# ANGUILLA 2014

From the publishers of

CAPTIVE REVIEW

**GROWTH**
The impressive expansion of Anguilla's captive market

**REPUTATION**
The attractiveness of the jurisdiction's robust regulation

**OPPORTUNITY**
Continuing interest from the US mid-market and Latam

# Great strides

As chief minister and minister of finance, I take great pride in the strides that we have made in the captive insurance industry. My government is committed to ensuring that Anguilla continues to build on this success. Despite the challenging global environment, I'm excited about the future of Anguilla's financial services industry, particularly in the captive insurance sector. Over the past five years, this sector has grown by 60% to a position where we are now licensing 379 captives; an impressive record indeed.

My government is steadfast in ensuring that Anguilla maintains its reputation as a high quality, well-regulated jurisdiction. In this regard, we are considering several legislative changes to enhance the quality of our product and offer better protection to policy holders, captive owners and captive managers. In addition to enhancing our reputation and strengthening our regulatory regime, we are keen to develop new markets and exciting new products. The intention is to attract new business to Anguilla, which in turn will lead to spill overs into ancillary and related activities such as legal services, actuarial services and accountancy.

The government of Anguilla will continue to engage the Financial Services Commission and the industry practitioners on the shared vision of making Anguilla the leading captive insurance jurisdiction in the world.

Thank you for choosing Anguilla!

**The Honourable Hubert Hughes**,
**Chief minister and minister of finance**

CAPTIVE REVIEW

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Published by Pageant Media,
Thavies Inn House, 3-4 Holborn Circus, London,
EC1N 2HA
ISSN: 1757-1251 Printed by The Manson Group

# AN AUDITOR'S PERSPECTIVE

Claudel Romney of BDO discusses the audit of captive insurance companies

The audit of captive insurance companies may seem simple and straightforward to non-auditors and non-regulators. It is not. There are many different types of captives including pure captives, group captives, risk retention captives (RRGs) etc. and the scope of an audit will vary according to the type and nature of transactions.

In general, the audit of a pure captive requires an auditor to understand, among others, the following:

- Nature and purpose of the captive;
- Ownership structure and the beneficial owners;
- The jurisdiction to which it was licensed as a captive and the type of licence issued to the captive;
- If the captive is a US IRC 953 (d) and 831 (b) entity;
- The applicable Insurance Act and relevant ordinances involved;
- The types of policies it underwrites and if such were in accordance with the ambit of its licence issued by the relevant insurance regulators and insurance management service provider;
- Control over the captive and the claims process including deductibles, levels of risk and premiums and the scope and breadth of coverage;
- Adequacy of capitalisation based on types and amounts of coverage and loss history;
- Risk shifting and risk distribution tests and analyses.

For new incoming captive audit clients, auditors usually peruse through the captive's business plan and feasibility study submitted to the relevant insurance regulator along with the insurance licence issued to the captive for the given year. These documents will provide information in respect of the nature and purpose of the captive, the ownership structure and beneficial owners, the jurisdiction to which it was licensed, the relevant regulations involved, financial projections, actuarial assessments and information in support of risk shifting and distribution to solidify the authenticity of the captive insurance company.

Written by
**Claudel Romney**

**Claudel Romney** is a founding and managing member of BDO Eastern Caribbean LLC. He has been a senior partner in Big 4 and 5 accounting firms for 22 years and has experience in audit and advisory engagements of clients in a cross-section of industries.

Corroborative inquiries with management (usually an insurance management service provider engaged by the captive) are also conducted to gather information about the transactions for the year apart from analysing the financial statements provided for audit.

Auditors also go through correspondences with regulators with the aim to determine whether there are regulatory concerns and/or compliance issues which need to be addressed during the audit.

Main risks involved in an audit of a captive include, among others, the following:

a. Analysis of whether the risk is shifted to the insurer and distributed among many insureds to meet the fundamentals of an insurance contract;

b. Compliance risk in relation to statutory capital requirement and margin of solvency requirements;

c. Related party risk – often, transactions with related parties, who are owners/beneficial owners of the captive, are not arms length (i.e. non-interest bearing advances and loans, overdue loans not being paid which necessitate the need for impairment assessment); and

d. Valuation risk – depending on the type of policies issued (long dated or not), the work of an actuary and assumptions used by such significantly affect the level of reserve of incurred but not reported losses and unexpired risks. This is one of the main areas being looked at by an auditor. The result of the actuary's valuation for IBNR and unexpired risks has a direct effect on the captive's level of margin of solvency requirement.

Given that audit reports are signed off post the captive's given year-end, subsequent events also are being reviewed especially those affecting the captive's possible non-compliance with statutory capital requirements and margin of solvency requirements and other non-compliance issues with the relevant regulators.

If the captive is a US IRC US IRC 953 (d) and 831 (b) entity, another significant point which an auditor ensures is that the captive's net written premiums should not exceed $1.2m for each US taxable year. Non-compliance to such will trigger the auditor's responsibility to report to the relevant authorities.

In most cases, captives are managed by insurance managers. It is also imperative for an auditor to assess the competence, reliability and objectivity, among other things, of the relevant insurance managers. Relevant international standards on auditing require the auditors to assess the work of management's experts and service organisations such as the actuaries and the insurance managers.

An auditor often liaises with the insurance regulator to obtain information about the captive and to seek clarification on the implementation of the relevant minimum margin of solvency and allowable assets for purposes of determining solvency requirements.

Overall, the audit of a captive focuses on: (a) appropriateness of accounting policies implemented; (b) independence and competence of service providers and management's expert; and (c) regulatory and income tax (if applicable) compliance.

# THE REGULATOR AS BUSINESS PARTNER

Choosing the right domicile for you and your captive

## Why are regulators so important to professional captive managers and their clients?

Over the past few years the industry has seen many jurisdictions, both onshore and offshore, put legislation in place for the handling of captive business. But many who have used these jurisdictions have not had a pleasant experience. Anecdotally, some captive insurance managers have even phoned some of these jurisdictions and when asking the switchboard to put them through to the appropriate person handling captives have been told that they were unaware that the domicile did captive insurance. This does not bode well for an ongoing professional relationship. Regulation is just as key as legislation and a good client-regulator relationship is pivotal to doing good business. I will explore, within this article, the reasoning underlying this statement and look at what clients should look for in a jurisdiction. It comes down to three major factors: focus on and knowledge of the industry, a willingness to communicate and the desire to work with service providers to move the industry forward.

## Make sure that your business is in good company

***What's more important: leniency or rigour?***

When I go through an airport I like it that everyone is searched. It makes me feel secure. It always makes me feel comfortable that no terrorists or inappropriate passengers are on my flight.

The same applies to captive insurance. You, as a captive manager, do not want the unscrupulous in the same industry as you, and we certainly don't want that sort of business in Anguilla. Your clients won't thank you if they hear that you picked a jurisdiction that appears regularly in the press after a captive goes rogue.

