

**INVESTMENT DEALERS (LICENSING)
ORDINANCE 2001**

(Ordinance 12 of 2001)

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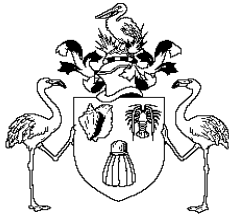
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TURKS AND CAICOS ISLANDS
INVESTMENT DEALERS (LICENSING)
ORDINANCE 2001

(Ordinance 12 of 2001)

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AN ORDINANCE TO MAKE PROVISION FOR THE LICENSING OF INVESTMENT DEALERS; AND FOR CONNECTED PURPOSES.

ENACTED BY THE LEGISLATURE OF THE TURKS AND CAICOS ISLANDS.

PART I

PRELIMINARY

1. This Ordinance may be cited as the Investment Dealers (Licensing) Ordinance 2001 and shall come into operation on such day as the Governor may appoint by notice published in the Gazette.

Citation and commencement

2. In this Ordinance –

“adviser’s licence” means a licence for an investment adviser;

“execution only licence” means a licence for an investment dealer in an execution only capacity;

“financial services commission” means the Turks and Caicos Islands Financial Services Commission established under section 4 of the Financial Services Commission Ordinance 2001;

“full licence” means a licence for an investment dealer;

“fund manager” means a person who trades in investments on behalf of one or more mutual funds;

“fund manager’s licence” is a licence for a fund manager;

Interpretation

“investment adviser” means a person who offers advice about investments by way of a business but does not trade in investments on behalf of customers;

“investment dealer” means a person who –

- (a) trades on behalf of customers;
- (b) acts as a fund manager;
- (c) solicits subscriptions for new issues of investments;
and
- (d) offers advice about investments by way of a business;

“investment dealer in an execution only capacity” means an investment dealer who trades in investments on behalf of customers, but shall not give advice as to the suitability of the investment for a customer;

“investments” includes —

- (a) commodities trading;
- (b) corporate bonds;
- (c) equities;
- (d) government and local authority bonds;
- (e) units in collective investment schemes;
- (f) warrants, covered warrants, options, futures, forward contracts, contracts for differences, swaps, and spread bets and any similar securities or derivatives; or
- (g) synthetic products which replicate or substantially replicate any of the investments mentioned in paragraphs (a) to (f);

“licence” means a licence of one of the categories specified in section 8;

“licensing committee” means the licensing committee of the financial services commission appointed under section 14 of the Financial Services Commission Ordinance 2001;

“mutual fund” has the same meaning as in the Mutual Funds Ordinance 1998;

“suitably qualified” means having such qualifications as may be prescribed;

PART II

LICENSING

3. (1) In this section “an exemption order” means an order made by the Governor under subsection (3) and “specified” means specified in an exemption order.

Requirement for
a licence

(2) An association of persons, a partnership or a person shall not carry on a business as an investment dealer or purport to do so unless it is a company or partnership which is –

- (a) a licensed investment dealer; or
- (b) an exempt company or partnership.

(3) The Governor may by order provide for –

- (a) specified companies or partnerships; or
- (b) persons or partnerships falling within a specified class,

to be exempt from the prohibition in subsection (2).

(4) An exemption order may provide for exemption to have effect –

- (a) in respect of specified activities;
- (b) in specified circumstances;
- (c) in relation to specified functions; and
- (d) subject to conditions.

(5) A person or partner that contravenes subsection (2) shall be guilty of an offence and liable –

- (a) on summary conviction to a fine not exceeding twenty five thousand dollars; and
- (b) on conviction on indictment to a fine not exceeding twenty five thousand dollars or imprisonment for a term not exceeding two years or both.

4. (1) An applicant for a licence shall apply to the licensing committee –

Application for
licence

- (a) on the prescribed form;
- (b) with a remittance for the fee set under section 5; and
- (c) with such other information in relation to —
 - (i) capital;
 - (ii) directors, beneficial owners, managers and shareholders ; and
 - (iii) partners,

as may be prescribed.

(2) After receiving an application under subsection (1) the licensing committee may require the applicant to let it have such further information as it considers necessary for determining the application.

Setting of fees

5. The financial services commission shall set the fees to be paid in relation to an application for a licence and shall publish the fees set in the Gazette.

