

Regulations of Anguilla: ___/2020

Gazette Dated: _____, 2020

FINANCIAL SERVICES COMMISSION ACT
FINANCIAL SERVICES (PRUDENTIAL AND STATISTICAL
RETURNS) REGULATIONS, 2020

Regulations made by the Governor under section 57 of the Financial Services Commission Act.

Interpretation

1. In these Regulations, unless the context otherwise requires -

“Act” means the Financial Services Commission Act;

“Commission” means the Financial Services Commission established under section 2(1) of the Financial Services Commission Act;

“licence” means a licence, registration or recognition issued or granted under a financial services enactment as defined in the Act;

“licensee” means a person who holds a licence;

“prudential and statistical return” means a return in the form prescribed in the Schedule;

“semi-annual return period” means a period of 6 months commencing on 1st January or on 1st July, in each year.

Objectives

2. (1) The objectives of these Regulations are -

- (a) to facilitate the timely preparation and submission by licensees of prudential and statistical returns required by the Commission in order to enable the Commission -

- (i) to identify any problems on a timely basis to safeguard the interests of its licensees, the financial services industry and the reputation of Anguilla; and
 - (ii) to analyse and develop relevant statistical data for use by the Commission or for public dissemination; and
- (b) to enable the Commission to appropriately respond to requests for information consistent with its international obligations as a regulatory authority or by virtue of its membership, observer status or other connection with any domestic or international institution or pursuant to any memorandum of understanding or other agreement or commitment which is consistent with its functions as a regulatory body.

(2) A prudential and statistical return received by the Commission pursuant to these Regulations shall be used only for the purposes outlined in section 3(1)(g) of the Act and in pursuance of the objectives outlined in paragraph (1).

Filing returns

3. (1) A licensee shall file with the Commission a prudential and statistical return in accordance with the applicable requirements of the Schedule and these Regulations.

(2) It is the duty of a licensee to ensure that the information contained in any prudential and statistical return filed pursuant to paragraph (1) is accurate and complete.

(3) A prudential and statistical return filed under paragraph (1) shall not be considered to be properly filed or to be accepted by the Commission if—

- (a) it is not fully completed by providing all the relevant information required;
- (b) it contains any information that is materially inaccurate or misleading;
- (c) within a period of 7 days after the date it has been filed, the Commission rejects it and notifies the licensee concerned in writing, providing the reason for the rejection; or
- (d) regulation 7(2) applies, to the extent stated therein.

(4) For the purposes of—

- (a) paragraph (3)(a), a prudential and statistical return shall not be considered to be incomplete simply on account of the absence of information which does not apply in the case of the licensee

- concerned or which, on account of the licensee not engaging in any business for any particular period, is not available;
- (b) paragraph (3)(b), information contained in a prudential and statistical return is considered to be materially inaccurate or misleading if the Commission is satisfied that the information—
- (i) is wrong and cannot be relied upon for the purposes of section 3(1)(g) of the Act or regulation 2 of these Regulations;
 - (ii) has persistent errors that are not of a clerical nature; or
 - (iii) is otherwise provided in a manner not consistent with the requirements of the Schedule or these Regulations.

(5) For the purposes of paragraph (4)(a), the onus is on the licensee that claims to be unable to provide any required information in a prudential and statistical return on account of not having engaged in business for any particular period to prove the claim to the satisfaction of the Commission and in this regard the Commission may require such information as it considers appropriate.

Period for filing returns

4. (1) A person who holds a licence at the end of a semi-annual return period shall, within 21 days after the end of the semi-annual return period, file a prudential and statistical return of the person's licensed activity during the semi-annual return period.

(2) Notwithstanding paragraph (1), the following Sections of a prudential and statistical return shall be completed and filed with the Commission on a quarterly basis on or before the last day of the month following the end of the relevant quarter to which the return relates –

- (a) Section 3 - Data Security of the Licensee;
- (b) Section 5 - Professional Indemnity Insurance; and
- (c) Section 6 - Internal Controls Disclosures.

(3) Nothing contained in these Regulations affects the operation of any time frame for the provision of any report, statement, return or other obligation under the Act.

Extension for filing returns

5. (1) Subject to paragraphs (2) and (3), the Commission may, upon written application received from a licensee, grant an extension for the filing of a prudential and statistical return by the licensee for a period of up to 30 days.

