



Fifth Follow-Up Report

Anguilla

May 29, 2014

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ANGUILLA: FIFTH FOLLOW-UP REPORT

I. Introduction

1. This report represents an analysis of Anguilla's report back to the CFATF Plenary concerning the progress that it has made with regard to correcting the deficiencies that were identified in its third round Mutual Evaluation Report. The third round Mutual Evaluation Report of Anguilla was adopted by the CFATF Council of Ministers in July 2010, using the Round Robin process. Based on the review of actions taken by Anguilla since its Mutual Evaluation to meet the outstanding recommendations made by the Examiners, The Bahamas Plenary decided that Anguilla would be placed in regular expedited follow-up and report back to Plenary in May 2014, at which time a determination would be made as to whether Anguilla would remain in regular expedited follow-up or be assigned to another category of follow-up reporting.
2. Anguilla received ratings of PC on five (5) of the sixteen (16) Core and Key Recommendations as follows:

| Rec. | 1 | 3 | 4 | 5 | 10 | 13 | 23 | 26 | 35 | 36 | 40 | I | II | III | IV | V |
|---------------|----------|----------|----------|----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|----------|-----------|------------|-----------|----------|
| Rating | LC | LC | LC | PC | LC | PC | PC | PC | LC | C | C | LC | LC | LC | PC | LC |

3. With regard to the other non - Core or Key Recommendations, Anguilla was rated partially compliant or non-compliant, as indicated below.

| Partially Compliant (PC) | Non-Compliant (NC) |
|--|--|
| R. 9 (Third parties and Introducers) | R. 20 (Other NFBP & secure transaction techniques) |
| R. 12 (DNFBPs – R. ,6,8-11) | SR. VIII (Non profit organisations) |
| R. 14 Protection & no Tipping-off | |
| R. 16 (DNFBP-R. 13-15 &21) | |
| R. 17 (Sanctions) | |
| R. 21 (Special attention for higher risk countries) | |
| R. 24 (DNFBP-regulation, supervision and monitoring) | |
| R. 25 (Guidelines and feedback) | |
| R. 29 (Supervisors) | |
| R. 30 (Resources) | |
| R. 32 (Statistics) | |
| SR. VI (AML requirements for MVTs) | |
| SR. VII (Wire transfer rules) | |
| SR. IX (Cross border declaration & disclosure) | |

4. The following table is intended to assist in providing an insight into the level of risk in the main financial sectors in Anguilla.

Size and integration of the jurisdiction's financial sector¹

¹ (1) Credit Institutions include the Anguilla Mortgage Finance Company (AMFC), the Anguilla Development Board (ADB) and the Telecommunications Employees Cooperative Credit Union (TECCU). AMFC and ADB are not

Figures as of 31 December 2013.

| | | Banks | Other Credit Institutions* | Securities | Insurance | TOTAL |
|-------------------------------|----------------------|-------|----------------------------|------------|-----------|----------|
| Number of institutions | Total # | 7 | 3 | 1 | 323 | 334 |
| Assets | US\$ | 1,380 | 18 | N/A | N/A | 1398M |
| Deposits | Total: US\$ | 1,055 | .11 | N/A | N/A | 1055.11M |
| | % Non-resident | 54% | 0 | N/A | N/A | 54% |
| International Links | % Foreign-owned: | 6% | 0 | N/A | N/A | 6% |
| | #Subsidiaries abroad | 0 | 0 | N/A | 3 | 3 |

II. Scope of the current report

- Based on the decision of the November 2013 Plenary, Member countries are required to meet their reform measures (comply with the recommendations made in their MERs) by November 2014. This report will therefore analyse Anguilla's, level of compliance with its outstanding Recommendations. In that regard, the report will look at Core and Key R. 5, 13, 23, 26 and SR. IV also R. 16, 20, 21, 25, 32 and SR. VI, VII and VIII, which are non-Core and Key Recommendations.

