

# TURKS AND CAICOS ISLANDS

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## I OVERVIEW OF RECENT ACTIVITY

The Turks and Caicos Islands (TCI), a British overseas territory, consists of two groups of islands: the Turks Islands including Grand Turk, which is the capital, seat of government and home to a cruise ship port, and the Caicos Islands of which Providenciales (known as Provo) is the economic centre of the TCI and is home to the vast majority of investments and financial services business.

The TCI is a common law jurisdiction modelled on the English legal system and with a court of final appeal to the Judicial Committee Privy Council in London (functionally, the English Supreme Court, albeit by a different name). The TCI, despite being a British overseas territory, uses the United States dollar as its legal tender currency.

The TCI is experiencing a time of transition (emerging from governance and constitutional concerns), as it seeks to reposition itself as a leading offshore jurisdiction, while being renowned as a leading tourist destination.

Within the 'offshore' space there continues to be legislative activity. That said, TCI stands alone in this part of the world with respect to asset management. At the time of writing there has been wholesale reform to the trusts, company and insolvency legislation. There is now insolvency legislation dealing comprehensively with both solvent and insolvent liquidations. The TCI has taken a pragmatic approach in this reform, mirroring the British Virgin Islands' (BVI) own insolvency legislation.

It is anticipated that the useful body of case law flowing out of the BVI since 2003 as a result of very similar legislative drafting will be a useful tool for the discerning asset management professional, their legal advisers, as well as insolvency practitioners. This will improve the ability to assess important business issues inbound to an insolvent liquidation. An example of this is the approach taken on interim assessment of costs following a number of recent BVI Commercial Court decisions.

Of historical note, in December 2016 the financial sector was ranked as the second-largest contributor to the economy of the TCI. Tourism ranked in first place.<sup>2</sup>

At year end 2016 the financial sector consisted of assets amounting to US\$1,774.1 million. This was distributed across six domestic banks, 19 insurance companies, nine trust companies and three money transmitters.<sup>3</sup>

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1 Wilbert Harvey is an attorney and Mikhail Charles is a litigation paralegal at Prudhoe Caribbean.

2 FSC Financial Stability Report December 2016 paragraph 2.1, page 2.

3 *ibid.*, 1.

Under the applicable insurance legislation, dispensation can be – and is – granted for placement of insurance products outside of locally licensed providers. This is especially useful to those seeking worldwide coverage from a TCI base.

The majority (US\$1,703.9 million or 96 per cent) of the sector's assets were deployed within the banking sector, with the remainder comprising of the insurance, trust and money transmitter sectors.<sup>4</sup> The majority of the financial sector is foreign-owned with the trust sector being the only sector that is majority domestic-owned.<sup>5</sup>

For the annual reporting period April 2015–March 2016, there was a total of 1,412 companies incorporated with producer-owned reinsurance companies accounting for approximately 62 per cent of the incorporation for the period;<sup>6</sup> all together there were 15,801 active companies registered at the end of March 2016 and a total of 15,864 including limited partnerships.<sup>7</sup>

The yearly incorporation for the period April 2016–March 2017 declined to 1,241 incorporated entities.<sup>8</sup>

As at December 2018, the total value of investment portfolios of whatever description totalled US\$1,075,984,517.<sup>9</sup>

There are some 5,800 captive insurance companies domiciled in the TCI.<sup>10</sup>

For the reporting period April 2017–March 2018, the total number of companies grew to 16,589. Of these, there were 5,670 domestic (ordinary) companies, 10,917 international and two protected cell companies.<sup>11</sup> For the same reporting period there were 70 limited partnerships of which 46 were exempted (international) limited partnerships. This brought the total number of companies and limited partnerships to 16,659 – a number that is steadily growing.

## **II GENERAL INTRODUCTION TO THE REGULATORY FRAMEWORK**

The regulatory body in the TCI is the Financial Services Commission (FSC). Acknowledgement is given to the FSC for their kind cooperation in providing and confirming the information quoted in this chapter.

