





Anguilla's licensing and regulatory body for the financial services industry



OUR MISSION

To enhance the safety, stability and integrity of Anguilla's financial system and contribute to Anguilla being a premier financial centre, through appropriate regulation and legislation, judicious licensing, comprehensive monitoring and good governance.



DIRECTOR'S REPORT



KEITH BELL

“The Commission remains committed to upgrading the skills of regulatory staff.”

On balance, the year 2012 was like the fabled curate's egg – “good in parts”. To be fair, to have gotten through it at all might even have been something of an achievement in itself; several of the more lugubrious forecasters having predicted the end of the world on 21 December. It was rather a relief to be at one's desk the next day (a Friday) and find that all was well or, at least, all was still there.

The first part of the year saw the Commission move from

its former cramped headquarters at The Secretariat to spacious new accommodation at the headquarters of the Malliouhana-Anico Insurance Company Ltd, a feat achieved without loss and singularly little breakage. In no small measure, the success of the move was attributable to the leadership and organisational skill of the individual who served as the Commission's Interim Director from the beginning of September 2011 until the end of June 2012. Richard Hands brought to the Commission vast experience from an impressive career as, firstly, a banker and, secondly, a bank regulator and made good use of it, in organising and directing the Commission's staff and in setting out for the industry the operational requirements for an offshore jurisdiction intent on performing to generally accepted international standards. The drive for closer regulation of international financial centres, led by the Organisation for Economic Cooperation and Development (OECD), began in 2009; what that drive would likely mean for Anguilla began to take shape under Richard Hands' watch in the latter part of 2011 and into the first half of 2012. His observation to staff upon his departure that the pressure from the OECD and other international bodies on jurisdictions such as Anguilla would be unlikely to diminish any time soon has been borne out by subsequent events.

The entire year unfolded against the continued backdrop of uncertainty that has bedevilled the financial services industry worldwide since the events of late Summer 2008. Global economic growth remained anaemic, with a lasting solution to the sovereign debt crisis in the euro area remaining elusive; moreover, as the year progressed, commentary intensified over the threatening “fiscal cliff” in the United States, with the equity markets responding predictably as the year came to an end. A micro-economy such as Anguilla feels the buffets and blows and ripples from such turbulence much more harshly than do its larger, more diversified neighbours and the mainstays of the island's economy, namely tourism, construction and the financial services industry, faced testing challenges – many of which would remain to be overcome in 2013 and beyond. Widespread lack of confidence in those markets that are the source of the tourism footfall meant a lacklustre performance in that sector (and the closely related construction sector), with several major properties either remaining

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closed or operating well below capacity. Similarly, less-than-buoyant markets eroded the fortunes of high net worth individuals in many parts of the world and worked to ensure less-than-buoyant demand for some of the financial services industry's product offerings.

Not without justification, however, Anguilla's coat of arms bears the inscription "Strength and Endurance" and, as if to emulate the performance of Ms Proctor at the London Olympics in July 2012, the financial services industry has continued to contribute to the island's economy, albeit amid fairly harsh trading conditions.

Furthermore, there has been a combined effort from the industry – through the Anguilla Financial Services Association ("AFSA"), the Government of Anguilla-funded Anguilla Finance Limited ("AFL"), the Society of Trust and Estate Practitioners ("STEP") and the Commission - to equip Anguilla with the attributes of an international jurisdiction-of-choice for legitimate business. The groundwork for these initiatives was laid at the Commission's Industry Day on 29 October, when a roster of accomplished speakers was assembled from various jurisdictions and professions to address market participants on subjects ranging from "Compliance in 2012" to the United States' "Foreign Account Tax Compliance Act" (colloquially known as "FATCA") and on to facets of the captive insurance industry. From this starting point, further discussions among AFSA, AFL, STEP and the Commission led eventually to development of a program of seminars, partly supported by the Commission, to further develop market participants' key resources – their managements and staff.

