



## ANGUILLA FINANCIAL SERVICES COMMISSION

FROM THE OFFICE OF THE  
DIRECTOR

### PRESENTATION AT THE FRIENDLY SOCIETY BREAKFAST MEETING, CHARLESTON, SOUTH CAROLINA - 7<sup>TH</sup> JANUARY 2005

Since I am addressing a knowledgeable insurance audience, I took the liberty to refer to one of my favourite reference books, the Oxford Book of Quotations for an erudite quote on Insurance. In true British fashion the writer W.S. Gilbert, of Gilbert & Sullivan fame, came up with the following:

“ Down went the owners – greedy men whom hope of gain allured  
Oh dry your starting tears. For they were heavily insured”

Since this is also a breakfast meeting, I did the same for the word ‘Breakfast’

The goodly William Makepeace Thackeray said:

“No business before breakfast. Glum, says the King  
Breakfast first, Business next”

### WHAT AND WHERE IS ANGUILLA ?

**Where:** Anguilla is located in the Caribbean. It is the most northerly of the Leeward Islands, just 5 miles North of St Martin, the unique French and Netherlands Antilles island. From Anguilla the Caribbean islands either go south all the way south to Trinidad & Tobago or west to BVI and Puerto Rico and beyond. It's situ makes it an ideal location. Its access hubs are St Maarten, San Juan and Antigua, although for those of you with private jets, the flight can be direct.

**What:** These are the main attributes of Anguilla:

Anguilla is a British Overseas Territory. The political make up is a locally elected Government and a House of Assembly with responsibility for running most areas of Government and passing legislation. There is a UK appointed Governor, appointed by Her Majesty the Queen, who is titular head of state. The Governor has responsibility for



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Good Governance overall and in particular external relations, security and law enforcement and financial services.

The legal system is based on English common law

Anguilla is a zero tax jurisdiction with no personal or corporate taxes of any nature. Government income is received through indirect taxation.

There are no foreign exchange restrictions or controls. The local currency is the EC Dollar which is tied to the US Dollar. In practice the US Dollar is widely used.

From a financial services perspective, there is a growing infrastructure with a large number of company manager and trust service providers. Four domestic banks, two of foreign capital and two of local capital, serve a population of 12,200 and overseas clients. There are a number of insurance companies, underwriting domestic risks, either resident on the island or dealing through agents and a small number of offshore insurance companies.

Touristically, Anguilla has renowned beaches, some of the best in the Caribbean. The tourism area is an excellent and expanding industry. At the end of this year an 18 hole championship golf course designed by Greg Norman should come on stream. The Tourist Board have a new slogan which is "The Anguilla Experience - Feeling is Believing" Previously it was "Tranquility wrapped in Blue" Both descriptions are appropriate. For those who long to see pictures of white beaches and azure waters, visit the web site:

[www.anguilla-vacation.com](http://www.anguilla-vacation.com)

I hope that gives you a flavour of what Anguilla is. I think you will find that anybody who has been to Anguilla will sing its praises to you.

### FINANCIAL SERVICES INDUSTRY

The industry has an Association, called the Anguilla Financial Services Association or AFSA and I shall be asking Odell McCants, who is the Executive Director of AFSA, to say a few words about it and their programme for 2005.



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First of all, I am the overall Director of the Financial Services Commission. The Commission is a statutory body and is in effect the Governments' financial services regulatory body. Its main functions are:

- To consider and determine applications for licences in financial services.
- To regulate and supervise licensed participants
- To monitor financial services businesses and legislation generally
- To oversee the activities of the Companies Registry
- To maintain contact with foreign regulatory bodies, as appropriate
- To monitor compliance with Anguilla's anti money laundering legislation
- To protect the reputation of Anguilla as a financial services jurisdiction.

The Financial Services Commission is governed by the Financial Services Commission Act which was passed in November 2003 and the Commission came into being on the 2<sup>nd</sup> February 2004. So we are very shortly to reach our first anniversary.

Anguilla is a relatively recent player in the financial services arena. The first pieces of so-called 'offshore' legislation did not come into being until 1996. Since then Anguilla has made what I would describe as very steady development.

The first achievement which we did was to make the Companies Registry totally electronic or online . This occurred at the end of 1998. We call the system Anguilla's Commercial Online Registry Network or ACORN.

