



THE GCSL GROUP OF COMPANIES LIMITED

## Guide to Anguilla Companies, Trusts and Mutual Funds

### INTRODUCTION

Anguilla is a British Overseas Territory in the Caribbean, east of Puerto Rico and the British Virgin Islands and north of the French/Dutch island of St. Martin/St. Maarten. In 1994 it enacted several pieces of corporate and licensing legislation that provided for, amongst other things, the creation of international business companies, domestic companies, limited liability companies, trusts and the licensing of company managers (registered agents), trust companies and offshore banks. All of this legislation was updated in 2000. In 2004, Anguilla added legislation that provided for mutual funds, captive insurance and protected cell companies and most recently a proposed Foundations Act.

### ANGUILLA INTERNATIONAL BUSINESS COMPANIES (IBC)

The IBC Act provides all the necessary features of this entity with enhanced shareholder protections.

### INCORPORATION

Anguilla has an online company formation system, ACORN, which allows for the incorporation of IBCs, and other corporate entities, as well as the filing of annual returns and all other statutory documents over the internet. Only licensed practitioners i.e. holders of a company management (registered agent), trust or offshore banking license or their approved overseas agents, are allowed access to the system. At the end of the incorporation process, the incorporator receives a digital certificate of incorporation which can be used to open bank accounts. There is no need to take any documents to the Companies Registry for stamping. These are automatically generated by the ACORN system and service providers simply have to collect the hardcopy of the articles of incorporation bylaws which will all bear the Registrar's stamp, from the Registry.

### STATUTORY PROVISIONS

#### Shares and share capital

Shares may be issued as registered shares or bearer shares or both and may be issued to corporations or natural persons. IBCs can be formed with any authorized share capital and in any currency approved by the Registrar. The government fees do not increase based on share capital and shares may be issued with no par value. Shares may also be issued in fractions.

#### Share registers

IBCs must maintain registers of shareholders and directors. However, there is no requirement to file them with the Registrar.

#### Registered office/registered agent

Each IBC must have a registered office and registered agent. Only licensed practitioners can provide this service.

#### Directors and company secretary

An IBC must have at least one director but there is no residency requirement. Directors have all powers provided for in the bylaws except those reserved to the shareholders by the Act. Directors may be corporations or natural persons. There is also no requirement for a company secretary.

#### Shareholders' meetings

Meetings may occur outside of Anguilla, wherever and in whatever manner determined by the shareholders. Meetings may occur by telephone or other electronic means.



### **Books, records and common seal**

IBCs must maintain accounting records sufficient to record and explain the transactions of the company. These records may be held at the registered office or wherever the directors resolve they should be kept. However, IBCs are not required to audit or file their accounts. An IBC must have a common seal which must be kept at the registered office.

### **Registration of charges**

An IBC must keep a register of charges; however, the public registration of charges is optional.

### **Redomiciliation**

IBCs can migrate into and out of Anguilla free of charge. IBCs may also continue as a domestic company under the Companies Act.

### **Strike-off and restoration**

IBCs which fail to pay their annual fees are struck from the companies registry. However, if they pay their fees and a penalty they are restored.

### **Tax exemptions**

IBCs are exempt from corporate, income, withholding, capital gains, dividends or distribution taxes.

## **LIMITED LIABILITY COMPANIES (LLCs)**

The LLC Act provides all the necessary features of this entity that are traditional in an offshore center.

### **INCORPORATION (FORMATION)**

Like the IBC, the LLC can be formed online through the ACORN system. The same formation procedures are followed except that the documents are known as articles of formation instead of incorporation.

## **STATUTORY PROVISIONS**

### **Registered office/registered agent**

An LLC must also have a registered office and registered agent which like an IBC must hold a licence as a company manager, trust company or offshore bank.

### **LLC Agreement**

A written agreement concerning the affairs of an LLC and conduct of its business may be entered into by the members of the LLC before, after or at the time of the signing of the articles of formation.

### **Admission of members**

A person acquiring an interest in an LLC becomes a member at the time of formation of the LLC or the time provided for in and upon compliance with the LLC agreement.

