



ANGUILLA'S LICENSING AND REGULATORY BODY FOR THE FINANCIAL SERVICES INDUSTRY

OUR MISSION

To enhance the safety, stability and integrity of Anguilla's financial system and contribute to Anguilla being a premier financial centre, through appropriate regulation and legislation, judicious licensing, comprehensive monitoring and good governance.

DIRECTOR'S REPORT

AFSC's 10th Anniversary

2014 marked the 10th Anniversary of the establishment of the Anguilla Financial Services Commission. To mark the occasion, the Commission hosted a special "Industry Day" at The Viceroy Anguilla on Thursday, 20 February. Over one hundred persons drawn from all sectors of the financial services industry attended the gathering entitled "Vision Critical". The title was chosen both to reflect continued discussion of issues raised at the "Vision Day" sponsored by the Anguilla Financial Services Association, the Government of Anguilla and Anguilla Finance Limited in October 2013, and the critical importance of the financial services industry's health to the territory's economy.

Keynote speakers were the Governor of Anguilla and the Chief Minister. In her opening remarks, Governor Scott recalled saying at "Vision Day" that "the international landscape that gives context to the operations of Anguilla's financial services sector is changing for good" and observed that "the irreversible trend I spoke about then continues". Highlighting the issue of a central registry, Governor Scott commented: "the Government will be conducting a public consultation on whether Anguilla should hold a central registry on those who benefit from companies and trusts and whether this information should be made available to the public" and urged all industry members to contribute to the process.

The Chief Minister observed that "Industry Day" provided not only essential knowledge but also an opportunity

for participants to share both technical and regulatory experiences that have to be dealt with in what is clearly a new era. He went on to say: "As the industry grows, so will its contribution to our GDP and Anguilla's overall economic development. To do this, each and every stakeholder must play their part. We will endeavor to create an environment where innovation and creativity is rewarded." Prefacing similar comments from speakers who followed him, the Chief Minister said: "...the tide is swiftly turning against secrecy and minimal disclosure....In the end, business will go where the talent is and we have to make sure that Anguilla is where the talent is." To help achieve this result, the Chief Minister urged that industry offer internships to high school graduates and get them to see financial services as a viable career alternative.

The program brought to the podium speakers from both Anguilla and abroad. Robert Mathavious, Managing Director of the British Virgin Islands Financial Services Commission, succeeded in immediately engaging the audience with a presentation entitled "International Financial Centres in the Eye of the Hurricane" in which he outlined strategies to be used to deal effectively with initiatives that often have the effect of promoting the self-interest of the financial services industries of much larger economies by targeting the activities of centres such as the BVI and Anguilla. The key strategy is for smaller centres to be nimble enough to identify niche markets and deliver superior quality of service to them. Among other things, this will require service providers to have appropriately qualified professional staff and the jurisdiction to have an appropriate legislative and regulatory framework.

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At the Commission's request, Keithley F.T. Lake, President of Anguilla's Chamber of Commerce and Industry, developed themes first raised in an interview with Anguilla Finance Limited's Shernika Connor and reported in *The Anguillian* on 24 January and 14 February, 2014. In a convincing presentation, Mr. Lake focused on skills and skills availability in Anguilla and highlighted areas for development. In particular, he urged recognition of the need for collaborative efforts on the part of Government and industry in developing appropriate levels of language proficiency to match the requirements of the industry's likely future target markets (notably, the so-called "BRIC" countries) and in producing the appropriate number of workers with the acknowledged core competencies, for example, accounting and computer skills, necessary "to move (Anguilla) into a competitive position within the financial services arena." Echoing comments made earlier by Governor Scott, Mr. Lake observed: "(Government) policies need to take into consideration what competencies are needed, the need to attract outside talent in areas where there are deficiencies, so that potential employers can plan their workforce needs with confidence, knowing that their needs will be addressed on a long term basis." Above all, Mr. Lake exhorted that the industry's mantra must be "Improve, Improve, Improve!"

