Starting a Business, Working and Living in the Turks & Caicos Islands

Government policy delicately balances the need to attract foreign investment and skilled labour with the need to protect and preserve opportunities for Turks & Caicos Islanders (called "Belongers").

This memo provides the reader with a checklist of the regulatory hurdles that a non-Belonger must cross before operating a business, before working, and before living in the Turks & Caicos Islands ("TCI").

This area, however, has gone through a number of changes in the last twelve months and current regulation is still in a state of flux. It is intended that this memorandum will be for general information and that the reader will secure specific advice rather than relying on the contents of this article.

Business License

Everyone operating a business in or from within the Islands, with the intention of earning a profit, must obtain a business license. For the vast majority of businesses the application must be made in one of forty-five (45) categories of business activities under the Businesses Licensing Ordinance. For the purpose of fees there are a total of sixty-six (66) fee classifications. On grant of a license, the fee payable is pro-rated to the end of the business licensing year, which is 31st March. The annual fee is payable on the first of April of each year but penalties for late payment only bite after 30th April. Annual fees range from $300.00 (e.g. farming and apartment rentals of fewer than two units) to $13,500.00 (e.g. hotel accommodation of more than 100 rooms). Subject to payment of the annual fee licenses are for an indefinite period.

Once obtained a license authorises the holder to engage in business activities within the category authorised by the license plus other activities reasonably incidental to those activities. Where the business is engaged in several distinct activities, a separate license must be obtained for all those activities that are separately categorised in the Business Licensing Regulations. If they are not separately categorised, or if they are not incidental to the categorised activity, it is this firm's view that a business licence must be obtained in the "miscellaneous" category, covering all non-incidental activities.

Of the sixty-six (66) classifications of business activity in the Business Licencing Regulations twenty (20) are reserved for Belongers or Belonger-controlled businesses (ie a Belonger-controlled business is one where greater than fifty percent of the shares are owned by a Belonger). Examples of reserved activities are the operation of restaurants, sales agencies, retail sales, and contracting (ie petty, small, and medium sized contracting). It is possible for a non-Belonger business to obtain a business license in a reserved category but the applicant must show that there would be a substantial benefit to the community from the granting of such a license.

A business license application is made on a simple four-page form, the last page of which is guidance notes.

There are certain sensitive business activities, a discussion of which is outside the scope of this memorandum, that fall outside the Business Licensing Ordinance and that must be separately authorised. Applicants for those licenses undergo a more rigorous approval process. Banking business, insurance business, the provision of professional trustee services, and the provision of Corporate Management and Agency Services are all licensed under separate legislation. Applicants and applications for those licenses are vetted by the Financial Services Commission. The competence and integrity of the beneficial owners and key management personnel are considered vital and necessary to protect the public and to prevent criminal use of the country's financial services.

Other Licenses

In addition to those obligations businesses need licenses to sell, distribute, or remove certain products from the TCI. Intoxicating liquors, for instance, is a controlled substance and vendors require a liquor license, in addition to their business license, to dispense alcohol to the public.

There are also obligations for certain professionals, in addition to the businesses that employ them, to be individually licensed. Medical practitioners and lawyers, for example, need to be individually licensed or admitted to practice (an exception being where they are employed by government).

Work Permits

The only persons that are allowed to be gainfully employed are Belongers, the spouse of a Belonger, permanent residents with permission to work, a narrow class of officials, diplomatic personnel, and those who have work permits. It is this firm's view that no work permit is required by a non-Belonger if there is no remuneration, but legislation creates a presumption of gainful employment and the burden to prove otherwise is substantial.

By far the most common route to employment by a non-Belonger is to obtain a work permit, applications for which are submitted to the Immigration Board ("the Board"). Applicants for work permits must include evidence of good character, good health, a description of the relevant job to be performed, and a letter indicating why the services of the proposed employee is required. The Board may, after considering all the evidence, grant a work permit if it feels the application meets the prescribed requirements.

At present the requirements are that the employer must show that every effort was made to recruit a Belonger, an advertisement must be placed in two consecutive issues of a local newspaper and no qualified Belonger must have applied for the job. The Commissioner of Labour must also be informed of the application. The Commissioner of Labour must not have made any objections to the employment and must have granted a Labour Clearance. Once the application has been submitted the Board has a wide discretion when deciding whether to grant a work permit.

