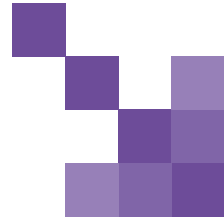


Doing business in Turks and Caicos Islands



Owen Foley
Misick & Stanbrook (Lex Mundi Member Firm)

www.practicallaw.com/2-384-1818

LEGAL SYSTEM

1. What is the legal system (civil law, common law or a mixture of both)?

The Turks and Caicos Islands (TCI) is a common law jurisdiction modelled on the English legal system.

A Magistrates' Court sits in each of the Islands and there is an appeal process from the Magistrates' Court to the Supreme Court. The Supreme Court is 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 Magistrates' Court.

There is an appeal process from the Supreme Court to the Court of Appeal. The court sits in TCI in February and August of each year for about two to three weeks, depending on the case load. Appeals can be made from the Court of Appeal to the Privy Council, which sits in England. The Privy Council is the final appellate court.

FOREIGN INVESTMENT

2. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

There are no restrictions on foreign investment and the government has a very successful open-arms inward investment policy. The Government Investment Agency carries out certain due diligence checks on potential investors and levies a fee of US\$1,500 (about EUR1,049) to offset the cost of their investigation.

3. Are there any exchange control or currency regulations?

TCI use the US dollar with free determination of exchange rates. There are no restrictions on the transfer of money into or out of TCI. However, funds of over US\$500,000 (about EUR349,844) coming into TCI through local banks must be accompanied by satisfactory evidence of the source of funds, to comply with anti-money laundering guidelines. The figure specified is one set by the banks themselves, and lesser amounts may be subject to enquiry, depending on the comfort level of the bank concerned with the particular transaction.

There are no restrictions on, or reporting requirements for, the payment of profits abroad. Hard currency can be taken out of the country.

4. What grants or incentives are available to investors? Are any of these aimed specifically at foreign investors?

The government can provide import and export incentives for establishing new enterprises (or expanding existing ones) which are seen to benefit employment and the economy of TCI (*Encouragement of Development Ordinance*). The government can grant relief from a variety of duties and fees, mainly on the import of materials to be used in connection with construction projects, but also on exports. The incentives are not restricted to TCI-owned enterprises.

BUSINESS VEHICLES

5. What is the most common form of business vehicle used by foreign companies to conduct business in your jurisdiction? In relation to this vehicle, please provide details on:

- **Registration formalities (including timing).**
- **Minimum (and maximum) share capital.**
- **Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities).**
- **Any restrictions on the rights that can attach to shares.**
- **Any restrictions on foreign shareholders.**
- **Management structure and any restrictions on foreign managers.**
- **Directors' liability.**
- **Parent company liability.**
- **Reporting requirements (including filing of accounts) and cost of compliance.**

The most common form of business vehicle used by foreign companies in TCI is a company limited by shares.

- **Registration formalities.** A new company must file and register its memorandum and articles of association (charter and bye-laws) with the Companies Registry. It is possible to buy an off-the-shelf company. A company can be incorporated within one day of receipt of instructions. However, it usually takes about one week to have all the paperwork filed and returned from the Companies Registry. Company directors' personal attendance is not required.

Domestic companies must have their registered office in TCI. Foreign companies doing business in TCI can be registered under the Companies Ordinance. Certain business activities, such as retail stores, real estate agencies and auctioneers, are reserved to TCI nationals (*Business Licensing Ordinance*).

- **Share capital.** Generally, there are no restrictions on a company's share capital. However, certain companies (such as banks, trust companies, mutual funds and insurance companies) must have a minimum share capital. The amount is based on the company's business plan, size and nature.

A company can alter its share capital by ordinary resolution, if authorised by its articles. A domestic company can reduce its share capital by special resolution, if authorised by its articles and confirmed by the Supreme Court.

- **Non-cash consideration.** A company can issue shares for non-cash consideration. A formal valuation is not required but a company can voluntarily carry it out.
- **Rights attaching to shares.** Shares can be issued with any rights or classes that the company determines, subject to compliance with the company's memorandum and articles.
- **Foreign shareholders.** There are no restrictions on foreign shareholders.
- **Management structure.** A domestic company is managed by a board of directors. All companies must have at least one director and one company secretary, although these two positions can be held by the same person. There is no restriction on who can participate in, manage or direct a company incorporated in TCI but managers who are resident in TCI must have the required immigration status.

