



TURKS AND CAICOS ISLANDS

CHAPTER 16.10
COMPANY MANAGEMENT
(LICENSING) ORDINANCE
and Subsidiary Legislation

Revised Edition
showing the law as at 31 December 2014

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.

This edition contains a consolidation of the following laws—

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CHAPTER 16.10

COMPANY MANAGEMENT (LICENSING) ORDINANCE

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CHAPTER 16.10

COMPANY MANAGEMENT (LICENSING) ORDINANCE

(Ordinances 1 of 1999, 6 of 2001, 24 of 2004, 16 of 2007, 15 of 2013 and 17 of 2013 and Legal Notice 25/2000)

AN ORDINANCE TO PROVIDE FOR THE LICENSING AND REGULATION OF THE BUSINESS OF COMPANY MANAGEMENT AND COMPANY AGENT; AND FOR CONNECTED PURPOSES.

Commencement

[9 September 2000]

PRELIMINARY

Short title

1. This Ordinance may be cited as the Company Management (Licensing) Ordinance.

Interpretation

2. In this Ordinance—

“accountant” means a person who—

(a) is qualified as an accountant by examination of one of the institutes of chartered accountants or certified accountants in England and Wales, Ireland or Scotland, the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants, and is a current member of good standing of one of those institutes; or

(b) possesses such other qualifications in accountancy recognised by the Commission for the purposes of this Ordinance; *(Amended by Ords. 6 of 2001 and 16 of 2007)*

“auditor” means an accountant or a firm of accountants holding a currently valid certificate granted by the Commission certifying that in its opinion such person is of good standing and qualified to undertake the audit of a company; *(Amended by Ords. 6 of 2001 and 16 of 2007)*

“business of company agent” means the provision in or from within the Islands for profit or reward, of the following services for companies—

(a) the incorporation or registration of companies under the Companies Ordinance;

(b) the provision of agents and officers (including company secretary or resident representative), other than agents or officers having

direction or control over the assets of a company, for companies wherever incorporated or registered; and

- (c) the provision of registered office services for companies wherever incorporated or registered;

“business of company management” means the provision in or from within the Islands for profit or reward, of—

- (a) directors;
(b) persons having direction or control over the assets; and
(c) shareholders,

of companies wherever incorporated or registered and includes the business of company agent;

“Code of Conduct” means the Code of Conduct set out in Schedule 2 (as may be amended from time to time);

“Commission” means the Turks and Caicos Financial Services Commission established under the Financial Services Commission Ordinance, 2001 and preserved and continued under the Financial Services Commission Ordinance; (*Inserted by Ord. 16 of 2007*)

“company agent” means a person who engages in the business of company agent;

“company manager” means a person who engages in the business of company management;

“Islands” means the Turks and Caicos Islands;

“licence” means a licence granted under section 6;

“licensee” means a person holding a company management licence or, as the case may be, a company agent’s licence granted pursuant to this Ordinance; and when used in relation to the word “licensee” the words “it”, “its” and “itself” shall include “him”, “his” and “himself” respectively.

Controlling interest defined

3. For the purposes of an application for a licence under this Ordinance, a person has a controlling interest in a company in the following circumstances—

- (a) a company is controlled by a person if any shares in the company carrying voting rights sufficient to elect a majority of the directors of the company are, except by way of security only, held directly or indirectly, by or on behalf of that person;
- (b) a company is the holding company of another company if that other company is its subsidiary;
- (c) a company is a subsidiary of another company if it is controlled by that other company.

LICENSING OF COMPANY MANAGERS AND COMPANY AGENTS

Restriction on carrying on the business of company management and company agent

4. No person shall carry on the business of company management or the business of company agent in or from within the Islands without being the holder of a licence issued under this Ordinance.

Application for a licence

5. An application for a licence shall be made to the Commission in the form set out in Schedule 1, and shall be accompanied with—

- (a) the prescribed fee;
- (b) a list of the names and addresses of the persons who it is proposed would act as directors, secretary or resident manager of the applicant;
- (c) particulars of the qualifications and experience of the applicant;
- (d) the documents in support of the application; and
- (e) such other documents and such further particulars as the Commission may require to be furnished to it in any case for the purpose of determining the application.

