

Alert

British Virgin Islands – Regulatory Update

Authors: Robert Briant, Partner | Nicholas Kuria, Counsel

On 11 February 2021, the British Virgin Islands Financial Services Commission (the “Commission”) published the Financial Services (Prudential and Statistical Returns) (Amendment) Order 2021 (the “Order”). The Order came into effect on 15 February 2021. Pursuant to the provisions of the Order, the obligations of regulated persons under the Financial Services (Prudential and Statistical Returns) Order 2009 (the “Principal Order”) to file statistical or prudential returns with the Commission have been amended significantly, creating additional reporting obligations for British Virgin Islands (“BVI”) entities that are authorised, licensed, registered or recognised under relevant BVI financial services legislation. The Order has also introduced a new obligation on regulated persons to file an annual anti-money laundering/countering the financing of terrorism return (the “AML Return”) with the Commission.

Who is Caught?

The amended reporting obligations under the Order in respect of annual or quarterly prudential and statistical returns (the “PS Returns”) apply to the following regulated persons:

- persons recognised or registered as Private Funds, Professional Funds, Public Funds and Recognised Foreign Funds pursuant to the Securities and Investment Business Act 2010 (“SIBA”)(collectively, “Mutual Fund Licensees”)
- holders of:
 - Category A, Category B, Category C, Category D, Category E or Category F insurance licence issued pursuant to section 8(2) of the Insurance Act 2008 (the “Insurance Act”); or
 - an insurance intermediary’s licence or insurance manager’s licence pursuant to section 40(2) of the Insurance Act (collectively, “Insurance Licensees”)
- a holder of an investment business licence issued pursuant to section 6(2) of SIBA (collectively, “Investment Business Licensees”)

In relation to the new AML Return, the requirement to file such return applies to the following:

- insurance licensees
- investment business licensees
- persons approved as approved investment managers pursuant to regulation 7(1) of the Investment Business (Approved Managers) Regulations 2012

What are the Implications of the New Requirements?

Based on the type of licence held by the relevant regulated person, there is now a requirement to submit the relevant PS Return within prescribed timeframes as set out below:

Type of Licence	Applicable Deadline for Submission of PS Return
Mutual Fund Licensees	On or before 30 June in respect of the year immediately preceding.
Insurance Licensees	On or before 31 March with respect to the previous calendar year, save that the return in respect of the 2020 calendar year the deadline is 15 May 2021.
Investment Business Licensees	On or before 31 March with respect to the previous calendar year, save that the return in respect of the 2020 calendar year the deadline is 15 May 2021.

Pursuant to section 8 of the Order, PS Returns (including any rectification of a previously filed return) are required to be filed in electronic format, which includes by publication on the Commission's website. The PS Returns are available in the relevant schedule of the Order.

Save in respect of the 2020 calendar year reporting period, all Relevant AML Return Licensees are required to file completed AML Returns on or before 31 March with respect to the previous calendar year. In the case of the 2020 calendar year, regulated persons are required to file the AML Return on or before 15 May 2021.

Sanctions for Non-Compliance

The Order sets out financial penalties for failure to file a PS Return as required by the Order or for failure to provide accurate information in the PS Return. In the case of a failure to file any PS Return, the financial penalties range from a maximum penalty of US\$400 to US\$600 for the first 30 days, in each case increasing by US\$100 for each additional month (or part thereof) during which any PS Return remains outstanding. Where the provisions of the Order have been breached due to a failure to provide accurate and complete information in any PS Return, the applicable financial penalties range from US\$300 to US\$700. Note that the financial penalties specified in the Order do not apply in relation to prudential or statistical returns due before 30 June 2021 provided any such returns are filed before that date.

We are here to help

Please feel free to reach out to your usual Conyers contacts should you require any guidance with completing or filing the relevant PS Returns. We are always available to provide continuing support and would be pleased to help.

For further information, please contact your usual Conyers contact or one of the contacts listed below.

Authors:

Robert Briant
Partner, Head of BVI Corporate
 robert.briant@conyers.com
 +1 284 852 1100

Nicholas Kuria
Counsel
 nicholas.kuria@conyers.com
 +1 284 852 1129

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For further information please contact: media@conyers.com