



TURKS AND CAICOS ISLANDS
FINANCIAL SERVICES COMMISSION

Regulating with Honesty, Integrity and Transparency

Regulatory Co-operation Handbook

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1.0 PURPOSE OF THIS HANDBOOK

The purpose of this Handbook is to establish the Policy and to provide guidance to officers of the Turks and Caicos Islands Financial Services Commission (hereinafter referred to as ‘the Commission’) on the processes and procedures required to be adhered to when processing requests for information from both domestic and foreign authorities.

2.0 INTRODUCTION

The Commission has an established history of co-operation primarily through the provision assistance to domestic and overseas regulatory authorities. Its co-operation regime is founded on the principle of reciprocity. The Commission is open to providing assistance to both domestic and international agencies by providing relevant regulatory information and/or information in the pursuit adequate regulation of financial services and for detecting financial crimes or regulatory offences

Electronic copies of legislation mentioned herein can be viewed on the Commission’s website at www.tcifsc.tc. That page provides links to all relevant primary and subsidiary legislation which is administered or regulated by the FSC.

3.0 THE LEGISLATIVE REGIME

The Commission has a statutory duty pursuant to Section 28 of the Financial Services Commission Ordinance CAP 16.01¹ (hereinafter referred to a ‘FSCO’) to take such steps as it considers appropriate to co-operate with foreign regulatory authorities; a competent authority; or other persons, in or outside the Islands, who have functions in relation to the prevention or detection of financial crime. In fulfilling its mandate to co-operate the Commission may share relevant information and documents which are not protected.

Further Section 29 of the FSCO provides for assistance to foreign authorities and stipulates the powers of the Commission in respect of providing assistance. It provides the discretionary considerations which the Commission shall take into account in determining whether or not to provide the relevant assistance.

¹ Link to the FSCO <http://www.tciCommission.tc/component/phocadownload/category/52-financial-services-commission>

4.0 MEMORANDA OF UNDERSTANDING

The Commission has executed a number of Memoranda of Understanding with various domestic and foreign regulatory authorities² who have regulatory oversight of Turks and Caicos Islands (hereinafter referred to as ‘TCI’) licensed financial service providers. The Commission and those authorities took into account the relevant legislative requirement to provide assistance and co-operation with each other and have committed in writing each other’s understanding of the process required to provide co-operation. A request for assistance pursuant to any one of the executed Memoranda of Understanding will be prima facie evidence that requests are compliant with the statutory requirements and this Handbook and that there would be no barriers to assistance; however, the Commission can and may exercise its discretion pursuant to Section 28 of the FSCO.

5.0 DUTY TO CO-OPERATE

The Commission has a statutory duty to co-operate with both domestic and international regulatory authorities and other authorities who are involved in the prevention and detection of financial crimes. The Commission is required to take such steps as it considers appropriate to co-operate³.

6.0 WHAT CONSTITUTES A “FINANCIAL CRIME”

A financial crime includes an offence which involves

- (a) money laundering;
- (b) the financing of terrorism;
- (c) the financing of proliferation (weapons of mass destruction); or
- (d) misconduct in, or misuse of information relating to, a financial market

In the definition of financial crime “offence” is taken to include an act or omission that would be an offence if it had taken place in the Turks and Caicos Islands.

Examples include, but not limited to:

Fraud, money-laundering, market manipulation, financial scams and tricks such as pyramid schemes, tax evasion, bribery, embezzlement, identity theft, forgery, counterfeiting, etc.

² List of Authorities with which the Commission has an executed Memorandum of Understanding at Schedule 1

³ Pursuant to Section 28 of the FSCO

7.0 RANGE OF ASSISTANCE

The Commission is entitled to co-operate with both domestic and foreign authorities and law enforcement. The Commission assists authorities in their functions by:

- i. Gathering and providing information in relation to applicants for licensing in the jurisdiction of the overseas regulatory authority.
- ii. Gathering and providing information at the request of an overseas regulatory authority that will assist overseas regulators to make a determination on the fitness and suitability of a particular applicant or the managers, directors, beneficial owners or other senior officers.
- iii. Gathering and providing information at the request of an authority that will assist them to make a determination on the perpetration of a regulatory offence
- iv. Gathering and providing information at the request of an authority that will assist them to make a determination on the perpetration of a financial crime

To fulfil the duty to provide information the commission may

- i. issue a Notice to Produce⁴,
- ii. apply to a Magistrate to have a person examined under oath⁵,
- iii. apply to a Magistrate for a Search Warrant⁶
- iv. appoint of examiners to investigate any relevant matter⁷.

