

**TURKS AND CAICOS ISLANDS**

**COMPANIES AND LIMITED PARTNERSHIPS  
(ECONOMIC SUBSTANCE) (AMENDMENT) ORDINANCE  
2024**

**(Ordinance 38 of 2024)**

**ARRANGEMENT OF SECTIONS**

**SECTION**

1. Short title and commencement
2. Interpretation
3. Section 2 amended
4. Section 10 amended
5. Section 11 amended
6. Section 11A inserted
7. Section 12A inserted
8. Section 25A inserted



## **TURKS AND CAICOS ISLANDS**

### **COMPANIES AND LIMITED PARTNERSHIPS (ECONOMIC SUBSTANCE) (AMENDMENT) ORDINANCE 2024**

**(Ordinance 38 of 2024)**

*Assent*.....14<sup>th</sup> November 2024

*Publication in Gazette*.....15<sup>th</sup> November 2024

*Commencement*.....in accordance with section 1

**AN ORDINANCE TO AMEND THE COMPANIES AND LIMITED PARTNERSHIPS  
(ECONOMIC SUBSTANCE) ORDINANCE.**

**ENACTED** by the Legislature of the Turks and Caicos Islands.

#### **Short title and commencement**

1. This Ordinance may be cited as the Companies and Limited Partnerships (Economic Substance)(Amendment) Ordinance 2024 and shall come into operation on such day as the Governor may appoint by Notice published in the *Gazette*.

#### **Interpretation**

2. In this Ordinance “principal Ordinance” means the Companies and Limited Partnerships (Economic Substance) Ordinance.

#### **Section 2 amended**

3. Section 2 of the principal Ordinance is amended—

(a) by inserting the following definitions in their correct alphabetical position—

““carrying on business in the Islands” in relation to an entity, includes carrying on business of any kind or type whatsoever by that entity, either alone or in partnership or otherwise, except—

(a) carrying on, from a principal place of business in the Islands, business outside the Islands;

- (b) doing business in the Islands with any person, firm or corporation in furtherance only of the business of that entity carried on outside the Islands;
- (c) transacting banking business in the Islands with and through a licensed bank;
- (d) effecting or concluding contracts in the Islands and exercising in the Islands all other powers, so far as may be necessary for the carrying on of the business of that entity outside the Islands;
- (e) the administration of mutual funds by a person licensed as a mutual funds administrator under the Mutual Funds Ordinance; or
- (f) business carried on by a mutual fund, as defined by the Mutual Funds Ordinance, in the course of the acquisition, holding, management or disposal of investments;

“domestic entity” means—

- (a) in the case of a TCI company—
  - (i) a company that is not part of an MNE group and is only carrying on business in the Islands; and
  - (ii) where the person or persons who have beneficial ownership of the majority of the shares or stock entitled to vote at a general meeting of the company are resident in the Islands; or
- (b) in the case of a TCI limited partnership—
  - (i) a partnership that is not part of an MNE group and is only carrying on business in the Islands; and
  - (ii) where the partner or partners entitled to receive the majority of the profits of the partnership are resident in the Islands;

“MNE group” means any group that includes two or more enterprises for which the tax residence is in different jurisdictions or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction;

“resident in the Islands” means an individual who is ordinarily resident in the Islands;

“investment fund” means an entity whose principal business is the issuing of investment interests to raise funds or pool investor funds with the aim of enabling a holder of such an investment interest to benefit from the profits or gains from the entity’s acquisition, holding, management or disposal of investments and includes any entity through which an investment fund directly or indirectly invests or operates (but not an entity that is itself the ultimate investment held);”;

(c) by repealing the definitions of “TCI entity” and “relevant activity” and substituting—  
““TCI entity” means—

- (a) a TCI company;
- (b) a TCI limited partnership; or
- (c) a registered foreign company,

but does not include a domestic entity;

“relevant activity” means—

- (a) banking business;
- (b) distribution and service centre business;
- (c) finance and leasing business;
- (d) fund management business;
- (e) headquarters business;
- (f) holding entity business;
- (g) insurance business;
- (h) intellectual property holding business; and
- (i) shipping business,

but does not include an investment fund;”.

