



ANGUILLA FINANCIAL SERVICES COMMISSION

GUIDELINES FOR THE RETENTION OF RECORDS

(Issued under Section 61 of the Financial Services Commission Act, R.S.A. c. F28)

1. Introduction

1.1 Section 61 of the **Financial Services Commission Act, R.S.A. c. F28** (“the Act”) states that the Anguilla Financial Services Commission (“the Commission”) may issue guidelines with respect to—

- “(a) compliance by licensees and or registrants with the Act, the financial services enactments and the Regulatory Codes;*
- (b) any matter required or permitted to be specified or provided for in a Regulatory Code; and*
- (c) such matters as it considers relevant to its functions.”*

Guidelines may make different provision in relation to different persons, circumstances or cases. All guidelines must be published in the Gazette in order to come into force.

1.2 This document establishes the Commission’s statement of guidance on the retention of records and may be referenced as the “Record Retention Guidelines”. It should be read in conjunction with all regulatory instruments issued by the Commission.

2. Objectives

2.1 The Record Retention Guidelines seek to ensure that persons and entities regulated and or registered under any financial services enactment as covered by **Sections 1 and 3 of the Act** as well as Schedule 2 of the Anti-Money Laundering and Terrorist Financing Regulations, R.S.A. c. P98 (“the AML/CFT Regulations”) maintain their records in a manner that promotes accessibility, retention and appropriate security. One of the primary reasons compliance in this area is required is for the facilitation of investigation



and prosecution by law enforcement agencies (locally and overseas) in anti-money laundering and combatting of terrorist financing matters. “If the funds used to finance money laundering and terrorist activity cannot be traced back through the financial system, it will not be possible to identify the sources and the destination of funding.”¹ Retention of and availability of documentation is therefore critical in this regard.

3. Scope of Application of the Record Retention Guidelines

- 3.1 Section 21 of the Act gives the Commission the right to obtain and inspect records from any licensee. Additionally, sections 34 through to 37 of the Anti-Money Laundering and Terrorist Financing Code, R.R.A. P98-5 (“AML/CFT Code”) as well as the Proceeds of Crime Act, R.S.A. c. P98 (“POCA”) and AML/CFT Regulations² also require the maintenance and retention of records. The Record Retention Guidelines therefore apply to³,
- a. Banks, trust companies and other service providers licensed under the Trust Companies and Offshore Banking legislation⁴;
 - b. Company Managers and corporate services providers licensed under the Company Management legislation⁵;
 - c. Funds, trusts, partnerships, managers, investors and administrators licensed under the Mutual Funds legislation⁶;

¹ Paragraph (i), Introduction, Guidance notes, Section 39 AML/CFT Code

² That is, the Anti- Money Laundering and Terrorist Financing Regulations, R.S.A. c. P98; the Anti- Money Laundering and Terrorist Financing (Amendment) Regulations, R.A. 24 of 2018 and the Anti-Money Laundering and Terrorist Financing (Amendment) Regulations, R.A. 87 of 2020;

³ Any legislation listed in paragraph 3.1 of the Record Retention Guidelines is for guidance only, non-exhaustive and meant to include any other applicable legislation passed after the issuance of the guidelines herein.

⁴ Trusts Act, R.S.A. c. T70; Trust Companies and Offshore Banking Act, R.S.A. c. T60; Trust Companies and Offshore Banking (Fees) Regulations, R.R.A. T60, Trusts Companies and Offshore Banking (fees) (amendment) Regulations, R.A. 35 of 2015 and R.R.A. T60 and Prohibition of Licensing of Shell Banks Regulations R.R.A. T60. This will, eventually include the Trusts and Corporate Service Providers legislation when passed by Parliament.

