

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

by Norman B. Saunders, Saunders & Co.

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 all the regulatory hurdles that a non-Belonger must cross before operating a business, before working, and before living in these Islands.

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 (i.e. 31st March), such amount being based on the annual business license fee. 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 nothing (e.g. farming and apartment rentals of fewer than two units) to ten thousand dollars (e.g. hotel accommodation of more than 100 rooms). Subject to payment of the annual fee licenses are granted indefinitely.

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 in the Business Licencing Regulations a list of twenty (20) are reserved for Belongers or Belonger-controlled businesses (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 these licenses undergo a more rigorous application process. Banking business, insurance business, the provision of professional trustee services, and the provision of Corporate Management and Agency Services all require licenses under separate legislation. Applicants and applications for these licenses are thoroughly 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 these obligations businesses need licenses to sell, distribute, or remove certain products. Intoxicating liquors, for instance, is a controlled substance and vendors require a liquor license, in addition to their business license, to dispense this substance to the public.

Underneath this regulatory framework are 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). There is proposed legislation that will soon add electricians, electrical engineers, and linemen to this privileged list.

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 if there is no remuneration (*i.e.* gainful employment), 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. These applications are made to the Immigration Board ("the Board"). Applications for work permits must include evidence of an applicant's good character, good health, a description of the relevant job to be performed, and a letter from the employer saying why the services of the applicant is required. The Board may, after considering all the evidence, grant a work permit if it feels the applicant 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.

A work permit application is submitted with a non-refundable administrative fee of one hundred dollars (US\$100) along with a fee payable on the grant of the permit. Currently, the fees range from US\$100 (e.g. farmers) to US\$7,000 (e.g. attorneys, accountants, etc.). 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 his residence in the Islands become unlawful and he is required to leave. The 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. The vast majority of work permits are granted for one year but this policy is presently under review. 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 the work permit in order to give them rights of residence. 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 fifty dollar fee to add a spouse and a twenty-five dollar fee for each child to be added to the work permit. It is the writer’s view, and hope, this policy will be revisited by Government.

If the Board refuses to grant a work permit its decision can be appealed. Such an appeal is to the Minister in charge of Immigration and the appeal has the effect of suspending the Board’s decision. The Minister may confirm or overturn the decision and instruct the Board to give effect to his directions. Our immigration laws stipulate that the Minister’s decision is final and shall not be reviewed by any court. Despite these 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. These are narrow grounds of appeal.

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.

Residence and Permanent Resident Permits ("PRCs")

There is a myriad of permits for those interested in residing in the Islands.

The Law recognize seven different qualifications for the granting of a Permanent Resident Certificate. The qualifications range from the holding of a work permit as an unskilled worker for a period of ten years or more to, simply, making an investment of US\$500,000 or more in a home or business in Providenciales. This second category of qualifications cater to individuals who are not interested in being gainfully employed. When granted, such a PRC is endorsed with a prohibition against gainful employment. Another category caters to individuals who invest US\$250,000 or more in a "**Development Enterprise**" in Providenciales or US\$125,000 in such an enterprise in one of the other islands. A Development Enterprise is one where there is a beneficial impact on employment and the economy. There is also a category for applicants who invest US\$50,000 or more in an "**Authorised Investment**". An Authorised Investment is a project that the Governor feels is of substantial contribution to the social and economic development of the Turks and Caicos Islands.

On the grant of a Permanent Resident Certificate, a fee is payable to the Government. Again, the amount payable varies from US\$250 to US\$50,000. Specifically, the amount payable depends on the category under which an applicant is granted a PRC. The fee payable on the grant of a PRC to a former dependent child of a permanent resident, for instance, is US\$250 while the fee payable by an investor is US\$15,000 and for a self-employed person with the right to work, it is US\$50,000.

SAUNDERS & CO

T.C.I. Attorneys at Law * P. O. Box 257 * Town Centre Building * Providenciales * Turks & Caicos Islands
Telephone: 01 (649) 941-4500 * Facsimile: 01 (649) 941-4533 * Email: info@saunders.tc
www.tciattorneys.com