

TURKS AND CAICOS ISLANDS

MONEY TRANSMITTERS ORDINANCE 2007

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MONEY TRANSMITTERS ORDINANCE 2007

(Ordinance 13 of 2007)

Assent..... 1 October, 2007

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Commencement..... 8 October, 2007

AN **ORDINACE** TO REQUIRE THE LICENSING OF MONEY SERVICES BUSINESS; TO REGULATE THE OPERATION OF SUCH BUSINESS; AND FOR CONNECTED PURPOSES.

ENACTED by the Legislature of the Turks and Caicos Islands.

Short title and commencement

1. This Ordinance may be cited as the Money Transmitters Ordinance 2007 and shall come into operation on such day as the Governor may appoint by notice published in the *Gazette*.

Interpretation

2. In this Ordinance –

Ord. 6 of 2001

“approved form” means such form as may be approved by the Commission under section 44 of the Financial Services Commission Ordinance 2007;

“Commission” means the Turks and Caicos Financial Services Commission established under the Financial services Commission Ordinance, 2001 and preserved and continued under the Financial Services Commission Ordinance 2007;

“financial year” means the financial year adopted by the Director of the money service business;

“licence” means a licence granted under section 5;

“licensee” means a person holding a licence under this Ordinance;

“money services business” means–

(a) the business of providing (as a principal business) any or all of the following services -

(i) money transmission;

(ii) cheque cashing;

(iii) currency exchange;

(iv) the issuance, sale or redemption of money orders or traveller’s cheques; and

(v) such other services as the Governor in Council may specify by notice published in the Gazette; or

(b) the business of operating as an agent or franchise holder of a business mentioned in paragraph (a),

and any question as to whether the provision of a service is the principal business of any person, shall be determined by the licensing committee; and

“net worth” means excess assets over liabilities as presented under applicable generally accepted accounting principles subject to adjustment for non-admitted assets as determined by the licensing committee.

3. (1) This Ordinance does not apply to a person licensed under –

Extent of the Ordinance

(a) the Banking Ordinance; or

Cap. 118

(b) the Trustee Licensing Ordinance,

Cap. 123

to carry on money services business in conjunction with other business unless such licensed person, is operating as an agent or franchise holder of a money services business.

(2) No money services business which is licensed under this Ordinance is required to be licensed under the Business Licensing Ordinance.

Cap. 130

4. (1) Subject to sections 3(2) and 32, any person who carries on money services business without first obtaining a licence under section 5, is guilty of an offence.

Licence required to carry on money services business

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for one year and, in the case of a continuing offence, to a fine of one thousand dollars for each day during which the offence continues.

5. (1) Any person desirous of carrying on money services business may make application in writing to the Commission for the grant of a licence.

Application for, and grant of, licence

(2) An application for a licence shall be in the approved form.

(3) The Commission may grant a licence in the prescribed form, subject to such terms and conditions, if any, as the Commission may consider necessary or desirable.

(4) The application shall be accompanied by an application fee of three thousand dollars.

(5) A licence shall not be granted in respect of a money services business unless the person applying for the licence has, in the Islands, a place of business approved by the Commission, which will be the principal office, in the Islands, for that money services business.

(6) A licence granted under subsection (3) shall be granted for the carrying on of money services business within the Islands but subject to such conditions as may be prescribed by this Ordinance or imposed by the Commission.

(7) It is a condition of every licence that the licensee –

- (a) shall not change its name without the prior approval of the Commission;
- (b) shall not cease to have a principal office in the Islands;
- (c) shall not change its principal office in the Islands without the prior approval of the Commission; and
- (d) shall notify the Commission forthwith of any change in the information supplied in the application for the licence.

(8) Conditions imposed by the Commission under subsection (6) may at any time be varied or revoked by the licensing committee.

(9) Every holder of a licence shall, on or before every 31st day of December after the first grant of the licence, pay an annual fee of four thousand dollars for a licence to carry on money services business, and there shall be payable by a licensee who fails to pay the prescribed annual fee by that date, a surcharge not exceeding one-twelfth of that fee for every month or part of a month that the fee is not paid.

(10) The Commission may refuse to grant a licence if the Commission is of the opinion that the person applying for the licence would fail to fulfil the obligations of a licensee under this Ordinance.

Net worth requirements

6. (1) The Commission shall not grant a licence to a person whose restricted deposit is less than seventy five thousand dollars or its equivalent in other currencies.

