

COMPANIES (AMENDMENT) ORDINANCE 2001

(Ordinance 10 of 2001)

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TURKS AND CAICOS ISLANDS

COMPANIES (AMENDMENT) ORDINANCE 2001

(Ordinance 10 of 2001)

Assent..... *May 16, 2001*

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Commencement..... *May 22, 2001*

AN ORDINANCE TO AMEND THE COMPANIES ORDINANCE: AND FOR CONNECTED PURPOSES.

ENACTED by the Legislature of the Turks and Caicos Islands.

Citation and commencement

1. This Ordinance may be cited as the Companies (Amendment) Ordinance 2001 and shall come into operation on such day as the Governor may appoint by notice published in the Gazette and different days may be appointed for different purposes.

Amendment of Companies Ordinance cap 122

2. The Companies Ordinance shall be amended as provided in the Schedule.

Savings and transitional provisions

3. The Governor may by regulations make such provision including amending any legislation, as he considers necessary, convenient or expedient for savings, transitory or transitional purposes in connection with the coming into operation of any provision of this Ordinance.

SCHEDULE

(Section 2)

AMENDMENT OF COMPANIES ORDINANCE

1. The Companies Ordinance shall be amended as follows.

2. After section 32 there shall be added –

Location of bearer shares

“32A. Subject to sections 32D to 32F bearer shares in a company shall be kept in such manner as may be prescribed in the office of –

- (a) the company manager or the company agent licensed under the Company Management (Licensing) Ordinance 1999 or where the company does not have a licensed company manager or licensed agent the secretary of the company; or
- (b) an accountant, attorney, bank licensed under the Banking Ordinance or trustee licensed under the Trustees Licensing Ordinance.

32B. The company manager, company agent or secretary of the company shall maintain records in respect of each bearer share in such form as may be prescribed, of –

- (a) its location;
- (b) its ownership; and
- (c) its beneficial ownership.

32C. An accountant, attorney, bank or licensed trustee which keeps bearer shares under section 32A(b) shall notify, in such form as may be prescribed, a change in ownership or beneficial ownership –

- (a) to the company manager, company agent or secretary of the company within seven days beginning with the day after the date of the change in ownership; or
- (b) where the company is temporarily without a company manager, company agent or company secretary or the manager, agent or secretary is not known to the accountant, attorney, bank or licensed trustee, to the Registrar within 14 days beginning with the day after the date of the change in ownership.

32D. Bearer shares in a company shall not be kept outside the Islands other than in accordance with the conditions in section 32E.

32E. The conditions referred to in section 32D shall be –

- (i) the company manager or the company agent licensed under the Company Management (Licensing) Ordinance 1999 of a company whose bearer shares are being kept outside the Islands, shall–
 - (a) produce to the Registrar a certificate issued by an authority corresponding to the financial services commission which states –
 - (A) that the custodian of the bearer shares is licensed by the authority; and
 - (B) that the custodian is subject to the supervision of that authority; and
 - (b) notify the Registrar in such form as may be prescribed when the custodian commences to hold bearer shares in a company and when it ceases to hold bearer shares in a company; and
- (ii) the custodian in its capacity as a custodian of bearer shares shall be subject to legislation corresponding with the

Proceeds of Crime Ordinance 1998 and regulations made under it.

32F. (1) Where the company manager or company agent of a company does not comply with the provisions of section 32E –

- (a) it or he shall be guilty of an offence and shall be liable on summary conviction to a fine of \$20,000 and on conviction on indictment to a fine of \$20,000 or imprisonment for a period not exceeding 12 months or to both such fine and imprisonment; and
- (b) the company which issued the bearer shares shall be struck off the register.

(2) Where the company manager or company agent is a company and commits an offence under this Ordinance, every director and every officer concerned with the management of the company shall be liable with the company to be convicted of that offence unless he satisfies the court that the offence was committed without knowledge or consent or that he took reasonable steps to prevent the commission of the offence.

3. In section 38(1) after the word “members” where it occurs for the first time there shall be inserted the words “and a company other than an exempted company, shall keep the register”.

4. At the end of section 38 there shall be added -

“38A An exempted company may keep its register of members at a location other than its registered office on condition –

- (a) that a record of the location and a copy certified by the secretary as a true copy of the register are kept at its registered office; and
- (b) that changes made to the register are entered on the certified copy not later than one week beginning with the date of the occurrence of the change.”.

5. At the end of section 53 there shall be added -

“53A An exempted company may keep its register containing the names, addresses and occupations of its directors and secretary at a location other than its registered office on condition –

- (a) that a record of the location and a copy certified by the secretary as a true copy of the register are kept at its registered office; and
- (b) that changes made to the register are entered on the certified copy not later than one week beginning with the date of the occurrence of the change.

53B . (1) The register of directors and secretary of –

- (a) an ordinary company may be inspected by a person at no cost; and

- (b) an exempted company may be inspected only by a member of the company and at no cost.
- (2) If inspection under subsection (1) is refused, the company and its directors, managers and officers shall incur-
 - (a) a penalty of \$10 for the refusal, and
 - (b) a penalty of \$10 for every day during which the refusal continues.
- (3) The Registrar may by order compel an immediate inspection of the register by a person who may inspect it under subsection (1).”.

6. In section 54 for the words “sections 52 or 53” there shall be substituted “section 52, 53, 53A or 53B”.

7. At the end of section 107 there shall be added the following subsection –

“(2)The distribution of the assets of the company under subsection (1)(h) shall be without prejudice –

- (a) to the rights of preferred creditors under section 160;
- (b) to an agreement between the company and any creditors including secured and preferred creditors, that the claims of these creditors in the agreement shall be subordinated or otherwise deferred to the claims of other creditors;
- (c) to rights of set off or netting of claims between the company and other persons whether by agreement or law or to an agreement between the company and other persons to waive or limit these rights.”.

8. At the end of section 134 there shall be added the following subsection –

“(2) The payment of the debts of the company under subsection (1)(j) shall be without prejudice –

- (a) to the rights of preferred creditors under section 160;
- (b) to an agreement between the company and any creditors including secured and preferred creditors, that the claims of these creditors in the agreement shall be subordinated or otherwise deferred to the claims of other creditors;
- (c) to rights of set off or netting of claims between the company and other persons whether by agreement or law or to an agreement between the company and other persons to waive or limit these rights.”.

9. In section 166(2) –

- (a) immediately after paragraph (d) there shall be inserted the following paragraph –

“(e) an agreement between the company and any creditors under section 107(2)(b) or (c) or section 134(2)(b) or (c).”; and

(b) in the proviso for the words “or transaction” wherever they occur there shall be substituted “transaction or agreement”.

10. In section 185(2) there shall be repealed –

“38. *Register of members*

42. *Inspection of Register*

44. *Remedy for improper entry or omission of entry in register*

46. *Register to be evidence*

53. *Register of directors and officers*

54. *Penalty on company not keeping a register of directors”.*