Licensed investment dealer's capital

6. The Governor may by regulations prescribe –

- (a) factors including the size and risk of an investment dealer's business; and
- (b) the formula,

on which the amount of the investment dealer's capital referred to in sections 4(1)(c)(i), 7(1)(d) and 12(h) is calculated.

Grant of licence

7. (1) The licensing committee may grant a licence when it is satisfied that –

- (a) the directors, beneficial owners, managers and shareholders of a company or the partners in a partnership, which is the applicant are fit and proper persons to hold a licence of the type for which application has been made;
- (b) if the applicant is a company –
 - (i) there is a manager who is ordinarily resident in the Islands;
 - (ii) its articles of association prohibit bearer shares; and
 - (iii) there are at least two directors who are natural persons;
- (c) if the applicant is a partnership, there is at least one partner who is ordinarily resident in the Islands and suitably qualified;
- (d) the applicant's capital meets the amount calculated on the basis of the factors and formula prescribed under section 6; and
- (e) the fees set under section 5 have been paid.

(2) The licensing committee shall publish notice of the grant of a licence in the gazette.

Licences

8. (1) A licence shall be –

- (a) a full licence;
- (b) an execution only licence;
- (c) a fund manager's licence; or

(d) an adviser's licence.

(2) A licence shall state –

(a) the category in subsection (1) for which it licenses the investment dealer; and

(b) the classes of investments in respect of which it licenses the investment dealer.

(3) The period for which a licence shall be in operation shall end not later than 31st March in the year following the year in which it is granted.

(4) A licence may be granted subject to conditions which may be added to or varied.

(5) A licence shall be displayed in a prominent place in the licensee's place of business.

9. (1) A licensed investment dealer which wishes to surrender its licence –

Surrender of
licence

(a) shall, before giving the 28 days' notice referred to in paragraph (b), make arrangements for the transfer of its business to another licensee;

(b) shall give notice of the proposed transfer and of its date to the licensing committee not less than 28 days before the date of the proposed transfer;

(c) shall, after the date of transfer, certify to the licensing committee that all its client accounts have been transferred; and

(d) shall let the licensing committee have a receipt by the transferee that the business has been transferred to it.

(2) Where the licensing committee is satisfied that the requirements of subsection (1) have been met it shall accept the surrender of the licence.

10. (1) This section shall apply where the licensing committee is satisfied that a licensed investment dealer –

Revocation of
licence

(a) has failed to comply with a term of its licence or with a condition imposed in respect of its licence under section 8;

(b) has failed to pay a fee payable under this Ordinance in respect of its licence;

(c) has been convicted of an offence under this Ordinance;

(d) has failed to comply with a requirement imposed under this Ordinance;

- (e) is or appears likely to become, unable to meet its financial obligations as they fall due or becomes insolvent;
- (f) is acting or has acted contrary to the public interest;
- (g) being a company, no longer has a manager in accordance with section 7(1)(b)(i);
- (h) being a partnership no longer has at least one partner who is ordinarily resident in the Islands and suitably qualified in accordance with section 7(1)(c); and
- (i) has a director, beneficial owner, manager or shareholder or a partner who is in any respect no longer fit and proper to be licensed under this Ordinance.

(2) Where the licensing committee is satisfied under subsection (1) it may, instead of or after making an order under section 23, revoke the licence of the licensed investment dealer by notice published in the Gazette without affecting other action or proceedings which have been or may be taken.

(3) The licensing committee shall not revoke the licence of a licensed investment dealer under subsection (2) unless and until-

- (a) it has served a notice in writing on the licensed investment dealer informing it –
 - (i) that it intends to revoke its licence;
 - (ii) the grounds for revocation; and
 - (iii) that it may within a period of one month beginning with the day after the date of service of the notice of revocation on it, make written representations to it as to why its licence should not be revoked; and
- (b) it has, if representations are made to it under paragraph (a)(iii), considered the representations.

(4) A notice revoking a licence under subsection (2) shall not take effect -

- (a) where appeal against the revocation has been taken under section 11, until the revocation has been confirmed on the appeal ;
- (b) in any other case, until the expiration of 21 days beginning with the day after the date of publication of the notice in the Gazette.

11. (1) An investment dealer whose licence has been revoked under section 10 may appeal against the revocation to the Supreme Court on a point of law.

Appeal against
revocation

(2) Except with the leave of the Supreme Court, an appeal under subsection (1) shall be heard not later than the end of the period of three months beginning with the day after the date of the publication in the Gazette of the notice of revocation to which the appeal relates.