(Amended by Ords 6 of 2001 and 16 of 2007)

Commission may grant licence

6. The Commission upon being satisfied that an applicant—

- (a) is in all respects, by virtue of integrity and solvency a fit and proper person to be issued with a licence;
- (b) has adequate knowledge and practical experience in the management and administration of companies; or is a person qualified by his knowledge of company law and the management and administration of companies;
- (c) is capable of complying with the provisions of this Ordinance and the terms and conditions of any licence granted hereunder;
- (d) has paid the prescribed licence fee;
- (e) has a manager, being—
 - (i) an individual who is ordinarily resident in the Islands; and who has adequate knowledge and practical experience in the management and administration of companies or who is qualified by his knowledge of company law and the management and administration of companies; or

- (ii) a company which has as a manager an individual as described in subparagraph (i); and
- (f) if a company, has articles of association which do not authorize the issue of any shares in the company as bearer shares,

may grant the applicant a licence in the prescribed form to carry on the business of company management or as the case may be, the business of company agent, and shall cause a notice to that effect to be published in the *Gazette* within thirty days of the grant of the licence.

(Amended by Ords. 6 of 2001 and 16 of 2007)

Fees

7. (1) A person applying for a licence under section 5 shall pay to the Commission such fees as may be prescribed; and different fees may be prescribed for different circumstances.

(2) In the event of the application being refused the Commission shall refund the fees to that person less an administrative charge of \$200.

(3) A licensee shall, not later than 31st March in each year following the year in which it was issued with a licence, pay to the Commission such fees as may be prescribed.

(Amended by Ords. 6 of 2001 and 16 of 2007)

Conditions of a licence

8. (1) Subject to the provisions of this section, the Commission may grant a licence upon such conditions as it thinks fit and may vary such conditions at any time during the currency of the licence.

(2) Subject to subsection (3), it shall be a condition of every licence that—

- (a) the licensee shall comply with paragraphs 1, 2, 4(2) and 6(a), (b), (c), (e) and (f) of the Code of Conduct set out in Schedule 2;
- (b) the licensee shall notify the Commission within fourteen days of any change or proposed change in the information contained in, or supplied in connection with the application for a licence;
- (c) the licensee shall maintain sufficient capital to meet liabilities as and when they fall due;
- (d) the licensee shall send to the Commission, not later than 31st March in each year—
 - (i) a certificate signed by a director or partner of or the sole proprietor where he is, the licensee or such other person as the Commission may approve, stating that to the best of his knowledge and belief the licensee has conducted its business in compliance with the Ordinance and any conditions attached to its licence; and

- (ii) a list of all companies for which it has acted in the year ending 31st December of the immediately preceding year specifying the type of company and indicating any additions to or deletions from, the immediately previous list.
 - (e) the licensee shall pay the prescribed annual licensing fee;
 - (f) the licensee shall cause to be kept such books of accounts as are necessary to give a true and fair view of the licensee's affairs with respect to—
 - (i) all sums of money received and expended by the licensee and the manner in respect of which the receipt and expenditure take place;
 - (ii) all sales and purchases by the licensee; and
 - (iii) the assets and liabilities of the licensee; and
 - (g) the Commission may at any time if it considers it desirable to do so, make an order requiring the licensee—
 - (i) to submit to it its accounts within such time as it may specify; and
 - (ii) to have its accounts audited by an auditor and sent to it within such time as it may specify.
- (3) It shall be a condition of every company manager's licence that the licensee shall—
- (a) comply with paragraphs 3, 4(1), 5, 6(d) and 7 of the code of conduct set out in Schedule 2;
 - (b) effect a policy of insurance with a company approved by the Commission against any or all of the following risks—
 - (i) losses arising out of claims of negligence or breach of duty by the licensee or by an employee of the licensee;
 - (ii) dishonesty of the licensee or employees of the licensee;
 - (iii) loss of documents,in such amount and of such nature as the Commission may determine to be fit and proper, having due regard to the nature and type of business carried on by the licensee; and
 - (c) notify the Commission within fourteen days of—
 - (i) any change or proposed change to;
 - (ii) withdrawal or cancellation of; or
 - (iii) failure to renew,an insurance policy effected under paragraph (b).

