



ANGUILLA

A BILL FOR

FINANCIAL SERVICES COMMISSION (AMENDMENT) ACT, 2022

Published by Authority

I Assent

Dileeni Daniel-Selvaratnam
Governor

Date

ANGUILLA

NO. /2022

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FINANCIAL SERVICES COMMISSION (AMENDMENT) ACT, 2022

[Gazette Dated: _____, 2022] [Commencement: Assent under section 57 of the Constitution]

An Act to validate all acts done under and pursuant to the Financial Services Commission Act, R.S.A c. F28 prior to the publication of the Commencement Notices to bring the Acts into operation.

ENACTED by the Legislature of Anguilla

Interpretation

1. In this Act the “principal Act” means the Financial Services Commission Act.

Insertion of sections 49A to 49C

2. The principal Act is amended by inserting the following new sections after section 49—

“Imposition of penalty against director or senior manager

49A. (1) The Commission may impose an administrative penalty on a director or senior manager of a licensee if—

- (a) it takes disciplinary action against the licensee under this Part in respect of a disciplinary violation that involves the failure of the licensee to comply with an AML/CFT obligation; and
- (b) it is satisfied that the disciplinary violation was committed with the consent or connivance of the director or senior manager.

(2) Where it intends to impose an administrative penalty on a director or senior manager of a licensee, the Commission shall send to the director or senior manager a notice—

- (a) specifying—
 - (i) the disciplinary violation, or alleged disciplinary violation, which the Commission alleges the director or senior manager consented to or connived in the commission of,

- (ii) the basis for the allegation against the director or senior manager, and
 - (iii) the amount of the penalty that it intends to impose, in a sum not exceeding \$50,000; and
 - (b) accompanied by a copy of the notice sent to the licensee under section 46.
- (3) A notice may not be sent to a director or senior manager of a licensee under subsection (2) before the Commission has sent a notice to the licensee under section 46.
- (4) A director or senior manager of a licensee who receives a notice sent under subsection (2) may, within 28 days of the date on which he receives the notice, send written representation to the Commission—
- (a) denying that the licensee committed the disciplinary violation, or disputing the facts of the disciplinary violation;
 - (b) denying that the director or senior manager consented to, or connived in, the commission of the disciplinary violation; or
 - (c) providing reasons that justify the imposition of a lower penalty.
- (5) For the purposes of this section and sections 49B and 49C, “senior manager” means an employee of a licensee who—
- (a) acts as chief executive officer of the licensee or occupies an equivalent position under a different name;
 - (b) holds a position that includes direct involvement in the management or decision-making process of the licensee at a senior level.

Penalty notice

49B. (1) After the expiration of 28 days from the date that it sent a notice under section 49A(2) to a director or senior manager, the Commission may impose an administrative penalty on the director or senior manager by sending the director or senior manager a penalty notice—

- (a) stating—
 - (i) the disciplinary violation that the director or senior manager consented to or connived in the commission of;
 - (ii) the date on which the notice under subsection (2) was sent to the director or senior manager; and
 - (iii) the amount of the penalty imposed;
 - (iv) a date, not less than 28 days after the date of the penalty notice, by which the penalty shall be paid to the Commission; and
 - (v) that if the director or senior manager does not pay the administrative penalty or exercise his rights of appeal under section 60 of the Act, on or before the date referred to in subparagraph (iv), the director or senior manager will be liable for the penalty set out in the notice; and
- (b) accompanied by the penalty notice sent to the licensee under section 47.

(2) The penalty imposed in a penalty notice shall not exceed the amount specified in the notice of intention sent under section 49A.

(3) The Commission shall consider any written representations that it has received from the director or senior manager before imposing an administrative penalty on the director or senior manager and, where it receives any representations, the Commission must provide reasons for the action that it takes.

(4) A director or senior manager of a licensee who receives a penalty notice under subsection (1) shall pay the penalty stated to the Commission or appeal the imposition of the penalty under section 60 of the Act, on or before the date specified in the notice.

Fixing of administrative penalty

49C. (1) Where the Commission decides to impose an administrative penalty on a director or senior manager of a licensee, it shall, after taking account of the factors specified in this section, fix the amount of the administrative penalty in an amount not exceeding \$50,000.

(2) In determining the administrative penalty to be imposed on a director or senior manager of a licensee, the Commission—

(a) shall take into account—

(i) the nature and severity of the disciplinary violation committed by the licensee and the amount of the administrative penalty imposed on the licensee; and

(ii) the role played by the director or senior manager in the commission of the disciplinary violation by the licensee; and

(b) may take into account such other matters as it considers appropriate.”.

Citation

3. This Act may be cited as the Financial Services Commission (Amendment) Act, 2022.

Barbara Webster-Bourne
Speaker

Passed by the House of Assembly this day of , 2022.

Lenox J. Proctor
Clerk of the House of Assembly