(2) When the Commission has reasonable cause to believe that there are grounds for doing so, the Commission may require a licensee to increase its restricted deposit to such greater sum as the Commission may determine for the nature of the licensee's business, current or proposed.

Advertisement of money services business

7. (1) No person, other than a licensee, shall –

- (a) use words representing that that person is carrying on money services business, in English or in any other language, in the description or title under which that person carries on business within the Islands;
- (b) make any representation in any billhead, letter, letterhead, circular, paper, notice or advertisement or in any other manner that that person is carrying on money services business within the Islands; or

(c) in any manner solicit or receive money from any person for the purpose of carrying on money services business within the Islands.

(2) The Commission may refuse to grant a licence to a person, or if a person is already in possession of a licence, the Commission may revoke the licence, if, in the Commission's opinion, such person is carrying on or intending to carry on money services business under a name which –

(a) is identical with that of any company, firm or business house, whether within the Islands or not, or which so nearly resembles that name as to be calculated to deceive;

(b) is calculated to suggest, falsely, the patronage of or connection with some person or committee, whether within the Islands or not; or

(c) is calculated to suggest, falsely, that the money services business has a special status in relation to or derived from the Government, has the official backing of or acts on behalf of the Government or any department, branch, agency or organ of Government, or of any officer thereof, or is recognised in the Islands as a national or central money services business.

(3) Any person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months, or both and, in the case of a continuing offence, to a fine of five hundred dollars for each day during which the offence continues.

8. (1) Every licensee shall, in respect of its money services business–

Accounting records and systems of business control

(a) cause accounting records to be kept; and

(b) establish and maintain systems of control of the business and records, and systems of inspection and report,

in accordance with this section.

(2) The accounting records of a licensee shall -

(a) explain its transactions;

(b) disclose, with reasonable accuracy and promptness, the state of the business at any time;

(c) enable the directors properly to discharge their duties; and

(d) enable the business properly to discharge its duties.

(3) The accounting records shall, in particular, contain -

- (a) entries from day to day of all sums received and paid by the business and the matters in respect of which they are received or paid; and
- (b) a record of the assets and liabilities of the business.

(4) The systems of control and of inspection and report shall secure that the money services business is so conducted and its records so kept that -

- (a) the information necessary to enable the directors and the business to discharge their duties and functions is sufficiently accurate, and is available with sufficient regularity or at need and with sufficient promptness, for those purposes; and
- (b) the information obtained by or furnished to the licensing committee under or for the purposes of this Ordinance is sufficiently accurate for the purpose for which it is obtained or furnished.

Returns

9. Every holder of a licence shall, at such times as may be specified by the Commission, furnish to the Commission -

- (a) written confirmation that the information set out in the application for the licence remains correct, and gives a full and fair picture of its money services business; and
- (b) such returns in respect of its money services business as the Commission may specify in writing,

in such form as the Commission may reasonably require.

Accounts

10. (1) Every licensee shall have the accounts of its money services business audited annually or at such other times as the Commission may require by an auditor, who shall be a chartered accountant, a certified public accountant, or some other professionally qualified accountant, approved by the Commission.

(2) The audited accounts shall be forwarded to the Commission within three months of the end of the financial year of the licensee's money services business, unless prior written approval for an extension has been granted by the Commission.

Auditor's certificate

11. Within three months of the end of the financial year of a licensee's money services business, the licensee shall forward to the Commission an auditor's certificate of the existence of adequate procedures to ensure compliance by the business with the Code issued under section 42 of the Proceeds of Crime Ordinance 2007.

Licensing committee may summon auditor

12. (1) The Commission may summon the auditor or any former auditor of a licensee's money services business for the purpose of making enquiries into the operations and financial position of the business.

(2) Where an auditor is summoned under subsection (1), the Commission shall in writing notify the licensee concerned which shall have the right to attend any meeting held by the Commission with the auditor.

13. Where an auditor appointed by a licensee –

Auditor's notice of resignation

- (a) intends to resign during the currency of his appointment; or
- (b) has given written notice to the licensee of his unwillingness to be considered for reappointment at the expiration of the period for which he is appointed,

the auditor shall give one month written notice to the Commission accordingly, and shall in such notice state the reasons for his intention to resign or his unwillingness to be considered for reappointment.