7.1 COMMISSION'S POWER TO REQUEST DOCUMENTS AND INFORMATION

The Commission is empowered, where it is reasonably required in the discharge of its functions, to require a person to provide to it specified information or any information of a specified description, or to produce specified documents or any documents of a specified description. The Commission exercises this power by giving written Notice to the person concerned specifying the place where, the time within which, the form in which, the manner of verifying or authenticating, and the person to whom the information or document is to be provided or produced. The Commission may take extracts of any document produced to it without affecting any lien that may relate to such document.

A person in this context means a licensee, a former licensee, a person whom the Commission reasonably believes to be carrying on or at any time have carried on an unauthorised financial services business and/or any person connected with any of the foregoing or any person who the Commission reasonably believes is in possession of the information.

⁴ Pursuant to Section 23 of the FSCO

⁵ Pursuant to Section 26 of the FSCO

⁶ Pursuant to Section 27 of the FSCO

⁷ Pursuant to Section 37 of the FSCO

7.2 EXAMINATION UNDER OATH

The Commission, where it considers it necessary, may apply to a Magistrate, where pursuant to a Notice given under Section 23, for a person or specified persons to be examined under oath and for the results of such examination to be transmitted to the Commission.

7.3 SEARCH WARRANT

In addition, the Commission may apply to a Magistrate for a search warrant to conduct a search of any premises and retrieve any documents or information to which the warrant relates or to take copies or make extracts thereof or to require any person on the premises to provide an explanation of any such documents or information.

7.4 APPOINTMENT OF EXAMINER

The Commission, where it considers appropriate, may appoint competent persons as examiners to conduct an investigation on its behalf where it appears to the Commission on reasonable grounds that there are, or may be, grounds for taking enforcement action against a licensee or any person is carrying on, or has carried on, unauthorised financial services business.

7.5 OFFENCES

The FSCO⁸ provides that failure to comply with a notice to produce information is an offence. It is an offence for a person to knowingly or recklessly provide to the Commission information which is false or misleading in a material respect, as a means of asserting compliance with the notice. Additionally, if a person deliberately seeks to obstruct or frustrate compliance with a Notice to Produce issued by the Commission by destroying; mutilating; defacing; hiding; or removing; documents he commits an offence.

8.0 GENERAL GUIDANCE ON PROCESSING REQUESTS

All requests for information received by the Commission shall be immediately brought to the attention of the Managing Director or any officer which the Managing Director delegates to process such requests.

In any circumstance in which the Commission has discretion or may be required to grant approval such discretion and power to grant approval shall be vested in the Managing Director or any officer the Managing Director so delegates.

⁸ Pursuant to Section 30 of the FSCO

8.1 FORM OF REQUEST FOR INFORMATION

Any requests for information should at least provide basic information to enable the Commission to determine whether or not it is entitled to provide assistance in the light of the FSCO provisions.

At a minimum it should include:

- i) A description of both the subject matter of the request and the purpose for which the assistance or information is sought;
- ii) A description of the assistance, documents or information sought by the requesting authority;
- iii) Any information in the possession of the requesting authority that might assist the Commission in identifying the persons, bodies or entities believed by the requesting authority to possess the information sought, or the places where the Commission may obtain such information;
- iv) The legal provisions concerning the matter that is the subject matter of the request and the relevance of the requested assistance or information to the specified laws or regulatory requirements.
- v) The names of any third parties to whom the requesting authority is bound to or expects to release the requested information.