(2) The Commission shall not exercise the power conferred under paragraph (1)—

- (a) unless the written application for extension of time is received by the Commission at least 14 days before the end of the relevant return period;
- (b) if a prudential and statistical return required of the licensee for any period remains outstanding prior to the date of receipt of the written application for extension of time;
- (c) if at the date of receipt of an application for extension of time any penalty imposed on or applicable to a licensee remains unpaid;
- (d) if the reason for the written application for extension of time relates to the absence of a particular officer from office, occurrence of a vacancy, shortage of staff or pressure of work or other similar reason; or
- (e) if for any reason the Commission considers that it is not appropriate or in the interest of the due performance of its functions to grant an extension of time.

(3) In making a decision on an application for extension of time under paragraph (1), the Commission shall have regard to the following matters—

- (a) whether the delay in submitting a prudential and statistical return is due to an act of nature beyond the control of the licensee, such as the occurrence of a hurricane, earthquake, tsunami or other natural cause which has affected the efficient functioning of the licensee;
- (b) whether the operations of the licensee have been adversely affected by a fire or flood on its premises or other premises at which it maintains its records and for which the licensee is not responsible;
- (c) whether the records of the licensee have been stolen or severely interfered with, so as to make it difficult to comply with the required deadline for the filing of prudential and statistical returns;
- (d) where audited financial statements are required but have not been received, whether there is a written confirmation from the licensee's auditor that the audit is incomplete and providing reason for the delay and when the audit is likely to be completed;
- (e) the compliance culture of the licensee and whether the licensee is likely to comply with its obligations if granted an extension of time;
- (f) whether there is any other reason provided by the licensee which the Commission considers compelling and acceptable.

(4) The onus is on the licensee that seeks to rely on any of the matters outlined in paragraph (3) to provide sufficient information to the Commission in support of its written application for extension of time and the Commission may require such other information from the licensee as it considers appropriate for the purpose of making its decision.

Rectification of filed returns

6. (1) Where, after filing a prudential and statistical return, a licensee becomes aware that the return contains information that is inaccurate or misleading, it shall, within 5 days of becoming so aware, notify the Commission of that fact in writing and provide the accurate information.

(2) Where, after receiving and accepting a prudential and statistical return filed with it, the Commission discovers or becomes aware of information in the return which it is satisfied is materially inaccurate or misleading, it shall notify the licensee in writing of that fact and require the licensee concerned to provide the accurate information within a period of 7 days from the date of the notification.

(3) Subject to regulation 3(3), no penalty applies in respect of any inaccurate or misleading information contained in a prudential and statistical return which has been discovered or become known by the Commission after the return had been filed with and accepted by the Commission, if the licensee concerned complies with the requirements of paragraph (1) or (2), as the case may be.

(4) The provisions of regulation 5 shall not apply to this section.

Electronic filing of returns

7. (1) For the purposes of regulations 3, 5 and 6, a licensee may file a prudential and statistical return, or effect a rectification to such return, in an electronic form by utilizing the forms of the returns as outlined in the Schedule and provided by the Commission on its website or through such other electronic medium as may be provided by the Commission.

(2) Where information relating to a prudential and statistical return is contained in a compact disk or other electronic storage device and transmitted for the purposes of satisfying the requirements of these Regulations, the return to which the compact disk or other electronic storage device relates shall not be considered to be properly filed and accepted by the Commission if the Commission—

- (a) is unable to load onto the Commission's systems the information contained in the compact disk or other electronic storage device; and
- (b) notifies the licensee concerned in accordance with regulation 3(3)(c).

Citation

8. These Regulations may be cited as the Financial Services (Prudential and Statistical Returns) Regulations, 2020.

SCHEDULE

(Regulations 1 and 3)

PRUDENTIAL AND STATISTICAL RETURNS

The Prudential and Statistical Returns in respect of 2020 are to be filed with the Financial Services Commission on or before .

Thereafter subsequent Prudential and Statistical Returns are to be filed with the Financial Services Commission on or before 30th June and 31 December in respect of the respective six-month periods immediately preceding.

