

GUIDELINES ON AUDIT EXEMPTION APPLICATIONS BY CERTAIN CAPTIVE INSURERS
(Section 8(5) of the Insurance Act)
(Issued under Section 49 of the Financial Services Commission Act, R.S.A. c.F28 (as amended))

1. Statement of Objectives

The purpose of this policy paper is to set out circumstances under which the Commission may be willing to exercise a discretion provided by law on applicants of certain types of captive insurers.

Section 8(5) of the Insurance Act, R.S.A. c. I16 provides:

Every licensed insurer shall prepare annual accounts in accordance with generally accepted accounting principles acceptable to the Commission, audited by an independent auditor approved by the Commission except that the Commission may, in writing, exempt any licensed insurer from the provisions of this subsection or part thereof.

Where the Commission can be satisfied that circumstances exist whereby the exemption can be safely exercised, it will consider doing so. One such set of circumstances has been observed with respect to US business as follows.

2. Exercise of Exemption of Captives originating from the United States of America.

Section 831(b) of the United States Internal Revenue Code permits certain small insurance companies other than life insurance companies to elect to be taxed only on taxable investment income (and not on underwriting income). In addition, section 501(c)(15) of the United States Internal Revenue Code exempts certain “microcaptives” from US federal income tax.

This document sets out the approach of the Commission to the exercise of its discretion to grant exemptions to these types of insurers from the requirement that annual accounts be audited.

3. Criteria

Generally, before granting an exemption for a particular financial year, the Commission will wish to be content that the following criteria are met:

- i) the insurer is in compliance with the Insurance Act, in particular with the solvency margin and capital requirements;

- ii) the insurer has made an election under section 831(b), or qualifies under section 501(c)(15), of the United States Internal Revenue Code;
- iii) the net written premiums (or, if greater, direct written premiums) of the insurer for the year do not exceed US \$1.2 million for the financial (taxation) year;
- iv) the insurer does not issue policies to the general public;
- v) the insurer does not transact/carry on long term business;
- vi) the insurer's unrelated risk (based on net premiums written) does not exceed 51% of net premiums and must be managed through a risk pool of other insurers managed by the same insurance manager;
- vii) the shareholder(s) of the insurer must acknowledge(s) in writing that they may not receive audited accounts of the insurer; and
- viii) where the insurer participates in a risk pool referred to in clause vi), the shareholders of all of the insurers in the risk pool, including the subject insurer, have acknowledged in writing that some or all of the insurers participating in the risk pool may not prepare audited accounts.

4. Applications

Therefore, with its application for exemption, the insurance manager of an insurer should complete and provide the Commission with a signed copy of the form attached as Annex 1). No changes to the form are permitted.

5. Conditions of Exemption

Generally, as a condition of granting an exemption, the Commission will require that the insurer:

- i) provide to the Commission its unaudited accounts for the relevant year within 4 months from the end of its financial year, certified by the insurance manager or a director of the insurer that the accounts are:
 - (a) a fair summary of the financial position of the company;
 - (b) free from material misstatement; and
 - (c) in accordance with the generally accepted accounting principles applicable to the financial statements; and
- ii) file a certified copy of its filing with the United States Internal Revenue Services, on or before September 15 following the financial (taxation) year to which the audit exemption relates. The certified copy may be submitted electronically.

6. Commission cannot Fetter its Discretion

This document sets out a general approach and can only be a guide. The Commission must assess each application for exemption on its merits, in the light of the circumstances of the particular case. Taking those circumstances into account, the Commission may, for example, ask for information that is not specified above, refuse the application, or impose additional conditions. The Commission may amend or withdraw this document at any time.

7. Where captives originate from a jurisdiction other than the United States of America, these principles will be applied and consideration given to granting the exemption when similar safeguards can be identified.

**Amended as approved by the Board
Anguilla Financial Services Commission**

17 June 2014

Annex 1

Completed application should be submitted to: -

Financial Services Commission
P.O. Box 1575
The Valley
Anguilla, BWI
AI-2640

Application for Audit Exemption – Captive Insurer

(Insurance Manager Name) _____

(Mailing Address) _____

(City, State/Province, Zip/Postal Code) _____

Re: (Captive Insurer Name) _____

I, (name), hereby certify that:

1. I am the (title) of (Insurance Manager Name), and am duly authorized to execute this affidavit on its behalf;
2. (Insurance Manager Name) is the insurance manager of (Captive Insurer Name);
3. (Captive Insurer Name) is a captive insurer holding a (Class of Licence) Insurance certificate in Anguilla and is in compliance with the Insurance Act, R.S.A. c. I16, including the solvency margin and capital requirements;
4. (Captive Insurer Name) has made an election under section 831(b), or qualifies for a tax exemption under section 501(c)(15), of the United States Internal Revenue Code;
5. the net written premiums (or, if greater, direct written premiums) of (Captive Insurer Name) do not exceed US \$1.2 million for the financial (taxation) year of this application;
6. (Captive Insurer Name) does not issue policies to the general public;
7. (Captive Insurer Name) does not transact/carry on long term business;
8. if there is unrelated risk, the unrelated risk of (Captive Insurer Name) does not exceed 51% of net premiums and is managed through a risk pool of other insurers managed by (Insurance Manager Name);
9. The shareholders of (Captive Insurer Name) have acknowledged in writing that they may not receive audited accounts of (Captive Insurer Name); and

10. where (Captive Insurer Name) participates in a risk pool referred to in item 8, the shareholders of all of the insurers in the risk pool, including (Captive Insurer Name), have acknowledged in writing that some or all of the insurers participating in the risk pool may not prepare audited accounts.

Dated this _____ day of _____, 20 _____

(Insurance Manager Name)

(Signature of Insurance Manager if an individual)

OR by its*Director/*Secretary/*or other person duly authorized

Signature

Position

*Delete words which are not applicable