

TURKS AND CAICOS ISLANDS
COMPANIES (AMENDMENT) ORDINANCE 2012
(Ordinance 36 of 2012)

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Section 2 amended
3. Section 89 repealed
4. Part IVA inserted
5. Transitional provisions



TURKS AND CAICOS ISLANDS

COMPANIES (AMENDMENT) ORDINANCE 2012

(Ordinance 36 of 2012)

AN ORDINANCE TO AMEND THE COMPANIES ORDINANCE

ENACTED by the Acting Governor of the Turks and Caicos Islands.

Short title and commencement

1. (1) This Ordinance may be cited as the Companies (Amendment) Ordinance, 2012 and comes into operation on such day as the Governor may appoint by Notice published in the *Gazette*.

(2) The Governor may appoint different days for the coming into operation of different provisions.

Section 2 amended

2. Section 2 of the Companies Ordinance (“the principal Ordinance”) is amended in the definition of “company” by inserting before the words “Part IX” the words “Part IVA,”.

Section 89 repealed

3. (1) Section 89 of the principal Ordinance and the heading preceding it are repealed.

(2) This section shall not come into operation until at least a year has expired from the date that the Governor first appoints for the coming into operation of a provision of the Ordinance.

Part IVA inserted

4. The principal Ordinance is amended by inserting immediately after section 97 the following—

“PART IVA

NON-PROFIT COMPANIES

Interpretation

97A. In this Part—

“registered not for profit association” means an association incorporated under section 89 that is, on the coming into operation of this Part, registered pursuant to that section.

“member”, in relation to a non-profit company, includes a person who is deemed to be a member of the company under section 42 and a person who has been admitted to membership under the company’s regulations;

“non-profit company” means a company without share capital, continued or incorporated under this Part.

Application

97B. (1) This Part applies to every non-profit company.

(2) When a provision of this Part is inconsistent with another provision of this Ordinance, the provision of this Part prevails over the other provision, in so far as it affects a non-profit company.

(3) For the avoidance of uncertainty, but subject to subsection (2), the following provisions of this Ordinance apply to a non-profit company, with such modifications as the circumstances require—

- (a) Part I;
- (b) subject to subsection (4), Part II, except sections 6, 7(2), 10, 12 to 19, 21(1), 22(2) and (3);
- (c) Part III, except sections 33 to 41, 43, 45 to 48 and 50;
- (d) Part IV, except sections 67, 71 to 76, 86, 87 and 97;
- (e) Part V, except section 112 and 145;
- (f) Part VI;
- (g) Parts XI and XIII.

(4) A non-profit company may adopt any of the following regulations from Table A and no others – 48 to 50, 52 to 105, 117 to 128 and 134.

Continuation of not for profit associations and incorporation of non-profit companies

97C. (1) A registered not for profit association may be continued as a non-profit company under this Part by—

- (a) sending the Registrar a notice in writing of its election to continue as a non-profit company under this Part;
- (b) making such amendments to its memorandum and articles of association as are necessary to comply with this Part and filing the amended memorandum and articles with the Registrar; and
- (c) complying with the registration requirements of this Part and section 26 and paying the fees prescribed under that section.

(2) One or more persons may form a non-profit company in the Islands by—

- (a) delivering to the Registrar a memorandum and articles of association that meet the requirements of this Part; and

- (b) complying with the registration requirements of this Part and section 26 and paying the fees prescribed under that section.

Contents or memorandum and articles of association

97D. A non-profit company's memorandum and articles of association must state—

- (a) the company's name, address in the Islands, telephone number and e-mail address, if any;
- (b) the company's purpose, objectives and activities; and
- (c) the address of any clubhouse, store or trading space that the company is maintaining.

Registration requirements

97E. (1) Without the approval of the Registrar, no non-profit company's memorandum and articles of association may be accepted for filing.

(2) The Registrar may only approve for filing a memorandum and articles that—

- (a) state that the non-profit company has no authorised share capital;
- (b) restrict the non-profit company's purpose, objectives and activities to those of a patriotic, religious, philanthropic, charitable, humanitarian, educational, scientific, literary, historical, artistic, social, professional, fraternal, sporting or athletic nature, or the like, for the purpose of benefiting the public or a section of the public;
- (c) state that the non-profit company is to be carried on without pecuniary gain to its members; and
- (d) state that, upon winding-up or liquidation, the non-profit company is obliged to give or transfer its assets remaining after the satisfaction of its liabilities to—
 - (i) another non-profit company; or
 - (ii) a non-profit organisation registered under the Non-Profit Organisations Regulations, 2012, with objectives similar to those of the non-profit company.

