



TURKS AND CAICOS ISLANDS

CHAPTER 20.15

**INVEST TURKS AND CAICOS ISLANDS AGENCY
ORDINANCE**

Revised Edition

showing the law as at 31 March 2018

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance.

This edition contains a consolidation of the following laws—

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Ordinance 24 of 2014 .. in force 1 April 2015 (L.N. 28/2015)	
Amended by Ordinances 29 of 2015 .. in force 1 April 2016 (L.N. 23/2016)	
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No Subsidiary Legislation has been made under this Ordinance



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CHAPTER 20.15
INVEST TURKS AND CAICOS ISLANDS AGENCY ORDINANCE

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CHAPTER 20.15

INVEST TURKS AND CAICOS ISLANDS AGENCY ORDINANCE

(Ordinances 24 of 2014, 29 of 2015 and 10 of 2017)

AN ORDINANCE TO PROVIDE FOR THE ESTABLISHMENT OF AN INVESTMENT AGENCY TO PROMOTE THE DEVELOPMENT OF THE TURKS AND CAICOS ISLANDS; TO DEFINE THE POWERS OF THE AGENCY AND FOR PURPOSES CONNECTED WITH THE AFORESAID MATTERS.

Commencement

[1 April 2015]

PART I

PRELIMINARY

Short title

1. This Ordinance may be cited as the Invest Turks and Caicos Islands Agency Ordinance.

Interpretation

2. In this Ordinance—

“Agency” means the Invest Turks and Caicos Islands Agency established under section 3;

“Board” means the Board of Directors of the Agency established under section 9;

“Chairperson” means a person appointed as chairperson of the Board under section 9;

“Chief Executive Officer” means the Chief Executive Officer of the Agency appointed under section 22;

“director” means a member of the Board of Directors;

“member” means a member of a committee established by the Board;

“Minister” means the Minister responsible for investment.

PART II

INVEST TURKS AND CAICOS ISLANDS AGENCY

Establishment of Agency

3. (1) There is established an Agency to be known as the Invest Turks and Caicos Islands Agency.

(2) The Agency shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its own name, and subject to the provisions of this Ordinance, shall do or perform such acts or things as bodies corporate may, by law, do or perform.

Seal of Agency

4. (1) The seal of the Agency shall be such device as shall be determined by the Agency and shall be kept by the Chief Executive Officer.

(2) The affixing of the seal shall be authenticated by the Chairperson and the Chief Executive Officer, or any other person authorised in that behalf by a resolution of the Board.

(3) Any contract or instrument which if entered into or executed by a person who is not a body corporate is not required to be under seal, may be entered into or executed without a seal by the Chairperson, the Chief Executive Officer or any person authorised by the Board in that behalf.

Objects of Agency

5. The objects of the Agency shall be to stimulate, facilitate and undertake the development of the Islands by—

- (a) attracting foreign direct investment;
- (b) encouraging trade and investment;
- (c) stimulating, supporting and promoting domestic investment; and
- (d) facilitating public private partnership and other forms of commercial alliances.

Functions of Agency

6. (1) The functions of the Agency shall be to—

- (a) promote a good investment climate by engaging in an active marketing and promotion program;
- (b) enhance the competitiveness of the Islands by identifying issues that inhibit investment or that may open new streams of investment;
- (c) act as a catalyst for change by sharing experiences and advise the Government on ways to improve the trade and investment environment in all sectors and streamline processes, and on the benefits of policy change required and if any, costs to be incurred;

- (d) take initiatives and action to instigate and support policy change and reform;
- (e) translate, communicate and constructively present investor needs;
- (f) ensure credibility and communications at highest levels to inform and advance issues;
- (g) disseminate information to facilitate investment by using innovative approaches and building links between policy makers and investors;
- (h) develop partnership and credibility through networking with the public and private sector, and the civil society;
- (i) provide monitory, advisory and courtesy services, including after-care services to investors;
- (j) centralise administrative procedures required to authorise applications for foreign direct investment in accordance with the Encouragement of Development Ordinance and any other ordinances enacted to encourage investment or trade; and
- (k) engage in any economic activity that will stimulate sustainable development.

(2) In the performance of its functions, the Agency shall consider the economic and commercial merits of any undertaking it plans to initiate, assist or expand.

