

- International Business Companies Act
- Benefits of an IBC
- Limited Liability Company Act

## Overview of Anguillan Company Law

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*Although not normally regarded as being in the first tier of traditional offshore jurisdictions, 2015 is shaping up to be an exciting year for financial services in Anguilla (or “British Anguilla”, as it sometimes likes to brand itself). New securities legislation and new insolvency legislation are expected soon. And whilst other leading offshore centres are struggling to manage the unwelcome international pressure that comes from success, Anguilla is still firmly in growth mode. Whilst other jurisdictions focus heavily upon increasingly complex financial products, Anguilla’s success is based largely upon that traditional stalwart of the offshore industry – the International Business Company (or **IBC**).*

### Back to the future

Practising company law in Anguilla feels a lot like the 1980s. And like the famous Back to the Future movie franchise from the 1980s, the appeal is charmingly simple. During that time, the most popular offshore product by a long way was the IBC – a very simple, very flexible, tax-exempt vehicle that could fulfil a variety of corporate roles in an inexpensive manner, and which generated a minimum of regulatory friction. But whereas one jurisdiction after another has repealed their IBC legislation since then, in Anguilla it is still alive and well, albeit slightly refined and updated.

The Anguillan International Business Companies Act (Cap I.20) is closely modelled on the identically named legislation from the British Virgin Islands. The BVI legislation was extravagantly successful, but with that success came a great deal of scrutiny. And with scrutiny comes additional regulation, and larger numbers of bilateral treaties and agreements relating to tax information exchange and other information sharing arrangements. Whilst transparency and good governance are certainly laudable, they do come at an administrative cost. With a smaller number

of companies in the Registry to manage, the Anguillan Financial Services Commission has remained able to maintain the integrity of the jurisdiction and avoid overburdening the system.

### Less is more

People familiar with the offshore industry will be well versed with key features of the IBC which make it an attractive corporate vehicle.

- *Taxation.* Anguilla is a true zero tax jurisdiction. There is no income tax, payroll tax, profit tax, corporation tax, capital gains tax, wealth tax or any similar fiscal laws. Anguillan IBCs are highly effective for use as intermediary holding companies to create tax neutral layers in corporate holding structures, or to employ leveraged finance as asset holding vehicles.
- *Speed.* Subject to satisfying basic client due diligence requirements, companies can be incorporated quickly by licensed registered agents via ACORN, Anguilla's online Companies Registry interface, usually within 24 hours.
- *Cost.* Anguillan IBCs are amongst the most affordably priced companies available from offshore or mid-shore jurisdictions, and the annual fees are normally much lower as well. A simple IBC can normally be incorporated for around US\$1,200 inclusive of all disbursements.
- *Confidentiality.* Neither the register of directors nor the share register of an IBC are required to be publicly filed in Anguilla, nor is there any requirement to file accounts or annual returns. The network of bilateral treaties and agreements for tax information or other information exchange in Anguilla is limited.
- *Corporate flexibility.* Company law in Anguilla is designed to provide the maximum flexibility, consistent with common law corporate legal systems. Companies are permitted to undertake any lawful act or activity, and there are no strictures relating to corporate benefit.
- *Capitalisation requirements.* Anguillan IBCs are not subject to any "thin capitalisation" rules or any general maintenance of capital requirements. IBCs are free to distribute dividends and redeem proceeds out of surplus (ie the full amount of its assets after accounting for liabilities and share capital).
- *"Light touch" regulation.* Whilst all offshore centres try to advertise "light touch" regulation, the painful truth is that regulation has become increasingly heavy in the premium branded offshore centres. Only in very specific industries (basically, investment funds, banks and insurance companies) do Anguillan IBCs need any regulatory approval or oversight to conduct their affairs. This saves both time and money.

The Anguillan model also has a few variations from the standard IBC prototype.

- In Anguillan IBCs the constitutional documents are based on the US model, and are formed by the articles of incorporation (which are public, and perfunctory) and the by-laws (which are private, and contain the material corporate governance provisions).
- The security registration system is predicated on an "opt-in" system. In order to register security interests against an Anguillan IBC, it needs to file an election with the Registry to enable creditors to register their security. Once registered, priority is determined by order of registration, but there is not public right to inspect the registered security documents without the IBC's consent.

### **For my next trick...**

Although the IBC is Anguilla's flagship offshore product, it is not the only vehicle. Anguilla can also form LLCs under the Limited Liability Company Act (Cap L.65), protected cell companies (the equivalent of segregated portfolio companies elsewhere) under the Protected Cell Companies Act (Cap P.107), and limited liability partnerships under the Limited Partnership Act (Cap L.70). LLCs in particular have found a niche market in the North American private equity space.

### **Breaking up is hard to do**

The one notable weakness in the Anguillan corporate law framework at present is its absence of a comprehensive insolvency regime. At present the insolvency legislation is fragmented across a range of incomplete and overlapping statutes. The current proposals to replace this in 2015 with a single, unified, insolvency statute (also based upon the BVI insolvency legislation) will be a welcome leap forward for the jurisdiction.

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