ACORN allows licensed company service providers and their approved intermediary clients to incorporate with the Companies Registry ordinary companies, international

business companies, limited liability companies and limited partnerships directly online. It also allows all other filings permitted or required by the respective corporate legislation to be done online. When the incorporation application is submitted electronically and accepted, the system immediately e-mails to the sender the certificate of registration. So being an electronic system, it works 24 hours a day 365 (or 366) days a year. The fastest incorporation which has been reported is 3 minutes. I repeat 3



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minutes. Finally because the Registry is totally electronic, it makes for an extremely efficient Registry. More details on ACORN and the Companies Registry can be obtained from the website:

[www.anguillafsc.com](http://www.anguillafsc.com)

My office, as the regulatory body, has its own website where it details the functions and details of the Commission, the various areas of responsibility of the Commission, including individual pages on each of the financial services products offered by Anguilla eg insurance, banking etc. The web site also the ability to download and print out the appropriate legislation and regulations. We have tried to make the web -site as user friendly and informative as possible. This website is:

[www.fsc.org.ai](http://www.fsc.org.ai)

## INSURANCE

A new Insurance Act was passed by Anguilla in September 2004. The new Act covers the licensing and regulation of domestic insurance, offshore or foreign insurance, particularly captive insurance, and of insurance intermediaries i.e. agents, sub-agents, brokers and insurance managers. The new Act allows for a number of different insurance licences to be issued as follows:

- Class A licence, permitting a local or external insurer to carry on all forms of insurance business, including domestic business. An external insurer is defined as an insurer licensed in another jurisdiction, wishing to underwrite domestic insurance in Anguilla.
- Class B Unrestricted licence, permitting a foreign insurer to carry on any foreign insurance, including long term insurance.
- Class B General licence, permitting a foreign insurer to undertake general foreign insurance only.
- Class B Association licence, permitting a foreign insurer to undertake general and long term insurance with two or more owners of the insurer and its affiliates, and to carry on up to 30% of its foreign insurance business (based on net premiums) or 100% of reinsurance business with persons who are not owners of the insurer.
- Class B Group licence, permitting a foreign insurer to carry on general and long term insurance with a single owner of the insurer and its affiliates.



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- Class B Single licence, permitting a foreign insurer to carry on general and long term business with the sole owner of the insurer.

The Act determines, in addition, a number of minimum levels of capital for each of the above licences. The Act also allows, with the approval of the Financial Services Commission the shares of a licensed insurer to be owned by trustees of a trust.

However any share of a licensed insurer may not be held, issued or transferred without the approval of the Commission with certain exceptions for insurers publicly traded on a stock exchange approved by the Commission.

A licensee, which is a company, must have a minimum of two directors and the appointment of all directors and senior officers must have the prior approval of the Commission.

The Act determines a number of requirements for licensed insurers, the most important being:

- The requirement for insurers undertaking domestic business to maintain certain realizable investments.
- The requirement for all insurers to issue an annual certificate of compliance to the effect that it is undertaking business in conformity with its approved business plan and licence.
- The requirement to prepare annual accounts, audited by an independent auditor approved by the Commission. However it may exempt a licensee from this requirement or from part of this requirement.
- The requirement for certain insurers undertaking long term business to submit an actuarial valuation on its assets and liabilities.
- The requirement for certain insurers to keep separate accounts covering general and long term insurance.
- The requirement for all class B licensed insurers to appoint an insurance manager, who has, or has available to it, the necessary insurance manager expertise.
- The requirement for all insurers to keep proper books and records in Anguilla and to have a principal representative within Anguilla.
- The requirement for all insurers to maintain a solvency margin determined by the Commission.

It should be noted that there is no statutory requirement for insurers to have:



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- A local director
- A local auditor
- A local lawyer
- A local bank account

In conjunction with the Financial Services Commission Act, passed in 2003, the Commission has powers of examination of licensees, of enforcement, including suspension and withdrawal of a licence and the ability to exchange information with other regulatory bodies subject to certain checks and conditions.

An inclusion in the Act is a section on protected premium accounts, which deals with the protection of premiums paid by an insured to an insurance company from being challenged by creditors unless the payment of such premiums was made with the intent to defraud such creditor. The section also protects the insurer from action against insurance premiums paid to it, providing it maintains such premium accounts separate from every other account.

A further section applies to annuities and contracts of insurance on human life and gives certain protection on payments and proceeds of policies made by the insurance company to an insured or to a beneficiary of a policy.

A number of Regulations covering application forms, fees and statutory returns have already been issued and Code of Conduct Notes are in the process of being prepared on the following issues:

- Licensing
- Management Controls and Corporate Governance
- Asset and Liability Strategy and Controls
- Market Conduct
- Role of Insurance Managers
- Records
- Reinsurance.

As I have already mentioned, further details including the ability to download the new Act and the Regulations/Code of Conduct Notes passed to date are to be found on the Commission's website [www.fsc.org.ai](http://www.fsc.org.ai).

## PROTECTED CELL COMPANIES

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At the same time as passing the Insurance Act, Anguilla also passed two other acts, namely a Mutual Funds Act and a Protected Cell Companies or PCC Act. The PCC Act allows a PCC to engage in insurance business or in another type of financial or other business, with the approval of the Commission.