(Amended by Ords. 6 of 2001 and 16 of 2007)

Licence in force

9. A licence shall come into force on the day on which it is issued and, unless revoked under the provisions of this Ordinance, shall remain in force—

- (a) if issued on or before 31st March in any year, until the expiration of 31st March in the immediately following year; or
- (b) if issued on or after 1st April in any year, until the expiration of 31st March in the immediately following year.

Application for renewal of licence

10. (1) An application for renewal of a licence may be made to the Commission before the expiry of a licence and it may renew the licence either upon the same or different conditions.

(2) An application for renewal of a licence under subsection (1) shall be made in such form as may be prescribed or, until a form is prescribed, in such form as the Commission may require and shall be accompanied with—

- (a) the documents in support of the application; and
- (b) such other documents and such particulars as the Commission may require to be furnished to it for the purpose of determining the application.

(3) If an application for renewal under subsection (1) is received by the Commission before the expiry of the licence, the licensee shall be deemed to be licensed until the decision on renewal takes effect notwithstanding that that decision may take effect after the expiry of the existing licence.

(4) Without prejudice to the generality of the discretion of the Commission under subsection (1), the Commission shall not renew a licence under this section unless it is satisfied that the licensee making the application has during the continuance of the existing licence, fulfilled and is, at the time the application is made, continuing to fulfill the requirements of this Ordinance.

(Amended by Ords. 6 of 2001 and 16 of 2007)

Licence to be displayed

11. A licence shall be prominently displayed on the premises where the business of company management or company agent is being carried on.

Revocation of licence

12. (1) A licensee, on receipt of a notice of revocation of its licence under the Financial Services Commission Ordinance shall, not later than—

- (a) thirty days after service of notice of revocation; or
- (b) thirty days after the date of the lodging of an appeal against the decision of the Commission,

whichever is later serve on the directors and beneficial owners of each of its client companies notice in the prescribed form.

(Amended by Ords 6 of 2001 and 16 of 2007)

(2) A licensee who fails to serve the notice required by subsection (1) commits an offence and is liable on summary conviction to a fine of \$1,000.

Transfer to another licensee

13. (1) A client company in respect of which notice was served upon its directors and beneficial owners pursuant to section 12(1) shall, within thirty days of receipt of the notice, make arrangements satisfactory to the Commission for another licensee to assume the duties formally undertaken by the licensee whose licence has been revoked.

(2) The Commission may where a company has not made the arrangements required by subsection (1), 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 interest of the client company and its creditors.

(Amended by Ords. 6 of 2001 and 16 of 2007)

Surrender of licence

14. (1) Subject to this section, a licensee may at any time surrender its licence to the Commission.

(2) A licensee which intends to cease carrying on business shall, not less than thirty days before the cessation of the business, notify the Commission in writing of its intention to do so and of the reasons for it.

(3) The licensee shall as soon as practicable but not later than seven days before the date of cessation of business, serve on the Commission its proposals respecting the arrangements made—

(a) for the transfer of assets held or administered on behalf of companies managed by it, and of the repayment of deposits held by it;

(b) for the transfer of—

(i) the offices of directors, officers, agents and persons having direction or control over the assets;

(ii) shareholder services; and

(iii) the provision of registered office services presently provided by the licensee.

