



The Government of Anguilla

# Enhancing the Transparency Of Anguillian Company Ownership and Increasing Trust In Anguillian Business

A Public Consultation

**The Ministry of Finance**  
**6/6/2014**

## **Introduction**

Following a meeting of the United Kingdom Overseas Territories' (OTs) leaders and the Prime Minister of the UK in June of 2013, Anguilla, along with the other OT's issued a press release in London outlining our commitment to continue upholding universally established standards on transparency in financial services. This commitment included, amongst other things, an agreement to prepare action plans setting out the steps needed to be taken to fully implement the Financial Action Task Force standards on transparency of beneficial ownership information. Anguilla, like the UK, already requires mandatory disclosure of shareholders and directors of local companies doing business in Anguilla.

The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions. FATF's mandate is to set standards and to promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction (WMDs), and other related threats to the integrity of the international financial system. Anguilla's legislation contains many of the principal elements required for compliance with the FATF Recommendations and efforts are underway to introduce improvements in the AML/CFT regime and for addressing a number of recommendations made by recent evaluations by the OECD and CFATF.

Beneficial ownership of companies has been a concern of the Financial Action Task Force; primarily, the concern has been to curb anti-money laundering and terrorist financing. The EU and the G8 are also focusing on the beneficial ownership of companies as a further means to tackle tax evaders and those who are intent on committing fraud. Anguilla has committed to examining the robustness and effectiveness of its current regulations and approach as it implements the revised FATF Recommendations adopted in 2012 and prepares for the fourth round of mutual evaluations of anti-money laundering defenses.

## **Beneficial Owner Defined**

According to FATF, the term "Beneficial Owner" refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

[1] Reference to "ultimately owns or controls" and "ultimate effective control" refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.

[2] This definition should also apply to the beneficial owner or a beneficiary under a life or other investment linked insurance policy.

On the 26th of August 2013 Anguilla's action plan was published outlining its commitment to enhancing transparency on beneficial ownership of companies and working with the international community to fight the scourge of tax evasion and money laundering. Anguilla's action plan endorses international standards against money laundering, the financing of terrorism and proliferation of WMDs, tax evasion, corruption and related criminal activity. Among the proposed actions, *Anguilla committed to having public consultation on the issue of corporate transparency with a focus on bearer shares and the ability of competent authorities to access information on beneficial ownership, including whether this information should be available in a central registry and whether this information should be publically available.*

*The objective of this consultation is to ascertain the public's views on:*

- *Whether the Commercial Registry should hold enhanced information on the beneficial owners (i.e. on individuals with significant control or influence) of all entities registered in Anguilla.*
- *Whether all companies should be given statutory tools to identify their beneficial ownership;*
- *What additional requirements might be required to ensure beneficial ownership information on all companies is indeed obtained?*
- *What information is currently provided to the Registry; how frequently it should be updated; and how should Anguilla ensure that it is as accurate as possible. Is it adequate?*
- *The abolition of bearer shares and whether existing bearer shares should be converted to ordinary registered shares.*

## **The International Standard**

### **Transparency of Legal Persons (FATF Rec. 24)**

CFATF Recommendation 24 requires companies to maintain basic information relating to the company, its directors and shareholders. These measures should be put in place to prevent the misuse of legal persons for money laundering or terrorist financing. Further, “[c]ountries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.”

### **Transparency And Beneficial Ownership Of Legal Arrangements (FATF Rec. 25)**

FATF Recommendation 25 expressly requires that “[c]ountries should take measures to prevent the misuse of legal arrangements for money laundering or terrorist financing. In particular, countries should ensure that there is adequate, accurate and timely information on express trusts, including information on the settlor, trustee and beneficiaries that can be obtained or accessed in a timely fashion by competent authorities.” This should include information on the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust.

With regard to Recommendation 25, Anguilla is regarded as being largely compliant, albeit that there have been no onsite examinations/information requests of independent legal professionals (with respect to trusts), or in respect of foundations to duly determine the effectiveness of access, by competent authorities, to required information.

### **Anguilla’s Current Situation**

The Government of Anguilla recognizes and supports the need for full compliance with the standards established by the Financial Action Task Force (FATF) (as replicated in its 2012 revised 40 Recommendations) and, in particular, to ensure the sourcing and maintenance of beneficial ownership information. This was a requirement under the old 40+9 Recommendations and Anguilla has required this of its entities’ subject to compliance with anti-money laundering and terrorist financing obligations.

