



Anguilla Financial Services Commission  
**ANNUAL REPORT**  
**2016**



# DIRECTOR'S REPORT



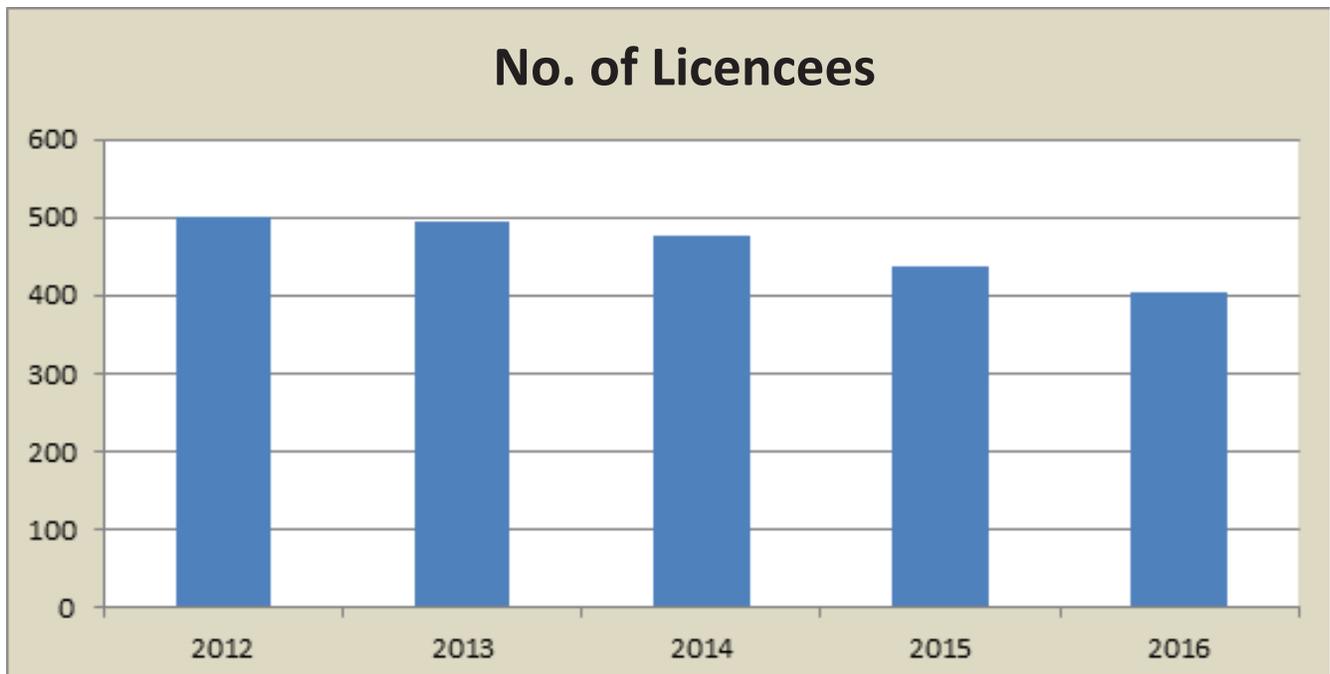
The Financial Services Commission is responsible under the provisions of the Financial Services Commission Act, R.S.A.c.F28 ("FSC Act") for administering the financial services enactments listed on the back page

of this Annual Report, including licensing and prudential supervision of licensees under those enactments and taking enforcement action where necessary in cases of non-compliance with requirements under those enactments.

The Commission also is responsible for registering externally regulated service providers, non-regulated service providers and non-profit organisations under AML/CFT legislation and for monitoring and enforcing compliance by those registrants, as well as by licensees, with their AML/CFT obligations.