ANGUILLA FINANCIAL SERVICES COMMISSION

PRUDENTIAL AND STATISTICAL RETURNS

FINANCIAL SERVICES COMMISSION ACT

SECTION 1 - GENERAL

1. Identifying information of Licensee:

1.1 Name

1.2 Licence/Certificate number

1.3 Corporate website

1.4 Reporting period [Month and Year]

1.5 Date of submission [Day, month and year]

1.6 Address of Registered Agent [Full physical address of Licensee's Registered Agent]

1.7 Authors of the Report [Names, job titles and sections completed by each relevant person]

1.8 Senior Officer/Director making submission [Name, job title, email address, contact number and date of submission]

1.9 Number of regulated subsidiaries [Insert number]

1.10 Number of un-regulated subsidiaries [Insert number]

1.11 Is the licensee a part of a group? [Y/N]

1.12 If yes, (i) please detail location of head office; and (ii) is the head office subject to prudential regulation.

SECTION 2 - CORPORATE GOVERNANCE OF LICENSEE

2.1 Directors [list directors]

2.2 Compliance Officer [name]

2.3 Money Laundering Compliance Officer [name]

2.4 Money Laundering Reporting Officer [name MLRO, if different from CO]

2.5 Senior Officers [Insert number]

2.6 Total Staffing Complement [Insert number]

2.7 Number of staff carrying out operations of the Licensee, but not directly employed by the Licensee [Insert number]

2.8 Disclosure of location of Licensee's Mind and Management

2.9 Has the Licensee's Board of Directors met formally with Shareholders (or a majority of shareholders) during the reporting period? [Y/N]

2.10 Disclosure of the frequency of Board meetings and established Board Sub-Committees [Insert number]

SECTION 3 - DATA SECURITY OF THE LICENSEE

3.1 Was there a review of the Licensee's data security for the reporting period? [Y/N]

3.2 Has the Board reviewed any reports regarding the testing of data security for the reporting period? [Y/N]

3.3 What areas were tested towards the security and integrity of the Licensee's data, if conducted, during the reporting period? Tick boxes with the following:

Penetration testing

Compliance testing

Data Integrity testing

User testing

Other

3.4 Has the Licensee carried out training of staff to ensure user education and awareness of cyber security risks during the reporting period? [Y/N]

3.5 Where is the Licensee's data located?

3.6 Is the Licensee's back-up data storage located in the same jurisdiction? [Y/N]

4. SECTION 4 - ACCOUNTING INFORMATION

5. SECTION 5 - PROFESSIONAL INDEMNITY INSURANCE INFORMATION

6. SECTION 6 - INTERNAL CONTROL DISCLOSURES

6.1 Does the Licensee maintain a log of all complaints? [Y/N]

6.2 Have any complaints been received during the reporting period? [Y/N]

6.3 If yes, how many of these complaints have been deemed serious complaints?

6.4 Name of the Senior Officer(s) responsible for addressing the serious complaints.

6.5 Are serious complaints escalated to the Board if unresolved for 30 days?
[Y/N]

6.6 Are any serious complaints that have been raised during the reporting period pending? [Y/N]

6.7 Has the Licensee conducted an Internal Audit during the reporting period?
[Y/N]

6.8 If yes, please provide a brief summary of the findings.

6.9 Has the Licensee conducted any other review of staff's compliance against internal controls and procedures during the reporting period? [Y/N]

6.10 If yes, please provide a brief summary of the findings.

6.11 Has the Licensee commenced, and or concluded the Audit process during the reporting period? [Y/N]

SECTION 7 - MANAGED TRUST ENGAGEMENTS

7.1 Does the Licensee act as a Managing Trust Company? Y/N

If yes, go to MTC Part A

7.2 Is the Licensee a Managed Trust Company? Y/N

If yes, go to MTC Part B

MTC – Part A

7.3 The number of licensees it is managing.

7.4 The number of staff dedicated to carrying out the activities of the managed trust companies (and whether those resources are shared or dedicated to specific managed trust companies).

7.5 Whether any managed trust company agreements have been amended or revised during the reporting period.

7.6 Whether the managing trust company has submitted any reports to the controllers (i.e., shareholders) of the managed trust company during the period under review. If yes, nature of report.

7.7 Whether the licensee provides any similar service for a non-Anguillian entity.

7.8 Corresponding fields of entry for each question or matter raised.

MTC – Part B

7.9 If yes, the name of the Managing Trust Company.

7.10 The number of staff dedicated to carrying out the activities of the managed trust companies.

7.11 Whether any managed trust company agreements have been amended or revised during the reporting period.

7.12 Whether the managing trust company has submitted any reports to the controllers (i.e., shareholders) of the managed trust company during the period under review. If yes, nature of report.