⁵ Company Management Act, R.S.A. c. C75; Company Management Regulations, R.R.A. C75 and Company Management Fees Regulations, R.R.A. C75

⁶ Mutual Funds Act, R.S.A. c. M107 and Mutual Funds Regulations, R.R.A. M107



- d. Insurance companies, brokers, managers, agents, sub-agents and principal representatives licensed under the Insurance legislation⁷;
- e. Money services businesses providers licensed under the Money Services Business legislation⁸;
- f. Issuers, and administrators licensed under the Utility Token Offerings or Utility Token Exchanges legislation⁹
- g. Externally and non-regulated service providers, non-profit organisations, corporate societies, regulated under the Proceeds of Crime and other legislation¹⁰

For the specific purposes of the Record Retention Guidelines, all entities falling within the above description will be referred to as “Regulated Persons”.

- 3.2 The Commission acknowledges that the arrangements for record keeping will vary according to the manner in which the business of a Regulated Person is structured, organised and managed; its size; and the nature, volume and complexity of its transactions and commitments.

⁷ Insurance Act, R.S.A. c. I16; Insurance (Amendment) Act, No 6 of 2018; Insurance (Amendment) (No. 2) Act, No 10 of 2018; Insurance Regulations, R.R.A. I16; Insurance (Amendment) Regulations, R.A. 45 of 2014; Insurance (Amendment) Regulations, No 16 of 2018;

⁸ Money Services Business Act R.S.A. c. M104 and Payment System Act R.S.A. c. P18

⁹ Anguilla Utility Token Offering Act, No 4 of 2018; Anguilla Utility Token Offering (Application Process) Regulations, R.A. 19 of 2018; Anguilla Utility Token Offering (White Paper) Regulations, R.A. 20 of 2018; Anguilla Utility Token Offering (Levy) Regulations, R.A. 21 of 2018; Anguilla Utility Token Offering (Anti-Money Laundering and Terrorist Financing) Regulations, R.A. 22 of 2018; Anguilla Utility Token Offering (Application Process) (Amendment) Regulations, R.A. 82 of 2020; Anguilla Utility Token Offering (White Paper) (Amendment) Regulations, R.A. 83 of 2020; Anguilla Utility Token Offering (Levy) Regulations, R.A. 84 of 2020; Anguilla Utility Token Offering (Anti-Money Laundering and Terrorist Financing) Regulations, R.A. 85 of 2020; Anguilla Utility Token Offering (Qualified Company) Regulations, R.A. 86 of 2020; Utility Tokens Exchange Act, No 10 of 2020; Utility Tokens Exchange (Application Process) Regulations, R.A. 88 of 2020; Utility Tokens Exchange (Levy) Regulations, R.A. 89 of 2020 and Utility Tokens Exchange (Anti-Money Laundering and Terrorist Financing) Regulations, R.A. 90 of 2020

¹⁰ Proceeds of Crime Act, R.S.A. c. P98; Proceeds of Crime (Transitional) Regulations, R.R.A. P98; Anti-Money Laundering and Terrorist Financing Regulations, R.R.A. P98; Anti-Money Laundering and Terrorist Financing Code, R.R.A. P98; Anti-Money Laundering and Terrorist Financing (Amendment) Regulations, R.A. 24 of 2018; Anti-Money Laundering and Terrorist Financing (Amendment) Regulations, R.A. 87 of 2020; Externally and Non-Regulated Service Providers Regulations, R.R.A. P98; Externally and Non-Regulated Service Providers (Amendment) Regulations, R.A. 32 of 2015; Non-Profit Organisations Regulations R.R.A. P98-2; Friendly Societies Act, R.S.A. c. F65; Co-operative Societies Act R.S.A. c. C115