#### **Section 10 amended**

4. The principal Ordinance is amended in section 10 by repealing subsection (4) and substituting the following—

“(4) If the Competent Authority determines that a TCI entity has failed to submit to the Competent Authority the return required under subsection (1), the Competent Authority shall impose a penalty on the entity in accordance with section 12A.”.

#### **Section 11 amended**

5. The principal Ordinance is amended in section 11 by repealing subsection (6) and substituting the following—

“(6) If the Competent Authority determines that a TCI entity has failed to provide the Competent Authority with such information or documents when required to do so by the Competent Authority under subsection (1), the Competent Authority shall impose a penalty on the entity in accordance with section 12A.”.

#### **Section 11A inserted**

6. The principal Ordinance is amended by inserting the following section immediately after section 11—

**“Requirement to give notice by a domestic entity**

**11A.** (1) A domestic entity shall, in respect of each accounting period, submit to the Competent Authority a notice for the purpose of enabling the Competent Authority—

- (a) to determine whether or not an entity is a domestic entity during the accounting period; and
- (b) if it is a domestic entity, whether or not it is carrying on a relevant activity.

(2) A notice submitted in terms of subsection (1) shall be accompanied by—

- (a) in the case of a company, a certificate of incorporation and a copy of the Register of Members that is filed with the Financial Services Commission;
- (b) in the case of a partnership, a partnership agreement and a list of partners to that agreement; and
- (c) such other appropriate evidence, to support the information provided in the notification, as may be prescribed and reasonably be required by the Competent Authority.

(3) The notification under subsection (1) shall be made at the time specified by the Competent Authority and in the form and the manner approved by the Competent Authority.”.

**Section 12A inserted**

**7.** The principal Ordinance is amended by inserting after section 12 the following section—

**“Penalty for failure to submit return or provide information**

**12A.** (1) If the Competent Authority determines that a TCI entity—

- (a) has failed to submit to the Competent Authority the return required under section 10; or
- (b) has failed to provide the Competent Authority with such information or documents when required to do so by the Competent Authority under section 11,

the Competent Authority shall impose a penalty on the TCI entity, not exceeding \$20,000, as the Competent Authority considers appropriate.

(2) Within fourteen days of making a determination under subsection (1), the Competent Authority shall issue a penalty notice to the TCI entity notifying it of—

- (a) the Competent Authority’s determination and reason for its determination;
- (b) the amount of the penalty imposed on the entity in accordance with subsection (1);

(c) the date on which the penalty is due to be paid to the Competent Authority, being a date not earlier than twenty-eight days after the issue of the notice; and

(d) the entity's right of appeal under subsection (6).

(3) A TCI entity that receives a penalty notice under subsection (2) shall pay the penalty stated in the notice to the Competent Authority on or before the date specified in the notice.

(4) A penalty imposed under this section which is not paid by the due date constitutes a debt to Government and may be recovered in the Court.

(5) The Competent Authority shall pay all penalties that it receives into the Consolidated Fund.

(6) A TCI entity that has a penalty imposed pursuant to this section may, within twenty-eight days after the notice is given, appeal to the Court against the determination and penalty and such appeal shall not act as a stay on the enforcement of the penalty.

(7) An appeal under this section may be made on questions of law or fact or both and the Court may affirm or reverse the determination and penalty or substitute its own penalty for that imposed by the Competent Authority.

(8) A TCI entity that fails to pay a penalty imposed under this section on or before the date stated in the notice commits an offence and is liable on summary conviction, to a fine not exceeding \$50,000.”.

#### **Section 25A inserted**

**8.** The principal Ordinance is amended by inserting after section 25 the following section

#### **“Protection against double jeopardy**

**25A.** (1) If a person is convicted in a court of an offence under this Ordinance, that person shall not also be liable to an administrative penalty in relation to the same facts.

(2) Where an administrative penalty is imposed under this Ordinance, the person liable for that penalty shall not be subsequently or simultaneously charged with an offence under this Ordinance in relation to the same facts.”.