(Amended by Ords. 6 of 2001 and 16 of 2007)

Appeals against decisions of Commission

15. (1) Subject to subsection (2), an appeal lies to the Supreme Court from a decision of the Commission—

- (a) refusing the grant of a licence to an applicant who, on the commencement of this Ordinance, carried on the business of company management or company agent;
- (b) revoking a licence under section 12.
(Amended by Ord. 6 of 2001)

(2) A decision of the Commission refusing the grant of a licence in respect of an applicant who has not commenced business on the date of commencement of this Ordinance is final and is not subject to any appeal.
(Amended by Ord. 6 of 2001)

(3) An appeal under this section shall not, unless otherwise ordered by the Court, operate as a stay of the decision in respect of which the appeal is made.

(4) Schedule 3 has effect with respect to appeals made under this section.

Approval of transfer of interests, etc. in licensee

16. (1) Where any interest in the licensee is to be transferred from one person to another, or where a new or additional officer or agent of the licensee is to be appointed, the licensee shall notify the Commission in writing of such proposed transfer or appointment.

(2) Notwithstanding any other Ordinance or rule of law to the contrary, and except for the transmission of an interest by operation of law—

- (a) no transfer of any interest in a licensee; and
- (b) no appointment of any new or additional officer or agent of the licensee,

shall have effect unless such transfer or appointment shall have first been approved by the Commission.

(Amended by Ords. 6 of 2001 and 16 of 2007)

SUPPLEMENTAL

Offences

17. (1) A person that with intent to deceive for any purpose of this Ordinance makes any representation that it knows to be false or does not believe to be true, commits an offence and is liable on summary conviction to a fine of \$20,000 or imprisonment for twelve months or both.

(2) A person that carries on the business of company management or the business of company agent in or from within the Islands—

- (a) when not in possession of a valid licence issued under this Ordinance;
- (b) in contravention of the provisions of this Ordinance or any term or condition of the licence,

commits an offence, and is liable on summary conviction to a fine of \$20,000.

(3) Except as otherwise provided by this Ordinance, a person that, not being the holder of a licence under this Ordinance or exempt from the requirement to hold a licence, in any matter holds itself out as or pretends to be or makes use of any words or description implying that it—

(a) is, licensed under this Ordinance to carry on the business of company management or company agent; or

(b) is, entitled, either alone or with others, to carry on such business, commits an offence, and is liable on summary conviction to a fine of \$20,000.

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

Regulations

18. (1) The Governor in Cabinet—

(a) may make regulations prescribing anything which under this Ordinance is required to or may conveniently be prescribed; and

(b) may, by Order published in the *Gazette*, amend Schedules 1 and 3 to this Ordinance.

(2) The Governor in Cabinet after consulting with representatives of the financial services industry, may from time to time amend any provisions of the Code of Conduct set out in Schedule 2, and may repeal and replace the same.

SCHEDULE 1

(Section 5)

**APPLICATION FOR LICENCE UNDER
THE COMPANY MANAGEMENT (LICENSING) ORDINANCE**

PART I: PRELIMINARY

1. Name and address of principal or registered office of company, partnership or individual proposed to be licensed.
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(Applicant to complete Part II or III as appropriate and to send the application to the Commission accompanied by the appropriate fee (which is not refundable)).
2. Name and address of subsidiary companies, associates or individuals, to be included in the licence.

PART II: APPLICANTS THAT ARE COMPANIES

3. Address/es where applicant and (if applicable) its parent company carry on the business of company management or company agent.
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.....
4. State whether applicant was incorporated or registered under the Companies Ordinance or incorporated and registered outside the Islands, giving in either case the date of incorporation or registration, and the registration number.
.....
.....
.....

(Attach (i) copy of the memorandum and articles of association, charter or statutes 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 (ii) proof of incorporation and registration in or outside the Islands).

5. Names and addresses of directors, managers or other persons who control the company.

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(Attach proof by way of certificates, references, CVs or otherwise that each person herein named is sufficiently experienced and knowledgeable in the business of company management or company agent and is a fit and proper person (by virtue of integrity, solvency and competence) to conduct the business).

6. Names, addresses, nationalities and proportions of shares held by individuals—
(a) who are registered shareholders holding ten *per cent* or more of the issued share capital of the applicant:

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.....

