



TURKS & CAICOS ISLANDS FINANCIAL SERVICES COMMISSION

CONSULTATION ON PROPOSED AMENDMENTS TO SECTION 6 OF THE COMPANIES ORDINANCE

The Turks and Caicos Islands (TCI) recognises its pivotal role as an international financial centre and the obligations and responsibilities that come with operating a financial services industry. The Territory's financial services industry has grown over the last thirty plus years since the Companies Ordinance was first enacted. At the same time the TCI has witnessed over that period the growth and sophistication of business entities and structures which has necessitated a continual review and reform of the appropriate legislative and administrative frameworks to keep in tune with developments and streamline processes and procedures.

This Consultation Paper therefore, forms a part of the FSC's undertaking in restructuring our procedures to provide a more efficient and effective service. It is designed to public opinion on the issue annual general meetings should assist with the formulation of an appropriate policy and in turn legislative change, on the way forward. It is our goal to ensure that we strengthen existing regimes to ensure the growth and development of the Territory's financial services industry.

Accordingly, this Consultation Paper is being published to measure and receive opinions from members of the public and other key institutions and stakeholders in the financial services industry, on the issue raised. The consultation is for a period extending to 31st January, 2014. Written opinions may be submitted by post, fax or email as follows:

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An amendment to section 63 of the Companies Ordinance (the Ordinance) was passed by the House of Assembly on July 1, 2013. This followed consultation which commenced on January 16, 2013 and closed on February 15, 2013. The amendment came into force on August 26, 2013 and affects annual returns beginning with the calendar year 2014 and onward.

This amendment to section 63 requires all companies to have an annual general meeting in every year and therefore the first general meeting of newly incorporated companies should be held within 12 months of the incorporation instead of 15 months. Annual general meetings must be held by April 30th in every year. This would allow for synchronisation with the June 30th deadline for the filing of annual returns in section 46.

The objective of that amendment was to streamline the date for filing annual returns. Prior to the 2013 amendment, the Ordinance required annual returns to be filed within 8 weeks of the annual general meeting. This requirement made monitoring the filing of annual returns and issuing penalties cumbersome and time consuming for the Companies Registry. The purpose of the amendment was to have one specific date for filing annual returns after which penalties will be issued. This would allow both the FSC and the service providers to clearly identify when penalties fell due.

After the enactment of the 2013 amendment the Financial Services industry raised a concern which centered on their impression that annual general meetings were required to be held only in the 1st four months of each year i.e. 'no later than 30 April'.

It is clearly not the Financial Services Commission's intention that companies be restricted to holding annual general meetings between January and April of every calendar year. Rather, the intention was that companies hold its AGM between 1st May in any calendar year and 30 April of the following calendar year and file its annual return within 8 weeks of the end of that period. Therefore, the objective was that the term 'year' in the context of section 63 represented the 12 month period ending 30 April of each calendar year i.e. 1 May to 30 April.

Having regard to the concerns of the industry which have now been received and in the interest of clarity, it is therefore proposed that a new section be inserted after section 63 along the lines as follows:

"63A "Year" for the purposes of Section 63 shall mean the 12 month period ending on 30 April of each calendar year i.e. the period between 1st May of any given calendar year and 30th April of the following calendar year."

Members of the public and, in particular, our key financial services stakeholders are therefore encouraged to weigh in on the issues and share their reasoned opinions. All responses will be ordered and properly assessed to guide the formulation of the appropriate legislative change.