Angel Bacho Vega, a Regulatory Manager with Artex Risk Solutions Inc., of Arizona, a licensee in Anguilla both as an insurance manager and as a company manager, delivered an inspiring presentation on Anguilla being a true competitor (rather than a mere participant) in the financial services industry, and particularly being a serious competitor as a jurisdiction of choice for the captive insurance industry. Mr. Vega, supported by Steve Garlick, Chief Executive Officer of Anguilla Finance Limited, paid tribute to the nineteen candidates from the Commission and the industry now pursuing the Associate in Captive Insurance (ACI) designation offered by the International Centre for Captive Insurance Education (ICIE) as providing

proof positive that Anguilla has the human capital available to make it a competitor.

Carlyle Rogers, Managing Director of the Stafford Group of Companies, delivered a wide-ranging presentation entitled "Substance over Form: The only way to survive". Pointing out that the age of transparency has arrived and that, at some point, automatic exchange of information between government authorities will be the norm. Mr. Rogers argued forcefully for aggressive development of activities with real economic substance, rather than having a company's sole links to Anguilla being the location of incorporation, registered office and registered agent. His objective would be to have, to the extent possible, a company's physical presence and "mind and management" in the territory's low tax jurisdiction. While providing a number of examples of how the new "model" could work, Mr. Rogers emphasized its applicability to industries with a significant proportion of knowledge workers employed, asking: "What if Facebook (also celebrating its 10th Anniversary in February 2014) had been developed not in the US but in an offshore jurisdiction (such as Anguilla)?" As other speakers had done, Mr. Rogers highlighted the demographic changes that such activities would likely mean for Anguilla.

Throughout the program there was frequent opportunity for interaction between industry members and speakers on issues of importance to them.

The occasion also was marked by presentations by Governor Scott of framed photographs to Mr. Ralph Hodge MBE and Mr. Carl Harrigan, in recognition of their ten years of service as Members of the Commission's Board, and by presentation of a gift to Mrs. Maria Smith by the Commission's Vice-Chairman, Mr. Hodge, in recognition of her ten years of service as the Commission's Office Manager.