(3) On an appeal under subsection (1) the Supreme Court, on the application of the licensing committee may, if it is satisfied that it is in the public interest or that it is necessary for the protection of a client of the investment dealer, by order direct that the appellant-

(a) shall not act as an investment dealer until the determination of the appeal; or

(b) shall only act as an investment dealer until the determination of the appeal subject to such conditions as the Supreme Court thinks fit to impose.

(4) On an appeal under subsection (1), the Supreme Court may quash or confirm the revocation against which the appeal is brought.

PART III

OBLIGATIONS OF LICENSED INVESTMENT DEALERS

- 12.** A licensed investment dealer shall –
- (a) be able to meet its financial obligations as they fall due;
 - (b) keep the money and investments of its clients in such a manner as may be prescribed;
 - (c) effect professional indemnity insurance in such a manner, for such amount, for such liabilities and with such insurer as may be prescribed;
 - (d) obtain the prior approval of the licensing committee for a change in directors, beneficial owners, managers and shareholders or partners.
 - (e) let the licensing committee know of a change requiring an amendment to its application for a licence or of a change to its structure or method of working which affects the conditions of its licence;
 - (f) maintain the ability to effect customer instructions and settle transactions, in a timely manner;
 - (g) submit a return in a prescribed form at prescribed times to the financial services commission; and
 - (h) maintain the amount of capital calculated on the basis of the factors and formula prescribed under section 6.

Obligations of licensees

Clients' money
and investments

13. The Governor may prescribe, in relation to the handling of money held by a licensed investment dealer in specified circumstances, regulations which result in clients' money and investments being held on trust in accordance with the regulations.

Accounts

14. (1) A licensed investment dealer shall keep accounts which give a fair view of the business and which are audited annually by an auditor approved by the financial services commission.

(2) The audited accounts shall be submitted to the financial services commission within 6 months after the end of the financial year

(3) A licensed investment dealer who does not submit such accounts –

- (a) within such period as may be prescribed shall be liable to a penalty of \$5,000;
- (b) within such further period as may be prescribed shall not accept business which it did not have at the end of that further period; and
- (c) within such further period as may be prescribed beginning on the day after the end of the period prescribed under paragraph (b), may have its licence revoked by the licensing committee.

(4) The financial services commission where it is satisfied that failure to comply with the periods prescribed under subsection (3) is because of circumstances outwith the control of the licensed investment dealer or its auditors, may extend the prescribed period for such length of time as it considers appropriate in the circumstances.

PART IV

REGULATION OF

LICENSED INVESTMENT DEALERS

Duty of financial
services
commission

15. The financial services commission shall make arrangements –

- (a) to maintain a general view of the conduct and practice of licensed investment dealers;
- (b) to monitor and examine the compliance of licensed investment dealers with their obligations under this Ordinance;
- (c) to inspect the affairs or business of a licensed investment dealer for the purpose of ensuring that –
 - (i) the licensed investment dealer is or has been acting in accordance with this Ordinance ;

- (ii) the licensed investment dealer is in a sound financial position and is or has been acting as a licensed investment dealer in a satisfactory manner and in a manner which is not detrimental to the public interest;
- (d) to examine accounts and returns to be submitted to the financial services commission under this Ordinance; and
- (e) to examine applications and written representations made to the licensing committee under this Ordinance and advise and make recommendations to it on them.

16. A licensee shall, when required by the financial services commission, provide for examination –

Documents and information to be supplied by licensee

- (a) a certificate of compliance with the terms and condition of the licence;
- (b) accounts and other records;
- (c) a declaration of solvency and evidence that the licensee is solvent; and
- (d) such other information as the commission may require.

17. (1) The licensing committee may –

Inspection, investigation and complaints

- (a) inspect the affairs or business of a licensed investment dealer for the purpose of ensuring that the licensed investment dealer is or has been acting in accordance with this Ordinance and with the terms and conditions of its licence;
- (b) investigate the affairs or business of a licensed investment dealer; and
- (c) investigate the affairs or business of a person who, it has reasonable grounds to believe, has committed or is committing an offence under section 3.

(2) The licensing committee shall receive and examine complaints against licensed investment dealers.

