

# **TCI INTRODUCES REGULATION OF INVESTMENT DEALERS**

## **INTRODUCTION**

The Turks & Caicos Islands (“TCI”) has recently introduced a law regulating investment dealers, The Investment Dealers Ordinance 2001. The Ordinance came into effect on 22<sup>nd</sup> May 2001.

## **INVESTMENT DEALERS**

An investment dealer means a person who trades on behalf of customers, acts as a fund manager, solicits subscriptions for new issues of investments, and offers advice about investments by way of a business. Investments include commodities trading, corporate bonds, equities, government and local authority bonds, units in collective investment schemes, warrants, options, futures, forward contracts, swaps and so on as well as synthetic products which replicate these items (section 2).

## **LICENSING**

No one shall carry on business as an investment dealer unless it is a company or partnership which is licensed or is otherwise exempt (section 3). Applications for licences are made to the licensing committee of Financial Services Commission (“FSC”). The Governor may by regulation prescribe factors including the size and risk of an investment dealer’s business and the formula on which the investment dealer’s capital is calculated. No such regulations have as yet been introduced. Each applicant (if a company) must have a manager who is ordinarily resident in the Islands, at least two directors who are natural persons and must be precluded by its articles of association from issuing bearer shares. An applicant which is a partnership must have at least one partner who is ordinarily resident in the Islands and suitably qualified (section 7). There are four types of licence:

- A full licence;
- An execution only licence;
- A fund manager’s licence; or
- An adviser’s licence

## **REGULATION**

Licensees are obliged to meet a variety of insurance, capitalization, reporting, accounting, audit, client account management and corporate governance requirements and are

answerable to the FSC, which is the principal regulatory authority (section 15) in those respects.

The Governor may pass regulations which require clients' money and investments to be held on trust in accordance with those regulations (section 13). Audited accounts must be submitted to the FSC within 6 months of the end of the licensee's financial year (section 14).

The licensing committee of the FSC has powers of inspection and investigation (section 17) and may appoint a third party investigator to investigate the affairs or business of a person specified in the authorization or a subject matter specified in the authorization (section 18). That investigator is given powers to require documents or information with respect to an investigation (section 19) and the Supreme Court may issue a warrant affording the police powers of entry and search in certain circumstances in relation to the investigation (section 20). Documents removed in the course of a search may be retained for a period of three months or until the conclusion of criminal proceedings if those proceedings are commenced within that three months period.

The FSC has powers of revocation of a licence in certain circumstances (section 10). Before exercising that power the FSC must comply with a notice procedure under which the licence holder has the right to make representations. The licence holder may appeal a decision by the FSC to revoke its licence to the Supreme Court, on a point of law (section 11). As an alternative to (or a precursor of) revocation, the licensing committee of the FSC has intervention powers under section 23 under which it can order a licensee not to take on any new business or order the appointment of a suitably qualified interim manager.

Where a licensee becomes insolvent or is wound up, the money and investments of its clients shall be used to complete the clients' outstanding and unsettled transactions and then returned to the clients less the sums owed to the licensee for professional services rendered (section 24).

At the time of writing, subsidiary regulations under the Ordinance have not yet been introduced.

*For further information on this topic please contact Owen Foley at Misick & Stanbrook by telephone (+1-649-946-4732) or by fax (+1-649-946-4734) or by e-mail (owen@misickstanbrook.tc).*