florida, USA, about 100 miles north of the Dominican Republic and about 30 miles southeast of the Bahamas. The TCI are made up of several islands covering an area of approximately 193 square miles. The climate is semi-tropical.
- D. There are no cultural influences or prohibitions on the way business is conducted in the TCI.
- E. There are no religious influences or prohibitions on the way business is conducted in the TCI.
- F. TCI's infrastructure is modern and efficient. There are international airports on Grand Turk, South Caicos, North Caicos and Providenciales, with domestic airports on all of the other islands except for East Caicos and West Caicos, which are uninhabited. There are international seaports on Grand Turk, South Caicos and Providenciales with domestic seaports on all of the other islands. Rental cars and taxis are abundant throughout the Islands.
- G. Telecommunications are modern and efficient with international direct dialing to all countries (Cable & Wireless operates a totally digital network). Major courier services including Federal Express and DHL provide 24 hour delivery in USA and 48 hour delivery to Europe.
- H. Water: (private and public enterprises). Electricity: 120/240 volts, 60Hz, suitable for all US appliances (private and public enterprises). Gas: propane (private enterprise).

II GENERAL CONSIDERATIONS

A. Investment Policies

1. The Turks and Caicos welcomes investment and in 1975 the Legislative Council passed the Encouragement of Development Ordinance (EDO) designed to encourage the establishment, conduct and expansion of development enterprises in the islands by granting relief from customs duties and taxes to person engaging in such enterprises.

In that same year the Legislative Council passed the Turks and Caicos Islands Investment Agency Ordinance (TCIAO) which was the legislative framework for the establishment of the Investment Agency whose function is to stimulate, facilitate and undertake the development of the Turks and Caicos Islands.

Under the EDO the Islands' Executive Council (or cabinet) before granting any exemption to a development enterprise must obtain and consider the advice of the Investment Agency on the application.

2. The Government does not keep domestic figures on inflation but tends rather to average the local rate of inflation at a couple of percentage points above the rate prevailing in the United States.
3. There are no restrictions on foreign investment. The Investment Agency is anxious to ensure that it carries out certain due diligence checks on potential investors and levies a fee against the investor to offset the cost of the Agency's investigation. Currently the fee is \$1,500.00.

Proposals for development on islands other than Providenciales tend to receive greater favor with both the Agency and Executive Council as do projects that would help to diversify the economy.

4. While there are no direct restrictions on investment, certain categories of businesses (reserved categories) are required to have the majority of its interest owed by a Turks and Caicos Islander (belonger). Generally businesses in the reserved categories do not require significant start up capital. There, however, is provision for an investor to apply to the Government for special permission to invest in a business activity that is reserved for belongers.

The relatively high cost of labour in the TCI has also been a natural deterrent to the introduction of labour intensive activities like clothing manufacturing and assembly plants.

5. At the 1990 census the population was 25,000.
6. The large majority of the population is employed directly in the tourist industry. The other major employers are the financial services (incorporating banks, accounting firms, law firms, trust companies and brokerage houses) and the construction industry. The fishing industry provides some employment with scale fish and conch being harvested year round and lobster being harvested seasonally.

B. Diplomatic Relations

1. The TCI is a British dependent territory with Britain having direct responsibility for foreign affairs. There are no foreign embassies with a physical presence in the TCI but certain embassies in the Bahamas and Jamaica (for example) exercise jurisdiction over the TCI with their officials making periodic visits to the TCI
2. There are no prohibitions or restrictions on business dealings with the TCI.
4. The citizens of some countries, all of which are listed in the local Immigration Ordinance, require

visas to enter the TCI. US citizens may travel to the TCI without a passport. Turks and Caicos Islanders may travel to the United States on a waiver.

C. Government

1. General elections are constitutionally due within four years and three months beginning with the date of the first meeting of the Legislative Council after the previous general election. Elections are held by secret ballot voting across 13 constituencies. Since the introduction of Ministerial Government in 1976 two political parties have formed the Government. Third parties have sprung up from time to time, but have not found favour with the electorate. No third party candidate has ever won a seat at the general elections.
2. The TCI notwithstanding frequent shift in Government between the two major parties is politically stable. The last administration came to power in 1995 winning 8 of the 13 seats. In the 1999 elections the Government won 9 of the 13 seats. In 1991 was the last time the opposition formed the Government with an 8 to 5 majority.

We had general elections in 2003 and the Government changed at that time. There were by-elections in two constituencies the results of which resulted in a change of Government, with the new Government holding 8 out of the 13 seats.

3. The TCI is a common law jurisdiction and its judicial system is modeled after that which exists in England. The Magistrate's Court is the lowest of the Courts and sits in each of the Islands as and when necessary with the bulk of its scheduled sittings between Providenciales and Grand Turk. The Magistrate's Court is presided over by a single magistrate who is a trained lawyer or one of two deputy magistrates appointed from among the local Bar.

We currently have two full time Magistrates, one sits in Grand Turk and the second one sits in Providenciales. There are still lay Magistrates taken from the local Bar.

There is an appeal from the Magistrate's Court to the Supreme Court. The Supreme Court exercises a jurisdiction similar to the High Court in England and is presided over by a single judge. The Supreme Court exercises first instance jurisdiction in more serious criminal and civil matters that are beyond the jurisdiction of the Magistrate Court.