In urgent circumstances, the Commission may accept a request for assistance or information effected by means of communication other than that required hereinabove. Such urgent communication must be confirmed within five business days through an original signed document addressed to the Commission in the form required herein. The Commission will only allow such latitude with regulatory authorities which has previously co-operated with or sought assistance from the Commission.

8.2 EFFECTING ASSISTANCE

Where the Commission receives a request for assistance from a regulatory authority and it forms the opinion that the request is needed for the regulatory authority's regulatory functions, it shall exercise one or more of the following powers:

- (a) Issue a Notice to Produce;
- (b) Apply to a Magistrate for the examination of a person under oath;
- (c) Appoint examiners to investigate any matter; or
- (d) Disclose information

8.3 CONSIDERATIONS PRECEDENT TO EFFECTING ASSISTANCE

The Commission, in deciding whether or not to provide assistance to a regulatory authority, is entitled to take into account the following⁹:

⁹ Section 29(5) of the FSCO

- (a) Whether corresponding assistance would be provided to the Commission. The Commission may require the said authority to provide a written undertaking to provide corresponding assistance whenever requested; the existence of a Memorandum of Understanding shall be evidence of such undertaking.
- (b) Whether the request relates to the breach or possible breach of a law or other requirement that does not have any close parallel in the TCI or involves the assertion of a jurisdiction that is not recognised in the TCI.
- (c) The seriousness of the case concerned and its importance to persons in the TCI.
- (d) The relevance of the information or documentation to the enquiries to which the request for assistance relates.
- (e) Whether the regulatory authority is willing and able to comply with the conditions of the Commission's assistance.
- (f) Whether or not the regulatory authority is willing and able to make contribution toward the cost of assistance, if required.
- (g) Whether it is otherwise appropriate in the public interest to provide the assistance sought.

8.4 REASONS TO NOT PROVIDE ASSISTANCE

The Commission may decide **not** to exercise its powers to render assistance in relation to a request, unless¹⁰

- (a) the request is in accordance with the Form of Request pursuant to Section 8.1 herein;
- (b) the regulatory authority undertakes to render corresponding assistance to the Commission whenever requested;
- (c) the regulatory authority undertakes to make such contribution towards the costs associated with the Commission's exercise of its powers as the Commission considers appropriate;
- (d) the Commission is satisfied that the regulatory authority is subject to adequate legal restrictions relating to further disclosure of information and documents supplied to it and that it will not further disclose the information or document supplied save to its employees and officers or take any further action on such information or document; MOU is evidence of this undertaking;
- (e) the Commission receives satisfactory assurance that the information or document provided to the regulatory authority will not be used in any criminal proceedings against the person furnishing such information or document, save in proceedings for the offence of perjury or other equivalent offence.

While none of the matters outlined in this section above is necessarily an outright bar to rendering assistance to a regulatory authority, the caveats contained serve as necessary checks and balances to ensure the integrity of the mutual co-operation regime.

¹⁰ Section 29(7) of the FSCO

Where the request for assistance is denied or where assistance is not available under the law, the Commission shall provide the reasons why it is not granting the assistance

8.5 REQUESTS FOR ASSISTANCE THAT LACK RELEVANT INFORMATION

In the rare circumstance where a request for assistance fails to provide the requisite information to enable assistance to be rendered, the requesting authority shall be notified and be required to supply the missing information. Subject to the above (Section 8.1) no action is taken until the missing information is provided. The reason for this is simple: the exercise of the Commission's powers given to it under the relevant enactments are subject to judicial challenge – normally in the form of applications for judicial review – where a deviation occurs in keeping to the requirements of the law. It is therefore imperative that all that is necessary is done to ensure full compliance with the law and thus reduce the likelihood of such a challenge and maintain the integrity of any ongoing enquiries or investigations.

