



TURKS AND CAICOS ISLANDS

CHAPTER 123
TRUSTEES LICENSING ORDINANCE
and Subsidiary Legislation

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—

	Page
TRUSTEES LICENSING ORDINANCE	3
Ordinance 15 of 1992 .. in force 25 September 1992 (L.N. 44/1992)	
Amended by Legal Notice 24/1993 .. in force 9 July 1993	
Amended by Ordinance 11 of 1995 .. in force 1 April 1997 (L.N. 11/1997)	
Amended by Ordinance 8 of 1997 .. in force 25 September 1997	
TRUSTEES LICENSING EXEMPTION ORDER – Section 10	31
Legal Notice 45/1992 .. in force 25 September 1992	
TRUSTEES LICENSING REGULATIONS – Section 35	33
Legal Notice 44/1992 .. in force 25 September 1992 (G.N. 266/92)	
Amended by Legal Notice 26/1993 .. in force 9 July 1993	
GUIDELINES – OVERSEAS REGULATORY AUTHORITY – Section 9	51
Gazette 1 April 1997	
INDEX	57

CHAPTER 123

TRUSTEES LICENSING ORDINANCE

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

1. Short title
2. Interpretation

PART II

THE SUPERINTENDENT OF TRUSTEES

3. The Superintendent of Trustees
4. Duties of the Superintendent
5. Powers of the Superintendent
6. Obstructing
7. Refusing to furnish information, making false statements, furnishing false information
8. Confidentiality
9. Request for assistance by overseas regulatory authority

PART III

LICENSING OF PROFESSIONAL TRUSTEES

10. Restriction upon acting as a professional trustee
11. Application for and issue of licence
12. Notification of refusal; when refusal takes effect
13. Making false statements, furnishing false information in connection with application
14. Fees
15. Conditions and restrictions on issue of licence
16. Duration and renewal
17. Notification of decision on renewal; when decision takes effect
18. Accounts and returns
19. Exhibition of notice of being a licensed trustee
20. Pretending to be a trustee
21. Approval for transfer of shares etc

22. Notice of change in beneficial ownership of shares, change of address
23. Penalty for contravention of sections 21(3) or 22
24. Revocation of licence
25. Appeal against revocation
26. Rules of Court
27. Effect of ceasing to be licensed trustee; procedure thereafter

PART IV

MISCELLANEOUS

28. Recording of Deeds Ordinance not to apply to trust instruments in certain cases
 29. Certain laws relating to confidentiality of information not to apply
 30. Criminal liability of directors
 31. Injunctions
 32. Service of notices
 33. Finality of decisions of Permanent Secretary, Finance
 34. Protection of Superintendent and certain other persons from personal liability
 35. Regulations
 36. Savings
-

CHAPTER 123

TRUSTEES LICENSING ORDINANCE

*(Ordinances 15 of 1992, 11 of 1995, 8 of 1997
and Legal Notice 24/1993)*

AN ORDINANCE TO PROVIDE FOR THE APPOINTMENT OF A
SUPERINTENDENT OF TRUSTEES, FOR THE LICENSING OF
PROFESSIONAL TRUSTEES AND FOR CONNECTED PURPOSES.

[25 September 1992] Commencement

PART I

PRELIMINARY

1. This Ordinance may be cited as the Trustees Licensing Ordinance. Short title
2. In this Ordinance— Interpretation
- “exemption order” means an order made by the Permanent Secretary, Finance under section 10(6);
- “extension order” means an order made by the Permanent Secretary, Finance under section 10(7);
- “function” includes powers, duties, responsibilities, authorities and jurisdictions;
- “licence” means a licence issued under section 11 and includes a licence renewed under section 16;
- “licensed trustee” means a trustee licensed to act as a professional trustee under section 11;
- “manager”, in relation to a company, means the person who is responsible—
- (a) for the conduct of the whole of the business of the company in the Islands; or
 - (b) for the conduct of that part of the business of the company in the Islands which relates to acting as a professional trustee;
- “professional trustee” means, subject to subsections (3) and (4) of section 10, a trustee who is entitled, by virtue of any authority mentioned in section 25 of the Trusts Ordinance.

nance, to receive remuneration for his services as a trustee;

“publication” means—

- (a) all written and printed matter;
- (b) any record, tape, wire, perforated roll, cinematograph film or images or other contrivance by means of which any words or ideas may be mechanically, electronically, or electrically produced, reproduced, represented, or conveyed;
- (c) anything whether of a similar nature to that described in paragraph (b) of this definition or not, containing any visible representation, or by its form, shape, or in any manner, capable of producing, reproducing, representing, or conveying words or ideas; and
- (d) every copy and reproduction of a publication as defined in paragraphs (a), (b) or (c) of this definition;

“Superintendent” means the Superintendent of Trustees appointed under section 3 and includes any person for the time being lawfully performing the functions of that office; and

“unauthorized trustee” means a person whose affairs or business the Superintendent has power to investigate under paragraph (e) of section 4.

PART II

THE SUPERINTENDENT OF TRUSTEES

The
Superintendent
of Trustees

3. (1) The Governor may by instrument in writing appoint a Superintendent of Trustees who shall be responsible for advising the Permanent Secretary, Finance on the performance of his functions under this Ordinance and who shall have such other functions as may be assigned to him by or under this Ordinance or any other law.

(2) Every appointment made under subsection (1) shall be notified in the *Gazette*.

(3) With the approval of the Governor acting in his discretion, the Superintendent may authorize in writing any

Revision Date: 15 May 1998

person to assist him in the performance of his functions and that person shall have such of the powers, duties or responsibilities of the Superintendent under this Ordinance as may be specified in the authorization.

4. The Superintendent shall—

Duties of the
Superintendent

- (a) maintain a general view of the conduct and practice of trustees and from time to time report to the Permanent Secretary, Finance thereon;
- (b) on his own motion or when so required by the Permanent Secretary, Finance, investigate the affairs or business of any licensed trustee for the purpose of ensuring that—
 - (i) the licensed trustee is or has been acting as a professional trustee in accordance with this Ordinance and with the terms, conditions and restrictions of his licence;
 - (ii) the licensed trustee is in a sound financial position and is or has been acting as a professional trustee in a satisfactory manner and in a manner which is not detrimental to the public interest,and report to the Permanent Secretary, Finance the results of every such investigation;
- (c) on his own motion or when so required by the Permanent Secretary, Finance, examine any accounts or returns required to be submitted to the Permanent Secretary, Finance by or under this Ordinance and report to the Permanent Secretary, Finance the results of every such examination;
- (d) examine applications and written representations made to the Permanent Secretary, Finance under this Ordinance and advise and make recommendations to the Permanent Secretary, Finance thereon; and
- (e) on his own motion or whenever so required by the Permanent Secretary, Finance, investigate the affairs or business of any person whom he has reasonable grounds to believe has committed or is committing an offence against section 10.

Powers of the
Superintendent

5. (1) For the purpose of performing his duty to investigate under paragraphs (b) and (e) of section 4, the Superintendent may at all reasonable times—

- (a) have access to all such publications, property and assets of any licensed trustee or unauthorized trustee; and
- (b) require from any licensed trustee or unauthorized trustee or, if the trustee is a company, from the manager or other officer designated by the trustee or its manager, any such explanation, information, matter or thing,

as the Superintendent may reasonably require for the purpose of enabling him to perform his duty of investigation under that section:

Provided that the Superintendent shall not be entitled to have access to the name of any settlor or to the name or title of any trust or to any publication relating to a trust except by order of a Judge of the Supreme Court, made upon the ground that he is satisfied there is no other manner in which the information sought by the Superintendent may in practice be obtained.

(2) Where under this section a right of access is conferred in respect of any publication, property or asset, a person exercising that right may at the same time inspect such publication, property or asset and take copies thereof by any practicable means.

(3) If it appears to the Superintendent that there are reasonable grounds for suspecting that an offence under this Ordinance or a breach of trust within the meaning of the Trusts Ordinance has been or is being committed by any person, the Superintendent may apply to the Supreme Court for directions and may, with the approval of and subject to the order of the Court, take such action as appears necessary, in the interests of the beneficiaries of any trust or of the creditors of that person, to preserve any assets held by that person.

(4) If a Magistrate or Justice of the Peace is satisfied by information on oath given by the Superintendent or by a person authorized under subsection (3) of section 3 to assist him, either that—

- (a) there are reasonable grounds for suspecting that an offence against this Ordinance has been or is being committed and that evidence of the

Revision Date: 15 May 1998

commission of the offence is to be found at any premises, or in any vehicle, vessel or aircraft, specified in the information; or that

- (b) any publication, property or asset to which he ought to have been but was not given access under subsection (1) is to be found at any such premises or in any such vehicle, vessel or aircraft,

he may grant a warrant authorizing the Superintendent or such person or any police officer of the rank of inspector or above, to enter the premises specified in the information or, as the case may be, any premises where the vehicle, vessel or aircraft so specified may be, at any time within one month from the date of the warrant and to search such premises, vehicle, vessel or aircraft.