There is an appeal from the Supreme Court to the Court of Appeal. This court is presided over by three judges called Justices of Appeal. The court sits in the islands in February and August of each year for about 2 to 3 weeks depending on the case load.

There is an appeal from the Court of Appeal to the Privy Council which sits in England. The Privy Council is the final appellate court.

Most disputes are resolved within the country. Where the dispute has an international flavour there may be argument that the Turks and Caicos Islands are not the most convenient forum for the resolution of the dispute. If such an application succeeds, then the local courts may refuse to hear the case. To avoid this situation many contracts stipulate that the Courts of the TCI shall have exclusive jurisdiction with respect to the resolution of disputes arising out of a contract.

Outside of proceedings before the Magistrate's Court or the Supreme Court, the only other form of dispute resolution is arbitration. There is a local Arbitration Ordinance that governs the process of arbitration.

The length of time taken to resolve a dispute depends on the complexity. The Court may be seized of more complex matters for well over a year. There is in force in the TCI an Overseas Judgments (Reciprocal Enforcement) Ordinance which provides for the enforcement in the TCI of judgments given in overseas countries, which accord reciprocal treatment to judgments given in the TCI and for facilitating the enforcement in such

countries of judgments given in the TCI. Under the ordinance the Governor by order directs those countries whose judgments would be enforced in the TCI. No such order has as yet been made with the effect that overseas judgments may not be enforced in the TCI. Similarly decisions of the TCI courts may not be reciprocally enforced outside the TCI. Foreign judgments may however be sued upon as a cause of action.

3. The power to pass laws is vested in the Legislative Council which comprises the 13 elected members, 3 appointed members, the speaker (who may be an elected nominated member), the Chief Secretary and the Attorney General.

Any member of the Legislative Council may introduce a Bill. On its way to being passed the Bill must go through 3 readings in the house, the second reading is a debate on the Bill and the third reading is a vote for the passage of the Bill by the Legislative Council.

A Bill after being passed by the Legislative Council must be presented to the Governor for his assent and does not become law until it receives the Governor's assent.

D. Environmental Considerations

1. The TCI are an environmentally conscious country and several pieces of legislation have been passed, aimed specifically at protecting environmentally sensitive areas. The most significant piece of legislation is the National Parks Ordinance which provides for the establishment of Parks, Nature Reserves, Sanctuaries and Areas of Historical Interest and generally for the conservation of the natural environment and ecology of the islands. The National Trust Ordinance establishes the National Trust to safeguard the cultural, historical and national heritage of the TCI. There are also ordinances for the protection of birds and plants and ordinances that provide for the protection of the coastline from unauthorized removal of sand and other natural material and from the depositing of offensive substances.

2. The major regulations are under the National Parks Ordinance. The regulations identify the areas as Reserves, Parks and Sanctuaries and restrict the activities that might be conducted in them.

III INVESTMENT INCENTIVES

- A Under the provisions of the Encouragement of Development Ordinance, the Government may provide import and export incentives for the establishment of new enterprises (or the expansion of existing ones) which are seen as having a beneficial effect on employment and the economy of the Islands. The Ordinance gives the Government power to grant relief from a variety of duties and fees principally on the import of materials to be used in connection with construction projects, but may also include export concessions. The incentives are not restricted to Belonger enterprises.
- C. There is no direct taxation on foreign investors or any other entities in the TCI, ie., no corporate tax, no property tax and no sales tax. These national tax incentives are not restricted by the type of activity, but the duration of the activity is restricted to a maximum period of 20 years.
- D. Regarding regional tax incentives, there is a differential rate of stamp duty (a tax payable on the acquisition of real estate) in order to encourage development on the lesser developed Islands. The rate is higher on the more developed Islands, and lower on the less developed Islands.

IV. FINANCIAL FACILITIES

1. Banking/Financial Facilities

A number of financial institutions exist here, including private and commercial banks, trust companies, investment brokers and mortgage companies.

An investor does not have to maintain a bank account within the jurisdiction, however, the majority of investors will wish to open a bank account here.

The requirements for opening a bank account here differ, depending on the Bank, however, all banks will require a bank reference, character reference and proof of address. Additional requirements vary frequently and it is advisable to confirm the requirements immediately prior to opening the account.

The account can be used for any legal purpose. The use and expected number and amounts of transactions for the first year are requested on the bank opening forms; the Bank may further question investors on the same if they see fit.

The financial system is largely based around two groups, those who primarily reside and/or carry on business here and those who live out of the jurisdiction, but who partake in the asset protection mechanisms available in the jurisdiction. This distinction is recognized by the two types of Banking Licence available in the Ordinance, “A National Banking Licence” for banking business from within the Islands with people resident within the Islands and “An Overseas Banking Licence” which permits banking within the Islands, but not with persons resident within the Islands. However, the same institution is permitted to hold both licences, provided the different businesses have separate accounting arrangements or they are conducted through separate branches.

There is not a local stock market, but the Investment Brokers deal with stocks on the world’s largest markets.

There is nothing to prevent an investor from receiving bank loans, provided they meet the bank’s lending criteria.