8.6 EXECUTION OF REQUESTS

Each request for assistance shall be assessed on a case-by-case basis by the Commission to determine whether assistance or information can be provided. Nonetheless the Commission shall as a matter of general practice reply to the requesting authority within five working days acknowledging receipt of the request for assistance and

- i. Provide the requested information,
- ii. Request additional information
- iii. Indicate additional time is required giving an estimated time frame, and/or
- iv. If not already given, request the authority to provide an undertaking to render corresponding assistance to the Commission

In the event the Commission indicates that additional time is required the Commission shall provide the requested information within 28 days of the original request. In exceptional circumstances the Commission may negotiate with the requesting authority for a period beyond 28 days

(Amended 10th July 2018)

Where the Commission is satisfied in accordance with the Laws, Regulations, Policies and Rules governing the Commission's duty that assistance should be given, the Commission will take the necessary reasonable steps to provide information held in its files or to obtain relevant information or documentation from licensees¹¹.

¹¹ Including a former licensee, a person whom the Commission reasonably believes to be carrying on or at any time have carried on an unauthorised financial services business and/or any person connected with any of the foregoing or any person who the Commission reasonably believes is in possession of the information

The Commission shall attach a covering letter to the requesting authority to any information which the Commission has decided to share. The letter shall be executed by the Managing Director or any officer the Managing Director so designates informing the requesting authority of all restrictions of disclosure and other pertinent information in respect to the original request.

A sample cover letter is produced at Schedule 2

8.7 SUPPLEMENTAL REQUESTS

A requesting authority, having previously submitted a request for assistance, is entitled to submit a supplemental request in relation to the earlier request. This may be done either

- (a) during the execution by the Commission of the initial request and before the completion thereof; or
- (b) after receipt of the assistance requested;

In either case, the supplemental request shall be treated in the same manner as the initial request.

Therefore, all the requisite procedures must be followed, but only information relevant to the further execution of the supplemental request need be provided. The supplemental request should make reference to the earlier request and be quite explicit as to the additional line of enquiry it wishes to be carried out. Failure to follow the established guidance may result in assistance either being delayed or not provided at all.

8.8 PERMISSIBLE USE OF INFORMATION

The Commission in providing assistance shall ensure that the regulatory authority understands the permitted uses for the information received. The information received should only be used for the purpose of enabling the requesting authority to exercise its regulatory functions, as specified in the request.

Any further use requires the Commission's approval.

8.9 ONWARD DISCLOSURE

Information supplied is required to be used solely for the purpose for which it was requested. A regulatory authority is generally prohibited from disclosing any information or documents received from the Commission as a result of a request for assistance. The regulatory authority may seek the Commission's approval for the onward disclosure of received information. Onward disclosure of information and documents supplied may be approved on the following basis:

- i) Via ***advance request for onward disclosure*** – i.e. that at the time of submitting a request for assistance, the requesting authority specifically requests permission to further disclose any information or documents supplied to another specified authority or authorities;

- ii) Via *later request for onward disclosure* – that after receipt of the information or documents requested, if the regulatory authority forms the view that it should further disclose the information or documents to another authority, then it must first write to and obtain the express permission of the Commission to do so;
- iii) that onward disclosure is permitted only to another authority within the jurisdiction of the authority that initially requested assistance, unless otherwise specified.

Any request for onward disclosure shall be immediately brought to the attention of the Managing Director who shall be the officer to determine approval

8.10 FEEDBACK

The Commission shall within 60 days of providing information requested by a requesting authority seek feed back from the receiving authority to assess the utility of the cooperation.

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9.0 PRIVILEGED INFORMATION AND DOCUMENTS

a person who receives a Notice to Produce from the Commission may claim that the information sought by the commission is privileged. The FSCO makes it clear that legal professional privilege only applies to information or documents that came to an attorney in circumstances are specified in the FSCO¹² but do not include information or documents communicated or provided to an attorney for the purpose of furthering or conducting a criminal act nor does it prevent the attorney from disclosing the name and address of his client.

Where a licensee claims privilege for the reason of not complying or fully complying with the Notice to Produce the Managing Director and the Legal Department should be so informed

10.0 RESTRICTIONS ON DISCLOSURE OF INFORMATION (PROTECTED INFORMATION)

A key aspect of effective international co-operation is the ability to maintain, to the extent necessary, the confidentiality of requests for assistance and the information or documents supplied

¹² Pursuant to Section 52 of the FSCO

in that regard. The FSCO classifies as “protected information”, information that is acquired by specified persons in specific circumstances or pursuant to any financial services legislation, and includes any information that is obtained from a foreign regulatory or law enforcement authority¹³. Thus, information received by the Commission, is considered protected information and may only be disclosed in circumstances permitted by law.