14. Where a licensee –

Notice of termination of auditor's appointment

- (a) intends to terminate the appointment of its auditor; or
- (b) decides that the auditor shall not be reappointed,

the licensee concerned shall give one month written notice to the Commission accordingly, and shall in such notification state the reason for such intention or decision.

15. An auditor or former auditor of a licensee shall not be regarded as being in breach of his duty to the licensee in consequence of any disclosure to the Commission under sections 12 to 14.

Consequences of auditor's disclosure

16. A licensee incorporated under the Companies Ordinance shall not, without the prior written approval of the Commission, open, in or outside the Islands, a subsidiary, branch, agency or representative office.

Prohibitions on certain licensees

Cap. 122

17. (1) A licensee shall, at no time, have less than two directors.

Number and approval of directors

(2) Unless exempted from such a requirement by the Commission, a licensee shall, before the appointment of a director or other senior officer, apply to the Commission for its written approval of such appointment.

(3) Approval granted under subsection (2) –

- (a) lapses if the director or senior officer becomes bankrupt or is convicted of an offence involving dishonesty; and
- (b) may be revoked by the Commission.

18. (1) A licensee shall ensure that –

- (a)* it maintains –
 - (i)* adequate reserves and other capital resources;
 - (ii)* adequate assets in liquid form;
 - (iii)* a system for managing and containing risks to the net worth of the licensee’s business and risks to its net income, whether arising from fluctuations in interest or exchange rates or from other factors; and
 - (iv)* the requisite accounting records and systems of control of business and of inspection and report;
- (b)* its business is directed and managed with prudence and integrity by a sufficient number of persons who are fit and proper to be directors or, as the case may be, officers in their respective positions; and
- (c)* the licensee conducts its business with adequate professional skills.

(2) The following provisions apply for the interpretation of subsection (1) in their application to a licensee’s business -

“adequate”, except with reference to liquidity, means adequate having regard to the range and scale of the business;

“adequate”, with reference to liquidity, means of such proportion and composition as will at all times enable the business to meet its liabilities as they arise and “liquid form”, in relation to assets, shall be construed accordingly;

“business” includes business the licensee proposes to conduct;

“requisite”, with reference to accounting records and systems of control, means such as are required by section 8;

“sufficient”, with reference to the number of directors and officers, means sufficient having regard to the range and scale of the business.

(3) In determining for the purposes of subsection (1)(b) whether a person is a fit and proper person to hold a particular position in a licensee’s business, regard shall be had, in particular -

- (a)* to his probity;
- (b)* to his competence and soundness of judgement for fulfilling the responsibilities of that position;
- (c)* to the diligence with which he is fulfilling or likely to fulfil those responsibilities; and
- (d)* to whether the interests of customers of the business are, or are likely to be, in any way threatened by his holding that position.

19. The Commission may, in any case in which a licensee, or a person who has at any time been a licensee, is being wound up voluntarily, apply to the Court if the Commission considers that the winding up is not being conducted in the best interests of the licensee's customers or creditors, and the Court shall make such order as it considers appropriate.

Commission may apply to Court to preserve customers' interests

20. The Chief Justice may make rules governing the procedure in relation to applications to the Court under section 19.

Rules

21. Any licensee or any director or officer of a licensee who knowingly or wilfully supplies false or misleading information to the Commission, is guilty of an offence and liable on summary conviction to a fine of two thousand dollars or to imprisonment for six months, or both.

False or misleading information

22 Any person who contravenes any provision or requirement of this Ordinance for which no offence is specifically created is guilty of an offence and liable on summary conviction to a fine of two thousand dollars or to imprisonment for three months, or both.

General penalty

23. (1) Where an offence under this Ordinance which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly.

Offences by officers of corporate bodies

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of the member in connection with his functions of management as if he were a director of the body corporate.

24. The Governor may make regulations-

Regulations

- (a) to control the form of advertising by licensees;
- (b) to prescribe fees payable under this Ordinance;
- (c) to provide for the formation and maintenance, by the licensing committee, of a record of licensees; and
- (d) generally for carrying this Ordinance into effect.

25. Notwithstanding section 4 a person who, immediately before the date of the coming into operation of this Ordinance, was carrying on money services business and who would, but for this section, be required by virtue of section 4 to be licensed under this Ordinance on and after that date, shall be entitled to operate such money services business without a licence –

Transitional

- (a) for the period of 90 days beginning with that date;
or
- (b) if before the expiration of that period he applies for a licence, until the licence is issued or finally refused or the application is withdrawn.