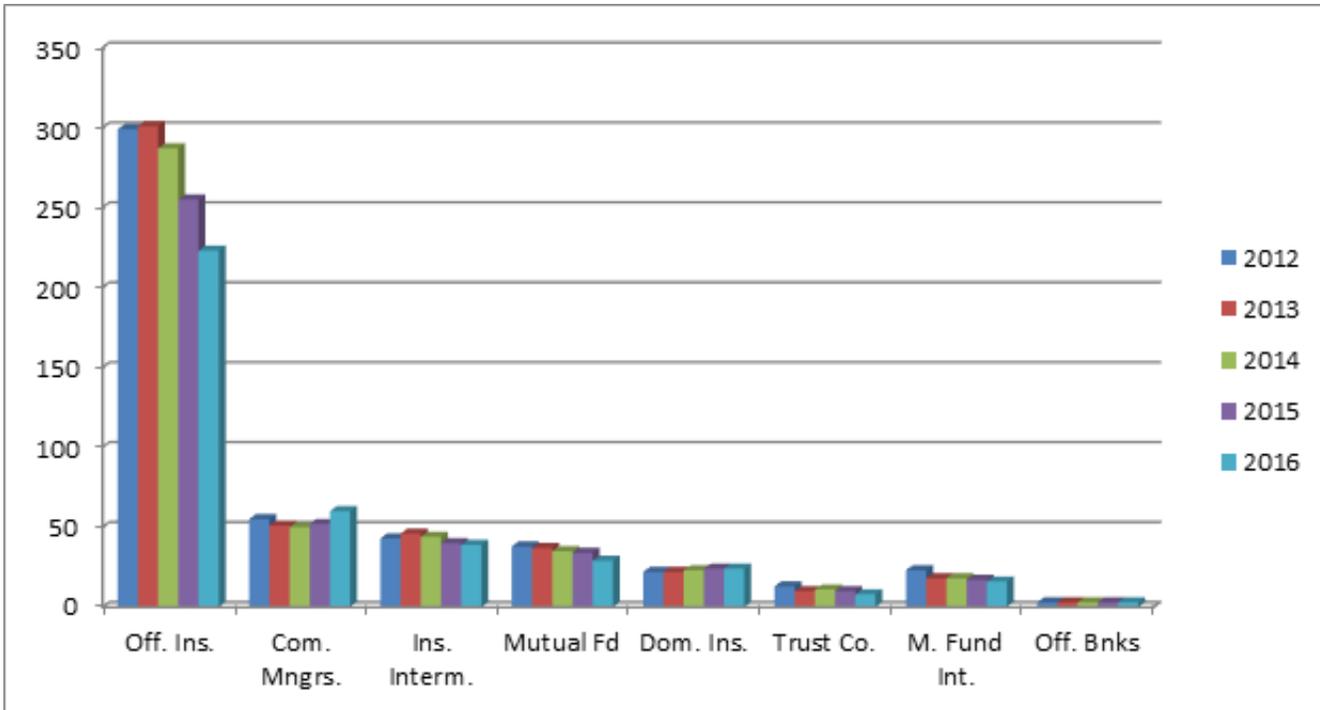
## **Number of Licensees**

As reflected in the chart below, the Commission continued to experience a decline in the overall number of its licensees, marking the fourth consecutive year of decline. The total number of licensees was 404 as at 31 December 2016, a decline of 7.6% from the previous year as compared to an 8.4% reduction as at 31 December 2015. The captive insurance sector in particular, comprising more than 50% of the Commission's licensees, continued its decline in numbers falling from 249 licensees as at 31 December 2015 to 218 as at 31 December 2016, a decline of 12.4%. Most of the Commission's captive insurance licensees are owned by U.S. residents and provide insurance to related companies located in the United States. Increased competition from U.S. states to attract captive insurance company incorporations, combined with various actions by the U.S. Internal Revenue Service directed at small captive insurance companies, has led to many U.S. owned captives favoring a U.S. domicile and has resulted in this jurisdiction replacing fewer captive insurance licensees than it has lost over the past year from normal attrition.



The following chart provides an industry sector breakdown of licensees, excluding the money services business sector that comprises only 2 licensees. The dominance of the offshore captive insurance sector continues and, even with the decrease in the number of licensed

captive insurers, demonstrates Anguilla's continued position as one of the world's leading jurisdictions in relation to the number of companies licensed to carry on business in the captive insurance market.



## Sector Reports

### Insurance Sector

#### *Domestic insurers, agents and brokers*

As at 31 December 2016, there were 24 licensed domestic insurers and 18 licensed agents/brokers, representing no change from 2015. The Commission is the principal regulator for two of the licensed domestic insurers and conducted an onsite examination of one of these insurers in 2016. The Commission is in the process of implementing risk-based supervision of its licensed insurers and benefited during 2016 from the assistance of a consultant from the Caribbean Association for Regional Technical Assistance, including one week of onsite training.

