



# The Financial Services Commission, Anguilla's AML/CFT oversight body

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MLRA, its members, remit and work

Commission responsibilities and powers under FSC Act and POCA

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# Overview

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# Regional & International Obligations

- The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions.
- FATF's mandate is to set standards and to promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and the financing of proliferation, and other related threats to the integrity of the international financial system.
- FATF issued Recommendations in relation to money laundering and terrorist financing.
- CFATF is an organisation of thirty states of the Caribbean basin, which includes Anguilla.



# International Standards – FATF Recommendations

The FATF Recommendations set out the essential measures that countries should have in place to –

- Identify the risks, and develop policies and domestic coordination;
- Pursue money laundering, terrorist financing and the financing of proliferation;
- Apply preventive measures for the financial sector and other designated sectors;
- Establish powers and responsibilities for the competent authorities (e.g., investigative, law enforcement and supervisory authorities) and other institutional measures;
- Enhance the transparency and availability of beneficial ownership information of legal persons and arrangements; and
- Facilitate international cooperation.



# Applicable Legislation

- Financial Services Commission Act, R.S.A. c. F28
- The Proceeds of Crime Act, 2009
- Anti-Money Laundering and Terrorist Financing Code, 2009
- Anti-Money Laundering and Terrorist Financing Regulations, 2009



# Money Laundering Reporting Authority (“MLRA”)

- **Established** – section 117 of the POCA, 2009
- **Mandate** - review/investigate all matters re money laundering and terrorist financing in Anguilla.
- **Function** – awareness, receive/review SARs, recommend SARs for investigation, provide analytical support for investigations.
- **Structure** - is an administrative body.
- **Membership** – Attorney General, Senior Police Officer, Director of FSC, Senior Customs Officer, Senior Immigration Officer and such other person that the Governor may appoint.



# Functions of the Financial Services Commission

Section 3, FSC Act, R.S.A. c. F28

- To supervise licensees in accordance with the Financial Services Act, the financial services enactments and the regulatory codes.
- To consider and determine applications for licences.
- To monitor compliance by regulated persons with Anti-Money Laundering Regulations and such other Acts, Regulations, Guidelines or Codes relating to money laundering or the financing of terrorism.
- To monitor financial services business carried on in or from Anguilla and to take action against persons carrying on unlicensed financial services business.

