



ANGUILLA FINANCIAL SERVICES COMMISSION

From the Office of the Deputy Director

30th September 2004

Dear Licensees and Overseas Agents

Mutual Funds Act 2004, Insurance Act 2004, Protected Cell Companies Act 2004

Effective 1st October 2004, the 3 aforementioned Acts will legally become the law of Anguilla and be in force. Three minor Acts also come into force at the same time but they are mainly regulatory. They are:

The Proceeds of Criminal Conduct (Anguilla) (Amendment) Act 2004
The Criminal Justice (International Co-operation) (Anguilla) (Amendment) Act 2004
The Drug Trafficking Offences (Amendment) Act 2004

All six pieces of legislation can be found on the soon to be launched website www.fsc.org.ai under the requisite heading.

The coming into force of this legislation has certain consequences. The Insurance Act (RSA 2002 Chapter I15) is automatically repealed on the aforementioned date. Under section 23 of the new Insurance Act 2004, all licensees under the old Act, are automatically deemed to have been granted a licence under the new Insurance Act 2004 on the 1st October 2004. The new law also includes the licensing and regulation of insurance intermediaries, mainly agents, brokers and managers.

Under section 37 (1), of the Mutual Funds Act 2004, any manager or administrator who, on the 1st October 2004 is carrying on any business or engaged in any activity in relation to which he is required to be licensed under the Mutual Funds Act 2004, shall within three months from the 1st October 2004 comply with the provisions of the Mutual Funds Act 2004. Under section 37 (2), any mutual fund which on the 1st October 2004 is carrying on its business or managing or administering its affairs from in or within Anguilla shall, within six months from the 1st October 2004, comply with the provisions of the Mutual Funds Act 2004.

This means that if you or any company for which you are registered agent is engaged in any activity that requires you or the company to be licensed as a manager or administrator, then you or your company have until the 1st January 2005 to apply for a licence. It also means that you have or are registered agent responsible for any company that is a mutual fund and its business is being managed from in or within Anguilla, you or the directors of that mutual fund have until the 1st April 2005 to seek registration or recognition of the mutual fund.

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Where a mutual fund fails to comply with section 37 (2), it shall pay a non-compliance penalty of US\$5,000 for each month or part thereof during which it fails to comply with that subsection up to a period of 12 months. If after the period of 12 months, a mutual fund fails to comply with the provisions of this Act, it commits an offence and maybe proceeded against under section 35(2). Accordingly, I would urge you to review this section.

One minor point must be noted about the Mutual Funds Act 2004. There is a minor typographical error in the definition of the term “private fund” in the “Interpretation” section. In that definition, please note that where it says “An invitation is not made to the public if it is made to the public” the second reference to “made to the public” should be deleted. The Attorney General’s Chambers has been informed and this will be addressed through their normal internal channels.

The Protected Cell Companies Act 2004 has no immediate compliance regulatory requirements because there are no existing companies. However, please note that the Commission, at least initially, will restrict the registration of protected cell companies to companies engaged in insurance business. This will be kept under constant review. However, if a client wishes to seek registration for a company not engaged in insurance business, please note that the Commission would entertain such an application and would assess each application on a case-by-case basis.

His Excellency The Governor will promulgate the regulations under the Mutual Funds Act 2004 and Insurance Act 2004 next week. The regulations will cover application forms and fees and will be loaded on to the website mentioned above shortly after they have been issued. At this point applications under these two acts may be made. The regulations for the Protected Cell Companies Act 2004 are still being worked on and regulatory issues are being reviewed. This process should be completed by the end of the month and regulations issued shortly thereafter.

Please do not hesitate to contact this office if you have any queries on the above at this stay. Also note that I will send separately, copies of the legislation and explanatory notes on the mutual funds and protected cell companies acts for your review.

Regards,

Mr. Carlyle K. Rogers
Deputy Director