Notably, CFATF has judged Anguilla as fully compliant with regard to transparency and beneficial ownership of legal persons. The OECD noted the availability of beneficial ownership as a concern, particularly in the case of Trusts and Foundations. To deal with these concerns, Anguilla has responded by drafting the necessary legislation to help ensure

that beneficial ownership information is available in all cases. The Government of Anguilla will ensure these amendments will be passed into law as quickly as possible.

The policy objective of the Government of Anguilla is to ensure that only fit and proper persons and institutions, who satisfy the due diligence requirements in the AML/CFT Regulations and Code, are allowed to operate in or from Anguilla. Toward this end, Anguilla has continually increased and enhanced its legislative framework, regulatory infrastructure and institutional arrangements to manage and mitigate potential ML/FT risk. The Government's ML/FT risk management strategy is focused on regulating the gate-keeping function of company managers/fiduciaries.

The Proceeds of Crime Act (POCA), AML/CFT Regulations, AML/CFT Code and its incorporated guidance notes, the Non-Profit Organisation Regulations, 2010 and the Anguilla International Co-operation (Tax Information Exchange Agreements) Act, 2009 form part of Anguilla's regulatory framework for transparency and information exchange. Anguilla seeks to further strengthen this framework by putting into place in the near future Non-Regulated Service Provider Regulations to require registration of DNFBPs as contemplated under the FATF 40+9.

Under Anguillian law, the term '**beneficial owner**' refers to (a) an individual who is an ultimate beneficial owner of the legal person, partnership or arrangement, whether or not the individual is the only beneficial owner; and (b) an individual who exercises ultimate control over the management of the legal person, partnership or arrangement, whether alone or jointly with any other person or persons. Further, Anguillian law makes no distinction with regard to whether an individual's ultimate ownership or control of a legal person, partnership or arrangement is direct or indirect.

In order to achieve this understanding, the FATF standards require reporting entities to identify and verify their customers, identify the natural person(s) that have beneficial ownership or control of these customers, and use reasonable measures to verify the beneficial ownership and control information. These requirements, which have their basis in the Financial Action Task Force (FATF) Recommendations, are embedded in Anguillian law through the following enactments:

- Anti-Money Laundering and Terrorist Financing Code, 2013
- Anti-money Laundering and Terrorist Financing Regulations
- Anti-money Laundering and Terrorist Financing (Amendment) Regulations, 2013
- Proceeds of Crime Act
- Proceeds of Crime (Amendment) Act, 2013
- Proceeds of Crime (Transitional) Regulations
- Externally and Non-Regulated Service Providers Regulations, 2013

All corporate entities are required to be registered with the Registrar of Companies. All companies formed under the Companies Act are required by section 7 of that Act to file a list of the named directors and shareholders when shares have been issued. That list must include the following:

- in the case of an individual, his name, nationality, address and mailing address, if any;
- in the case of a corporation, its name, country of registration, address and mailing address, if any.

All companies require at least one director at all times. However both the directors and shareholders can be corporate entities. Per section (76) of the Companies Act, where there is any change in directors, the company (including a foreign company) must file a notice of the change within 15 days. Section 9 of the Companies Regulations requires any transfer in ownership of shares must to be entered in the company's register of shareholders or debenture holders. Companies formed under the IBCA are not required, but may elect, to file information regarding shareholders or directors. However, as noted previously, all IBCs must have a registered agent who holds a relevant licence. Persons who hold a relevant licence are "service providers" for the purposes of AML/CFT and are subject to the requirements of the AML/CFT Regulations and AML/CFT Code.

Sections 10 and 11 of the AML/CFT Regulations and the AML/CFT Code require service providers to undertake CDD measures prior to establishing a business relationship or executing an occasional transaction. Section 4(1) of the AML/CFT Regulations defines CDD to include identification and the verification of identification of a customer, a third party for whom a customer may be acting, beneficial owner(s) of a customer and third party where either the customer or a third party, or both are not individuals.

In the case of beneficial owners of a legal entity, the AML/CFT Code requires identification of shareholders owning ten percent (10%) or more. This information is required to be accessible by the Financial Services Commission ("FSC") immediately upon request, or, if it is held at a location outside Anguilla, pursuant to the Guidelines on Introduced Business issued by the FSC it must be made available within 72 hours. The AML/CFT Regulations and AML/CFT Code have been subject to ongoing review by the CFATF.

Companies formed under the LLC Act are not required to file information regarding directors or shareholders. However, as is the case with IBCs, limited liability companies must have a registered agent who holds a relevant licence and ownership information that is readily accessible by the FSC.