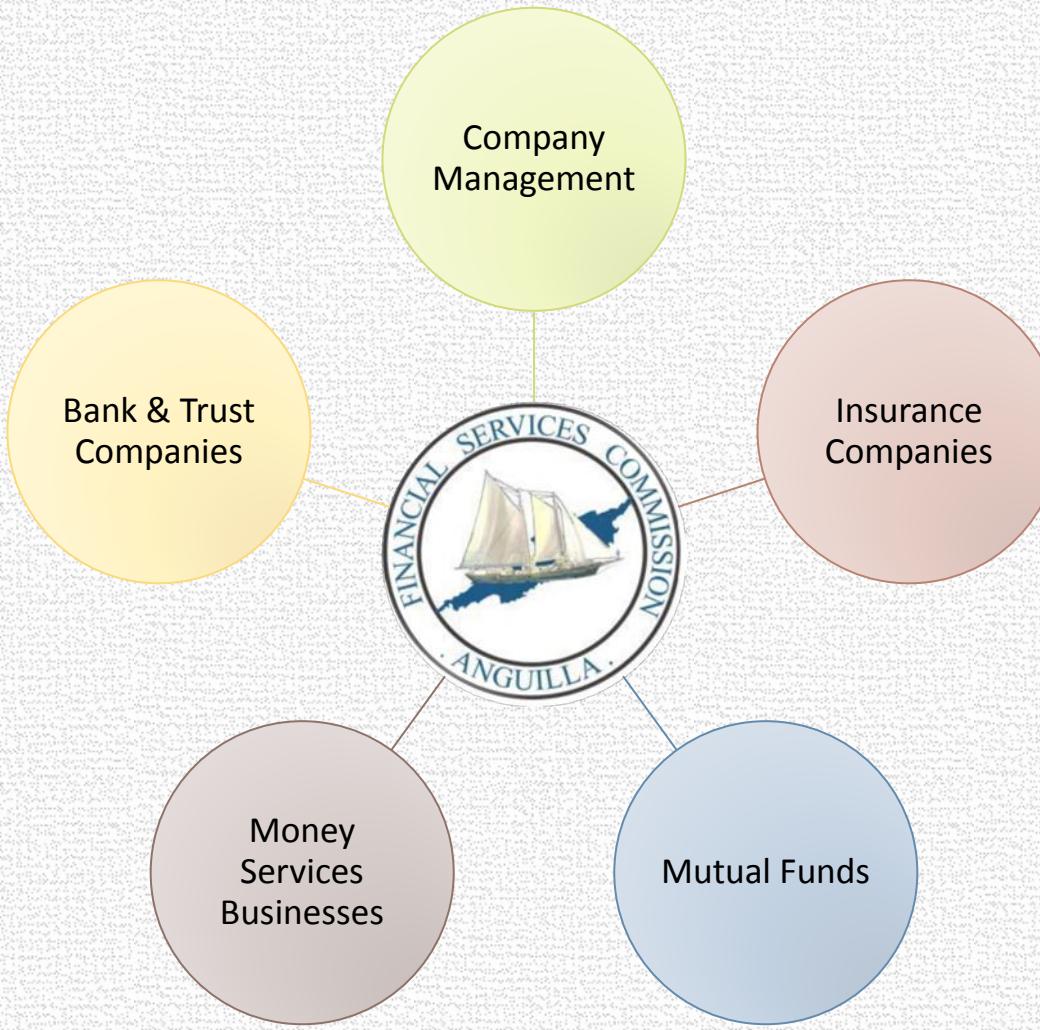


# Functions of the Financial Services Commission

- To monitor the effectiveness of the financial services enactments in providing for the regulation of financial services business in Anguilla to internationally accepted standards.
- To advise the Governor on matters relating to financial services business.
- To encourage the development of high professional standards within the financial services industry.



# Licensees of the FSC



# Powers of the Financial Services Commission

## **Section 160, POCA**

- The Commission is responsible for monitoring compliance by service providers with POCA, the AML/CFT Regulations, and Code.
- The Commission is responsible for taking appropriate action enforcement action against service providers for breaches of the POCA, the AML/CFT Regulations, and Code.
- The Commission acts as the supervisory authority for regulated service providers, the information gathering and enforcement powers provided for in the FSC Act, 2003.
- Section 164(2), the Commission acts as the registration and supervisory body for non-profit organisations.
- The Commission is designated as the supervisory authority for service providers that are not regulated persons.



# Powers of the Financial Services Commission

## **Section 28 (1) FSC Act, R.S.A. c. F28**

The Commission may –

- a. inspect the premises and the business, whether in or outside Anguilla, including the systems and controls, of a relevant person;
- b. inspect the assets, including cash, belonging to or in the possession or control of a relevant person; and
- c. examine and make copies of documents belonging to or in the possession or control of a relevant person that, in the opinion of the Commission, relate to the carrying on of financial services business by the relevant person.



# Powers of the Financial Services Commission

## **Section 20 (1)**

Obtain information where reasonably required by the Commission for the discharge of its functions and on the written request of a foreign regulatory authority.

## **Section 23 (1)**

Where a foreign regulatory authority requests the Commission, in writing, to provide it with assistance in connection with the exercise of its regulatory functions, the Commission may disclose information, or provide documentation, in its possession to the foreign regulatory authority in accordance with this section.



# Powers of the Financial Services Commission

## **Section 29 (1)**

The Commission has the power to take enforcement action against a licensee.

## **Section 30 (1)**

The Commission may revoke or suspend a licensee's licence.