Powers of Agency

7. (1) The Agency shall have power—
- (a) to carry on any activities which are requisite, advantageous, or convenient for or in connection with the discharges of its functions;
 - (b) to promote other bodies or persons to carry on activities referred to under paragraph (a), and for that purpose, to establish, expand or promote the establishment or expansion of other bodies to carry on any such activities, whether under the full control or partial control of the Agency or independently;
 - (c) to give assistance to bodies or persons who have facilities to carry on the activities referred to under paragraph (a), which assistance except for the financial assistance provided under the Micro, Small and Medium Development Ordinance, shall not include financial assistance; (*Amended by Ord. 29 of 2015*)
 - (d) to appoint such agents or enter into such arrangements with suppliers it may consider necessary for the proper discharge of its functions; and

(e) with the specific authority of the Minister for any purpose whether or not directly related to its functions, to act as an agent for—

- (i) the Government or any department of Government; or
- (ii) any statutory body approved by the Government.

(2) The Agency shall carry on the activities referred to under subsection (1) in association with other bodies or persons, including Government authorities, or such bodies or persons shall carry on the activities as managing agents or on behalf of the Agency.

(3) Where the exercise of a power by the Agency under this section involves entering into a new activity or transaction by the Agency, the Agency shall first obtain the approval of the Minister before entering into such activity or transaction, and shall comply with the requirements provided under the Public Finance Management Ordinance.

Units of Agency

8. The structure of the Agency shall include the following Units, the—

- (a) Research and Marketing Unit which shall be responsible for—
 - (i) awareness building;
 - (ii) public relations; and
 - (iii) generating investment leads and research to support investor requests;
- (b) Investor Services Unit which shall—
 - (i) assist prospective investors and investors in obtaining permission and services related to foreign direct and domestic investment projects and proposals;
 - (ii) administer the Encouragement of Development Ordinance and other related Ordinances;
 - (iii) appraise and evaluate projects;
 - (iv) negotiate development agreements with prospective investors;
 - (v) conduct studies and research into identifying investment opportunities;
 - (vi) prepare feasibility studies and compile data relating to investment;
 - (vii) monitor and enforce compliance of development agreements, including recommendations to the Minister for cancellation of development agreements for non-performance;
 - (viii) ensure that all aspects of the investment process in the Islands, including the receipt and distribution of documents from foreign and domestic investors, timely receipt of Government approval, permits, grants, registrations, and to

facilitate communications between an investor and the Government and the fulfilment of any other regulatory authorisations are facilitated; and

- (ix) provide advocacy support;
- (c) Aftercare or Monitoring Unit which shall—
 - (i) monitor projects after approval; and
 - (ii) work with current investors to assist them to maximize their success and to reinvest their profits into new projects.

Board of Directors

9. (1) The Agency shall be governed by a Board of Directors which shall consist of the following five directors—

- (a) two persons appointed from the private sector;
- (b) the Permanent Secretary for Finance or his representative;
- (c) an attorney from the Attorney General Chambers with experience in civil and commercial transactions;
- (d) the Director of Strategic Policy Planning Department or his representative.

(2) The Chief Executive Officer shall be an *ex-officio* director of the Board.

(3) The directors shall be appointed by the Minister from persons with experience in trade, industry, finance, investment, accounting, commercial law, science or administration.

(4) The Minister shall appoint a Chairperson and Deputy Chairperson of the Board from amongst the directors.

(5) The Chairperson shall be appointed from amongst members from the private sector who have a successful track record and have operated at a senior level in business or any profession, or in a similar post.

(6) A director shall hold office for a term of three years, and shall be eligible for re-appointment.

Disqualification, removal and resignation of directors

10. (1) A person shall not be appointed as a director of the Board who—

- (a) has in terms of any law in force in any country or in the Islands –
 - (i) been adjudged or otherwise declared bankrupt or insolvent and has not been rehabilitated or discharged; or
 - (ii) made an assignment, arrangement or composition with his creditors, which has not been rescinded or set aside;