Register to forward information to NPO Supervisor

97F. (1) If the Registrar accepts a non-profit company's memorandum and articles of association for filing, he shall, without delay, send to the NPO Supervisor appointed under section 148S of the Proceeds of Crime Ordinance a copy of—

- (a) the company's memorandum and articles of association; and

(b) any other information submitted to him by the company.

(2) The Registrar shall also provide the NPO Supervisor with copies of any other documentation subsequently submitted to him by the company, including amendments to the company's memorandum and articles, changes to the composition of the company's directors and annual returns.

Directors

97G. (1) A non-profit company must have no fewer than 3 directors.

(2) A non-profit company's memorandum and articles of association or its regulations may provide for an individual to become a director by virtue of holding an office outside the company.

Name of company

97H. Notwithstanding section 7(1)(a), the word "incorporated" or "corporation" or the abbreviation "inc" or "corp" must be the last word of the name of a non-profit company; but a non-profit company may use and be legally designated by either the full or the abbreviated form.

Membership

97I. (1) Unless otherwise provided by a non-profit company's memorandum and articles of association or its regulations, there is no limit on the number of members of the company.

(2) A non-profit company's memorandum and articles of association or its regulations may provide for more than one class of membership, and if they do so, they shall set forth the designation of, and the terms and conditions attached to, each class of members.

Members admitted by directors' resolution

97J. (1) Subject to a non-profit company's memorandum and articles of association or its regulations, persons may be admitted to membership in the company by resolution of the directors.

(2) A non-profit company's memorandum and articles of association or its regulations may provide—

- (a) that a resolution referred to in subsection (1) is not effective until confirmed by the members in a general meeting; and
- (b) that members can be admitted by virtue of holding some office outside the company.

Votes by members

97K. (1) Subject to subsection (2), each member of each class of members of a non-profit company has one vote.

(2) A non-profit company's memorandum and articles of association may provide that each member of a specified class has more than one vote, or has no vote.

Transfer of membership

97L. (1) Unless otherwise provided by a non-profit company's memorandum and articles of association, the interest of a member in a non-profit company is not transferable and ceases to exist upon his death or when he ceases to be a member by resignation or otherwise, in accordance with the regulations of the company.

(2) Where a non-profit company's memorandum and articles of association provide that the interest of a member in the company is transferable, the regulations may not restrict the transfer of that interest.

(3) Notwithstanding subsection (2), the regulations of a non-profit company whose primary objectives are religious may restrict the transfer of a member's interest to a person of the same faith.

Regulations

97M. (1) The directors of a non-profit company may make regulations, not contrary to this Ordinance or to the company's memorandum and articles of association, respecting—

- (a) the admission of persons and unincorporated associations as members and as *ex officio* members, and the qualifications of, and the conditions of membership;
- (b) the fees and dues of members;
- (c) the issue of membership cards and certificates;
- (d) the suspension and termination of membership by the company and by a member;
- (e) where the memorandum or articles of association provide that the interest of a member is transferable, the method of transferring membership;
- (f) the qualifications of, and the remuneration of, the directors and the *ex officio* directors, if any;
- (g) the time for, and manner of, election of directors;
- (h) the appointment, remuneration, functions, duties and removal of agents, officers and employees of the company, and the security, if any, to be given by them to the company;
- (i) the time and place, and the notice to be given, for the holding of meetings of the members and of the board of directors, the quorum at meetings of members, the requirement as to proxies, and the procedure in all things at meetings of the members and at meetings of the board of directors;

- (j) the conduct in all other particulars of the affairs of the company.
- (k) the division of its members into groups, either territorially or on the basis of common interest;
- (l) the election of some or all of the directors—
 - (i) by the groups on the basis of the number of members in each group;
 - (ii) for the groups in a defined geographical area, by the delegates of the groups meeting together, or
 - (iii) by the groups on the basis of common interest;
- (m) the election of delegates and alternate delegates to represent each group on the basis of the number of members in each group;
- (n) the number and qualifications of delegates and the method of their election;
- (o) the holding of meetings of members or delegates;
- (p) the powers and authority of delegates at meetings; and
- (q) the holding of meetings of members or delegates territorially or on the basis of common interest.