III. Summary of progress made by Anguilla since November 2013.

- Anguilla issued and gazetted the AML/CFT Code, 2013 in December 2013. With regard to R. 1, 2, 3, 4, 6, 7, 8, and 10 Anguilla has provided updates as follows: The implementation of R. 1 and 2 continues with eleven (11) ML charges pending for preliminary inquiry in the Magistrate's Court and thirteen (13) ML charges pending in the High Court. With regard to R. 3, the FIU was able to use the restraint and confiscation, civil recovery and cash forfeiture powers under the Proceeds of Crime Act, R.S.A c.P.98 (POCA 2009) to detain US\$685,000. With regard to the sharing of information (R. 4), Section 20 of the Financial Services Commission Act, R.S.A. c. F28 as amended by the Financial Services Commission (Amendment) Act 2013, ensures that there is no impediment to sharing information. With regard to R. 6, the Financial Services Commission (FSC) made a presentation to the externally and non-regulated service providers on December 11, 2013 and discussed enhanced due diligence procedures including domestic and foreign PEPs. On the issue of correspondent banking, the Authorities have advised that the requirements have been extended to other financial institutions that may engage in similar cross-border relationships. (Sections 41, 42 and 42A of the AML/CFT Code, 2013). R. 8 which was rated LC has now been fully met with the introduction of Guidelines in line with the Risk Management Principles for Electronic Banking. The Guidelines were approved by the FSC's Board of Directors on February 18, 2014 and subsequently sent for gazetting. With regard to R. 10, the Authorities have noted the enactment of the Administrative Penalties Regulations, 2013 (issued pursuant to section 47 of the Financial Services Commission Act, R.S.A. c. F28) and the Externally and Non-Regulated Service Providers (ENRSPs) Regulations 2013 (enabled under section 152F of the Proceeds of Crime Act, R.S.A. c. P. 98), which allows the FSC to impose sanctions against non-regulated and externally regulated service providers. It should be noted that the R. 10 was rated LC

regulated by the Commission. (2) The FSC is in the process of compiling a database to capture the insurance data. (3) Insurance includes 301 captive and foreign insurance companies administered through insurance managers.

and the issue pertained to the determination of effectiveness of the POCA at the time of the onsite evaluation.

7. On the issue of suspicious activity reports (SARs), Anguilla has noted that for the period July 13, 2013 to date, 69% of all SARs received by the FIU were categorized as unusual. The AML/ TF Code, at section 34(3) provides for timely access to CDD and other information to the MLCO and other appropriate employees. This measure addresses the Examiners' recommendation for R. 15, which was rated LC². With regard to R. 34, which was also rated LC, the Authorities have indicated that the alternative to the registration of trusts is contained in the AML/CFT Code 2013, which was gazetted on December 11, 2013. The measure requires the service provider to request additional information from the trustee, protector or enforcer of the trust when the service provider reasonably believes that additional information is required. Anguilla also provided an update with regard to SR. IX (which was previously fully complied with) noting that the Customs Cash Declaration forms are recorded electronically on the OTRICS database. Additionally, the Governor's office has agreed to purchase passport scanners and also scanners for customs/immigration forms. This will allow the Customs and Immigration Officers to match forms alongside passengers' names in the OTRICS database. The Authorities have also noted that in 2013, the AML/CFT Unit of the FSC conducted twenty-four (24) inspections and twelve (12) follow-up site inspections. In 2014, twenty-seven (27) inspections have been scheduled and five (5) have been conducted as of February 27, 2014. In relation to the extension of the Palermo Convention and the 1999 Terrorist Financing Convention to Anguilla, the Anguillan Authorities have noted that having received advice from Her Majesty's Government (HMG) in relation to the Conventions, that a letter will be sent during the first week of March 2014, to HMG indicating that Anguilla is now confident that adequate legislation is in place to meet the requirements that will allow formal extension of the Conventions to Anguilla. As noted in the previous report, the ratification will allow full compliance with R. 35 and SR. I.