(5) Any person authorized by a warrant issued under subsection (4) to search any premises, vehicle, vessel or aircraft may seize any publication, property or asset found therein as to which he has reasonable grounds for believing that he ought to have been given access to it under subsection (1).

(6) Where under this section a person has the right to enter premises, he may use such force as is reasonably necessary for the purpose of his exercising such right.

6. Any person who obstructs or impedes the Superintendent acting in the exercise of his powers under section 5 or who obstructs or impedes any person authorized by the Superintendent under section 3 to assist him in the exercise of those powers, commits an offence and is liable—

Obstructing

- (a) upon summary conviction, to a fine of \$20,000 or to imprisonment for a term of one year, or to both; or
- (b) upon conviction on indictment, to a fine of \$20,000 or to imprisonment for a term of two years, or to both.

7. Any person who, when called upon by the Superintendent under section 5 for any information, or explanation, refuses or fails, without reasonable excuse, to furnish such information or explanation, or knowingly makes any false or misleading statement or knowingly furnishes

Refusing to furnish information, making false statements, furnishing false information

any false or misleading information, commits an offence and is liable—

- (a) upon summary conviction, to a fine of \$20,000 or to imprisonment for a term of one year, or to both; or
- (b) upon conviction on indictment, to a fine of \$20,000 or to imprisonment for a term of two years, or to both.

Confidentiality

8. (1) Subject to section 9 and except for the purpose of the performance of duties or the exercise of functions under this Ordinance or when lawfully required to do so by any court of competent jurisdiction in the Islands or under the provisions of any other law for the time being in force in the Islands, neither the Permanent Secretary, Finance, nor the Superintendent, nor any person authorised under section 3(3) to assist him, shall disclose any information relating to an application by any person under this Ordinance or to the affairs of a trustee or any client of a trustee, which has been acquired by the Permanent Secretary, Finance, the Superintendent or authorised person, in the performance of his duties or the exercise of his functions under this Ordinance. *(Replaced by Ord. 11 of 1995)*

(2) A person holding the office of Superintendent, or a person authorized under section 3(3), who contravenes subsection (1) is guilty of an offence and liable upon summary conviction to a fine of \$20,000 or to imprisonment for a term of 12 months, or to both.

Request for assistance by overseas regulatory authority

9. (1) For the purpose of assisting an overseas regulatory authority which has requested information in connection with inquiries being carried out by it, the Superintendent, acting in his discretion, may disclose to it such information which he has acquired in connection with the performance of his duties or in the exercise of his functions under this Ordinance as he considers appropriate.

(2) An “overseas regulatory authority” means an authority which in a country or territory outside the Turks and Caicos Islands exercises any functions corresponding to the functions of the Superintendent under this Ordinance, the functions of Superintendent of Banking under the Banking

Revision Date: 15 May 1998

Ordinance or the functions of Superintendent of Insurance under the Insurance Ordinance.

Cap. 118
Cap. 121

(3) The Superintendent shall not disclose any such information to the authority unless he is satisfied—

- (a) that the information requested by the authority is for the purposes of its regulatory functions;
- (b) that the request is not for information related directly or indirectly to the imposition and collection of taxes or the enforcement of exchange control regulations; and
- (c) that the authority is subject to adequate legal restrictions on further disclosure.

(4) The Governor may from time to time issue guidelines to the Superintendent concerning the discharge of his functions under this section; and the Superintendent shall have regard to such guidelines in the discharge of his functions under this section.

(5) Before making any guidelines under subsection (4), the Governor shall consult Executive Council.

(6) The Governor shall keep under review the working of any guidelines made under subsection (4) and shall make to Executive Council a report on it at least once in every six months after the coming into operation of this section.

(Inserted by Ord. 11 of 1995)

PART III

LICENSING OF PROFESSIONAL TRUSTEES

10. (1) No person being a company shall act as a professional trustee unless—

Restriction upon
acting as a
professional
trustee

- (a) it is a licensed trustee; or
- (b) it is a company specified in an exemption order or falls within a category of companies specified in such an order.

(2) No person being a person specified in an extension order or falling within a category of persons specified in such an order shall act as a professional trustee unless he is a licensed trustee.

(3) For the purposes of this Ordinance, a person shall not be deemed to be a professional trustee in respect of any trust unless he is a trustee in respect of that trust by virtue of—

- (a) an express appointment (whether as trustee, executor or both) contained in a will or codicil thereto, a deed made *inter vivos* or some other instrument in writing; or
- (b) an appointment made under a power of appointment, contained in a will or codicil thereto or deed made *inter vivos* or some other instrument, or made under the power of appointment contained in section 16 of the Trusts Ordinance or under some other statutory power; or
- (c) an appointment made by the Supreme Court under section 44 or section 52 of the Trusts Ordinance, or by any court of competent jurisdiction in exercise of powers conferred upon it in that behalf; or
- (d) an instrument in writing whereby the person declares himself to be a trustee or to be holding property on trust for the benefit of any person or for any purpose which is not for the exclusive benefit of the trustee.

(4) Notwithstanding anything to the contrary in this section contained, a person shall not be deemed to be a professional trustee in respect of the estate of a person deceased if and by reason of the fact that—

- (a) not being a company, he has, whether alone or jointly with others, been granted letters of administration (with or without a will annexed) by a court of competent jurisdiction; or
- (b) not being a company, he has been appointed as executor, whether alone or jointly with others, by a will or a codicil thereto, if he has not also been appointed, by an express appointment in such a will or codicil, as trustee in respect of the estate of that person deceased.

(5) Any person who contravenes subsections (1) or (2) commits an offence and is liable upon summary conviction to a fine of \$20,000 or to imprisonment for a term of one year, or to both and, if the offence is a continuing one, to a further fine of

Revision Date: 15 May 1998

\$500 for every day or part of a day during which the offence continues.

(6) The Governor may, by Order published in the *Gazette* and subject to such conditions or restrictions as he may think fit, exempt any company or category of companies specified in the Order from the restriction imposed by subsection (1)(a)*. (Amended by L.N. 24/1993)

(7) The Governor may, by Order published in the *Gazette* and subject to such conditions or restrictions as he may think fit, subject any person or category of persons to the restrictions imposed by subsection (2). (Amended by L.N. 24/1993)

(8) An exemption order or extension order made under this section may at any time by subsequent Order published in the *Gazette* be varied, suspended or revoked by the Governor on such terms and subject to such conditions as he may think fit. (Amended by L.N. 24/1993)

(9) In any proceedings under this section, if it is proved that a person charged acted as a trustee at a time when he was not a licensed trustee and that at such time either—

- (a) being a company, that person was not specified in an exemption order and did not fall within a category of companies so specified; or
- (b) being other than a company, that person was specified in an extension order or fell within a category of persons so specified,

it shall be presumed, unless the contrary is proved, that that person acted as a professional trustee.

11. (1) Subject to this section, upon application being made to the Permanent Secretary, Finance by any person, the Permanent Secretary, Finance may issue a licence to that person authorizing that person to act as a professional trustee.

Application for
and issue of
licence

(2) An application made under subsection (1) shall be made in such form as may be prescribed or, until a form is prescribed, in such form as the Permanent Secretary, Finance may require and shall be accompanied by such particulars and such evidence, documentary or otherwise, as the Permanent Secretary, Finance may require.

* See the [Trustees Licensing \(Exemption\) Order](#) *supra*.
See also section 18 of the Limited Partnerships Ordinance (Cap. 126) that provides, *inter alia*, that a general partner does not thereby necessarily need to be licensed as a trustee.

(3) The Permanent Secretary, Finance may at any time after he receives an application made under subsection (1), if he thinks that it is necessary to do so for the purpose of determining the application, require the applicant to furnish such further particulars and evidence in support of the application as he thinks necessary for that purpose.

(4) A licence shall be issued in such form as may be prescribed or, until a form is prescribed, in such form as the Permanent Secretary, Finance may require.

(5) The issue of every licence shall be notified in the *Gazette*.

(6) Without restricting the generality of the Permanent Secretary, Finance's discretion under subsection (1), the Permanent Secretary, Finance shall not issue a licence under this section to any person other than a company unless he is satisfied that—

- (a) that person is in all respects a fit and proper person to be issued a licence;
- (b) that person is capable of complying with this Ordinance and with the terms and conditions of any licence which may be issued to him;
- (c) that person has paid to the Treasurer the fee payable under section 14; and
- (d) it is in the public interest to do so.

