

Lex Mundi

GUIDE TO DOING BUSINESS: ANGUILLA

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15th April 2004

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Please note that references to statutory enactments are, unless otherwise stated, references to Acts or Regulations of the Revised Statutes of Anguilla 2002.

1. **ANGUILLA AT A GLANCE**

1.1. Geography

Anguilla is a British Overseas Territory located 150 miles east of Puerto Rico. It is 6 miles north of the French/Dutch island of Saint Martin/Sint Maarten, with which it has a half-hourly ferry service. The islands of St. Barths, St. Kitts, Nevis, St. Eustatius, Saba and the Virgin Islands are nearby. Anguilla is the most northerly of the Leeward Islands and falls within the Eastern Time zone (GMT -4 hours). The airport is located at Latitude: 18° 12' 17.399N (18.204833°) Longitude: 63° 3' 18.299W (-63.055083°) at an elevation of 94 feet (29 metres).

The island is sixteen miles long and an average of about two miles wide with an area of 35 square miles. It is composed of limestone and coral and is generally flat (highest point 213 feet or 65.5 metres). Anguilla's climate, like the rest of the Eastern Caribbean, is tropical and mostly sunny all year round, cooled by the North East Tradewinds and with a mean monthly temperature of 80° Fahrenheit (27° Celsius). However the island does suffer from the infrequent risk of hurricanes during the period from July to November each year. Mean annual rainfall is approximately 31.6 inches (790mm).

1.2. Currency

The Official Currency is the Eastern Caribbean Dollar, which is a strong and stable currency that has been pegged to the United States Dollar at EC\$2.70 to US\$1 since 1976. United States currency is also used freely.

1.3. Language and Culture

The Official Language is English, though Spanish is spoken by the descendants of Anguillians who were born in the Dominican Republic.

There are no cultural or religious influences or prohibitions which have a negative impact on the conduct of business on the island, although gambling (other than on the National Lottery) is a proscribed business. The principal religious denomination is the Anglican Church, although many other denominations are strongly represented.

1.4. Infrastructure

Because of its relatively flat topography, Anguilla has a good road network with about 60 miles or 95km of paved roads. There is no rail system or public transportation. The population of Anguilla was 11,430 according to the 2001 census and there are over 7000 motor vehicles; itself a testament to the standard of living enjoyed by Anguillians. Visitors may rent a variety of vehicles from reputable local and international car rental companies. There are two main seaports, one for cargo from the US, Puerto Rico and elsewhere and one for passengers and light cargo

between Anguilla and St. Martin/St. Maarten. There is a single airport, Wallblake, which is served by local airlines such as American Eagle, Liat and Caribbean Star and which can also accommodate private jets. Interconnection to international flights is available through St. Maarten, Antigua and San Juan, Puerto Rico.

Water is supplied by the government and private companies. The government operates a desalination plant, which provides piped water to residents, while private companies provide bulk water delivery services to residents and businesses.

1.5. Communications

Anguilla has recently passed new telecommunications legislation designed to promote liberalization of the sector. It is anticipated that this will benefit the tourism and financial services sector by introducing competition and stimulating the provision of new technology. Cable & Wireless has hitherto been the monopoly provider of telecommunications services, but there is already competition in internet services and competitor cellular services are due to come on stream imminently. There is a single provider of cable television services, which has recently entered the broadband internet market also. The electricity service was predominantly government owned until recently, but the Government has sold the bulk of its interest to help finance a major runway extension at the airport.

2. GENERAL CONSIDERATIONS

2.1. Investment Policies

As a vibrant financial services jurisdiction, both the public and private sectors contribute to the growth of Anguilla's economy by actively courting and promoting new avenues for investment. While the brief of The Financial Services Commission is regulatory, it collaborates with the Government and the private sector to promote Anguilla overseas.

Anguilla's zero-tax environment is an especially attractive component of its appeal and, coupled with its reputation as a well-regulated jurisdiction, marks it out as a quality offshore jurisdiction.

As evidence of commitment to an investment culture, the Government in 2000 established a task force to examine the framework for the development of an e-commerce policy, designed to meet the challenges of globalization and liberalization and to enable businesses operating out of Anguilla to compete globally and to complement the tourism and financial services sector.

That initiative has been followed by the development of modern mutual funds and insurance legislation, both designed to enable Anguilla to compete strongly with jurisdictions already established in those fields.

2.2. Anguilla's Economy

Anguilla's economy is primarily based on tourism, followed by the financial services sector. The modest agricultural production is almost entirely used for domestic consumption. It can therefore be said that the primary natural resources of Anguilla's 35 square miles are its climate, beaches, marine life and diving sites. Their exceptional qualities draw Anguilla's tourists, who form the backbone of its buoyant economy. Fishing and boat building (a longstanding tradition of excellence in Anguilla) also contribute, as does an increasingly active financial services sector.

There is an avowed policy of favouring up-market tourism, while discouraging the mass-market tourism industry. The convenient location of Anguilla, its vibrant culture, friendly people and virtually crime-free society have together enabled Anguilla to realise this aim, with a number of world class hotels and restaurants that is disproportionate to the island's size and population.

