



LEXOLOGY

Getting The Deal Through

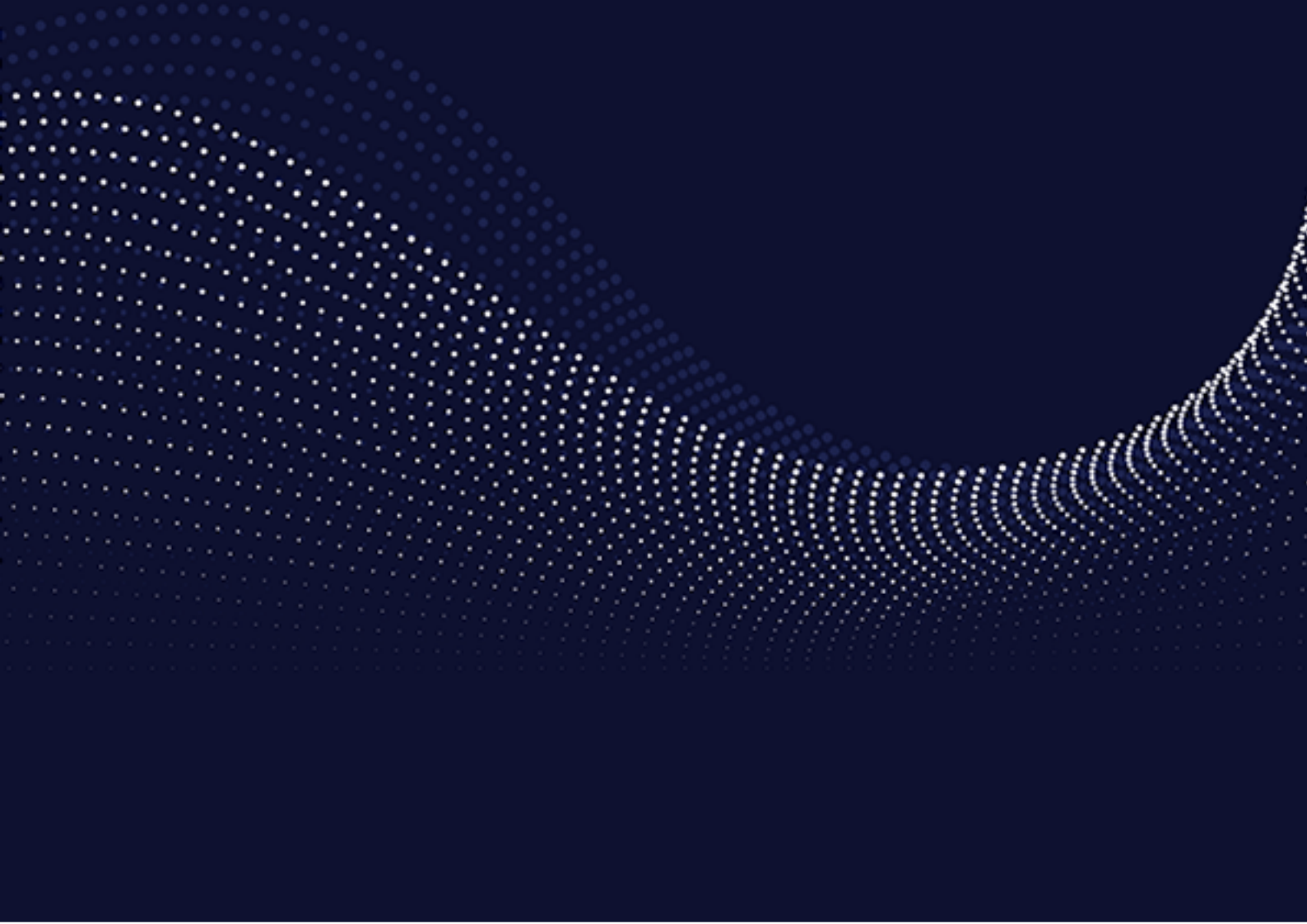
# PRIVATE CLIENT

## Turks & Caicos Islands

Contributing Editors

**Abigail Nott** and **Jonathon Goldstone**

McDermott Will & Emery



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# Contributors

## Turks & Caicos Islands



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## LEGAL FRAMEWORK

### Key legislation

What key legislation and regulations are relevant to foreign individuals moving to or investing in your jurisdiction? What government bodies are charged with enforcing these laws and what is the extent of their powers?

