

Focus on Anguilla

One of the lesser-known offshore jurisdictions, Anguilla has long been a pioneer in developing technology to facilitate international corporate structuring



Introduction

Anguilla celebrated its ten-year anniversary as an international financial centre in 2004, with little fanfare or attention from corporate structuring professionals around the world. Despite annual promotional visits to the region, Anguilla has remained a relatively low-profile jurisdiction in Asia.

However, Anguilla can be a desirable place for a variety of corporate structures – not only are its companies law, legal system and tax structure competitive with those of the BVI or any other Caribbean jurisdiction, it has fostered a strong, technology-focused approach to developing its offshore centre, which

makes it dynamic and user-friendly for company principals and service providers alike. Moreover, even the jurisdiction's low-profile image is an advantage, as it means Anguilla has managed to avoid a great deal of the stigma attached to 'tax havens'.

General Overview

Anguilla is a familiar jurisdiction to professionals accustomed to working with the BVI. It is a British Overseas Territory, with similar companies legislation regulated by a similar legal system based on English common law. Anguilla is a zero-tax jurisdiction: it does not levy any direct taxes on income, whether personal or corporate, nor on capital

gains, interest income, dividends, royalties, gifts, legacies, etc. Although the identities of an Anguillian company's principals must be on file with its resident agent, they need not be disclosed to the government except in the event of an investigation into activity that would be considered criminal in the jurisdiction.

Anguilla has never appeared on a Financial Action Task Force (FATF) blacklist, and was among the first jurisdictions to agree a letter of intent with the Organization for Economic Cooperation and Development (OECD). Its pro-active efforts to develop strong anti-money laundering legislation have earned it a strong reputation with financial

authorities worldwide. This reputation was further improved in February 2004 when the Anguilla Financial Services Department reconstituted as an independent Financial Services Commission (FSC). This allows the FSC to focus on its core functions of granting licenses and monitoring compliance with anti-money laundering and other regulations.

ACORN

Perhaps the most obvious example of Anguilla's success in developing an innovative financial centre is the Anguilla Commercial Online Registration Network (ACORN), the world's first online and instant company registration system. A small number of Hong Kong service providers are licensed to operate ACORN, which allows its affiliated network of registered overseas agents to conduct instant company name searches, register companies, and file company articles, annual reports and fees - all over a secure computer link. For clients, this means reducing considerably the time and costs associated with forming companies and with government compliance.

ACORN has proven to be a very flexible and efficient system. Responding to input from local service providers, the Anguilla FSC has made it possible to incorporate companies with names written in Chinese characters. Companies can be incorporated for a client within a matter of minutes during the Hong Kong workday, with a certificate of incorporation delivered immediately by email. Banks in Hong Kong will generally open a corporate bank account for an Anguilla company using electronic documents printed out by the service provider, so there

is no need to wait for originals to be sent from Anguilla.

Mutual Funds

The Anguilla FSC has recognized that the future growth potential of its financial centre depends more on its ability to develop more sophisticated structuring solutions than the typical international business company (IBC). As a result, in 2004, the government passed a series of legislation creating new and interesting products. One of these was The Mutual Funds Act, which provides for the licensing of three categories of mutual funds: public funds, which are those offering shares to the general public; private funds, which are those with 99 or fewer investors and restrictions on public offerings; and professional funds, which are those whose shares are offered only to professional investors, defined by the Act as a person whose ordinary business involves managing investments.

The Mutual Funds Act provides detailed provisions regulating public funds, dealing with such issues as the requirements for publishing the fund prospectus and the requirements for annual audits and other filings with the Commission. Private and professional funds are subject to substantially lower regulatory standards.

In February 2005, the Anguilla FSC unveiled a policy to allow fast tracking of private and professional funds under the Act. The policy grants 'qualified fund administrator or intermediary' status to fund administrators, law firms and financial institutions that meet criteria detailed in the policy. The status allows qualified administrators or intermediaries to form private and

professional funds within 24 hours, and then submit full application details later for review by the FSC. The Commission reserves the right to review the details of each fund to ensure that the qualified fund administrator or intermediary is continuing to adhere to the procedures required for maintenance of this status. In March 2005, the Anguilla FSC licensed the first qualified fund administrator under this policy.

Captive Insurance

Another element of the 2004 package of legislation was the Anguilla Insurance Act of 2004, which was created to attract a broad range of captive insurance business to Anguilla. This Act makes it possible for companies to realize all of the normal advantages of forming a captive insurance company - minimizing costs, reducing risks and providing access to the re-insurance market - all in Anguilla's user-friendly, zero-tax environment.