(7) Without restricting the generality of the Permanent Secretary, Finance's discretion under subsection (1), the Permanent Secretary, Finance shall not issue a licence under this section to any company unless he is satisfied that—

- (a) that company is in all respects a fit and proper company to be issued a licence;
- (b) that company is capable of complying with this Ordinance and with the terms and conditions of any licence which may be issued to it;
- (c) that company has a manager, being—
 - (i) an individual who is ordinarily resident in the Islands and who has adequate knowledge and practical experience of the work of corporate trustees; or

Revision Date: 15 May 1998

- (ii) a company which itself has a manager being such an individual as is described in subparagraph (i);
- (d) the Articles of Association of that company do not authorize the issue of any shares in it as bearer shares;
- (e) that company has paid to the Treasurer the fee payable under section 14; and
- (f) it is in the public interest to do so.

12. (1) If the Permanent Secretary, Finance refuses to issue a licence to any person, he shall cause a notice in writing to be served on that person notifying that person of his refusal.

Notification of refusal; when refusal takes effect

(2) A refusal to issue a licence takes effect on the day that service of the notice mentioned in subsection (1) is deemed to be effected in accordance with section 32(2).

13. A person who, in connection with any application made under section 11, knowingly makes any false or misleading statement or knowingly furnishes any false or misleading information commits an offence and is liable—

Making false statements, furnishing false information in connection with application

- (a) upon summary conviction, to a fine of \$20,000 or to imprisonment for a term of one year, or to both; or
- (b) upon conviction on indictment, to a fine of \$20,000 or to imprisonment for a term of two years, or to both.

14. (1) A person making an application under section 11 shall pay to the Treasurer such fees as may be prescribed; and in the event of the application being refused by the Permanent Secretary, Finance, the Treasurer shall refund the fees to that person, less an administrative charge of \$200.

Fees

(2) A licensed trustee shall, not later than the 31st day of March in each year following the year in which he was issued a licence, pay to the Treasurer such fees as may be prescribed.

15. (1) A licence may be issued subject to such conditions or restrictions as the Permanent Secretary, Finance thinks fit to impose.

Conditions and restrictions on issue of licence

(2) The Permanent Secretary, Finance may at any time vary or revoke a condition or restriction imposed under

subsection (1) on his own motion or on application being made to him for that purpose.

(3) A condition or restriction imposed under subsection (1) shall be set out in the licence in respect of which it was imposed, and the statement setting out the condition or restriction shall be varied or cancelled by the Permanent Secretary, Finance, as the case may require, when the condition or restriction has been varied or revoked under subsection (2).

Duration and
renewal

16. (1) A licence shall come into force on the day that it is issued and, unless revoked under section 24, shall remain in force—

- (a) if issued before the 31st day of March in any calendar year, until the expiration of the 31st day of March in the following calendar year; or
- (b) if issued after the 31st day of March in any calendar year, until the expiration of the 31st day of March in the calendar year next following that calendar year.

(2) Subject to this section, upon application being made to the Permanent Secretary, Finance at any time before the expiry of a licence, the Permanent Secretary, Finance may renew the licence either upon the same or different terms, conditions or restrictions.

(3) If an application made under subsection (2) is received by the Permanent Secretary, Finance before the expiry of the licence, the licensed trustee making the application shall be deemed to be a licensed trustee until the decision on renewal takes effect in accordance with section 17, notwithstanding that the decision on renewal may take effect after the expiry of the existing licence.

(4) An application made under subsection (2) shall be made in such form as may be prescribed or, until a form is prescribed, in such form as the Permanent Secretary, Finance may require and shall be accompanied by such particulars and such evidence, documentary or otherwise, as the Permanent Secretary, Finance may require.

(5) The Permanent Secretary, Finance may at any time after he receives an application made under subsection (2), if he thinks that it is necessary to do so for the purpose of determining the application, require the applicant to furnish such further particulars and evidence in support of the application as he thinks necessary for that purpose.

Revision Date: 15 May 1998

(6) Without restricting the generality of the Permanent Secretary, Finance's discretion under subsection (2), the Permanent Secretary, Finance shall not renew a licence under this section unless he is satisfied that the licensed trustee making the application under that subsection—

- (a) not being a company, has, during the continuance of the existing licence, fulfilled and is, at the time the application is made, continuing to fulfill the requirements of section 11(6);
- (b) being a company, has, during the continuance of the existing licence, fulfilled and is, at the time the application is made, continuing to fulfill the requirements of section 11(7).

17. (1) The Permanent Secretary, Finance shall cause a notice in writing to be served on a licensed trustee making an application under section 16(2) notifying the licensed trustee that he has decided to renew or that he has decided to refuse to renew the licence, as the case may be.

Notification of decision on renewal; when decision takes effect

(2) A renewal or a refusal to renew a licence takes effect on the day that service of the notice mentioned in subsection (1) is deemed to be effected in accordance with section 32(2).

18. (1) A licensed trustee shall keep such accounts and submit such accounts and returns to the Permanent Secretary, Finance as may be prescribed or, until anything is prescribed, as the Permanent Secretary, Finance may require.

Accounts and returns

(2) The Permanent Secretary, Finance may at any time after any accounts or returns are submitted to him under subsection (1), require the licensed trustee to submit such further accounts or returns as he thinks fit.

(3) A licensed trustee who knowingly submits any false or misleading accounts or returns under subsection (1) or (2) commits an offence and is liable—

- (a) upon summary conviction to a fine of \$20,000 or to imprisonment for a term of one year, or to both; or
- (b) upon conviction on indictment, to a fine of \$20,000 or to imprisonment for a term of two years, or to both.

19. (1) Every licensed trustee shall exhibit and keep exhibited in a prominent place at his place of business, or if there is more than one, at each of them, so as to be read easily

Exhibition of notice of being a licensed trustee

from inside the place of business, a notice of his name, or if the licensed trustee is a company, of the name of the company and a notice of the fact that he is a licensed trustee.

(2) The information referred to in subsection (1) shall also be clearly shown on all publications issued by or on behalf of the licensed trustee in the course of or in connection with any business carried on by him as a licensed trustee.

(3) A licensed trustee who contravenes subsections (1) or (2) commits an offence and is liable—

- (a) upon summary conviction to a fine of \$20,000 or to imprisonment for a term of one year, or to both; or
- (b) upon conviction on indictment, to a fine of \$20,000 or to imprisonment for a term of two years, or to both.

Pretending to be
a trustee

20. (1) Neither of the following, namely—

- (a) a person being a company which is not specified in an exemption order and does not fall within a category of companies specified in such an order;
- (b) a person specified in an extension order or falling within a category of persons specified in such an order,

shall, unless he is a licensed trustee, act as a professional trustee under a name, title or description implying that he is a licensed trustee or otherwise pretend to be or hold himself out as being a licensed trustee.

(2) Neither of the following, namely—

- (a) a person being a company which is not specified in an exemption order and does not fall within a category of companies specified in such an order;
- (b) a person specified in an extension order or falling within a category of persons specified in such an order,

shall, unless he is a licensed trustee, offer to be a professional trustee of any trust or advertise that he is willing to become a professional trustee of any trust

Revision Date: 15 May 1998

or hold himself out as being willing to become a professional trustee of any trust.

(3) A person who contravenes subsections (1) or (2) commits an offence and is liable—

(a) upon summary conviction, to a fine of \$20,000 or to imprisonment for a term of two years, or to both; or

(b) upon conviction on indictment, to a fine of \$20,000 or to imprisonment for a term of seven years, or to both.

21. (1) Where a licensed trustee is a company, then, notwithstanding any law to the contrary—

Approval for transfer of shares etc.

(a) no transfer of any shares in the company;

(b) no appointment of any new or additional director of the company; and

(c) no appointment of any new or additional manager of the company,

shall take effect unless the transfer or appointment has been approved by the Permanent Secretary, Finance under subsection (2).

(2) Upon application being made to the Permanent Secretary, Finance by a licensed trustee which is a company, the Permanent Secretary, Finance may approve—

(a) the transfer of any shares in the company;

(b) the appointment of any new or additional director of the company; or

(c) the appointment of any new or additional manager of the company.

(3) Where the Permanent Secretary, Finance approves a transfer or appointment referred to in subsection (2), the licensed trustee referred to in that subsection shall notify the Permanent Secretary, Finance in writing that the transfer has taken place or that the appointment has been made as the case may be as soon as reasonably practicable thereafter.

(4) In this section, “manager” means the manager described in section 11(7)(c).

22. (1) Where a licensed trustee is a company, then if at any time—

Notice of change in beneficial ownership of shares, change of address

- (a) the company or the manager or any director of the company has reasonable cause to believe that a change has occurred in the beneficial ownership of any shares in the company, other than by transfer; or
- (b) a change has occurred in the registered address or registered office or the place of business of the company,

the company shall as soon as reasonably practicable after the change has occurred serve on the Permanent Secretary, Finance a notice in writing giving particulars of the change.