#### Legislation

The government of the Turks and Caicos Islands (TCI) is actively working to diversify its economy by focusing on the growth of the financial services sector. As part of this ongoing diversification effort, TCI's regulatory framework has undergone a comprehensive overhaul to enhance competitiveness in the Caribbean market. This transformation has entailed significant revisions to legislation governing companies, trusts and insolvency, resulting in a modernised framework that closely aligns with the successful models observed internationally, particularly those of the British Virgin Islands (BVI). Historically, the promotion of TCI's financial services industry has been primarily driven by the private sector. However, the TCI government has recently established and financially supported a new entity, TCI Finance, to play a pivotal role in promoting the local financial sector on the global stage. As a result, we can anticipate an enhanced international profile for TCI's financial services industry in the near future.

Foreign investors are actively welcomed to take up residence in the Turks and Caicos Islands with a range of incentives for property or business investors to obtain permanent or temporary residence.

#### Taxation

TCI adopts a consumption-based tax system characterised by the absence of direct taxes, so there is no income tax, capital gains tax, gift tax, inheritance tax, estate tax or corporation tax. Instead, the government generates revenue through a range of indirect taxes. These include taxes on hotels, restaurants and tourism, customs import duties, stamp duties on land transactions, and departure tax. Additionally, substantial revenue is derived from the financial services sector, further contributing to government income.

#### Regulation

The Turks and Caicos Islands have implemented a comprehensive regulatory framework that governs various aspects of the local financial industry. This framework encompasses banks, insurance companies, brokers, agents, company administration managers, trust companies, investment dealers, mutual funds administrators and money transmitters.

The TCI Financial Services Commission (FSC) operates independently of the TCI government and is entrusted with a range of functions. These include supervising and regulating entities licensed under the financial services regulatory ordinances and monitoring financial services activities. Notably, TCI places a strong emphasis on maintaining an effective anti-money laundering regime, aligning itself with international best practices. Both the TCI government

and the FSC prioritise anti-money laundering and anti-terrorist financing efforts, mandating that all local service providers adhere to the established regulations and undergo compliance audits conducted by the FSC.

Consequently, any individual or corporation seeking to establish a legal entity or obtain licensing in TCI must adhere to the relevant regulations. It is worth noting that TCI's anti-money laundering regulations are continuously updated to align with international standards and guidelines set forth by organisations such as the Financial Action Task Force (FATF).

### **Real property**

#### **Are there any particular rules or restrictions on foreign individuals purchasing or investing in real property in your jurisdiction?**

There is generally no restriction on foreign investors in the contest of a real estate transaction. All transfers of title are governed by the Registered Land Ordinance. There is no limitation on the amount of investment on undeveloped land or purchasing a developed property in the TCI. However, actual title to land must be held by an individual outright (regardless of the investor's nationality), or by a TCI incorporated limited liability company.

Real estate development attracts stamp duty (tax), payable depending on the cost of the property and where it falls within the relevant threshold. This is payable whether the property is owned by the foreign investor or by a company. On the other hand, the government may allow import duty concessions to foreign investor developers, ranging from 50 per cent–75 per cent, mainly on the import of materials to be used in connection with construction projects. The concession will depend on the location of the development, whether on Providenciales or any of the other inhabited islands. Incentives are not restricted to TCI-owned enterprises.

### **Establishing a business**

#### **Are there any particular rules or restrictions on foreign individuals establishing a business in your jurisdiction?**

There is a flexible, commercially minded and user-friendly corporate regime for the incorporation, management, maintenance and operation of companies in the TCI. The Articles of Incorporation and other constitutional documents can be tailored to the requirements of a specific transaction, market requirements, or both, limiting any such changes to those specifically imposed by the same.

The most common type of corporate vehicle used in the TCI is a private company limited by shares. It only requires one shareholder and one director, each of whom may be a corporate entity. No restrictions exist as to the nationality or country of incorporation of the shareholder or the director. The company may have an authorised share capital (eg, US\$1.00 minimum), although an unlimited share capital is also available. A US\$5,000 share capital (5,000 ordinary shares of \$1.00 each) is generally used for a plain vanilla company. Share capital is typically in US dollars, but may be denominated in any other currency. Bonus shares, partly paid and nil paid shares, and fractional shares, are all permitted. Redeemable or preference shares may

be issued, and shares of a different class may be created. Bearer shares are not permitted in the TCI and shares may not be issued at a discount. A company limited by shares is typically used as a holding entity or a business and operating entity, and may also own land in the TCI. It is also joint venture (JV) ready, and a director may act for the benefit of the JV party appointing him or her (and not in the best interests of all shareholders, to the extent necessary).

A company limited by guarantee (with or without the ability to issue shares), a protected cell company and a non-profit company are other types of corporate vehicles available for incorporation in the TCI.

