



ANGUILLA FINANCIAL SERVICES COMMISSION

and the

MINISTRY OF FINANCE

REVISED CONSULTATION PAPER

**OVERSEAS AGENTS IN A CHANGING REGULATORY
ENVIRONMENT**

In order to address the feasibility and practicability of permitting direct access to ACORN by overseas agents while complying with international standards for AML/CFT

Issued August 2016

REVISED CONSULTATION PAPER

The Anguilla Financial Services Commission (the “Commission”) and the Ministry of Finance, by way of the Consultation Paper entitled “Overseas Agents in a Changing Regulatory Environment” dated March 2016, invited comments from stakeholders on a draft proposal to replace the existing overseas agent system with direct licensing by the Commission to conduct company management business. The Consultation Paper took into consideration the following:

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

A number of comments were received and are attached at Appendix 1, along with the Commission’s response.

The Revised Consultation Paper includes the same background information as was presented in the March 2016 Consultation Paper but concludes with the recommendation that the Commission intends to make to its Board. The proposal is based on the Commission’s review of the comments received as well as its further review of the existing practice whereby overseas agents directly access the Anguilla Commercial Online Registration Network (“ACORN”) to incorporate companies on behalf of licensed company managers and trust companies.

THE OVERSEAS AGENT SYSTEM AND COMPLIANCE WITH INTERNATIONAL STANDARDS

1.0 Background

- 1.1 In or about 1998, the Government of Anguilla introduced a system whereby overseas agents could access ACORN directly to incorporate companies. Section 1 of the Companies Registry Act, R.S.A. c. C70 defines an overseas agent as “*a person who has been appointed by the licensee as his agent for the purpose of filing documents in electronic form on his behalf from outside Anguilla*”.
- 1.2 An agreement between an overseas agent and licensee allows an overseas agent, subject to Commission authorization, to establish an account with, and have direct access to, ACORN to incorporate companies on behalf of the licensee. In such cases, the licensee serves as the incorporated companies’ registered agent and office and remains liable for any failure by the overseas agent to apply customer due diligence measures.
- 1.3 The relevant licensees are company managers under the Company Management Act, R.S.A. c. C75 and trust companies under the Trust Companies and Offshore Banking Act, R.S.A. c. T60 that are carrying on company management business.
- 1.4 Overseas agents are mainly accounting firms, law firms and other professionals and may include parents and subsidiaries of licensees. Overseas agents are located predominantly in Taiwan, Hong Kong, Europe, the Caribbean, the United States and South America.
- 1.5 The overseas agent system introduced in or about 1998 was seen as a temporary measure to boost the number of international business incorporations. The intent was that the overseas agents, having built sufficient business in the jurisdiction, eventually would become licensees.
- 1.6 Information collected in September 2015 indicates that there are thirty-six active overseas agents. The largest and most active of the overseas agents historically have been located in Taiwan and Hong Kong. Only about fifteen percent of active overseas agents are regulated in their home jurisdictions.
- 1.7 Within the last twelve months, five Taiwanese based overseas agents accounting for the majority of incorporations by overseas agents have become licensees or are in the process of becoming licensees of the Commission.

2.0 Compliance With International Standards

- 2.1 International standards and the legislative requirements applicable to company management business have changed significantly since 1998, especially with the
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- enactment of the Proceeds of Crime Act (“POCA”) in 2009 and ongoing amendments to the FATF Recommendations.
- 2.2 The Government of Anguilla indicated its commitment to endorsing the FATF standards in its Action Plan published on 26 August 2013 which states: *“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.”*
 - 2.3 In November 2015, Anguilla exited the Caribbean Financial Action Task Force Third Round Follow-Up Process, having completed all of its reporting requirements. Anguilla now must prepare for the Fourth Round of Mutual Evaluations pursuant to which it must demonstrate the effectiveness of its AML/CFT practices and procedures.
 - 2.4 Section 13(4) of the Anti-Money Laundering and Terrorist Financing Regulations, R.R.A. P98-1 (“AML/CFT Regulations”) states *“Where a service provider relies on an introducer or intermediary to apply customer due diligence measures, the service provider remains liable for any failure to apply those measures”*. An overseas agent is a type of intermediary on which many licensees rely.
 - 2.5 Onsite inspections have shown that most licensees in relation to their overseas agents have not done the following:
 - Ensured that the overseas agent is a foreign regulated person.
 - Assessed the risk of relying on the overseas agent.
 - Implemented additional measures to manage risk if appropriate.
 - Confirmed that the customer is an established customer of the overseas agent.
 - Obtained sufficient information about the introduced customer to conduct a risk assessment prior to incorporation.
 - 2.6 Failure to ensure compliance with AML/CFT legislation exposes licensees to enforcement action and criminal prosecution and the jurisdiction to possible reputational damage.
 - 2.7 Licensees are required under the AML/CFT legislation to review the customer due diligence information, perform due diligence checks and assess the AML/CFT risks prior to establishing a business relationship and/or incorporating a company. This procedure in most cases is not currently being conducted under the overseas agent system.
 - 2.8 Rather, due to the overseas agent’s ability to directly access ACORN and incorporate companies, the licensee does not review the due diligence information and cannot analyze the AML/CFT risks prior to incorporation. Thus the overseas agent system exposes licensees to considerable risks and is not in accordance with international standards.
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- 2.9 Section 13(1) of the AML/CFT Regulations indicates that a licensee may rely on an introducer or intermediary to apply customer due diligence measures with respect to a customer, third party or beneficial owner if the introducer or intermediary is a regulated person or a foreign regulated person and consents to be relied upon.
- 2.10 Currently only fifteen percent of the active overseas agents are regulated. Thus the licensee can rely only on these regulated overseas agents. Reliance however is limited to performing elements (a) – (c) of the CDD measures set out in FATF Recommendation 10.¹
- 2.11 As only fifteen percent of the active overseas agents are regulated, for the majority of the overseas agents there is no supervision and/or oversight for compliance with anti-money laundering and terrorist financing standards. This heightens the level of risk to the jurisdiction.