Core Recommendations

Recommendation 5

8. Based on the previous analysis for R. 5 three of the Examiners' recommendations remained outstanding. The first pertained to the lack of an express prohibition of numbered accounts, which has been addressed by section 15 of the AML/TF (Amendment) Regulations. Section 15 specifically provides that 'a service provider shall not set up a numbered account, an anonymous account or an account in a name which it knows, or has reasonable grounds to suspect is fictitious.' The Examiners' recommendation has been met. The second outstanding recommendation deals with including private banking trusts that operate as personal asset holding companies and nominee arrangements as cases where enhanced due diligence should be recommended. This recommendation has been addressed at section 11A of the AML/TF Code, 2013, which specifically requires enhanced due diligence for the businesses and activities noted above. The Examiners' recommendation has therefore been met. The third outstanding recommendation deals with clarification of the legal framework for the application of administrative sanctions by the FSC as it relates to domestic banks. The Anguillan Authorities have addressed this recommendation through the enactment of the Administrative Penalties Regulations, 2013, which allows the FSC to impose sanctions for AML/CFT breaches against regulated service providers. Additionally, Schedule 4 to POCA and sections 9-16 of the Externally and Non-Regulated Service Providers Regulations, 2013 (ENRSP Regulations) permits the FSC to impose sanctions. The

² R. 15 remains at an LC level. There is still one recommendation that has not been addressed. (Adequately resourced audit function).

Examiners' recommendation has been met. Based on the aforementioned R. 5 has been fully complied with.

Recommendation 13 and SR. IV

9. With regard to the two outstanding recommendations that were made by the Examiners, the Authorities have indicated that the AML/TF Code, 2013 at section 29 requires service providers to implement internal controls that will require a report to be made with regard to attempted transactions and where business has been refused and there is a suspicion of money laundering or terrorist financing. This measure will address the issue of the MLRO making reports on attempted transactions and satisfies both R. 13 and SR.IV. Additionally, the recommendation that service providers be provided with specific guidance on dealing with breaches that involve tax matters has been addressed in the AML/TF Code after section 31 at (x) – 'Offences involving or relating to tax.' The relevant paragraphs note that there is no exception made in the application of AML/CFT measures for tax offences. Both outstanding recommendations for R. 13 have been met and R. 13 and SR. IV are now fully met.

Key Recommendations

Recommendations 23

10. The supervision of financial cooperatives for AML/CFT compliance has now been fully addressed with the onsite inspection of the sole financial cooperative being completed on January 28, 2014. Accordingly, R. 23 has been fully complied with.

Recommendation 26

11. The outstanding issues pertain to office space for the FIU and the number of staff. The Authorities have now indicated that the FIU moved into its new office space on April 11, 2014. This positive development addresses the Examiners' recommendation. As noted in the previous report, the current strength of the FIU is five (5) staff. While this is an improvement on the four (4) staff that comprised the FIU at the time of the Mutual Evaluation, based on a review of paragraph 271 of the MER it is clear that the Examiners expected a higher staff compliment than just one additional person. Accordingly, the Examiners' recommendation with regard to staffing is considered to be partially met. With regard to autonomy of the FIU which was previously complied with, Anguilla has indicated that the Commissioner of Police, the Chairman of the MLRA and the Head of the FIU have signed a new Memorandum of Understanding, which sets out and agrees on the separation and autonomy of the FIU. R. 26 has not achieved full compliance, but is substantially complied with.

Other Recommendations

Recommendations 12

12. As noted in the previous report there was substantially compliance with R. 12, with R. 5 issues being the outstanding matters. Since R. 5 has been fully complied with, the deficiencies noted for R. 12 have also been addressed. The previous report also noted that the supervision of DNFBPs had been addressed through the enactment of the ENRSP Regulations. Based on this legislation, there had been progress in the supervision of DNFBPs with presentations by the FSC and the FIU to the Externally and non-

Regulated Service Providers (ENSRPs) on December 11, 2013; the commencement of registration of ENSPs on January 1, 2014 and the scheduling of two onsite examinations for February 25 and 27, 2014 which were completed as scheduled. It should be noted however that the Authorities have indicated that on February 6, 2014, an application was made by legal practitioners seeking a stay of section 3 of the ENRSP Regulations claiming a breach of the Anguillan constitution. The legal challenge was relied in part upon a decision of the British Columbia Court of Appeal (being appealed to the Supreme Court of Canada).³ The stay applies to Barristers, Solicitors and Notaries Public. The matter will be heard by a Court in June 2014.