(2) Where a licensed trustee is not a company, then if at any time a change has occurred in the address or place of business of the licensed trustee, he shall as soon as reasonably practicable after the change has occurred serve on the Permanent Secretary, Finance a notice in writing giving particulars of the change.

(3) In this section, “manager” means the manager described in section 11(7)(c).

Penalty for
contravention of
sections 21(3) or
22

23. A licensed trustee who contravenes sections 21(3) or 22 commits an offence and is liable—

- (a) upon summary conviction, to a fine of \$20,000 or to imprisonment for a term of one year, or to both; or
- (b) upon conviction on indictment, to a fine of \$20,000 or to imprisonment for a term of two years, or to both.

Revocation of
licence

24. (1) Subject to this section, if the Permanent Secretary, Finance is satisfied that a licensed trustee—

- (a) has failed to comply with any term of his licence or with any condition or restriction imposed in respect of his licence under section 15;
- (b) has failed to pay any fee payable by or under this Ordinance in respect of his licence;
- (c) has been convicted of an offence under this Ordinance;
- (d) has failed to comply with any requirement imposed by or under this Ordinance;

Revision Date: 15 May 1998

- (e) is, or appears likely to become, unable to meet his financial obligations as they fall due;
- (f) is acting or has acted in breach of trust (as defined by section 2 of the Trusts Ordinance);
- (g) is acting or has acted contrary to the public interest;
- (h) being a company, no longer has a manager as described in section 11(7)(c); or
- (i) is in any respect no longer a fit and proper person to be licensed under this Ordinance,

Cap. 124

he may, without affecting any other action or proceedings which have been or may be lawfully taken, by Notice published in the *Gazette*, revoke the licence of the licensed trustee.

(2) The Permanent Secretary, Finance shall not revoke the licence of a licensed trustee under subsection (1) unless and until—

- (a) the Permanent Secretary, Finance has caused a notice in writing to be served on the licensed trustee informing him that the Permanent Secretary, Finance intends to revoke his licence and of the grounds therefor and that he may, within a period of one month after the service of the notice on him, make written representations to the Permanent Secretary, Finance as to why his licence should not be revoked;
- (b) the Permanent Secretary, Finance has, if any such written representations are made to him within the period referred to in paragraph (b), considered those representations.

(3) The Permanent Secretary, Finance shall not revoke a licence under subsection (1)(f) if the Supreme Court, acting under section 45 of the Trusts Ordinance, has relieved the licensed trustee wholly or partly from personal liability for the breach of trust mentioned in that subsection.

Cap. 124

(4) A Notice revoking a licence made under subsection (1) shall not take effect—

- (a) where notice of appeal against the revocation has been served on the Attorney General under section 25, until the revocation has been confirmed on that appeal or on any further appeal which may be lawfully available;

- (b) in any other case, until the expiration of 21 days after the date of publication of the Notice in the *Gazette*.

Appeal against
revocation

25. (1) A trustee whose licence has been revoked under section 24 may appeal to the Supreme Court on a point of law against the revocation.

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

(3) The Attorney General shall be the respondent to every appeal brought under subsection (1), and notice of the appeal, stating the grounds of the appeal, shall be served on him by the appellant within twenty-one days after the date of the publication in the *Gazette* of the Notice of revocation to which the appeal relates.

(4) On an appeal brought under subsection (1) the Supreme Court, on the application of the Attorney General, may, if it is satisfied that it is in the public interest or that it is necessary for the protection of any beneficiary of any trust of which the appellant is a trustee, by order direct that the appellant—

- (a) shall not act as a professional trustee until the determination of the appeal; or
- (b) shall only act as a professional trustee until the determination of the appeal subject to such conditions as the Supreme Court thinks fit to impose.

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

Rules of Court
Cap. 11

26. The power of the Chief Justice to make Rules of Court under section 17 of the Supreme Court Ordinance shall include the power to make Rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction conferred on it by section 25; and until Rules are made under this section, that jurisdiction shall be exercised in accordance with such directions as the Chief Justice may give in any particular case.

Revision Date: 15 May 1998

27. (1) In this section, a licensed trustee who has ceased to be a licensed trustee is referred to as a “formerly licensed trustee”.

Effect of ceasing to be a licensed trustee; procedure thereafter

(2) Where a licensed trustee ceases to be a licensed trustee because—

- (a) his licence has expired and he has not applied for renewal under section 16 before the expiry of his licence;
- (b) his application for renewal under section 16, if he makes one, has been refused ; or
- (c) his licence has been revoked under section 24,

the fact that he has ceased to be a licensed trustee shall not affect the legality or validity of—

- (d) subject to this section, his appointment as a trustee of any trust, made before he ceased to be a licensed trustee; or
- (e) any act or thing done by him as trustee of any trust of which he was a trustee before he ceased to be a licensed trustee.

(3) A formerly licensed trustee shall apply to the Supreme Court for directions, within one month after he ceased to be a licensed trustee, under section 52 of the Trusts Ordinance and the Court may make any order which it may make on an application under that section, other than an order restoring or which would have the effect of restoring his licence.

Cap. 124

(4) The Attorney General shall be made a party to any proceedings on an application referred to in subsection (3).

(5) Pending the making or the determination of an application referred to in subsection (3)—

- (a) where the formerly licensed trustee is the sole trustee of any trust of which he was trustee before he ceased to be a licensed trustee, he shall act in relation to that trust only for the purpose of preserving trust property;
- (b) subject to paragraph (c), where the formerly licensed trustee is not the sole trustee of any such trust, he shall not take part in the administration of that trust but, notwithstanding any law to the contrary, the other trustee or trustees may nevertheless continue to administer that trust;

(c) where the formerly licensed trustee is not the sole trustee of any such trust, but the other trustee or trustees of that trust are also formerly licensed trustees, all of them shall act in relation to that trust only for the purpose of preserving trust property.

(6) Unless so authorized by an order of the Supreme Court made after he ceased to be a licensed trustee, a formerly licensed trustee shall not be entitled to receive and shall not accept remuneration for anything done by him which he is required or empowered to do by this section in relation to any trust of which he was a trustee before he ceased to be a licensed trustee, notwithstanding any provision in the terms of any such trust or in any written consent given by the beneficiaries of such trust, or in any order of the Supreme Court relating to any such trust made before he ceased to be a licensed trustee.

(7) A formerly licensed trustee who does not apply to the Supreme Court in accordance with subsection (3) or who, pending the making or the determination of that application, acts otherwise than in accordance with subsections (5) or (6)—

(a) commits an offence; and

(b) is deemed to be in breach of trust.

(8) A formerly licensed trustee who commits an offence under subsection (7) is liable—

(a) upon summary conviction, to a fine of \$20,000 or to imprisonment for a term of one year, or to both; or

(b) upon conviction on indictment, to a fine of \$20,000 or to imprisonment for a term of two years, or to both.

(9) Without regard to whether or not criminal proceedings have been or may be taken against a formerly licensed trustee under subsection (7), any proceedings which lie against a trustee who is in breach of trust under the Trusts Ordinance or any law shall lie and may be taken against a trustee who is deemed to be in breach of trust under that subsection.

(10) This section shall not apply to a formerly licensed trustee if the terms of any trust of which he was a trustee before he ceased to be a licensed trustee provide otherwise; but any term of any such trust which provides that any such trustee

Revision Date: 15 May 1998

may continue to act as a professional trustee shall be of no effect.

PART IV

MISCELLANEOUS

28. (1) The Recording of Deeds Ordinance shall not apply to—

Recording of
Deeds Ordinance
not to apply to
trust instruments
in certain cases
Cap. 169

- (a) any instrument creating—
 - (i) a trust which appoints a licensed trustee as a trustee of that trust; or
 - (ii) a Turks and Caicos Trust;
- (b) any instrument modifying—
 - (i) a trust of which there is a licensed trustee; or
 - (ii) a Turks and Caicos Trust;
- (c) any instrument appointing a new or additional trustee of—
 - (i) a trust of which there is a licensed trustee; or
 - (ii) a Turks and Caicos Trust;
- (d) any instrument by which a power conferred or a duty imposed by—
 - (i) a trust of which there is a licensed trustee; or
 - (ii) a Turks and Caicos Trust,
is exercised or performed;
- (e) any conveyance, transfer, mortgage, charge, lease or other document relating to any property which is the subject of—
 - (i) a trust of which there is a licensed trustee; or
 - (ii) a Turks and Caicos Trust.

(2) In this section, “Turks and Caicos Trust” has the meaning assigned thereto by section 2 of the Trusts Ordinance.