LLCs and IBCs are not required to file change of ownership information unless they are conducting regulated business and are licensed through the FSC. However, under section 10 of the AML/CFT Regulations, the registered agent of such entities is required to conduct ongoing monitoring of all customers and obtain identification information—

- when there is a change in the identification information of a customer;
- when there is a change in the beneficial ownership of a customer; or
- when there is a change in the third parties, or the beneficial ownership of third parties.

This information is required to be readily accessible by the FSC and other obliged entities.

In relation to every type of company, ownership information is required to be made available to the competent authority by operation of sections 5 and 6 of the ICTIEAA. Failure to provide such information as requested is punishable on summary conviction by a fine of up to \$10,000 or imprisonment of up to 2 years or both.

Failure to carry out the CDD or ongoing monitoring required by the AML/CFT Regulations is punishable on summary conviction by a fine of up to \$100,000 (AML/CFT Regulations section 10). Failure to keep the necessary records, including ownership information, required by the AML/CFT Regulations is punishable on summary conviction by a fine of up to \$50,000 (AML/CFT Regulations section 17). Failure to make information available to the FSC is punishable on indictment or summary conviction by a fine of up to \$25,000 or, for individuals, imprisonment for up to 1 year (FSC Act Schedule 4).

Information held at the Registry of Companies is available to the public. All information held by registered agents who are “service providers” for the purposes of AML/CFT is available on request to the FSC and the competent authority.

Section (158) of the Companies Act requires every company, including foreign companies, to file with the Registrar an annual return in the prescribed form. The prescribed forms for both foreign and domestic companies require disclosure of the identity of all shareholders and a notation as to whether there has been any change in ownership (Companies Regulations, Schedule 2, Forms 5 and 9).

Failure to comply with filing requirements, including filing false information, is punishable on summary conviction by fines ranging from \$5,000 (failure to notify change of directors) to \$25,000 or, for individuals, imprisonment for up to 1 year (making a false or misleading report or return).

## **Which Entities are registered?**

Within the Commercial Registry we register four types of companies; these include International Business Companies, or IBCs, Limited Liability Companies or LLCs, Companies Ordinance Companies or COCs and Limited Partnerships or LPs. Additionally we also register two other corporate vehicles: Foundations and Trusts.

Foundations are established under the Anguilla Foundation Act, and can be either registered by its name or by declaration of establishment.

The underlying legislation regarding trusts is the Trusts Act, R.S.A. c. T70 1994, which allows for the optional registration of trusts.

## **What information is available to the public?**

All required filings are on the public record, but not all IBCs have a public profile in terms of directors etc.. IBCs are often shelf companies that have no public profile at all. They will reach strike off action more often than other companies. **Who has access to ACORN?**

ACORN is not a public access system. All ACORN users (end-users) are persons licensed by the Financial Services Commission under the Company Management Act, R.S.A. c. C75 or under the Trust Companies and Offshore Banking Act, R.S.A. c. T60. These licensees may appoint overseas agents for the purpose of filing documents in electronic form on their behalf from outside Anguilla, provided that the overseas agents are approved “authorized” by the Commission after consultation with the Registrar under section 4(4) of the Companies Registry Act, R.S.A. c. C70, with the statutory test for authorization based solely on an agent’s information technology capacity. The Commercial Registry does not accept filings from the general public.

## **Trusts**

The Trusts Act, R.S.A. c.T70, governs the creation of trusts. Following common law, no formalities are required to create a trust in Anguilla if the intention of the settlor to create a trust is clearly manifested. However, a trust in respect of land situated in Anguilla, other than one arising by operation of law, is unenforceable unless evidenced in writing. An Anguillian trust is not a separate legal entity. Trust property is therefore held or owned by a trustee and not the trust. The Trusts Act provides that a trust exists where a trustee holds property for the benefit of a beneficiary and/or for any valid charitable or non-charitable purposes, which is not for the benefit only of the trustee. The settlor may also be a trustee, beneficiary or protector of the trust. A trustee may be resident in or out of Anguilla (s. 1).

In Anguilla, a trust may be created by oral declaration, by an instrument in writing, by conduct, by operation of law or in any other manner once the intention of the settler is clearly

manifested. However, a unit trust can only be created by a written instrument. The Registrar of Companies is empowered to keep a Register of Trusts, which registers the details of the identity of the trust, settlor, beneficiary and the purpose for which the trust is established. Registration of a trust is optional, however. The information in the Register can only be accessed where the trustee authorises a person in writing to inspect the entry for the trust. All information held by a trust company/service provider is available to the FSC on request or through the onsite examination process.. The receipt of information has been repeatedly tested by the FSC. CFATF has recommended that Anguilla should require mandatory registration of trusts.