The FSC is also the umbrella entity for the TCI Registry of Companies, Trademarks, Patents and Business Names. The Registry of Companies is the entity charged by statute to register and monitor companies, and other corporate entities incorporated or registered (as appropriate) in the TCI. In this way, the FSC has overarching control over all asset management business carried out in the TCI.

The FSC was established by the Financial Services Commission Ordinance 2001 and continued to operate under the more recent Financial Services Commission Ordinance

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4 *ibid.*, 1.

5 FSC Financial Stability Report December 2016 paragraph 2.2, page 3.

6 FSC Annual Report 2015/2016 at paragraph 7.2, page 31.

7 FSC Annual Report 2015/2016 table 6 at page 31.

8 FSC Annual Report 2016/2017 at paragraph 7.2 page 34.

9 Data provided by the FSC on 14th June 2019.

10 Taken from <[www.gov.uk/government/world-location-news/can-captive-insurance-help-grow-turks-and-caicos-gdp](http://www.gov.uk/government/world-location-news/can-captive-insurance-help-grow-turks-and-caicos-gdp)> Accessed 12th June 2019.

11 Figures for the reporting period April 2017–March 2018 provided by FSC Companies Registry.

2007,<sup>12</sup> which itself has undergone several amendments and is currently known as the Financial Services Commission Ordinance 2014 Cap. 16.01 of the Laws of the TCI (the FSC Ordinance).

The FSC's functions are set out by Section 4 of the FSC Ordinance and include:

- a* supervision and regulation of licensees in accordance with the ordinance;
- b* monitoring financial services business carried on in and from within the islands and acting against any person carrying on unauthorised financial business;
- c* considering and determining applications of licensees;
- d* monitoring compliance of licensees with the Anti-Money Laundering Regulations and any other ordinance, regulation or codes as may be prescribed by the legislature;
- e* monitoring the effectiveness of the regulatory ordinance in providing for the supervision and regulation of financial services business carried on in or from within the islands to internationally accepted standards;
- f* advising and making recommendations to the Governor and the Governor in Council for the amendment of existing or enacting of new legislation affecting the financial services business;
- g* the promotion of the continuing development of high professional standards within the financial services industry in the islands;
- h* developing relationships with foreign regulatory authorities;
- i* providing information and advice to licensees and the public as it considers appropriate; and
- j* discharging such other functions as may be assigned to it under the ordinance or any other ordinance.

These functions cumulatively should promote the development of a modern regulatory framework to protect and enhance the reputation of the TCI.

The FSC has the necessary capacity and power to enforce the relevant legislation against those under its remit, and has corporate personality to bring suits and hold property in its own name.

The Companies Ordinance 2017 is the primary legislative mechanism for the setting up of corporate structures. These structures may be for domestic, international, protected cell or non-profit purposes.

Traditionally, asset management vehicles are set up as either domestic, international or protected cell companies or as a partnership under the Limited Partnerships Ordinance Cap. 16.15. Partnerships are governed by the Partnership Ordinance Cap. 16.16 and cannot be registered as an international company partnerships do not offer limited liability protection for any partner<sup>13</sup> and may not be attractive from a foreign investment perspective.

As of 31 March 2017, the total number of licensed company service providers remained unchanged at 37.<sup>14</sup> During this same period, there were six entities licensed under the Investment Dealers (Licensing) Ordinance and five licensed under the Mutual Fund Ordinance.

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12 Taken from the FSC website <<http://tcifsc.tc/about-tcifsc>> Accessed 1 May 2019.

13 Partnership Ordinance CAP. 16.16 Section 10.

14 FSC Annual Report 2016/2017 at paragraph 5.1 page 26.

The total value of the investment business portfolio at 31 March 2017 was reported as US\$738.6 million.<sup>15</sup>

Insurance companies (captive or not) are regulated by way of the Insurance Ordinance Cap. 16.06 of the Laws of the TCI and require a licence from the FSC. There is a minimum financial requirement that varies depending on the nature or category of insurance business intended to be set up.

