

TCI UPDATE

TURKS & CAICOS INTRODUCES ENHANCED ANTI-MONEY LAUNDERING PROVISIONS

The Turks & Caicos Islands (TCI) has recently introduced a raft of legislation to enhance its existing comprehensive anti-money laundering regime. The provisions largely follow the “Review of Financial Regulation in the Caribbean Overseas Territories and Bermuda” recently conducted for the British Government by KPMG (generally known as “the KPMG Report”). Since passage of the legislation, the Paris-based Financial Action Task Force (FATF) has published its updated list of “non-cooperative countries or territories” in the fight against international money laundering. The original list, published in 2000 included the Bahamas and the Cayman Islands but not TCI. Local regulators are pleased to see that, following extensive analysis of TCI’s enhanced anti-money laundering regime, it has again been given a clean bill of health by the FATF.

The new legislation, which came into force on May 22nd, 2001, includes:

1. **Companies (Amendment) Ordinance 2001**

The primary function of this law is to make provision for the **immobilisation of bearer shares** issued by TCI-incorporated companies and to provide for the maintenance of registers of members and registers of directors by TCI-incorporated IBCs.

TCI companies retain the power to issue bearer shares. However, where they do so the shares shall not be kept outside TCI except in accordance with section 32E (see below). The company manager, company agent or secretary of the company shall maintain records in respect of each bearer share of its location, its ownership and its beneficial ownership. If the shares are held by an accountant, attorney, or licensed bank or trustee, the custodian shall notify any change in ownership or beneficial ownership to the company manager, company agent or secretary of the company within seven days.

Under Section 32E, bearer shares may be kept outside TCI on the following basis:

- (i) A locally-licensed company manager or agent must produce to the Registrar of Companies a certificate issued by an authority corresponding to TCI’s Financial Services Commission stating that the foreign custodian of the bearer shares is licensed by that authority and that that custodian is subject to the supervision of that authority.
- (ii) The company manager must also notify the Registrar when that foreign custodian commences to hold the bearer shares and it ceases to hold them.

- (iii) A foreign custodian who is not subject to legislation corresponding to TCI's Proceeds of Crime Ordinance 1998 is not permitted.

It should be noted however that there is still no requirement to make any public filing in TCI with respect to the ownership of bearer shares.

Another significant amendment is that TCI IBCs must now maintain a **register of members**. It is permitted to keep the register at a location other than the registered office of the company on condition that a record of the location and a true copy of the register are kept at the registered office and that changes made to the register are entered on that copy within one week of the date of any change. The register of members must be made available for inspection by members, as with an ordinary company. Moreover, IBCs must also maintain a **register of directors and secretary**. As with the register of members, it can be maintained at a location other than the registered office on condition that a certified copy is kept at the registered office, with details of the location of the original and that changes are entered within seven days of their occurrence. The register of directors and secretary may be inspected by a member of the company.

Companies incorporated prior commencement of the Ordinance (22nd May 2001) had been given a period of two years, until 21st May 2003, to comply with the provisions regarding immobilization of their outstanding bearer shares.

2. **The Financial Services Commission Ordinance 2001**

This Ordinance follows a recommendation of the KPMG report in re-constituting TCI's Financial Services Commission (FSC) as a statutory board responsible for the regulation of the financial services industry in the Islands. The FSC has been given power to set and collect fees and to employ its own staff. A subsidiary licensing committee will take over responsibility for decisions on the granting and revoking of licences in the financial services arena, appointing inspectors and carrying out other functions conferred on it by other financial services laws. The Ordinance does not create any new regulatory powers but consolidates pre-existing regulatory functions in the hands of the new Commission.

3. **The Criminal Justice (International Cooperation) etc. (Amendment) Ordinance 2001**

TCI's Proceeds of Crime Ordinance 1998 introduced (at section 29 (1)) the offence of acquiring or using property or having possession of it knowing that it is or represents (in whole or in part) another person's proceeds of criminal conduct. This Ordinance expands that offence to "knowing and suspecting".

It also enhances TCI's existing laws against drug-trafficking by introducing an offence of using or having possession of property which represents the proceeds of another person's drug trafficking, in addition to the previous offence of acquiring such property, and it expands the offence of "tipping-off" in relation to drug trafficking investigations.

4. **The Customs (Amendment) Ordinance 2001**

This Ordinance makes it an offence for a person to enter the Islands carrying cash or negotiable instruments for a value in excess of US\$10,000.00 without making a declaration to that effect. It is also an offence not to produce the cash or negotiable instruments concerned and to answer questions about them.

5. **Overseas Regulatory Authority (Assistance) Ordinance 2001**

A framework is established for the giving of assistance to overseas regulatory authorities when they wish to obtain information in relation to their regulatory functions on non-tax matters. The assistance is to be given by the licensing committee of the FSC. An "overseas regulatory authority" is, essentially, an authority which regulates banking, company managers, insurance, mutual funds, or trustees or which exercises other regulatory functions relating to companies or financial services but does not include functions directly or indirectly relating to assessing, imposing or collecting taxes of any kind (section 2). The FSC will consider several factors in deciding whether to give assistance including reciprocity, public interest, gravity of the matter, whether assistance could be obtained by other means and whether the inquiries relate to a possible breach of a law which has no close parallel in the Islands.

Powers given to the licensing committee of the FSC include the power to require the production of documents and the provision of information. The committee may apply to the Supreme Court for a compliance order or for a person to be examined on oath. It may also apply to the court for a warrant which will give it powers of entry and search. Section 7 provides protection against self-incrimination.

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