Anguilla has a very low inflation rate of 2.3%. The services sector which includes tourism and financial services contribute 78% of GDP, manufacturing industry 18%, and agriculture 4%.

2.3. Financial Services Industry

Anguilla began to develop a financial services industry following the 1993 Mokoro Report, which concluded that Anguilla's offshore financial services were a natural concomitant to the tourism industry, the British and Anguillian Governments embarked on a progressive programme to launch Anguilla as an upmarket, well-regulated and exclusive financial services centre. The result of this was an extensive legislative reform programme, culminating in the 1994 enactment of legislation designed to encourage the development of a well regulated offshore financial services industry. The significant growth in government revenues earned from the financial services sector over the last few years is a testament to the success of the policies to date. There are ambitious plans for the future and, within the past few years, Anguilla has made significant strides in its efforts to position itself as a major player in the international financial services arena.

2.4. Diplomatic Relations

Because the United Kingdom retains responsibility for Anguilla's foreign affairs, there are no embassies established in Anguilla nor does Anguilla maintain any overseas. Anguilla does, however, have membership (Associate Membership in most cases) in regional associations such as the Caribbean Community (CARICOM), the Organisation of Eastern Caribbean States (OECS), the Eastern Caribbean Central Bank (ECCB), the Caribbean Development Bank (CDB) and the United Nations Economic Commission for Latin America and the Caribbean (ECLAC). In

addition to these organizations, by virtue of the Diplomatic Privileges (Extension) Act Anguilla has extended diplomatic privileges and immunities to several international organizations. These organisations are declared to be accorded diplomatic privileges by Order of the Governor in Council and these privileges extend to representatives, officers and members of staff of the organisations concerned.

3. GOVERNMENT AND POLITICS

3.1. Constitutional Position

Anguilla is one of Britain's Overseas Territories in the Caribbean. Although essentially self-governing, the Governor, appointed by the British sovereign, is Head of State and is responsible for foreign affairs, defence, internal security and international financial services. The legal system is based on English common law. Being a dependency, the country has no armed forces.

3.2. Form of Government

Under the present constitution, introduced in 1976 and amended in 1982 and 1990, a Westminster style government exists, consisting of the Governor, an Executive Council and a House of Assembly or Legislative Council. The Governor acts as chairman of the Executive Council. The Executive Council comprises the Chief Minister, the three other ministers, the Deputy Governor and the Attorney General and is responsible for day-to-day government. The legislative Assembly is presided over by a Speaker of the House and comprises the Chief Minister, the three other ministers, the leader of the Opposition and two more elected members, making a total of seven elected members. In addition, there are two members nominated by the Governor and two ex-officio members: the Deputy Governor and the Attorney General.

Voting for the seven elected members of the House of Assembly is by secret ballot, with international observers overseeing the whole process. All Anguillian citizens and "belongers" aged 18 and upwards are eligible (required) to register and vote in these elections. Voter turnout is normally about 75%. Like most parliamentary democracies, the results are determined by the "first past the post" system.

3.3. Organisation of Government

The principal issue facing Anguilla's government is that of overseeing reasonable and orderly development of the island's economy, while safeguarding the natural resources upon which that economy is dependent.

The affairs of the Government are run by departments, each headed by a Minister and a Department Permanent Secretary, who is the chief

executive/administrative officer for the department concerned. Legal matters are handled by the office of the Attorney General.

There is a strong commitment to governmental integrity in Anguilla, due primarily to a strict adherence to the principle of separation of powers, a jealously guarded freedom of the press and an independent judiciary.

3.4. Government Stability

Since the political upheavals of the late 1960s and early 1970s, when Anguillians rebelled against Anguilla's continued membership of its federation with St. Kitts and Nevis, the political climate has remained stable and to a large extent predictable. The present Government is a product of coalition between two political parties.

3.5. The Constitution

Unlike its mother country, Anguilla has a written Constitution, comprised in the Schedule to The Anguilla Constitution Order 1982 (UK Statutory Instrument 1982 Number 334, amended in 1990). The significance of this is that whereas in the United Kingdom Parliament is supreme, and is guided by established conventions, in Anguilla the Constitution is the supreme law of the land and the Government must conduct its affairs in accordance with the Constitution. In fact, in cases where Government is deemed to have acted ultra vires the Constitution, it can be required to annul such actions. This constitutional supremacy reinforces the doctrine of separation of powers. The enactment of laws is the domain of the Legislative Council. Bills are introduced into the House of Assembly, which is a unicameral legislature, for debate. Enactment is achieved after three successive readings in the House of Assembly and upon assent by the Governor. Additionally, certain laws passed in the United Kingdom are extended to apply to Anguilla.

3.6. Judicial System

The judicial system in Anguilla is part of the Eastern Caribbean Supreme Court, also comprising the territories of Antigua & Barbuda, the British Virgin Islands, Grenada, the Commonwealth of Dominica, Montserrat, the Federation of Saint Kitts and Nevis, Saint Lucia and Saint Vincent and the Grenadines. In Anguilla there is a High Court of Justice with a resident High Court Judge, whose jurisdiction is original and unlimited. This judge presides over both civil and criminal matters. There is also a Magistrate's Court, whose jurisdiction is statutory.