The Act creates a series of licensing regimes for Anguilla-based insurers whose risks and premiums are outside of the jurisdiction. These are called Class 'B' licenses (Class 'A' licenses are for companies insuring domestic risks), and the five sub-categories set out different minimum capital requirements, ranging from US\$10,000 to US\$200,000, based on the nature of the risks insured and the level of ownership concentration.

This new regime has proved particularly successful so far. In July 2005, for instance, the Anguilla FSC reported that 10 of these captive insurance companies had been set up in the preceding two-month period. Most of the new captives established in Anguilla are being used to insure ►

medical professionals. This has become a bit of a niche market for the jurisdiction because of the simplicity and cost-effectiveness of the Class 'B' Single License, which has a minimum capital of US\$10,000, and is issued to a company with a single owner whose insurance business consists only of insuring the risks of the owner of the company. By July 2006 Anguilla had licensed 61 captive insurance companies.

Protected Cell Companies

The third and final element of the 2004 legislative package is the Anguilla Protected Cell Companies Act 2004. A Protected Cell Company (PCC) is a corporate entity that holds assets in one or more segregated cells. The purpose of a PCC is to separate the assets in each of the company's cells from those in other cells. Cellular assets are only available to satisfy the creditors of that cell, and creditors of other cells have no claim upon them. The assets of each cell must be kept separate and be separately identifiable from non-cellular assets of other cells. Corporate structuring professionals have found these companies particularly flexible and useful for entities that require complex structured finance arrangements.

Under the new Anguilla Protected Cell Act, any company incorporated under the Anguilla Companies Act, can be registered as a Protected Cell Company upon filing of a PCC notice and application, and receipt of an approval from the FSC. Many structures are possible under the Anguilla Protected Cell Act, and PCCs can be newly incorporated, or they can be conversions from existing Anguillian companies. The Act requires each PCC to appoint a protected cell account representative

whose duties are similar to those of a resident agent for an ordinary Anguillian company.

Private Foundations

Further to the above three Acts which came into force in 2004, the Private Foundations Act is expected to be passed before the end of 2006. The aim of the Act is to meet the demand for estate planning vehicles by legislating for it under Anguilla law. Private foundations first gained international popularity when Liechtenstein legislated in the late 1930s, basing its Act on Swiss principles but providing greater adaptability to the needs of international clients.

The Private Foundations Act will offer a civil law private foundation concept as an alternative to the existing common law trust, broadening the appeal of Anguilla for a whole new category of financial services clients, for whom they are much more familiar than Common Law trusts.

This Act also adopts an innovative aspect of the Liechtenstein Act by providing foundations with the option of being registered or deposited, a key feature attributable to the success of Liechtenstein's private foundations.

Recent Legislative Developments

In May 2006, Anguilla passed the International Business Companies (Amendment) Act, 2006. Later this year, regulations will be issued under the amended Act to provide for the immobilization of bearer shares. The proposed regime is simple and flexible and will grant the right to all holders of company management and general trust licensees who meet the criteria set out in the regulations to become custodians of bearer shares. Companies which have issued bearer

shares will have to immobilize them by the end of 2010. The regulations will also specify the duties of the custodian and the powers of the Commission to ensure compliance with the regulations. Anguilla's approach is such that most registered agents will be able to act as custodians, once they meet the criteria for safekeeping the bearer shares. This is in line with Anguilla's efforts to remain a reputable jurisdiction by complying with international standards in the financial industry and 'know your client' requirements.

Conclusion

Anguilla has been on the cutting edge of the offshore world ever since it pioneered the ACORN system in the late 1990s. Though other jurisdictions have introduced online registration systems since, ACORN remains the industry benchmark, and is continually being improved to maintain Anguilla's leadership position.

With all the scrutiny and negative attention the offshore world has received from the FATF, the OECD, the US government, the EU and other groups since the terrorist attacks of 11 September 2001, it has become increasingly difficult for jurisdictions to develop their financial centres through IBC business alone. Responding to this challenge, Anguilla has continued to update its companies legislation, opening up new business areas and developing innovative and competitive vehicles for structuring professionals.

