

Consultation Paper
Overseas Agents in a Changing Regulatory Environment

Sections	Industry's Comments	Commission's Response
General	<p>We support the Anguilla Financial Services Commission with their choice (3.1 iii) that due diligence should be executed prior to establishing a business relationship as it comes close to our own business model. We do, however, understand the position of the Commercial Registry that perhaps a transition period is required.</p>	<p>A transition period of one year is intended.</p>
Options i to iv	<p>We agree that the options (i) and (ii) both may prove to be administratively burdensome.</p> <p>Option (iii) is acceptable as it is in compliance with the international standard and best practices of Customer Due Diligence (CDD) and risk assessment prior to the incorporation. However, in implementing the option (iii), it may also be considered to make provision for CDD after the incorporation where it is essential not to interrupt the regular course of business and the money laundering and terrorist financing risks are appropriately managed.</p> <p>Option (iv) is the preferred approach as it allows overseas agents to access the ACORN through the licensed company managers regime. Although, currently only 15% of the active overseas agents are regulated, the risk of non-compliance with international standards would</p>	<p>Section 10(5) of the AML/CFT Regulations allows for the completion of verification of the identity of a customer, third party or beneficial owner after the establishment of a business relationship if it is necessary in order not to interrupt the normal conduct of business and there is little risk of money laundering or terrorist financing. Thus the CDD process would have to be started prior to incorporation in order to determine that the customer represents little risk of money laundering or terrorist financing.</p> <p>In relation to option (iv), the intent is that newly authorized overseas agents would be authorized to access ACORN only for one year before they would be required to transition into a licensed company manager or become an intermediary, while existing overseas agents will have a year to apply to become a licensee or restrict their activities to those of an intermediary. However, in relation to providing a one year term of access to ACORN for newly authorized overseas agents, it should be noted that AML/CFT requirements provide that the licensee itself must conduct both a due diligence review and a risk assessment prior to incorporation of a company, limiting the apparent benefit to the</p>

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	<p>be low where the overseas agents are based in low-risk jurisdictions like Hong Kong.</p> <p>Under both the options, we appreciate that the trend towards greater corporate transparency is necessary and in accordance with the FATFA standards.</p>	<p>overseas agent of direct access to ACORN.</p> <p>With respect to Hong Kong, it must be noted that although this jurisdiction rates favourably on the "Transparency International Corruption Index", it does not regulate company managers. Thus overseas agents in that jurisdiction would be unregulated and could not be relied upon by a licensee to perform due diligence on its behalf or to hold its customer due diligence evidence.</p>
Option i	<p>We would prefer the reconfiguration of the Acorn (that is option one), [to enable Overseas Agents] to continue using the system, others options seems to be too harsh and doesn't [sic] add attractiveness in terms of business. Options in becoming the licensee for overseas agent won't meet a positive response as the volumes of incorporations provided by the agents might be not sufficient to maintain the License.</p>	<p>The comment is noted. However, a technical configuration of ACORN was considered "unduly costly and administratively burdensome". Further, compliance with the FATF standards has to be taken into consideration and the status of the current system of unregulated overseas agents does not meet international standards.</p>
General	<p>I have never been in favor of "Overseas Agent" possibilities for Anguilla and access to Acorn. It weakens the due diligence principles and does not really add anything to business I believe.</p>	<p>The comment is noted.</p>
General	<p>It is a pity that the Overseas Agent regime is to end and that a workable solution could not be found. My only question is would the licensee be able to provide with an employer resident outside of the territory with access to ACORN to incorporate? Or if not to incorporate to pay the annual licence fee and ad hoc enquiries? (In any case due diligence will be held within the territory).</p>	<p>We have assumed that reference to "employer" was meant to be "employee". The Licensee is able to have an employee outside of its home jurisdiction, however any access to ACORN must be subject to compliance with applicable AML/CFT legislation.</p>

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<p>(Second Phase) Alternate Model 3.1 (iv)</p>	<p>In regards to the industry consultation on Overseas Agents, – Alternate Model 3.1 (iv):</p> <p>“The restructuring of the overseas agent system as follows: (a) all existing overseas agents within the course of a one-year period must submit an application to the Commission to become licensees or enter into an agreement with a licensee to become an intermediary of the licensee where the licensee incorporates all companies; and (b) new overseas agents would be permitted, provided that they enter into an agreement with the licensee whereby the licensee is to review due diligence documents and assess the risk prior to incorporation, and following incorporation the licensee would provide the overseas agent a hard copy of the incorporation documents; and within the course of a one-year period the overseas agent will submit an application to the Commission to become a licensee or enter into an agreement with a licensee to become an intermediary of the licensee where the licensee incorporates all companies.” (From the Revised Consultation Paper – Overseas Agents in a Changing Regulatory Environment”</p> <p>We believe that this model is the best way forward.</p>	<p>The comment is noted.</p>
<p>(Second</p>	<p>We have carefully considered the consultation</p>	<p>The comment is noted.</p>

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Phase) Option (iii)	<p>papers with respect to the overseas agent issues.</p> <p>We have the following comments with respect to those papers:</p> <p>We believe that option (iii), preferred by the Commission, is the best option with respect to sustainable growth of the financial industry in Anguilla. This option meets all current and in our opinion future AML/CFT requirements. All other options might temporarily work, but in our view, run a serious risk of having to be revoked in the near future in view of the current international trend towards greater corporate transparency.</p> <p>With respect to the current overseas agents, which are primarily accounting firms based in Hong Kong and Taiwan. These jurisdictions are considered to be low risk according to the "Transparency International Corruption Index". Company managers are not regulated in these jurisdictions, but without any doubt, accountancy firms are. Do those accountancy firms not fall under the definition of "foreign regulated person" as mentioned under point 2.5 of the revised consultation paper? We believe that accountancy firms have similar responsibilities as trust companies.</p> <p>Overall, we totally agree that the current overseas agent regime requires a revision that</p>	

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	qualifies Anguilla as a top jurisdiction for company management where AML/CFL risks are eliminated as good as possible.	