All businesses require a licence from the government to operate within the islands. There are some business activities that are limited to citizens of the islands. Legal advice should be taken about these restrictions.

Investors in businesses are eligible for permanent resident status depending on the amount of the investment.

## TAX

### **Residence and domicile**

#### **How does an individual become taxable in your jurisdiction?**

The Turks and Caicos Islands (TCI) is a tax-neutral jurisdiction with no direct taxes – there is currently no income, corporate, capital gains, personal or inheritance tax.

There is, however, stamp duty payable on transfers of land, duties on imports, ranging (mainly) from 5 per cent to 45 per cent, consumption tax and other forms of indirect taxes for those who live and work in the TCI.

The TCI has adopted the Model 1 IGA UK and US FATCA, and is an early adopter of the Common Reporting Standard. While there are no double tax treaties with the TCI, the TCI is party to a network of tax information exchange agreements with a number of jurisdictions by which the government may commit to tax information exchange agreements.

### **Income**

#### **What, if any, taxes apply to an individual's income?**

The TCI has no income taxes.

### **Capital gains**

#### **What, if any, taxes apply to an individual's capital gains?**

The TCI has no capital gains taxes.

### **Lifetime gifts**



| **What, if any, taxes apply if an individual makes lifetime gifts?**

The TCI has no lifetime gifts taxes.

| **Inheritance**

| **What, if any, taxes apply to an individual's transfers on death and to their estate following death?**

The TCI has no inheritance taxes.

| **Real property**

| **What, if any, taxes apply to an individual's real property?**

The TCI has no real property taxes.

| **Non-cash assets**

| **What, if any, taxes apply on the import or export, for personal use and enjoyment, of assets other than cash by an individual to your jurisdiction?**

The TCI has no taxes on non-cash assets.

| **Other taxes**

| **What, if any, other taxes may be particularly relevant to an individual?**

The TCI has no other individual taxes.

| **Trusts and other holding vehicles**

| **What, if any, taxes apply to trusts or other asset-holding vehicles in your jurisdiction, and how are such taxes imposed?**

The TCI has no such taxes.

| **Charities**

| **How are charities taxed in your jurisdiction?**

Charities are not taxed in the TCI.

| **Anti-avoidance and anti-abuse provisions**

## What anti-avoidance and anti-abuse tax provisions apply in the context of private client wealth management?

The TCI does not impose any special anti-avoidance rules, as there is no taxation. Any attempt to use a TCI entity to commit tax evasion or to launder the proceeds thereof may be the subject of civil and criminal proceedings.

There are no exchange controls in the TCI. The TCI does not have any thin capitalisation rules, controlled foreign company rules or transfer pricing rules.

## TRUSTS AND FOUNDATIONS

### Trusts

#### Does your jurisdiction recognise trusts?

Trust companies overview

A new suite of trust legislation was enacted in the Turks and Caicos Islands (TCI) on 15 September 2016, replacing the Trusts Ordinance 1990 and The Trustees Licensing Ordinance 1992. The new suite of legislation includes:

- Trusts Ordinance 2016;
- Trust Companies (Licensing and Supervision) Ordinance 2016;
- Trust Companies (Regulations) 2016; and
- Trust Companies Code 2016.

Regulation of trust companies

Pursuant to section 4 of the Financial Services Commission Ordinance, the Turks and Caicos Islands Financial Services Commission (the Commission) is responsible for the supervision and regulation of financial services businesses in the TCI. In addition, section 8 of the Trust Companies (Licensing and Supervision) Ordinance 2016 gives the Commission the authority to regulate the trust industry in the TCI.

Licensing of trustees and application process

The Trust Companies (Licensing and Supervision) Ordinance 2016 provides for restricted and unrestricted licences to be granted.

Restricted licences are issued subject to the provision that the trustee only acts on behalf of a named trust or trusts. Unrestricted licensees are not subject to this provision.

All applications for licensing should be submitted to the Commission. Applications should follow the criteria set out in Trust Companies Code 2016 and the Commission's [Trust License Application form](#).

Applicants must satisfy the Commission that they or their management are fit and proper in all respects to act as a trustee.

#### Trust Law Advisory Committee

A Trust Law Advisory Committee (TLAC) has been established pursuant to section 59 of the Trust Companies (Licensing and Supervision) Ordinance 2016. The TLAC, consisting of members of the Turks and Caicos Islands Association of Licensed Trustees and the Commission, was created to facilitate collaboration and regular dialogue in an effort to keep the Trust Law and Regulation of the Islands under regular review.