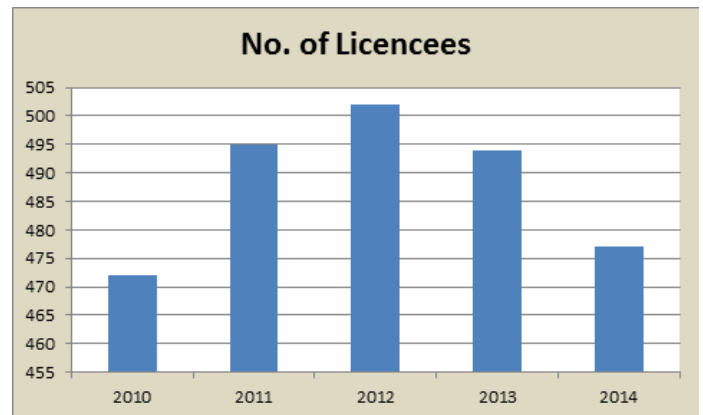
Operations Report

Licenses

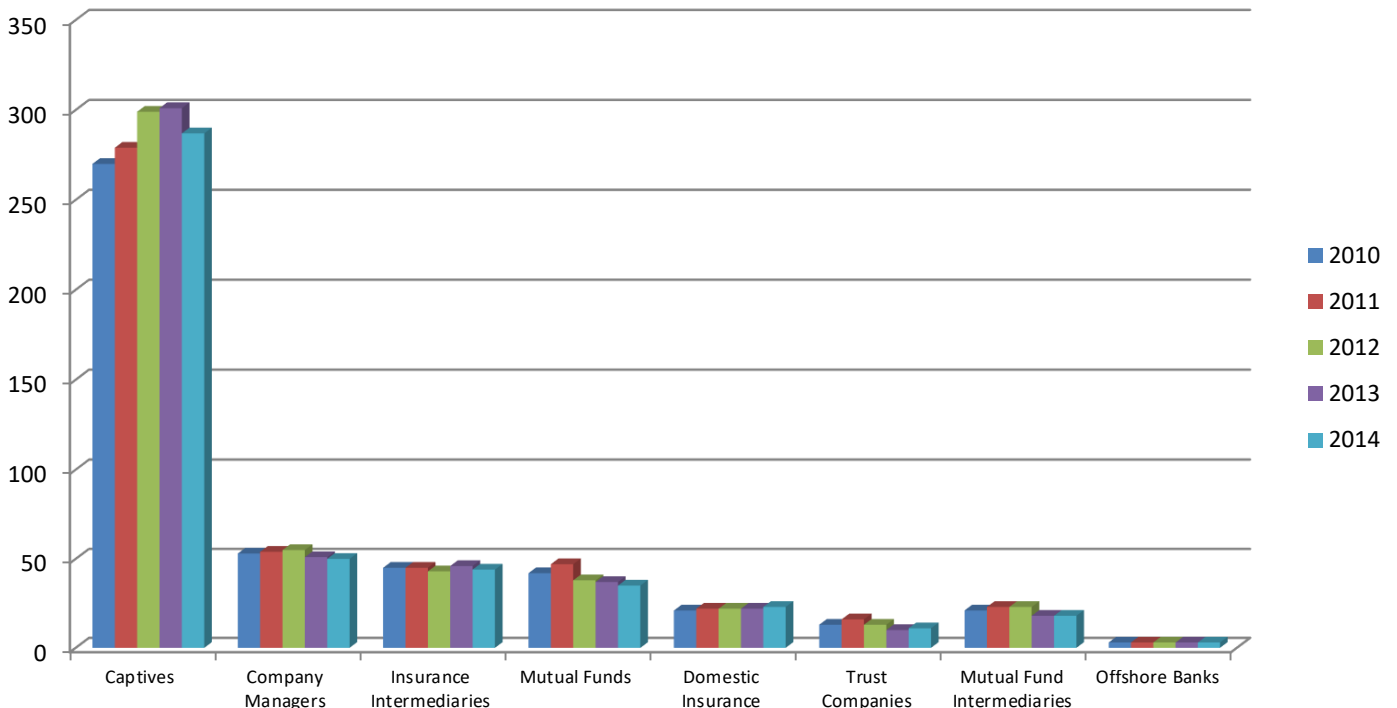
Number of Licensees

Continued global economic uncertainty has negatively impacted growth in the number of the Commission's licensees, with 2014 results evidencing the second consecutive year in which the number of licensees has decreased from the number of licensees in place at the end of the preceding year. At the end of December 2014, the total number of licensees was 477, a marginal contraction of 3.4% from the prior year, and compared to a 1.6% reduction during 2013. Contributing to the decrease in the number of the Commission's licensees was the captive insurance sector that comprises more than 50% of the Commission's licensees. The captive insurance sector experienced a 5% decrease in the number of licensees in 2014 after seven years of growth ended in 2013. To some extent, the decrease represents expected turnover based on the typical lifespan of a captive insurance company.

However, during 2014, the sector experienced a significant decrease in the number of new captive insurance company applications, resulting in the jurisdiction replacing fewer captives than it lost in the year. This may evidence a trend in the market whereby U.S. owned captives increasingly are favoring onshore domiciliation.



The following chart provides an industry sector breakdown of licensees, excluding the money services business sector that comprises only two licensees. The dominance of the offshore captive insurance sector remains clear and demonstrates Anguilla's continued position as the world's fifth largest jurisdiction (by number of companies licensed) in the captive insurance market.



Prudential Onsite Examinations

During the year, Commission staff conducted an onsite prudential review of a domestic insurance company as well as an onsite review of a restricted trust company to determine whether it was carrying on business in accordance with the terms and conditions of its licence.

Fees

On 4 October 2014, the Commission gave notice of its intention to impose a new condition, effective January 1, 2015, on all licensees licensed under the Company Management Act, R.S.A. c. C75 and Trust Companies and Offshore Banking Act, R.S.A. c. T60, where the licensee engages in company management business but does not conduct that company management business at premises in Anguilla:

"The licensee must pay any costs incurred by the Commission or its agent to carry out an examination of the licensee's company management business at the premises where that business is carried on."

Such costs would include reasonable transportation and accommodation costs and a per diem for meals and incidentals, plus professional fees where the examination is contracted to a third party.

As well, late in 2014 and subsequent to a public comment period, amendments were made to the Insurance Regulations. The amendments came into force on 1 January 2015. The amendments put into place a new fee schedule that reflects more accurately the cost of regulation.