The basis of the legal system is English common law, together with relevant local statutes. New Civil Procedure Rules were introduced in 2000, the aim of which is to accelerate the progress of litigious matters, with simplified procedures as a natural corollary of that aim. The new rules also make provision for alternative methods of dispute resolution, such as arbitration and mediation. These two types of alternative dispute

resolution are frequently employed in the resolution of disputes under international contracts. Foreign judgments may be enforced through the Reciprocal Enforcement of Judgments Act. As the name suggests, this Act operates on the basis of reciprocity. Alternatively, parties may choose to make their contracts enforceable by the laws of another jurisdiction.

Appeals from both the High Court and the Magistrate's Court lie to the Eastern Caribbean Court of Appeal, while further appeals are to the Judicial Committee of the Privy Council in the UK. It is now thought that in appropriate cases further appeal could lie to the European Court. The Supreme Court and the Magistrate's Court are all located in the capital, the Valley. A three Judge panel of the Eastern Caribbean Court of Appeal sits in Anguilla during rotations within the territories comprising the Eastern Caribbean Supreme Court.

By virtue of what is now the Common Law (Declaration of Application) Act, originally enacted in 1705, Anguilla adopted the English Common Law, subject to any modifications thereof, enacted either locally or by extension of English enactments.

Anguilla's laws have recently been the subject of a revision and consolidation resulting in the Revised Statutes and Regulations of Anguilla 2000. The Courts also rely heavily on the jurisprudence of the Commonwealth as a whole, including the wider Caribbean, although strictly speaking only the jurisprudence of the Eastern Caribbean Supreme Court and of the Privy Council is binding on them.

3.7. Conservation

Like the majority of countries in the world, Anguilla is concerned about the impact of development upon the environment. Evidence of this can be seen in the recent Physical Planning Act. This Act creates a physical Planning Board and establishes offences relating to the destruction of land and the environment. The offences relate to the destruction of plant, the making of land unsightly through the use of it as a dump for refuse, derelict vehicles, waste etc. It confers on the Board powers, in appropriate cases, to issue orders such as plant preservation orders or amenity orders and to designate areas as Environmental Protection Areas.

4. **INTELLECTUAL PROPERTY**

The trademark and intellectual property laws of Anguilla have recently been revised to comply with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

4.1. Copyright

Copyright in Anguilla is governed (as regards infringements) by the Anguilla Copyright Act, and (as regards general copyright law) by the UK Copyright Act 1956 as extended to Anguilla.

Protection is afforded to the owners and authors of all literary and artistic works of an original nature. This includes dramatic and choreographic works and even extends to sermons. The duration of copyright in Anguilla is the usual 50-year period after the death of the author or, in the case of joint authorship, after the death of the last surviving author. This period may vary in the case of works of applied art, collective work or work published anonymously.

The economic rights of the copyright owner are assignable in whole or in part and such assignment must be made in writing. Moral rights under the Act are not transmissible by the owner except by testamentary disposition or by operation of law upon the death of the owner/author. The owner/author may however waive those rights provided that such waiver is in writing and specifies the nature and extent of the waiver.

Criminal liability will arise in instances of infringement. In such cases a person found guilty may be fined and or imprisoned for infringement of a right protected under the Act. Civil remedies - most commonly injunctive relief, damages, seizure and destruction - are available to a wronged party.

The law is very stringent in the prosecution of infringement and the usual privilege against self-incrimination and spousal incrimination is negated under the Act.

4.2. Trademarks

Trademarks are registered in Anguilla under the Anguilla Trade Marks Act. In recognition of the exclusive right conferred on a holder of a licenced mark, the legislation is strict in its protection and there are civil and criminal penalties for infringement.

- (a) A trademark may not be registered under the Trade Marks Act if it is:

- (i) identical to a trademark already on the register with respect to the same goods or description of goods;
 - (ii) deceptive or calculated to deceive;
 - (iii) of a scandalous design;
 - (iv) descriptive of the goods to which it relates.
- (b) A trademark may consist of any of the following:
- (i) name of an individual or firm printed, impressed or woven in some particular or distinctive manner;
 - (ii) a written signature, or a copy of a written signature, of the individual or firm applying for registration thereof;
 - (iii) a distinctive device, mark, brand, heading, label or ticket;
 - (iv) an invented word or invented words;
 - (v) a word or words having no reference to the character or quality of the goods, and not being a geographical name.
- (c) Under the Trademarks Regulations, the Registrar applies the International Classification of Goods and Services as set out in the Nice Agreement which, in its latest updates, classifies Classes 1-34 for goods and Classes 35-45 for services.
- (d) The Act also provides for reciprocal treatment for community trademarks in the Official Journal pursuant to Rule 101 of the EC Commission Regulations.
- (e) Applicants who may have previously registered in other countries will be allowed recognition and given priority for those applications which fulfil the criteria set out in the international treaty, the Paris Convention.
- (f) Registration is valid for fourteen years and is renewable for further consecutive periods of fourteen years upon payment of the relevant fee. The Act also makes provision for the invalidation and removal of marks from the register on the grounds of non-use, and for changes in ownership and the correction of errors.
- (g) The Act makes provision for registration in Anguilla of trademarks that have already been registered in the United Kingdom.