V. EXCHANGE CONTROLS

1. Business Transactions with Nationals, Residents or Non-Residents - Nationals (Belongers) can be defined as TCI citizens who have a right to vote in General Elections.

Residents can be defined as persons holding Permanent Residence Certificates (or Annual Residence Certificates), but who do not have a right to vote in General Elections.

Non-residents can be defined as temporary visitors.

Except for the requirement of a business licence and/or work permit, where appropriate, there are no restrictions on conducting business with nationals, residents or non-residents.

There are reporting requirements.

An investor can receive loans from nationals, residents and non-residents.

2. Investment Controls - There are limited restrictions on direct investment in the TCI. The restrictions mainly concern money laundering issues.
3. Money Transfer - There is free determination of exchange rates in the TCI.

There are no restrictions on the transfer of money into or out of the TCI. However, funds in excess of US\$500,000.00 coming into the Islands through local banks must be accompanied with a source of funds declaration by the owner of such funds.

There are no restrictions on the remittance of profits abroad.

There are no reporting requirements in this regard.

Hard currency can be taken out of the country.

VI IMPORT/EXPORT REGULATIONS

1. Customs Regulations

The Customs Ordinance provides that the importer of any goods must within 14 days of its importation deliver an entry of those goods to an authorized customs officer, unless the goods are exempt from the payment of import duties. Where no entry has been made in respect of imported goods or where the goods have not been off loaded from the importing vessel or have not been produced for examination and clearance, the goods will be deposited at the Queen's warehouse.

The Customs officer has authority to place a value on goods. If a value is placed on an item which the authority does not feel is a true value, he or she may require the importer to provide evidence of the value and ultimately may charge the importer with an offence under the Ordinance.

Once the entry is made, the applicable duty paid and the goods inspected they may be removed from the warehouse.

2. Exports

There are export restrictions on some goods, particularly firearms and some types of plants and animals, which are considered endangered and products derived from such endangered plants or animals. Under the Ordinance the Governor may grant a licence to export goods in such amounts or subject to such conditions as the licence might stipulate. There are export duties on some items.

Generally the Islands by Order in Council in the United Kingdom are restricted from trading with certain countries that are subject to United Nations sanctions. In addition there is an export quota on conch which is exported mainly to the United States mainland.

3. Foreign Trade Regulations

There are no foreign trade regulations on the import or export of goods save for orders enforcing UN sanctions.

4. Imports

There is a category of licence called a general importers licence that is required under the Business Licensing Ordinance. Apart from the licence under the Business Licensing Ordinance, where the importation of goods are prohibited, the Governor may issue a special licence allowing the import under special conditions.

The duties applicable to imports are provided for under the General Tariff Order. Some goods do not attract duty. There are no import quotas.

5. Manufacturing Requirements

There is no significant manufacturing being carried out in the TCI

6. Product Labeling

There are no product labeling requirements applicable in the TCI.

VII STRUCTURES FOR DOING BUSINESS

1. Government Participation

The TCI Government does not usually participate in the ownership or operation of business. There has to date only been one incident of the Government participating in a joint venture with a private entity.

2. Joint Ventures

Joint ventures are permitted. The majority of joint ventures within the Islands are established

through equity participation in a corporate vehicle and a joint venture agreement. Therefore the registration and incorporation procedure for a joint venture is the same as for any ordinary company incorporated within the Islands (see section below on limited liability companies). The cost of establishing a joint venture would include the cost of incorporating a company in the Islands (see below) and any fees associated with the drafting of a joint venture agreement will obviously vary depending on the nature of the joint venture agreement required.

There is no requirement that a national of the TCI must participate in a joint venture as manager or director. However, under the Business Licensing Ordinance certain business activities are reserved for TCI nationals (known as “Belongers”) and require majority Belonger ownership. Some joint ventures are entered into between foreign investors and Belongers to allow for foreign investors to participate in those activities that are reserved under the Business Licensing Ordinance for Belongers.

There are no restrictions on capitalization and no tax consequences arising from the formation of a joint venture.

3. Limited Liability Companies

To most English trained lawyers, every company (other than unlimited companies) are limited liability companies. A company formed under the Companies Ordinance may limit the liability of members either to the amount, if any, unpaid on the shares respectively held by them (a company limited by shares) or such amount as the members may respectively undertake by the Memorandum of Association to contribute to the assets of the company in the event of it being wound up (a company limited by guarantee).

The Companies Ordinance provides for the incorporation of ordinary and exempt companies. An Ordinary Company is a Company which conducts a substantial part of its business in the Turks and

Caicos Islands and is subject to all of the provisions of the Laws relating to Companies.

An Exempt Company is a Company whose business activities are conducted substantially outside the Islands. The holding of bank accounts or owning or leasing of offices in the Islands does not constitute business activity for this purpose.

The Companies Ordinance also provides for exempt companies to be registered as Limited Life Companies (LLC), which are similar to the US Limited Liability Companies. A LLC combines the corporate characteristics of limited liability with the partnership characteristics of limited duration, restricted transferability of interest and automatic dissolution.

A company is formed under the Ordinance by subscribing and filing the Memorandum of Association of the company with the Registrar of Companies. On incorporation the Registrar of Companies will issue a Certificate of Incorporation evidencing the formation of the company.