To obtain a licence in the TCI<sup>16</sup> the insurance company must show that the persons who control its affairs are competent, with evidence of relevant ability, integrity and experience in the field of insurance. To obtain an insurer's, broker's or manager's licence, it is essential that the application contains a business plan. If the company will be engaging in reinsurance, and general (domestic or international) business, it should expect to have a minimum paid-up capital of US\$100,000. For life assurance companies, this minimum paid-up capital figure will be US\$180,000.

Application fees range from US\$100 for a credit life reinsurer's licence or a sub-agent's licence to US\$500 for an insurer's, insurance manager's or insurance broker's licence.

For types or classes of insurers the annual licence fee is:

- a* Domestic: US\$2,500.
- b* Non-domestic (e.g., captives): US\$2,000.
- c* credit life reinsurers: nil.
- d* Other: US\$500.

The costs of various licence fees are as follows:

- a* Agents: US\$100.
- b* Brokers: US\$1,000.
- c* Managers: US\$3,500.
- d* Principal representatives: US\$1,000.
- e* Sub-agents: US\$50.

It can be expected that some asset managers may use the limited partnership structure as it is, in many respects, identical to the BVI structures.

The FSC, through its company registration operations, is the custodian of public information filed pursuant to the Companies, Limited Partnerships and Partnership Ordinances.

Searches may be made of the companies' registry for information, including a company's incorporation, registration, registration of charges and qualifying documents filed.

A person may require a certified or uncertified copy or extract certificate of incorporation, restoration, merger, consolidation, arrangement, continuation, discontinuance, dissolution or good standing of a company, or a copy or an extract of any document or any part of a document of which he or she has custody, to be certified by the registrar.<sup>17</sup> Some restriction applies to the inspection of certain documents, for example membership documents.<sup>18</sup>

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15 FSC Annual Report 2016/2017 at paragraph 5.1 page 26.

16 Insurance Ordinance Cap. 16.06, Insurance Regulations, Guidelines on the Issue of Insurance Licences in the Turks and Caicos Islands – Regulation 6.

17 Companies Ordinances 2017 Section 293(1).

18 Companies Regulation 2018 (Legal Notice 11 of 2018) paragraph 27.

### III COMMON ASSET MANAGEMENT STRUCTURES

Under TCI law, the following structures are available to the investor (domestic or foreign):

#### **i Companies**

There are several types of companies that can be established in the TCI:

- a* a company limited by shares;
- b* a company limited by guarantee that is authorised to issue shares;
- c* a company limited by guarantee that is not authorised to issue shares;
- d* an unlimited company that is authorised to issue shares; or
- e* an unlimited company that is not authorised to issue shares.

A company limited by shares may be incorporated as a protected cell company or, if it has already been incorporated, be registered as a protected cell company in accordance with Part XI of the Companies Ordinance 2017.

A company, other than a non-profit company, may be registered as an international company in accordance with Section 12 of the Companies Ordinance 2017.

The 2017 Ordinance introduced the establishment and maintenance of a register of beneficial owners and a register of charge and requires that all incorporated companies have a registered agent.<sup>19</sup>

These requirements were introduced to meet the TCI government's commitment under the exchange of notes with the UK to establish a central registry of beneficial owners. The identification of the beneficial owners of a company has become a major law enforcement and policy initiative of the UK and EU.<sup>20</sup>

In relation to necessary disclosures of information for the purposes of giving evidence, there is a process under the Companies Ordinance 2017 (as amended) for disclosure; this is a discrete procedure and is conducted as such.