#### *Single insurance market project*

In 2009, the Monetary Council of the Eastern

Caribbean Currency Union ("ECCU") established a Ministerial Subcommittee on Insurance in response to the challenges created by the failure of the CL Financial Group. This subcommittee is responsible for, among other things, overseeing development of a single insurance market for the ECCU, including a regional regulatory body. The subcommittee is chaired by The Hon Ralph Gonsalves, Prime Minister of Saint Vincent and the Grenadines.

The Ministerial Subcommittee on Insurance is supported by a Technical Core Committee on Insurance, which has comprised government and ECCB officials as well as international insurance and legal experts.

In October 2014, the Monetary Council appointed a Steering Committee to coordinate activities leading to the establishment of a single insurance and pensions market and regulator for the ECCU.

A draft Insurance Act for the ECCU region, as well as a draft Agreement Establishing the Eastern Caribbean Financial Services Regulatory Commission (“ECFSRC”), the proposed regional insurance regulatory body, have been produced but have not yet been enacted by the ECCU member states. In November 2015, the Steering Committee came to Anguilla and held a public consultation with the insurance industry, updating industry members on the status of the project, the Single Insurance and Pensions Market Project (“SIPMP”), and soliciting comments and concerns. The first round of public consultations across the ECCU on the SIPMP was completed in September 2016. Specifics on the structure, funding and location of the ECFSRC have yet to be determined.

#### *Non-Domestic Insurers*

#### *Captive Insurers*

As at 31 December 2016, there were 218 licensed captive insurers. During the year 4 new companies were licensed, 33 licensed captive insurers surrendered their licences and 2 licences were revoked.

#### *Foreign Insurers*

As at 31 December 2016, there were 5 licensed foreign insurers. No new licences were issued and 1 licence was surrendered during 2016.

#### *Insurance Managers*

As at 31 December 2016, there were 21 licensed insurance managers. No new licenses were issued and 1 licence was surrendered during 2016.

During the year, Commission staff conducted onsite prudential examinations of three insurance managers, each of which was located in the United States. The insurance managers provide insurance management services to captive insurance companies licensed in Anguilla. The examinations were full scope in nature, including a review of governance, operations, internal controls, financial soundness and compliance with the Insurance Act R.S.A. c. 116

and the Insurance Regulations thereunder by both the insurance managers and the insurers under their management.

The onsite examination of each insurance manager took place over the course of 3-5 days and was conducted by 2-4 of the Commission’s insurance supervision staff.

Key findings included required improvements in capital management practices, claims administration and reinsurance procedures, financial statement filing compliance and governance policies and procedures including in relation to risk management.

### **Mutual Fund Sector**

#### *Funds*

As at 31 December 2016, there were 20 private funds and 9 professional funds licensed. There were no new licences granted or issued and 2 private funds and 3 professional funds surrendered their licenses during 2016.

#### *Fund Managers and Administrators*

As at 31 December 2016, there were 16 licensed fund managers and administrators. There were no new licences issued and 1 license was surrendered during the year.

#### *Mutual Fund Sector Compliance Review*

The Commission gradually has increased the rigour of its regulatory activities in support of ensuring compliance with the legislation it has responsibility for regulating. The Commission’s approach is in line with the regulatory trend internationally to strengthen enforcement programs with the objective of evidencing, both to the investing public and to international overseers, a credible deterrence to legislative breaches. In this respect, the Commission in 2016 commenced a comprehensive review of its mutual fund sector, including funds, fund managers and fund administrators.

## **Company Management and Trust Company Management Sector**

As at 31 December 2016, there were 5 general trust companies, 3 restricted trust companies and 60 licensed company managers. The Commission has encouraged its company managers to convince their larger overseas agents to become licensed as a means of addressing AML/CFT obligations more effectively. A number of the larger overseas agents have applied for and received licences. During the year, 8 new company management licenses were issued while no licenses were surrendered. Two general trust company licensees surrendered their licences while no new trust company licenses were issued during 2016.

In March 2016 the Commission together with the Anguilla Ministry of Finance circulated for comment to Commission Licensees conducting company management business a Consultation Paper entitled "Overseas Agents in a Changing Regulatory Environment". The Consultation Paper presented a draft proposal to replace the existing overseas agent system with direct licensing by the Commission to conduct company management business. The draft proposal was presented in consideration of

- the money laundering and terrorist financing risks faced by the sponsoring licensees in Anguilla;
- the liability of licensees for the non-compliance of overseas agents with AML/CFT legislation;
- the reputation of the jurisdiction; and
- the application of international standards.