- 3.3 Further, Regulated Persons that are part of a group may be subject to group-wide record keeping practices. In such cases it remains important that Regulated Persons adopt record keeping practices that meet the objectives of the Record Retention Guidelines, as prove particularly appropriate for their operations. It is therefore advisable that Regulated Persons attempt to achieve group wide standards that are in alignment with the Record Retention Guidelines. Please also note that records pertaining to Regulated Persons, that are kept by non-relevant entities within a group, must remain accessible to the Commission at all times. Sufficient security measures must also be put in place to safeguard and preserve the documents' integrity.
- 3.4 The overriding principle is that the records and system of records must be adequate to satisfy the requirements of the Commission and relevant regulations and laws. Always bear in mind that all regulatory laws allow the Commission to access and inspect records maintained by Regulated Persons.
- 3.5 These guidelines are not intended to be prescriptive or exhaustive. Instead, they set out the Commission's minimum expectations for the record keeping arrangements of any Regulated Person. While the Record Retention Guidelines apply to all Regulated Persons and Regulated Persons, they do not codify or amend any existing law. Where they are incompatible with existing legislation, legislation takes precedence and prevails. The Commission will consider the Record Retention Guidelines in its supervisory processes, including but not limited to onsite inspections.

4. General

- 4.1 A "record" has the same meaning as "document" as defined in Section 1 of the Act and "electronic record" has the same meaning as defined in Section 1 of the Electronic Transactions Act R.S.A. c. E38. ("the ETA"). "Original records" include records originating electronically or electronic copies of paper-based records. All records must be legible, whole and intact and easily accessible.



- 4.2 All Regulated Persons must keep maintained records of books of accounts and other financial affairs as well as other records.¹¹ Some examples include:
- a. Corporate accounting records;
 - b. Organizational records;
 - c. Training logs, employee records and other administrative records;
 - d. Risk management policies;
 - e. Corporate records such as incorporation documents and shareholders and directors' meeting minutes and board resolutions;
 - f. Client records such as client communication and complaints records;
 - g. Service provider records such as copies of contracts and agreements;
 - h. Customer due diligence records;
 - i. Annual returns; and
 - j. Any other records as required by legislation.
- 4.3 Regulated Persons should ensure that their records, including accounting records, are maintained using an appropriate record management system and in a manner that allows the Commission ease of accessibility. Records may be kept in an electronic or other form, other than paper based so long as the integrity, security and authenticity of the document is not compromised. The integrity of all documents involved must remain intact throughout their period of storage.
- 4.4 It is a requirement that a records management system be established. This system must adequately address record categorization and organisation, maintenance and updates, applicable retention periods, continued, safe accessibility and storage and safe, authorised and documented disposals. These considerations must include scenarios where the Regulated Person ceases to provide the licensed service for any reason including being struck off, liquidation, bankruptcy, winding up, etc. The system must include a comprehensive record retention policy that is in line with all applicable

¹¹ See section 8 of the guidelines herein



legislation and any other legal requirements. Therefore, the considerations herein are not exhaustive.

- 4.5 Records provided by third parties may only be rightly utilized if they have been duly verified with the Regulated Person (particularly those originating from overseas jurisdictions) and or reconciled with records held by the Regulated Person. Where this requirement is proven to be impractical, the Regulated Person retains ultimate responsibility for not only the authenticity of the record, its retention and timely accessibility and all other record keeping requirements.

5. Electronic Records

- 5.1 All electronic records are statutorily governed by the same requirements as non-electronic records.¹² Electronic records are therefore to be treated with the same importance as paper-based records. All Regulated Persons are strongly advised to familiarize themselves with the ETA.
- 5.2 The scanning of paper-based records, and the creation, retention, storage, and disposal of records, using emerging technologies such as cloud-based services should adhere to the same or even higher record-keeping standards as in the case of paper-based records. The use of technology to handle records does not absolve a Regulated Person of any regulatory or legal obligations for record-keeping. In fact, due to the additional security risks and ease of manipulation often involved in maintaining electronic records, Regulated Persons should ensure that digital audit trails, signature devices and other information security features, such as customised access based on company authorisation level, adequate data backups to guard against inadvertent data loss, and other procedures are installed to safeguard electronic records. They should also consider obtaining the services of an information security service provider or installing the relevant hardware to help ensure that the authenticity, time of processing and integrity of their records are able to be ascertained.