This applications process comes under Sections 299(A) and (B) of the Companies (Amendment) Ordinance 2017<sup>21</sup> and enables an application to be made for the use of material in the corporate register for specific evidential purposes. This abolishes the distinction under previous legislation as between what were then ordinary companies compared to exempt companies and lessens the impact of the Confidential Relationships Ordinance.

As noted above, the Insolvency Ordinance 2017 was introduced to reform the law relating to the liquidation of companies and to provide for the administration, receivership and liquidation of companies. These laws will help to modernise the country's legislation, making the jurisdiction more attractive to investors.

As of early 2019, there is now, for the first time, a licensing regime for insolvency practitioners authorised under the Ordinance to fulfil the role of liquidator. That licensing regime is a close equivalent to the one used in the BVI.

As is widely known, the BVI is the largest-volume provider of companies outside of Delaware, United States, and therefore has high volumes of insolvency work. As a result of that, the experience requirements for licensing as an insolvency practitioner are onerous.

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19 FSC Annual Report 2016/2017 at paragraph 7.5 page 35.

20 FSC Annual Report 2016/2017 at paragraph 7.6.1.3 page 36.

21 Companies (Amendment) Ordinance 2017 (Ordinance 21 of 2017) Section 45.

At the time of writing, there is currently a single licensed insolvency practitioner in the TCI, the contact details for whom are available from the FSC. There is a 'public' liquidator available for court appointments, and under the new regime this individual is known as the official assignee. This public official cannot accept appointments on an insolvency voluntary members' resolution basis.

The current appointee as official assignee is a senior member of the FSC. As indicated, his stated view is that he is precluded from accepting appointments as a members' appointee on a voluntary insolvent liquidation. The capacity of the offshore industry in the TCI to service the work that the new statutory insolvency regime is expected to generate remains a work in progress.

The most common type of company is a company limited by shares, of which there are over 12,000.

The current company law provides for the incorporation of four simplified categories of company: domestic companies, protected cell companies, international companies and non-profit companies.

There is also provision for registration of foreign companies. Existing companies incorporated under previous categories according to the former legislation have been automatically registered under transitional arrangements that have now run their course. This means, for example, that a former 'exempted'<sup>22</sup> or a 'limited life'<sup>23</sup> company becomes an international company under the new provisions.

The standard vehicle for onshore businesses or for the holding of land within the TCI will be a domestic company.<sup>24</sup> A business whose activities will be carried on principally outside the TCI will be an international company.<sup>25</sup> Tax exemption certificates issued to companies under the former ordinance continue to be valid under the new statutory regime.<sup>26</sup>

## **ii Partnerships**

Partnerships that are governed by the Partnership Ordinance Cap. 16.16 are also governed by the common law.<sup>27</sup> As its ordinance does not form part of the administered ordinances,<sup>28</sup> partnerships are not regulated by the FSC, except for their name where the partnership name is different from the surnames and forenames of the partners.<sup>29</sup> Therefore partnerships are not discussed further within this chapter.

## **iii Limited partnerships**

As at March 2018, there were 70 limited partnerships<sup>30</sup> in the TCI. They are governed by the Limited Partnerships Ordinance 2014 Cap. 16.15.

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22 Companies Ordinance 2017 Schedule 1 paragraph 6. (1)(f).

23 Companies Ordinance 2017 Schedule 1 paragraph 6. (1)(g).

24 Companies Ordinance 2017 Section 29.

25 Companies Ordinance 2017 Section 12(3).

26 Companies Ordinance 2017 Schedule 1 paragraph 21.

27 Partnership Ordinance Cap. 16.16 Section 45.

28 Financial Services Commission Ordinance Cap. 16.01, Financial Services Commission (Prescribed Financial Services Ordinances) Regulations – Section 55 paragraph 3.

