



ANGUILLA FINANCIAL SERVICES COMMISSION

From the Office of the Deputy Director

ANGUILLA – LEGISLATIVE UPDATE

Early Developments

Anguilla, a British Overseas Territory, is a relatively recent international financial services jurisdiction. The main pieces of legislation, which were either new or brought up to date since 1995, were:

- . Companies Act
- . International Business Companies Act
- . Limited Liability Company Act
- . Limited Partnership Act
- . Company Management Act
- . Trust Act
- . Fraudulent Dispositions Act
- . Offshore Banks and Trust Companies Act
- . Confidential Relationships Act

The above acts provided at the time the basic legislative framework for a financial services centre. It should be noted that in 2000 the Government of Anguilla carried out a complete law revision exercise with the result that all the country's laws, including financial services laws, are available on one CD-Rom. They are additionally available in paper form in a set of ten books, which are updated periodically to cover new laws and amendments to existing laws. This law revision exercise is the responsibility of Anguilla's Attorney General's Chambers.

Anguilla's Electronic Companies Registry

Prior to the introduction of the 1995 legislation package, the consultancy firm, Mokoro Ltd, had made a recommendation that Anguilla consider setting up some form of electronic Registry of Companies.

The Registry of Companies internet project commenced in the late 1990s and in November 1998 the first international business company was registered completely electronically, bringing into existence Anguilla's Commercial Online Registration Network (ACORN). At the same time Anguilla passed the Companies Registry Act, which allowed for the acceptance of electronic filing of documents and signatures in electronic form.



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ACORN is now a very well established system and 95% of all documents, including new registrations, are filed electronically with the Registry by locally licensed service providers and their approved overseas agents, who are given direct access to ACORN.

In 2000 the international accounting firm, KPMG, conducted a Review of Financial Regulation in the Caribbean British Overseas Territories and Bermuda.

In its review of Anguilla, KPMG concluded “Of particular note is the development of the ACORN company registration system and the operation of the company registry in general which we consider to be an example of how on-line registration can be developed in a well regulated manner”

Chinese Characters

In 2002 ACORN, was given the ability to incorporate electronically companies with Chinese Characters symbolizing the name. These companies, as is the case with all foreign named companies, also provide an English equivalent of the Chinese symbols, which is recorded on the certificate of incorporation. This facility increases the number of languages available for use on ACORN to five. The other languages currently available on ACORN include French, Spanish, & Russian (Cyrillic).

The Chinese facility on ACORN allows agents the ability to incorporate Chinese named companies instantly without the need for additional verification of the English equivalent of the Chinese symbols. Incorporations with Chinese character names are reviewed at the Registry and both the Chinese characters and English name equivalent are recorded on the register to ensure no duplication of name in either language.

While this approach to registering Chinese named companies is quite novel, the avoidance of duplicate English equivalent names on these type of companies provides Anguilla with an enhanced regulatory oversight of these companies.

Full details of ACORN are to be found on Anguilla’s financial services website, www.anguillafsc.com.

Anti-Money Laundering Legislation

Following on from the KPMG Review was Anguilla’s need to put in place effective Anti-Money Laundering legislation. Also in the year 2000 the following were passed:

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- . Proceeds of Criminal Conduct Act
- . Money Laundering Reporting Authority Act
- . Anti-Money Laundering Regulations
- . Guidance Notes on the Prevention of Money Laundering
- . Criminal Justice (International Co-operation) (Anguilla) Act

Of particular relevance to the financial services sector are the Anti – Money Laundering (AML) Regulations. These set out the requirements that financial services and other providers must adhere to. They cover:

- a) identification procedures that must be established and maintained including how to deal with business introduced by an intermediary.
- b) the keeping of records for a minimum retention period of six years.
- c) internal reporting procedures, which require the appointment of a money laundering reporting officer and the setting up of an internal procedure for handling and reporting suspicious transactions.
- d) employee training procedures.

Anguilla recognises that AML standards are changing, bringing more burdens onto both the regulator and the industry and of course the combating of the financing of terrorism has added an extra dimension to this whole process.

Over the next 12 months the Government of Anguilla will be reviewing its Proceeds of Crime legislation and other areas of AML regulation and compliance to ensure that the revised 40 FATF recommendations, as well as the 8 Special Recommendations on Terrorist Financing are catered for and met by regulator and regulated alike.

Anguilla has been an active member of CFATF, the Caribbean branch of FATF, and has participated in a number of mutual evaluations of CFATF member countries.

Other KPMG Recommendations

The KPMG report introduced a number of minor improvements to existing licensing legislation as well as to Anguilla corporate legislation and these are to be introduced shortly. The



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amendments deal mainly with tightening the licensing and supervisory processes and improving shareholder protection in the corporate area.