- **Directors' liability.** Directors have both fiduciary obligations and obligations of skill and care to the company. A director who is party to a fraud or to the commission of any tort is personally liable to the injured party. Therefore, if by order of the directors copyright is infringed, the directors who are parties to the infringement are personally liable, as is the company. The Companies Ordinance also imposes criminal penalties on directors for a number of offences. In the absence of a criminal offence, directors' duties are largely enforced by civil remedies.

- **Parent company liability.** The liability of a parent company is limited to the amount unpaid on issued shares.
- **Reporting requirements.** The main reporting requirement is to file an annual return specifying details of:
 - shareholders;
 - directors;

- officers;
- capital structure.

There is no obligation to file financial statements.

The government fee for submission of the annual return is:

- US\$250 (about EUR175) for an ordinary company; and
- US\$300 (about EUR210) for an exempt company (as defined in the Companies Ordinance).

EMPLOYEES

6. What are the main laws regulating employment relationships?

The Employment Ordinance 2004 and the Employment Order 1993, govern employment relationships. It is occasionally necessary to look at national insurance legislation in tandem with the Employment Ordinance in relation to sick payments and benefits.

The employment laws apply to foreign persons working in TCI. The laws do not purport to have extra-territorial effect and so have no bearing on the contract of employment of a TCI national working outside TCI, unless the employee ordinarily works in TCI and the work outside TCI is for the same employer.

7. Is a written contract of employment required? Are any agreements and/or implied terms likely to govern the employment relationship?

An employee must be given a contract setting out the terms of employment within seven days of starting work. The contract of employment can be:

- For a fixed term.
- For a specific task.
- For a probationary period of no more than three months.
- Without reference to any time limits.

In addition, it must specify the:

- Identity of the parties.
- Date on which employment began.
- Date on which continuous employment began, taking into account employment with previous employers that counts towards that period.
- Scale of remuneration.
- The terms and conditions of work.

8. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

Employees are not entitled to management representation or consultation in relation to corporate transactions.

9. How is the termination of individual employment contracts regulated?

Termination of an employee's employment must be fair. To be fair, the employer must show the Labour Tribunal that the termination is for any one of the following reasons:

- The employee's capability or qualifications for the job.
- The employee's conduct.
- Redundancy.
- The fact that the employment could not continue without contravention of a duty or restriction imposed by another ordinance.

If the employer meets this requirement, the Tribunal will decide whether a dismissal is fair or unfair depending on whether it deems the employer's reason for dismissal as sufficient in the circumstances.

An employee must be given notice of termination, unless he is dismissed for serious misconduct (for example, gross insubordination or dishonesty) and it would be unreasonable to require the employer to continue the employment relationship.

A person who is continuously employed for one month or more is entitled to the following notice periods:

- One week's notice if his period of employment is less than two years.
- One week's notice for each year of continuous employment if he has been continuously employed for between two and 12 years.
- 12 weeks' notice if his period of continuous employment is 12 years or more.

Unless contractually bound, dismissed employees have no continuing obligations to the employer once they have left.

If a dismissal is fair, an employee is not entitled to any payments other than for entitlements that have previously accrued but are unpaid at the date of dismissal.

An employee who is unfairly dismissed can take proceedings against the employer:

- In the Labour Tribunal for remedies prescribed by the Employment Ordinance.
- In the courts for wrongful dismissal or breach of contract.

The Tribunal can make an order of:

- Reinstatement.
- Re-engagement.
- Compensation, up to a maximum of US\$35,000 (about EUR24,489).

Employers who discriminate against an employee on grounds of, among other things, sex, race, religion, ethnic origin, age and marital status are liable on summary conviction to either:

- A fine of US\$5,000 (about EUR3,498).
- Two months' imprisonment.

Victims of such discrimination have civil remedies available to them as well, including:

- Damages.
- Re-engagement or reinstatement.

10. Are redundancies/mass layoffs regulated? If so, please give details.

Employees who have been employed for two years or more are, in a redundancy situation, entitled to severance pay of two weeks' wages for each year of service. This is prorated for an incomplete year.

11. Do foreign employees require work permits and/or residency permits? If so, how long does it take to obtain them and how much do they cost?