29 Business Names (Registration) Ordinance Cap. 17.01 Section 3.

30 Figures for the reporting period April 2017–March 2018 provided by FSC Companies Registry.

A limited partnership is required to be registered with the FSC,<sup>31</sup> but the person who is the general partner of that limited partnership is not required to be licensed.<sup>32</sup> A limited partnership can be an exempted limited partnership, which status will restrict the partnership from conducting business in the TCI.<sup>33</sup>

The primary advantage of a limited partnership structure for a United States national is obviously an issue requiring advice on a state-by-state basis. However, as a general concept, the US tax regime looks favourably on control issues via involvement in a limited partnership. A body corporate can also be a general or limited partner of a limited partnership.

The market for limited partnerships in the TCI seems to have been driven historically by US domestic tax policy as outlined above.

**iv Mutual funds**

The number of mutual funds in the TCI as at 31 December 2018 was nine,<sup>34</sup> with the amount of assets under management in these mutual funds amounting to US\$210,946,471.<sup>35</sup>

Mutual funds as governed by the Mutual Funds Ordinance 2018 Cap. 16.07 requires that all mutual funds be registered, recognised, licensed or exempted.<sup>36</sup> It also requires that a mutual fund have a mutual fund manager who is licensed.<sup>37</sup>

The Investment Dealer’s (Licensing) Ordinance 2001 (IDLO) also applies as a regulatory mechanism for ‘investment businesses’.

The four categories of investment businesses under the IDLO are: a full investment dealer; investment dealer execution only; fund manager; and investment adviser must be licensed to operate.<sup>38</sup> The IDLO provides for certain investment business activities to be exempted from the requirement for a licence.<sup>39</sup>

Breakdown of investment by type/value	
No. of licensees	Type of licensee
1	Investment adviser
5	Investment dealers
	Value of portfolio: US\$865,039,046
3	Mutual fund administrators
4	Licensed mutual funds
5	Exempt mutual funds
	Value of portfolio: US\$210,946,471
Data provided by the FSC on 14 June 2019.	

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31 Limited Partnerships Ordinance CAP. 16.15 Revised Edition 2014 Section 7 taken from TCI 2018 revised Laws.  
 32 Limited Partnerships Ordinance CAP. 16.15 Revised Edition 2014 Section 19 taken from TCI 2018 revised Laws.  
 33 Limited Partnerships Ordinance CAP. 16.15 Revised Edition 2014 Section 16(1) taken from TCI 2018 revised Laws.  
 34 FSC Annual Report 2016/2017 at paragraph 5.1 page 26 – updated by the FSC 14 June 2019.  
 35 Confirmed by the FSC dated 14 June 2019.  
 36 Mutual Funds Ordinance CAP. 16.07 Section 3(1).  
 37 Mutual Funds Ordinance CAP. 16.07 Section 12(1).  
 38 Adapted from the FSC, 14 June 2019.  
 39 Adapted from the FSC, 14 June 2019.

Registered mutual funds are mutual funds constituted under the laws of the TCI and are only authorised to issue equity interests to investors who meet the prescribed qualification or in which the equity interests are listed on a stock exchange recognised by the FSC.<sup>40</sup> The stock exchanges currently recognised are<sup>41</sup> Australia, Bermuda, Canada, the Cayman Islands, Hong Kong, Japan, a Member State of the European Union, New Zealand, Singapore, Taiwan, and the United States.

Depending on the outcome of Brexit, we would expect the United Kingdom expressly to be added.

Recognised mutual funds are mutual funds constituted under the laws of a foreign country or territory and the equity interests are listed on a stock exchange specified by the FSC.<sup>42</sup>

Licensed mutual funds are licensed mutual funds other than registered or recognised mutual funds.<sup>43</sup>

Any decision by the FSC not to register, recognise or license a mutual fund is final and not subject to an appeal.<sup>44</sup> It is an open issue whether that is itself open to judicial review.

Exempted mutual funds are mutual funds that have 15 or fewer members and the majority of whom can appoint or remove the fund operator,<sup>45</sup> or are only authorised to issue equity interests to professional investors provided that at all times the fund administrator provides an office in the TCI for the funds.<sup>46</sup> For this reason, they are exempted from the requirement to be registered, recognised or licensed.