(Attach annexes if necessary)

- (b) who are beneficial owners of ten *per cent* or more of the issued share capital of the applicant but are not registered as shareholders:

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

(Attach annexes if necessary)

7. State names, addresses, registered or head offices, countries or places of incorporation and proportion of shares held by companies—
(a) that are registered shareholders holding ten *per cent* or more of the issued share capital of the applicant:

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.....

(Attach annexes if necessary)

- (b) that are beneficial owners of ten *per cent* or more of the issued share capital of the applicant but are not registered as shareholders:

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(Attach annexes if necessary)

8. State below the nature of the security to be provided for the discharge of the applicant's liabilities in the form of a financial guarantee by the company having a controlling interest in the applicant or other company (state the names/s of the guarantor/s and the corresponding amount/s guaranteed):

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.....,

NOTE: . In the case of all applications, a financial business plan must be annexed describing the nature of the business which is to be undertaken and the administrative procedures, which are to be adopted.

Dated this day of, 20.... .

.....
(Applicant)

PART III: APPLICANTS OTHER THAN COMPANIES

9. Name and address of applicant or, if applicant is a partnership, of each partner concerned

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(Attach (i) three references, one of a financial character either from a bank or trust company, in respect of the person or persons here named, and (ii) 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 company management or company agent and fit and proper to conduct the business, and (iii) a certified copy of the partnership agreement in the case of partnership).

10. Does the applicant intend to employ a person as a manager or senior officer with responsibility for the management of the companies in respect of which the applicant proposes to act as company manager or provide it with company services? Yes/No. *(If "Yes", give that person's name and address, attaching the appropriate references and proof required by paragraph 2 and proof of the person's status as a Belonger or of his right of residence in the Islands).*

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11. Date for drawing up the annual accounts of the applicant *(Attach a statement of assets and liabilities, duly certified, at the end of the month immediately preceding this application)*

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SCHEDULE 2*(Sections 8 and 18)***CODE OF CONDUCT**

All licensees are required to comply with the provisions of paragraphs 1, 2, 4(2) and 6(a), (b), (c), (e) and (f) of this Code of Conduct. The remainder of this Code applies to company managers only. Breaches of this Code may lead the Commission to take enforcement action. A series of breaches, which may be minor in themselves, may indicate that a licensee is not a fit and proper person to hold a licence. *(Amended by Ord. 16 of 2007)*

PROPER MANAGEMENT OF YOUR BUSINESS

1. A licensee should ensure that at all times—
 - (a) it has a resident manager of its business in the Islands;
 - (b) it maintains sufficient capital to enable it to meet its liabilities as they fall due.

KNOW YOUR CUSTOMER

2. A licensee should use its best endeavours, including taking up references, to identify—
 - (a) the beneficial owners of all voting or dividend earning shares of the companies for which it acts (where those shares comprise more than five *per cent* of the issued capital) or persons who exercise control over such shares;
 - (b) persons to whom the directors have granted a power of attorney,and shall ensure that the information is kept up to date.

(Amended by Ord. 17 of 2013 and L.N. 27 of 2014)

RECORDS OF CLIENTS

3. A licensee should keep at its offices the following records in respect of each of its client companies in respect of which it acts as a company manager—
 - (a) names and addresses of directors and other officers and agents of the company;
 - (b) name and address of beneficial owner; and where the business is done through a professional intermediary, name and contact address of the professional intermediary;
 - (c) name and address of the principal requesting formation or registration of the company;

- (d) powers of attorney and other instruments relating to the control of the company.

MONITOR THE ACTIVITIES OF YOUR COMPANIES

4. (1) A licensee should use its best endeavours and set up any system necessary, to enable it to monitor the activities of the companies it manages, to ensure that the companies are not being used for purposes which would be illegal if carried out in the Islands.

(2) A licensee should use its best endeavours to ensure that the companies in respect of which it acts as a company manager or in respect of which it acts as a company agent, are not used for the purposes of holding assets arising from or facilitating the commission of criminal activity, or for any acts which would infringe the law of the Islands.