Written by
**Steve Garlick**

**Steve Garlick**, chief executive officer, Anguilla Finance Limited

So, Anguilla's Financial Services Commission (AFSC) takes great care in licensing captives. Yes, some captive applications may get rejected, but by doing so, the AFSC are protecting the insured, the captive owner and the insurance manager, and keeping the industry clean.

Choose a domicile that has substance over form and where open communications is welcome.

## Can you get to know your regulator?

***Think of the regulator as a business partner.***

One of the most important aspects to any service industry is communications. And one of the most important questions one should ask is about the people who will be handling your application and regulating the industry. Regulators are not people you should stay away from. They are there to help you. In some jurisdictions you will never be able to speak to the regulator directly, in some cases because the jurisdiction is outsourcing the review of applications to freelance regulators across the world. Obviously that may lead to frustration and miscommunication. Find out who is handling your business and talk to them regularly; maybe your application is going to be delayed and you need to make them aware that you are doing your best, maybe you are unsure of whether a business plan will be acceptable and want to discuss it… or maybe you want to praise the regulator when they pull out all the stops for you. It adds to a great working relationship.

Over time you also will want to know how the regulator is viewing the future and how they are growing their operation to ensure that they have strength in depth. How many of their staff have done, or are doing the ICCIE course? That's always a good barometer to see how focused the regulator is on captives, rather than their other regulatory tasks.

They will therefore be enlarging the department from its already significant base to one which will be able to provide even better service to clients and enhance the Anguilla regulatory experience. They have not, and do not intend to, outsource any captive regulation, believing, as they do, that the clients of the future will take great comfort in being able to talk to a regulator directly who understands their business.

## Asking the right questions

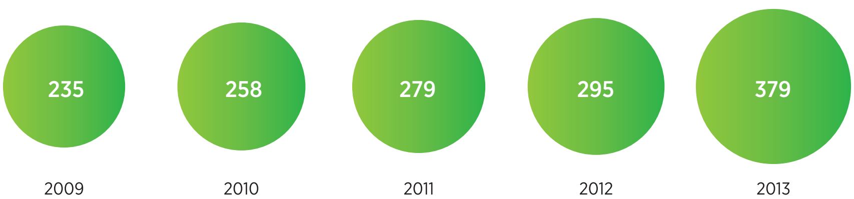
***What type of captives do you manage?***

There is, within the world of captives, a huge variety of types and sizes of entities and therefore it's important to know where your captive fits in and if it's in good company. A jurisdiction handling Fortune 500 captives might not, for example, pay due attention to the mid-market captives. These are two types of entities that have little in common with each other. If you're looking to set up a mid-market captive make sure that the regulator is going to take the time to understand your business so that he can advise you and get you the best possible result. A jurisdiction that specialises in these smaller captives may also have back-end-of-the-year demand problems that requires a strength in depth at the regulator to ensure that everything is done on time and that no client is disappointed.

## DEMONSTRABLE GROWTH

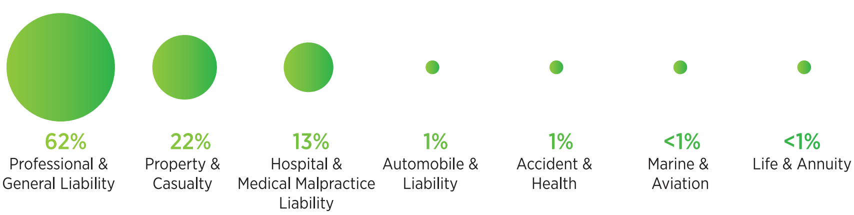
By providing appropriate regulation, since 2004 when Anguilla first licensed captives, we have seen substantial and sustainable growth. Our captive numbers have gone from 235 in 2009 to 379 at the end of 2013. This is, I believe, in no small part due to the investment that the Anguilla Financial Services Commission (AFSC) has made in the staff and their training and that continues today. Apart from their professionally qualified experts they have eight people currently taking the ICCIE course; a significant demonstration that they are building for the future.

### NUMBERS OF CAPTIVES LICENSED

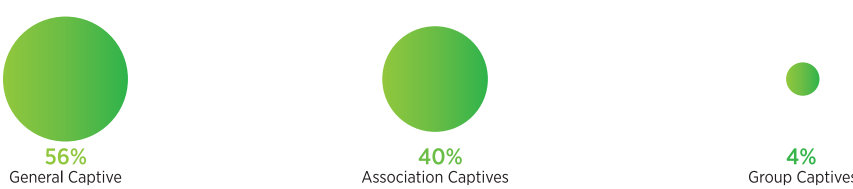



## TYPES OF COVERAGE

Anguilla has for many years been focused on captives in the mid-market sector, mostly from the United States. While we do often license large captives, our niche is captives in the premium range US$300,000 to US$2m.
The majority of our coverage comes from professional and general liability, with significant amounts from property & casualty, and hospital & medical malpractice.




The captives can also be defined between general captives, the majority, followed by association and group captives.




## ECONOMICAL FEES AND CAPITAL REQUIREMENTS

Anguilla has a niche market in licensing smaller captives and therefore believes that it should legislate and regulate accordingly. With this in mind the fees are modest, a factor of having a large cadre of captives. Our capital requirements are also substantially less than most, if not all, of our competitors.

| | |
|---|---|
| Association Captive Licence | US$ 100,000 paid up capital |
| Group Captive Licence | US$ 25,000 paid up capital |
| Single Captive Licence | US$ 10,000 paid up capital |

### Consistency

***How do I avoid surprises?***

Legislation and regulation in an ever-changing environment can be difficult. And in this market one thing is certain; the industry needs a consistent approach from a jurisdiction. Sometimes this is not easy as international pressures sometimes come along pretty quickly and the regulator has to react to them.

What is clear is that nothing upsets captive managers more than if they sell a solution to a client and then find that new regulations don't permit it. The answer is that communications between captive managers and the regulator is key.

We also understand that due to competitive pressures we must be forever vigilant and move the industry forward and recognise that the best way to do this is for insurance managers and the regulators to work together on new and improved legislation and regulation. In this context the AFSC regularly meet with captive managers and use internationally recognised experts in insurance to assist as they know they need to make Anguilla's legislation and regulation even better.

### Service standards

In an environment of silence where the regulator in uncommunicative, the fear that insurance managers have is that the regulator will let them down and not do what they should do by when they should have done it...and that they will lose the client because of it. So, ask the jurisdiction if they have service level standards. That is the barest minimum that you should require. In Anguilla we are proud that we strive for far greater than that. The FSC want to be involved in your business and they want to give you a service that is much better than just OK.

From your side, talk to your regulator all the way through the process (even before talking the client through the business plan sometimes). You won't get any nasty surprises that way and the regulator will be happy to plan his workload around your requirements as long as they aren't outrageous. In some jurisdictions regulators get around to your file when it hits the top of the pile. Don't let yourself be just a number!

### One last point

Before you decide on a jurisdiction make the decision to meet the regulator – at a conference, or at their offices. You'll find that in Anguilla they are on your side. Captives are pivotal to the success of Anguilla's financial services industry and we like to think that we make our captives and their managers feel welcome.