To meet the criteria of a professional investor a person has to be a qualified licensed securities broker or have or represent an investor who has US\$5 million or more in securities quoted on a stock exchange recognised by the TCI and have significant knowledge and experience by which to understand the funds stated in the prospectus.

Mutual funds are also required to have a licensed administrator. The administrator is obligated to report to the commission on the honesty, good character and conduct of any operator or manager of the fund. The administrator of a mutual fund can be a company and in such instances the company will be required to include in its articles of association that there be two directors sitting on its board and ensure that there are in fact two directors sitting at all times.

## **v Banks**

A total of 19 financial institutions are under supervision of the FSC's Bank and Trust Department, of which seven are banks.<sup>47</sup> Banks are governed by the Banking Ordinance 2018 Cap 16.02, which places their governance under the FSC.

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40 Mutual Funds Ordinance CAP. 16.07 Section 4(1).

41 Mutual Funds Ordinance CAP. 16.07 Schedule 1 (Regulation 2) Stock Exchanges.

42 Mutual Funds Ordinance CAP. 16.07 Section 5(1).

43 Mutual Funds Ordinance CAP. 16.07 Section 6(1).

44 Mutual Funds Ordinance CAP. 16.07 Sections 7(3) and 8(5).

45 Mutual Funds Ordinance CAP. 16.07 Section 11(1).

46 Mutual Funds Ordinance CAP. 16.07 Section 11(2).

47 FSC Annual Report 2016/2017 at paragraph 3.1 page 14.

Total assets held by the banks tend downwards to US\$1.67 billion for the second consecutive year;<sup>48</sup> the decrease reflects a reduction in loans and advancement and placements to other financial institutions. Although there was a reduction in loans, they remain the largest asset of the banks at US\$865.9 million.

Non-performing loans (NPL) was at US\$86.3 million down from US\$124.4 million in the previous year. NPL accounted for 10 per cent of total loans and was concentrated in construction and land development and the personal loan sectors.<sup>49</sup>

## **vi Trusts**

There are a total of nine trust companies under supervision by the FSC's Bank and Trust Department<sup>50</sup> with an on-balance sheet asset valued at US\$19.7 million.<sup>51</sup> This asset had cash and cash equivalents as its largest component at 42 per cent and two of the nine companies accounted for 80 per cent of the sector's assets.<sup>52</sup>

A new Trusts Ordinance 2016 Cap. 16.12, which repeals 1980s legislation, came into force on 23 September 2016.

This legislation, along with the supporting Trusts Companies (Licensing and Supervision) Ordinance 2016 Cap. 16.11, Trusts Companies Regulation 2016 and the Trust Companies Code 2016,<sup>53</sup> represents significant modernisation.

Section 8 of the Trusts Companies (Licensing and Supervision) Ordinance 2016 Cap. 16.11 gives the FSC the authority to regulate the trust industry in the TCI. Any decision by the FSC in refusing the granting of a licence is stated to be final and not subject to an appeal or review by any court.

Trusts have to be licensed and can either be licensed as an unrestricted trust company with the authority to carry on trust business in and from within the TCI or a restricted trust company, which is subject to the conditions specified in regulations.

## **IV MAIN SOURCES OF INVESTMENT**

The main source of investment into the TCI is foreign direct investment (FDI). The TCI as a British overseas territory with a stable legal system has been attractive to FDI for decades. FDI comes mainly in the form of wealthy individuals and companies seeking an attractive tax-neutral jurisdiction with easy international access, friendly immigration policies and progressive governance.

## **V KEY TRENDS**

The main commercial hub of Providenciales in the TCI (where the court system is housed, it is one of eight main islands and is the most populous) is a thriving luxury property market for high net worth and ultra-high net worth individuals.

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48 FSC Annual Report 2016/2017 at paragraph 3.7.2 page 16.

