



TURKS AND CAICOS ISLANDS

CHAPTER 165
ENCOURAGEMENT OF
DEVELOPMENT ORDINANCE

Revised Edition
showing the law as at 15 May 1998

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance 1997.

This edition contains a consolidation of the following laws—

ENCOURAGEMENT OF DEVELOPMENT ORDINANCE

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Ordinance 2 of 1972 .. in force 24 February 1975 (G.N. 32/1975)

Amended by Ordinance 3 of 1973 .. in force 24 February 1975 (G.N. 32/1975)

Amended by Ordinance 8 of 1980 .. in force 22 August 1980 (L.N. 31/1980)

Amended by Ordinance 7 of 1994 .. in force 25 February 1994

No Subsidiary Legislation has been made under this Ordinance

CHAPTER 165

**ENCOURAGEMENT OF
DEVELOPMENT ORDINANCE**

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CHAPTER 165

ENCOURAGEMENT OF DEVELOPMENT ORDINANCE

(Ordinances 2 of 1972, 3 of 1973, 8 of 1980 and 7 of 1994)

AN ORDINANCE TO ENCOURAGE THE ESTABLISHMENT, CONDUCT AND EXPANSION OF DEVELOPMENT ENTERPRISES IN THE ISLANDS BY THE GRANTING OF RELIEF FROM CUSTOMS DUTIES AND TAXES TO PERSONS ENGAGING IN SUCH ENTERPRISES INCIDENTAL TO AND CONNECTED WITH ANY OF THE FOREGOING PURPOSES.

[24 February 1975] Commencement

1. This Ordinance may be cited as the Encouragement of Development Ordinance.

Short title

2. In this Ordinance—

Interpretation

“Agency” means the Turks and Caicos Islands Investment Agency;

“construction date” means the day specified in a Development Order pursuant to paragraph (c) of section 5 of the Ordinance or in any amendment thereof pursuant to section 12 of this Ordinance;

“production date” means the date specified in a Development Order pursuant to paragraph (d) of section 5 of the Ordinance, or in any amendment thereof pursuant to section 12 of this Ordinance;

“Developer” means a person so declared by a Development Order, and shall include a body corporate registered under the Companies Ordinance;

“Development Order” means an Order made under section 4 of this Ordinance;

“development premises” means the premises specified in a Development Order pursuant to paragraph (b) of section 5 of this Ordinance or any amendment thereof pursuant to section 12 of this Ordinance;

“Governor” means the Governor in Council;

“tax exemption period” means the relevant period specified in the Development Order;

“declared benefit” means the benefits specified in section 6 of this Ordinance.

Application for
Development
Order and
information
required

3. Any person or body corporate who is desirous of conducting or expanding an enterprise in these Islands may apply to the Governor for a Development Order in relation to such enterprise and in support of the application shall furnish to the Governor the following information—

- (a) particulars as to the nature of such enterprise, the premises where it will be conducted, managed and otherwise operated, and the contribution which it is expected to make to the economy;
- (b) the estimated minimum amount and utilisation of the capital to be expended annually thereon during the tax exemption period;
- (c) where applicable, the numbers of persons to be employed, source of recruitment and the conditions under which workers will be employed, including where required provisions for the housing of workers;
- (d) the date on or before which:—
 - (i) the construction, expansion or preparation as the case may be, of the premises of the enterprise will commence;
 - (ii) having regard to the nature of the enterprise, it is anticipated that the applicant shall begin producing or supplying, on a reasonably extensive or marketable basis, the result arising from the conduct of the enterprise;
 - (iii) facilities will be available where the enterprise relates to the provisions of residential or recreational amenities for tourists;
- (e) satisfactory evidence that the enterprise is adequately financed and managed; and
- (f) such other information (which may include a feasibility report) as the Governor may require.

Development
Order

4. (1) Subject to the provisions of section 3 and subsection (2), the Governor may by Order—

- (a) declare any enterprise to be a development enterprise in respect of which an application has been made if he is satisfied that—

- (i) it is either a new enterprise or the substantial expansion of an existing enterprise;
 - (ii) it will have a beneficial effect on employment and the economy of the Islands; and
 - (iii) it is expedient in the public interest so to do.
- (b) declare any person or body corporate to be a Developer for the purpose of conducting or expanding a development enterprise if he is satisfied that—
- (i) it is adequately financed and is effectively managed for such period as may be specified in the Development Order;
 - (ii) it has adequately qualified or trained personnel in its employ or is able to obtain the services of such personnel;
 - (iii) it is able to obtain adequate raw materials (where applicable);
 - (iv) it possesses or will possess the necessary premises.

