

Regulatory framework for mutual/hedge funds in Anguilla

Anguilla is a British Overseas Territory and has a stable government which is committed to promoting its mutual/hedge funds industry. The laws of Anguilla are derived from English common law and supplemented by local legislation. The Court system is well developed and the London based Privy Council is the jurisdiction's final court of appeal. Anguillian legislation ensures that funds can be structured as internationally accepted vehicles.

Regulatory regime

Mutual and hedge funds are regulated under the Mutual Funds Act 2004 ("the Act"). The Act sets out two procedures for regulation based on the type of fund under consideration: i.e. recognition for private and professional funds and registration for public funds. In addition, fund administrators and managers are licensed where they wish to operate from in or within Anguilla to provide their services to local and foreign funds. Under section 31 of the Act, the Commission has the power to exempt any person or class of persons from complying with the Act. This allows for flexibility in requiring funds to be registered or recognized and persons to be licensed as managers and administrators. This flexibility is particularly important for managers/administrators who provide their services for one name fund only.

Fund structures

Funds in Anguilla may be formed as companies, partnerships, unit trusts or protected cell/segregated portfolio accounts. This allows investors to adopt the structure which best suits their needs which are often tax based. It appears that traditionally funds in which US taxable investors will invest directly tend to be formed as limited partnerships, funds that target European and South American investors tend to be formed as corporate funds while those that target Japanese investors tend to be formed as unit trusts. This means that Anguillian funds are able to satisfy the individual requirements of most investors globally.

Protected cell/segregated portfolio accounts

Anguilla enacted a Protected Cell Companies Act in 2004. It allows mutual funds to be established as protected cell accounts and in essence, the legislation provides that, whilst retaining its corporate existence as a single legal entity, a corporate fund vehicle may be registered as having protected cell accounts, which are traded independently and which during the life of the company and on liquidation are protected from creditor claims arising with respect to liabilities of other protected cell accounts or the company generally.

The use of protected cell accounts as funds provides an attractive alternative to the traditional structures to address cross-class liability issues for multi-class corporate funds and provides corporate fund vehicles with the ability to operate in a way analogous to a corporate group despite utilizing just a single legal entity.

Taxation

Anguilla is a completely zero tax jurisdiction. There are no capital gains, income, profit, corporation or withholding taxes or any legal restrictions on the investment policies and strategies of funds in Anguilla.

Definition of a mutual fund

A mutual fund is defined as a company incorporated, a partnership formed, a unit trust organized or other similar body formed or organized under the laws of Anguilla or any other country or jurisdiction which collects and pools investor funds for the purpose of collective investments and issues shares that entitle the holder to receive on demand or within a specified period after demand an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the company, the partnership, the unit trust or other similar body, as the case may be. This definition includes an umbrella fund whose shares are split into a number of different class funds or sub-funds and a fund which has a single investor which is a mutual fund not registered or recognized under the Act.

Categories of funds

The Anguilla legislation provides for three types of funds. Of these three (3) types, only public funds are required to submit audited financial statements to, as well as publish and file a prospectus with, the Commission.

1. Public

A public fund is a fund which is not a private or professional fund. Usually, its prospectus indicates that it can offer its shares to the public for subscription.

2. Private

A private fund is a fund whose constitutional documents specify that it will have no more than ninety-nine investors; the constitutional documents of which specify that an invitation to subscribe for or purchase shares issued by the mutual fund is not to be made. An invitation is not made to the public if it is made to specified persons and is not calculated to result in shares becoming available to other persons or by reason of a private or business connection between the person making the invitation and the investor. The Commission also has the power to designate certain funds as not being private funds.