Financial Services Commission

KPMG also recommended that Anguilla's regulatory body should become an operationally independent body, free from government control and with its own funding source. At the present time the regulatory body, the Financial Services Department, is a department of the Ministry of Finance of Anguilla.

A new Financial Services Commission Act was therefore passed in November 2003 and contains the following main provisions:

Functions of the Commission. These focus on licensing; supervision of licencees; compliance with AML legislation; monitoring of financial services in general; reviewing existing financial services legislation and making recommendations for new legislation; encouraging the development of high professional standards throughout the industry by way of codes of conduct; maintaining contact with appropriate foreign regulatory authorities by way of memoranda of understanding and with international associations of regulatory bodies; and providing information and advice to the industry and to the public on matters of financial services.

The appointment of a Board of the Commission and the functions of such a Board, which include inter alia establishing a Commission policy and overseeing its implementation; monitoring the effective administration of the Commission; and approving budgetary plans.

An important provision with regard to the Board of a Commission is the provision covering conflict of interest.

General powers of the Commission, reflecting those powers that would normally be held by a body corporate.

Financial and Reporting Provisions applicable to the Commission. These detail the funding and resources of the Commission and its budgeting, accounts and audit function.

Information Gathering. This section enables the Commission to obtain regulatory information and in certain circumstances to provide assistance to foreign regulatory authorities in the exercise of their regulatory functions.



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Enforcement and Disciplinary Action. This section requires licencees to appoint compliance officers; covers the ability of the Commission to conduct compliance inspections and to take enforcement action against licencees under a number of predetermined situations; and deal with suspension and revocation of licences together with a procedure for appeals.

Administrative and general provisions.

The new Financial Services Commission commenced operations on the 2nd February 2004.

New Insurance Legislation

Anguilla's existing insurance legislation dates from 1968 and provides only for insurance companies and associations of underwriters writing domestic insurance in Anguilla. It is somewhat deficient in meeting modern standards for licensing and regulating the insurance industry.

Anguilla has therefore drafted a new insurance act, which will bring regulatory requirements up to IAIS standards and will also cater for a number of different types of captive insurances. The types of licences, which may be applied for under the new legislation are:

- (i) Class 'A' Insurer's Licence which shall permit a local or an external insurer to carry on insurance business generally in or from within Anguilla.
- (ii) Class 'B' Insurer's Unrestricted Licence which shall permit a foreign insurer to carry on any foreign insurance business, including long-term foreign insurance business.
- (iii) Class 'B' Insurer's General Licence which shall permit a foreign insurer to carry on general foreign business, but not long-term foreign insurance business.
- (iv) Class 'B' Insurer's Association Licence which shall permit a foreign insurer to carry on general foreign insurance business and long-term foreign insurance business, with two or more owners of the insurer, and their affiliates, and to carry on no more than thirty percent (30%) of its foreign insurance business (based on net premiums written)



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with persons who are not owners of the insurer or their affiliates.

- (v) Class 'B' Insurer's Group Licence which shall permit a foreign insurer to carry on any foreign insurance business, including long-term foreign insurance business, with a single owner of that insurer and its affiliates, and employees of the owner or its affiliates.
- (vi) Class 'B' Insurer's Single Licence which shall permit a foreign insurer or a trust to carry on any foreign insurance business, including long-term foreign insurance business, with the sole owner of the insurer, if a company or with the beneficial owners of the insurer, if a trust.
- (vii) Insurance Intermediaries, including agents, brokers and insurance managers.

The licensing regime calls for a detailed application and business plan. The business plan requires information on the structure and scope of the proposed insurance business, the type of policies to be issued, details of any intermediaries to be used, the proposed client base, administrative structure and controls to be put in place, reinsurance arrangements, proposed capital and three year financial projections. Detailed personal questionnaires are required for all beneficial shareholders, unless the applicant is a publicly-traded company, directors and controllers of the company. No person can undertake insurance business in or from within Anguilla without a licence.

It is the duty of the regulatory body to maintain a general review of insurance practice in Anguilla and to oversee the conduct of persons so licensed. Foreign companies undertaking domestic insurance in Anguilla still need to register as a foreign company under the appropriate section of Anguilla's Companies Act.

Captive Insurances will need to appoint an insurance manager within Anguilla, who will provide any necessary accounting, administrative, underwriting and claims services to the captive. Finally, it is proposed to deal with a number of administrative issues through regulations rather than through primary legislation. These will be issues concerning solvency, admitted assets, application forms, annual returns and fees.