The Consultation Paper, revised after consideration of comments received, was recirculated for comment in August 2016.

The Board of the Commission, after reviewing the Consultation Paper and the comments of financial services industry members, approved implementation of the following recommendation:

"The transitioning out of the overseas agent

system (except in the case where the overseas agent is an affiliate or subsidiary of the licensee) over the course of a one-year period during which existing overseas agents must submit an application to the Commission to become licensees or enter into an agreement with a licensee to become an intermediary or introducer of the licensee where the licensee incorporates all companies. In cases where the overseas agent is an affiliate or subsidiary of the licensee, the licensee must have adequate policies and procedures in place to address compliance with the AML/CFT legislation."

The one-year period, during which an existing overseas agent must submit an application to the Commission to become a licensee or enter into an agreement with a licensee to become an intermediary or introducer of the licensee where the licensee incorporates all companies, commences 1 January 2017.

## **Offshore Bank Sector**

Despite efforts made by the Commission in 2015 to encourage the Eastern Caribbean Central Bank ("ECCB") to move forward with an equitable resolution plan for National Bank of Anguilla Ltd. ("NBA") and Caribbean Commercial Bank (Anguilla) Ltd. ("CCB"), the parent banks of Anguilla's two indigenous offshore banks, National Bank of Anguilla (Private Banking & Trust) Ltd. ("PBT") and Caribbean Commercial Investment Bank Ltd. ("CCIB") (together the "offshore banks"), that included fair treatment of depositors in the offshore banks, by the end of that year it remained unclear as to how the ECCB intended to treat PBT and CCIB under a resolution of the parent banks. In order to meet its regulatory obligations under the Trust Companies and Offshore Banking Act, R.S.A. c. T60 and the FSC Act, as well as to complement the structure that would be in place under proposed banking legislation for the resolution of the parent banks, the Commission applied for and obtained, on 22 February 2016, an order of the Eastern Caribbean Supreme Court made pursuant to section 37 of the FSC Act. The order appointed William Tacon of FTI Consulting Ltd. as administrator to take over and manage the business of the offshore banks in order to

protect and preserve the business and property of the offshore banks in the interests of the offshore banks' customers and creditors. The administrator has made periodic reports to the Court as well as to depositors in the two offshore banks throughout 2016, providing them with updates on the affairs of each of PBT and CCIB, the steps taken initially to ascertain their financial position and ongoing efforts to protect and obtain the return of depositors' money.

On 22 April 2016 the ECCB initiated its resolution plan for NBA and CCB, placing each of NBA and CCB in receivership and ceasing the carrying on of banking business by NBA and CCB and, by extension, PBT and CCIB. Under the resolution plan, the assets, and certain liabilities, of NBA and CCB were transferred to a newly established bank, the National Commercial Bank of Anguilla Ltd. ("NCBA"), an entity wholly owned by the Government of Anguilla. However, NCBA did not assume any obligation to repay either of PBT and CCIB the funds of PBT's and CCIB's depositors held at the parent banks on behalf of PBT and CCIB when the resolution plan was initiated. The resolution plan treated the offshore banks as creditors and not as depositors, ensuring that the assets of NBA and CCB, including funds deposited by the offshore banks, even those deposited during the period of time the parent banks were under the conservatorship initiated by the ECCB, would be distributed to the benefit of the depositors of the parent banks and not the depositors of the offshore banks. As a result, the administrator of the offshore banks initiated a number of legal actions in both Anguilla and New York, which are ongoing, for the purpose of advocating for the legal rights of PBT, CCIB and their depositors to share in the assets distributed under the ECCB's resolution plan.

### **Externally and Non-Regulated Service Providers**

The Externally and Non-Regulated Service Providers Regulations ("ENRSP Regulations") introduced in 2013 gave the Commission responsibility for the supervision of domestic banks and companies licensed under the Securities Act, R.S.A. c. S13 (together, "ERSPs")

and non-regulated financial service providers ("NRSPs") for compliance with AML/CFT requirements under the Proceeds of Crime Act, R.S.A. c. P98 ("POCA").

Service providers as defined under POCA are required to register under the ENRSP Regulations. During 2016, the Commission registered one ERSP, being the National Commercial Bank of Anguilla, and 8 NRSPs, primarily real estate dealers and micro lenders.