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將注意力投向安圭拉

一個較少人注意的離岸司法區安圭拉，長久以來均為發展國際公司結構技術的先導者

前言

安圭拉於 2004 年慶祝其作為國際金融中心 10 周年，但這個向來較為低調的司法區，並沒有引起世界各地的公司對其太多關注。

然而，對於多種的公司結構而言，安圭拉實際上均為理想的註冊成立地方。這不單是因為它的公司法、法制及稅務結構優良，足可與 BVI 或任何其他加勒比的司法區比較，更在於它在發展其作為一個離岸中心方面，建立了以技術為基礎的強而有力策略，使它無論對於公司的負責人及服務供應商而言，均是以顧客至上的積極態度來服務。至於它所採取的低調形像，這亦成為了它的另一項優點，因為這樣才可使它不致沾上「稅務天堂」的惡名。

概觀

對於習慣運用 BVI 結構的專業人士來說，安圭拉亦是他們熟悉的司法區。它是英國的海外屬土，受與英國普通法制度類似的公司法規管。安圭拉是零稅項的司法區，對於無論是個人還是公司的入息，或是對於資本增益、利息收入、股息、專利費、餽贈及遺產等，均無須徵收任何直接稅項。雖然處於安圭拉的公司其負責人及常駐代理人的身份均需要存檔備查，但除非是需要對該司法區認為乃屬於刑事罪行的活動進行調查，否則上述資料並不須向政府披露。

安圭拉從來都不在 Financial Action Task Force (FATF) 的黑名單上，而且它更加是其中一個最早與「經濟合作及發展組織」（簡稱

OECD）簽訂意向書的司法區。安圭拉積極制訂強而有力的反洗錢法例，使它在全球各金融監管機構中享有聲譽。當安圭拉的 Financial Services Department 於 2004 年 2 月重組成為獨立的 Financial Services Commission (FSC) 後，它的聲譽進一步上升。這項措施讓 FSC 更專注於發揮其核心功用，就是授予執照以及對反洗錢和其他規例的遵守所進行的監督。

ACORN

安圭拉成功發展成為一個創新金融中心的最明顯例子，是 Anguilla Commercial Online Registration Network (ACORN)，那是全球第一個在線及即時進行公司註冊的系統，而香港有少數的服務供應商獲得許可運作 ACORN。該系統讓其註冊海外代理人的聯屬網絡得以進行即時的公司名稱搜尋、公司註冊，以及呈交公司章程、年報和費用，全部均在一個安全的電腦連結上進行。對客戶而言，這表示在成立公司及遵從政府規定方面，不論是時間還是成本方面都得以大幅度減少。

ACORN 被證明是一個非常具彈性及有效的系統。為回應本地服務供應商的要求，Anguilla FSC 現已可以用中文名稱來成立公司。於香港的工作天內，客戶可以於數分鐘時間內成立一家公司，並即時通過電郵獲得發給公司成立證明書。香港銀行一般會以服務供應商所列印的電子文件來為於安圭拉成立的公司開設公司銀行帳戶，因此不必等待文件正本自安圭拉寄來。

互惠基金

Anguilla FSC 已承認其金融中心的未來增長，端賴其在傳統國際商業公司 (IBC) 的發展以外，對於提供更複雜的結構解決方案的能力。因此，政府在 2004 年通過了一系列法例來設定新型而有趣的產品。其中一項法例是互惠基金法 (The Mutual Funds Act)，當中規定了對三類互惠基金的許可，它們是：公開基金，即向公眾人士發售股份的基金；私人基金，即擁有 99 名或以下投資者並且在公開發售方面有限制的基金；而專業基金乃其股份只能夠向專業投資者發售的基金。該法例界定專業投資者為其一般業務乃與投資管理有關的人士。

互惠基金法對公眾基金在刊印基金發售說明書、年度核數，及向委員會提交文件存檔等方面的規管，均有作出詳細規定。私人及專業基金所受的規管程度遠較它為低。

2005 年 2 月，安圭拉 FSC 公布了一項根據該法例准許對私人及專業基金進行快速追蹤的政策。該政策對符合政策所定立之準則的基金管理人、律師事務所及金融機構授予「合資格基金管理人或中介人」的地位。該地位容許合資格基金管理人或中介人於 24 小時內組成私人及專業基金，並於稍後時間提交完整的申請詳情供 FSC 查核。委員會保留對每一基金的詳情進行查核的權利，以確保合資格基金管理人或中介人繼續遵循維持該地位的程序。2005 年 3 月，安圭拉 FSC 根據此一政策授予執照給第一個合資格基金管理人。

專屬保險

2004 年立法配套的另一項元素是 Anguilla Insurance Act of 2004。該法例的制訂，是為了吸引廣範的專屬保險業務到安圭拉來。該法例使各公司可能獲得成立專屬保險公司的一般好處，包括將成本減至最低、降低風險及提供運用再保險市場的途徑。所有這些均在安圭拉的服務至上和零稅項環境下達成。