In order to effect such registration, there must be submitted:

- (i) a certified extract of the United Kingdom trade mark register showing the registration of the mark therein;
- (ii) a notarised Power of Attorney or Authorisation of Agent.

If satisfied as to the validity of the application, the Registrar will issue a certificate of registration and the applicant will then have all the rights and privileges in the use of the trademark as would be conferred on him by United Kingdom law.

The registration is valid for the remainder of the mark's original registration period in the United Kingdom. Renewals are dependant on the renewal of the mark in the United Kingdom, and payment of a renewal fee in Anguilla.

An advantage of registration under the United Kingdom Act is that an applicant may dispense with some of the formal requirements such as advertising which are required under the domestic Act.

4.3. Patents

The registration of patents in Anguilla is governed by the Patents Act.

- (a) As in the case of Trademarks, the registration in Anguilla of a UK patent confers on the holder the like privileges and rights, subject to the like conditions, as if the patent had been granted in the UK with an extension to Anguilla. For the avoidance of doubt, the Act further determines what are "patentable inventions", and there are civil penalties for their unauthorised exploitation. Provision is made for the exploitation by the government or an authorized third party where the public interest so requires, or where the manner of exploitation by the owner or his licensee is deemed to be anti-competitive.
- (b) Like the Trademarks Act, upon registration in Anguilla patent applications have priority in accordance with the Paris Convention.
- (c) A UK or European patent grantee may also re-register within 3 years of having obtained a UK grant by virtue of registration under the UK Patents Act 1977 and by virtue of the Convention on the Grant of European Patents (The European Patent Convention).
- (d) The Registrar must be given written notice of any change in ownership, which in turn will be published.
- (e) In legal proceedings involving companies, the company itself, together with the directors, manager, secretary or similar officers consenting to an offence under the Act will be prosecuted.

4.4. Geographical Indications

Under the Geographical Indications Act Anguilla provides protection to producers, manufacturers and traders dealing in products that derive a distinctive characteristic specific to its place of origin. Geographical indications which are contrary to public morality, have fallen into disuse or have no protection in their originating countries will not be afforded protection under the Act.

4.5. International Treaties in Intellectual Property Area

No international treaties have been entered into in the area of intellectual property. However some treaties entered into by the United Kingdom are extended to Anguilla.

4.6. Encryption / Digital Signatures

There is as yet no general provision for encryption or digital signatures. However, for the specific purposes of the ACORN Companies Registry system, provision is made in section 4 of The Companies Registry Act for the filing of documents in the Companies Registry in electronic form and in section 6 for the electronic authentication of documents (digital signatures).

4.7. Privacy/Data Protection

What should be on the website?

The answer to this question will depend upon the business in which the website operator is engaged. There may well be circumstances in which a statement would be desirable to the effect that any person using the website will be deemed, for the purposes of the law, to have authorised the website operator to divulge certain information, of a type to be specified, to certain parties of a type to be specified, in the fulfilment of the website's business operations.

4.8. Evidence

How does the jurisdiction treat electronic evidence?

There is as yet no legislation on this issue, apart from the Companies Registry provisions mentioned in paragraph 4.6 above. However, in the absence of substantive law on the treatment of electronic evidence, Anguilla would receive the corresponding law of England. Section 9 of The Eastern Caribbean Supreme Court (Anguilla) Act provides for "reception" of law in such circumstances, stating, in effect, that in the absence of relevant Anguilla legislation, the jurisdiction of the Anguilla court "...shall be exercised as nearly as may be in conformity with the law

and practice administered for the time being in the High Court of Justice in England". This has been construed as an "open reception" provision for receiving the relevant law of England as enacted from time to time provided, of course, that Anguilla has not already legislated on the matter.

4.9. Hackers

Is there any computer misuse legislation?

Computer programs are protected under the Copyright Act.

Under sections 301 to 310 of The Criminal Code 2000, it is an offence for a person, without lawful excuse, to destroy or damage property of another or to be reckless as to whether any such property would be destroyed or damaged. Although "property" in this context means property of a tangible nature, it has been held that where software has been damaged in such a way as to render its dependent hardware inoperable, such damage constitutes damage both to the software and to the hardware. While this consequence will not always be the result, it may well apply in many circumstances.

5. **INVESTMENT INCENTIVES**

5.1. Export Incentives

In Anguilla, direct taxation is non-existent and even indirect taxation is very limited, which is why the territory is commonly referred to as a zero-tax jurisdiction. In terms of taxation on exports, the Export Duty Act imposes a duty on a very limited range of goods: livestock, lobsters and raw materials such as salt, sand and stone. The list is subject to amendment by the House of Assembly. There are no other applicable export taxes. The Export Duty Act does not apply to goods transhipped through Anguilla. Apart from this exception, there is therefore no scope for tax incentives for exports.

The Eastern Caribbean Central Bank (of which Anguilla is a member) operates an Export Credit Guarantee Scheme which provides pre-shipment insurance to assist exporters in procuring finance more easily from commercial banks and to promote exports from the ECCB region. The Bank has also proposed the establishment of the Eastern Caribbean Enterprise Fund which is geared towards the development of the productive sector of the territories and will provide financing, export insurance coverage, and business advisory and consulting services.