The Commission also issued 5 Investor Alerts involving Anguilla incorporated companies in the business of dealing in forex and binary options trading that had failed to comply with the requirement to register under the ENRSP Regulations. Failure to register while continuing to engage in a business requiring registration is a violation of section 158 of POCA and can result, on summary conviction, to imprisonment for a term of 12 months or to a fine of \$50,000 or to both; or on conviction on indictment, to imprisonment for a term of 5 years or to a fine of \$100,000 or to both.

### **Non-Profit Organizations**

The Commission is responsible for the registration of non-profit organisations ("NPOs") under the Non-Profit Organisations Regulations, R.R.A. P98-2 and for supervising their compliance with anti-terrorist financing requirements under POCA. In 2016, the Commission registered 14 NPOs and exempted 15 NPOs from registration. An NPO can be exempted from registration if its gross annual income does not exceed EC\$5,000 and its assets do not exceed EC\$10,000.

### **AML/CFT Supervision**

#### **2016 Offsite and Onsite Inspections**

The Commission recognizes that its licensed company managers are faced with significant responsibilities under AML/CFT legislation to address money laundering and terrorist financing risks. Their failure to be vigilant in complying with AML/CFT legislation exposes licensees to enforcement action by the Commission and possible criminal prosecution

and could create reputational damage to Anguilla. The Commission as a result has conducted a several year campaign to educate company managers on their responsibilities, in particular as stated in the Anti-Money Laundering and Terrorist Financing Code, R.R.A. P98-5 (“AML/CFT Code”) and the Anti-Money Laundering and Terrorist Financing Regulations, R.R.A. P98-1 (“AML/CFT Regulations”). The education campaign included Industry Day presentations, numerous training sessions and one on one meetings as well as publications via its website.

In March 2016, the Commission published a report on the results of onsite examinations of licensed service providers conducted during 2014 to assess their level of compliance with AML/CFT legislative requirements. The report evidenced that the general level of compliance with AML/CFT requirements by service providers in Anguilla remains substandard. The report identified areas where service providers’ performance was found to be deficient and provided commentary on the specific improvements required. Principal areas identified in the report to require improvement included customer due diligence (relationship) information, risk assessments (business and customer), enhanced customer due diligence and ongoing monitoring, and relationships with intermediaries. More specific findings were as follows:

- Eighteen percent (18%) of the licensed service providers examined failed to conduct sufficient customer due diligence, in particular documenting the purpose and intended nature of the business.
- Fifty-five percent (55%) of the service providers examined did not document their business risk assessment while thirty-six percent (36%) did not document their customer risk assessments.
- Forty-five percent (45%) of licensed service providers sampled failed to conduct enhanced customer due diligence and any ongoing monitoring on a regular basis. Since 2011, this has been a recurring issue.
- Twenty-seven percent (27%) of licensed service providers did not have policies

in place on conducting business with introducers/intermediaries, including where reliance was placed on those third parties.

The Commission in March 2015 commenced a comprehensive offsite examination program to review all of its licensees carrying on company management business to ascertain their level of compliance with customer due diligence provisions of the AML/CFT legislation, in particular with the following basic AML/CFT requirements:

- licensee’s business risk assessment (section 16(f) of the AML/CFT Regulations)
- customer risk assessments (section 10 of the AML/CFT Regulations)
- identification and verification information of the customer, third party, and beneficial owner (section 10 of the AML/CFT Regulations)
- AML/CFT policies and procedures manual (section 16 of the AML/CFT Regulations)

The offsite examination program commenced in March 2015 and continued throughout 2016.

The Commission previously disclosed its intention to consider issuing administrative penalties against licensees who proved during the offsite examination program commenced in 2015 to have failed to comply with their obligations under the AML/CFT Code and AML/CFT Regulations. As an initial outcome from the offsite examination program, the Commission issued an administrative penalty on 30 August 2016 against a licensee as a result of findings from the examination program, in the amount of EC\$1,400. The penalty was due to the licensee failing to apply adequate customer due diligence measures, specifically the failure to obtain identification information, including a passport or any other identification documentation, and proof of address documents for a principal of one of its managed companies; failing to certify that original documentation was seen verifying the identity of 3 principals of 3 companies; and failing to conduct ongoing monitoring to update the expired identification documentation for one principal of one of its managed companies.