18. (1) The licensing committee in exercise of the powers conferred by section 17(1)(b) and (c) may authorise a person as an investigator to investigate –

Powers of the licensing committee to appoint investigator

- (a) the affairs or business of a person specified in the authorisation; or
- (b) a subject matter specified in the authorisation,

being a person who or subject matter which is the subject of the investigation.

(2) A person shall not be obliged to comply with a requirement imposed by an investigator exercising powers under this section unless the investigator produces if requested evidence of his authority.

(3) The person referred to in subsection (1)(a) –

(a) shall be given written notice by the licensing committee of the appointment of an investigator unless the licensing committee believes that the notice would be likely to result in the investigation being frustrated; and

(b) shall not be obliged to comply with a requirement imposed by an investigator exercising powers under this section unless the investigator produces if requested –

(i) evidence of his authority, and

(ii) directions under subsections (4) to (6).

(4) An authorisation under subsection (1) shall –

(a) specify the provisions under which the investigator was appointed; and

(b) state the reason for his appointment.

(5) An investigator –

(a) may require a person to attend before the investigator at a specified time and place to answer questions,

(b) may require a person to provide such documents and information as the investigator may require for the purposes of the inquiry, and

(c) may examine a person on oath and may administer an oath accordingly.

(6) A person who is to be examined on oath under this section may be represented by an attorney.

(7) The licensing committee shall direct an investigator as to -

(a) the scope of the investigation;

(b) the period during which the investigation is to be conducted;

(c) the conduct of the investigation; and

(d) the reporting of the investigation.

(8) A direction under subsection (4) may –

(a) confine the investigation to particular matters;

(b) extend the investigation to additional matters;

- (c) require the investigator to discontinue the investigation or to take only such steps as are specified in the direction; or
- (d) require the investigator to make such interim reports as are specified.

(9) If there is a change in the scope or conduct of the investigation and, in the opinion of the licensing committee the person subject to investigation is likely to be significantly prejudiced by not being made aware of it, that person shall be given written notice of the change.

(10) An investigator shall make a report of his investigation to the licensing committee.

19. (1) For the purposes of this section, section 18 and section 20 –

Powers of investigator to require information

- (a) “documents” includes information recorded in any form; and
- (b) the power to require the production of information or documents includes power to require the production of the information or documents in legible form.

(2) An investigator may direct a person –

- (a) to attend before the investigator at a specified time and place to answer questions;
- (b) to produce documents relevant to the investigation;
- (c) to furnish him with information with respect to a matter relevant to the investigation; and
- (d) to provide him with such assistance in relation to the investigation as he may specify.

(3) Where a person fails to comply with a direction issued under subsection (2) within the period of three days beginning with the date of the direction or such longer period as the investigator may permit, he may apply to the court for an order requiring the person to comply with the direction.

(4) Where under a direction issued under subsection (2) the investigator considers it necessary to examine a person on oath, he may apply to the court to have the person examined by the court and the transcript of the examination sent to him.

(5) A person who is to be examined under subsection (4) may be represented by an attorney and the examination shall be held in camera.

(6) Any order of the court made under subsection (4) may limit the scope and nature of the examination of any person and may provide for the payment of any costs incurred by that person in connection with the examination.

(7) Where documents are produced under this section, the investigator may take copies of or extracts from them.

(8) A person shall not under this section be required to disclose information or produce a document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings, except that an attorney may be required to furnish the name and address of his client.

(9) Where a person claims a lien on a document, its production under this section is without prejudice to his lien.

(10) The licensing committee may make a contribution to the costs of a person who complies with a direction given under this section other than the person who or whose affairs are the subject of the investigation in respect of which the direction was issued.

Powers of entry
and search

20. (1) The court may issue a warrant under this section if satisfied on information on oath given by or on behalf of the licensing committee that there are reasonable grounds for believing that the conditions referred to in subsection (2) or (3) are satisfied.

(2) The conditions referred to in subsection (1) are –

(a) that a person on whom an order of the court under section 19 has been imposed has failed wholly or in part to comply with it; and

(b) that on the premises specified in the warrant –

(i) there are documents which have been required; or

(ii) there is information which has been required.

(3) The conditions referred to in subsection (1) are –

(a) that there are on the premises specified in the warrant documents or information in relation to which a direction of the investigator or an order of the court under section 19 could be imposed; and

(b) that if such a requirement were to be imposed the documents or information to which it related would be removed, tampered with or destroyed.

