

NATIONAL RESERVE BANK OF TONGA

Prudential Statement No.3 – Revised 2017

ADMINISTRATIVE PENALTIES

Introduction

1. In terms of Section 18 of the *Financial Institutions Act, 2004* the Reserve Bank may impose administrative fines not exceeding \$5,000 plus \$1,000 per day for each day of contravention where a licensed financial institution (LFI) has:

- Delayed the submission of reports or returns or publication as required by law, regulation, orders or other directives;
- Refused to permit an examination into the affairs of the institution; or
- Made a false statement in relation to any application or report required under the Act.

2. In addition to the administrative penalties for an LFI in terms of S18, S24 and 25 impose penalties on individuals in relation to failure to lodge annual accounts and non-co-operation with inspections carried out or initiated by the Reserve Bank.

3. S24(4) indicates that failure to:

- forward to the Reserve Bank 30 days prior to publication;
- publish in any newspaper circulated in Tonga, once every week, for four consecutive weeks a copy of its audited balance sheet and profit and loss account;
- make copies available in every branch in Tonga; and
- comply with the format for disclosure of financial statements on an individual or consolidated basis that the Reserve Bank may specify

will result in a penalty of up to \$10,000 for every director or manager who contravenes this section.

4. S25(5) indicates that every employee of an LFI who fails to co-operate in an inspection initiated by the Reserve Bank shall be liable to a fine not exceeding \$1,000 for each day of contravention.

5. As well as a number of other actions under S33, the Reserve Bank may impose administrative penalties on a LFI, its officers, directors or shareholders for violation of any provisions of the Act for which a specific penalty does not apply. These provisions are listed in **Attachment 1**.

6. S15(3) empowers the Reserve Bank to issue in writing Prudential Statements and guidelines including requirements for licensing, ownership and management of licensed financial institutions. Failure to comply with these Prudential Statements may also be subject to the penalties provided in S33. S33(2) imposes penalties not exceeding \$1,000 for each day during which the infraction or the unsafe or unsound activities continues

7. S83 provides that the Reserve Bank may levy and collect an administrative fine imposed under the Act and that in the event that a fine is not paid, the Reserve Bank may take civil action against the LFI to recover the amount due as a debt owed.

Policy

8. It is the responsibility of the board of directors and management of a LFI to ensure that it complies in a timely and accurate manner with the requirements of the *Financial Institutions Act 2004* and any amendments to this Act. The Reserve Bank does not see administrative penalties as a revenue generating measure and would prefer a co-operative approach from LFIs to supervisory requirements. Nevertheless, the Reserve Bank will not hesitate to use administrative penalties where it believes these are necessary to emphasise the importance of devoting sufficient and appropriate resources to compliance tasks.

9. There will be very few cases in which the circumstances are essentially the same and, in general, establishing a list of penalties for specific infractions would inhibit the flexible and proportionate policy which the Reserve Bank proposes to adopt. There are a number of principles, however, that will guide the determination of the penalty:

- (a) The seriousness of the compliance breach;
- (b) The frequency and history of breaches and systemic weaknesses of the management systems or internal controls relating to the LFI's business;
- (c) The extent to which the breach is deliberate or reckless including whether the LFI failed to comply with its own procedures;
- (d) The size and financial resources of the LFI;
- (e) The extent (if any) to which the LFI benefited from the compliance breach;
- (f) The incentive the penalty provides to the LFI (and others) to comply with regulatory requirements.
- (g) Consistency with penalties applied to the LFI (and others) in the past.
- (h) The conduct of the LFI in bringing (or failing to bring) quickly and completely the breach to the Reserve Bank's attention:
- (i) The level of co-operation demonstrated by the LFI during the investigation of the breach;
- (j) Remedial steps taken since identification of the breach, including disciplinary action against staff involved (if appropriate), and steps to ensure that similar problems cannot arise in the future.

Late and erroneous returns

10. The most common area for application of administrative penalties is likely to be late or erroneous returns. Timely and accurate returns are essential for the effective performance of the Reserve Bank's supervisory functions. They are equally as important as internal reporting arrangements and penalties will be used to reinforce this message.