## **Investor Alerts**

The Commission issued a total of 5 Investor Alerts during 2016, mostly in relation to unregulated investment business involving forex or binary options trading. The Commission is using its powers under the Proceeds of Crime Act, the Anti-Money Laundering and Terrorist Financing Regulations and the Externally and Non-Regulated Service Providers Regulations to address the risks of money laundering and terrorist financing posed by unregulated investment business. Specifically, the Commission will hold company managers, as well as trust companies carrying on company management business, accountable where their clients are carrying on unregulated investment business and the company manager or trust company has failed to conduct appropriate customer due diligence, including ongoing due diligence. The Commission will also enforce the requirement that unregulated investment businesses, as service providers, register as non-regulated service providers. Again, where effective supervision is not practical or possible, such businesses will not be registered and will be required to leave the jurisdiction.

## **National Risk Assessment**

CFATF's 4th Round Mutual Evaluation Review of Anguilla is scheduled to be conducted in the fourth quarter of 2021. Central to Anguilla meeting the requirements of the review is the conduct of a national risk assessment ("NRA"). The NRA is a responsibility of the Government of Anguilla deriving from its membership in the CFATF. The NRA exercise includes identifying the risks for money laundering and terrorist financing in the jurisdiction, reasonable means of addressing those risks and measuring their effectiveness, and the production of a detailed report documenting the exercise conducted and its results.

The Government approved the initiation of the NRA in November 2016. The NRA is expected to take approximately three years to complete and will be conducted through a Working Group reporting to a Steering Council. The NRA will cover the principal sectors of the economy

susceptible to the risks of money laundering and terrorist financing, and will include assessing the effectiveness of the government organizations in place to address those risks, comprising the Commission, the Financial Intelligence Unit, the Royal Anguilla Police Force, Immigration and Customs departments, Attorney-General's Chambers and Inland Revenue. In order to assist in the conduct of the NRA, the Commission offered to provide the coordinator for the Working Group, which offer was accepted by the Government. The Commission hired a senior legal counsel in 2016 whose responsibilities include filling the role of NRA coordinator as well as ensuring that the Commission addresses its own obligations under the NRA.

## **Enforcement Activity**

The Commission has continued to emphasize its enforcement activities in order to provide, and to evidence both to the investing public and international overseers, a credible deterrence to legislative breaches. This approach corresponds with the regulatory trend internationally to strengthen enforcement programs. During 2016, the Commission issued 53 demands for the provision of information and production of documents (2015: 113), 16 notices of intent to suspend (2015: 10) and 2 suspensions (2015: 7), 2 notices of intent to revoke (2015: 24) and 2 revocations (2015: 22), 32 notices of intent to impose an administrative penalty (2015: 6) and 5 administrative penalties imposed (2015: 3) totaling US\$19,002 (2015: US\$7,589).

## **Industry Development**

### **Commission Website**

The Commission's updated and more user friendly website went live on 2 February 2016. It has been designed to make it easier for Commission licensees and potential licensees as well as the general public to locate regulatory information applicable to each industry sector regulated by the Commission.

## Guidelines and Policies

During 2016 the Commission amended the *Guidelines for Audit Exemption Applications by Certain Captive Insurers* to increase the upper limit of net written premiums in a year for purposes of enabling a captive insurer to qualify for an exemption from the requirement to prepare audited annual accounts for that financial year. The upper limit was increased from US\$1.2 million to US\$2.2 million, or such other amount that is established from time to time under the United States Internal Revenue Code ("USIRC") for purposes of qualifying for the section 831(b) election under that legislation. The upper limit was revised to match the revised limit established under the USIRC.

The Commission also distributed for comment draft *Guidelines for the Conduct of Company Management Business through an Intermediary* and met with a number of licensed company managers to discuss the draft Guidelines. The Guidelines will not be compulsory but are intended to provide a roadmap for licensees to follow and to represent best practices in relation to both pre-incorporation and post incorporation customer due diligence practices.

## Industry Events

The Commission held its 2016 Industry Day on 15 December at the Teachers' Resource Centre in The Valley. It was a well-attended, positive and constructive event centred on the theme of "The changing environment for the financial services industry in Anguilla – how do we adapt?"

