



## ANGUILLA FINANCIAL SERVICES COMMISSION

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### **GUIDELINES ON USE OF LETTERS OF CREDIT ON INITIAL CAPITALIZATION OF “CAPTIVE” INSURERS** (Issued under Section 49 of the Financial Services Commission Act, R.S.A. c. F28 (as amended))

#### **1. Object**

These Guidelines set out certain conditions for compliance with the capital requirements established under subsection 3(1) of the Insurance Act, R.S.A. c. I16 (“the Act”).

#### **2. Background**

Subsection 3(1) of the Act provides that the Commission may grant licenses under specified categories to persons who wish to carry on insurance business in or from within Anguilla **“providing that (*that person*) has and maintains an issued and paid-up capital of at least \$ (specified amount);”**

The attributes of issued and paid-up capital are clearly set out at Division 3 (Share Capital) of Anguilla’s Companies Act, R.S.A. c. C65 and do not include any reference to **“*Letters of Credit*”**. However, the use of Letters of Credit as a component of “paid-up” or “paid-in” capital is expressly contemplated by legislation governing certain classes of insurers in other jurisdictions, albeit under stringent conditions.

Pending review of the Act, these Guidelines formalise and clarify the conditions under which, going forward, the Commission will be minded to accept a Letter of Credit as a component of “paid-up capital” at the initial licensing of a “captive” insurer.

It remains the Commission’s clear preference that an insurer be licensed after capitalisation in conformity with the Act as currently written, i.e. with cash in exchange for the issue of fully paid-up shares.

### **3. Conditions for Acceptance of Letters of Credit as a Component of Initial Capitalization**

- (a) The Letter of Credit must be issued by a bank licensed in Anguilla under the Banking Act, R.S.A. c. B11 and with a Short Term Debt credit rating of at least A-1 (Standard & Poor) or P-1 (Moody). (The wording “a bank licensed in Anguilla” includes a wholly-owned subsidiary or branch so licensed of a bank incorporated and licensed elsewhere, so long as the latter meets the Short Term Debt credit rating requirement.)**
- (b) The Letter of Credit must be Irrevocable, delivered to the custody of the Commission prior to the issue of a license, be issued for the Commission’s benefit and can be called upon at its discretion;**
- (c) The wording of the Letter of Credit must follow the format developed by the National Association of Insurance Commissioners (“NAIC”), subject to the proviso that there be text reflecting that the Letter of Credit is issued pursuant to the requirements of these Guidelines;**

**NB: The Letter of Credit will not be released by the Commission unless first: (i) replaced by another approved Letter of Credit: (ii) replaced by capital paid in to the licensee by its shareholders in cash in the amount required by the Commission or, (iii) evidence acceptable to the Commission has been received that all the insurer’s liabilities have been satisfied in the case where the insurer is terminating operations.**

**Approved by the Board  
Anguilla Financial Services Commission  
10 December 2013**