### **Bearer Shares**

Anguilla's AML/CFT Regulations and Code contain comprehensive provisions regarding CDD measures, including requirements for all service providers to obtain full information in relation to the source of funds, nominee arrangements, beneficial owners and directors involved in any business relationship or occasional transaction with a service provider. The AML/CFT Regulations and Code also set out explicitly the details of the identification information that must be retained.

Anguilla's AML/CFT regime has been scrutinised by the Caribbean Financial Action Task Force ("CFATF") for compliance with the FATF 40+9. Although some deficiencies were noted, the CFATF Mutual Evaluation Report, published July 2010, noted that, "Anguilla has a strong AML/CFT framework bolstered by the recent enactment of the POCA, the AML/TFR and the AML/TFC and a high level of public awareness of the issues relating to combating ML and FT."

### **Exchange of Information Mechanisms**

As noted above, the ICTIEAA allows for Anguilla to enter into TIEAs with other jurisdictions. As at June 6<sup>th</sup> 2014, Anguilla has signed 16 TIEAs in accordance with the enabling legislation and a further 2 TIEAs are agreed and awaiting signature. Anguilla's TIEAs are based on the OECD model.

The issues that FATCA and similar UK agreements seek to address are not unfamiliar to Anguilla; Anguilla is committed to fighting tax evasion, terrorist financing, money laundering, and other nefarious activities. This is evidenced by Anguilla's participation in the EU Savings Directive, the OECD global standard of international tax co-operation, and CFAFT.

With regard to automatic exchange of information, Anguilla already automatically exchanges tax information with European Union Member States in respect of some financial products under the EU Savings Directive. Further, the Global Forum on Transparency and Exchange of Information for Tax Purposes' Phase One review of Anguilla demonstrates Anguilla's commitment to meeting the international standard on tax and transparency. The Anguilla

FATCA-task force has examined the issue and has recommended that the Government of Anguilla should enter into Model 1b (Non-Reciprocal) Intergovernmental Agreement with the US Government. The Government of Anguilla has already signed UK's FATCA-type Agreement.

### **The Concept of a Central Registry**

Prior to its assumption of the Presidency of the G8, the United Kingdom (UK) had put forward a proposal for the creation of a central registry on beneficial ownership which will be accessible to law enforcement and tax authorities. Business Secretary Vince Cable said:

*"We believe a public register, listing those who really own companies makes Britain a better place to invest and do business. People have a right to know who controls UK companies and greater openness will help tackle tax evasion, money laundering and other crimes."*

The registry will contain information on individuals with an interest in more than 25% of a company's shares or voting rights, or who otherwise control the way it is run. The establishment of such a registry would thus ensure that all information on beneficial ownership is placed in one location and can be readily accessed whenever required. The UK Government believes greater transparency on issues such as actual beneficial ownership of companies is essential to creating a "stronger economy" that the public is confident to invest in. Consequently, the Department for Business, Innovation and Skills published details of its intention to create a registry in the ['Transparency and Trust' discussion paper](#) in July 2013 and invited responses on whether it should be made publicly accessible.

In properly dealing with this subject, it is important to consider the advantages of, and the obligations that come with, the establishment of a central registry, noting that the principal driver in this connection is the facilitation of international cooperation. A central registry holding beneficial ownership information would provide a one-stop shop for law enforcement and tax authorities to collect information quickly. This would help to speed up investigations considerably, have a positive impact on crime detection and act as a deterrent to those seeking to exploit companies across jurisdictions. It would avoid tipping-off the company or beneficial owner that they are under investigation (and thereby giving them a chance to evade detection). It should also help these authorities carry out more effective and efficient investigations and proceedings. Anguilla is a key player in the global financial services sector and its role in building appropriate and effective legal and administrative frameworks to ensure the timely response to requests (or delivery) on mutual legal assistance is fundamental.

It is equally important to identify the disadvantages (if any) and costs that may be associated with such an establishment, and whether the objectives described above can be effectively achieved by other means. In addition, it is important to consider the various options afforded under the revised 40 Recommendations to ensure a good level of consistency between those options and the option of creating a central registry on beneficial ownership.