Recommendations 16

13. This Recommendation has been fully met, since as noted above the deficiencies (attempted transactions, guidance for breaches involving tax matters and penalties for relevant businesses) with R. 13 have been addressed.

Recommendation 20

14. The Examiners' recommendations remain not met. Anguilla has however taken steps towards complying. In that regard, a draft Investment Business Act and consultation paper was approved by the FSC's Board of Directors and circulated for comment on February 19, 2014. A policy paper to amend the AML/TF Regulations to include lotteries under AML/CFT supervision was approved by the Executive Council on February 13, 2014 and amendments to the AML/TF Regulations are currently being drafted. With regard to the Payment Systems Act, 2009, there is no indication that it has been implemented. The Anguillan Authorities have however importantly noted that the implementation of this Act is under the purview of the Eastern Caribbean Central Bank and outside the control of Anguilla.

Recommendation 21

15. Based on the detailed revisions to section 22 of the AML/CFT (Amendment) Regulations 2013 (specifically, the deletion of section 22 of AML/TF Regulations, R.R.A. P98-1 and the replacement with sections 22, 22A, 22B, 22C and 22D), the Examiners' recommendation has been met. Section 22 provides for the Commission to give Directions to financial businesses; the types of Directions that can be given; the procedures for giving Directions and granting exemptions and the offences. As noted previously, the FSC has issued an Advisory in response to the CFATF's most recent public statement regarding Belize and Guyana. Directions were recently issued to service providers concerning the Ukraine situation. (See. <http://www.fsc.org.ai/pubs.shtml>).

Recommendation 25

16. The Examiners' recommendation that sector specific guidance on ML and TF be placed in the Guidance Notes has been addressed by Anguilla through the inclusion of additional guidelines in the AML/TF Code, 2013. Guidelines specific to banks in accordance with Risk Management Principles for Electronic Banking and in relation to NPOs were approved by the FSC's of Directors on February 18,

³ Federation of Law Societies of Canada v. Canada (Attorney General) 2013 BCCA 147

2014 and published on the Commission's website. The recommendation requiring a review of the Financial Services Commission Act (FSCA) and the range of penalties was done with the enactment of the FSC (Amendment) Act, 2013. The FSC Administrative Penalties Regulations, as discussed above allows for the imposition of administrative penalties by the FSC. To date there is no indication that any penalties have been implemented and so the level to which they appear to be proportional and dissuasive is not clear. R. 25 has been substantially met.

Recommendation 30

17. The work of training and increasing resources continues and as expected there is continuous compliance with the Examiners' recommendations in this regard. More specifically, the Commonwealth Secretariat has sponsored a consultant who will join the FSC in to assist with the oversight and training of the insurance sector regulators. Officers from the FIU, the RAPF CID; the Anguilla Customs and Crown Counsel from the AG's Chambers received training on advanced financial investigation techniques, money laundering, criminal asset recovery and terrorist financing. The course facilitators were accredited by the UK National Crime Agency (NCA) and all attendees have been given access to the NCA's Financial Investigator's Support System (FISS) online database as part of ongoing learning and research. Based on the aforementioned, all of the Examiners' recommendations have been addressed to some degree with the exception of the recommended amendment of the POCA to make the institutional arrangements between the roles and functions of the policy-making MLRA and operational FIU clear, and training for Judges. There is substantial compliance with R. 30.