A LLC is established as an exempt company, however, the name of the company must include the words "Limited Life Company" or the abbreviation "LLC" and the Memorandum and Articles of Association must be subscribed by at least 2 person. The Memorandum must limit the life of the company to 50 years but the members may by one or more resolutions passed after incorporation, extend the life of the company to a maximum of 150 years. The Articles of Association of a LLC may:

- prohibit or restrict the transfer of any share or interest of a member in the company;
- provide that a member ceases to be a member on the happening of certain events, eg. death or bankruptcy of such member;
- provide that the company need not have directors and its affairs may be managed by a manager or by the shareholders in their capacity as such;

- provide for the automatic winding up and dissolution of the company on the occurrence of certain events, and for the designation of a person who automatically becomes the liquidator without the requirement for further action.

A LLC if properly structured, will be taxed in the US as a partnership and not as a corporation.

A company may be incorporated within a day of receipt of instructions. However, it usually takes about a week to have all the paper work filed and returned from the Companies Registry.

The fees payable to Government on the incorporation of a company differs depending on whether the company is an ordinary company or an exempt company.

The fee structure for the incorporation of an ordinary company is as follows:-

-	where the nominal share capital does not exceed \$50,000.00	\$ 275.00
S	where the nominal share capital exceeds \$50,000.00 but does not exceed \$100,000.00	\$ 450.00
S	where the nominal share capital exceeds \$100,000.00 but does not exceed \$750,000.00	\$ 550.00
S	where the nominal share capital exceeds \$750,000.00 but does not exceed \$2,000,000.00	\$1,050.00
-	where the nominal share capital exceeds \$2,000,000.00	\$2,050.00

There is a fee of \$250.00 on the annual filing of the company=s list of members.

The fees payable to Government on the registration of an exempted company are as follows:

- where the nominal share capital does not exceed \$5,000.00 \$ 100.00
- S where the nominal share capital exceeds \$5,000.00 but does not exceed \$50,000.00: \$100 and one per centum of the amount by which the nominal share capital exceeds \$5,000.
- S where the nominal share capital exceeds \$50,000.00 but does not exceed \$100,000.00: \$550 and one-half of one per centum of the amount by which the nominal share capital exceeds \$50,000.
- S where the nominal share capital exceeds \$1050,000.00 but does not exceed \$1,000,000.00: \$800 and one-tenth of one per centum of the amount by which the nominal share capital exceeds \$100,000.
- where the nominal share capital exceeds \$1,000,000.00 \$1,700.00

The fees charged by company formation agents for the incorporation of ordinary and exempt companies varies but averages between \$2,000.00 to \$3,000.00.

There is no restriction on who may be a participant, manager or director of a company incorporated in the Islands. Ordinary companies must, however, have their registered office within the Islands. Exempt companies are required to appoint a representative resident in the Islands for the purpose of accepting service of any process. Under the Business Licencing Ordinance certain business activities are reserved for TCI nationals.

There are no restrictions on the capitalization of companies. An ordinary or an exempt company if authorised by its articles (by-laws), may by ordinary resolution alter the conditions of its Memorandum to alter its share capital. An ordinary company subject to confirmation by the Court may by special resolution, if authorised in its Articles, reduce its share capital. Certain corporations, however, namely banks, trust companies, mutual funds and insurance companies must

have a minimum share capital. There is no fixed figure. The figure will be based on the business plan of the company and the size and nature of the business contemplated.

Exempted companies are exempt from any tax or duty to be levied on profits or income or on capital assets, gains or appreciations and any such tax in the nature of estate duty or inheritance tax, payable on the shares, debentures or other obligations of a company for a period of 20 years from the date of its incorporation.

4. Liability Companies Unlimited

The Companies Ordinance provides that ordinary companies may be formed with no limit placed on the liability of members.

Unlimited liability companies are formed in the same way as ordinary companies, ie., by the subscribing and filing of the Memorandum and Articles of Association of the company with the Companies Registry.

The Memorandum of Association of an unlimited liability company must under the Companies Ordinance contain the following:-

- (1) the name of the proposed company;
- (2) the address of the registered office the company;
- (3) a declaration that the liability of its members is unlimited.

The cost of the incorporation of an unlimited liability company is the same as that of an ordinary company.

5. Partnerships, General or Limited

General and limited partnerships may be established. Limited partnerships may be established in the TCI under the Limited Partnership Ordinance 1992. A limited partnership may be established for any lawful purpose, including the holding of passive investments. Any individual or a company or another partnership may be a general or a limited partner. However, the total number of limited partners cannot exceed 100.

Features of a TCI Limited Partnership

The following are some of the main features of a TCI limited partnership:

- * A general partner may also be a limited partner.
- * The partnership may be formed for any lawful purpose.
- * A limited partner is precluded from taking part in the management of the affairs of the partnership.
- * The rights and obligations of the partners are left for the most part for determination by the partnership deed or agreement, subject to the overriding obligation of the general partners to act at all times in good faith and in the interest of the partnership deed.
- * A limited partner will have limited liability, except to the extent that he participates in the management of the business of the partnership, and such liability will arise only in the event of insolvency of the partnership and only to persons who transacted business with the partnership in the genuine and reasonable belief that such a limited partner was a general partner.