# THE WINNING ALTERNATIVE

Steve Garlick, of Anguilla Finance, explains to *Captive Review* why Anguilla is the smart, if not obvious, choice for domiciling a captive

With a solid, responsive regulatory environment and entrepreneurial and progressive motivation on the island, Anguilla has become a domicile of choice for captives. The end of 2013 saw Anguilla with 379 captives, making it the fifth largest jurisdiction in the world and, arguably, the largest in the mid-market sector.

Written by
**Steve Garlick**

**Steve Garlick**, the chief executive officer of Anguilla Finance, has been a marketing consultant for a number of global professional organisations over the past 20 years, and a marketing and business development manager for Wall Street law firm, Milbank, Tweed, Hadley & McCloy. He joined Anguilla Finance in early 2011.

**Captive Review (CR): There has been a growing debate of late about the advantages of onshore domiciles for captives – what makes a domicile like Anguilla still advantageous for captives?**

**Steve Garlick (SG):** When we think of onshore domiciles we more or less think of these as the US captive domiciles. Of course we see them as competitors. We understand the nationalistic approach. We are all proud of our home countries. If they are competitive we would want to use those providers. That said, some US domiciles will continue to prosper, such as Vermont, while others will fall away as expertise is polarised. Expertise is key to captive insurance, as some jurisdictions will discover who have gone down the route of being mechanistic. In some US jurisdictions, you can do almost everything online which we see as being jurisdictionally problematic. Therefore, what I feel that we have to offer, and continues to be the central tenet of our approach, is a client-focused regime, because captive insurance, by its very nature, isn't vanilla. The interdependency between captive managers and their captive domicile deserves a more communicative approach, a better and more responsible legislative process and a very knowledgeable cadre of service providers and regulators to support the insurance managers. It is the supporting of the insurance managers that is the key competitive factor for Anguilla. In Anguilla, this is evident as the regulatory process is not only solid and sound but also efficient and effective. This is the advantage that sets Anguilla apart from other domiciles. Such a relationship can be very helpful when an insurance manager may be considering embarking on a very specific or unusual variety of coverage and they want to discuss it first. Everybody's interest has to be in providing an environment where good business is treated well.

> **"What we have to offer, and continues to be the central tenet of our approach, is a client-focused regime, because captive insurance, by its very nature, isn't vanilla"**

**CR: Captives are cost-effective insurance solutions, does Anguilla support this as a domicile in terms of time-to-market and licensing costs?**

**SG:** Quite simply, time is money. Efficiency is paramount to captive managers. In Anguilla we firmly believe that the process for establishing a captive should be as fast and effective as possible, with the dialogue between all parties being as open and mutually beneficial as it can be. The time-to-market in Anguilla is astonishingly quick, especially if the captive manager communicates effectively with the regulator. In terms of licensing fees, we are not bottom feeders. Yes, you can get cheaper, but remember that these fees pay for the regulators to do their job. The price you pay in Anguilla delivers an undeniable ROI. In other locations, if you pay less the regulator might then not be as good, as responsive, as educated, as interested – which could end up costing you in so

insurance product and we understand the needs of captive managers. The fact that Anguilla is the fifth largest domicile by number of captives is evidence of our experience and success. Captive insurance is a product that makes sense, and as long as the tax environment in the US continues, growth will be significant. Even if the US Government decides against a favourable tax environment, captives will continue to be advantageous. The Far East and Latin America are key regions because we can add our industry expertise to our knowledge of the geographic area. For the time being, there is little understanding of captive insurance in these regions, but with time, the value of this product and why Anguilla should be the jurisdiction that they choose to work with will become more and more apparent.

CR: **What can you see the next 12 months holding for Anguilla as a captive domicile in terms of opportunities and challenges?**

SG: We have proven understanding of the captive insurance product, and

many ways. In Anguilla, we are more than cost-effective and, most importantly of all, we provide great value for money and we intend to continue in that vein for many years to come. The regulators are committed to attracting high-quality captive business, recognise the importance of captives and are keen to develop their expertise – evidenced by the recruitment of a director, deputy director and (insurance) regulatory consultant with significant international experience in financial services regulation. In this way each licensee is rewarded with a large team that works to deliver a high-quality, dedicated service.

CR: **Legislation is becoming a dominant issue for many captive managers, what legislative environment can a captive expect in Anguilla?**

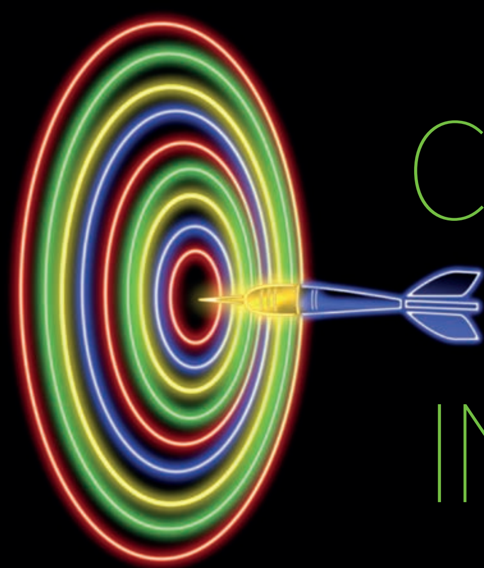
SG: The legislation is first class in Anguilla. Of course, legislation in other jurisdictions can change to potentially give a competitive advantage, but we keep a very close eye on them to ensure that we are a top flight domicile for captives. Our Joint Financial Services Legislative Committee draws together everyone's input and ensures Anguilla's captive legislation remains top-class. Committee members are drawn from the Government, The Financial Services Commission, the Attorney General's Chambers and the private sector. This constant review of all legislation will help to drive the jurisdiction forward through a positive and proactive approach.

**"Captive insurance is a product that makes sense, and as long as the tax environment in the US continues, growth will be significant"**

CR: **More markets are opening up to the notion of captive insurance, is Anguilla active with these emerging markets? And if so, what progress is being made?**

SG: While the US and Canada still have plenty of potential, and will continue to be our prime focus, we are actively looking at both the Far East and Latin America where we perceive that captive opportunities will grow exponentially. They may be starting slowly, but substantial growth will occur in the next five years if not before. We have proven that we understand the captive

we understand the needs of insurance managers. Therefore, Anguilla will go from strength to strength and attract more business from the current manager base, from medium-sized managers and from large managers, who cannot avoid the attractions of a jurisdiction that is firmly focused on the captive insurance industry. In terms of generating GDP, captive insurance is vitally important to the jurisdiction and is one of the keys to prosperity of the whole island. When it comes to challenges, we must ensure that our client service ethic is maintained and even improved. Everyone in the industry is focused on this and our mission is clear: to ensure that we become the jurisdiction of choice for the educated professional. Insurance managers and insurance owners are our clients and we ought to treat them as such and we do. This is and will continue to be the fulcrum of our success.