- (b) within a period of ten years immediately preceding the date of his proposed appointment, has been convicted—
- (i) in the Islands, of a criminal offence; or
 - (ii) outside the Islands, of an offence which if committed in the Islands would have been a criminal offence, and sentenced by a court of competent jurisdiction to imprisonment for six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he has not received a free pardon;
- (c) has been sentenced by a court of competent jurisdiction to a fine of \$500 or more, and the fine has not been paid for a period of three months or more; or
- (d) has been certified as being mentally ill or disordered.
- (2) The Minister may—
- (a) at any time revoke the appointment of a director as the Minister may think is expedient to do so; or
 - (b) may by notice in writing remove a director from office—
 - (i) in the event of the occurrence of anything which would render the director ineligible for appointment as director in terms of subsection (1);
 - (ii) where the director is absent without leave from the Chairperson from three consecutive meetings of which he has been given notice;
 - (iii) where the director contravenes the provisions of this Ordinance or otherwise misconducts himself to the detriment of the objectives of the Board and of the Agency, or of the public interest; or
 - (iv) where the director fails to comply with sections 17, 18 and 19.
- (3) A director may at any time resign his office by writing to the Chairperson, who shall forthwith cause the written resignation to be forwarded to the Minister.
- (4) For purposes of subsection (2)(b)(iii), “misconduct” includes any act done without reasonable excuse by a director which—
- (a) amounts to failure to perform in a proper manner any duty imposed on the director;
 - (b) is prejudicial to the efficient conduct of the Board; or
 - (c) tends to bring the Board into disrepute.

Vacation of office of director

- 11.** The office of a director shall become vacant—

- (a) in the event of the occurrence of anything which would render the director ineligible for appointment as director in terms of section 10(1);
- (b) upon the death of a director;
- (c) if the appointment of a director is revoked by the Minister, or the director has been removed from office in terms of section 10(2);
- (d) upon delivery of written resignation by the director in terms of section 10(3); or
- (e) if the director has contravened any provision of the Integrity Commission Ordinance.

Filling of vacancy

12. (1) Where the Minister is satisfied that a director is temporarily incapacitated by illness, absence or other cause from satisfactorily performing the duties of his office, the Minister may in terms of section 10(1), appoint another person to act temporarily in his place for a period not exceeding six months, as the Minister may specify.

(2) On the death of, or vacating of office by a director, the Minister shall in terms of section 10(1), appoint another person to be a director in place of the director who vacates office, for the remaining period of office of such director.

(3) Subsection (2) shall not apply where the remainder of the period for which the director whose office has been vacated is less than six months.

Publication of appointment, revocation or filing of vacancy

13. The appointment of, or vacation from office, of a person, either by death, revocation, resignation or otherwise shall be published in the *Gazette*.

Committees of Board

14. (1) The Board shall establish committees as it considers necessary to assist it in the exercise of its functions, and may delegate to such committees, such functions as it considers necessary or appropriate.

(2) The Board may appoint to such committees, at least two directors of the Board and such other number of persons as it considers appropriate, and such persons shall hold office for such period as the Board may determine.

(3) Subject to special or general directions of the Board, a committee may regulate its own procedure.

(4) Meetings of a committee shall be held at such place, day and time as a committee may determine, or as the Board may direct.

(5) A committee shall keep records of its meetings and report to the Board on its activities.

(6) The Board may by resolution, adopt or reject a report made to it by any committee, either wholly or with such modifications, additions or adaptations as the Board may see fit.

Remuneration, allowances and expenses

15. A director, member or any person co-opted to attend any meeting of the Board or committee, shall be paid such remuneration, allowances and traveling expenses incurred in connection with service on the Board or committee, as the Minister may approve.

PART III**MEETINGS AND PROCEEDINGS OF BOARD****Meetings of Board**

16. (1) Subject to this Ordinance, the Board shall regulate its own procedure.

(2) The Board shall meet as often as is necessary or expedient for the discharge of its functions, but in any case, at least four times a year, and such meetings shall be held at such place, day and time as the Chairperson in consultation with the Chief Executive Officer may determine.

(3) A meeting shall be called by the Chairperson upon giving written notice of not less than fourteen days.

(4) The Chairperson may call a special meeting—

(a) by giving a shorter notice where the urgency of any matter does not require the giving of notice in terms of subsection (3); or

(b) within seven days on written request addressed to him by any three directors.

(5) There shall preside at any meeting of the Board—

(a) the Chairperson;

(b) in his absence, the Deputy Chairperson; or

(c) in the absence of the Chairperson or Deputy Chairperson, a director elected by the directors present at a meeting for purposes of presiding over that meeting.