(4) A warrant under this section shall authorise a police officer –

(a) to enter the premises specified in the warrant;

(b) to search the premises and take possession of any documents or information specified in the warrant or take, in relation to any such documents or information, any other steps which appear necessary for their preservation or preventing interference with them;

- (c) to take copies of or extracts from documents or information specified in the warrant;
- (d) to require a person on the premises to provide an explanation of a document or information specified in the warrant or to state where it may be found; and
- (e) to use reasonable force.

(5) A document of which possession is taken under this section may be retained -

- (a) for a period of three months beginning with the date on which possession is taken; or
- (b) if within that period proceedings to which the document is relevant are commenced against a person for a criminal offence, until the conclusion of the proceedings.

21. (1) A statement made by a person in compliance with this Ordinance shall be admissible in evidence in proceedings, if it complies with the requirements governing the admissibility of evidence in the proceedings.

Admissibility of answers obtained under this Ordinance

(2) In criminal proceedings in which the person referred to in subsection (1) is charged with an offence to which this subsection applies or in proceedings in relation to action to be taken against that person -

- (a) no evidence relating to the statement may be adduced; and
- (b) no question relating to it may be asked,

(3) Subsection (2) applies to an offence other than perjury or furnishing false or misleading information contrary to section 24(1)(c).

22. No action or proceedings for breach of confidentiality or contravention of any duty to which a person is subject shall lie against a person who furnishes information, produces documents, renders assistance or provides an explanation in relation to a direction, examination, search warrant, inspection or investigation under this Ordinance.

Immunity from action or proceedings

Intervention

23. Where the licensing committee is satisfied under section 10(1) it may -

Intervention by licensing committee

- (a) order the licensed investment dealer not to take on business which the licensed dealer has not had before the date of the order under this paragraph;
- (b) order the licensed investment dealer to appoint not later than seven days beginning on the day after the

date of the order under this paragraph and at the licensed investments dealer's expense, an interim manager who shall be a suitably qualified individual, person or company approved by the financial services commission; or

- (c) if the licensed investment dealer fails to act as ordered under paragraph (b), appoint a suitably qualified interim manager.

Insolvency of licensed investment dealer

Insolvency of
licensed
investment
dealer

24. Where a licensed investment dealer becomes insolvent or is wound up, the money and investments of its clients shall be -

- (a) used to complete the clients' outstanding and unsettled transactions; and
- (b) then returned to the clients less the sums owed to the licensed investment dealer for professional services rendered.

Offences and penalties

Offences and
penalties

25. (1) A person shall commit an offence if he -

- (a) without reasonable excuse fails to comply with a direction imposed on him under section 19; or
 - (b) where an order of the Court has been made under section 19, fails to comply with it; or
 - (c) furnishes information in purported compliance with a direction or an order of the Court under section 19 or a request for information in an inspection or investigation under this Ordinance, which he knows to be false or misleading in a material particular; or
 - (d) mutilates, obliterates, tampers with, destroys, secretes or removes a document with intent to avoid a provision of this Ordinance; or
 - (e) wilfully obstructs an inspection or investigation.
- (2) (a) A person who commits an offence under this section shall be liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding six months or both;
- (b) a person who commits an offence under this section shall be liable on conviction upon indictment to a fine not exceeding twenty five thousand dollars or imprisonment for a term not exceeding two years or both.

PART V

MISCELLANEOUS

26. 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.

Transitional provisions

27. The Governor may make regulations prescribing the matters which are required or permitted by this Ordinance to be prescribed or which appear to him to be necessary or desirable to be prescribed for the purpose of giving effect to this Ordinance.

Regulations

28. The amendments in the Schedule shall have effect.

SCHEDULE

(Section 28)

AMENDMENTS

1. In the Financial Services Commission Ordinance 2001 –

(a) in section 2 in the definition of “financial services Ordinances” at the end of paragraph (g) there shall be added –

“(gg) the Investment Dealers (Licensing) Ordinance 2001;” and

(b) at the end of section 11(e) there shall be added -

“(ee) open and maintain accounts with investment dealers licensed under the Investment Dealers (Licensing) Ordinance 2001;”.

2. In section 2 of the Overseas Regulatory Authorities (Assistance) Ordinance 2001 in the definition of “overseas regulatory authority” at the end of paragraph (c) there shall be added –

“(cc) the licensing committee under the Investment Dealers (Licensing) Ordinance 2001;”.