5.2. Investment Incentives

Concessions are granted to inward investors by the Hotels Aid Act, which exempts all custom duties and pier dues (usually between 10%-30%) on all building materials and other articles of hotel equipment imported by properties with more than 10 rooms. These concessions are available for

the construction of new hotels as well as the expansion of those already constructed. The Minister of Finance has authority to approve applications for this concession.

There are no hard and fast rules requiring local participation in inward investments. The majority of inward investments, however, are approved without any requirement of local participation.

6. FINANCIAL FACILITIES AND SUPERVISION

6.1. Supervision

Financial and banking facilities fall under the Eastern Caribbean Central Bank Agreement Act and the Banking Act.

The financial system is comprised of the commercial banks, insurance companies, development finance institutions and finance companies.

The ECCB is charged with regulating banking business on behalf of and in collaboration with the Government. The Banking Act gives responsibility for the financial system to the ECCB. The Minister of Finance has ultimate authority under the Act but is required to act in consultation with and on the recommendation of the ECCB, but in respect of the examination of banks and other financial institutions the ECCB has complete authority.

The banks operating in Anguilla are strict in their adherence to know-your-customer rules in opening and maintaining bank accounts.

There is no established stock market in Anguilla. However all securities dealing is regulated by the Eastern Caribbean Securities Regulatory Commission.

6.2. Existing Facilities

In Anguilla there are four commercial banks. Caribbean Commercial Bank and the National Bank of Anguilla are indigenous banks. Scotiabank Anguilla Limited is a locally incorporated branch of The Bank of Nova Scotia; while FirstCaribbean International Bank Ltd is a joint venture between Barclays Bank and Canadian Imperial Bank of Commerce.

There is also a mortgage company, a development bank, and several insurance and finance companies in Anguilla.

7. EXCHANGE CONTROLS

There are no foreign exchange control restrictions. However, in certain very limited (and largely avoidable) circumstances the Foreign Currency Levy Act imposes a 2% tax on certain transactions involving the purchase of foreign

currency. This tax is not applicable if the foreign currency purchased is being paid to the order of a foreign exporter in respect of goods imported into Anguilla. Furthermore, since US dollars are used interchangeably with EC dollars, it is hard to imagine any occasion to incur the tax.

As in other jurisdictions, there are now certain disclosures and declarations to be made when transferring large sums of money into or out of the jurisdiction, but these are directed not towards exchange control but towards the combating of money laundering and fraud.

As part of the initiative to launch the CARICOM Single Market and Economy, all current restrictions (of which few apply to Anguilla) on the transfer of money from one country to another will be abolished. Under this regime no new restrictions can be added and those already in existence will be removed. To complement this initiative, there will also be the right to buy shares in any company in any Member State and the right to remove capital from one member state to another. It is anticipated that this free movement of capital across the region will result in increased investment opportunities by both regional and non-regional investors.

8. IMPORT/EXPORT REGULATIONS AND INCENTIVES

8.1. Treaties - European Union

As a British Overseas Territory, Anguilla does not generally enter into treaties or become a member of international organizations in its own right, with certain exceptions noted below.

However, as a British Overseas Territory, Anguilla is entitled to preferential treatment under the Lome Convention and has benefited from the European Development Fund:

- (a) Since 1976, major projects funded under the 4th, 5th and 6th EDFs have concentrated on the upgrading of infrastructure, including power supply and the water supply, storage and distribution system. Further finance has been allocated to a road development and maintenance programme, intended to improve access to commercial and tourism sites, including some funds used to repair damage to the road network in the wake of Hurricane Lenny in 1999.
- (b) In addition to its Indicative Programme allocations, the island has benefited, through the regional resources of the EDF, from the activities of several regional organisations, including the University of the West Indies (UWI), the Caribbean Tourism Organisation (CTO), the Caribbean Agricultural Research and Development Institute (CARDI) and the Caribbean Food Cooperation (CFC).
- (c) Under the 9th EDF, a further substantial allocation has been agreed, from which social, environmental and financial aspects are to be accorded increased emphasis in the programming.

8.2. Regional Projects

Regional projects relevant to Anguilla include: the Caribbean Export Development Agency (CEDA) which provides technical assistance and training for export manufacturers in the OECS countries including Anguilla; the ASYCUDA project, designed to improve customs collection; and the Caribbean Regional Tourism Development Programmes which aim to assist ACP States and OCTs to achieve sustainable growth in their tourism operations.

8.3. CARIBCAN

CARIBCAN was promulgated by Canada in 1986 to give duty free access to the Canadian market for most commodities originating in Commonwealth Caribbean countries, including Anguilla. In 1996, Canada obtained approval from the World Trade Organization for an extension of its waiver for CARIBCAN for another 10 years, to 2007.

8.4. Caribbean Community - CARICOM

As an associate member of CARICOM, Anguilla stands to benefit from treaties and trade initiatives proposed by the community. Anguilla will be part of the CARICOM Single Market and Economy, which is intended to remove all of the barriers to trade, with free movement of regional services, goods and capital, and people.