# CAPTIVE BEST PRACTICE INNOVATIONS

Tom Cifelli of Captive Experts discusses best practice issues faced by smaller captive managers

The small and mid-market captive industry, often referred to as micro-captives, drives most innovations today. These include expanding the number of domiciles licensing captives, new insurance policy types (stimulating expansion of policy offerings by major commercial insurers), risk pooling arrangements, and adoption of more sophisticated safety, loss control and risk management practices by privately held companies. Management and operating practice standards by these smaller captives however are not always as good as they should be. This article highlights best practice issues and components captive owners and managers of all size and types of captives should consider implementing if they truly want to operate a best of class captive programme.

Captive insurance company design, formation and management practices vary greatly between captive managers. Additionally, while government insurance departments across the globe have similar governing statutes for licensing captives and captive service providers, actual regulatory policies, practices and procedures can vary significantly between domiciles. Even staff changes within a domicile can materially impact that domicile's regulatory requirements and practices.

Written by
**Thomas Cifelli**

**Thomas Cifelli**, JD, CPA, is managing director of Captive Experts, LLC. Mr. Cifelli worked with the business development teams of leading captive managers including Artex Risk Solutions and Active Captive Management. He also served as interim controller of group and RRG captives with Advantage Insurance Management. He previously practiced law, public accounting, insurance, investment and real estate brokerage.

In today's increasing regulatory environment, a higher degree of structure, control and expertise in managing the day-to-day operations of a captive is required. Increasing regulatory oversight and additional mandatory disclosures are the trend in both the US and abroad. Reviewing your corporate governance policies and procedures and implementing best practices is indicated. This is particularly important if you want the predictability in the flow of funds associated with your captive operations.

## Management commitment

Creating and operating a captive has long-term business implications. Failure to meet expanding best practice standards could have materially negative consequences. Management needs to make an appropriate commitment to the insurance venture and maintaining sound business practices.

## Business plans and beyond

Considering captives are highly regulated entities which may experience changes in domicile regulatory staff if not a change in domicile during its life cycle, every captive should in its first year adopt comprehensive foundational business formation and operating documentation. Excellent corporate governance requires more than the feasibility study, actuarial report, and business plan typically required of licensing domiciles followed by commencement of its financial reporting system and issuance of insurance policies.

A feasibility study, basic business plan and financial proformas are merely core introductory business practice documents generally needed to apply for an insurance company licence. While each domicile has unique guidelines and specific requirements, good business plans and associated organisational documentation should address these "corporate engineering" concerns:

- organisational structure
- domicile selection
- ownership composition

- management and board composition
- committee functional scope and composition
- risk assessment, measurement and management members
- banking and investment management members
- accounting, financial and tax compliance members
- key policies and procedures
- organisational meeting minutes
- other corporate book documentation, and where applicable
- private offering related securities offering documentation when applicable

The business plan and related exhibits should address resources and procedures needed to create, operate and maintain required insurance policy, premium invoicing and collection, banking, investment, accounting, financial reporting, compliance reporting and overall organisational management. The plan should determine the extent of outside resources needed and budget associated costs. Defining how the internal and external resources will collaborate to maintain a system of controls to benchmark, collect and report data will assist efficient controlled operations.

## Additional corporate governance elements

Required administrative management to assure fairness, accountability, transparency and discipline fall within the realm of corporate governance. Sufficient experience to operate an insurance business should be reflected within the experience of the board of directors. As needed, outside directors should be retained. An independent director and one or more management committees are recommended. Each management committee could also include qualified independent members whether voting or not.

All captives should strive to have the following, updated annually, even if not required by the regulating domicile, and irrespective of the legal form selected for the captive insurance entity:

- a board of directors
- officers
- corporate articles and by-laws (or operating agreement)
- corporate book (and board and committee minutes)
- management policies and procedures
- policy coverage, premium and actuarial review meetings
- financial performance and audit review meetings
- loss and safety control review meetings
- continuing education should be provided to board members
- an owner manual handbook
- periodic personnel and service provider performance reviews
- periodic testing of internal controls should be part of the policies and procedures
- committees should be formed and given primary responsibility for underwriting and risk management, finance and investment activity, and audit and regulatory compliance
- committee reports for submission to the board

A good set of corporate governance guidelines would also include board operations manuals, financial controls, investment strategy policies (including a conflict of interest and code of ethics policy), and outside service provider management.

## Regulatory compliance

Captive operations must not only meet owner objectives, but must comply with industry and domicile rules and regulations. Accordingly, captive management should maintain calendar-based checklists of all required regulatory requirements to share with the board and effected committees. Non-compliance events should be documented and timely corrected. These checklists should address licensing requirements, insurance policy periods, insurance renewal procedures, financial reporting requirements, capital and solvency requirements, audit and tax compliance requirements, other regulatory filings, and all time sensitive matters impacting third parties.

Captive management staff training manuals are recommended so staff turnover or absences do not cause reporting compliance issues for client captives. Every captive should have daily, monthly, quarterly and annual activity checklists and guidelines shared with owners so they can effectively manage the captive management staff as all owners and captive officers are ultimately responsible for compliance and operational controls.

Solvency and financial strength are key issues for regulatory agencies. Maintenance of the following ratios for periodic board consideration are recommended:

- premium to surplus ratios
- expense ratios
- loss ratios
- investment income ratios
- reserves to surplus ratios
- retention to surplus ratios