(3) A licensee should maintain board meeting minute books and general meeting minute books or keep copies of board meeting and general meeting minutes, in its offices.

(4) A licensee should set up any system necessary to ensure that the licensee is made aware of the transactions effected through bank, brokerage and other accounts of the companies in respect of which it acts as a company manager.

POWERS OF ATTORNEY

5. A licensee should ensure that powers of attorney are—
- (a) granted for specific purposes;
 - (b) limited in time;
 - (c) not capable of being further delegated by the grantee; and
 - (d) granted only where the licensee regards the donee to be particularly trustworthy by virtue of long-standing relationship or similar connections.

CUSTOMER AGREEMENT

6. A customer agreement should be entered into between a licensee and each of the companies managed by it or for which it provides company services. The agreement should specify—

- (a) the nature of the services to be provided;
- (b) the fees to be charged and how such fees may be collected;
- (c) how instructions can be given;
- (d) any bank account arrangement made or administered by the licensee;
- (e) provisions for terminating the agreement and the implications for the client company of such termination;

- (f) a requirement for the client to notify the licensee of any changes in its business activities.

AVOIDANCE OF CONFLICT OF INTEREST

7. (1) A licensee should ensure that it avoids a conflict of interest between it and its client companies and between one client company and another. A licensee should in respect of each company for which it provides services—

- (a) maintain separate accounts in its books;
- (b) segregate the funds and other property of each company;
- (c) maintain one or more separate bank accounts into which it shall deposit all moneys held by it on behalf of each company.
(Amended by L.N. 25/2000)

(2) A licensee may not comply with the provisions of subparagraph (1)(c) where the moneys held by it on behalf of a client company—

- (a) are not more than \$5,000;
- (b) are more than \$5,000 but not more than \$15,000 and—
 - (i) the books of account of the licensee are subject to an annual audit;
 - (ii) the number of transactions carried out on behalf of a client company in a year is less than twelve; and
 - (iii) the annual average amount involved in each transaction carried out on behalf of a client company is less than \$15,000; or
- (c) are more than \$15,000 and—
 - (i) the books of account of the licensee are subject to an annual audit; and
 - (ii) the licensee has obtained the approval of the Commission to its exercise of the power not to comply with subparagraph 1(c).
(Inserted by L.N. 25/2000)

SCHEDULE 3

(Section 15)

PROCEDURE ON APPEAL

1. The appellant, within twenty-one days after the day on which the Commission has given the decision which is the subject of the appeal, shall serve a notice in writing, signed by the appellant or his attorney, on the Attorney General of his intention to appeal and of the general grounds of his appeal.
 2. The Attorney General shall, within twenty-one days of receiving the notice of appeal, obtain a copy of the decision of the Commission and transmit to the Registrar of the Supreme Court without delay a copy thereof, together with all papers relating to the appeal.
 3. The Registrar shall set down the appeal for hearing on such day as is convenient, and shall cause notice of the hearing to be published in such manner as the court may direct.
 4. The court may adjourn the hearing of any appeal and may, upon the hearing thereof, confirm, reverse, vary or modify the decision of the Commission or remit the matter with the opinion of the court thereon to the Commission.
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COMPANY MANAGEMENT (LICENSING) (FEES) REGULATIONS

– SECTIONS 7 AND 18

(Legal Notices 26/2000 and 15/2009)

Commencement

[8 September 2000]

Short title

1. These Regulations may be cited as the Company Management (Licensing) (Fees) Regulations.

Application fees

2. The fee in respect of an application for a licence to carry on the business of company management or company agent shall be the sum of—

- (a) \$750 or \$350 respectively; and
- (b) an amount having the same ratio to \$2,000 as the period commencing on the date of issue of a licence and ending on 31 March in the year following that date of issue, has to a year.

(Amended by L.N. 15/2009)

Annual fee

3. The fee to be paid by a licensee not later than 31 March in each year following the year in which it was issued with a licence shall be \$2,000.