(2) Before making a Development Order in respect of an application made pursuant to section 3, the Governor shall obtain and consider the advice of the Agency on the application, but the Governor shall not be bound to follow any such advice. (*Inserted by Ord. 7 of 1994*)

5. A Development Order shall declare—

- (a) the Developer in whose favour the Development Order is made;
- (b) the premises where the development enterprise shall be conducted, managed and otherwise operated;
- (c) the date on or before which the construction, expansion or preparation of the development premises will commence;
- (d) the date on or before which, having regard to the nature of the development enterprise, it is anticipated that the Developer shall begin producing or supplying, on a reasonably extensive or marketable basis, the result arising from the conduct of the development enterprise;

Contents of
Development
Order

- (e) the date of commencement and the date of the termination of the tax exemption period in relation to the development enterprise;
- (f) such other conditions relating to the manner in which the affairs of the development enterprise shall be conducted, managed and operated as the Governor may deem fit, which may include a requirement that the Developer shall in every year during the tax exemption period submit to the Governor accounts as provided by section 11 of this Ordinance.

Declared
Benefits

6. Any Developer in whose favour a Development Order is made shall receive such of the following benefits and reliefs as may be specified in the Order—

- (a) exemption, for such period, not exceeding thirty-five years, as may be specified in the said Order, from any taxes on the profits, gains or turn-over attributable to the enterprise to which the said Order relates;
- (b) exemption, for such period, not exceeding thirty-five years, as may be specified in the said Order, from any real property tax, capital levy or other tax on capital invested in the enterprise to which the said Order relates;
- (c) exemption, for such period, not exceeding thirty-five years, as may be specified in the said Order, from all customs import duties upon the articles, in respect of the quantities (if any) stated, specified in the said Order which are imported into the Islands for such purposes of the enterprise to which the Order relates as may be specified therein:

Provided that no article imported into the Islands with a benefit or relief in respect of customs duty under the provisions of any Development Order shall be used for a purpose other than that for which it was so imported except in accordance with the provisions of section 9;

- (d) exemptions from all customs import duties upon any construction equipment imported into the Islands, either by the Developer or a contractor operating on his instructions, for the purpose of the construction of any premises required for the purposes of the enterprise to which the said Order relates:

Provided that such construction equipment shall not be used for the purpose of any other project or enterprise without the prior consent in writing of the Governor and shall be removed from the Islands, after the work for which it is required has been completed, within such time as shall be specified by the Governor at the time of importation, unless the full amount of customs duty ordinarily payable on the importation thereof has been paid; and the Governor may require the importer to enter into a bond for the payment of any such duty if such equipment is not so removed by such date;

- (e) exemption, for such period not exceeding thirty-five years, as may be specified in the said Order, from all export duties upon all articles or substances manufactured, produced or processed by the Developer in the exercise of the proper functions of the trade or business involved in the enterprise to which the said Order relates, or upon such articles or substances as may be specified therein.

(Substituted by Ord. 8 of 1980)

7. Every Developer who imports into these Islands any articles free of customs duty under the provisions of section 6 of this Ordinance shall—

- (a) keep a record in such form and containing such particulars as shall be specified by the Collector of Customs of the articles so imported;
- (b) cause such articles to be marked with a mark and in such manner as may be required by the Collector of Customs; and
- (c) permit the Collector of Customs or any person authorised by him at any reasonable time to inspect such record and to examine any such articles for the purpose of satisfying himself of the accuracy of the particulars in relation to such article contained in such record.

Special provisions relating to articles imported free of customs and entry tax

8. At least seven days before the date of importation by the Developer of any article deemed by the Developer to come within the provisions of the Development Order, and agreed by the Collector of Customs, the Developer shall deposit with the

Deposit of bills of quantities, specifications and alterations thereto

Collector of Customs two certified copies of the list of the quantities and articles being imported as soon as these shall become available:

Provided that an alteration, amendment or addition thereto of a minor nature may be authorised by the Governor in his discretion.

Restriction on
imported goods

9. (1) No articles imported under the provisions of a Development Order shall be given away or sold within five years of the date of importation except—

- (a) with the written permission of the Governor, or
- (b) on payment of all import duties of Customs leviable on the market value of such article or articles at the date of gift or sale.