Mutual Funds – Part I

Anguilla's Mutual Funds Act 2004, which is in draft form, provides for the regulation, authorization and control of mutual funds and their managers and administrators carrying on business in or from within Anguilla. Provision is also made for unit trusts, which refer to an arrangement creating a trust under the laws of Anguilla or of any jurisdiction in which unit



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holders participating in the arrangement are the beneficiaries of the trust. The types of mutual funds envisaged are:

a) Private.

This refers to a mutual fund whose constitutional documents specify that it will have no more than 50 members. The documents must also specify that the making of an invitation to subscribe for or purchase shares issued by the mutual fund are not offered to the public.

b) Professional.

This refers to a mutual fund whose shares are made available only to professional investors and the initial investment in which, in respect of each of the persons constituting a majority of such investors, is not less than US\$100,000 or its equivalent in any other currency.

A mutual fund may also be termed a professional fund if it was carrying on business or engaged in an activity as a mutual fund on the date of the coming into force of the Act; the initial investments in respect of the majority of each of the investors in the mutual fund have been not less than US\$100,000 or its equivalent in any other currency; and the shares of the mutual fund are, after the date of the coming into force of the Act, made available only to professional investors.

c) Public

This refers to a fund, which is not a private nor a professional fund.

It should be noted that promoters of private and professional funds apply for recognition while those for public funds apply for registration under the Act. All applications are made to the Commission using the appropriate form accompanied by a statement setting out the nature and scope of the business to be carried on by the applicant, the name of any other country or jurisdiction where the applicant is carrying on or intends to carry on business. The application fee should be paid and certified copies of the constitutional documents of the fund submitted. The address of the applicant's place of business and address for service in Anguilla, name and address of a person resident in Anguilla who is authorized to represent the applicant and to accept service on its behalf and the address of any place (s) of business that the applicant may have outside Anguilla should be submitted also.

Applications for licensing managers and administrators must be accompanied by the application fee and include a statement of the financial, human resources and administrative facilities available to the applicant. All information requested by the Commission must be supplied.



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Public funds must maintain accounting records and prepare annual audited financial accounts for submission to the Commission. All licensees are subject to a Code of Practice governing matters relating to the conduct of business, financial resources, clients money etc.

This new legislation is expected to be passed by the end of 2004.

Mutual Funds – Part II

The Eastern Caribbean Central Bank, and The Eastern Caribbean Securities Regulatory Commission, both based in St Kitts, issued a Securities Act and Securities Regulations in 2001, which were passed by all eight jurisdictions within the Organisation of Eastern Caribbean States (OECS), which includes Anguilla.

The purpose of the Securities Act is to provide a full regulatory framework for all securities business either conducted within the OECS territories or with residents of OECS territories. The Act covers the requirements and rules to establish securities exchanges within member OECS jurisdictions; the licensing of the Eastern Caribbean Securities Exchange Ltd; the licensing and rules for clearing agencies and securities registries, collective investment schemes and the activities of market participants; general standards of conduct governing securities business and finally the establishment, powers and duties of the Eastern Caribbean Securities Regulatory Commission. A number of Regulations have also been passed to support the Securities Act.

Protected Cell Companies (PCC) Legislation

A final piece of new legislation to be passed in Anguilla will be the PCC Act, which is already in draft form and will also be passed with the new insurance and mutual fund legislation.

The PCC Act will allow for companies engaged in insurance business to be registered and companies engaged in other businesses to be registered with the approval of the regulatory body. If engaged in insurance business, a PCC would first require to be licensed as an insurer under the Insurance Act. Further, if that insurer wishes to underwrite programmes on a protected cell basis, it will have to be registered under the PCC Act.

The Act makes provision for the registration of protected cell companies and sets out rules governing the registration, management and administration of such companies.

In the Act a protected cell account is defined as a separate and distinct account (comprising assets, rights, liabilities and obligations) of a protected cell company.



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However the establishment of a protected cell account does not create a legal person distinct from the protected cell company. A feature of a protected cell company is that any asset, which

is linked to a particular protected cell account shall be held as a separate fund, which is not part of the general assets of the protected cell company, and is held exclusively for the benefit of the account owner of the protected cell account and to any counter-party to a transaction linked to that protected cell account. Assets in such account shall only be available to meet liabilities to the owners and creditors of that protected cell account. The Act provides that any asset which attaches to a particular account shall not be available or used to meet liabilities to, and shall for all purposes be protected from, the general shareholders and from the creditors of the company who are not creditors with claims linked to the particular protected cell account identified in the governing instrument.

The Act further creates statutory rights and obligations with respect to protected cell accounts and to receivership and winding up of protected cell companies.

The new Insurance Act, the Mutual Funds and the PCC legislation are expected to be passed by the end of 2004.

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