Information is considered not protected if

- (a) it is or has been available to the public from another source;
- (b) it is disclosed in summary or in statistics that is expressed in a manner that does not enable the identity of any person to whom it relates to be determined.

10.1 EXCEPTIONS TO THE RESTRICTIONS ON DISCLOSURE OF INFORMATION

The law provides exceptions to the restrictions applied to the disclosure of information¹⁴, these include disclosures to

- (a) A Court of competent jurisdiction;
- (b) The Governor
- (c) Law enforcement authorities in the Islands;
- (d) A person for the purposes of carrying out a function or power under the FSCO or a regulatory Ordinance regardless of whether the function or power is innate to that person, the FSC, or the FSC Board;
- (e) The Money Laundering Reporting Authority established under the Proceeds of Crime Ordinance; or
- (f) A foreign regulatory authority who requests the FSC’s assistance with the provision of information or documents

Information received by the Commission from a regulatory authority is held and treated in the strictest of confidence and persons required to provide information or produce documents in relation thereto are held to the same level of strict confidentiality.

11.0 PROTECTION FROM DISCLOSURE

As a means of exacting full co-operation in processing requests for assistance as well as ensuring effective enforcement of the law, a person who discloses information or produces documents pursuant to a request or Notice of the Commission is held not to contravene any enactment, rule

¹³ Pursuant to Section 50 of the FSCO

¹⁴ Section 51 of the FSCO

of law, agreement or any applicable professional code of conduct and he or she is not liable civilly, criminally or disciplinarily¹⁵.

12.0 COSTS OF PROVIDING ASSISTANCE

Although TCI law provides for the recovery of or contribution to the costs associated with any enquiry or investigation concerning a request for assistance, as a matter of general practice the Commission does not pass on such costs to requesting authorities. However, in exceptional cases where the costs are considered prohibitive, the requesting authority may be asked to make a contribution to such costs or undertake the full payment of the costs. In such a situation, the processing of a request for assistance will depend on the positive response of the requesting authority. It should be noted that the Commission's general practice of not passing on costs takes into account the reciprocal principle that in a similar situation where the Commission makes a request of the requesting authority the costs associated therewith will not be passed on, save where such costs are prohibitive. The Managing Director shall determine whether or not there would be a requirement for the foreign regulatory authority to contribute to costs of providing assistance

13.0 PRESENCE OF NON-COMMISSION INVESTIGATORS

While TCI law does not require the presence of non-Commission investigators in relation to a request for assistance (specifically site inspections), it does not prohibit it either. However, where a requesting authority feels the need to have its investigators present, they must specifically request this at the time of submitting the request for assistance. The request shall be in writing and should include the rationale for the request and the proposed officers the request relates to.

The Commission's authorisation is required and, where granted, the non-Commission investigators are allowed to visit the TCI licensee. During the visit the non-Commission investigators' role shall be limited only to assisting the Commission's investigators and they cannot take any direct part in the investigations. Such requests as they relate to regulatory matters must be addressed to the Commission. Any reports pursuant to such investigation shall be prepared by the Commission and transmitted to the requesting authority within a reasonable time (not longer than three months after the completion of the investigation).

All requests for approval for the authorisation of the presence of a non-Commission officer shall be immediately brought to the attention of the Managing Director who shall provide a decision on approval. Approvals may be subject to specific conditions.

¹⁵ Pursuant to Section 14 of the FSCO

14.0 REQUESTS ERRONEOUSLY SENT TO THE COMMISSION

In the rare cases where a request for assistance is erroneously addressed to and received by the Commission for assistance which cannot be rendered, the Commission shall immediately inform the requesting authority and as soon as it is practical return the erroneous request for information with a statement that the Commission is not the proper authority to which the request should have been directed.