## Communication and document storage protocols

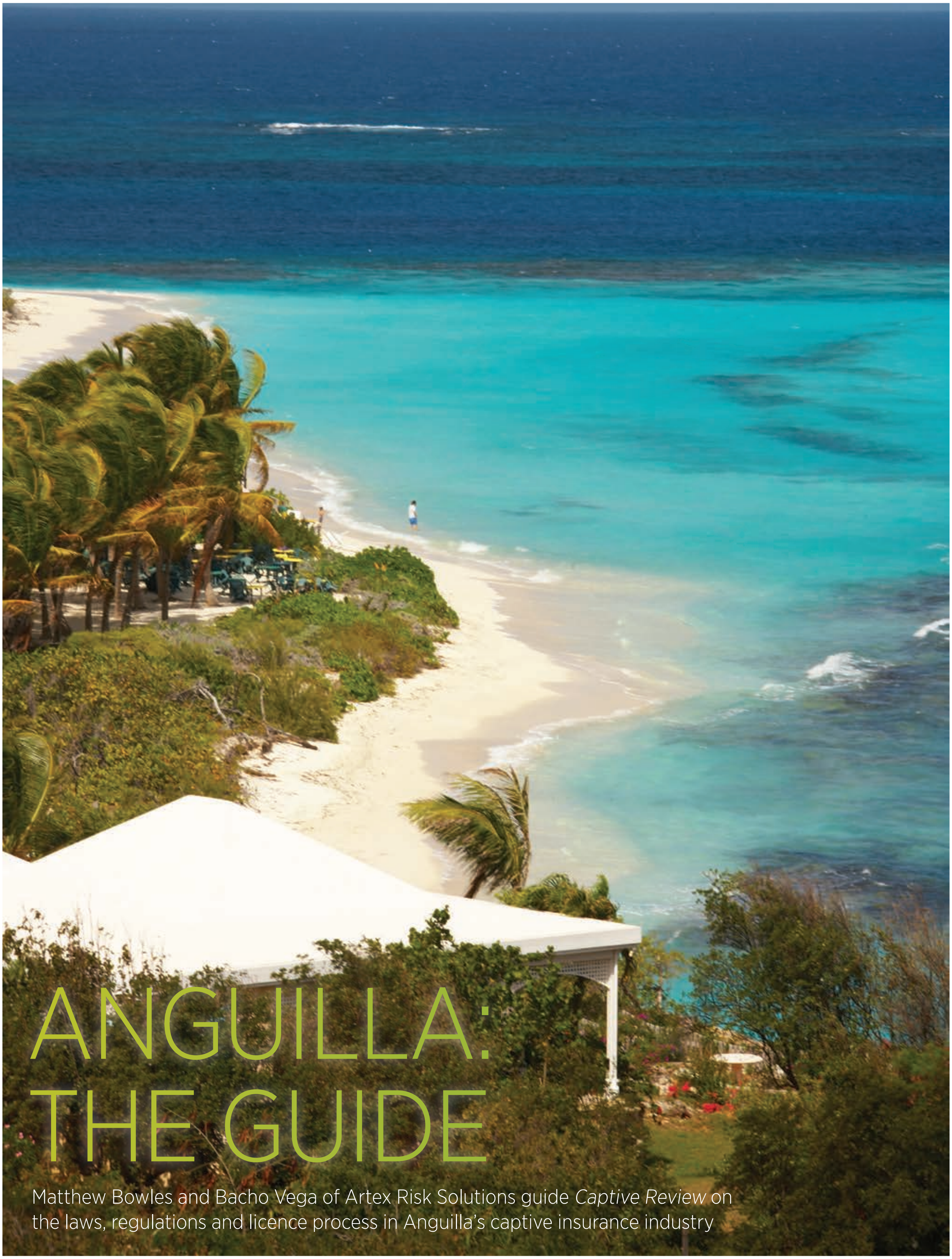
Ongoing communication between the board, management, service providers and regulators should be maintained. Operational data should be maintained for the life of the captive, and for the period of years required after wind-up. Information technology should be fully utilised for easy access, back-up and secure virtual storage of records with associated IT security policies and procedures.

## Insured operating company risk management policies and procedures

Companies that decide to include a captive insurance company as part of the enterprise risk management programme should also assess risk safety and loss control policies and procedures. These are normally part of group and association captive arrangements, but not typically part of the best practice standards for many smaller family owned captives. The availability of safety and loss control consultants has expanded and these services are now very affordable. It makes good business sense for companies investing in captive insurance companies to increase investment in loss and safety control training and associated policy and procedure initiatives, even if your captive manager does not have related affiliated resources as part of their service arsenal.

> "It makes good business sense for companies investing in captive insurance companies to increase investment in loss and safety control training"

For detailed guidance on captive best practices, manager selection, domicile selection, insurance programme coverage design, risk pool considerations, tax planning and other valuable information, read *Navigating Captive Insurance Companies - Storm Proof Your Risk Vessel*. This is the most up to date book on small to mid-market sized company captive risk management programmes.



# ANGUILLA: THE GUIDE

Matthew Bowles and Bacho Vega of Artex Risk Solutions guide *Captive Review* on the laws, regulations and licence process in Anguilla's captive insurance industry

Written by
**Matthew Bowles**

**Matthew Bowles** works as a captive analyst for Artex Risk Solutions. Bowles is a licensed attorney in Arizona with an accounting, tax, estate planning, and insurance background.

Written by
**Bacho Vega**

**Bacho Vega** works as regulatory manager for Artex Risk Solutions, Inc. Vega is a licensed attorney in Arizona and Utah and has extensive experience in US Federal & State compliance and corporate formations.


Anguilla continues to be a rising star in the captive insurance industry. It has seen continued growth in each of the 10 years of its captive insurance industry participation. This is due to the self-imposed high standards, relatively low costs of formation, reasonable capital requirements and well-informed regulators. The purpose of this article is to act as a guide for those currently using or considering using Anguilla as a domicile for a captive insurance company. As this document moves from a general view of who and what you need to know into the details of incorporation, licensing and maintaining regulatory compliance, the many advantages of Anguilla as a domicile should become apparent.

## The players

Anguilla's captive insurance law and regulation have been in existence for approximately 10 years. Businesses from the US, Asia and Latin American markets are looking at Anguilla for their insurance regulation. Over the past decade, the captive insurance industry has seen the majority of its growth in the middle-market sized businesses, and Anguilla's law and regulation were able to provide a stable and consistent regulatory body for these new entrants into the captive insurance industry.

The Anguilla Financial Services Commission (FSC) is the agency that facilitates healthy insurance and financial services growth by encouraging "appropriate regulation and legislation, judicious licensing, comprehensive monitoring and good governance". Anguilla FSC is the body that regulates the licensure of captive insurance companies.

Anguilla Finance is the government funded entity that is privately run which acts as an industry advocate. This group promotes and facilitates business development by helping prospective insurance or financial companies understand the hurdles and facilitate the streamlining of the candidate prospective companies.

There is clear, purposeful separation between Anguilla Finance and the Anguilla FSC so that the latter may maintain its independence both in fact and in appearance. However, these entities are both continually pursuing improvement, so in a move unprecedented in size and scope, 20 Anguilla professionals (half regulators, half private sector), are currently working on obtaining the Associate in Captive Insurance (ACI) from the International Center for Captive Insurance Education (ICCIE) and are expected to complete it in the next few years. No other domicile (US or non-US) is promoting the ACI designation among its ranks more than Anguilla.

A licensed company manager is required to ensure corporate compliance and acts as the registered/statutory agent. A licensed insurance manager (also known as a captive manager) is also required. It is important given the nature of the insurance industry that you choose well-respected and experienced providers, as they can navigate you through the process. You may contact Anguilla Finance for a list of licensed service providers. If you choose to use a provider who hasn't been previously approved, they may choose to work through an already approved provider, or go through the steps to become qualified.

## Legislation

The genesis of captive insurance in Anguilla began with the Anguilla Insurance Act of 2004, which was amended in 2006. The FSC is committed to improving the quality of its insurance laws and is looking to update these in the near future to follow best practices seen in other domiciles.

Under the Protected Cell Companies Act of 2004, Anguilla permits the formation of protected cell companies (PCC). These companies can form individual protected cells that segregate liabilities, but which are not considered a distinct person under Anguilla law. Segregated accounts are particularly useful for captive insurance companies that want to form separate related insurance programmes or risk silos. Risk silos are useful to legally build a wall within a captive to prevent the troubles of a programme in one silo from spilling into another.