Recommendation 32

18. The collection and analysis of statistics on wire transfers, is the only outstanding recommendation. In that regard, the Anguillan Authorities have indicated that an Agreement has been obtained from all four (4) local banks that they will provide the MLRA via the FIU with quarterly statistics on incoming and outgoing wire transfers. The information will include originating and destination countries. Analysis of the statistics will be done by the FIU. The Examiners' recommendation has been met with regard to the collection of statistics on wire transfer. It is unclear whether the analysis of the statistics has been catered for. R. 32 has been substantially complied with.

Special Recommendations VI

19. The Authorities have indicated that at present all MSBs operating in Anguilla have been licensed and were subjected to fit and proper testing. (See. attached matrix for details). With regard to the outstanding recommendations, it has been noted that amendments to the Money Service Business Act to require licensees to maintain a list of agents and to comply with AML/CFT obligations were presented for a first reading in the House of Assembly on February 12, 2014. While this is significant progress, the Examiners' recommendations in that regard remain not met.

Special Recommendations VII

20. The Examiners' required Anguilla to have the AML/TF Code explicitly address the issue of payment chains and ensuring that each party in the payment chain is responsible for ensuring that full originator information is transmitted with the transfer. Part 9 of the revised AML/TF Code provides for wire transfers and requires that originator information be kept with the transfers. More specifically, sections 46-48 of the Code require amongst other things that the payer ensure that every transfer of funds is accompanied by full originator information; the payment service provider of the payer is also required to keep records of full originator information for a period of five (5) years; the payment service provider of

the payee has to ensure that effective procedures are in place for the detection of any missing or incomplete originator information and that where an intermediary payment service provider is involved, the intermediary should ensure that any information it receives on the payer that accompanies the transfer is kept with the transfer. The Examiners' recommendation has been met. On the matter of clarification of the supervision and sanction powers for domestic banks and their offshore subsidiaries, the referenced Section 9 of the AML/TF (Amendment) Regulations. Note should also be taken of the fact that section 5 of the POCA 2013 specifically allows the FSC to perform onsite AML/CFT inspections of domestic banks. Domestic banks fall within the definition of an Externally Registered Service Provider (ERSP) based on Schedule 3 of the AML/TF (Amendment) Regulations, 2013. The Schedule defines an ERSP as 'a person who holds a licence under the Banking Act or under Part 4 or Part 9 of the Securities Act. The ENRSP Regulations also require the registration of both ERSPs and Non-Regulated Service Providers (NRSPs). Penalties are applicable for failure to register or for providing false information. The domestic banks subsidiaries are currently supervised by the FSC captured under Schedule 1(b) of the AML/CFT Regulations. The Examiners' recommendation has been met. Accordingly, SR. VII has been fully met.

Special Recommendation VIII

21. As noted in the previous report, there is one outstanding recommendation for SR. VIII, which pertains to the finalization and implementation of the AML/TF Code for the NPO sector. The Authorities have indicated that the draft NPO Code was approved by the FSC's Board of Directors on February 18, 2014 and was then circulated for industry comment on February 26, 2014. The draft NPO Code is being finalized by the AG's Chambers. On the issue of NPO registration, fifteen (15) NPOs were registered during 2013 pursuant to the NPO Regulations, 2010.

III. Conclusion

22. Anguilla's level of compliance with the Core and Key Recommendations is as follows: Anguilla has achieved full compliance with regard to R. 5, 13, 23, and SR. IV, which were rated 'PC'. R. 26 while not fully compliant has been substantially complied with and is expected to attain full compliance shortly. With regard to the non-Core or Key Recommendations, there is now full compliance with R. 16, 20 and SR. VII. There is also substantial compliance with R. 25, 30, 32 and SR. VIII. However, SR. VI still has outstanding issues as discussed in the report.
23. Based on the legislative and implementation improvements made by Anguilla, it is anticipated that Anguilla can achieve a level of compliance that would equate to 'C' or 'LC' in the Recommendations that still have outstanding issues. Keeping in mind that the requirements to exit follow-up and enter biennial reporting for the third round are the equivalent of 'C' or 'LC' in all the Core and Key Recommendations and substantial compliance with the non-Core or Key Recommendations, it is therefore recommended that Anguilla remain on expedited follow-up with the expectation that based on its current level of progress it can satisfy compliance with R. 26, implement legislation, codes and guidelines that are already in the draft stage which will positively affect compliance with other Recommendations and thereby possibly make an application for exiting follow-up by the November 2014 Plenary.

