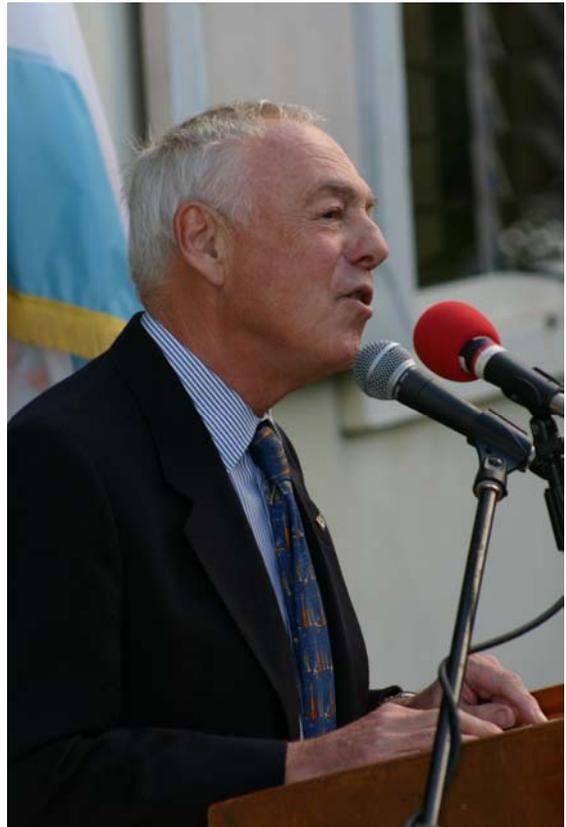


Today is an important day for financial services in Anguilla. This is the day when the financial services regulatory body moves from underneath the umbrella of government and stands up on its own two feet as an independent Financial Services Commission.

## **ROLE AND FUNCTIONS OF THE FSC**

For those who have not had an opportunity to become familiar with the functions of the Commission, they are

- to supervise financial services licensees
- to consider and determine applications for licences and registrations;
- to monitor compliance by regulated persons with the Anti-Money Laundering Regulations, Guidelines or Codes ;
- to monitor financial services business carried on in or from within Anguilla and to take action against persons carrying on unlicensed activities;
- to administer the financial services enactments and to ensure they effectively meet international standards;
- to supervise the administration of the Registry Acts by the Registrar of Companies;
- to advise the Governor and Government of Anguilla on matters relating to financial services business;
- to encourage the development of high professional standards within the financial services industry, and to promote industry codes of conduct;
- to maintain contact with foreign regulatory authorities and international associations of regulatory authorities relevant to the Commission's functions and to provide regulatory assistance to foreign regulatory authorities in accordance with the Act;
- to provide information and advice to licensees and the public concerning financial services as appropriate;
- to take measures to develop and protect the financial services industry in Anguilla



## **OTHER ISSUES COVERED BY THE ACT**

The Act also covers a number of administrative obligations and powers of the Commission in the following areas

- Appointment of a Board and the Board's role of oversight of the Commission
- General Powers and resources of the Commission
- Requirements for budgets, accounts and annual report, which will be a public document
- Power of the Commission to gather regulatory information (commonly known as Investigative powers)
- Power of the Commission to disclose information to another regulatory body for regulatory purposes and the checks and restrictions that the Commission will be required to take into account before disclosing such information.
- Enforcement Powers and disciplinary action available to the Commission arising from failure by licensed institutions to meet legislation requirements or from misconduct
- Formation of an Appeals Board
- Conflicts of interest issues
- Ability of the Commission to issue Regulations and Codes.

## **IMF UPDATE**

At the end of 2002 the IMF conducted an assessment of Anguilla's financial services sector. The IMF makes no concessions to smaller jurisdictions. Where there is significant activity in an area of financial services, the international standards and principles of regulation, set out by Basel, IAIS, IOSCO or FATF- related, are expected to be met. IMF's main recommendations on Anguilla were:

- a) to proceed as soon as possible with the independent Commission. So today we have met that recommendation.
- b) there are a number of outstanding issues in respect of meeting the Basel Core principles in respect of bank supervision. Although domestic banking in Anguilla is supervised by the Eastern Caribbean Central Bank, who are also undergoing an IMF assessment, the regulation of any offshore banking activity falls under the Commission. Two domestic banks in Anguilla have been granted offshore banking licences and they are in preparations for setting up this facility. Nevertheless, in spite of the fact that Anguilla has no offshore banks yet operating, the IMF felt it appropriate to recommend that existing legislation should be brought up to speed to meet all the Basel regulatory standards. The necessary legislative amendments have now been drafted.
- c) The third area of recommendation was to commence on-site visits of trust and company management service providers. Over 90 percent of these service providers have now received a first onsite examination. The Commission will be issuing general guidance based on its findings and based on the best practice guidelines issued by the Offshore Group of Banking Supervisors (OGBS) in September 2002. The system of onsite visits will be fine-tuned and this year the Commission will continue the process, applying a more forensic method to the process.
- d) The fourth main area of recommendation is in the area of Anti Money Laundering and Combating the Financing of Terrorism. The IMF recognizes that Anguilla has a relatively

strong legal framework for AML/CFT. The main recommendation centres on the fact that a number of issues already included in Guidance Notes should be drafted into legally-enforceable Regulations.