## Licences

Anguilla's insurance law has multiple types of insurance licences based on the type of business written and the structure of the insurance company. While not a statutory requirement, the FSC strongly prefers that a prospective insurer seeks the most tailored licence type for the insurer's proposed programme, which is consistent with the approach followed by other domiciles.

Anguilla first divides the licences into two broad categories, Class A and Class B. Class A permits an insurer to transact insurance anywhere including Anguilla (required for Anguilla domestic risks). Class B does not allow the insurer to transact insurance for Anguilla risks and is the licence used for all non-Anguilla risk, which is known as "foreign" for these purposes. Since the majority of businesses seeking to domicile in Anguilla are foreign, this article will focus on the Class B insurance licence (strictly foreign insurance). This class is subdivided into five subclasses: (a) Unrestricted, (b) General, (c) Association, (d) Group, and (e) Single.

### Unrestricted

Covers any foreign insurance business including long-term coverage (e.g. life insurance and similar products). It requires the insurer to maintain at least $200,000 of paid up capital. This subclass licence is not commonly used, but is available for the right fact pattern.

> **"There is clear, purposeful separation between Anguilla Finance and the Anguilla FSC so that the latter may maintain its independence both in fact and in appearance"**

**General**
Covers any foreign insurance business excluding long-term coverage. It requires the insurer to maintain at least $100,000 of paid up capital. This licence is useful for more complex captive ownership arrangements. It also is not restricted on the amount of unrelated risk it can insure, which might be useful for certain programmes such as a captive that will cover subcontractor default risk. The disadvantage to this licence type is it cannot cover long-term coverage.

**Association**
Covers any foreign insurance (including long-term coverage) where the insurer has two or more owners who are also owners of the affiliate insureds. This licence limits the amount of unrelated risk to no more than 50% of the insurer's business. It requires the insurer to maintain at least $100,000 of paid up capital. This type of licence is good for affiliated groups with multiple owners, but generally still closely held, who are interested in insuring both affiliates and up to 50% of direct unrelated risk (100% of reinsurance unrelated risk).

**Group**
Covers any foreign insurance (including long-term coverage) where there is a single owner for the insurer and the insureds. It may insure the owner, the affiliates, and any of their employees. It requires the insurer to maintain at least $25,000 of paid up capital.

**Single**
Covers the traditional "pure" captive. This type of insurer may only transact foreign business with its owner. It requires the insurer to maintain at least $10,000 of paid up capital.

## The preparation

First and foremost, the insured company should be evaluated to determine the risks that the captive will insure. A feasibility study should look at these risks and estimate premiums, losses and expenses. Doing this will also lead to the documentation of the business purpose, or purposes, for the captive and its overall feasibility as a risk management tool. The feasibility study should also project future expectations and plans for the captive. It is important that these reports have two sets of financial pro formas that show both an expected scenario and an adverse scenario. This helps the FSC better analyse the health of the proposed insurance programme.

Next, the business plan will explain the design and ownership of the captive and the insured. This includes ownership, corporate structure, directors/officers, and other corporate matters as needed. The business plan provides a roadmap for the captive insurance company. When drafting a business plan, it should be easily understandable. To this end, charts are often helpful illustrative aids.

## The process

There is a two-part process in forming and licensing a captive insurance company – forming the legal entity and obtaining an insurance licence. These parts will likely be done in parallel. Below is one way to do it.

**Incorporation**
Anguilla uses an electronic system called the Anguilla Commercial Online Registration Network (ACORN) to process new incorporations. In order to access ACORN, a company must use a licensed company manager or an overseas agent of a licensed company manager who can facilitate the filing of the incorporation document using the system. ACORN's advantages include being an interactive system, input control and checks to screen out mistakes, instantaneous response, submissions anytime and anywhere (with an internet connection).

The person incorporating will perform a search and determine if the name is available. If it is available, it is then reserved (free for 10 days, longer for a fee). Then, the user selects the type of company or partnership wanted and ACORN takes the user through the incorporation process on a step by step basis, with a series of questions that are completed by checking options from drop-down boxes. Standard articles of incorporation, which can be customised for future use, have been entered into the system. Once the articles are completed, the screen provides the user with a registration application form to review prior to final submission. Upon submission and acceptance, the certificate of incorporation immediately appears on screen and can be printed.

It is recommended for insurance companies, especially those being formed by a manager or individual without experience in the area, that the articles of incorporation first be reviewed and approved by the Anguilla Financial Services Commission to ensure they are appropriate and capture all the requirements of a highly-regulated entity.

Immediately after incorporation, the company should establish a bank account which can be located anywhere in the world and put the required capitalisation in place. This will be important later in the licensing portion of set-up.

**Application for licence**
The application consists of several schedules and accompanying supporting documentation. These schedules can be found at http://www.fsc.org.ai/PDF/legislation/I016-Insurance%20Regulations.pdf. For Class B insurers, which this article is focusing on, there are two main areas of focus, the Schedule 2 and the Schedule 5.

Schedule 2 is the main application form and gives the general information on the captive. It should be completed carefully and with as much detail as possible. Often questions require supporting documentation and failure to provide this will result in delays with the application process. However, Anguilla is very reasonable about asking for and accepting additional information.

Schedule 5 is the other application form that the FSC requires which concerns information relating to the individuals that will be the ultimate owners, officers and other material participants of the captive. Schedule 5 is similar to a biographical affidavit and asks a variety of personal information. Keep this in mind when choosing who will be involved with the captive, as the bar is high for individuals who complete this form - both in who is required to complete it and

> "All insurers with a Class B licence, within six months of the end of their financial year, must annually file a financial statement with the FSC"

in what information they are required to provide. Anguilla will run a thorough background check as part of their due diligence following Know Your Customer and anti-money laundering requirements. It is essential for your service providers to run similar background checks as well.

Once you have completed all these forms and the accompanying supporting documents, they should be reviewed and signed. Original signed documents are required, so using blue ink is good practice as it is easy to verify as original. A checklist or cover sheet of items is recommended, as the application can end up being rather large - sometimes over 100 pages, depending on how complex the structure. Sending documents to Anguilla can be done with almost any major delivery service, though sometimes a few days are needed for their transportation.

After the FSC has had time to review the materials, if the proposed programme is acceptable and the FSC has no further questions, it will notify the captive manager of a preliminary licence approval, contingent on company formation and capitalisation. Typically this is done via email to the captive manager, with a letter to follow.

Assuming the incorporation and capitalisation are already complete, the company manager will send the FSC proof of capitalisation and a statement that shares have been issued. Then after all application and licence fees have been paid, the FSC will issue the insurance licence.

## Solvency standards and the group supervision framework

Anguilla currently takes a balanced approach to solvency and supervision. They require advance approval of material transactions and certain other corporate actions. Anguilla is proactive in seeking the health of the insurers that it regulates. It is currently in the process of revising its solvency regulations in order to improve company health and performance.