Certain laws relating to confidentiality of information not to apply
Cap. 125

29. (1) None of the following acts shall constitute an offence under [section 4 of the Confidential Relationships Ordinance](#) or any other law relating to confidentiality of information—

- (a) the obtaining of access by the Superintendent to any publication, property or asset to which he is entitled to access under section 5(1) and the inspection or copying of any such publication, property or asset or the permitting by any person of such access, inspection or copying;
- (b) the seizure by the Superintendent of any publication, property or asset which he is entitled to seize under the authority of a warrant granted pursuant to section 5(4) or the permitting by any person of such a seizure;
- (c) a request made to any person by the Superintendent under powers conferred upon him by section 5(1), to give any explanation or information or the giving by any such person of such explanation or information; or
- (d) the submission by a licensed trustee of any accounts or returns which he may be required to submit to the Permanent Secretary, Finance under section 18 or the inspection by the Superintendent of any such accounts or return so submitted.

(2) None of the following acts by a trustee shall constitute a contravention of section 28 of the Trusts Ordinance—

- (a) the permitting of access by the Superintendent to any publication, property or asset to which he is entitled to access under section 5(1) or the permitting of inspection or copying by the Superintendent of any such publication, property or asset;
- (b) the permitting of seizure by the Superintendent of any publication, property or asset which he is entitled to seize under the authority of a warrant granted pursuant to section 5(4);
- (c) the giving to the Superintendent of any explanation or information which the Superintendent, under the power conferred upon him by section 5 (1), has requested the trustee to give; or

Revision Date: 15 May 1998

(d) the submission by the trustee, being a licensed trustee, of any accounts or returns which he is required to submit to the Permanent Secretary, Finance under section 18.

(2) Nothing in this section shall derogate from the duty of secrecy imposed by section 8.

30. (1) Where an offence under this Ordinance 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 similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

Criminal liability
of directors

(2) In this section, “director”, in relation to a body corporate, includes any person in accordance with whose instructions or directions the directors of the body corporate or any of them act.

31. (1) On the application of the Attorney General the Supreme Court may, without regard to whether or not proceedings have been, or may be taken against any person for any offence under sections 10, 19, 20 or 27, grant an injunction—

Injunctions

(a) restraining a person from doing or causing or permitting to be done any thing that constitutes or would constitute a contravention of, or an attempt to contravene, any of those sections; or

(b) requiring a person to take or cause to be taken such reasonable steps as the Supreme Court considers necessary to prevent the doing of any thing that constitutes or would constitute a contravention of, or an attempt to contravene, any of those sections.

(2) The Supreme Court shall not, as a condition of granting an injunction under this section, require any undertaking as to damages.

- (3) An injunction granted under this section—
- (a) shall have effect for such period as is specified therein;
 - (b) may be varied or rescinded by the Supreme Court.

(4) Nothing in this section limits any right of the Attorney General that would exist but for this section to apply for an injunction, and the grant, refusal, variation, rescission or expiry of an injunction granted under this section shall not affect the taking of proceedings against any person for an offence under any of the sections referred to in subsection (1) nor the making of an order under any of those sections.

Service of
notices

32. (1) Any notice or other document to be served under this Ordinance on a licensed trustee or on any person making an application under sections 11 or 16 may be served—

- (a) where that licensed trustee or that person is a company, by delivering or leaving the notice or document or posting the notice or document as a letter, addressed in each case to the company, at the last known place of business of the company's manager in the Islands or at the last known address of the company, whether within or outside the Islands;
- (b) in any other case, by delivering or leaving the notice or document or posting the notice or document as a letter, addressed in each case to that person, at his last known place of business in the Islands or at the last known address of that person, whether within or outside the Islands.

(2) Service of a notice or other document in accordance with subsection (1) is deemed to be effected—

- (a) where the notice or other document is delivered in accordance with that subsection, on the day that it is delivered; or
- (b) where the notice or other document is posted as a letter in accordance with that subsection, 30 days after it is posted.

Revision Date: 15 May 1998

33. A decision of the Permanent Secretary, Finance made under sections 11, 15, 16 or 21 shall be final and shall not be reviewed or enquired into by any court, nor shall the Permanent Secretary, Finance be required to give reasons for any of those decisions.

Finality of
decisions of
Permanent
Secretary,
Finance

34. (1) Subject to section 8, no action or proceedings of any kind shall lie against the Superintendent, the Permanent Secretary, Finance or the Attorney General in their respective personal capacities for or in respect of any act or thing done by any of them in good faith in the course of the performance of their respective functions as Superintendent, Permanent Secretary, Finance or Attorney General under this Ordinance.

Protection of
Superintendent
and certain other
persons from
personal liability

(2) In this section, "Superintendent" includes any person authorized by the Superintendent under section 3 to assist him in the performance of his functions.

35. (1) The Governor may make **Regulations** prescribing all matters that are required or permitted by this Ordinance to be prescribed, or that appear to him to be necessary or desirable to be prescribed for the purpose of giving effect to this Ordinance and, in particular, without restricting the generality of the foregoing he may make Regulations exempting any person or class of persons either generally or in respect of any specified trust or class of trusts from the provisions of this Ordinance.

Regulations

(2) Regulations made under subsection (1) may make different provision for cases of different descriptions including provision for the charging of different fees in cases of different descriptions.

36. (1) Notwithstanding their repeal or amendment, (or anything in the Trusts Ordinance), the Trusts (Special Provisions) Ordinance 1985, the Trusts (Special Provisions) (Modification of Trustee Act 1925) Regulations 1986, the Trusts (Special Provisions) (Accounts) Regulations 1986, the Trusts (Special Provisions) (Fees) Regulations 1986, the Business Licences (Exemption) Order 1986 and the Confidential Relationships Ordinance shall continue to apply to and to have effect in relation to—

Savings

(a) every trust of which, immediately before the commencement of this Ordinance, there was an approved trustee; and

(b) every such approved trustee,

as if, subject to subsection (2), neither this Ordinance nor the Trusts Ordinance 1990 had been enacted.

Cap. 124

(2) This Ordinance shall apply to an approved trustee mentioned in subsection (1) who—

- (a) immediately before the commencement of this Ordinance, was acting as a professional trustee of any trust; or
- (b) on or after the commencement of this Ordinance, wishes to act as a professional trustee of any trust, other than a trust of which he was an approved trustee immediately before the commencement of this Ordinance.

(3) In this section, “approved trustee” has the meaning assigned thereto by section 2(1) of the Trusts (Special Provisions) Ordinance 1985.

Ord. 10 of 1985

TRUSTEES LICENSING ORDINANCE

TRUSTEES LICENSING EXEMPTION ORDER
– SECTION 10

(Legal Notice 45 of 1992)

[25 September 1992] Commencement

1. This Order may be cited as the Trustees Licensing (Exemption) Order. Short title

2. (1) A company to which any of the following provisions apply is exempted from the restriction imposed by section 10(1)(a) of the Ordinance— Certain companies exempted from licensing

(a) a company which is the trustee of a single trust only and—

(i) the issued share capital of which is entirely beneficially owned by one or more of the beneficiaries entitled under the terms of that trust, or by the settlor of that trust, or by the settlor and one of more of those beneficiaries; or

(ii) has its registered office or principal place of business outside the Islands in a jurisdiction which the Permanent Secretary, Finance has approved in writing to be a jurisdiction that adequately regulates and supervises trust companies;

or

(b) a company which acts as a bare trustee only, that is, which merely holds property on trust with no interest in or duty as to the trust property, except to convey it when directed by the beneficial owner.

(2) The exemption of a company referred to in subsection (1) shall cease as soon as the provisions there mentioned no longer apply to it.

TRUSTEES LICENSING REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Short title
2. Interpretation
3. Categories of licence
4. Application for licence
5. Returns
6. Publication of accounts
7. Auditor: appointment and duties
8. Licensed trustee to report detrimental conduct
9. Permanent Secretary, Finance's power to make directions
10. Licensed trustee to effect insurance
11. Superintendent's guidelines
12. Fees

SCHEDULE I: FORMS:

- Form TL1: Licence to Act as a
Professional Trustee
- Form TL2: Application for Licence
under section 11 of the
Trustees Licensing Ordinance

SCHEDULE II: FEES

TRUSTEES LICENSING REGULATIONS —SECTION 35*(Legal Notices 44 of 1992 and 26 of 1993)*

[25 September 1992] Commencement

1. These Regulations may be cited as the Trustees Licensing Regulations. Short title

2. (1) In these Regulations— Interpretation

“applicant”, means an applicant for a licence;

“banking licence”, means a licence issued under section 3 of the Banking Ordinance; Cap. 118

“beneficiary” has the meaning given to that expression in section 1(2) of the Trusts Ordinance; Cap. 124

“form”, means a form prescribed in Schedule I;

“individual”, means a natural person;

“parent company”, means a company that controls or owns a “subsidiary”;

“quoted company”, means a company the shares of which are quoted on a public stock exchange approved in writing for the purposes of these Regulations by the Permanent Secretary, Finance;

“senior officer”, includes a trust manager, trust officer, accountant or attorney employed by the applicant or licensed trustee, as the case may be;

“settlor”, has the meaning given to that expression in section 2 of the Trusts Ordinance;

“subsidiary”, means a company—

(a) with or without a share capital which, in the opinion of the Permanent Secretary, Finance, is effectively controlled by another company; or

(b) with a share capital of which at least 50% of the issued shares are beneficially owned by another company.