11. The Reserve Bank emphasises, that LFIs are expected to ensure that there are a suitable number of capable staff familiar with reporting and other compliance tasks and arrange leave and other absences so that requirements are met in a timely and accurate manner. It will not accept staff absence or pressure of work as a reason for not imposing an administrative penalty.

12. Penalties will be assessed in respect of individual returns in Attachment 2 and any other returns that the Reserve Bank may later issue that are late and/or erroneous. Penalties charged are listed in Attachment 3.

13. The Reserve Bank will treat a report which is materially incomplete or inaccurate as not received. An erroneous return is considered late, in effect, and will attract a per day penalty until such time as it is re-submitted and determined by the Reserve Bank to be error-free.

14. Failure to submit a report by the due date or free from error may indicate wider problems within the LFI, for which more serious sanctions or other enforcement action or both, may be appropriate.

15. A return that is both late and determined to be erroneous when it is received will be assessed and charged a flat fee and a daily penalty until such time as the Reserve Bank receives an amended return free from error.

16. In the case of errors between returns, only the return that triggers the error (in general, the last one to be filed of the returns affected) is subject to penalty, regardless of the number of returns affected. The date that last return is received by the Reserve Bank will be the starting date for the purpose of calculating the penalty. For example, FID 1_10 is linked to FID 1 Balance Sheet – if FID 1 Balance Sheet data is wrong then FID 1_10 would also be wrong therefore penalty would be on FID 1 Balance Sheet only until it gets revised correctly.

17. Where an error is detected by an LFI and a revised return submitted a daily penalty will not be assessed and charged unless the LFI persistently reports errors.

18. Higher penalties will apply where an LFI repeatedly fails to submit its reports on time or where there is information that suggests that the delay was deliberate.

Non-compliance with the requirements of the Prudential Statements and Currency Guidelines for Sorting/Packing of Banknotes and Coins

19. Another area for application of the administrative penalties is the non-compliance with the requirements of the Prudential Statements issued by the Reserve Bank under S15(3) and the Reserve Bank's Currency Guidelines for Sorting/Packing of Banknotes and Coins. The Prudential Statements and Currency Guidelines provide the minimum standards that LFIs must comply with to ensure the prudent management of risks at the LFI.

20. Penalties charged are listed in Attachment 4.

Payment and objection to penalties

21. The Reserve Bank will notify an LFI in writing of any administrative penalty imposed under the *Financial Institutions Act, 2004*, and the penalty will be payable 30 days after the date of the notice. The Reserve Bank will debit the LFI's Exchange Settlement Account with the amount of the penalty on the due date.

22. Section 19 of the *Financial Institutions Act, 2004* provides that where a LFI objects to the penalties imposed under the Act it may within 14 days of the date of notification of the penalty

submit reason(s) in writing for its objection to the Reserve Bank who may confirm, vary or rescind the penalty. The Reserve Bank will respond within 14 days of receipt of the objection.

23. If the decision is to proceed with the penalty, the LFI may request that the decision be reviewed, by writing to the **Office of the Ombudsman** who is empowered by S11(1) of the **Ombudsman Act** 2001 to investigate any administrative decision of the Reserve Bank. The **Ombudsman** may recommend that the Reserve Bank vary or rescind the penalty. Any adjustments will be made to the LFI's Exchange Settlement Account, as necessary..

Compliance with Prudential Statement No. 3

This statement is effective from **1 April 2017**.