In order to strengthen its position and perception in the market, Anguilla has become a strong participant in the US Foreign Account Tax Compliance Act (Fatca) to increase transparency and fight tax evasion. Anguilla is also a committed partner in the US and international efforts to fight money laundering, with strict Know Your Client standards.

## The perpetual

### Statutory financial statements

All insurers with a Class B licence, within six months of the end of their financial year, must annually file a financial statement with the FSC. All financial statements must be audited or similar equivalent review based on country specific available standards. The financial statements must be prepared in accordance with generally accepted accounting principles that are acceptable to the FSC. The captive manager often prepares the financial statements. In addition, as part of Anguilla's Know Your Client standards, the company manager annually must provide a statement to the FSC assessing the company's level of risk.

### Minimum liquidity margin

The FSC requires a minimum margin of solvency which is the amount of assets that exceed the liabilities of the insurer. The margin that is required depends on how large the insurer is as measured by its net premium (net of reinsurance). There is a set of rules for how much of a certain asset class may count towards this solvency calculation and how much an asset class is discounted, meaning they are worth less than dollar for dollar value for purposes of calculating solvency.

### Principal representative and principal office

All licensed insurers must have a principal representative in Anguilla who is not an employee of the insurer, who maintains the full and proper records (original copies) of the business activities of the insurer and who holds the appropriate licence.

### Licence fees

Anguilla does not charge insurers premium taxes, but instead charges an application and annual licence fee. The application fee is currently $500, and the annual licence fee is $2,000 for an Unrestricted or General licence, and $1,500 for an Association, Group, or Single licence.

# CAPTIVE INSURANCE IN ANGUILLA

Pam Webster and Noëlle-Nicole Walker of WEBSTER give an overview of Anguilla's captive insurance industry

## What is Captive insurance?

A captive insurance company is an insurance company where the insurer and the insured are related or affiliated. In its purest form a captive only insures all or part of the risks of its parent. Generally captives provide insurance and tax planning solutions for small- to medium-sized businesses and their owners.

## What are the benefits of captive insurance?

A captive is simply a risk management and tax-planning tool for businesses and their owners. It is usually a small insurance company that is owned by one or more business owners to provide insurance for the business or businesses.

A captive provides a number of advantages:

- Lower insurance costs
- Cash flow
- Risk retention
- Coverage of difficult risks
- Risk management
- Access to the reinsurance market
- Tax minimisation and deferral

## What are the specific benefits for businesses in the United States under the US tax code?

**Section 831(b)**

Section 831(b) of the US tax code permits a captive to receive up to $1.2m per year in property and casualty insurance premiums completely tax free. This means that the business paying the premiums will deduct up to $1.2m per year for insurance costs, but that amount is not taxable to the client's captive. This can result in a benefit to the business of up to $500,000 per year.


Written by
**Pam Webster**

**Pam Webster** was born in Island Harbour, Anguilla, and is the managing partner of WEBSTER. Pam began her legal practice in Anguilla in 1986, as Crown Counsel for the Government of Anguilla, following which she established the firm [now known as] WEBSTER. Her areas of expertise include international taxation, trusts, estate planning and company law.

Written by
**Noëlle-Nicole Walker**

**Noëlle-Nicole Walker** is a senior associate at WEBSTER. She was born in Jamaica and called to the bar in November 2005. Her areas of expertise include corporate services, commercial law, captive insurance & civil litigation.


**Section 50(c) (15)**

Section 501(c)(15) of the US tax code provides that if the total 'gross receipts' to the captive insurance company is $600,000 or less annually, then the entire company is tax exempt. 'Gross receipts' includes both premium income and any other realised income (such as gains from the sale of stock). The premium income must exceed all other types of income.

## Does the IRS really allow these tax savings?

The relevant sections of the US tax code referred to above have been in the law for over 50 years and were received and amended by Congress in April 2004. The benefits are allowed under the "Safe Harbor" Revenue Rulings in 2002, and have been reaffirmed by additional rulings and letter in 2004 and 2005.

## Asset protection

Any owner of a profitable business is a target for litigation. Business owners should have a plan to protect those assets, and avoid becoming a victim of the judicial system. A captive can be an important cornerstone to a client's assets protection plan, as it can safely protect assets from legal attack by creditors and opportunistic litigation. The captive's owner controls the claims process at all times, meaning that others cannot make a claim on the business's insurance policies.

Anguilla insurance law and Anguilla law generally, have very strong asset protection features that provide additional protection.

## Why choose Anguilla?

Every business considering establishing a captive is looking for a jurisdiction with a great reputation, good legislation, considerable experience and an efficient and effective captive regime. Anguilla offers all of this and because of that has become the offshore jurisdiction of choice for small- to mid-sized captive insurance companies.

While Anguilla is a newer insurance domicile, it has grown to become the fifth largest captive domicile in the world, because its legislation in 2004 is a highly regarded statute with a flexible regulatory structure. Under the Anguilla Insurance Act (the Act) Anguilla became the most flexible captive insurance jurisdiction, and this is supported by the

Anguilla Financial Services Commission which is very responsive with an excellent turnaround time for licence applications. The capital requirements for captives under the Act are as low as any requirements found either in the US or other countries, the Anguilla Government is pro-growth and the regulators are knowledgeable and reasonable.

### Anguilla Insurance Act 2004

The Anguilla Insurance Act 2004 makes provision for the licensing and regulation of both insurers doing domestic insurance business in Anguilla and insurers from Anguilla engaged in 'foreign insurance business', defined as risks and premiums originating outside of Anguilla.

The Act also provides for specific kinds of captive insurance companies with a view of promoting captive insurance business in Anguilla. Apart from all of the other advantages of forming a captive insurance company, such as minimising insurance costs, reducing the risks to companies (their insureds would be previously known to them), and access to the reinsurance market, Anguilla has the added advantage of being a no-tax jurisdiction.

The Act also prescribes licensing requirements for insurance agents (persons acting for a single insurer), insurance brokers (persons acting for more than one insurer) and insurance managers.

Insurance business is defined in the usual way as either long-term business or general business. Long-term business is issuing annuities, life insurance, or insuring against accidents. General business is engaging in insurance business other than long-term business but under the new Act also specifically includes issuing credit life insurance or employees' group life insurance.

Class A licences are issued to domestic insurers and Class B licences to foreign insurers.

A Class A licence is issued to carry on insurance business including domestic insurance business in or from within Anguilla. The minimum capital requirement is $200,000 (annual licence fee $2,500).

There are five kinds of Class B licences available for engaging in foreign insurance business:

(1) Unrestricted licence to carry on foreign insurance business including long-term business. The minimum capital requirement is $200,000 (annual licence fee $2,000).

(2) General licence to carry on general foreign insurance business, but not long-term business. The minimum capital requirement is $100,000 (annual licence fee $2,000).

(3) Association licence to carry on general and long-term foreign insurance business with two or more owners of the insurer, and its affiliates, and to carry on more than 30% of its foreign insurance business (based on net premiums written) or 100% of its reinsurance business with persons who are not owners of the insurer or its affiliates. The minimum capital requirement is $100,000 (annual licence fee $1,500).