¹² The interpretation of “document” (Section 1) in both the Act and the POCA includes “...any record of information or data, however compiled, and whether stored in paper, **electronic**, magnetic or any non-paper based form and any storage medium, including discs and tapes...” (Emphasis added)



- 5.3 The Commission understands that electronic records can be more practical than paper-based records for disaster preparedness and storage reasons. Therefore, record retention may be in the form of electronic records unless specified otherwise by legislation. Electronic records must be of good quality, be an accurate reflection of the paper-based record (where one exists), must be complete and unaltered, and be easily accessible and reproduced in hard copy. They must also be retained in format generated, sent or received, or in a format which can be demonstrated to represent the document accurately. Any information that enables the identification of the origin and destination of the record and the date and time when it was sent and received should be retained; and appropriate steps taken to ensure the security of such electronic records.
- 5.4 The Commission expects that Regulated Persons will use caution to prevent the premature destruction of paper-based records which have been converted to electronic records. Protocols must be put in place to forestall the destruction of converted paper based records until proper and recorded data integrity checks are made and attested to by the Regulated Person's officers. It is important that the necessary safeguards are in place and that consideration of the legal, regulatory and organizational requirements and recommendations be made before determining their conversion.

6. Maintenance of Records

- 6.1 All companies are under a duty of care regarding the records they are required to maintain. This means that companies (and their agents) must take reasonable precautions to prevent loss or destruction or falsification of any document. Companies must also create a system that facilitates the detection and or correction of inaccuracies in records or the record keeping process.
- 6.2 Companies are required to prepare and maintain records, at their registered offices, containing—
- a. the articles and the by-laws, and all amendments to them, and a copy of any unanimous shareholder agreement and amendments to it;
 - b. minutes of meetings and resolutions of shareholders, directors and any committee of the directors;



- c. copies of all notices required such as those notifying a change in directors, registered agent, registered address, etc; and
- d. required registers, such as registers of shareholders or of directors.¹³

6.3 Companies that issue debentures must also maintain a register of debenture holdings showing the personal details, principals, the date of entry or removal from the registry of each debenture holder. In addition, the amount or the highest amount of any premium payable on redemption of the debentures and the issue price of the debentures and the amount paid up on the issue price must also be recorded. Once a company grants conversion privileges, options or rights to acquire shares they must also maintain a register showing the name and latest known address of each person to whom any of these have been granted (and any other particulars) must be kept. Debenture and conversion registers may be kept at any place the directors (by resolution) decide and need not be kept at the registered office.

Public companies

- 6.4 In addition to the above, public companies whose shares are listed on an appointed stock exchange may keep their register of shareholders outside Anguilla at a place in the country in which the appointed stock exchange is located. It must be noted however that, a copy of the register of shareholders as at the end of the last day of each calendar quarter must be sent to the registered office within 14 days of the end of each quarter. These must be kept at the registered office.
- 6.5 In addition, companies who are Regulated Persons must record information likely to be required by the Commission and are required to keep records that are sufficient to show and explain the company's transactions for the purposes of POCA,¹⁴ a copy of the evidence of identity obtained through any customer due diligence measure, ongoing monitoring or information that enabled the acquirement of the record to begin with. In addition, the following records must also be retained,
- a. the supporting documents, data or information that have been obtained in respect of a business relationship or occasional transaction which is the subject of customer due diligence measures or ongoing monitoring;

¹³ See Section 154 of the Companies Act

¹⁴ As per Section 17 of the AML/CFT Regulations R.S.A. c. P98



- b. a record containing details relating to each transaction carried out by the service provider in the course of any business relationship or occasional transaction;
- c. all account files; and
- d. all business correspondence relating to a business relationship or an occasional transaction.¹⁵

6.6 Regulated Persons who are licensed to conduct business pursuant to the Company Management Act, in addition to the above, are required to have local custodians.¹⁶ They must file the name and contact details of their custodians with the Commission. This should be done in the event the Licensee applies to surrender their license or a revocation.