National Reserve Bank of Tonga
February 2017

ATTACHMENT 1

OTHER PROVISIONS OF THE FINANCIAL INSTITUTIONS ACT TO WHICH ADMINISTRATIVE PENALTIES MAY APPLY

- S4(1) Every licensed bank shall use as part of its name the word “bank”, unless the Reserve Bank otherwise permits.
- S4(5) No LFI shall change its name or use a name other than the one under which it is licensed, without the prior written consent of the Reserve Bank.
- S8(3) A copy of the licence issued by the Reserve Bank shall be displayed conspicuously in places of business of the LFI.
- S12(1) Every financial institution licensed under this Act shall maintain –
 - (a) if incorporated in Tonga, paid up capital and reserves; and
 - (b) if incorporated abroad, assigned capital and reserves in Tonga;

in such minimum amount and proportion as the Reserve Bank may specify having regard to internationally accepted capital standards. Such proportion shall not be less than 8 % of the total risk weighted assets for a licensee incorporated in Tonga.

(2) The minimum amount specified under subsection (1) for the issue of a licence under section 8 shall not be less than \$2,000,000.

(3) The Reserve Bank may specify minimum capital standards for the Consolidated group in the case of a licensed financial institution incorporated in Tonga.

- S15(3) The Reserve Bank may issue in writing prudential statements and guidelines including requirements for licensing, ownership and management of licensed financial institutions
- S23(1) A licensed financial institution shall, with the consent of the Reserve Bank appoint an external auditor for each financial year.
- S26(1) No person shall be appointed or elected as a director or to the management of a licensed financial institution who -
 - (a) has acted in similar positions in a licensed financial institution in Tonga or elsewhere which has had its licence revoked or which has been wound up by a court;
 - (b) has been sentenced by a court in any country for an offence involving dishonesty; or
 - (c) is or becomes bankrupt or enters into a scheme of arrangement with his creditors;
 - (d) a certificate of compliance as required by the Reserve Bank in accordance with section 16(1)(d) has not been submitted by the licensed financial institution;
 - (e) has acted in similar positions in a licensed financial institution and has been removed in accordance with section 33;

- (f) has been disqualified or suspended from practicing a profession on grounds of personal misconduct;
 - (g) does not possess sufficient financial competence and expertise;
 - (h) is an officer or employee of another licensed financial institution unless both entities are commonly owned;
 - (i) does not reside in the place where the licensed financial institution is located except as otherwise authorised by the Reserve Bank; or
 - (j) falls under such other criterion or criteria as may be established by the Reserve Bank in a directive, prudential statement or other acts or decisions.
- S27(1) Licensed financial institutions may only engage in the following financial activities -
 - (a) receiving deposits of money or other repayable funds from the public provided that this activity shall only be performed by banks
 - (b) including but not limited to extending credits, consumer and mortgage credit and financing of commercial transactions;
 - (c) buying and selling for its own account or customers account, money market instruments and debt securities;
 - (d) providing money transmission services;
 - (e) with the prior approval of the Reserve Bank, buying and selling foreign currencies, including contracts for the future purchase or delivery of foreign currencies;
 - (f) issuing and administering means of payment, such as credit cards, travellers' cheques or bank drafts;
 - (g) safekeeping and administration of valuables, including securities;
 - (h) providing credit reference services; and
 - (i) any other activities approved by the Reserve Bank.
 - S27(2)(a) A licensed financial institution shall apply to the Reserve Bank to own subsidiaries that engage in other activities of a financial nature.
 - S28 (2) Any licensed financial institution or its subsidiary shall not grant to any person or company, or a group of interrelated persons, any advance, credit facility, financial guarantee or incur any other risk exposure or liability -
 - (a) which in total exceeds 25% of the licensed financial institution's capital as determined by the Reserve Bank;
 - (b) in the case of unsecured facility, 10% of the licensed financial institution's capital as determined by the Reserve Bank; or
 - (c) if the aggregate outstanding principal amount of all large credit exposures of the licensed financial institution pursuant to paragraphs (a) and (b) would exceed a percentage of the licensed financial institutions capital as determined by the Reserve Bank."
 - S32(1) A licensed financial institution shall not open a new branch in Tonga without obtaining the written approval of the Reserve Bank.
 - S32(2) A licensed financial institution incorporated in Tonga shall, obtain written approval from the Reserve Bank to operate a branch office or subsidiary outside Tonga.