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 various documents and the appropriate fee. The fee ranges from US\$100 (about EUR70) to US\$7,000 (about EUR4,898), depending on the type of employment. There are a few additional requirements for a self-employed work permit.

A work permit is usually granted for one year; however, a three-year work permit can be obtained. The process takes about ten to 12 weeks. Temporary permits can be obtained at a cost of US\$500 (about EUR350) and can be renewed for up to a maximum of 42 days.

TAX

12. In relation to employees, what constitutes tax residency in your jurisdiction?

TCI is a tax-free jurisdiction and no tax is payable by employees.

13. What income tax or social security contributions must the following pay:

- Tax resident employees?
 - Non-tax resident employees?
 - Employers, in relation to their employees?
-

There is no individual income tax. The only social security scheme is the national insurance scheme. Under this scheme, the employer must pay 4.6% and the employee must pay 3.4% of the employee's gross salary up to a total combined maximum monthly contribution of US\$208

(about EUR146). National insurance contributions are payable in relation to all employees working in TCI.

14. In relation to business vehicles, what constitutes tax residency in your jurisdiction?

TCI is a tax-free jurisdiction and there are no withholding, income, capital gains, sales or profits taxes.

15. Please give details of the main taxes that potentially apply to a tax resident business vehicle (including rates).

TCI is a tax-free jurisdiction (see *Question 14*).

Incorporation and annual registration fees

A company's contribution to the government's revenue is made through the payment of incorporation and annual registration fees of US\$275 (about EUR192) and US\$250 (about EUR175) respectively.

Stamp duty

Stamp duty must be paid at the rate of 0.2% on the transfer of a company's shares, unless:

- The consideration is less than US\$500 (about EUR350).
- The shares are in an exempt or foreign company.

If the company owns land in TCI, it must pay tax at the rate of 8% of the value of the land multiplied by the fractional interest being transferred when shares in the company are sold. The company is liable for the tax even though it is not usually party to the transaction.

Licences

A company conducting business in TCI must have a business licence and pay an annual business licence fee, ranging from US\$150 (about EUR105) to US\$10,000 (about EUR6,997) depending on the type of business.

16. How are the activities of non-tax resident business vehicles taxed?

TCI is a tax-free jurisdiction (see *Question 14*).

17. Please explain how each of the following is taxed:

- Dividends paid to foreign corporate shareholders.
 - Dividends received from foreign companies.
 - Interest paid to foreign corporate shareholders.
 - Intellectual property (IP) royalties paid to foreign corporate shareholders.
-

No taxes are payable on these transactions.

18. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)? If so, please give details.

TCI does not have thin capitalisation rules.

19. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

TCI does not have controlled foreign company rules.

20. Are there any transfer pricing rules? If so, please give details.

TCI does not have transfer pricing rules.

21. How are imports and exports taxed?

The duties applicable to imports are set out in the General Tariff Order under the Customs Ordinance at rates ranging (mainly) from 5% to 45%. Some goods do not attract duty. There are no import quotas.

Export duties are payable on seafood only.

22. Is there a wide network of double tax treaties? If so, please give details.

TCI is not party to any double tax treaties.

COMPETITION

23. Are restrictive agreements and practices regulated by competition law in your jurisdiction? If so, please give brief details.

There are no competition laws in TCI, other than the restraint of trade rules applicable under English common law.

INTELLECTUAL PROPERTY

24. Please outline the main intellectual property rights that are capable of protection in your jurisdiction. In each case, please state:

- **Nature of right.**
- **How protected.**
- **How enforced.**
- **Length of protection.**

Patents

- **Nature of right.** For a patent to be registered in TCI, it must have already been registered in the UK. For an invention to be patentable in the UK, it must:
 - be new;
 - involve an inventive step;
 - be capable of industrial application; and
 - not be specifically excluded from protection as a patent.
- **How protected.** An application to register a patent is made to the UK Patent Office. Once the application is granted it can be registered with the Registrar of Patents in TCI.
- **How enforced.** Patents are enforced through initiating legal proceedings. A patent holder can sue for damages or seek an injunction to restrain the breach.
- **Length of protection.** The duration of protection is equivalent to that afforded by UK registration (typically 20 years). Therefore, if the UK registration is extended, that extension applies equally to the TCI registration.