該法例的目的旨在為該等以安圭拉為基地，但其風險與保費則處於司法區以外的承保人，建立一系列的執照制度。此稱為「B」類執照（「A」類執照乃為提供本地風險保險的公司而設），所包含的五個附屬類別均列出了不同的最低資本要求，自 10,000 美元至 200,000 美元不等，視乎所承保的風險性質及所有權集中性的水平而定。

此一新制度到目前為止仍然被證實為行之有效。例如，在 2005 年 7 月，安圭拉 FSC 公布了在過去兩個月共有 10 家該類專屬保險公司成立。此等在安圭拉新成立的公司，大多數用於為醫學界專業人士承保。「B」類單一執照簡單而具有成本效益，加上其所要求的最低資本額只是 10,000 美元，並且只是向擁有單一所有人的公司發出，其保險業務只涉及及為公司所有人的風險承保，因此頗成為該司法區的一個瞄準機會的市場。至 2006 年 7 月為止，安圭拉已向 61 家專屬保險公司發出了執照。

Protected Cell Companies

2004 立法配套的第三項，亦即最後的一項元素是 Anguilla Protected Cell Companies Act 2004。Protected Cell Company（簡稱 PCC）乃於一個或以上的獨立單元內持有資產的公司法人。PCC 的目的，是為了將公司的每一個單元內的資產，與公司其他單元內的資產分離。單元內的資產只可以

用來償付該單元的債權人，其他單元的債權人無權對該等資產提出主張。每一單元的資產必須保持獨立，並必須能夠獨立分辨於其他單元的非單元資產。負責公司架構的專業人士認為該等公司別具靈活性，對於要求具備複雜的財務安排結構的機構而言特別有用。

根據新制訂的 Anguilla Protected Cell Act，任何在 Anguilla Companies Act 下組成的公司，均可於提交 PCC 通知及申請，並獲得 FSC 的批准後註冊成為一家 Protected Cell Company。在 Anguilla Protected Cell Act 下，多種不同結構均可被採納，而 PCC 可以是新組建的，又或是可以自現有的安圭拉公司轉換而成。該法例要求每一 PCC 委任一名 protected cell account representative，而他的職責與一般安圭拉公司的常駐代理人相似。

私人基金會

除了上述三項於 2004 年生效的法例外，Private Foundations Act 亦預期於 2006 年底前通過。該法例之目的是為了依據安圭拉的法例進行有關立法，以滿足對產業規劃工具的需求。私人基金會最先於上一世紀三十年代末在列支登士敦立法而在國際間備受歡迎。該法例是以瑞士的原則為基礎，但能夠向國際客戶提供更廣泛的適應性。

Private Foundations Act 將提供一個以民法為基礎的私人基金會概念，替代現行的普通法信託，從而擴闊安圭拉的服務範圍，使它可以向另一類全新的金融服務客戶提供服務。該等新客戶對前者的認識，遠勝於對普通法信託的認識。

該法例亦採納了列支登士敦法的創新意念，提供了可以選擇登記或存放的基金，此一特徵是促使列支登士敦私人基金成功推行的主要因素。

近期立法

2006 年 5 月，安圭拉通過 International Business Companies (Amendment) Act, 2006。今年稍後時間將會頒布該修訂法例下的規例，對不記名股份作出停止流通的規定。建議的規定簡單而富彈性，並授予所有符合規例所規定資格的公司管理層及一般的信託獲許可人權利，成為不記名股份的保管人。已發行不記名股份的公司需要於 2010 年底前停止流通該等股份。規例亦將會規定保管人的責任及委員會的權力，確保規例得到遵行。安圭拉的計劃是，一旦他們符合了保管不記名股份的規定，大多數的註冊代理人將能夠作為保管人。這與安圭拉在竭力遵循金融業的國際規範，「了解客戶」要求，保持其作為享負盛譽的司法區方面所付出的努力相符。

結語

自從安圭拉在 20 世紀 90 年代後期建立了 ACORN 系統後，它在離岸世界中一直居於先導地位。雖然其他司法管轄區自此亦建立了在線的註冊系統，但 ACORN 仍然是這一個領域內的典範，而它亦不斷進行自身改良以期保持領導地位。

自「九一一」恐怖襲擊後，離岸世界面對 FATF、OECD、美國政府、歐盟及其他組織的密切監視和消極對待，因此單憑 IBC 業務來發展金融中心地位的司法區面對越來越大的困難。為迎向此一挑戰，安圭拉持續更新其公司法例，開拓嶄新的業務領域，並努力為建立公司架構的專業人士開發具創意和競爭力的工具。

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