- e) Finally the IMF recommended that the Money Laundering Reporting Authority should have a more formalized structure and this has been attended to. The IMF also remarked on the low incidence of Suspicious Activity Reports. This may be a good thing or a bad thing. However the heightening of awareness of AML issues must be an ongoing activity and, as you may know, the FATF has just revised its 40 AML recommendations and 8 Special recommendations on CFT. This will mean further revision to Anguilla's existing AML Regulations and Guidance Notes.

## **INSURANCE LEGISLATION**

I would like to brief the industry on Anguilla's financial services legislative programme for this year 2004.

A new insurance act will cover both domestic insurance and international, in particular captive insurance. It will also bring into the licensing fold insurance agents and insurance brokers. In terms of captive insurers, who will also need to be licensed, the Commission will also introduce the role of the insurance manager. The insurance manager traditionally is the consultant and manager to a captive insurance company and its role is to assist the captive in all areas of insurance administration. It follows that an insurance manager needs to have experience in managing insurance companies at a professional qualification level.

## **MUTUAL FUNDS LEGISLATION**

The next important piece of new legislation is a new Mutual Funds Act. There is in existence an Eastern Caribbean Securities Act, which comes into effect whenever any securities business, whether actual or promoted, touches the shores of any of the Organisation of Eastern Caribbean States.

Anguilla's Mutual Funds Act will focus on international funds and makes it a requirement for all professional and private funds to be recognised. A professional fund is one where investors are deemed to be professional investors by making high initial investments into a fund and additionally where each investor elects to be treated as a professional investor. .

A private fund is one that limits the number of investors into a particular fund and where there is no public offering.

Public funds will be required to be registered. The definition of a public fund is simply where it is neither a professional nor a private fund.

The Act will also require managers and administrators of mutual funds to be licensed.

The Act will recognize that there is need for a transitional period of 3-6 months to allow for the process of registration or recognition of existing funds, operating in or from within Anguilla.

## **PROTECTED CELL LEGISLATION**

The third important piece of legislation is the proposed Protected Cell Companies Act.. The Act will provide for any company, for which the Companies Act applies, to apply to operate what are called protected cell accounts. Basically one of the main reasons for PCC legislation is to allow very small entities or accounts to form their own captive insurance facility within the framework of a protected cell company or indeed to form any type of statutory division within a company, provided the business is approved by the Commission. A protected cell account is not a legal entity nor is it a separate body corporate but the Act protects the assets of an account from the liabilities of another account and from the liabilities of the company itself. A protected cell company may have as many accounts as its administration might allow.

The PCC legislation can provide a number of benefits not only in the area of captive insurance but also for international trading and asset-owning businesses.

Captive Insurance, Mutual Funds and Protected Cell legislation will put Anguilla onto another level of financial services involvement. The Commission will be here to assist in explaining the requirements of the new legislation.

## **OTHER LEGISLATIVE INITIATIVES**

Other new pieces of legislation or proposed amendments to existing legislation, which we are in store for 2004 are:

1. Under the Companies Act it is proposed to require all companies, including domestic companies, to have a registered agent, who is a licensed service provider.
2. Under the Limited Liability Companies Act it is proposed to allow the continuation of any foreign company, not just a foreign LLC, into an Anguillian LLC.
3. Consideration will be given to forming a new Limited Liability Partnership Act. The Commission will be reviewing its application and benefits to the jurisdiction.
4. The Trusts Act is one of the few Acts from 1994 that has not undergone any amendment and it is time to have a new look at this Act and to see what developments have been introduced over the last 10 years in the practices of trusts and trust administration.
5. One point, that is pending from the KPMG Review, another regulatory review conducted in 2000, is the recommendation that all bearer shares should be immobilized. We shall be putting forward shortly the Commission's proposals to meet this recommendation.
6. The Commission will also be looking to commence a debate as to whether the International Business Companies Act and The Companies Act should be amalgamated, given the fact that Anguilla is a zero tax jurisdiction.

I believe that if the Commission is able to manage that all this proposed legislation during 2004, it will have started extremely well and the industry will be well equipped to move the jurisdiction forward.

I am not going to talk about the threats and initiatives to international tax havens. We are all familiar with these. Our job is to move forward by setting the standards, ensuring that standards are adhered to and that best advice is available and is given and that Anguilla establishes a reputation for quality service, for which the Acorn On-line Companies Registry system has already set the standard.

## **WHAT CAN THE INDUSTRY EXPECT FROM THE COMMISSION ?**

The industry can expect

- Integrity and high ethical standards
- Fairness and a level playing field,
- Access to the Commission on a wide range of financial services issues,
- The Commission to consult with industry and industry sectors on major issues,
- The Commission to give general assistance on financial services matters
- The Commission to provide a focused regulatory environment and oversight.

What does the Commission expect of practitioners and licencees ?

- High standards of service and conduct in respect of client business,
- Compliance with legislation, regulations and codes,
- Early consultation with the Commission in respect of problems and concerns affecting their own business or industry,
- A strong industry association in which all licencees and practitioners are members.

Thank you very much for your attention this afternoon.

John D.K.Lawrence, Director