(3) A regulation made under subsection (1)(p) may provide that a meeting of delegates for any purpose is a meeting of the members, and that delegates have all the powers of members at such a meeting.

(4) A regulation under subsection (1)(k) to (q) is not effective until it is confirmed by at least two-thirds of the votes cast at a general meeting of the members duly called for that purpose.

(5) A delegate has only one vote and may not vote by proxy.

(6) A regulation passed under subsection (1)(k) to (q) may not prohibit members from attending meetings of delegates and participating in the discussions at those meetings.

Audit requirements

97N. (1) Subject to subsection (4), the directors shall make all necessary arrangements for an annual audit of the books and accounts of a non-profit company.

(2) An audit is not required in respect of a non-profit company with gross annual revenues of less than \$250,000 in a particular year if all members attending the company's annual meeting unanimously pass a resolution not to appoint an auditor for that year.

Appointment of auditor to investigate accounts

97O. (1) The Registrar may by order require that the accounts of a non-profit company be investigated and audited, for such period as he thinks fit, by an auditor appointed by him if—

- (a) no audit has been carried out under section 97O; or
- (b) an audit has been carried out under section 97O but the Registrar is of the opinion that an independent audit is necessary.

(2) An auditor appointed in accordance with subsection (1) shall—

- (a) have the right of access to all books, accounts and documents relating to the non-profit company that are in the possession or under the control of the directors and persons acting or having concern in the management and administration of the company or of the property or income of the company or to which the directors and such persons have access;
- (b) be entitled to require from any person referred to in paragraph (a) or any past or present member, officer or servant of the company, such information and explanation as he thinks necessary for the performance of his duties; and
- (c) at the conclusion of, or during the progress of, the audit make such reports to the Registrar on the audit or the accounts or affairs of the company as the auditor thinks the case requires, and send a copy of the report to the persons referred to in paragraph (a).

(3) The expenses of an audit under subsection (1), including the remuneration of the auditor, must be paid by the non-profit company.

(4) A person is guilty of an offence who—

- (a) fails to afford an auditor any facility to which he is entitled under subsection (2);
- (b) fails to make full disclosure to the Registrar of all material facts required to be disclosed under this Ordinance in respect of a non-profit company; or
- (c) knowingly makes—
 - (i) a false statement of a material fact; or
 - (ii) a statement containing information that is misleading in light of the circumstances in which it was made.

(5) A person who is convicted of an offence under subsection (4) is liable on summary conviction to a fine of \$5,000 or to imprisonment for 6 months, or to both.

Annual return and fee

97P. (1) Every non-profit company shall, not later than 31 January in every year—

- (a) file with the Registrar an annual return in the form approved by the Financial Services Commission; and
- (b) at the time of filing under paragraph (a) pay the prescribed annual fee.

(2) A company that fails to comply with the requirements of subsection (1) is liable to a penalty of \$500 payable to the Registrar and every director and officer of the company knowingly and wilfully authorises or permits the non-compliance is also liable to that penalty.

(3) The Registrar may strike off the register a company that neglects or refuses to file an annual return required under this section, and thereupon the company shall be dissolved under Part VI.

(4) The Registrar may issue guidelines or administrative directions for the efficient administration of this section, including directions in respect of the submission of the annual return in electronic format.

Delegation of directors' authority

97Q.(1) The directors of a non-profit company may, subject the company's memorandum and articles of association, confer on any of their number, not being less than two, a general authority or an authority limited to such number of persons as the directors think fit, to execute in the names and on behalf of all the directors, assurances or other deeds or instruments for giving effect to transactions to which the directors are a party.

(2) Any deed or instrument executed in accordance with an authority given under subsection (1) shall be of the same effect as if executed by the company.