3.0 Alternate Models

- 3.1 Discussions were held between the Commercial Registry and the Commission in terms of the way forward for the overseas agent system in order to comply with international AML/CFT standards. Several models were proposed as follows:
- (i) A technical reconfiguration of ACORN to allow the licensee to comply with AML/CFT legislation. This would require the licensee to review the customer due diligence information and assess the AML/CFT risks prior to giving the overseas agent the authorization to incorporate the company. Thus, ACORN would be reconfigured so that gateways are established with the licensee having greater control over the incorporation process. This was considered to be unduly costly and administratively burdensome.
 - (ii) A system whereby direct access to ACORN would be given only to regulated overseas agents and licensees. However, assuming no reconfiguration of ACORN, incorporation by a regulated overseas agent would not be in compliance with international standards as the required risk assessment would not be completed by the licensee prior to incorporation. Considering the small number of regulated overseas agents, implementing a system of incorporation that was not in full compliance with international standards was not considered worth the risk.
 - (iii) 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

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a) Identification and verification of the customer's identity using reliable independent source documents, data or information.
b) Identification and verification of the ultimate beneficial owner, (pertinent details of how the identity has been verified, e.g. passport details, including the country of issuance, date of expiration and passport number).
c) Understanding and obtaining information on the purpose and intended nature of the business relationship.

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.

- (iv) 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.

3.2 Option (iv) is the approach preferred by the Commercial Registry.

The Commercial Registry's view is that the overseas agent regime has provided free access to the ACORN system to international company managers, lawyers and accountants, assisting in the expansion of the number of licensed company managers since the launch in 1998. It allows international agents, without any significant investment or licensing cost, the ability to add Anguilla to their list of jurisdictions with which they do business. The proposed one-year period then allows for the marketing and development of the Anguilla market within the organization. The Commercial Registry's opinion is that Anguilla needs these international firms to access the IBC markets. The Commercial Registry therefore sees the overseas agent regime as a key competitive advantage, the loss of which would be detrimental to the future development of Anguilla as a viable international financial services center.

3.3 Option (iii) is the approach preferred by the Commission in order to ensure compliance with Anguilla's AML/CFT legislation, international standards and best practices.

AML/CFT legislation and international standards require that the licensee conduct due diligence and assess the risk **prior** to establishing a business relationship with the customer.

Although the Commission recognizes the need to generate increased fees to Government, the means of doing so should be considered in light of the risks to the jurisdiction should it be considered non-compliant with international standards.

Moreover, non-compliance with international standards combined with the current international trend towards greater corporate transparency, for example in beneficial ownership, suggest that a continued overseas agent regime is unsustainable and that efforts more lucratively could be spent on expanding the online corporate information database, accessible for a fee, which would also address the increased demand for greater transparency.

4.0 Comments

Final comments are requested on the Commission's recommended approach. Comments may be sent directly to info@afsc.ai to the attention of Tina Bryan-Bannister, Deputy Director, Enforcement and AML/CFT Compliance by **23 September 2016**.

If you require any clarification or wish to discuss any aspect of the proposal prior to formulating a response, you may contact the Commission at the above-noted email address or by mail or telephone.

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The Commission and the Ministry of Finance will make the content of all responses available to the public for inspection unless specifically requested otherwise.