49 *ibid.*, 48.

50 FSC Annual Report 2016/2017 at paragraph 3.1 page 14.

51 FSC Annual Report 2016/2017 at paragraph 3.8 page 17.

52 FSC Annual Report 2016/2017 at paragraph 3.8 page 18.

53 Taken from the FSC website <<https://tcifsc.tc/trust-companies/>> accessed 23 May 2019.

The TCI continues to position itself via an improved reputation as an international financial centre. The legislative activity as described above supports this.

There have been a number of strategic returns to the jurisdiction for the purpose of the TCI serving as a base of operations for a number of professionals with a strong existing platform.<sup>54</sup>

## **VI SECTORAL REGULATION**

### **i Insurance**

The FSC as the sole regulatory body in the TCI holds the mandate to regulate and control the insurance sector. The FSC does this by administering the domestic insurance sector and monitoring the active international insurance business sector.

As at 31 December 2017, there were 11 insurance brokers with combined assets of US\$27,238,000, which was more than double the assets from year end 2016.

The operative legislative framework is contained in the Insurance Ordinance Cap. 16.06 and Insurance Premium Sales Tax Ordinance Cap. 19.17. It provides a mechanism for the licensing of persons wishing to carry on insurance business within the TCI; a person may hold one or more of six different types of class of licence.

Each licence type has basic conditionalities built in, for example, reporting requirements to the FSC and may have restrictions placed on the scope of activity.

It is an offence for any person to conduct insurance business without a licence from the FSC.

### **ii Pensions**

There is not yet a specific regulatory regime in the TCI relating to pension funds.

### **iii Real property**

Property is at a premium in the TCI; the islands are relatively small with a combined land mass of 238 square miles. Property may be freely held by citizens and non-citizens alike.

Real estate can be held as freehold title absolute or leasehold.

The Strata Titles Ordinance Cap. 9.04 allows for the registration of a strata plan against a land parcel to create individual strata lots, each of which is registered with its own derivative title and the remainder held as 'common property' by a strata corporation. Strata titles are used as the preferred structure for condominium developments.

There is a Registered Land Ordinance Cap. 9.01, which governs the real property regime in the TCI. It allows for the conveyance of real property to be held by natural and legal persons.

There is no locally imposed tax on real estate other than stamp duty at the time of purchase. A TCI company is the most common form of entity used to own investment real estate.

Under the Land Holding Companies (Transfer Duty) Ordinance Cap. 19.06, the transfer of shares of a company that is the registered owner of land (or the transfer of any

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<sup>54</sup> For example, Tim Prudhoe exited the partnership of international disputes firm Kobre & Kim LLP for the purposes of founding the TCI-based pan-regional disputes firm Prudhoe Caribbean and David Stewart left Olswang LLP in London to join an existing law and fiduciary services firm, Griffiths & Partners.

beneficial interest in the shares of that company) is dutiable at the rate of 8 per cent of the value of the land held by the company multiplied by the proportion of the shares of the company changing hands.

This would encompass any other company that holds TCI real estate.

The definition of a dutiable transfer is drafted widely and encompasses the shares of holding companies or interests in any other entity further up the chain of ownership.

Liability for the duty remains vested in the landholding company itself.

As far as TCI legislation is concerned, there is no impediment for a TCI company to hold real estate in other jurisdictions.

There are no restrictions on foreign ownership of real estate in the TCI, although certain formalities may apply to different types of purchaser.<sup>55</sup>

Any investor should consider the primary sources of law, including the Registered Land Ordinance Cap. 9.01, the Physical Planning Ordinance Cap. 9.02 and the Stamp Duty Ordinance Cap. 19.05. Other laws may apply depending on the nature of the transaction and how it is structured.

#### **iv Hedge funds**

There is no specific regulatory regime in the TCI relating to hedge funds. Typically, structured hedge funds are usually limited partnerships and as such can be registered under the Limited Partnerships Ordinance Cap. 16.15.