Presentations on "the changing environment for the financial services industry in Anguilla", were made by representatives of (i) the Commission and Anguilla Finance Ltd. ("AFL") addressing challenges in the captive insurance market; (ii) the Commission and STEP on the increasing regulatory requirements facing the company management sector; (iii) the Anguilla Financial Services Association and BDO LLC (Anguilla) on the significance of and need for local offshore banking facilities; and (iv) the Commission and D-3 Enterprises on the potential impact of the proposal by the Eastern Caribbean Currency

Union ("ECCU") to develop a regional body to regulate financial services across the ECCU, beginning with the insurance sector.

Presentations were made on "how do we adapt" by representatives of (i) the Government of Anguilla and Innovative Finance on "sustainable investment" and "innovative finance" opportunities; (ii) AFL on its current initiatives to market the jurisdiction; (iii) Sator Regulatory Consulting Ltd. on the criteria clients use to jurisdiction shop for corporate service providers; and (iv) Stafford Corporate Services Ltd., Counsel Limited and AFL with ideas on how Anguilla corporate services providers can maintain profitability and build business.

## Staff Training

Insurance regulatory staff attended the Captive Insurance Companies Association conference in March in Arizona. Other staff attended the CARTAC sponsored annual meeting and workshop of the Caribbean Group of Securities Regulators held in the Bahamas in April and an AML/CFT training conference in Antigua in June. A week long follow up training session was presented in-house in April to insurance regulatory staff by a consultant from CARTAC as a follow up to the previous year's in-house training for risk-based supervision, focusing as well on the development of a risk-based supervision manual.

The Director attended the CARTAC/ECCB/ World Bank sponsored "US-Caribbean Public-Private Dialogue on Correspondent Banking" in Jamaica in April, which discussed the withdrawal of correspondent banking services being experienced across the Caribbean, the reasons for it and how best to address it. Also in April, the Deputy Director, Enforcement and AML/CFT Compliance attended the 26th Annual Institute for Securities Market Growth and Development training program in Washington D.C., an intensive 10 day course presented for regulators from countries around the world by the U.S. Securities and Exchange Commission. One of the senior prudential regulation managers attended the Toronto Centre's International Program for Insurance and Pensions Supervisors, an

intensive one week program of advanced management training held in July in Toronto.

### **Regulatory Meetings**

Staff attended the UK Overseas Territories Financial Services Regulators annual conference in Miami in March, as well as the Group of Financial Centre Supervisors annual meeting in April and the Group of International Insurance Centre Supervisors annual meeting in June, both of which were held in London, U.K. Staff also attended the CARTAC sponsored annual meeting of the Caribbean Association of Insurance Regulators, including the regulatory college held to discuss any outstanding issues with a selected regional insurer, that was held in Surinam in June as well as the CFATF Plenaries in June in Jamaica and in November in the Turks & Caicos Islands.

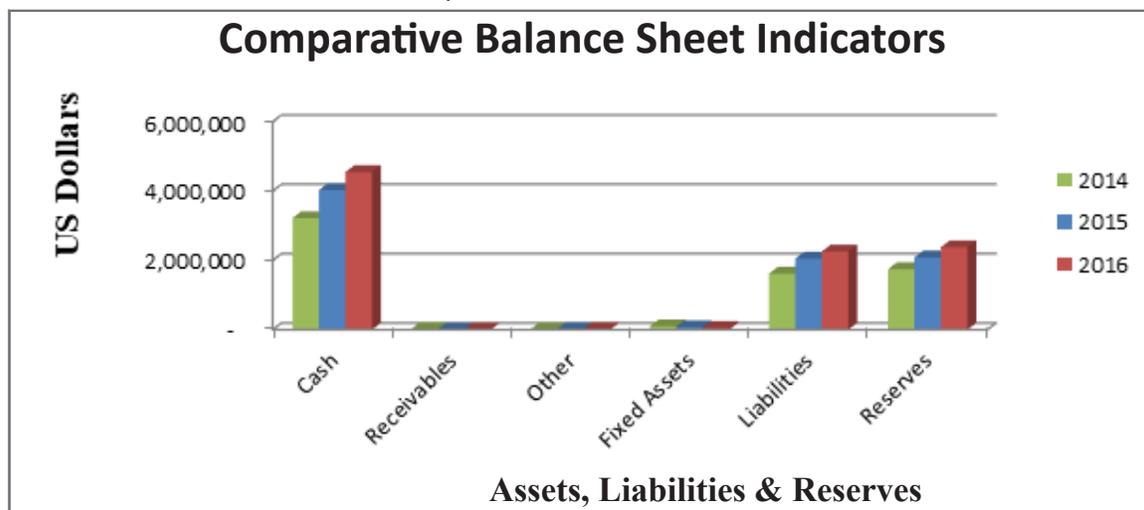
### **Financial Performance Analysis**

The Commission reported net income of US\$297,176 for the year ended 31 December 2016 (2015: US\$337,781), a 12% decrease year over year. Reserves increased by 14% to US\$2,381,361 as at 31 December 2016 from US\$2,084,185 as at 31 December 2015. The factors underlying the year's performance are reported below in the discussion of Revenue and Expenses.