(6) A quorum at any meeting of the Board shall be three directors, one of whom shall be from the private sector.

(7) A decision of the Board shall be passed by a simple majority of the directors present and voting, and in the case of an equality of votes, the person presiding shall cast a vote in addition to his deliberative vote.

(8) The minutes of a meeting of the Board shall be kept in a proper form, and shall be confirmed by the person presiding as soon as practicable after any meeting, and before any subsequent meeting of the Board.

(9) The Board may co-opt any person whose presence it considers necessary to assist or advise at any deliberation of the Board, but such person shall not form part of the quorum or have any right to vote.

Disclosure of interest

17. (1) Where a director or member is present at a meeting of the Board or committee, at which meeting a matter which is the subject of consideration is one in which the director or member has any pecuniary interest, directly or indirectly, in a contract, proposed contract, licence or other matter, the director or member shall as soon as practicable after the commencement of the meeting and before the matter is discussed, disclose his interest and shall not, unless the Board or committee otherwise directs, take part in any consideration or discussion of any question touching upon such matter, but the director or member shall not be entitled to vote and shall withdraw from the meeting before a vote is taken.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it was made.

(3) Where a director or member fails to disclose his interest in terms of subsection (1) and a decision by the Board or committee is made benefiting the director or member, such decision shall be null and void to the extent to which it benefits that member.

(4) A director or member who fails to comply with subsection (1) commits an offence and is liable—

- (a) on summary conviction to a fine of \$20,000 or to imprisonment for a term of two years, or to both; or
- (b) on conviction on indictment to a fine of \$50,000 or to imprisonment for a term of three years, or to both.

Pecuniary interest

18. (1) For the purposes of section 17, a director or member shall be treated as having an indirect pecuniary interest in a contract, proposed contract, licence or other matter if—

- (a) the director or member or any nominee of his is a member of a company or other body which has a direct or indirect pecuniary interest in the contract, proposed contract, licence or other matter under consideration;
- (b) the director or member is a partner, or in the employment of a person with whom the contract was made or is proposed to be made, or who has a direct or indirect pecuniary interest in a contract, proposed contract, licence or other matter under consideration;
- (c) the director or member or any partner of his is a professional advisor to a person who has a direct or indirect pecuniary interest in a contract, proposed contract, licence or other matter under consideration; or
- (d) the director's or member's spouse or child has a direct or indirect pecuniary interest in a contract, proposed contract, licence or other matter under consideration.

(2) Subsection (1) does not apply to membership of, or employment by, any public body.

(3) The Chairperson may, subject to such conditions as he may determine, appoint persons to act as directors or members for any specified period, in any case in which the number of directors or members disabled by section 17 at any one time would be so great a proportion of the whole, as to impede the transaction of business of the Board or committee.

Confidentiality

19. (1) A director, member, officer or employee of the Agency, or any person assisting the Board, committee or Agency shall observe and preserve the confidentiality of all matters coming before the Board, committee or Agency, and such confidentiality shall subsist even after the termination of the term of office or the mandate.

(2) A director, member, officer or employee of the Agency, or any person to whom confidential information is revealed through working with the Board, committee or Agency shall not disclose that information to any person, unless he is required to do so in terms of any law or for purposes of any judicial proceedings.

(3) Any person who contravenes this section commits an offence and is liable—

(a) on summary conviction to a fine of \$20,000 or to imprisonment for a term of two years, or to both; or

(b) on conviction on indictment to a fine of \$50,000 or to imprisonment for a term of three years, or to both.

Submission of particulars for declaration

20. A director shall comply with the provisions of the Integrity Commission Ordinance, and shall submit all particulars required by that Ordinance to identify the director's assets, holdings, beneficial income and other relevant interests.

Validity of decisions

21. The validity of any act or proceedings of the Board or committee shall not be affected by any vacancy among its directors or members, or by any defect in the appointment of a director or member.

PART IV

CHIEF EXECUTIVE OFFICER AND STAFF OF AGENCY

Chief Executive Officer

22. (1) There shall be a Chief Executive Officer for the Agency who shall be appointed by the Minister on the recommendation of the Board, and upon such terms and conditions and for such period as may be determined by the Minister and specified in the instrument of appointment.