A PCC may operate protected cell accounts, which are defined as a separate and distinct account pertaining to an identified or identifiable pool of assets and liabilities linked to that account and which are distinguished from other assets and liabilities of the PCC itself and other cell accounts.

I shall not dwell on the PCC legislation this morning, but suffice it to say that PCC's are often used to cater for very small captives, which are the cell accounts. Again, full details can be found on the Commission website.

### INSURANCE REGULATION

A few years ago, I wrote an article for an Offshore Investment, entitled "Quis custodiet ipsos custodiet" "Who guards the guards themselves" The guards being of course the regulators. The saying is to be found in one of Juvenal's satires. The original context highlighted the problem of hiring guards to prevent infidelity amongst women whose husbands were out of town fighting some war. The modern challenge is more likely to void the assignment of a fox to guard the henhouse.

Well in the regulatory world, I am pleased to say that matters are more equitable. Each industry itself sets out the standards, being either Core Principles or Recommendations that regulators should follow. The standard setters are:

Banking – Basel Committee

Securities – International Organisation of Securities Commissions – IOSCO

Insurance – International Association of Insurance Supervisors – IAIS

AML – Financial Action Task Force – FATF and various regional organizations.

Anguilla is a member of the Caribbean Financial Action Task Force

### IAIS

The IAIS has set out 28 Core Principles, covering inter alia

- Structure and resources of the regulatory entity
- Licensing
- Suitability of applicants and related persons, including changes in control



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- Off site monitoring and on-site inspection
- Market conduct and internal procedures by licensees
- Enforcement and sanctions
- Winding up and exit from the market
- Group wide supervision
- Risk assessment
- Anti- Money laundering

As you will see, the core principles of IAIS are mainly directed at insurance companies dealing with the public at large and they do not really cater for captives except in a few generic areas. This brings me on to another insurance standard setter which is the Offshore Group of Insurance Supervisors – OGIS.

### OGIS

OGIS is a grouping of mainly offshore regulatory entities, who deal with regulatory issues for offshore insurances and captives. Their stated objectives are:

- To encourage the proper supervision of international business by jurisdictions concerned with the supervision of international insurance business, including captives.
- To establish standards for the supervision of international insurance business, including captives by OGIS members

Anguilla is an active member of OGIS.

OGIS has prepared a number of papers to support the objectives already named. The main ones are:

- Personal Lines
- Fit and Proper Evaluation
- Loans to related parties
- Cease and desist orders
- Solvency requirements
- Corporate Governance
- Quality of assets
- Standards of reinsurance security
- Captives changing domiciles



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- Licensing of insurance managers
- Avoiding money laundering in the international insurance sector

These papers provide a useful background to regulators for the supervision of captives.

At the end of the day, I, as a regulator, will focus on five main issues, when considering captive applications:

- Fit and proper in respect of owners and directors
- Adequacy of resources
- Sensible and sustainable business plan
- Risk management and corporate governance
- Expertise of related parties, e.g insurance manager

### WHY ANGUILLA ?

Offshore simply means a different jurisdiction, which permits someone from outside that jurisdiction to obtain some desired financial service or benefit. Nevertheless, international jurisdictions have to live off their wits in order to generate business. In particular they have to be mindful of the following attributes:

- Speed of response
- Cost of operating
- User friendly legislation and flexibility of sensible regulation
- Stable legal climate
- Lower or minimal tax burden, if properly structured
- Privacy considerations, when dealing with high net worth individuals
- Security
- Reputation

I shall just focus on the first item i.e. speed of response, because I believe that in Anguilla we are able to meet the other attributes which I have mentioned. Let me give you three examples.

1. Some time ago a major N.Y. law firm suddenly found itself late on a Friday with the requirement to form an international company by close of



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business that day. Through the ACORN system, the registered agent was able to receive the company registration certificate within half an hour.

2. A firm in Hong Kong required a company to be formed the previous day. Again through the ACORN system this was achieved, since Hong Kong is some 12 hours ahead of Anguilla
3. Just prior to Christmas, an insurance manager asked whether Anguilla could licence a captive before the holiday. Through e-mail we received a copy of the business plan, details of beneficial shareholders and directors. This allowed us within 48 hours to vet the due diligence and discuss with the manager aspects of the business plan. The full application was then received by e-mail and a further 48 hours later the Companies Registry incorporated the company and on Christmas eve a copy of the licence certificate was faxed to the insurance manager.

I believe that service such as the instances I have just described will be crucial for Anguilla to be able to be a recognized player in this industry.

Now, I made a reference earlier to the Latin poet, Juvenal. In another satire he wrote "Unde habeat quaerit nemo, sed oportet habere" "From where you obtain it nobody asks, but have it you must". The answer to this conundrum is of course "money"

Let me end with the Government of Anguilla's slogan for 2005. It is ANGUILLA INC - OPEN FOR BUSINESS.

John D.K. Lawrence  
Director