15.0 RESOLVING DISPUTES BETWEEN AUTHORITIES

In the event that a dispute or disagreement arises between the authorities during the processing of a request for assistance, the authorities are encouraged to engage in dialogue to see how best the matter can be resolved. The Commission encourages dialogue between authorities as a way of maintaining transparency and effective information exchange without compromising the viability of its services.

If such a dispute arises the Managing Director shall be immediately informed and the Managing Director shall be the officer to direct the progress of the dialogue.

16.0 REQUESTS FROM THE COMMISSION

On occasion the Commission makes requests for information to both domestic and foreign regulatory authorities. On such occasions the Commission should be guided and draft its requests in accordance with the guidance in 8.1 herein.

17.0 SUMMARY OF ACTIONS TO BE TAKEN WHEN A REQUEST IS RECEIVED

1. Unless received from the Managing Director, all requests for information shall be brought to the Managing Director's attention for directions.
2. Review request to determine that the request relates to information required for the requesting authority's regulatory functions or to financial crimes.
3. Ensure the Request is:
 - In writing from a regulatory authority (take necessary steps to verify the authority, if not known)
 - Verify the request provides the information in respect of Section 8.1 hereinabove
 - Verify that the conditions precedent in Section 8.3 are complied with
4. If there is a determination that the Commission is unable to provide the requested assistance draft a letter for the Managing Director's signature giving reasons for the Commission's decision
5. In the event the Commission decided to ask the requesting authority to assist with the cost of the assistance a letter to that effect signed by the Managing Director shall be dispatched. The request shall not be processed until there is an agreement to cover the required cost.
6. Where the request for assistance asks for the inclusion of non-Commission officers on an inspection, etc, the Managing Director shall determine approval and notify the requesting authority of his decision in writing. Where approval is granted it may be with conditions.
7. Where there is a determination to provide assistance, determine the most appropriate course of action based on Section 7
8. Execute the decided course of action
9. Prepare a reply and report for the Managing Director's approval which shall include:
 - The relevant information to be disclosed
 - A statement on permissible uses of information (Section 8.8)
 - A statement on onward disclosure to 3rd parties (Section 8.9)
10. Supplemental requests for information shall be treated in the same manner as the original request pursuant to Section 8.7
11. Where a request was erroneously sent to the Commission the Commission shall return the request to the requesting authority with a statement that the Commission is not the proper authority to which the request should have been directed

Schedule 1

The Commission has established mutual co-operation via bilateral and multi-lateral Memoranda of Understanding with the following regulatory authorities.

Domestic Authorities

1. National Audit Office
2. Financial Intelligence Agency

International Authorities

1. The Central Bank of Aruba
2. The Central Bank of Bahamas
3. The Central Bank of Barbados
4. Bermuda Monetary Authority
5. British Virgin Islands Financial Services Commission
6. Cayman Islands Monetary Authority
7. Centrale Bank van Curacao en Sint Maarten
8. Eastern Caribbean Central Bank
9. The Bank of Guyana
10. Banque De La Republique D'Haiti
11. The Bank of Jamaica
12. Centrale Bank van Suriname
13. Central Bank of Trinidad and Tobago
14. Financial Services Commission – Barbados
15. Financial Services Commission – Jamaica
16. Georgia Insurance Department
17. Insurance Commission of the Bahamas
18. Office of the Superintendent of Financial Institutions
19. Superintendancy of Banks of Panama

Schedule 2

--- Date---

--- Name ---

--- Designation ---

--- Organisation ---

--- Address ---

Email: _____

Dear _____

In the Matter of _____)

The Turks and Caicos Islands Financial Services Commission acknowledges your letter and request for assistance dated_____

The Commission issued a Notice to Produce to ___(Name of Licensee or relevant person)___ in relation to the subject matter of the request. ___(Name of Licensee)___ has provided relevant information which we are attaching with this letter. (*Alternatively highlight the actions taken to provide assistance*)

Please note that the information provided should only be used for the purposes highlighted in your request. The ___(Name of Requesting Authority)___ should secure the Commission's written approval to share this information with third parties.

Please do not hesitate to further contact us in the event you require additional information and/or clarification

Sincerely

**Turks and Caicos Islands
Financial Services Commission**

Managing Director