(2) A reference in these regulations to any person in the masculine gender shall, unless the context otherwise requires, include a reference to a partnership or company.

[Subsidiary]

Revision Date: 15 May 1998

Categories of
licence

3. A licence which the Permanent Secretary, Finance issues under section 11 of the Ordinance shall be in form TL1 and be either—

- (a) a restricted licence, which is subject to the condition that the licensee shall act as a professional trustee only on behalf of the settlors named in paragraph 21 of form TL2; or
- (b) an unrestricted licence, which is not subject to the condition referred to in paragraph (a).

Application for
licence

4. (1) An application for a licence shall be made to the Permanent Secretary, Finance in [form TL2](#).

(2) The issue and subsistence of a licence shall—

- (a) be subject to the conditions and requirements contained in form TL2; and
- (b) in the case of a company licensed as a professional trustee, be subject to the additional conditions that—
 - (i) its memorandum of association or equivalent instrument provide specifically for the carrying on of the business of a professional trustee as one of its objects;
 - (ii) the articles of association or equivalent instrument of that company and of any company directly or indirectly holding shares or having a beneficial interest in that company expressly prohibit the issue of bearer shares; and
 - (iii) it shall not at any time have less than two directors.

(3) An applicant or licensed trustee shall notify the Permanent Secretary, Finance in writing of any change in the particulars provided in form TL2 which has occurred or which the applicant or licensed trustee intends to make, and the Permanent Secretary, Finance may confirm in writing any such change with or without conditions or decline to approve any such change for reasons that he shall specify.

Returns

5. (1) A licensed trustee shall file with the Permanent Secretary, Finance—

- (a) either an annual balance sheet and profit and loss account or, if the licensed trustee holds a restricted licence or the Permanent Secretary, Finance so approves in writing, a declaration of solvency; and

(b) an annual certificate of compliance.

(2) The balance sheet, account, declaration and certificate referred to in subregulation (1) shall be made by an auditor appointed under regulation 7 unless the Permanent Secretary, Finance direct that two or more persons designated by the Permanent Secretary, Finance may make them or, in the case of a company, two or more directors of the company.

(3) The balance sheet and profit and loss account, declaration of solvency, and certificate of compliance shall be filed within three months from the end of the financial year to which each shall relate, or within such longer period as the Permanent Secretary, Finance may in his discretion approve in writing.

(4) The Permanent Secretary, Finance may at any time in his discretion—

(a) require the trustee to file an interim balance sheet and profit and loss account, declaration of solvency, or certificate of compliance;

(b) require the trustee to provide further information to explain any item contained in any balance sheet or profit and loss account filed by the trustee.

(5) If the licensed trustee is a company, the annual balance sheet and profit and loss account filed under subregulation (1)(a) shall be accompanied by a copy of the auditor's report to the shareholders made under regulation 7(2)(a).

(6) For the purposes of this regulation—

“annual certificate of compliance” means a certificate by an auditor approved by the Permanent Secretary, Finance that the trustee has during the financial year of the trustee to which the certificate relates complied in all respects with the business plan filed by the trustee under paragraph 17 of form TL2 as amended from time to time;

“declaration of solvency” means a declaration in a form approved by the Permanent Secretary, Finance and made by an auditor approved by the Permanent Secretary, Finance that the trustee at the date of such declaration has sufficient assets available from its own resources (not including any property held by the trustee on trust or as nominee for any other person or purpose), to meet the financial obligations of the trustee as they become due in the usual course of the trustee's business as a professional trustee during

such period commencing at the date of such declaration as the Permanent Secretary, Finance shall first have stipulated in writing.

Publication of
accounts

6. Any balance sheet required to be filed under these Regulations shall, if the Permanent Secretary, Finance in writing so directs, be published in the *Gazette* by the trustee as soon as it may be reasonably practicable to do so.

Auditor:
appointment and
duties

7. (1) A licensed trustee required under regulation 5(1) to file an annual balance sheet and profit and loss account shall, unless the Permanent Secretary, Finance has made a direction under regulation 5(2), appoint annually an auditor approved by the Permanent Secretary, Finance.

(2) Such auditor shall —

(a) in the case of a licensed trustee that is a company, report to the shareholders of the trustee on the annual balance sheet and profit and loss account of the trustee, such report to be read with that of the directors at the annual meeting of the shareholders;

or

(b) in the case of a licensed trustee—

(i) who is an individual, report on the balance sheet and accounts to the Superintendent; or

(ii) which is a partnership, report on the balance sheet and accounts to the partners.

(3) In default of any appointment under subregulation (1), the Permanent Secretary, Finance may appoint an auditor and fix his remuneration.

(4) An auditor appointed under this regulation who resigns or is dismissed shall, if so requested by the Permanent Secretary, Finance, state the reasons for his resignation or dismissal.

Licensed trustee
to report
detrimental
conduct

8. If at any time a licensed trustee has cause to believe that the affairs of any trust of which he is trustee are being conducted either contrary to any law of the Islands or in a manner which is, or may become, detrimental to the reputation or standing of the trustee or of the Islands, he shall forthwith notify the Superintendent and furnish full particulars thereof.

9. Whenever anything is required or allowed to be done under the Ordinance or these Regulations and no form or procedure is prescribed for so doing, application may be made in writing to the Superintendent on behalf of the Permanent Secretary, Finance for directions as to doing the same, and anything done in accordance with such directions shall be deemed to have been properly done in compliance with the Ordinance or these Regulations, as the case may be.

Permanent Secretary Finance's power to make directions

10. (1) Every licensed trustee shall effect a policy of insurance with an insurance company approved by the Permanent Secretary, Finance against losses arising out of claims of negligence or breach of duty by the trustee or any employee of the trustee, or against the dishonesty of the trustee or any employee of the trustee, and against loss of documents or property, and such other risks as the Permanent Secretary, Finance may from time to time stipulate by notice in the *Gazette*.

Licensed trustee to effect insurance

(2) Such insurance shall be in such amount and of such class or type as the Permanent Secretary, Finance may determine to be appropriate, having regard to the nature and type of business carried on by the trustee.

(3) In the event that such insurance is withdrawn, cancelled or not renewed, the trustee shall immediately notify the Permanent Secretary, Finance and cease to carry on the business of a professional trustee until such insurance has been reinstated or replaced to the satisfaction of the Permanent Secretary, Finance.

11. The Superintendent may from time to time at the direction of the Permanent Secretary, Finance publish guidelines by notice in the *Gazette* as to the manner in which the Permanent Secretary, Finance intends to exercise any discretion conferred on him by the Ordinance or these Regulations.

Superintendent's guidelines

12. (1) Subject to subsection (3), the fees payable under section 14 of the Ordinance are prescribed in Schedule II.

Fees

(2) The payment of fees shall be made—

(a) by cheque drawn on a bank licensed under section 3 of the Banking Ordinance to carry on banking business in the Islands; or

(b) by such other method of payment as the Superintendent may from time to time authorize.

(3) If within six months from the commencement of these regulations an applicant company satisfies the Permanent Secretary, Finance by sworn declaration or other evidence that immediately prior to

the application it has been lawfully, continuously and principally carrying on the business of a professional trustee in the Islands—

- (a) for at least one year, it shall be exempt from the fees prescribed in paragraphs 1, 2 and 3 of Schedule II;
 - (b) for less than two years but more than one year, it shall be exempt as provided in paragraph (a) and from the first annual fee;
 - (c) for less than three years but more than two years, it shall be exempt as provided in paragraphs (a) and (b) and from the second annual fee; or
 - (d) for at least three years, it shall be exempt as provided in paragraphs (a), (b) and (c) and from the third annual fee.
-

TRUSTEES LICENSING REGULATIONS

SCHEDULE I

(Regulations 1, 3 and 4)

FORMS

FORM TL1

THE TRUSTEES LICENSING ORDINANCE

LICENCE TO ACT AS PROFESSIONAL TRUSTEE

1. being an individual/
partnership/company operating from
in the Turks and Caicos Islands is hereby granted a restricted/ an
unrestricted licence to act as a professional trustee in the Islands.
2. The licence is issued under and subject to the Trustees Licensing
Ordinance, and subject to any conditions and restrictions endorsed
hereon.