Constitution of a Limited Partnership

A limited partnership is constituted by the execution of a partnership agreement by at least one general partner. The limited partnership must have a partnership name including the words "Limited Partnership or L.P." The limited partnership must be registered by filing particulars of the partnership's name, the general nature of the partnership business, the address of its registered office in the Islands, the duration of the partnership if it is of limited duration, the date of commencement if it is of unlimited duration and the names and addresses of each of the general partners. Once the particulars are properly filed, the Registrar of Limited Partnerships, who is also the Registrar of Companies, will issue a Certificate of Registration. A limited partner does not benefit from limited liability until the certificate is issued. Any changes in the registered particulars must be reported to the Registrar of Limited Partnerships.

Costs of Establishment and Maintenance

The costs of establishing a limited partnership will depend on the complexity of the partnership, deed or agreement. The average costs, including the Government registration fee of US\$500, is approximately US\$1,500.00. The annual maintenance costs will depend on the extent to which there have been changes in the registered particulars. The average cost of provision of registered office facilities, including the annual Government fee of \$300, and assuming there has been no changes in the registered particulars and the register of limited partners interests, is approximately US\$1,050.00.

Exempted Limited Partnership

An Exempted Limited Partnership is a limited partnership which does not undertake business with any

person or body corporate or unincorporated resident in the TCI, other than an Exempted company, a foreign company registered in the Islands or another Exempted Limited Partnership. An Exempted Limited Partnership may obtain an undertaking for a period of up to 50 years from the Governor, that any future Ordinance imposing any tax or profits income, gains or appreciation, or any tax in the nature of estate duty or inheritance tax, would not apply to such partnership.

6. Partnerships, Undisclosed

Under the Limited Partnership Ordinance only the names and addresses of general partners are required to be registered. The names of the limited partners remain undisclosed.

7. Sole Proprietorship

An investor may be the sole proprietor of a business. A sole proprietor should register his business name under the Business Names (Registration) Ordinance. The carrying on of any business in or from the Islands requires a Business Licence under the Business Licensing Ordinance. There are some business activities under the Business Licensing Ordinance that are reserved for natives, known as Belongers.

An application for a business licence is made to the Permanent Secretary, Finance, on a prescribed form. The fee for a business licence varies depending on the type of business activity, and is payable annually.

8. Subsidiaries/Branches/Representatives Offices

An investor may establish a branch, subsidiary or representative office in the TCI.

If a subsidiary or representative office is to be established in the islands, then it is usual to establish an ordinary TCI company. If the subsidiary or representative office will be doing business in the island the TCI company will also have to apply for a business licence.

The major cost of establishing a subsidiary or representative office will be the cost of incorporation of the company, as set out above, and the applicable business licence fee.

If a branch is to be established in the TCI the foreign company may register with the Companies Registry as a company incorporated outside the islands carrying on business within the islands.

In order to be registered as a foreign company carrying on business within the islands, the foreign company must register the following documents at the Companies Registry:-

1. a certified copy of its charter, statutes or Memorandum and Articles of Association;
2. a list of its directors; and
3. the name and addresses of one or more persons resident in the islands authorised to accept service on its behalf.

The fee for registration is \$250.00, and a similar fee must be paid upon each anniversary of registration.

A foreign company registered within the TCI must also apply for a business licence in order to carry on business within the islands.

With respect to a foreign company any potential liability will attach directly to the foreign company.

In the case of subsidiaries any potential liability will attach to the subsidiary company incorporated in the TCI.

Strictly speaking a national of the TCI does not have to be a participant, manager or director.

However, under the Business Licencing Order, certain business activities are reserved for nationals of the TCI.

There are no restrictions on capitalization per se. See section under **Limited Liability Companies**

There are no tax consequences with respect to the establishment of a subsidiary, branch or representative office in the TCI.

9. Trusts and Other Fiduciary Entities

The concept of the trust has been known and recognized in the TCI since 1799, when the common

law of England became part of the laws of TCI. Today, the common law has been supplemented by modern trust legislation in the shape of the Trust Ordinance of 1990 (the Ordinance). The Ordinance is not a codification of the laws of trust, so that judicial developments in trust laws which do not conflict with the provisions of the Ordinance will continue to apply. The object of the Ordinance is to set out the essential characteristics of trusts; to settle and clarify some of the international conflict rules relating to trusts; to abolish the rule against perpetuities and accumulation; to give statutory recognition to certain concepts and ideas commonly found in a modern trust deed (such as trust protectors); and to make for more flexible rules relating to the administration of trusts.

The Ordinance does not make a distinction between a domestic and an international trust. It makes a distinction between a Turks and Caicos Trust and a foreign trust. If the law governing the validity of the trust is that of the TCI, it is a Turks and Caicos trust. If the law governing the validity of the trust is that of a jurisdiction other than the TCI, it is a foreign trust. A settlor may designate Turks and Caicos Islands law as the law governing the validity of the trust, even though he has no connection with the islands, the trustees are not resident in the islands, and the property is not administered from the islands.

On the transfer of assets to a trust the assets are held by or vested in the trustees.