7. Maintenance of Accounting Records

- 7.1 Accounting records must be maintained in such a way as to enable a particular transaction to be identifiable at any time and traced through the accounting systems of the Regulated Person, in particular in such manner as to enable early reconciliation of balances and of the particular items which make up those balances. Proper accounting records must be sufficient to show and explain transactions and commitments (for the Regulated Person) so that these records may,
- a. accurately disclose the Regulated Person's financial position for a minimum of six (6) years of operation¹⁷;
 - b. demonstrate the Regulated Person's compliance regarding financial resources requirements as stated by the Commission or relevant legislation, where applicable (e.g. capital requirements, liquidity, etc); and

¹⁵ As per Section 35 – 39 of the AML/CFT Code including the guidance notes (i) – (vii) following same

¹⁶ This amendment is from Section 2 of the proposed Company Management Bill, 2020, which is currently before Parliament and due to be passed shortly. Section 2 of this Bill amends Section 11 of the current Company Management Act.

¹⁷ In light of the requirements under Section 129 of the Companies Act, R.S.A. c. C65 and Section 65(2) of the International Business Companies Act, R.S.A. c. I20, which requires that all accounting records (for any entity covered by these Acts) be maintained for a period of six (6) years. This six (6) year period requirement remains notwithstanding that in the case of entities not covered by these Acts, POCA and the AML/CFT Code and Regulations require that accounting records be maintained for a minimum of five (5) years.



- c. enable the Regulated Person's timely preparation of any financial reporting statement required by the Commission as at the close of business for any date within the previous six (6) years.¹⁸

In some cases, this requirement may include information that belongs to the Regulated Person's clients.¹⁹

- 7.2 At a minimum, the accounting records of a Regulated Person must contain,
 - a. a record of all assets and liabilities, the nature of all income and expenditure of the Regulated Person including any commitments or contingent liabilities;
 - b. a record of all investments or documents of title in the possession or control of the Regulated Person showing the physical location, the beneficial owner, the purpose for which they are held and whether they are subject to any charge;
 - c. entries from day to day of all sums of money received and expended by the Regulated Person, whether on its behalf or on behalf of others (including clients), and the matters in respect of which the receipt and expenditure takes place;
 - d. entries from day to day of all purchases and sales of investments by the Regulated Person, distinguishing those which are made by the Regulated Person on its own account and those which are made by or on behalf of others (including clients); and
 - e. entries from day to day of the receipt and dispatch of documents of title, which are in the possession or control of the Regulated Person.

- 7.3 These requirements remain in place where Regulated Persons keep accounting records outside of the jurisdiction. Additionally, in these instances Regulated Persons must ensure that they keep at their locally registered office (a) accounts and returns adequate to enable the directors of the company to ascertain the financial position of the company on a quarterly basis and- (b) a written record of the overseas location where its written accounts are kept.²⁰

¹⁸ *Ibid*

¹⁹ As in the case of transactions with a client or involving a client as per Section 129 of the Companies Act, *supra*

²⁰ Section 128 of the Companies Act, *supra*; Section 9 of the AML/CFT Regulations, R.S.A. c. P98; Section (xvi-xvii) of Guidance notes under Section 2 of the AML/CFT Code;



8. Maintenance of Records outside of Anguilla

- 8.1 In most instances, Regulated Persons are not restricted from keeping certain records outside of Anguilla. In addition, the Commission may give approval, where appropriate, to permit the maintenance of records outside Anguilla. Regulated Persons that maintain their accounting and other records in a location outside of Anguilla, should also ensure that,
- (a) the data is kept secure and they mitigate against operational risk; and
 - (b) they are familiar with Sections 25 through to 31 of the Act and Section 2 of the Confidential Relationships Act R.S.A. c. C85.
- 8.2 Regulated Persons must ensure that the Commission will have access to all records kept overseas at all reasonable times in accordance with the relevant legislation. Where records are maintained outside Anguilla through outsourcing, storage, or other arrangements, the Regulated Person remains ultimately responsible for record keeping requirements and accessibility to records by the Commission. These requirements remain whether or not the Regulated Person has a physical presence in Anguilla. In light of this, Regulated Persons should maintain a local and complete copy of any record kept overseas, where access to those records by the Commission is likely to be delayed, restricted or prevented, to ensure their accessibility.²¹