### **Assets, Liabilities and Reserves**

As at 31 December 2016, the Commission's total assets were US\$4,637,858 (2015: US\$4,139,458). Liquid assets, in 2016 being entirely cash, accounted for 98.1% of the Commission's assets (2015: 97.3%).

*Table 1: Comparative Balance Sheet Indicators*



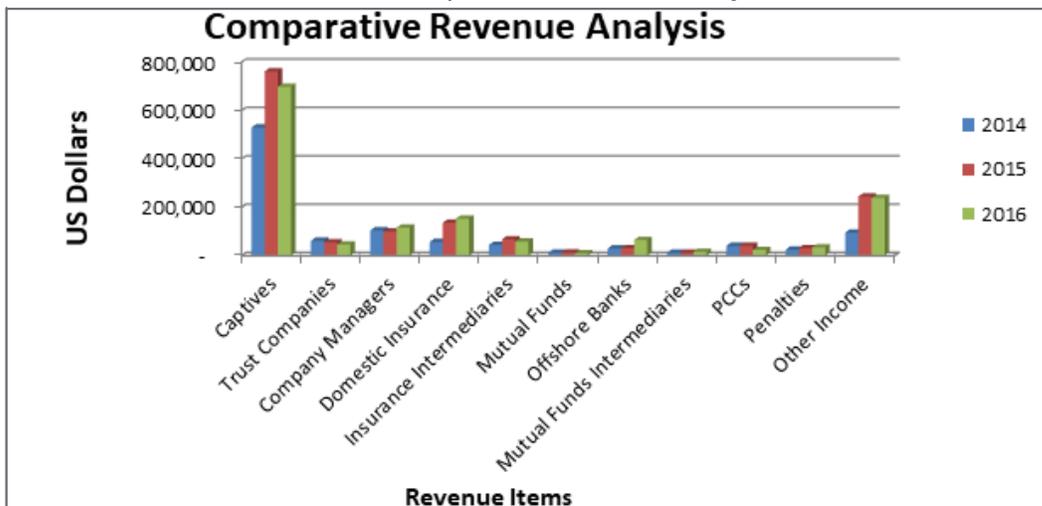
Total liabilities were US\$2,256,497 (2015: US\$2,055,273) with the increase over the previous year-end reflecting an increase in statutory deposits held by the Commission in connection with approved external insurers licensed in the jurisdiction. Accumulated reserves were US\$2,381,361 at year end (2015: US\$2,084,185), the increase resulting from the net income reported above.

## Revenue

Total revenue decreased by 2.2% or US\$33,507 to US\$1,462,442 (2015: US\$1,495,949). License fee revenue decreased by 2.7% or US\$39,735 to US\$1,437,350 (2015: US\$1,477,085). The insurance sector, including captives, domestic insurance and insurance intermediaries, comprises almost two-thirds of the Commission's revenue (\$910,600 or 62.3% of total revenue), with captives comprising the majority of the revenue in the sector. Revenue from captives has decreased by 8.3% or \$63,470 to \$698,500 (2015: \$761,970), primarily due to a decrease in the number of licensees.

Note that the Table below includes, in addition to licence fees paid under each sector, other forms of fees assessed in the sector.

Table 2: Comparative Revenue Analysis



## Expenses

Total expenditures increased by US\$7,098 to US\$1,165,266 (2015: US\$1,158,168). Payroll costs declined US\$28,198 to US\$792,311 (2015: US\$820,509), primarily due to the retirement during the year of a senior staff member. "Other" increased by \$35,722 to \$129,209 (2015: \$93,487) mainly due to expenses associated with the appointment of an administrator for the two offshore banks, and Industry Outreach and AML/CFT seminars held in 2016.

Table 3: Comparative Expenditure Analysis