Dated at Grand Turk this day of19/20

.....
Permanent Secretary, Finance

Licence No. _____

TRUSTEES LICENSING REGULATIONS

FORM TL2

APPLICATION FOR LICENCE UNDER SECTION 11 OF THE TRUSTEES LICENSING ORDINANCE

PART I

PRELIMINARY

- 1. Name of individual/partnership/company proposed to be licensed

(Applicant to complete Part II or III as appropriate)

PART II

APPLICANTS OTHER THAN COMPANIES

- 2. Name and address of applicant or, if applicant a partnership, of each partner concerned

- (Attach*
 - (a) 3 references, one of a financial character from a bank or trust company, in respect of the person or persons here named, and*
 - (b) any other proof by way of certificates, CVs or otherwise that the person or persons concerned are sufficiently experienced and knowledgeable in the business of professional trusteeship and fit and proper to conduct the business, and*
 - (c) a certified copy of the partnership agreement, in the case of a partnership).*

- 3. Does the applicant intend to employ a person as a manager or senior officer with responsibility for the administration of the trusts in respect of which the applicant proposes to act as professional trustee? Yes/No.

If 'Yes', give that person's name and address, attaching the appropriate references and proof required by paragraph 2 and proof of that person's belongingship or right of residence in the Islands.....

.....

- 4. Date for drawing up the annual accounts of the applicant. (if applicable, attach any preceding annual accounts, duly certified, for a period of two years immediately prior to this application).....

.....

- 5. Name and address and professional qualifications of proposed auditor of applicant (Attach proposed auditor's consent to act as such).....

.....

- 6. Does the applicant hold 50% or more of the shares of any company otherwise than as nominee or trustee? Yes/No
 (If 'Yes', the Permanent Secretary, Finance may in his discretion require the applicant to complete paragraph 15).

PART III

APPLICANTS THAT ARE COMPANIES

- 7. Address of principal or registered office of applicant

.....

- 8. Address/es where applicant and (if applicable) its parent company carry on trust or other business

.....

9. State whether applicant was registered and incorporated under the Turks & Caicos Islands Companies Ordinance or registered and incorporated outside the Islands, giving in either case the date of registration and incorporation

.....

(Attach (a) a copy of the charter, statutes or memorandum and articles of association of the applicant, or other instrument constituting the applicant, certified under the seal of the Registrar of Companies or the public seal of the country where the applicant was incorporated, and if the instrument is not written in the English language, a certified translation thereof, and
 (b) proof of registration and incorporation in or outside the Islands).

10. Names and addresses of members of the Board of Directors or officers of the governing body of the company

.....

(Attach proof by way of certificates, references, CVs or otherwise that each person here named is sufficiently experienced and knowledgeable in the business of professional trusteeship and a fit and proper person to conduct the business).

11. Name and address of manager of company in the Islands or, if company is managed by another company, the name and address of the manager of that company.....

.....

(Attach (a) 3 references, one of a financial character from a bank or trust company, in respect of the person here named, and

- (b) *other proof by way of certificates, CVs or otherwise that the person is sufficiently experienced and knowledgeable in the business of professional trusteeship and a fit and proper person to conduct the business, and*
- (c) *proof of that person's belongship or right of residence in the Islands).*

12. Date for drawing up the annual accounts of the applicant (*if applicable, attach any preceding annual accounts, duly certified, for a period of two years immediately prior to this application, including the accounts of any company beneficially entitled to not less than 20% of the applicant's issued share capital*)

.....
.....
.....

13. Name and address and professional qualifications of proposed auditor of the applicant (*attach proposed auditor's consent to act as such*).....

.....
.....
.....

14. If the applicant is not a quoted company, give the following particulars, as applicable—

(a) names, addresses, nationalities and proportions of shares held by individuals—

- (i) who are registered shareholders holding 2% or more of the issued share capital of the applicant
.....
.....
.....
.....

(Attach annexures if necessary)

- (ii) who are beneficial owners of 2% or more of the issued share capital of the applicant but are not registered as shareholders.....

.....
.....
.....
.....

(Attach annexures if necessary)

(b) names, addresses or registered or head offices, countries or places of incorporation, and proportion of shares held by companies—

(i) that are registered shareholders holding 2% or more of the issued share capital of the applicant.....

(Attach annexures if necessary)

(ii) that are beneficial owners of 2% or more of the issued share capital of the applicant but are not registered as shareholders.....

(Attach annexures if necessary)

15. If applicable, provide below a list of all companies in which applicant holds 50% or more of the issued share capital otherwise than as nominee or trustee, giving the number and proportion of shares held, and the registered or head office of each company

.....
.....
.....
.....
.....

16. State below the nature of the security to be provided for the discharge of the applicant's liabilities in the form of either or both of the following—

(a) minimum paid-up share capital (state amount)
.....

- (b) a financial guarantee by the parent company of the applicant or other company (*state the name/s of the guarantor/s and the corresponding amount/s guaranteed*).....
.....
.....

NOTES:(1) In the case of security in the form of minimum paid-up share capital, the Permanent Secretary, Finance may require such larger sum to be maintained as paid-up share capital as he shall notify to the applicant.

(2) In the case of a financial guarantee, the following requirements or conditions shall apply—

- (a) the guarantee shall be given under seal by the guarantor;
- (b) the Permanent Secretary, Finance may require such larger sum to be guaranteed as he shall notify to the applicant;
- (c) the guarantor shall have a paid-up share capital of not less than \$250,000; and
- (d) the terms of the guarantee shall provide that all questions concerning the formal and essential validity of the guarantee, its interpretation and effect and the rights and obligations of the parties thereto shall be governed and determined by the laws and courts of the Islands.

PART IV

GENERAL REQUIREMENTS

17. Attach a business plan setting out the operations in which the applicant intends to engage if a licence is granted, and including the following information—

- (a) the business objectives of the applicant and, in general terms, the type and source of business contemplated;
- (b) the applicant's proposed initial assets, and anticipated assets and liabilities and estimated income at the end of each of the two years next succeeding the grant of the licence;
- (c) particulars of the applicant's management structure and personnel; and
- (d) the reasons for the choice of the Islands as the location for the business.

18. The Permanent Secretary, Finance may, in his discretion, request the applicant to provide him with a written statement from the authority responsible for the supervision of trust companies, or of banks and trust companies, in the place where the applicant previously carried on business or was incorporated, that such authority is aware of the intended application, and if the applicant's parent company is a bank, the Permanent Secretary, Finance may also require a statement from the authority responsible for the supervision of banks in the place where the parent company was incorporated or any other place where it carries on banking business.

19. Written clearances, to be attached to the form, shall be required from the police authority or other law enforcement agency satisfactory to the Permanent Secretary, Finance in the place or country where each such person normally resides and, if different, where he normally carries on business in respect of—

- (i) the applicant, if an individual;
- (ii) the applicants, if a partnership of individuals; or
- (iii) the board of directors or governing body of the applicant, if the applicant is a company;
- (iv) any manager or trust officer whom an individual or partnership applicant intends to appoint or

continue to employ for the administration of the trusts in respect of which the applicant acts or proposes to act as professional trustee.

20. If application for a licence is made by a company having its head office outside the Islands the Permanent Secretary, Finance may require that—

- (a) the company shall at all times maintain an office in the Islands for carrying on the business of a professional trustee;
- (b) that the company designate two persons satisfactory to the Permanent Secretary, Finance who shall be authorized to accept service of notices and legal process on behalf of the company; and
- (c) that prior to the issue of the licence the company becomes registered under the Companies Ordinance.

Cap. 122

PART V

RESTRICTED LICENCES

21. If the application is for a restricted licence, attach to the form a written undertaking that the applicant shall not carry on the business of professional trustee in respect of any trust of which the settlor is other than one of the persons named in or ascertainable from such undertaking.

NOTE: Such undertaking may, with the written approval of the Permanent Secretary, Finance, be amended from time to time after the issue of the licence in order to delete or add settlors approved by the Permanent Secretary, Finance.

Dated this day of 19/20.....

..... Applicant.

TRUSTEES LICENSING REGULATIONS**SCHEDULE II***(Regulation 12)*

FEES

1. On application for a licence other than a restricted licence\$500
2. On application for a restricted licence\$200
3. On the grant of a licence, the proportion of the annual fee for the period from such grant to the 31st March next following.
4. Annually, on the 31st March during the subsistence of the licence—
\$
 (a) for an unrestricted licence3,000
 (b) for a restricted licence750
5. If the applicant is a wholly owned subsidiary of a licensed trustee the fee payable on application shall be one-fifth of the fee otherwise payable; and if a licensed trustee is a wholly owned subsidiary of another licensed trustee, the annual fee, including the proportion payable on grant of the licence, shall be one-tenth of the fee otherwise payable.