As I noted previously, the setting out for the industry of the operational requirements for a jurisdiction intent on performing to generally accepted international standards was one of the benefits of Richard Hands' tenure as Director. Primarily, this was apparent in his effort to improve what one might describe as the industry's "compliance culture", particularly as regards Anti-Money Laundering and Know Your Client requirements. Using on-site inspection procedures which Richard Hands, with the help of the Commission's Head of AML/CFT and Legal Services and Regulators, had devised and field tested, the effort continued through the second half of the year, with one collateral result being that by early 2013 over

ninety percent of licensees had appointed the required Money Laundering Compliance Officer ("MLCO"), Money Laundering Reporting Officer ("MLRO") and corporate Compliance Officer ("CO") that had been demanded by applicable Anguillian legislation since 2009 (or, in the case of a CO, since 2004).

Following mid-year, a similar compliance program sought to have all licensees, not merely a majority of them, produce and deliver to the Commission audited accounts according to the requirements of their governing statutes. It is indeed all rather baffling that clear statutory prescriptions for the filing of audited accounts with the Commission have not, historically, been scrupulously observed. At its most basic, a free enterprise system requires that there be a "level playing field" for all those who seek to compete in the marketplace; if a majority is shouldering the expense of the audit of accounts required by statute, then each one of the numerically significant minority not bearing that expense is availing itself of an unfair advantage vis-à-vis its competitors. Research has revealed that this phenomenon is not encountered in other Overseas Territories (from which much of the legislation applicable to Anguilla's financial services industry is drawn) or in the Crown Dependent Territories – collectively the jurisdictions with which Anguilla may usefully be compared.

It will be constructive to recall the context:

- Anguilla's legislators did not impose acute time pressure on those subject to the Territory's financial services enactments. The time limit for presentation of audited accounts is an accommodative six months;
- There is considerable latitude in acceptability of the "independent auditor" to be selected by a licensee to audit its accounts;
- Taking the particular case of those subject to the Company Management Act, R.S.A. c. C75 ("CMA"), the majority of products and services delivered to clients does not appear to require an industry participant to have an extraordinarily complex accounting system and there is often dedicated accounting software available for use in any event. Moreover, the bulk of those subject to the CMA are incorporated under the Companies Act, R.S.A. c. C65. This means that they *"must*



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keep accounting records that: (a) are sufficient to record and explain the transactions of the company; and (b) will, at any time, enable the financial position of the company to be determined with reasonable accuracy.....”; under such a clear, statutory prescription the audit of such records will not, one would assume, present extraordinary challenges.

Clearly, if industry participants wish to hold themselves out as conducting business in a well-regulated jurisdiction operating within generally accepted international standards, it all becomes rather a sham if there is not universal compliance with what is a fundamental requirement in a financial services sector – the filing of audited accounts by licensees with the agency responsible for their licensing.

Licensees

No doubt as a reflection of the uncertain climate in the global economy, there was only a marginal increase in the number of the Commission's licensees, with an absolute increase of 23 licensees in the captive insurance sector compensating for small decreases in the numbers of mutual funds and trust companies. The total number of licensees stood at 496 at the end of December, 2012, representing an increase of slightly more than 1.1% over the previous year end and compared to 4.9% growth during 2011 (a year when almost every sector recorded an increase in licensees). During 2012 (and into the first part of the following year) it was clear that licensees were continuing to assess the economic viability of their businesses with a number of requests for license surrender or revocation being the outcome (in some cases, licensees simply failed to pay the prescribed annual fee for license renewal, an action which requires the Commission to revoke a license).

The license of Gulf Insurance Limited (“Gulf”) was made subject to a Directive on 1 August 2012. The Directive prohibited Gulf from writing new business due to its failures to meet “margin of solvency” requirements and to have in place adequate Property Risk Excess of Loss and Catastrophe Excess of Loss reinsurance. Following year end, ownership of Gulf was acquired by Assuria NV, a financial services conglomerate based in Suriname, with interests in insurance companies active in Guyana, Trinidad & Tobago and Suriname and in the latter country's largest bank. The two deficiencies

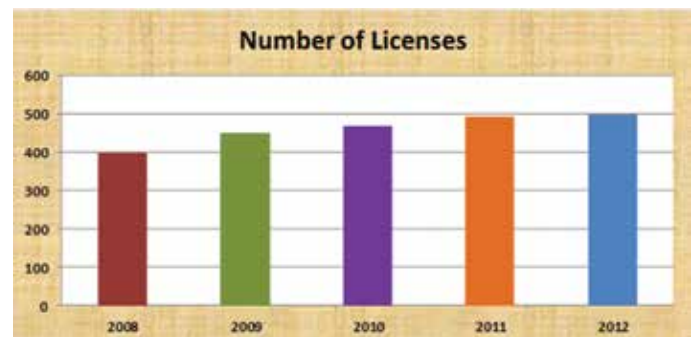
leading to the Commission's imposition of the Directive were removed.