Trade marks

- **Nature of right.** Any sign capable of being represented graphically and of distinguishing the goods or services of one undertaking from those of others can be registered. The right holder's remedies in the case of breach are to sue for damages and/or seek an injunction against the breach and further breaches.
- **How protected.** A trade mark must be registered with the Registrar of Trade Marks to be protected.
- **How enforced.** Trade marks are enforced in the same way as patents (*see above, Patents*).
- **Length of protection.** Protection lasts for 14 years from the time of registration and can be renewed.

Copyright

- **Nature of right.** The UK Copyright Act 1911 (Act) applies to TCI and covers, for example, original literary, dramatic, musical and artistic works, and film soundtracks. The right holder's remedies in the case of breach are to sue for damages and/or seek an injunction restraining the breach and further breaches.
- **How protected.** Protection subsists automatically without the need for registration.
- **How enforced.** Copyrights are enforced in the same way as patents (*see above, Patents*).
- **Length of protection.** Protection lasts for the life of the author plus 50 years, unless otherwise provided by the Act.

Confidential information

- **Nature of right.** A general statutory duty of confidentiality applies to:
 - banks;
 - professional advisers;
 - government officers;
 - others holding positions of trust.
- **How protected.** Protection of confidentiality arises under the Confidential Relationships Ordinance.

The Ordinance makes the unauthorised disclosure of confidential information with respect to business of a professional nature a criminal offence. It is similarly an offence to attempt to obtain confidential information to which a person is not entitled.

- **How enforced.** A breach of confidentiality is enforced through prosecution by the Attorney General. The sanctions include a fine of up to US\$5,000 (about EUR\$3,498) (US\$25,000 (about EUR17,492) in the case of a company) and imprisonment for up to two years.
- **Length of protection.** There is no defined length of protection.

MARKETING AGREEMENTS

25. Are marketing agreements regulated in your jurisdiction? If so, please give brief details in respect of the following arrangements:

- **Agency.**
- **Distribution.**
- **Franchising.**

There are no specific laws relating to agency, distribution or franchising agreements.

E-COMMERCE

26. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)? If so, please give brief details.

The Electronic Transactions Ordinance 2001 regulates e-commerce. The main provisions are as follows:

- **Electronic records.** Electronic documents are given legal effect. Legal recognition is also given to electronic signatures.
- **Communication of electronic records.** Contracts can be created by electronic means, and practical issues such as place and time of sending and receipt are dealt with.
- **Electronic signatures.** A regime is contemplated for authorising service providers to certify electronic signatures. This is dealt with in more detail by regulation.

- **Encryption.** The Governor can issue regulations to deal with the use, import and export of encryption programmes and products.
- **Data protection.** There is provision for the voluntary registration of data controllers and data processors. Standards for the processing of personal data may be established by regulation, and volunteers will have to comply with those standards.
- **Intermediaries and e-commerce service providers.** Intermediaries are excluded from civil and criminal liability for the information contained in an electronic record, in certain circumstances. Codes of conduct and standards for intermediaries and e-commerce service providers will be introduced, and enforced by the relevant ministry.

DATA PROTECTION

27. Are there any data protection laws? If so, please give brief details.

There are no data protection laws currently in force in TCI. However, see *Question 26*.

PRODUCT LIABILITY

28. Are there any laws regulating product liability and product safety? If so, please give brief details.

TCI generally mirrors English common law in relation to defective products. Therefore, manufacturers, producers, distributors and importers can be liable for any damage caused to a consumer as a result of a defective product (*Sale of Goods and Supply of Services Ordinance*).

CONTRIBUTOR DETAILS

Owen Foley

Misick & Stanbrook

T +1 649 946 4732

F +1 649 946 4734

E owen@misickstanbrook.tc

W www.misickstanbrook.tc

MISICK & STANBROOK

BARRISTERS AND ATTORNEYS



services for domestic and

international clients,

Company and Commercial law,

Banking and Insurance law, Trust law,

Litigation, Property and Tourism,

International Trade, Finance

and Corporate Formation.



Richmond House
Post Office Box 127
Providenciales
Turks & Caicos Islands
British West Indies
Tel: 649 946 4732
Fax: 649 946 4734
E-Mail:
info@misickstanbrook.tc
Web site:
www.misickstanbrook.tc