- S35(2) Every licensed financial institution shall at all times hold assets in Tonga of a value not less than the total amount of its deposit liabilities in Tonga.
- S80(1) All cheques and bank drafts in the possession of the licensed financial institution on which they are drawn and all bills of exchange or promissory notes in the possession of a licensed financial institution, including accounting records and management information system (MIS) information, and other related records, shall be retained by that institution until the expiration of the period of 7 years from the date in the case of documents payable on demand or from the due date thereof in the case of all other documents.
- S80(3) No documents referred to in subsection (1) shall be destroyed at any time after a demand for the delivery of the document has been made to the licensed financial institution by the person entitled thereto.
- S80(5) Notwithstanding subsection (4), no document shall be destroyed at any time within 2 years after its date in the case of documents payable on demand or from its due date in the case of all other documents.
- S81(1) Every licensed financial institution shall, within 60 days after the end of each financial year, publish in at least one local newspaper published weekly and circulated in Tonga for four consecutive weeks a statement showing all accounts payable by the licensed financial institution where no transaction has taken place and no statement of account has been requested by the creditor during the last 7 or more years.
- S82(1) Unclaimed moneys included in the statement published under section 81 that remains unclaimed for a period of three months after publication, shall be paid to the Reserve Bank and credited to the government's general revenue account with the Reserve Bank, after deduction of the costs of publication.

Other sections of the Act provide the Reserve Bank with power to introduce certain requirements which may be subject to administrative penalties e.g. S16(1)(d)

ATTACHMENT 2

STATISTICAL RETURNS

Return	Description	Frequency	Submission Date within:
FM 1-1	Foreign Currency Position	Daily	1 b/day after date reported
FM 1-2	Foreign Currency Accounts Movements	Daily	1 b/day after date reported
CU 1-1	Currency Guidelines	On application for deposit to the NRBT vault	On date of deposit of Notes and Coins to the NRBT vault
OET	Weekly OET Report	Weekly	every Tuesday
FID 1-11	Government of Tonga Accounts, including the Managed Funds Loans	Weekly	before 4pm every Monday
FID 1	Balance Sheet	Monthly	15 business days following the end of each calendar month
Form B1	SRD Calculation	Monthly	15 business days following the end of each calendar month
FID 1_1	Loans by Sector	Monthly	15 business days following the end of each calendar month
FID 1_2	Loan and Deposit Interest Rates	Monthly	15 business days following the end of each calendar month
FID 1_3	Foreign Currency Exposure	Monthly	15 business days following the end of each calendar month
FID 1_4	Maturity Gap Report	Monthly	15 business days following the end of each calendar month
FID 1_5	Large Borrowers	Monthly	15 business days following the end of each calendar month
FID 1_6	Related Party Exposures	Monthly	15 business days following the end of each calendar month
FID1_7	Large Depositors	Monthly	15 business days following the end of each calendar month
FID 1_8	Rate Sensitive Assets & Liabilities	Monthly	15 business days following the end of each calendar month
FID 1_9	Consolidated Profit & Loss Statement	Monthly	15 business days following the end of each calendar month
FID 1_10	Risk Based Capital	Monthly	15 business days following the end of each calendar month
FID 1_11	Government Accounts	Monthly	15 business days following the end of each calendar month
FID1_12	Foreign Currency New Borrowings	Monthly	15 business days following the end of each calendar month
FID1_13	Loans application in excess of T\$300K	Weekly	before 4pm every Monday
FID 1_14	Forward Exchange Contracts	Monthly	15 business days following the end of each calendar month
FID1_15	FID OET Reconciliation	Monthly	15 business days following the end of