The settlor of a trust may be a trustee and/or a beneficiary of the trust.

Section 61 of the Ordinance provides for the establishment of so called “asset protection trusts” provided that the settlor is an individual, not insolvent at the time of the disposition and does not become insolvent by reason of the disposition. “Insolvent” is defined in the Ordinance as being subject to liabilities whether actual, contingent or prospective, of which the value exceeds that of the assets available to meet such liabilities as they become due.

VIII REQUIREMENTS FOR THE ESTABLISHMENT OF A BUSINESS

1. Alien Business Law

There is no Alien Business Law applicable to the TCI. The Business Licencing Ordinance does however stipulate that certain categories of businesses may only be carried on by belongers or by companies where the majority interest is held by belongers.

If the business is conducted through an incorporated company, the Companies Ordinance requires that the company file an annual return that identifies the names of the directors and shareholders of the company.

Under the Business Licensing Ordinance a business in the restricted category is required to advise the Licensing Authority of any change in its shareholding.

2. Antitrust Laws

There are no antitrust laws in the TCI.

3. Environmental Regulations

Except for the regulations that affect a particular industry, businesses are not subject to any specific environmental regulations. For example, the tourist industry would be affected by the regulations governing behaviour in National Parks. These regulations for example, restrict water skiing to certain specific zones.

Developments that contemplate activity either in the construction or operational phase that have the potential to disrupt the environmental and or ecological balance of a particular area are often required by Government to carry out an assessment of the environmental impact of their proposal before the necessary approvals are granted.

4. Government Approvals

Under the Business Licencing ordinance all business activity is required to be licensed. To engage in business activities without a licence is an offence. To this extent Government approval is necessary before one can engage in any business activity. Some activities require licences and approvals from specific bodies. For example, the Air Traffic Licensing Authority controls the airline business and the Insurance Ordinance governs the licensing of insurance companies.

The fees for business licences vary depending on the category of business being licensed. The current fees range from \$10,000.00 for a hotel licence to \$150.00 for a licence in a category of business that is not specifically mentioned in the schedule to the Ordinance.

The licensing process may take anywhere from 2 weeks to a month.

5. Insurance

There are no requirements that business carry insurance although most professional firms carry professional indemnity insurance and the larger businesses generally carry some public liability insurance. There is no state monopoly on insurance. Motor vehicles are required to carry third party insurance.

6. Licenses/Permits

As indicated earlier all businesses are required to be licensed under the Business Licensing Ordinance except where specific legislation exempts them. One example of this is the Insurance Ordinance which governs the licensing of insurance companies and establishes a specific licensing authority and provides further that a licence under the Business Licensing Ordinance is not necessary.

Licences under the Business Licensing Ordinance may take as long as a month before they are

approved. Often input from several different Government departments is necessary. Insurance licenses generally take longer and the application process is more complicated. Usually the foreign national seeking to apply for a licence of any sort will engage local attorneys to assist with the process. Business licences for foreigners are almost always approved on the basis that it is against public policy to deny a foreigner the opportunity to participate in the country's economy through business ownership.

X CESSATION OR TERMINATION OF BUSINESS

1. Termination

On the termination of a business, notice must be given, within 30 days to the Permanent Secretary, Finance, who is responsible for business licences. Failure to provide notice is an offence and a person found guilty is liable on summary conviction to a fine of \$5,000.00.

If the business name has been registered under the Business Names (Registration) Ordinance, notice must also be given within 6 months to the Registrar.

There are no tax consequences on terminating a business.

On the termination of a corporate business the creditors of the business will be notified of the winding up of the company by the publication of the same in the Government Gazette. Any

liquidator appointed_ for the purpose of winding up the affairs of the company may, with the sanction of the Court where the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of a special resolution of the company where the company is being wound up voluntarily, pay any classes of creditors in full or make such compromise or other arrangements as they think expedient.

A corporate business may be struck off the Register of Companies and dissolved where:-

1. the Registrar of Companies has reasonable cause to believe that the company is not carrying on business or is not in operation;
2. the company is being wound up, and the Register has reasonable cause to believe that no liquidator is acting;
3. the affairs of the company are fully wound up.

In such cases the Registrar of Companies is required to publish in the Gazette a notice that the company has been struck off the Register, the date on which it has been struck off and the reason therefor. Any creditors or interested party aggrieved by the company having been struck off the Register, may within 2 years, or such longer period as the Registrar may allow, apply to the Registrar to have the company restored to the Register to enable a claim to be brought against the

company.

Employees, who have been employed for 2 years or longer are entitled to severance pay on the termination of the business under the Employment Ordinance 1988 (as amended). The rate of severance pay under the Employment Ordinance is 2 weeks basic wage for each year of service, and pro rata for each incomplete year.

2. Bankruptcy

There are no personal bankruptcy laws in the TCI.

3. Insolvency/Bankruptcy

The Companies Ordinance provides provisions for the winding up of companies. However, these provisions predate the UK Insolvency Act 1985 and modern provisions in other jurisdictions.

The Liability of Members

The past and present members of a company with limited liability are not liable for the debts of a company, except to the extent of the amount, if any, unpaid on their shares when the company is being wound up.