3. Professional

A professional fund means a fund, the shares of which are made available only to professional investors and the initial investment in which, in respect of each of the persons constituting a majority of the such investors, is not less than one hundred thousand dollars in the United States currency or its equivalent in any other currency, but this minimum initial investment limit shall not apply in respect of an investment made by the manager, administrator, promoter or underwriter of the professional funds; a mutual fund which was carrying on business or engaged in an activity as a mutual fund on the date of the coming into force of the Act; the initial investments in respect of the majority

of each of the investors in the mutual fund have been not less than one hundred thousand dollars in the United States currency or its equivalent currency; and the shares of the mutual fund are, after the date of the coming into force of the Act, made available only to professional investors. The Act further defines an investor as a person whose ordinary business involves dealing in investments or who has signed a declaration that he, whether individually or jointly with his spouse, has net worth in excess of one million dollars in United States currency or its equivalent in any other currency and that he consents to being treated as a professional investor.

Functionaries

All funds domiciled in Anguilla must have the following functionaries: a manager, administrator, investment advisor and custodian who should be in a recognized jurisdiction under Act. The Commission has issued a list of such jurisdictions which can be found on the site stated below. However, where this is not possible, the Commission requires an explanation be given as to why and permission sought to appoint the particular functionary. There is no requirement for the appointment of an auditor for professional and private funds but public funds must appoint an auditor approved by the Commission. A public fund must also maintain adequate accounting records and prepare audited financial statements for each year.

Managers and administrators

Under the Act, both managers and administrators are required to be licensed. There is no requirement to use an Anguillian administrator or manager for Anguillian funds. And where the manager or administrator is only providing its services to one mutual fund, whether registered or recognized in Anguilla or another jurisdiction, as evidenced by a written undertaking, the Commission may exempt him/her from the requirement to be licensed under the Act. In addition, the Commission may use section 31 of the Act to exempt a company if it is not against the public interest.

Qualified fund administrator/intermediary (QFAI) status

The Commission allows service providers with a proven track record in setting up mutual and hedge funds to apply for QFAI status. This allows the recipient of this status to launch the fund prior to review of the application by the Commission provided he/she adheres strictly to the guidance issued by it. This fast-track procedure gives Anguilla a competitive advantage over its competitors. The Commission will conduct a regulatory review within thirty (30) days of the launch of the fund, post facto, to ensure that the QFAI exercised its prerogative properly. If it fails to do so, then the registration or recognition will be revoked and the QFAI will lose its status. QFAIs are able to launch their funds within twenty-four (24) hours if they use an Anguillian corporate entity which can be formed online using the ACORN system (www.anguillafsc.com). Anguilla's competitive advantages in this area are speed and efficiency and are the hallmarks of the jurisdiction's thrust into the provision of international financial services.

Netting legislation

Anguilla will enact shortly the Netting Act 2005 which will provide for the ability of over the counter (OTC) derivative transactions to net the mark-to-market values of all existing

transactions under the master agreements upon their early termination following the default of its counterparty or other specified events. The Act is based extensively on the International Swaps and Derivatives Association (ISDA) model and is ideally suited for hedge funds thus contributing to Anguilla's attractiveness as a jurisdiction.

Commission fees

Anguilla's fees are extremely competitive with other jurisdictions. They are as follows:

Recognition – US\$350 plus an application fee of US\$350

Registration – US\$500 plus an application fee of US\$500

Licensing – US\$500 (for a single licence) and US\$1000 (for a double licence) plus an application fee of US\$250

Where the recognition, registration or licensing is effected on or after 1st July in any year, the fees are prorated but the application fee remains the same. The annual fees are the same as the fees paid at the time the recognition, registration or licensing is effected where this is done on or before the 30th June in any year.

Application procedures

Where the service provider in question is not a QFAI, all applications must be submitted to the Commission before the corporate entity is formed at the Companies Registry. Applications forms, which can be downloaded from website www.fsc.org.ai are contained in the Mutual Funds Regulations 2004. They must be fully and properly completed and submitted, along with the requisite application fee, to the Commission at the address below. Policy guidance notes, which are also posted on the aforementioned website, provide important guidance for the completion of the forms and should be read carefully prior to completion. The Commission is very proactive and seeks to determine applications which have been fully and properly completed and which are sound in all respects, within five (5) working days.

Further information

Further information can be had from Mr. John Lawrence, Director of the Anguilla Financial Services Commission or Mr. Carlyle Rogers, the Deputy Director, at the following address:

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