(2) A person shall not be appointed as a Chief Executive Officer unless the Minister is satisfied that the person possesses the appropriate qualifications and experience to undertake the duties, and the person demonstrates that he is competent to carry out the functions of the Agency.

(3) The Chief Executive Officer shall be a full time officer and employee of the Agency, and shall render his services exclusively to the Agency.

(4) The Chief Executive Officer shall be answerable to the Board for his actions and decisions.

(5) In the Chief Executive Officer's absence or inability to fulfil his functions, the Board may appoint a senior officer of the Agency to discharge the functions of the Chief Executive Officer during the period of absence or disability.

Functions of Chief Executive Officer

23. (1) Subject to the directions on matters of policy as may be given by the Board, the Chief Executive Officer shall be responsible—

- (a) for the day-to-day management of the affairs of the Agency;
- (b) the discharge of the Board's functions and the exercise of its powers; and
- (c) the discharge of such functions and exercise of such powers as may be assigned to, or conferred on him by this Ordinance, or that may be delegated to him by the Board.

(2) The Chief Executive Officer may delegate to any senior officer of the Agency, any powers that he is authorised to exercise under this Ordinance.

Staff of Agency

24. (1) The Board shall appoint the senior officers of the Agency and the Chief Executive Officer shall appoint such officers and employees as may be necessary for the proper discharge of the functions of the Agency.

(2) The terms and conditions of the staff of the Agency shall be determined by the Board, in consultation with the Minister.

Secretary

25. (1) There shall be a Secretary of the Board who shall be appointed by the Chief Executive Officer, with the approval of the Board, on such terms and conditions as may be specified in the instrument of appointment.

(2) The Secretary shall, in addition to any function that may be assigned to him by the Board or the Chief Executive Officer, be responsible for—

(a) taking the minutes of the meetings of the Board; and

(b) keeping the records of all decisions of the Board.

(3) The Secretary shall attend all meetings of the Board, but shall not have a right to vote on any matter before the Board.

(4) In the absence of the Secretary, the Chief Executive Officer may appoint any member of staff of the Agency to perform the functions of the Secretary until the Secretary resumes office or the vacancy is filled, as the case may be.

(5) In the performance of his duties, the Secretary shall be responsible to the Chief Executive Officer.

(6) The Chief Executive Officer may, with the approval of the Board, in writing, terminate the appointment of the Secretary, on such grounds referred to in the instrument of appointment.

PART V

FINANCIAL PROVISIONS

Funds of Agency

26. The Funds of the Agency shall consist of—

(a) such sums of moneys as may be appropriated by the House of Assembly for the purposes of the Agency;

(b) such grants, approved by the Minister, as the Agency may receive;

(c) such fees as the Agency may charge for services rendered by it; and

(d) any other moneys, other than penalties, to which it may be entitled in terms of this Ordinance.

Financial year

27. The financial year of the Agency shall be a period of twelve months commencing from 1 April and ending on 31 March.

Accounts and audit

28. The provisions of the Public Finance Management Ordinance in relation to the accounts and audits and reporting of a statutory body shall apply to the Agency.

Unexpended funds

29. Section 44 of the Public Finance Management Ordinance shall apply in relation to the unexpended balance of moneys appropriated to the Agency for any financial year. (*Inserted by Ord. 10 of 2017*)

PART VI

MISCELLANEOUS PROVISIONS

Indemnity

30. No matter or thing done or omitted to be done by a director, member, officer or employee of the Agency shall, if the matter or thing is done or omitted to be done in good faith and without negligence, in the course of the operations of the Agency, render a director, member, officer or employee of the Agency or any person acting by his direction, personally liable to an action, claim or demand.

Offences and penalties

31. A person who wilfully obstructs any officer or employee of the Agency in the performance of his functions under this Ordinance commits an offence and is liable on summary conviction to a fine of \$20,000, or to imprisonment for a term of two years, or to both.

Regulations

32. (1) The Minister may make regulations prescribing anything under this Ordinance which is to be prescribed or which is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Ordinance, or to give force and effect to its provisions.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations—

- (a) governing the proceedings of the Agency and the manner and transactions of its business;
- (b) prescribing such fees and charges to be paid under this Ordinance; and
- (c) any other thing as may be required for the proper implementation of this Ordinance.