Registrants

Externally and Non-Regulated Service Providers

The Externally and Non-Regulated Service Providers Regulations ("ENRSP Regulations") introduced in 2013 gave the Commission responsibility for the supervision of compliance by domestic banks, companies licensed under the Securities Act, R.S.A. c. S13 ("ERSPs") and non-regulated financial service providers ("NRSPs") with anti-money laundering and combating the financing of terrorism requirements under the Proceeds of Crime Act, R.S.A. c. P98 ("POCA"). ERSPs and NRSPs are required to register under the ENRSP Regulations. During 2014, the Commission registered 4 ERSPs and 4 NRSPs. The Commission held an education session in October 2014 at its Industry Day emphasizing to service providers the importance of compliance. Failure to register while continuing to engage in a business requiring registration is a violation of section 158 of POCA and can result, on summary conviction, to imprisonment for a term of 12 months or to a fine of \$50,000 or to both; or on conviction on indictment, to imprisonment for a term of 5 years or to a fine of \$100,000 or to both.

Non Profit Organizations

The Commission continues to register non-profit organisations ("NPOs") under the Non-Profit Organisations Regulations, R.R.A. P98-2. In 2014, the Commission registered 5 NPOs and exempted 10 NPOs from registration.

Industry Development

Guidelines and Policies

During 2014, the Commission approved a number of guidelines and policies:

- “Guidelines on Combatting the Abuse of Non-Profit Organisations” provides best practices drawn from FATF Recommendation 8 that will assist each NPO to guard against the NPO’s use for the financing of terrorism.
- “Commission Policy on Decision Making” explains the process followed by the Commission when making a decision on non-routine licensing applications, suspensions and revocations and on disciplinary matters.
- “Guidelines on Risk Management of Electronic Banking” alerts the boards of directors and senior management of banks, both domestic and offshore, conducting business in Anguilla to certain AML/CFT related principles that apply to the conduct of electronic banking business, in particular those dealing with the appropriate measures a bank should take to authenticate the identity and authorization of customers with whom it conducts business over the Internet.
- “Guidelines on Restricted Trust Companies” details the conditions the Commission will impose on the licenses of new and existing restricted trust company licensees, subject to a 5 year grandfathering of existing licensees.
- “Guidelines on Audit Exemption Applications by Certain Captive Insurers” explains the circumstances under which the Commission may be willing to exercise its discretion to exempt a licensed captive insurer from the requirement to prepare and file audited accounts.
- “Guidelines for Submission of Applications for Licensing” updates the licensing application process, including a preference for electronic submissions.

Unregulated Investment Business

The Commission issued an Investor Alert on 11 December 2014 warning investors of the risks associated with unregulated investment business and, in particular, with any such business involved in forex or binary options trading. The Investor Alert reads in part:

“The Anguilla Financial Services Commission (“Commission”) is informing the public that the Commission does not have any licensees carrying on the business of dealing in, or offering facilities to others to deal in, foreign currency (“forex”) contracts or binary options contracts. Any such business incorporated or otherwise organized under the laws of Anguilla is not regulated by the Commission and may not be regulated anywhere.

Investors should be aware of the risks associated with unregulated investment business. For example, the unregulated investment business, and its owners and directors, are not subject to the “fit and proper” test applied to regulated investment business and its principals. Unregulated investment business is not subject to any requirements to maintain adequate financial resources and adequate insurance. Unregulated investment business may not meet acceptable standards for corporate governance, internal systems and controls, integrity and competence, continuing professional development, complaint handling and record keeping, and transparency in its business arrangements. And unregulated investment business may not be subject to any code of practice or other regulatory law that expressly prohibits the business from making statements that are misleading, false or deceptive.”

The Investor Alert has proven to be prophetic, with the Commission subsequently publishing dozens of investor alerts naming specific businesses, many of the alerts prompted by complaints received from overseas investors alleging misconduct.

The Commission has proposed the enactment of an Investment Business Act and ancillary legislation that would prohibit or require licensing of all investment business carried on in or from within Anguilla not currently required to be licensed under Anguilla legislation. Where the principals of investment businesses are not “fit and proper”, or where effective supervision is not practical or possible, such businesses would not be licensed. Currently, because this business is not subject to prudential regulation, the regulatory “gap” allows Anguillian incorporated companies to carry on non-domestic investment business, other than in respect of offshore mutual funds, without any prudential supervision. Investors have no protection against loss through fraud and insolvency. Absence of recordkeeping requirements makes civil action difficult.