An application for a work permit is submitted with a fee payable on the grant of the permit. Currently, the fees range from US$150 (e.g. farmers) to US$9,500 (e.g. professionals, directors, or managers of a business). There is a "repatriation fee", that is paid by an employer, that serves as a deposit to provide for the repatriation of an

employee if he is required to leave. Repatriation fees vary, depending on the country of origin of the worker. The fee is loosely based on the cost of an airline ticket to the worker's country of citizenship.

If the application for a work permit is by an individual interested in starting his or her own business there are additional requirements in that such an applicant must show that there is a genuine need for his skills, services, or investment in the Islands. Such an individual must also show that he is bringing money to put into the business and he must, further, illustrate that he can support himself and any family that he intends to have with him on the Islands. This statutory requirement is not rigidly adhered to, although the Immigration Board is more demanding if the application is for employment in certain traditionally Belonger fields and professions.

If a work permit is approved it authorises the employee to be gainfully employed with the applicant (*i.e.* the employer) for a period, specified on the permit, of up to three years. Once granted, a work permit is not transferable and a new application must be made if an employee wants to change employment. It should be noted that a person cannot hold two work permits nor can a work permit be taken out in the name of two employers. Once granted a work permit authorises the applicant to reside in the Islands. The Board also has the authority to add an applicant's spouse and children to a work permit, which gives them a right to reside in the Islands. At the time of writing, the Immigration Board had implemented a policy of only endorsing the dependents of professional employees on work permits. There is a $300.00 fee to add a spouse along with a $300.00 fee for each child.

If the Board refuses to grant a work permit its decision can be appealed within thirty days of notification of its decision. Such an appeal is under Section 32 of the Ordinance and it is to the Immigration Appeal Tribunal ("IAT"), which as the effect of suspending the Board's decision. The IAT may confirm or overturn the decision and instruct the Board to give effect to his directions. Our immigration laws stipulate that the IAT's decision is final and shall not be reviewed by any court. Despite those provisions, English Administrative Law principles are generally available in the Islands and they allow executive decisions to be examined and overturned by the courts when they are manifestly against principles of natural justice or when no reasonable person could have arrived at the decision that is the subject of the appeal. Appeal are therefore possible, but the grounds for an appeal are narrow.

National Insurance

With few exceptions, all employers and employees between the ages of 16 and 65, who are gainfully employed, must make National Insurance contributions. Examples of such exceptions are employment by the spouse of an employed person and self-employed individuals who work less than ten hours a week.

An employer's contribution is 4.6% of the employee's gross earnings while the employee must pay 3.4% of this amount. Wages, however, exceeding US$600 a week, or US$2,600 a month, are ignored for the purpose of employer and employee contributions (and entitlements). The employer is responsible for deducting and paying the national insurance contributions.

National Health Plan
All employers and employees must make National Health Insurance Plan contributions.

An employer's contribution is 3% of the employee's gross earnings and the employee must pay an additional 3%. There is a minimum contribution of $50.00 that is paid for an employee regardless of the salary but wages exceeding US$7,800 a month are ignored for the purpose of employer and employee contributions. Self-employed persons pay a flat contribution of $250.00 a month and employees are responsible for contributing an additional $25.00 a month for any dependent spouse along with $10 a month for each dependent child, up to a maximum contribution of $30.00 for dependent children. The employer is responsible for deducting and paying the national health contributions of the employee.

Residence and Permanent Resident Permits ("PRCs")
Individuals who have held work permits for ten or more years, other than as an unskilled worker, qualify for the grant of a Permanent Residence Certificate with a right to work, provided they are of good health and do not have a police record. The fee on the grant of a PRC with the right to work is $10,000.00.

Up until September 2012 the law provided for seven different qualifications for the grant of a Permanent Resident Certificate, several of which was the making of an investment in the TCI. Those categories catered to individuals who were not interested in being gainfully employed and, when granted, such PRCs were endorsed with a prohibition against gainful employment. Investor PRCs are no longer available and it is our view that their exclusion was short sighted, that Government is likely to recognize that fact, and that there is likely to be an amendment in the medium term providing for a class of PRC for investors.