Past and present members with unlimited liability will be liable to contribute to the capital of the company on winding up to the extent specified in the company's Memorandum of Association.

XI LABOR LEGISLATION, RELATION AND SUPPLY

1. Employer/Employee Relations

The Employment Ordinance 1998 governs employer/employee relations. It is based largely on English employment law and English common law applies where there is a gap in the legislation. It is occasionally necessary to look at our National Insurance legislation in conjunction with the Employment Ordinance with regard to sick payments and benefits.

There are no obligations on employers to train employees, save that which would be deemed necessary under English common law, for health and safety reasons.

2. Employment Regulations

Where nationals with the necessary skills are available and they apply for a post they must be given preference for any available position.

The minimum wage is presently set at \$4.50 an hour. All employees and employers must contribute to the National Insurance Scheme.

The maximum number of hours an employee can work in a week are 72 hours, unless the position is managerial or supervisory. However, the normal hours of work for an employee shall not exceed 44 hours a week. Hours in excess of this are overtime and the employee shall be paid at the rate of

time and a half or double time on a public holiday.

The minimum number of sick days an employee shall have is 12 days in a year. The minimum paid vacation which an employee must have is two weeks for every completed year of employment.

3. Hiring and Firing Requirements

There are no minimum number of persons who must be employed.

There is no minimum number of nationals who must be employed.

In certain reserved businesses (including retail stores, non-professional accountancy and non-professional architecture) the controlling interest of the business must be held by a national, (this is governed by the Business Licensing Ordinance). Other than those positions there are no requirements setting down which positions must be filled by nationals.

The only requirement on hiring an employee is that within four weeks of the commencement of their employment, they must be given a written statement setting out the terms of their employment, including the parties, rates of remuneration, terms and conditions relating to hours of work, holiday entitlements, sick pay and outlining disciplinary rules and procedure.

An employee must be given notice on termination unless his termination is by reason of such gross misconduct that no notice is required. Every person continuously employed for a month or more shall be given the following notice periods:

1. one week's notice if his period of employment is less than two years.
2. one week's notice for each year of continuous employment if he has been continuously employed for two years or more but for less than 12 years.
3. twelve weeks= notice if his period of continuous employment is 12 years or more.

There are no continuing obligations on dismissed employees.

4. Labor Availability

There is some skilled labor available, depending on the type of business. There is adequate unskilled labor available, although this may include resident laborers from other Caribbean countries who will themselves require work permits.

5. Labor Permits

Labor permits, known locally as work permits are necessary for all non nationals.

To obtain a work permit, an application must be completed and submitted to the Immigration Board along with the following documents:

1. Two recent passport sized photographs;
2. Evidence of the applicant's good character (a clear police record and 2 character references);
3. Evidence of the applicant's good health (a medical certificate from a local clinic showing an HIV negative result);
4. A description of the work the applicant is expected to perform;
5. A covering letter from the employer;
6. A fee for the work permit, which varies from \$300.00 to \$7,000.00 (Professions are in this bracket); and temporary work permits are issued for an initial period of 10 days and may be extended for 32 days.
7. Labor clearance which is obtained after the position has been advertised in the local newspapers and a fee of \$25.00 is paid.

There are a few additional requirements for a self-employed work permit, which include showing an investor's financial standing and that he will bring money of his own which he will put into the business; that he has the necessary qualifications and experience; and that he is able to support himself and his dependants. A work permit is usually granted for one year, however, a three year permit can be obtained.

The process takes approximately 6 to 8 weeks. Temporary permits can be obtained at a cost of \$500.00 for up to a maximum of 30 days.

6. Safety Standards

There are no safety codes which must be followed but the English common law applies to ensure that reasonable safety standards are in place.

7. Unions

There are no unions recognized or active here. However, there have been attempts to raise the profile of the trade union movement as a whole and there is provision in the Employment Ordinance which specifies that an employee cannot be dismissed for belonging to a union or partaking in union activities.

XII TAX ON CORPORATIONS

The TCI is a tax free jurisdiction and consequently there are no withholding taxes or taxes on income, capital gains, sales or other turnover or on profits.

A company's contribution to Government's revenue is through the payment of incorporation and annual registration fees. Currently the registration of and renewal fees for an ordinary company are respectively \$275.00 and \$250.00 and for an exempt company the respective fees are \$100.00 and \$300.00. These fees are based on the company's minimum capitalization and are increased as the capitalization of the company increases. Presently the minimum capitalization for an ordinary

company is \$50,000.00 and for an exempt company it is \$5,000.00.

A duty of 0.2% of the consideration is payable on the transfer of a company's shares except that where the consideration is less than \$500.00 or where the shares are in an exempt or foreign company no duty is payable.

Where the company owns TCI land on the transfer of its shares it pays a duty of 8% calculated on the percentage of the value of the land held by the company which reflects the percentage of the shares being transferred. By way of example a company owning land valued at \$100,000.00 will pay the duty on \$25,000.00 if 25% of its shares is transferred. The company itself is liable for the duty even though it is not usually a party to the transfer transaction.

The only social security scheme is the National Insurance scheme. Under this scheme the employer is responsible for the payment of 4.6% of the employees salary and the employee is responsible for the payment of 3.4% of his salary up to a total maximum monthly contribution of \$88.40.