(3) An authority under subsection (1) —

- (a) shall suffice for any deed or instrument if it is given in writing or by resolution of a meeting of the directors notwithstanding the want of any formality that would be required in giving authority apart from that subsection;
- (b) may be given so as to make the powers conferred exercisable by any of the persons referred to in subsection (1), or may be restricted to named persons or in any other way; and
- (c) shall, subject to any restriction, and until it is revoked, and, notwithstanding any change in the composition of the directors of the company, have effect as a continuing authority given by and to the

persons who from time to time are directors of the company.

(4) Where a deed or instrument purports to be executed in accordance with this section, in favour of a person who in good faith acquires for money or money's worth an interest in or charge on property or the benefit of any covenant or agreement expressed to be entered into by the directors, the deed or instrument shall be deemed to have been duly executed by virtue of this section.

Appointment of trustees of non-profit company's property

97R. (1) Where, under a non-profit company's memorandum and articles of association, trustees of property held for the purposes of the undertaking of the company maybe appointed or discharged by resolution of a meeting of the members or other persons, a memorandum declaring a trustee to have been so appointed or discharged shall be sufficient evidence of that fact.

(2) The memorandum must be signed at the meeting by the person presiding or in some other manner directed by the meeting, and must be attested by two persons present at the meeting.

(3) A memorandum evidencing the appointment or discharge of a trustee under subsection (1) shall operate as a declaration under section 51 of the Trusts Ordinance vesting the property subject to the trust in the trustees.

(4) For the purposes of this section, where a document purports to have been signed and attested as mentioned in subsection (1), upon proof of the signature the document shall be presumed to have been so signed and attested, unless the contrary is shown.

General right of appeal of Registrar's decisions

97S. (1) A person who is dissatisfied with a decision of the Registrar under this Part may appeal to the Court against the decision.

(2) Where an appeal is made in accordance with subsection (1) —

- (a) section 97U applies; and
- (b) the Attorney-General and such other persons as the Court may direct shall be entitled to appear and be heard.

Objection to registration of non-profit company

97T. A person who may be or is affected by the registration of a non-profit company may object to the registration of the company or apply to the Registrar for the company to be removed from the register, on the ground that—

- (a) the company's memorandum and articles do not restrict its undertaking to an undertaking set out in section 97E(2)(b); or

- (b) the company does not provide the undertaking for which it is incorporated.

Appeals

97U. (1) A non-profit company shall, for all purposes other than rectification of the Register of Companies, be deemed to be or to have been a non-profit company at any time when it is or was on the register as a non-profit company.

(2) An appeal against a decision of the Registrar to—

- (a) register or not to register a non-profit company; or
- (b) remove or not to remove a non-profit company from the register;

may be brought in the Court by the Attorney-General, by the persons who are or claim to be the directors of the non-profit company or by any person whose objection or application under section 97T is disallowed.

(3) Where there is an appeal to the Court against a decision of the Registrar to register a non-profit company or not to remove a non-profit company from the register, the entry in the register shall be maintained but shall be in suspense and marked to indicate that it is in suspense until the appeal is determined.

(4) For the purposes of subsection (1), a non-profit company shall be deemed not to be on the register during any period when the entry relating to it is in suspense under subsection (3).

(5) Nothing shall preclude a company from making any pre-existing contractual payment while the entry relating to it is in suspense under subsection (3).

(6) Any question affecting the registration or removal from the register of a non-profit company—

- (a) may be considered afresh by the Registrar, notwithstanding that it has been determined by a decision on appeal under subsection (2); and
- (b) shall not be concluded by a decision referred to in paragraph (a) if it appears to the Registrar that there has been a change of circumstances or that the decision is inconsistent with a later judicial decision, whether given on an appeal or not.”.

5. (1) After the coming into operation of this section, the Registrar may not direct an association not for profit to be registered with limited liability, or grant a licence to that effect, under section 89.

Transitional provisions

(2) Where a registered not for profit association that is incorporated as a company limited by shares elects to continue under section 97C(1) of this Ordinance and for that purpose is incorporated as a company without share capital, its date of

incorporation is deemed to be the date that the registered not for profit association was first incorporated.

(3) The Registrar shall strike from the Register any registered not for profit association that fails to make an election under subsection 97C(1) and to comply with the other requirements of that subsection, within one year after the day of coming into operation of this Ordinance.

MADE this 10th day of October 2012

PATRICK BOYLE
ACTING GOVERNOR