8.5. Organisation of Eastern Caribbean States - OECS

Anguilla is an associate member of the OECS. It has not fully embraced the economic union project adopted by the majority of OECS members in 2002. Since the development of this project remains fluid, no attempt will be made to describe its current status, details of which can be readily obtained from the Internet.

8.6. US Caribbean Basin Initiative - CBI

The CBI is a package of trade preferences designed to expand two-way trade and create incentives for the countries of the Caribbean Basin to continue improving their economies. Anguilla has not requested beneficiary status.

8.7. Import Duties

Import duties are one of the Government's principal sources of revenue and a major factor in the cost of living and of investing in Anguilla. The rate structure is complex but broadly speaking the principal rates vary between 15% and 25%.

The principal legislation is The Customs Act, which is supplemented by The Customs Administrative Costs Recovery Act. The former provides for

the imposition of duties. The latter imposes a levy of 5% of the value of certain goods relieved from duty.

9. **STRUCTURES FOR DOING BUSINESS INCLUDING OFFSHORE STRUCTURES**

9.1. Background

Anguilla's emergence as a leading offshore financial services jurisdiction is in no small measure due to a legal framework drafted with the assistance of invaluable hindsight. The original 1994 laws, revised in 2000 and on a continuing basis, were enacted based on careful and detailed examination of the benefits and burdens found in more mature offshore jurisdictions such as the Caymans Islands, the Bahamas and Bermuda.

Armed with such insight into similar British Commonwealth systems, with consideration given to enforcement issues and day to day management, the Anguillian lawmakers were able to provide an excellent framework for the creation of Limited Liability Companies, International Business Companies, Anguilla Business Companies, Partnerships, Management Companies and Trusts.

By early 1995 the then Financial Secretary, now Minister of Finance, the Hon. Victor Banks, was able to express the view that "The Anguilla Government is now well satisfied that the proper delicate balance of prudence and enterprise has been achieved". The newly established and independent Financial Services Commission, successor to the Government Financial Services Department, together with private and public industry experts, diligently oversees the offshore sector. Its success is indicated in the diversity of financial planning options and asset protection offered by its leading proponents.

9.2. Companies Registry

In recent years the companies Registry has been fully computerized to provide on-line registration of companies and remote filing for both local and overseas agents through what is known as ACORN. ACORN is a state of the automated company registration system which puts Anguilla in a class of its own in terms of convenience and efficiency for company management. The system provides company registration services worldwide on a 24 hour-a-day basis.

9.3. The Limited Liability Company - LLC

The limited liability company (LLC) is originally a creature of United States statute. First enacted in Wyoming, it was based on a Central and South American business entity called the Limitada, which permitted both partnership taxation status and limited liability. Subsequently numerous other states enacted legislation similar to the Wyoming legislation. The

structure has received favourable rulings from the United States Internal Revenue Service to the effect that such entities may choose to be taxed as either corporations or partnerships. A "member" of a properly constructed LLC is not a "shareholder" for purposes of United States taxation and the entity may be treated as transparent.

The key features of the LLC are that the members, who make a "contribution" to the company, have limited ownership rights, their entitlement being a final dividend on dissolution, although interim distributions are permissible. Its uses are many and varied. It can function as a joint venture, in international transactions (in conjunction with a trust if appropriate) and in many other capacities.

The LLC "operating agreement" is the organic document, and the Act grants much leeway to its draftsman. The key to the effective use of an LLC is the structuring of the operating agreement in such a way as to avoid any indicia of "shareholder" characteristics. Use of this entity is of interest primarily to United States residents or citizens, or those having business interests in the US.

As is the case with all Anguilla companies, an LLC doing no business in Anguilla is exempt from all forms of taxation in Anguilla, whether on assets, income, dividends or distributions.

9.4. The International Business Company - IBC

The International Business Companies Act devolves all the rights of an ordinary person onto the Anguillian IBC. This form of incorporation is multi-functional and is employed in various business activities. It is ideal for estate and retirement planning and lends itself to most business activities from maritime to intellectual property and precious metals. There are many attractive features of an Anguilla IBC. It may issue par or no-par shares – or no shares at all. The company is formed by the filing of simplified articles of incorporation, the former practice of filing a sometimes extensive Memorandum and Articles of Association having been abolished. The organic company document is the By-laws, which is not filed with the Registrar. While the By-laws are of course subject to the Act, much leeway is granted to the company. Indeed the phrase, "subject to its articles and by-laws" is a common introduction to many sections of the legislation.

An IBC need have only one director, need not have any officers and need never issue shares should it not wish to do so. If it does not, it may commence winding-up by a director's resolution, and a transfer of all, or substantially all, of the assets of the company for the benefit of creditors or shareholders satisfies the bulk of the liquidator's duties on a winding-up. The Anguilla IBC has all powers of an "individual", and no company acts, including individual property transfers to or from the company, are invalid by reason only that they are contrary to the Articles.

For the purposes of determining matters of title and jurisdiction, but not for the purposes of taxation, the situs of share ownership, debt obligations or other securities is Anguilla. An IBC may issue registered or bearer shares and the names of bearer shareholders need not to be recorded in the share register.

Procedures for notices of meetings and waiver thereof have been simplified (subject of course to contrary By-laws) and, in many cases, business may be conducted by a resolution of directors with meetings held by telephone. Annual meetings of shareholders or directors are not required. There are provisions for simplified "continuation" of an IBC, both into and out of Anguilla, and simplified winding-up procedures.