XIII TAX ON INDIVIDUALS

There are no direct taxes on individuals in the TCI.

There is an estate duty payable at the time one applies for letters of administration or probate of a

will but this is an insignificant amount.

Outside of the licensing and other fees directly associated with doing business in the TCI the only other tax paid by individuals is the tax or import duty payable on products brought into the country.

There is currently a \$400.00 duty exemption afforded to returning residents but above this amount imported goods are subject to import duty.

XIV TAX ON OTHER LEGAL BODIES

Other legal entities are likewise not subject to taxation.

XV GENERAL TAX CONSIDERATIONS

Because there are no domestic tax implications of doing business in the TCI, any corporate structure would be concerned with the reduction of the tax burden on individuals and companies in high tax jurisdictions.

XVI IMMIGRATION REQUIREMENTS

1. Immigration Controls

At present there are no immigration quotas.

Vaccinations or medical certificates are not required for entry into the country.

Entry and exit permits are not required for visitors, however, a return ticket out of the country is necessary for a visitor's entry into the Islands.

2. Immigration Requirements/Formalities

A residence permit is required by persons wishing to reside here (but who will not be engaging in gainful employment).

It is not necessary to apply for a residence permit before entering the country, if one has a return ticket out, extensions to the time can be granted on paying a \$50.00 fee. However, it is advisable for a residence permit to be obtained in advance, if a lengthy period of residence is contemplated.

The following information must be provided when applying for a residence permit:

1. Completed application form providing details of date, place of birth, occupation, recent residential address, criminal convictions, spouse and family details.
2. Two recent passport sized photographs.
3. Evidence of financial standing to show that the applicant can support himself and his family without working.

4. Police record and character references.
5. Medical certificate showing an HIV negative result.
6. The applicant-s written undertaking not to engage in any gainful occupation whilst in the Islands.
7. Proof of a residential address, which can be a rental property.
8. Fee of \$1,000.00..

An average application takes about 6 to 8 weeks.

We do, however, have provision to give Permanent Resident status to persons who have either made substantial investment in the country or who have lived, worked and/or invested in the country for a number of years. There are 9 categories under which a person may qualify for a Permanent Residence Certificate. The fees vary from \$8,000.00 to \$50,000.00.

3. Visas

A visa is required for nationals from some countries, including but not limited to Russia and a number of surrounding countries. A visa is applied for by completing an application form and submitting it along with 2 passport sized photographs and a fee of \$100.00 to the Visa Board, which meets every Tuesday. The visa fee is only paid if the visa is issued, there is no administrative

fee.

XVII EXPATRIATE EMPLOYEES

1. Cost of Living and Immigration

The cost of living in the Islands is high, comparable to that of Central London.

2. Drivers' Licenses

The investor must obtain a driver's licence for the Islands. All an investor has to do is present a valid driver's licence from another country, fill in an application form with his personal details and pay a fee of \$65.00. If an investor is unable to provide a valid driver's licence from another country, he will have to complete both written and practical tests.

3. Education

There are both state and private schools from primary level to high school. There is also a private collegiate to age 18. No fees are involved for the state schools, but the fees for the private (primary) schools vary from \$300.00 upwards per month.

It is now necessary for the child's parents to be legally resident within the Islands for a child to be enrolled in a school.

No tax benefits are available as there are no taxes, save for import tax here.

4. Housing

The housing available varies and very good quality housing is available. An investor can own property here. The only tax payable on the same is a stamp duty payable at the time of purchasing the property which at its highest is 9.75% of the value of the land. It is not necessary for an investor to have secured housing before entering the country. However, an address will be needed when he applies for a residence certificate or work permit.

5. Importing Personal Possessions

Personal possessions can be imported by using a freight shipping company through Florida. Import duties are payable. If you import used personal goods within 6 months of taking up residence here, no customs duty is levied on those goods. However, the investor must have his immigration status finalized to obtain the concession. Everything must be declared to Customs, who will check goods and advise on the duties to be paid. The freight companies also clear goods through Customs for a nominal fee.

6. Medical Care

Basic medical care is available. There are a number of private doctors in the TCI, but if any

surgery is necessary, it is advisable to travel abroad for it. There is a Government hospital where treatment is very cheap. Health insurance is strongly advisable.

7. Moving Costs

The costs involved in moving will consist of the following:

1. Freight and duties for the importing of personal belongings; and
2. Immigration fees for residence certificate or work permit.

A duty allowance may be possible, see 5 above.

8. Tax Liability

The only tax liabilities on an expatriate are the customs import duty and his fees to Immigration. There is no income tax. However, there are a number of fees which will have to be paid to Government if a new business is established here, eg., a business licence fee.

9. Work Contracts

An investor does not need a work contract to work, but unless he is the owner and manager of his own business it will be necessary for him to be employed by someone to get a work permit, and when he has a work permit with one company, it is increasingly difficult for the work permit to be transferred to another company. A work permit is for a specific company and for a specific job within that company. It is not necessary for the agreement to be with a national or resident of the

country.

10. Work Permits

An investor requires a work permit to work in the country. For details on acquiring a work permit, please refer to XI (5).