

**TURKS AND CAICOS ISLANDS  
FINANCIAL SERVICES COMMISSION (AMENDMENT)  
BILL 2018**

**ARRANGEMENT OF CLAUSES**

CLAUSE

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2. Interpretation
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6. Section 37 amended
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8. Section 57 substituted
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**TURKS AND CAICOS ISLANDS**

**A  
PROPOSAL  
FOR  
A  
BILL  
FOR**

AN **ORDINANCE** TO AMEND THE FINANCIAL SERVICES COMMISSION ORDINANCE.

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

**Short title and commencement**

1. This Ordinance may be cited as the Financial Services Commission (Amendment) Ordinance 2018 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 Financial Services Commission Ordinance.

**Section 2 amended**

3. The principal Ordinance is amended in section 2(1) by repealing the definition of “competent authority” and substituting the following—

“competent authority” means a competent authority designated under an enactment with responsibility for supervising or monitoring compliance with or the enforcement of provisions relating to, money laundering or terrorist financing requirements or the exchange of information for tax purposes, including the authorities that have the function of investigation or prosecuting money laundering or terrorist financing offence;”.

**Section 23 amended**

4. The principal Ordinance is amended in section 23(2)(c) by inserting after the word “which” the words “in any event within seven working days”. **C. 25.5**

**Section 28 amended**

5. The principal Ordinance is amended in section 28 by inserting after subsection (2) the following—

“(3) In providing assistance to a foreign regulatory authority pursuant to subsection (1), the Commission shall use the most appropriate and efficient means of cooperation. C. 40.2

(4) The Commission may, subject to the laws of the requested country, requests information which it may reasonably need in furtherance of its functions from a foreign regulatory authority.

(5) Where the Commission makes a request for assistance to a foreign regulatory authority it will monitor the quality of assistance that it receives from such other countries in response to requests for assistance including requests in relation to basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad.”. C.24.15

### Section 37 amended

6. The principal Ordinance is amended in section 37—

(a) in subsection (1)—

(i) by deleting the full stop at the end of paragraph (b) and substituting a semi colon;

(ii) by inserting after paragraph (b) the following—

“(c) requiring that any director, key employee or person having functions in relation to the licensee be removed and replaced by another person acceptable to the Commission;

(d) require that any individual—

(i) not perform a specified function or functions for the licensee;

(ii) not engage in specified employment by the licensee;

(iii) not hold a specified position in the business of the licensee.”;

(b) in subsection (2) by deleting the words “and (b)” and substituting “, (b) and (c)”;

(c) by inserting after subsection (3) the following—

“(4) A directive issued under this section may be of unlimited duration or of a duration specified in the notice of the direction.

(5) The power to issue a directive under this section includes the power, whether on the application of the licensee or on the volition of the Commission, to vary or withdraw any directive.

(6) A notice of a directive must—

(a) specify the reasons for giving the directive; and

(b) specify when the directive is to take effect.

(7) A licensee who fails to comply with a directive issued under this section commits an offence and is liable on summary conviction, to imprisonment for a term of twelve months or to a fine of \$50,000 or

to both.” **C. 24.13 and C. 35.2 [note: section 57 of FSCO extend liability to directors and other officers]**

### **Section 45 amended**

7. The principal Ordinance is amended in section 45(1)—
- (a) by repealing the “or” at the end of paragraph (a);
  - (b) by inserting after paragraph (a) the following—
    - “(aa) the alleged contravention of the Anti-Money Laundering Regulations or of such Ordinances or codes relating to money laundering or the financing of terrorism; or”.

### **Section 57 substituted**

8. The principal Ordinance is amended by repealing section 57 and substituting the following—

#### **“Offences by body corporate, etc.**

57. (1) Where an offence under this Ordinance is committed by a limited liability partnership or body corporate and it is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
- (b) any person purporting to act in any such capacity,

the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to acts and defaults of a member in connection with his functions of management as if the member were a director of the body corporate.

(3) For the purposes of this section, a person shall be deemed to be a director of a body corporate if he occupies in relation to that body corporate, the position of a manager, by whatever name called, or is a person in accordance with whose directions or instructions (not being directions or instructions in a professional capacity only) the directors and the body corporate or any of them, act.” **C. 35.2**

### **Section 58 inserted**

9. The principal Ordinance is amended by inserting after section 57 the following—

#### **“General penalty provision**

58. A person who commits an offence under this Ordinance for which no other penalty is provided is liable upon summary conviction to imprisonment for a term of twelve months or to a fine of \$50,000 or to both.”

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**PASSED** by the House of Assembly this      day of      2018.

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Tracey Parker  
Clerk of the House of Assembly

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Dwayne Taylor  
Speaker

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### **EXPLANATORY MEMORANDUM**

This Bill seeks to amend the Financial Services Commission Ordinance (“the Ordinance”) to ensure compliance with FATF AML/CFT recommendations.

#### **THE BILL**

Clauses 1 and 2 of the Bill make provision for the short title, commencement and interpretation of the Bill.

Clause 3 of the Bill seeks to amend section 2(1) the Ordinance to substitute the definition of “competent authority”.

Clause 5 of the Bill seeks to amend section 37 of the Ordinance to provide further enforcement actions which the Commission may take against a licensee.

Clause 6 of the Bill seeks to amend the Ordinance to substitute section 57 to make provision for offences by body corporate.

Clause 7 of the Bill seek to amend the Ordinance to insert section 58 which is a general penalty provision.

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