### **Liability to third parties**

The debts, obligations and liabilities of an LLC are solely those of the LLC. They are unrelated to the manager or members of the LLC.

### **Managers and management of the LLC**

A person may be named a manager of an LLC by the members. If no manager is named, the management of the LLC is in proportion to the percentage share of the profits of the members.

### **Resignation of members**

A member may resign upon the happening of events specified in the LLC agreement.

### **Nature of the Interest**

An LLC interest is personal and a member has no interest in any specific LLC property.



### **Dissolution and strike off from the register**

The term of an LLC may be perpetual or otherwise as provided for by the LLC agreement. An LLC may be dissolved by the Court on specific grounds including if it carries out business without any members. A dissolved LLC may be struck from the register but it may also be restored upon the payment of the requisite fees.

### **Continuation and departure**

An LLC can continue as either an IBC or a domestic company. A foreign LLC can also continue into Anguilla. An LLC may also depart from Anguilla and continue under the laws of the jurisdiction to which it is redomiciling.

### **Exemption from taxation and registration of documents**

An LLC is exempt from all forms of taxation.

## **OTHER TYPES OF COMPANIES**

Anguilla's domestic or Companies Act Companies (CACs) are tax exempt entities like the IBC but with greater disclosure requirements including the obligation to list shareholders and directors publicly. The CAC also allows for the formation of private, public, not-for-profit, foreign, companies limited by shares, companies limited by guarantee and hybrid forms of these companies. In addition, Anguilla also allows for the formation of protected cell companies and captive insurance companies. Further details are available on request.

## **ANGUILLA TRUSTS**

The Trusts Act provides for the creation and recognition of trusts under Anguilla law.

### **CREATION**

Trusts may be created either by oral declaration, by conduct, operation of law or in writing.

## **STATUTORY PROVISIONS**

### **Duration of trust and accumulation of income**

The rules against perpetuities have been abolished. Trusts may be of any duration and income may be accumulated throughout the life of the trust.

### **Exclusion of foreign judgments**

Where a trust has been created under Anguilla law, the Court cannot vary or set it aside or recognize the validity of any claim against the trust property pursuant to the law of another jurisdiction or Court in respect of personal or proprietary consequences of marriage or its termination; succession rights including the fixed shares of spouses or relatives; claims of creditors in an insolvency or imposition of foreign tax duties. The Reciprocal Enforcement of Judgments Act is specifically excluded in the Trusts Act.

### **Settlers and beneficiaries**

Any person who under local law can own or transfer property can be a settlor. The settlor may also be a beneficiary, trustee and protector. Beneficiaries shall be identifiable by name or ascertainable by reference to a relationship to some person or description of a class.

### **Nature of a beneficial interest**

The interest of a beneficiary is personal property and subject to the terms of the trust this interest may be sold, pledged, charged, transferred or otherwise dealt with in whatever manner.

### **Purpose trusts**

Specific provision is made for the settlement of commercial or purpose trusts as long as the purpose is specific, reasonable, and capable of being fulfilled. In addition, the purpose for which the trust is created must be lawful and a protector must be appointed.



### **Protector of a trust**

A protector may be appointed who has defined powers under the Act including the power to remove and appoint new trustees.

### **Spendthrift trusts**

The Act specifically provides for the settling of trusts which are known as spendthrift trusts.

### **Trustees**

A settlor, beneficiary or protector may also be a trustee. The minimum number of trustees is one. At least one trustee, where there is more than one, must be resident in Anguilla. Trustees' duties, including those to act with due skill and care and in utmost good faith are set out in the Act.

### **Trustees' powers**

These include the power to appropriate, to accumulate, to maintain and to advance all or parts of the trust property for the benefit of the beneficiaries.

### **Termination of trust by beneficiaries**

The beneficiaries have a statutory power to terminate the trust and distribute the trust assets under certain circumstances.

### **Registration of trusts**

Provision is made for the optional registration of trusts with the Registrar of Companies.

### **Exemption from taxes**

Trusts are completely tax free as long as the settlor or any of the beneficiaries are not resident in Anguilla.