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
Anguilla**

| FATF 40+9 | Rat -ing | Summary of Factors for Rating | Recommended Actions | Actions Undertaken by Anguilla to 28 February 2014 |
|----------------------|---------------------|--|--|---|
| Legal systems | | | | |
| 1. ML offense | LC | There have been no ML prosecutions under the POCA, thus effectiveness cannot be duly determined. | <ul style="list-style-type: none"> • The Anguillan Authorities should ensure that the relevant bodies engage in consistent and apposite training on the ML provision of the POCA with the aim of obtaining ML prosecutions and convictions. | <ul style="list-style-type: none"> • Since POCA was passed, 11 charges of money laundering have been laid in the Court. It is anticipated that 3 additional charges will be brought to Court in the near future. • Since the last Follow-Up Report, 16 money laundering charges have been filed before the courts in Anguilla, bringing the total to 27. Most of these cases have yet to come to trial; none has been dismissed. • ML conviction obtained on 18 April 2011. • 2 day workshop during the last week of March 2011 on implementation of the POCA, its investigative powers and measures for freezing, seizure, confiscation and prosecution of ML offences attended by 4 members of AG's Chambers and 4 members of the FIU. • 7 Oct. 2011: 2 ML convictions obtained • Since the last follow-up report, 9 new ML investigations have been undertaken. • 31 October to 9 December 2011: Representative of UK Crown Prosecution Services seconded to AG's Chambers for 6 weeks. Workshops conducted for prosecutors and law enforcement on all aspects of prosecuting ML offences, including restraint and confiscation. • There were eight (8) Money Laundering convictions obtained in February 2013 in the High Court. The defendant subsequently filed an appeal which is pending. |

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| | | | <ul style="list-style-type: none"> • There are five (5) Money Laundering charges pending High Court. Charges include converting criminal property and transferring of criminal property. • 13th –16th March 2013: Parliamentary/Crown Counsel at Attorney General’s Chambers and investigator at RAPF attended a workshop in Bermuda. Workshop for prosecutors and investigators on investigating and prosecuting complex transnational crimes (money laundering, corruption, asset recovery, cross border assistance, organised crime and cyber-crime). • There are 11 Money Laundering charges pending for preliminary inquiry in Magistrate’s Court and 13 Money Laundering pending in High Court. |
| 2. ML offense–mental element and corporate liability | LC | There have been no ML prosecutions under the POCA, thus effectiveness cannot be duly determined. | <ul style="list-style-type: none"> • ML conviction obtained on 18 April 2011. • Prosecution of 26 ML charges under POCA currently pending • 7 Oct. 2011: 2 ML convictions obtained. • Eight (8) Money Laundering convictions obtained in February 2013 in the High Court. The defendant subsequently filed an appeal which is pending. • There are 11 Money Laundering charges pending for preliminary inquiry in Magistrate’s Court and 13 Money Laundering pending in High Court. |
| 3. Confiscation and provisional measures | LC | There have been no confiscations, restraints and/or seizures under the POCA or the CFT legislation, thus effectiveness cannot be duly determined. | <ul style="list-style-type: none"> • The police/FIU should endeavour to make use of the restraint, confiscation and other measure in the POCA and the anti-terrorism legislation. • Since its passage in July 2009, the Reporting Authority, through the FIU, has made 31 requests under section 118(2)(b) for information supplementary to SARs, with full compliance from the institutions. • On the 18th of May, Anguilla received word from Denmark that a conviction had been obtained and a forfeiture order entered with regard to \$1.2 million USD currently frozen in Anguillan accounts. The necessary documentation has recently been received from Denmark and, when the Court reconvenes after |