GUIDELINES—OVERSEAS REGULATORY AUTHORITY
– SECTION 9

**GUIDELINES FOR THE DISCLOSURE OF INFORMATION TO
AN OVERSEAS REGULATORY AUTHORITY**

(Gazette Notice of 1 April, 1997)

*(Issued by HE The Governor pursuant to section 11A of the
Insurance Ordinance, section 23 B of the Banking Ordinance,
and section 9 of the Trustees Licensing Ordinance)*

1. These guidelines concern the discharge by the Superintendent of his functions under section 12 of the Insurance Ordinance, section 29 of the Banking Ordinance, or section 9 of the Trustees Licensing Ordinance, relating to the disclosure to an Overseas Regulatory Authority (ORA) of information which he has acquired in connection with the performance of his duties, or in the exercise of his functions under the Ordinance.
2. Assistance may only be given for the purpose of the regulatory function of the ORA, which may include purposes relating to the prudential supervision of the financial services industry and for the obtaining of information relating to market oversight and the protection of the markets of the Turks and Caicos Islands and the markets of the country of the ORA against fraudulent transactions.
3. Where the Superintendent expects to request corresponding assistance from an ORA or expects an ORA to make frequent requests for assistance from him, he should enter into a Memorandum of Understanding (MOU) with the ORA based on the proforma MOU annexed to these guidelines.
4. The Superintendent must satisfy himself that an ORA is an authority which exercises regulatory functions corresponding to his functions under the Insurance Ordinance and Regulations, the functions of the Superintendent of Banking under the Banking Ordinance and Regulations, or the functions of the Superintendent of Trustees under the Trustees Licensing Ordinance and Regulations.
5. A request from an ORA should be in writing and should contain sufficient particulars of the following to enable the Superintendent to

assess whether the conditions set out in the Ordinance governing the disclosure of information are satisfied—

- (a) details of the information requested (including the identity of the person making the request);
- (b) the link between the information requested and the territory of the ORA;
- (c) the purpose for which the information is sought;
- (d) a description of the conduct, or suspected conduct, which gives rise to the request;
- (e) the link between the specified laws or regulatory requirements and the regulatory function of the ORA;
- (f) the relevance of the requested information to the specified laws or regulatory requirements;
- (g) copies of any statutory provisions in the territory of the ORA which prohibit or restrict the further disclosure of information disclosed to it by the Superintendent; and
- (h) the steps, if any, taken by the ORA to obtain the requested information by some other means.

6. In deciding whether to accept or decline a request for assistance, the Superintendent should take into account whether the requested information should be obtained by some other means.

7. No assistance will be given where the request is for information relating directly or indirectly, to the imposition, calculation and collection of taxes or the enforcement of exchange control laws and regulations. If the Superintendent is of the view that the request is for such information, he must refuse all assistance. An ORA must furnish the Superintendent with an undertaking that the request is not for such information.

8. An ORA must furnish the Superintendent with an undertaking that it will keep confidential to the extent permitted by law any information disclosed to it by the Superintendent. However, an ORA may disclose such information to another regulatory authority in its jurisdiction if such authority is responsible for taking regulatory action or imposing regulatory requirements in the ORA's jurisdiction; but before doing so, an ORA must obtain the approval of the Superintendent for such disclosure.

9.1 Where the information which is requested is information to which this paragraph applies, the Superintendent may disclose the information without regard to paragraphs 5, 6 and 8 of these guidelines.

9.2 This paragraph applies to requests for information about companies, being information which is routine in nature and which concerns non-sensitive matters, and which relate to—

- (a) a company's local agent;
 - (b) a company's registered office or principal office;
 - (c) a company's local manager;
 - (d) a company's licence: details of the licence (i.e. type, date, number, class of business for which it is licensed and the conditions and restrictions if any, endorsed on its licence);
 - (e) the standing of the company with the Superintendent, and the Registrar of Companies;
 - (f) company records which are available for public inspection.
-

ANNEX**Pro-forma M.O.U.**

MEMORANDUM OF UNDERSTANDING (MOU) made between the Superintendent of Insurance/Banking/Trustees of the Turks and Caicos Islands and

RECOGNIZING the increasing international activity in and the inter-dependence of, the financial services markets;

RECOGNIZING the need to enhance the supervision of the financial services industry with respect to international business; and

RECOGNIZING the need for mutual co-operation between the relevant national authorities:

NOW THEREFORE the Superintendent of Insurance/Banking/Trustees of the Turks and Caicos Islands and have reached the following understanding.

Principles

1. The purpose of this MOU is to promote the integrity of the financial services market by providing a framework for co-operation, increased mutual understanding and the exchange of confidential information, to the extent permitted by the laws and practices of the Turks and Caicos Islands and
2. This MOU does not modify or supersede any laws or regulatory requirements in force in, or applying to, the Turks and Caicos Islands or.....
3. Whilst the signatories will use their best endeavours to meet the terms of the MOU, nothing contained herein creates a duty on one signatory to assist the other. Nor does the MOU create any rights which are enforceable by a signatory or a third party.
4. The signatories propose to ensure the timely and confidential processing of all requests for assistance.

Scope

5. The signatories propose to ensure that mutual assistance is provided for the prudential supervision of the financial services industry and for the obtaining of information relating to market oversight and the protection of each other's markets against fraudulent transactions.

Requests

6. The signatories may consult at any time about a request or proposed request.
7. Requests will be made in writing and will contain the particulars specified in paragraph 9. In urgent cases, requests may be made in a summary form to be followed within 10 days by a full request.
8. In deciding whether to accept or decline a request for assistance, account will be taken of whether the information could be obtained by other means.
9. The particulars referred to in paragraph 7 are the following—
 - (a) details of the information requested (including the identity of the person making the request);
 - (b) the link between the information requested and the territory of the requesting signatory;
 - (c) the purpose for which the information is sought;
 - (d) a description of the conduct, or suspected conduct, which gives rise to the request;
 - (e) the link between the specified laws or regulatory requirements and the regulatory function of the requesting signatory;
 - (f) the relevance of the requested information to the specified laws or regulatory requirements;
 - (g) copies of any statutory provisions in the territory of the requesting signatory which prohibit or restrict the further disclosure of information disclosed to it by the Superintendent; and
 - (h) the steps, if any, taken by the requesting signatory to obtain the requested information by some other means.
10. Any documents or other material provided under the MOU and any copies thereof must be returned on request.
11. Each request will be assessed by the requested signatory to determine whether information can be provided under the terms of the MOU. In any case where the request cannot be accepted completely, the requested signatory may give such information as it considers to be appropriate to give.

12. No assistance will be given where the request is for information relating directly or indirectly to the imposition, calculation and collection of taxes or the enforcement of exchange control laws and regulations. The requesting signatory will give an undertaking to the requested signatory that the request is not for such information.

Confidentiality

13. Before any information is disclosed to a requesting signatory under the MOU, and except as provided in paragraph 14, the requesting signatory must satisfy the requested signatory that it is subject to adequate legal restrictions on further disclosure of such information.
14. Each signatory will give an undertaking that it will keep confidential to the extent permitted by law—
- (a) any request for assistance made under the MOU and any matters arising in the course of its operation unless disclosure is necessary to carry out the request or the requesting signatory waives such confidentiality;
 - (b) any information disclosed under the MOU except information disclosed to the authorities referred to in paragraph 15.
15. The signatories will consult with each other to agree the authorities in their respective jurisdictions who are responsible for taking regulatory action or imposing regulatory requirements to whom information may be further disclosed.
16. If a signatory becomes aware that information disclosed under the MOU has been or is likely to be disclosed otherwise than as contemplated by paragraph 14, it will inform the other signatory of the situation.

Termination

17. The MOU will continue to have effect unless terminated by any one of the signatories by giving 30 days' advance written notice to the other signatories that the understanding set out herein is no longer to have effect.

SIGNED this day of 19/20.....

Superintendent of _____

INDEX

	Page
Confidential Relationships	
When Ordinance not to apply–re. trustees	26
Licensing	
Trustees-Ordinance	1
Trustees	
Annual returns to be filed	36
Application for licence - regulations	36
Application form	42
Audit of	37
Audit of trustee company's accounts	37
Auditor's duties	38
Confidential Relationships Ordinance - when not to apply	26
Confidentiality towards	10
Criminal liability of directors	27
Exemption from licensing requirements	13
Exemption by Order from requirement to be licensed	31
Injunction by Attorney General	27
Insurance required	39
Licence application	13
Licensing Ordinance	1
Licensing Regulations	33
Obligation to display licence	18
Overseas Regulatory Authority	10
Professional Trustee – defined	5
Qualifications for companies	14
Qualifications for individuals	14
Restriction on acting as professional trustee	11
Restriction on transfer of shares in	20
Revocation of licence	20
Service of notice upon	28
When no licence required	12
Recording of Deeds	
Ordinance–where not to apply–re. trustee	25