## **Section 35 (2)**

The Commission may take disciplinary action against a licensee where it is satisfied that the licensee has committed a disciplinary offence.



# Corporate Governance

- Corporate Governance involves the manner in which the business and affairs of service providers are governed by their boards of directors and senior management, which affects how they:
  - Determine the service provider's risk tolerance;
  - Set the service provider's strategy and objectives;
  - Operate the service provider's business on a day-to-day business; and
  - Align corporate activities and behavior with the expectation that service provider's will operate in a safe and sound manner; and in compliance with applicable legislation.



# Corporate Governance cont'd

Statutory Remit: section 3(2) of the FSC Act

- To reduce risk to the public from suffering loss through fraud, mismanagement, incompetence or insolvency;
- To protect the reputation of the island; and
- To contribute to the fight against financial crime.



# Corporate Governance cont'd

- Determines the culture of the organization.
- Sets the tone from the top down.
- Professionalism, integrity, work ethic, courteous and respectful behaviour from the top affects the culture and risk profile of the institution.



# Corporate Governance cont'd

- Growing attention over the past 10 years to corporate governance standards and regulations and risk management.
- At same time the last few years have seen some of the biggest financial (and corporate governance) collapses.
- Latest thinking suggests problem due to reliance on systems rather than value based judgement and a need for –
  - a. more transparency;
  - b. accountability; and
  - c. exercise of judgement based on careful consideration of the wider picture.



# Regulatory Framework

- To ensure prudent management and balance of risks and potential returns.
- To ensure appropriate procedures and controls to manage risks associated with the products and services.
- To establish risk management committee to review adequacy of policies and systems and their effectiveness.



# Objectives of Framework

Common objective of the regulatory framework is:

- Increase the likelihood of a well run business of integrity.
- Promote financial soundness, competency and transparency.
- Fit and proper owners, directors and key persons.
- Provision for investigative, intervention and sanction powers for failure to comply.



# How to Comply

The Commission expects to see evidence that the Board -

1. Considered the risks relevant to the business and the environment it operates within.
2. Decided how those risks can be effectively mitigated and that some form of monitoring is in place to ensure the mitigating actions are holding firm and being exercised regularly.
3. Re-examines the risks from time to time to add/remove or to note changes or update mitigating controls.
4. Determined the level of risk appropriate for the business.
5. Set policies to ensure this risk appetite is respected and not exceeded.



# Advantage to Business

- Many major clients expect to see high levels of corporate governance and risk management in place prior to involvement with a firm.
- Lowering the chances of regulatory intervention saves money and reputation.
- Overall contribution to efficiency and profitability.



# Offences

Section	Penalty
10. Failure to perform customer due diligence.	\$100,000
17. Failure to keep records in a form, which allows them to be retrieved/reproduced in legible form.	\$50,000
18. Failure to keep records for a retention period of 5 years.	\$50,000
18. Failure to make employees aware of legislation, and to provide training.	\$50,000
20. Failure to appoint a MLCO, which is approved by the Commission.	\$50,000
21. Failure to appoint a MLRO, which is approved by the Commission.	\$50,000



# Non-Profit Organisations (“NPOs”)

## Section 164 of the POCA

- Non-profit organisation, is an organisation that –
  - a. is established solely or primarily for charitable, religious, cultural, educational, social or fraternal purposes or for the purpose of benefiting the public or a section of the public; and
  - b. it raises or disburses funds in pursuance of those purposes.
- NPO Regulations were enacted on 28 May 2010.
- One-time registration fee of EC \$150.00.



# Non-Regulated Services Providers (“NRSPs”)

Section 162(1) of the POCA 2009 applies to a service provider that is not a regulated person.

Non-Regulated Service Providers mean –

- Real estate agents;
- Dealers in precious metals and dealers in precious stones;
- Lawyers, notaries, other independent legal professionals and accountants; and
- Trust and Company Service Providers.