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| | | | | <p>the summer holiday, the Danish Forfeiture Order will be enforced in Anguilla as an external order pursuant to Schedule 3 of the POCA.</p> <ul style="list-style-type: none"> • \$1.2MM successfully confiscated in December 2010 via enforcement of a foreign confiscation order pursuant to Schedule 3 of the POCA. • Using the restraint provisions of POCA, 5 Restraint Orders have been granted by Anguilla’s High Court. • Since the last Follow-Up Report, the Reporting Authority, through the FIU, has made 20 requests under POCA section 118(2)(b) for information supplementary to SARs, bringing the total to 51, with over 90% compliance from a wide variety of institutions. • 31 October to 9 December 2011: Representative of UK Crown Prosecution Services seconded to AG’s Chambers for 6 weeks. Workshops conducted for prosecutors and law enforcement on all aspects of prosecuting ML offences, including restraint and confiscation. • Since the last Follow-Up Report, 1 additional Restraint Order has been granted by Anguilla’s High Court using POCA’s restraint provisions of POCA. • Since the last Report, the FCIU has obtained 12 Production Orders under POCA section 136 for information relating to ML investigations. • In June 2012, the RAPF made a cash seizure in connection with the investigation of ML and the predicate offence. An order to extend the detention of the seized cash was made under POCA section 109. • Since the last follow up report the Reporting Authority, through the FIU, has made 44 requests under POCA section 118(2)(b) for information supplementary to SARs. This brings the total to 95, with over 97% compliance from the wide variety of institutions. • There is over US\$250,000.00 restrained in a local financial institution as a result of a Money Laundering investigation which commenced in 2012. There has been some action to proceed with a civil forfeiture case for the forfeiture of the restrained money. • Since the last follow up report the Reporting Authority, through the FIU, has made 164 requests under section 118(2)(b) of POCA for information supplementary to |
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|---|----|--|--|---|
| | | | | <p>SARs. There has been approximately a 98% compliance rate from the wide variety of institutions.</p> <ul style="list-style-type: none"> • Update on 19th Feb 2014. As a result of the use of Restraint & Confiscation, Civil Recovery and Cash Forfeiture powers under the Proceed of Crime Act 2009, the Anguilla FIU currently have cash and assets to the value of US\$685,000 frozen/restrained/detained. |
| Preventive measures | | | | |
| 4. Secrecy laws consistent with the Recommendations | LC | Information sharing by the FSC with foreign regulators could be subject to court override. | <ul style="list-style-type: none"> • The Anguillan Authorities should consider reviewing Section 20 of the FSC Act to ensure that there is no impediment to the sharing of information as contemplated by the FATF. | <ul style="list-style-type: none"> • Application of FSC Act s. 20 will be modified by the FSC (Amendment) Act, 2010, which the Authorities anticipate will be passed in the very near future. Specifically, a new section 20A provides, in pertinent part, as follows— <p>“Effect of application to set notice aside</p> <p>20A. (1) An application to the Court under section 20(7) does not relieve a person from compliance with the notice issued by the Commission.</p> <p>...</p> <p>(3)Where this subsection applies, notwithstanding section 24(3), the Commission shall not disclose to any other person any information provided, or documentation produced, to it in compliance with the notice to which the application or intended application relates—</p> <p>(a) unless required or permitted to do so by the Court, whether on the application of the Commission or otherwise; or</p> <p>(b) as permitted by subsection (4).</p> <p>(4)The Commission may disclose information or documentation to which subsection (3) relates if it has reasonable grounds for believing that the immediate disclosure of the information or documentation is necessary—</p> <p>(a) to protect and preserve assets, or the value of assets, that are in jeopardy; or</p> <p>(b) to assist in the prevention of the commission of an offence, whether in or outside Anguilla.</p> <p>...</p> |