Closure of the “gap” presents an opportunity to develop Anguilla’s economy and safeguard its reputation through legislation that permits fee-generating licensing of investment business, and its supervision, by the Commission. This would open up an important additional product range to industry members capable of upgrading their services to manage and administer such business.

In the meantime, the Commission is using its powers under the Proceeds of Crime Act, the Anti-Money Laundering and Terrorist Financing Regulations and the Externally and Non-Regulated Service Providers Regulations to address the challenge of unregulated investment business. Specifically, the Commission will hold company managers and trust companies accountable where their clients are carrying on unregulated investment business and the company manager or trust company has failed to conduct appropriate customer due diligence, including ongoing due diligence. The Commission also will enforce the requirement that unregulated investment businesses, as service providers, register as non-regulated service providers. However, where effective prudential or AML/CFT supervision is not practical or possible, such businesses will not be registered and will be required to leave the jurisdiction.

Industry Events

In addition to the special “Industry Day” held in February, the Commission held a second Industry Day on 2 October 2014, with panels covering:

- responsibilities of insurance managers; and
- compliance with changing international standards, the importance of compliance in a global world and the challenges it presents to small economies like Anguilla.

Several of the Commission’s regulators also attended and participated in the “Captive Summit 2014” organized by Anguilla Finance and held in Anguilla on 3 October 2014.

AML/CFT

2014 Offsite and Onsite Inspections

During the year, Commission staff conducted fourteen (14) AML/CFT examinations covering five Company Managers, two Insurance Intermediaries, one Domestic Insurer, one Credit Union, two Fund Managers and three Non-Regulated Service Providers (Real Estate and Investment Management). The Commission’s examiners assessed whether service providers were compliant with the AML/CFT legislation. Examiners reviewed and assessed service providers’ AML/CFT policies and procedures, staff training and awareness, suspicious activity reporting (“SARs”), appointment of money laundering reporting and compliance officers, and record keeping.

The enactment of the Externally and Non-Regulated Service Providers Regulations in 2013 expanded the Commission’s supervisory remit over all financial service providers for AML/CFT purposes. Hence, the examinations included three non-regulated service providers in the real estate and investment management sectors.

The findings, published on the Commission’s website, revealed that a number of areas require improvement.

Two areas worthy of mention are the following: (1) the need for enhanced due diligence where the business conducted by the company is deemed to be of high risk, including unregulated investment business as addressed in the Commission's Investor Alert issued in December 2014 and (2) the need for licensees to engage in a more detailed assessment of business risks applicable to their book of business in order to ensure sufficient analysis of the applicable risks.

Overseas Agents

Commission staff met individually with approximately 20 licensed company managers who conduct business through overseas agents to emphasize the impact on that business model of recent amendments to AML/CFT legislation.

From Compliance to Enforcement

The Commission gradually has increased the rigour of its regulatory activities in support of ensuring compliance with the legislation it has responsibility for regulating. Over the past several years, the Commission has provided numerous educational sessions to service providers on compliance issues, in particular in relation to compliance with AML/CFT legislation, and more recently has offered specific post examination guidance in relation to identified deficiencies. Although compliance with AML/CFT requirements has improved as a result of these efforts, the improvements have been slow and uneven. Therefore, in July 2014, the Commission informed its licensed service providers that the Commission intends to escalate its regulatory approach by imposing appropriate regulatory sanctions when inadequate compliance by licensees with AML/CFT legislation is encountered. The Commission's approach is in line with the regulatory trend internationally to strengthen enforcement programs with the objective of evidencing, both to the investing public and to international overseers, a credible deterrence to legislative breaches.

Staff Training

With Anguilla being one of the world's largest jurisdictions of captive insurance domiciliation, the Commission is committed to ensuring that its staff is well qualified to regulate its captive insurance licensees. In 2014, seven of the Commission's staff who enrolled in 2013 in a comprehensive captive insurance education program offered through the International Centre for Captive Insurance Education successfully attained an Associate in Captive Insurance designation, a market leading and globally recognized professional qualification.

Commission Management

On 17 April 2014, Mr. Richard Hands took over as the interim Director of the Commission, replacing Mr. Keith Bell who had served as Director for the previous two years. My appointment as Director became effective on 11 August 2014.