(2) In the event that any Developer to whom a Development Order has been granted shall knowingly fail to comply with the provisions of this section the Development Order may be revoked by the Governor.

(3) Where any article is disposed of contrary to the provisions of subsection (1), the person to whom such article has been given or sold shall be liable, jointly and severally, with the Developer, for the payment of the import duties on the value of the article at the date of the gift or sale unless he proves that he did not know or have reason to suspect, and could not upon reasonable inquiry have ascertained, that the article had been imported in pursuance of a Development Order and was being disposed of contrary to the provisions of subsection (1).

(4) The provisions of section 10(4) shall apply *mutatis mutandis* to the recovery of sums due in respect of import duty payable under the provisions of this section as they apply to sums payable under the provisions of that section.

(Amended by Ord. 8 of 1980)

Provisions
relating to
revocation of
order

10. (1) The Governor, if he is satisfied that a Developer has contravened any of the provisions of this Ordinance, and in particular, any terms of the Development Order but without prejudice to the generality of the following—

- (a) that there has been a failure or neglect to commence the construction, expansion or preparation, as the case may be, of the development enterprise on or before the construction date; or
- (b) that the result contemplated by paragraph (d) of section 5 of this Ordinance is not attained on or before the production date; or

- (c) that a development enterprise is not being conducted in accordance with the terms of the Development Order or the application for a Development Order relating to it; or
- (d) that the information furnished by the applicant in its application for a Development Order is false in a material particular; or
- (e) that conditions relating to the employment of labour or the housing of workers are unsatisfactory; or
- (f) the conditions referred to in paragraph (f) of section 5 of this Ordinance have not been complied with;

may revoke the Development Order and thereupon the provisions of section 6 of this Ordinance shall cease to apply to such enterprise:

Provided that the Governor may at his discretion give to the Developer 14 days notice of his intention to revoke the Development Order to enable the Developer to comply with the terms of the Development Order.

(2) When any Order made under section 4 of this Ordinance has been revoked the Governor shall cause a notice to that effect to be published in the *Gazette* and shall state the date on which the enterprise shall cease or shall have ceased to be a development enterprise.

(3) The person declared to be a Developer under section 4 (2) of this Ordinance or the person conducting the development enterprise as the case may be shall pay to the Collector of Customs the customs duty which shall be calculated as if the articles have been disposed of under paragraph (b) of section 9 (1) of this Ordinance.

(4) Any sum which may be payable to the Collector of Customs under the provisions of subsection (3) of this section may be recovered at the suit of the Collector of Customs in the Magistrate's Court notwithstanding the provisions of any law to the contrary limiting the jurisdiction of such Court. The value of the goods for the purpose of paragraph (b) of section 9 (1) shall be assessed by the Collector of Customs; and in the event of a dispute as to the value, the Court may order the said goods to be sold by public auction, or offered for sale on such terms as the Court may direct.

11. A Developer shall in every year during the tax exemption period, on a date to be specified by the Governor, submit to the Governor a report in writing on the conduct and the progress of

Report

the development enterprise together with a statement giving full particulars of all capital expended on the development enterprise and showing how this capital has been depreciated during the year or part thereof covered and if so required, such statement shall be duly certified and authenticated.

Amendment of
Development
Order

12. On the application of a Developer the Governor may, by Order, upon such conditions as he may think fit, amend a Development Order made with respect to the Developer in regard to any matters specified in paragraphs (b), (c), (d) and (f) of section 5 of this Ordinance.

Extension of tax
exemption
period

13. The Governor may by order extend the period of declared benefits for a further period not exceeding five years from the expiration of the original period granted under section 6 of this Ordinance provided he is satisfied that the development enterprise:

- (a) will continue to have a beneficial effect on employment and the economy of these Islands; and
- (b) it is in the public interest that an extension of the tax exemption period is desirable.

Offences

14. Any Developer or his agent who contravenes any of the provisions of sections 5(f), 7, 9, or 11 of this Ordinance who with intent to deceive knowingly makes a statement false in a material particular in any report or account submitted under any provision of this Ordinance and every officer or agent of any Developer being a body corporate who is knowingly a party to such contravention shall in addition to any liability incurred under any other Ordinance be guilty of an offence and on summary conviction thereof shall be liable to a fine not exceeding \$1,000 and in default of payment to imprisonment for a period not exceeding six months.

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