(4) Group licence to carry on any foreign insurance business, including long-term foreign insurance business, with a single owner of that insurer and its affiliates and employees of the owner or its affiliates. The minimum capital requirement is $25,000 (annual licence fee $1,500).

(5) Single licence to carry on any foreign insurance business including long-term insurance business, with the sole owner of the insurer, if a company. The minimum capital requirement is $25,000 (annual licence fee $1,500).

Clearly, the Act is designed to attract a broad range of captive insurance business, and does!

Also, pursuant to the insurance regulations, Anguilla companies that issue no more than two private annuities are expressly exempted from the licensing provisions of the Insurance Act.

With the approval of the Commission, an insurer licensed under the Act may be owned, or later change its ownership to be owned, by a trust which can be either a purpose trust or with beneficiaries.

The Act provides comprehensive protection for the insured by allowing premiums to be placed in protected premium accounts. There are also additional provisions protecting the proceeds of an insurance policy from the creditors of the policy holder or the insured.

The procedures for securing a licence for an insurance company are not complicated and are quite straight forward. The application procedure is essentially a check on background and qualifications. Approval is obtainable within a short period of time unless there is a need for an extensive background check.

### Candidates for a captive insurance company

Just about any business that is closely held, making significant profit, and looking for the benefits outlined above is suitable for a captive. Most closely held companies with taxable income of $500,000 or more will qualify. However some of the most common candidates include:

1. Businesses looking to replace expensive insurance, such as general liability, workers compensation, property and casualty. Typically need premiums of at least $750,000 for a captive to make sense.

2. Businesses looking for supplemental insurance, or to save taxes. Candidates will generally be closely held businesses, have gross revenue of $5m or more annually, and have annual cash flow of at least $500,000.

3. Physician groups (large and small) particularly those looking to reduce medical malpractice costs.

4. Associations with combined insurance premiums of any type.

5. Existing captives looking to move to a better jurisdiction or just more cost-effective, responsive and comprehensive management.

### How much money can my business transfer to the captive?

The maximum contribution is $1.2m per year, but premium can be as little as $250,000 or less. The amount your business pays to the captive will depend on the types of risks to be insured and the amount of premiums necessary to cover those risks. This can be tailored to accommodate your company's available cash flow and premium financing options.

### How can I use funds inside the captive?

Any way you like! The client controls the assets, and makes all investment decisions. Funds inside a captive can be invested immediately in a variety of investment vehicles. Many clients choose mutual funds, bonds and real estate as typical investments. Over time, withdrawal for retirement can be made.

www.anguillafinance.ai

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WEBSTER is a law firm with areas of specialisation in estate planning and family offices, international commercial litigation, corporate and commercial law, governmental and constitutional affairs, intellectual property and offshore finance and registered office facilities.

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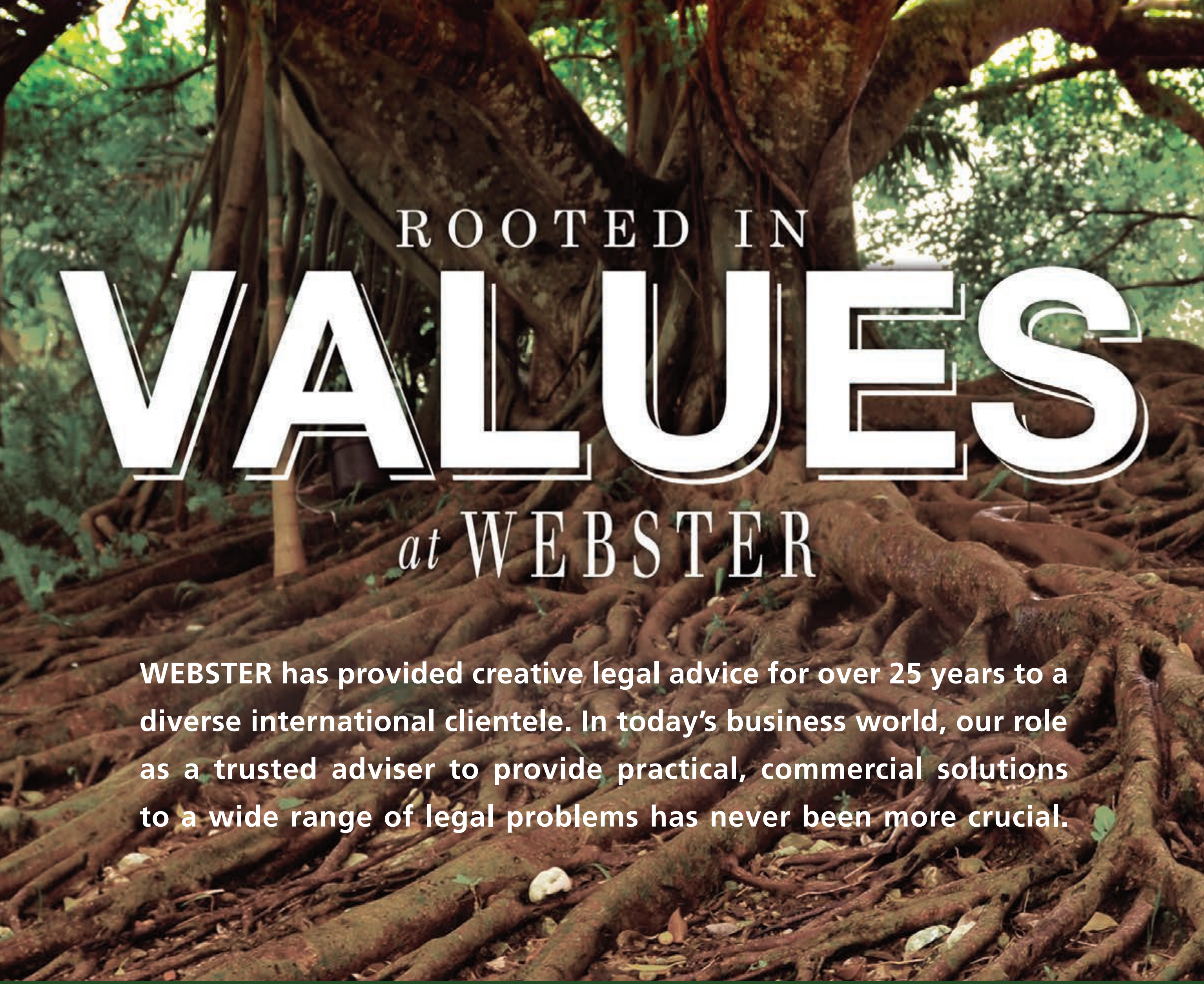
- To be the leading law firm in Anguilla and Nevis, providing true global reach through quality associations worldwide
- To deliver the highest standards of advice and service
- To understand client needs
- To understand the commercial environment in Anguilla and Nevis
- To help clients achieve the right commercial outcomes
- To provide cross-border advice to Anguillian, Nevisian and international clients

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