9. Record Management

- 9.1 Regulated Persons must maintain adequate procedures for the availability, maintenance, security, privacy and preservation of records, working papers and documents of title belonging to clients, other Regulated Persons or any other person so that they are reasonably safeguarded against loss, unauthorised access, alteration or destruction. This includes records retained electronically or by any other medium and records retained on behalf of other Regulated Persons. A Regulated Person should review its record keeping arrangements periodically, including where third parties are involved, and make adjustments if necessary.

²¹ Examples of where accessibility to overseas records may be affected in the case of confidentiality concerns (legislative or otherwise), data protection restrictions, legislative requirements which take precedence over and or conflict with Anguillan law and or Court action.



- 9.2 Records should be retained in the English language or be professionally and certifiably translated into standard written English without delay at the request of the Commission. Where records are translated, the original language version must be retained by the Regulated Person.²²

10. Records Accessibility

- 10.1 Accessible records are records that can be provided by the Regulated Person to the Commission within a reasonably short timeframe – between 24 hours and up to three (3) business days or within the timeframe as determined from time to time by the Commission. This requirement remains the same whether the document is stored within the jurisdiction or not.
- 10.2 It is important to remember that in addition to the Commission, directors and shareholders, their agents and legal representatives, may examine, inspect and take extracts (free of charge) during business hours of any of the records listed in paragraph 6.2 herein in Anguilla. This is a statutory entitlement. Directors and shareholders must be provided with a copy of the register of shareholders within five (5) business days of receipt of their written request. Shareholders are entitled to a copy of the articles, by-laws, and unanimous shareholders' agreements on request and subject to? the payment of any fees set by the directors to defray the costs of providing these.

11. Records Retention Timeframes

- 11.1 Record retention timeframes are governed by statute. Records kept by entities governed under the Companies²³ and International Business Companies Acts²⁴ have a record retention period of six (6) years. Those governed solely by POCA will have a record retention period of five (5) years. This period relates specifically to each document and commences from the date of the document or the date the document was created, whichever is later. The stipulated period does not refer to documents in bulk.

²² Translation to standardised English is only required in instances requested by the Commission.

²³ *Supra*, note 18, page 9

²⁴ *Supra*, note 18, page 9



11.2 Accounting records in particular must be maintained for six (6) years. This is counted from (a) the date on which all activities taking place in the course of that transaction in question were completed or (b) the date the business relationship ended for whose formation the record was compiled.²⁵

11.3 In consideration of all of this, it is best that Regulated Persons maintain records in the original format for a minimum period of six (6) years after the transaction date or any other period as stipulated in legislation. This requirement is without prejudice to other legal obligations a Regulated Person may have for record retention.²⁶ Original format includes electronic versions and copies of original documents, certified where appropriate or any combination of these.

Liquidation or striking off of companies

11.4 It is important that all Regulated Persons are aware that **all** companies, including international business companies, are required to retain all records for a minimum period of six (6) years from the date of cessation of business. This remains the case regardless of the reason for cessation of business, i.e. striking off, liquidation, dissolution, revocation of applicable licenses, etc.

11.5 Where an international business company (“IBC”) has been struck off, its directors are required to retain its accounting records for a period of six (6) years after the company was struck off. Where the IBC has been wound up and liquidated, its liquidators hold this responsibility.

²⁵ *Supra*, note 18, page 9

²⁶ For example, where a fiduciary relationship has been formed with clients it may be necessary to keep records for longer periods of time. In the case of trusts for example, in instances where the requirement to keep records may last for the life-time of the trust.