## **ANGUILLA MUTUAL FUNDS**

The Mutual Funds Act provides for Public, Professional and Private Funds. This section addresses Private Funds, but additional information regarding Public or Professional Funds is available upon request.

The Act defines a Mutual Fund and allows for mutual funds to be established as -

- (a) a unit trust;
- (b) a company;
- (c) a partnership; or
- (d) a protected cell account.

Under the Act, a Private Mutual Fund is defined to be a Mutual Fund where:

- (a) the equity interests are held by not more than 100 persons; and
- (b) it requires invitations to purchase shares to be made on a private basis; or
- (c) it is designated a private fund by regulations
- (d) there is NO minimum subscription

## **STATUTORY PROVISIONS**

The Act does not prescribe any limits on the investment policy of an Anguilla Mutual Fund nor does it dictate portfolio requirements.

The vast majority of Anguilla funds are set up as International Business Companies under the International Business Companies Act of Anguilla.

A Private Mutual Fund is not required to have any service providers (including directors of corporate entities) in Anguilla, other than the registered office and registered agent. Therefore, each of the investment manager, the administrator, the custodian/prime broker, investment adviser and any other service providers may be located in any jurisdiction as long as it is a "recognised jurisdiction". Recognised jurisdictions are quite expansive and this very rarely poses an issue.



A Private Mutual Fund is allowed to carry on its business in or from Anguilla for a period not exceeding 14 days without being registered (recognised/licensed). Thus registration can be deferred until the fund is established and operating.

A Private Mutual Fund is entitled to be registered (recognised/licensed) if it provides proof satisfactory that:

- (i) it is a private fund within the meaning of the Act, namely that it meets the criteria above;
- (ii) it is lawfully constituted under the law in force in Anguilla; and
- (iii) the address of the Applicant's place of business and its address for service in Anguilla and the name of the Anguilla resident authorised to represent the applicant and accept service on its behalf as well as place of business the applicant has outside Anguilla.

### **Manner of Application**

To register (recognise/license) a Private Mutual Fund, one must complete an application form supported by other documents and information. The application form calls for the name, address and business activity of (a) the Manager, (b) the Administrator (c) the Investment Advisor and (d) the Custodian.

The application must be accompanied by:

#### **Constitutional Documents**

Certified copies of Memorandum and Articles and Certificate of Good Standing.

#### **Director and Shareholders Details**

- Full names, date and place of birth.
- Addresses and citizenship
- Country of residence and length of residency
- Educational and Professional qualifications
- Employment history
- Other items of a Resume detailing the past ten years
- Details of 25% or more shareholding interests in companies in the past ten years
- Nominee details (if any)
- Other questions detailing business, litigation and general legal background
- The names of three non-related referees

#### **Business Plan (Offering Memorandum)**

Must be submitted detailing:

Investment objectives, types of investments, restrictions on investment, risk factors of the fund, actual or expected size of shareholders investment base, valuation arrangements and frequency of valuations and redemption mechanisms.

### **Proof of Classification - Private Fund**

The Act requires submission of proof that the Fund is a private fund within the meaning of the Act. This can be achieved by the Fund's constitutional documents containing a specific provision which states that it will have no more than 100 investors. An explanation and proof of how the other requirements of a private mutual fund will be met must be supplied. This is usually done by drafting and submitting an offering document for review.

### **Timing of Approval**

It should, under normal circumstance, be possible to obtain approval for an Anguilla Private Fund within two weeks of a completed application. Firms with a proven track record of establishing funds can apply for the qualified intermediary status which fast tracks the procedure and allows for funds to be launched in less than 24 hours.

**For further information, please contact Carlyle K. Rogers at [carlyle@gcsl.info](mailto:carlyle@gcsl.info)**

#### **Global Consultants and Services (Anguilla) Limited**

201 The Rogers Office Building, Edwin Wallace Rey Drive, George Hill, Anguilla  
P.O. Box 941, The Valley, Anguilla, British West Indies  
Tel: +1 264 498 5858 Fax: +1 264 497 5504 Email: [anguilla@gcsl.info](mailto:anguilla@gcsl.info)

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