			each calendar month
FID 2	Weekly Liquidity Report	Weekly	before 4pm every Monday
FID 3	Foreign Currency Accounts	Quarterly	15 business days following the end of each quarter
FID 4	Basic Information on the Financial Institution	Annual	1 month following the end of the financial year
FID 5	Board of Directors	Annual	1 month following the end of the financial year
FID 6	Shareholders	Annual	1 month following the end of the financial year
FID 7	Branch Information	Annual	1 month following the end of the financial year
FID 8	Certification of Managers and Directors	Annual	1 month following the end of the financial year
FID 9	Annual Certification of Compliance with Requirements of the Financial Institution Act 2004 & Prudential Statements No. 1-11 Annual Requirements	Annual	3 months following the end of financial year
	Annual Audited Accounts & Management Letter	Annual	3 months following the end of financial year
	Publication of Unclaimed Money	Annual	2 months following end of financial year for four (4) consecutive weeks
	Payment of Unclaimed Money to the NRBT	Annual	3 months following publication
	Publication of Annual Audited Accounts	Annual	4 months following the end of financial year
	Updated descriptions of risk management systems	Annual	End of December of every year

ATTACHMENT 3

NOTE ON ADMINISTRATIVE PENALTIES FOR LATE OR ERRONEOUS RETURNS

The distinction drawn between penalties for LFIs with assets under and over \$150 million is designed to take account of the relative impact of a monetary fine on smaller and larger LFIs – in other words a \$500 fine would have a greater impact on a smaller LFI than a larger LFI.

The flat charge should reflect the inherent seriousness of the problem e.g. for persistently late return there should be a continuing escalation within the limit set by the Act. The extent of the delay is allowed for in the escalating per day charge.

Other guiding principles are set out in the Prudential Statement.

Number of business days late	Flat amount (for erroneous returns)		Daily amount (for late returns)	
	Under	Over	Under	Over
LFIs' Assets	\$150M	\$150M	\$150M	\$150M
Over 28	\$200	\$300	\$600	\$700
22-28	\$200	\$300	\$300	\$400
15-21	\$200	\$300	\$200	\$250
8-14	\$200	\$300	\$150	\$200
1-7	\$200	\$300	\$100	\$150

For example:

- Late and wrong return – charge flat amount plus daily amount for each day until the correct revised return is submitted
- Early and wrong return – charge flat amount. Daily amount would be charged after the due date until the correct revised return is submitted
- Late and correct return – charge daily amount until the correct revised return is submitted.

FID 1_1 is due 15 business days from the end of the month, was received with errors and was late by 9 business days – a LFI with assets over \$150M would be charged \$1,750 which is the flat amount of \$300 plus \$1050 (\$150 * 7 days) plus \$400 (\$200 * 2 days).

Any exception to the above charges is subject to the Governor's approval/discretion. The Reserve Bank would notify the banks of any erroneous return(s) and will impose administrative penalties in this Statement.

ATTACHMENT 4

NOTE ON ADMINISTRATIVE PENALTIES FOR NON-COMPLIANCE WITH PRUDENTIAL STATEMENTS AND CURRENCY GUIDELINES for SORTING/PACKING of BANKNOTES and COINS

The distinction drawn between penalties for LFIs with assets under and over \$150 million used for the penalties for late and erroneous returns is also adopted for the penalties for non-compliance with the prudential statements issued under S15(3) of the Act and the Reserve Bank's Currency Guidelines for the Sorting/Packing of Banknotes and Coins.

The penalty imposed will be for each day during which the infraction/breach of the requirements of the Prudential Statements and Currency Guidelines continues.

Number of business days of infraction / breach of the Prudential Statements	Daily amount (for infraction / breach of the Prudential Statements)	
	Under \$150M	Over \$150M
LFIs' Assets		
Over 28	\$800	\$1000
22-28	\$400	\$600
15-21	\$300	\$500
8-14	\$250	\$450
1-7	\$200	\$400

For example:

Failure to disclose fees & charges under the Prudential Statement No. 4 for 10 business days – a LFI with assets under \$150M would be charged \$2,150 which is \$1,400 (\$200 * 7 days) plus \$750 (\$250 * 3 days).

Any exception to the above charges is subject to the Governor's approval/discretion. The Reserve Bank would notify the banks of any non-compliance with the Prudential Statement(s) and Currency Guidelines for Sorting/Packing of Banknotes and Coins will impose administrative penalties in this Statement.