7.13 Whether the licensee anticipates continuance of the managed trust relationship for the next calendar year.

7.14 Corresponding fields of entry for each question or matter raised.

SECTION 8 - FIDUCIARY SERVICES - GENERAL

8.1 Geographic location of client base

Caribbean	<input type="text"/>
Asia Pacific Region	<input type="text"/>
Russia	<input type="text"/>
Europe, ex-UK	<input type="text"/>
United Kingdom	<input type="text"/>
USA	<input type="text"/>
Canada	<input type="text"/>
Middle East	<input type="text"/>
Africa	<input type="text"/>
India	<input type="text"/>
Central and South America	<input type="text"/>
Other	<input type="text"/>

8.2 Risk Spread of client base. Percentage of client base rated as:

High risk	<input type="text"/>
Medium risk	<input type="text"/>
Low risk	<input type="text"/>
Not assessed	<input type="text"/>

8.3 Please state the percentage of clients that have been sourced from third parties. [Insert percentage]

8.4 Please confirm whether agreements between the Licensee and all third parties have been ratified. Y/N

SECTION 9 - FIDUCIARY SERVICES – CORPORATE STRUCTURES

9.1 Please state the total number of corporate structures (companies, partnerships) held on the Licensee’s portfolio. [Insert number]

9.2 Please state the total number of corporate structures (companies, partnerships) for which the Licensee provides administration and/or management services. [Insert number]

9.3 Please state the total number of corporate structures (companies, partnerships) for which the Licensee handles clients’ monies. [Insert number]

9.4 Please state the total value of clients’ monies under management by the Licensee. In USD. Aggregate value. No rounding.

9.5 Confirm whether the Licensee provides services for non-Anguillian corporate structures. [Y/N]

9.6 Please state the number of corporate structures for which the Licensee provides directorship services. [Insert number]

9.7 Please state the number of corporate structures for which the Licensee provides shareholder services. [Insert number]

9.8 Please state the number of corporate structures for which the Licensee provides secretarial services. [Insert number]

9.9 Please state the number of corporate structures for which the Licensee provides other value-added services (such as registrar, transfer agent, etc.). [Insert number]

SECTION 10 - FIDUCIARY SERVICES – TRUST STRUCTURES

10.1 Please state the total number of trust structures under administration by the Licensee. [Insert number]

10.2 Please state the total number of AStRA trusts under administration by the Licensee. [Insert number]

10.3 Please state the value of trusts under administration by the Licensee. In USD. Aggregate value. No rounding.

10.4 Please state how many Private Trust Companies are within the Licensee's portfolio. [Insert number]

10.5 Please confirm whether the Licensee acts as trustee for non-Anguillian trust structures. [Y/N]

10.6 Please state the number of trusts for which the Licensee acts as a Protector. [Insert number]

10.7 Please state the number of trusts from which the Licensee has retired during the reporting period. [Insert number]

SECTION 11 - OTHER DISCLOSURES

11.1 Are there any other matters which should be brought to the Commission's attention? [Y/N]

11.2 If yes, please provide details

11.3 How many entities for which the Licensees are the Registered Agents?

11.4 Check all sectors that apply:

Fiduciary Services

Investment Business

Insurance Business

Financing and Money Services Business

Banking Business

Other (e.g., NPO, AUTO, etc.) [Insert number]

11.5 Are any of the entities licensed in another jurisdiction? [Y/N]

11.6 Has the Licensee contracted for any consultancy services during the reporting period? [Y/N]

11.7 If so, please provide the name of the contracted business/person and nature of service.

12. DECLARATION

I certify that this return represents a true and fair view of the company's position as at the above reporting date.

I undertake that if there are further material facts affecting the company's affairs which, in my judgment, should be disclosed, I shall promptly advise the Financial Services Commission.

(Name of person completing form)

(Fax number of person completing form)

(Telephone number of person completing form)

(Email address of person completing form)

(Name of Director or Senior Manager)

(Position held)

(Signature of Director or Senior Manager)

(Date)

Made by the Governor this day of , 2020

GOVERNOR OF ANGUILLA