On 12 September 2012, the licenses of Maven Assurance, Ltd. (a general foreign insurance company) and Maven Life International, Ltd. (a long term foreign insurance company with protected premium accounts) were each made subject to a Directive requiring that they cease immediately to hold themselves out as entering into contracts of insurance. Two months later, the companies' directors and shareholder placed them in liquidation (over an extended period, the companies' investment manager and custodian had failed to return funds to them upon request; this eventually led to the companies' inability to meet liabilities falling due). On 22 November 2012, counsel for the Joint Liquidators made application for surrender of the companies licenses and this was accepted.

In light of the contents of the latest available consolidated audited accounts of their parents, and the Emphasis of Matter paragraphs in the reports of the auditors of those accounts, the Directives applied to each of National Bank (Private Banking and Trust) Limited and Caribbean Commercial Investment Bank Limited, were maintained in force. Both licensees are subject to the Trust Companies and Offshore Banking Act, R.S.A., c. T60 and the Directives essentially permit their raising of new deposits only from those persons who were depositors at the time the Directives were first imposed.

A graphic representation of the number of licensees can be found below.

BAR CHART SHOWING YEARS 2008 - 2012

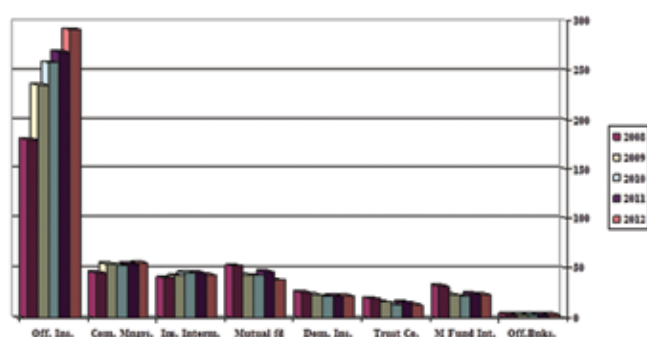


The following chart provides an industry sector breakdown of licensees, excluding a small number of foreign insurance companies and, as well, the two money services businesses which came within the

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purview of the Commission by virtue of the Money Services Business Act, 2009. The dominance of the offshore captive insurance sector remains clear and demonstrates Anguilla's position as the world's fifth largest jurisdiction by number of companies licensed in the captive insurance market.

Sectorial Distribution of Licensees



Regulatory Capacity

The Commission remains committed to upgrading the skills of regulatory staff. The insurance sector remains the most significant of the Commission's activities where technical regulatory knowledge is required. Accordingly, the Commission entered discussions in 2012 with the Caribbean Regional Technical Assistance Centre (CARTAC) with a view to CARTAC providing hands-on technical advice and training, either by the Centre's own advisers or specially contracted CARTAC consultants, to enable the Commission's Regulators to conduct on-site inspections of insurance companies. By year end, arrangements were well advanced for the conduct of two such inspections in 2013. The Commission also engaged in active negotiation with the Commonwealth Secretariat for the latter's provision of a long-term insurance advisor to provide capacity building in, inter alia, legislative development and both on-site and off-site supervision of insurance companies.

Anti-Money Laundering and Combating the Financing of Terrorism ("AML/CFT")

The Commission's AML/CFT Unit, in collaboration with the Financial Intelligence Unit and the Attorney General's Chambers, conducted an AML/CFT Seminar on 13 and 14 June 2012 at the Blue Ridge Conference Centre. The Conference was well attended and demonstrated the commitment of the service

providers in attendance, especially the designated non-financial businesses and professions, to engage in AML/CFT training.