There are no registered hedge funds in the TCI.

#### **v Private equity**

There is no statutory regime in the TCI governing private equity funds. As these are usually private arrangements, they fall outside of the remit of the FSC except where, due to their business model, they are registered under the Limited Partnership Ordinance CAP. 16.15 or the Mutual Funds Ordinance Cap. 16.07 or they are otherwise an offering to the 'public'.

#### **vi Other sectors**

There are no other statutory regimes in the TCI relating to other asset management entities and sectors (including sovereign wealth funds).

### **VII TAX LAW**

The TCI currently do not impose any taxation on income or capital gains of an investment fund or their investors or corporation profits. The Companies Ordinance 2017 preserved the validity of tax exemption for companies exempted under the former legislation, which is valid for 20 years from the date of incorporation.

Value added tax is not applied in the TCI, nor is there any form of withholding tax applicable. The TCI does not directly tax income (of whatever provenance) or capital gains.<sup>56</sup>

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55 Adapted from 2.11 Legal Restrictions on Foreign Investors <<https://practiceguides.chambers.com/practice-guides/comparison/348/2605/5216-5220-5232-5243-5251-5257-5278-5286>> Accessed 12 June 2019.

56 Adapted from 8.4 Income Tax Withholding for Foreign Investors <<https://practiceguides.chambers.com/practice-guides/comparison/348/2605/5216-5220-5232-5243-5251-5257-5278-5286>> Accessed 12 June 2019.

## **VIII OUTLOOK**

There is much more to the TCI than just tourism. The financial sector continues to gain measured traction.

The real estate sector remains strong, and is becoming even stronger. Of interest are managed villa properties (with established market players already in the space), large-scale mixed condo/villa developments and luxury condos.

The TCI is committed to encouraging inward investment within the jurisdiction. In that regard, the Companies Ordinance 2017 will play a significant role. The law simplifies the registration of companies, provides greater flexibility and modernises the scope for use of corporate entities.<sup>57</sup>

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57 FSC Companies Ordinances presentation 2017.

## **WILBERT HARVEY**

### *Prudhoe Caribbean*

Wilbert Harvey is a second-career lawyer at Prudhoe Caribbean, a pan-Caribbean law firm specialising in complex and often cross-border disputes work. Previously a senior member of the Cable & Wireless team where he managed a commercial department before embarking on his legal studies, Wilbert is admitted to practise in the Turks and Caicos Islands. He is also called to the Bar of England and Wales. His industry background is invaluable in his now specialist practice.

## **MIKHAIL CHARLES**

### *Prudhoe Caribbean*

Mikhail Charles is an experienced litigator across the Caribbean region with Prudhoe Caribbean, a pan-Caribbean disputes and advisory firm operating out of the Turks and Caicos Islands. Mr Charles is not admitted to practise in the TCI itself but works with others within the firm on representation of companies and high net worth individuals globally, in matters relating to trusts, cross-border insolvency, international judgment enforcement and asset recovery. He also works closely with a licensed insolvency practitioner from within the firm. He has substantial international comparative legal experience and consultancy having worked for the Commonwealth Secretariat and the Eastern Caribbean Telecommunications Authority.

He is admitted to practise in Saint Vincent and the Grenadines, Grenada, St Lucia and the British Virgin Islands. He is also called to the Bar of England and Wales.

He has appeared before the United Nations Office on Drugs and Crime (UNODC – Vienna Office) in 2016 on anti-corruption and asset recovery issues and served as in-house counsel to the Eastern Caribbean Telecommunications Authority. He appeared in the Eastern Caribbean Court of Appeal in 2015 for the (then) largest money laundering case in its history and is currently involved with testing the newly passed Bankruptcy and Insolvency Act of Saint Vincent with the first ever recognition of a ‘foreign liquidator’ application.

## **PRUDHOE CARIBBEAN**

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