9.5. The Ordinary Company or Anguilla Business Company - ABC

The ABC, which can be used both within Anguilla and as an offshore vehicle, is governed by the Companies Act. The Act contains many attractive features:

- (a) Companies may be incorporated by one incorporator and have one director;
- (b) Companies may be limited by shares, by guarantee or by both shares and guarantee;
- (c) Non-profit companies may be formed;
- (d) The Act abolishes the doctrine of ultra vires;
- (e) Companies may acquire, purchase or own their own shares;
- (f) Filing formalities have been streamlined;
- (g) Companies may be continued in or out of Anguilla.

The Company Limited by Guarantee has no shareholders but only non-shareholder members with a guarantee of limited liability for whatever fixed sum that may be agreed.

The Company Limited by Shares and Guarantee ("the hybrid") on the other hand, has both shareholding and non-shareholding (guarantee) members.

The Non-profit Company provides a structure for private clubs, associations and charities. This can be a shareholding or non-shareholding company.

The Public Company has all the attributes and requirements of a company offering shares to the public

9.6. Partnerships

The Limited Partnership Act provides for partnerships which may have both general partners, as well as limited partners who contribute to the partnership at the time of entry and are not liable for partnership debts or obligations save as provided in the partnership agreement or the provisions of the Act. The rules of common law and equity applicable to partnerships (as modified by the Partnership Act 2000) apply to limited partnerships save to the extent they are inconsistent with the Limited Partnership Act.

9.7. Branches

Branches of foreign registered companies doing business in Anguilla must register under the Companies Act.

9.8. Trusts

In drafting its Trusts Act, Anguilla's legislature had very much in mind the shortcomings of older laws in other jurisdictions. Many of the older common law restrictions on trust formation and operation have been abolished by the legislation. A trust may last indefinitely and there is no limitation on the accumulation of income. The law has also been modernised as it relates to security, confidentiality and flexibility, while preserving the best features of common law trust interpretation.

There is provision for the creation of purpose trusts, asset protection trusts, variant trusts, spendthrift trusts and charitable trusts. Under the Fraudulent Dispositions Act, the burden of proof of fraudulent disposition shifts from the debtor to the creditor and actions must be commenced within three years of the date that the assets were settled in the trust.

10. **ESTABLISHMENT OF BUSINESS**

10.1. Business Licence

An annual Business Licence under the Trades, Businesses, Occupations and Professions Licensing Act must be taken out by any person carrying on a scheduled business. The annual fee varies from approximately US\$1,850 for professional businesses down to approximately US\$110 for a barber's shop. Hotel and guest house licence fees are calculated on a per-room basis.

The application process is quite straightforward and, in normal circumstances, quite swift provided all the necessary preparation has been undertaken and the necessary information supplied.

10.2. Exceptions

Businesses requiring special licences, such as banks or trust companies, are not required to obtain a separate Business Licence under this Act.

11. **REGULATION AND BUSINESS RELATIONS**

11.1. Regulation

The principal regulatory authority is the Governor, who acts in conjunction with the Financial Services Commission.

The principal piece of regulatory legislation is the Money Laundering Reporting Authority Act.

The Mutual Legal Assistance (United States of America) Act makes provision for implementing the 1986 Treaty between the UK and the US concerning the Cayman Islands, which was extended to Anguilla in 1990.

11.2. Trust Companies and Offshore Banking Act

This Act provides for the licensing of companies conducting "offshore banking business" or "trust business". The grant of a licence also confers exemption from the licensing requirements of the Trades, Businesses, Occupations and Professions Licensing Act.

Anguilla's regulation of offshore banking and trust business is very strict. The recommendations of the Basle Committee on Banking Regulation and Supervisory Practices are fully enforced.

11.3. Taxation

Anguilla has no direct taxation, its only taxation being a room tax on tourist accommodation, customs duties and land taxes.

11.4. Advertising

There are no specific provisions governing advertising, though the common law relating to misrepresentation will apply.

11.5. Proceeds of Crime

Anguilla has enacted the Proceeds of Criminal Conduct Act 2000. This Act follows the normal pattern of such legislation as it has been enacted recently in many offshore jurisdictions.

11.6. Dispute resolution / Conflict of laws

The Arbitration Act of the United Kingdom from time to time in force is extended to Anguilla.

11.7. Reciprocal Enforcement of Judgments

Anguilla has a Reciprocal Enforcement of Judgments Act (with the UK Administration of Justice Act Part II as extended to Anguilla by U.K. Stat. Instr. 1985 No. 1994). This legislation applies to judgments of the Superior Courts of scheduled countries, including the United Kingdom, but not, for example, the United States.

11.8. Consumer legislation

Anguilla has a conventional Sale of Goods Act but no other specific consumer protection legislation as such.

11.9. Exclusion and limitation of liability clauses

Exclusion and limitation of liability clauses are likely to be construed strictly according to their terms, as there is no equivalent, in Anguilla, to Unfair Contract Terms legislation.

11.10. Competition Law

There is no anti-trust or similar law in Anguilla.