For further information, contact the Bank and Trust department at [bd@tcifsc.tc](mailto:bd@tcifsc.tc).

#### Trusts main licensing conditions

- Capital requirement: fully paid-up share capital of US\$250,000;
- statutory restricted deposits: US\$100,000;
- business plan; and
- personnel who qualify under the [Fit and Proper](#) Guideline.

#### Main filing requirements

A trust licensee must submit to the Commission:

- audited financial statements;
- auditor's report and management letter
- annual directors' certificate;
- semi-annual prudential returns;
- annual compliance report;
- internal audit reports; and
- evidence of professional indemnity insurance.

### **Private foundations**

Does your jurisdiction recognise private foundations?

No.

### **Disputes**

What issues typically give rise to disputes relating to trusts and foundations? How are these disputes resolved? (What are the most common causes of action? Which courts are used? Is alternative dispute resolution (ADR) available and commonly used? What remedies are commonly awarded?)

The Supreme Court of the Turks and Caicos Islands regularly hears disputes relating to trusts. ADR is encouraged.

## SAME-SEX MARRIAGES AND CIVIL UNIONS

### Same-sex relationships

Does your jurisdiction have any form of legally recognised same-sex relationship?

No.

### Heterosexual civil unions

Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?

No.

## SUCCESSION

### Estate constitution

What property constitutes an individual's estate for succession purposes?

The Turks and Caicos Islands follow the laws of England and Wales with respect to what assets are comprised within an individual's estate.

### Disposition

To what extent do individuals have freedom of disposition over their estate during their lifetime?

Individuals have complete freedom of disposition over their estate during their lifetime.

### Disposition

To what extent do individuals have freedom of disposition over their estate on death?

Individuals have complete freedom of disposition over their estate. There are no forced heirship rules.

### **Intestacy**

If an individual dies in your jurisdiction without leaving valid instructions for the disposition of the estate, to whom does the estate pass and in what shares?

The Turks and Caicos Islands (TCI) follow the England and Wales law approach to intestacy.

### **Adopted and illegitimate children**

In relation to the disposition of an individual's estate, are adopted or illegitimate children treated the same as natural legitimate children and, if not, how may they inherit?

There is no difference between adopted or illegitimate children following the enactment of the Status of Children Ordinance (effective 1 June 2021).

### **Distribution**

What law governs the distribution of an individual's estate and does this depend on the type of property within it?

The distribution of real property is governed by the *lex situs*, and all other property is governed by *lex domicilii*.

### **Formalities**

What formalities are required for an individual to make a valid will in your jurisdiction?

The TCI follows the England and Wales law approach to making a valid will.

### **Foreign wills**

Are foreign wills recognised in your jurisdiction and how is this achieved?

Yes, by application to court for recognition in the normal way.

### **Administration**

Who has the right to administer an estate?

Named executors or court-appointed representatives.

### **Administration**

**How does title to a deceased's assets pass to the heirs and successors?  
What are the rules for administration of the estate?**

The laws of England and Wales apply, as locally varied.

### **Challenge**

**Is there a procedure for disappointed heirs and/or beneficiaries to make a claim against an estate?**

Legal advice should be taken to make such a claim, but there are no statutory provisions (unlike English law) that allow disappointed heirs to make such a claim.

## CAPACITY AND POWER OF ATTORNEY

### **Minors**

**What are the rules for holding and managing the property of a minor in your jurisdiction?**

Legal advice should be taken for guidance.

### **Age of majority**

**At what age does an individual attain legal capacity for the purposes of holding and managing property in your jurisdiction?**

The age of majority is 18.

### **Loss of capacity**

**If someone loses capacity to manage their affairs in your jurisdiction, what is the procedure for managing them on their behalf?**

There is no LPA law, but there is some jurisdiction under the Mental Health Act for the Court to appoint a guardian if incapacity is proved. Legal advice should be taken.

## IMMIGRATION

### **Visitors' visas**

**Do foreign nationals require a visa to visit your jurisdiction?**

This depends on the country issuing the visitor's passport. Most people do not require a visa.

### **High net worth individuals**

## Is there a visa programme targeted specifically at high net worth individuals?

Yes. Investors can obtain temporary or permanent residency in return for investments that vary according to the nature and location of the investment.

## UPDATE & TRENDS

### Key developments

Are there any proposals in your jurisdiction for new legislation or regulation, or to revise existing legislation or regulation, in areas of law relevant to high-net worth individuals, particularly those coming to or investing in your jurisdiction? Are there any other current developments or trends relevant to such individuals that should be noted?

There are no relevant developments at the time of writing.