The AML/CFT Unit continued its onsite inspections, covering corporate governance and related issues, across the financial services sector between March and October 2012. The purpose of each examination was to evaluate the service provider's compliance with the AML/CFT legislation. The main conclusions of the themed inspections were published on the Commission's website. While recognizing progress made, the Commission observed that there was also a number of areas where service providers exhibited a low level of compliance with the AML/CFT legislation, particularly in training and awareness, policy, systems and controls and in obtaining the required Commission approval of service providers' MLRO, MLCO and CO (as indicated above, significant progress was achieved in this latter area by the beginning of 2013).

It has long been the Commission's view that AML/CFT risk represents one of the major threats to the reputation of the jurisdiction. Moving forward, the approach will transition from provision of education to service providers to an approach where regulatory sanctions are considered when inadequate performance by service providers is encountered.

Legislation and Guidance Update

The Commission's Board of Directors took an active approach to proposed revisions to be made to the legislation, their compliance with international standards and the possible impacts on the financial services industry. Accordingly, a legislative workshop was held on 18 September 2012 with the Board of Directors and the Executive. Subsequently, final revisions have been made to the Financial Services Commission (Amendment) Bill, the Proceeds of Crime (Amendment) Bill, the AML/CFT Regulations and Code, Externally and Non-Regulated Service Providers Regulations and the FSC Administrative Penalties Regulations.

In common with comparable legislation elsewhere in the world, the Financial Services Commission Act, R.S.A., c. F28 permits the Commission to issue Guidelines regarding procedures to be followed and the conduct expected of licensees in the operation of licensed businesses. This is a useful regulatory



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technique as it helps avoid unproductive use of time and, as well, misunderstandings between the regulator and licensees. In the course of 2012, the Commission issued separate Guidelines for Offshore Banking, the Role and Approval of Compliance Officers and on the Revocation and Cancellation of Mutual Fund Licenses.

In April 2012, following a series of incidents over the preceding several months where principals of international insurance companies were charged with fraudulent activity and/or licensees were not in good standing and had contravened several sections of the Insurance Act, R.S.A., c. I16, the Commission advised insurance managers that it considered such cases represented instances of ineffective oversight – with significant potential for reputational risk for Anguilla's financial services industry – and reminded them of the standards set out in the Guidance Notes on the Responsibilities of Insurance Managers first issued in March 2008.

International Assessment

Members of the Commission's staff were heavily involved in the preparation of the follow up report on improvements made to Anguilla's AML/CFT regulatory framework which was presented in November 2012 by officials of the Attorney General's Chambers at the CFAFT Plenary Meeting XXXVI held in the British Virgin Islands. Further contributions from Commission staff will be provided when Anguilla again makes its report to the CFATF Plenary Meeting XXXVIII in November 2013.

The Way Forward

In the second paragraph of this Report I remarked that the pressure from the OECD and other international bodies on jurisdictions such as Anguilla is likely to be unremitting. This is as likely to be true for a regulator such as the Commission as it is for financial services industry participants themselves, as the international bodies spend considerable resources assessing the supervisory arrangements in place in a jurisdiction, from legislation through to its application as well as performance of off-site and on-site supervision and the related reporting and actions taken by the supervisor. A start has been made in preparing for this pressure by the Commission taking an inventory of the capabilities of its own human resources and then taking the

opportunity to access capacity made available by the international organizations themselves, or by closely related affiliates.

While no comparable initiative appears to have taken place in 2012, it seems clear that there should be developed a skill-set inventory of the financial services industry, collating the current skills of those at the operational level of market participants and requiring from those at the most senior, decision-making level, the laying down of plans for their further development in areas critical for financial services industry professionals' success. By establishing the current level of development of the industry's human resources and comparing it to what is required in an offshore jurisdiction performing at generally accepted international standard, a strategy can be developed to bridge "the gap". Moreover, knowledge of "the gap" opens the way for identification of the most appropriate means of closing it, be it by delivery of courses through the medium of "distance learning" or via an educational service provider – such as the Anguilla Community College – developing and delivering its own product offerings precisely to develop the island's human capital. The key, as always of course, will be to manage the translation from intention to execution; it will be critical that once having identified "the gaps" the industry – and its human resources – deliver the development effort required. To fail to do so puts the well-being of the financial services industry at risk; service providers must react positively to the requirements of an increasingly demanding and unfriendly world, and that requires resources of the right calibre at the right place at the right time.