11.11. Human rights legislation

The Anguilla Constitution makes provision for fundamental human rights and freedoms. It is arguable, furthermore, that the principles of the UK Human Rights Act 1998 could in certain circumstances be extended to Anguilla.

12. **IMMIGRATION**

12.1. Residents

There are two broad categories of residents, the Belonger and the Non-Belonger.

12.2. Belongers

(a) A Belonger is a person who:

- (i) was born or adopted in Anguilla;
- (ii) is a child of a mother or father born in Anguilla;
- (iii) is a spouse of an Anguillian and has been so married for three years;
- (iv) has been ordinarily resident in Anguilla for 15 years or more.

Belonger status may also be granted to significant investors.

Application for Belonger status must be made to the Belonger Commission and applicants must provide documentary evidence satisfactory to the Commission before the status is granted.

12.3. Non-Belongers

Non-Belongers may be holders of a work permit or holders of Permits of Permanent Residence. A Permit of Permanent Residence may be granted by the Governor, upon application by the applicant. A holder may enter and remain in Anguilla free of any immigration restrictions. However he may not engage in any occupation or employment unless he has been granted an exemption under the Control of Employment Act - see para 13 below. A Permit of Permanent Residence may also be granted to an investor of at least US\$2,500,000 in a business in Anguilla.

Non-Belongers are also, of course, required to obtain an Alien Landholder's Licence in order to acquire an interest in land.

12.4. Visitors

Mere visitors to Anguilla may be granted permits authorising a stay for up to 6 months, which is renewable for a further 6 months under the Immigration and Passport Act. Visitors who own homes on Anguilla and have not yet been granted a Permit of Permanent Residence will usually be granted longer periods of stay.

Visas to enter Anguilla are only required by nationals of countries who would require a visa to enter the United Kingdom.

13. **EXPATRIATE WORKERS**

13.1. Work Permits

Rapid economic growth in Anguilla has created a situation whereby the labour needs of the economy cannot be satisfied locally. Work permits issued under the Control of Employment Act are required for expatriate workers and are renewable annually, except in the case of the financial

services and technology industries where three-year work permits are available.

13.2. Fees

Work permit fees for professional workers are the highest and are currently approximately US\$1,300 per person per annum.

13.3. Procedure

The employer must advertise the position for two weeks and satisfy the Labour Department that no qualified belonger is available or interested. The applicant must produce satisfactory medical and character references before his application may be considered. Due to the shortage of skilled labour, more than 95% of applications are approved.

13.4. Employment law

The Fair Labour Standards Act makes detailed provisions for the protection of employees, in the areas of:

- (a) contracts of employment;
- (b) unfair dismissal;
- (c) wages and hours of work;
- (d) protection of wages;
- (e) holiday leave;
- (f) sick leave;
- (g) maternity leave;
- (h) protection from dismissal while on maternity leave.

13.5. Transfer of assets of a company

Employees are treated as privileged creditors of a company in liquidation

14. **LIFE IN ANGUILLA**

14.1. Cost of Living

The cost of living in Anguilla is generally low. Many residents take advantage of the proximity to the duty free ports of St. Maarten/St. Martin to purchase consumer goods. The duties paid on these items range between 15% and 25%.

14.2. Education

The education system is decidedly British. The literacy rate on the island is 95%. This is due to the official policy of free and compulsory education up to high school or secondary level. University and higher education training is often sought abroad, mainly in the US, UK and at the Caribbean campuses of the University of the West Indies.

The Government has declared its intention to establish a national tertiary institution to provide further education at the trade skills, technical, middle-management and professional levels.

Two private primary/elementary schools bolster the government-run system.

14.3. Health

The health sector is serviced by medical practitioners, consultants and specialists in most disciplines, who practice at the sole public hospital and a few private clinics. Air ambulances, plus care easily available in St. Martin, Puerto Rico, Barbados and Miami, supplement local facilities.

14.4. Housing for Rent

Housing is plentifully available throughout the island in the form of private villas, condominiums, apartments and other properties for both short and long-term rental.

14.5. Purchasing Property

Investors may also purchase their own properties on the island but this is subject to the grant of an Alien Landholding Licence under the Aliens Landholding Regulation Act. The licence fee equates to 12 1/2% of the value of the property, whether developed or unimproved. As a consequence, there is an incentive to purchase a plot and build, since the fee/tax does not apply to the cost of the building works.

14.6. Life Expectancy

Life Expectancy for Males is 73.6 years and for Females 79.5 years - higher than even the US average. This reflects the high quality of life on the island due to a well preserved natural environment, high standard of living and adequate health care, nutrition and prevention of diseases.

APPENDIX - Useful Coordinates

Government

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Ministry of Finance, The Valley, Anguilla, BWI; Tel: +1 264 497 2545, Fax: +1 264 497 3761

Tourism

Anguilla Tourist Board, PO Box 1388, The Valley, Anguilla, BWI; Tel: +1 264 497 2579, Fax: +1 264 497 2710. Email: abtour@anguillanet.com

Banks

FirstCaribbean International Bank (Barbados) Limited, P.O. Box 140, The Valley, Anguilla, BWI; Tel: +1 264 497 2301, Fax: +1 264 497 2980

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