Another consideration worth bearing in mind is that, while establishing and maintaining a central register on beneficial ownership has not as yet emerged as an international standard and therefore of equal application universally, does Anguilla stand to gain by moving ahead with such a registry and what such gain might be; or does Anguilla stand to lose by moving ahead of the “rest” of its competitors and what such loss might likely be. A delicate balance is imperative here, but ultimately serious consideration must be given to establishing appropriate mechanisms to enable Anguilla to efficiently and effectively discharge its international obligations.

## Questions For Your Consideration

Having considered the foregoing, your views are solicited about the following:

1. What steps should the Anguilla Financial Services Commission take to further ensure that adequate, accurate and current information on beneficial ownership is available in Anguilla?

### **CENTRAL REGISTER ON BENEFICIAL OWNERSHIP INFORMATION**

2. Should Anguilla seek to extend its Commercial Registry to include beneficial ownership information? Please provide the reasons for your answer.
3. If Anguilla were to establish a central register on beneficial ownership information, to whom should the registry about the company register be made available? How?
  - i. Should the register be accessible by the public generally?
  - ii. Should the register be accessible to regulated entities such as banks and other financial institutions?
  - iii. Should the register be directly accessible to all law enforcement and tax authorities, both domestic and foreign? If your answer is no, state which of those authorities the register should be available to and why.
  - iv. Should the register be accessible only to the Anguillian regulator of financial services business, and law enforcement (including judicial) and competent tax authorities, in the discharge of their duties under domestic law and for international cooperation purposes (including rendering appropriate mutual legal assistance)?
  - v. Should any entities/persons be restricted from accessing information contained in the central registry?

Please explain the reasons for your answers.

4. What identifying information on beneficial owners should be held in the register? What information should be made public?
5. Who should be responsible for providing the information? The company, the beneficial owner(s), the Company Service Provider?

6. If Anguilla were to extend its central registry to include beneficial ownership information, considering Anguilla's business model, what costs (human, financial or otherwise) do you expect would arise?
  - i. Are the costs more likely to fall on the Government or the private sector?
  - ii. Please explain your views on, and quantify the costs for both the Government and the private sector.
7. Do you consider there to be any security risks in establishing a central registry administered by the Government or any statutory body (such as the Financial Services Commission) and, if so,
  - i. What are those security risks likely to be?
  - ii. How do you think those security risks may be best dealt with?
8. What are your views on the FATF definition of beneficial ownership and its application in respect of information to be held by a central registry?
9. Which types of companies and legal entities should be in scope of the registry?
10. Should there be any exemptions from a central register of beneficial ownership for certain types of companies; if so, what types of company should be exempt? How might this regime operate?
11. What level of global application of an accepted international standard should be required, to ensure that Anguilla's competitive position is not seriously adversely affected?
12. Do the reasons advanced by the UK for a central register open to the public apply to Anguilla or is it considered that the objectives of tackling illicit activities can be better met by an alternative approach and one that is better suited to the circumstances of Anguilla?
13. Are the concerns regarding a central register open to the public, identified through the UK consultation exercise, shared and are there any other concerns which should be highlighted.
14. Should there be a requirement on the company to identify the beneficial ownership of blocks of shares representing more than 25% of the voting rights or shares in the company;

or which would give the beneficial owner equivalent control over the company in any other way?

## **TRUSTS**

15. Should there be a requirement for the trustee(s) of express trusts to be disclosed as the beneficial owner of a company?
16. Would it be appropriate for the beneficiary or beneficiaries of the trust to be disclosed as the beneficial owner as well? Under what circumstances?
17. Is there a need to introduce additional or other measures to ensure the accuracy of the beneficial ownership information that is filed with The Companies Registry and retained on the register? If so, what? To what extent would the benefits of these measures outweigh the costs and other impacts?

## **BEARER SHARES**

18. Should the issue of new bearer shares be prohibited? Further, should individuals be given a set period of time to convert existing bearer shares to ordinary registered shares? How long?
19. Are there additional or other measures that we might take?
20. What are the costs and benefits of this policy change?

## **How to respond**

Submissions of evidence should be emailed to [perin.bradley@gov.ai](mailto:perin.bradley@gov.ai) clearly marked as a response to the 'Transparency and Trust discussion paper'. Evidence will be reviewed thereafter. If further information or clarification is required, we will make contact as appropriate.

We are therefore inviting submissions by **August 8th 2014** to inform our consideration of proposals to enhance corporate transparency and increase trust in Anguillian business.

When responding, please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, where applicable, please make it clear who the organisation represents and how the views of members were assembled.

## **Confidentiality & Data Protection**

Information provided in response to this consultation, including personal information may be subject to publication or release to other parties. If you want information, including personal data that you provide to be treated as confidential, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Government of Anguilla.