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| | | | | <p>(8)Nothing in this section affects the disclosure of any information or documentation by the Commission prior to the receipt of a notice under subsection (2)(a) or the service of the application under subsection (2)(b).”</p> <p>In effect, a legal challenge does not relieve a person from compliance with the request. A person may still apply to the court to keep the FSC from further disclosing the information provided. However, the FSC may nevertheless immediately disclose the information if it has reasonable grounds for believing that the disclosure is necessary to assist in the prevention of the commission of an offence, whether that offence takes place within or outside Anguilla.</p> <ul style="list-style-type: none"> • Industry consultation process for the Bill for the FSC (Amendment) Act, 2011 has concluded. Amendments arising from consultation are being finalised and the Bill will be taken to Executive Council for approval and placement on the legislative agenda. • Since the last Follow-Up Report, two requests for information were made under Section 20 of the FSC Act, with full compliance from the institutions. • Amendments to the FSC (Amendment) Act, 2012 are being finalised • Since the last Follow-Up, 2 requests for information were made under section 20 of the FSC Act, one request was fully compiled with by the service provider and the other is currently being processed. • Industry consultation process for the FSC (Amendment) Act 2013 has concluded. Further amendments to the Bill are now finalised. • This Bill was taken to Executive Council on 22nd August 2013 and was approved by Executive Council with early release. The bill will be included on the Order Paper for House of Assembly and taken to Executive Council on 28th August 2013. • Since August 2012, three requests for information to assist foreign regulators were made under section 20 of the FSC Act with full compliance from the service providers. • Section 20 of the Financial Services Commission Act, R.S.A. F28 amended by the Financial Services |
|--|--|--|--|--|

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| | | | | <p>Commission (Amendment) Act 2013 ensured that there is no impediment to the sharing of information. The Financial Services Commission (Amendment) Act 2013 came into force on 25 September 2013.</p> |
| <p>5. Customer due diligence</p> | <p>PC</p> | <p>Effectiveness cannot be assessed due to the recent passage of the POCA, Regulations and the Code.</p> <p>The regime for the supervision of and sanction powers for domestic banks and their off-shore subsidiaries ambiguous.</p> <p>No requirement in the Regulations or Code that enhanced due diligence be applied to private banking, trusts that operate as personal holding vehicles and nominee arrangements.</p> | <ul style="list-style-type: none"> • The Regulations and Code should expressly prohibit numbered accounts or alternatively, specify how these should be treated. • Regulations and Code should include private banking, trusts that operate as personal asset holding vehicles and nominee arrangements as cases in which it is recommended that enhanced due diligence be applied. • For clarity, the Authorities should consider providing specific guidance as it relates to the application of reduced or simplified CDD measures, as a result of required risk assessment by service providers. • The Authorities should clarify the legal framework for the application of administrative sanctions by the FSC, as it relates to domestic banks. | <ul style="list-style-type: none"> • Amendment of AML/CFTR section 15 to add a definition of “anonymous account” that expressly includes numbered accounts is under consideration by the Authorities. The addition of such a definition would make it clear that numbered accounts are expressly prohibited. It is anticipated that drafting of an amending regulation will commence in the near future. • The FSC has prepared a paper addressing the need to resolve this matter, and other related issues, and circulated same to the ECCB and other countries who subscribe to the ECCB Agreement. • The matter of regulatory collaboration with ECCB/ECSRC/FSC had been afforded a confirmed place on the agenda of the ROC regional video conference scheduled for September 03, 2010. • Amendment of AML/CFTR section 12, relating to enhanced CDD measures and on-going monitoring is under consideration by the Authorities. It is anticipated that drafting of an amending regulation will commence in the near future. • Discussions were held with the FSC and ECCB on 3 September 2010, 3 December 2010 and 4 March 2011. It was agreed that responsibility for the AML/CFT oversight for domestic banks and their off-shore subsidiaries, including the ability to enforce sanctions for non-compliance, was to lie with the domestic jurisdiction. For Anguilla, this decision places the responsibility with the FSC. The Anguilla Authorities have requested an analysis of Anguilla’s legislative framework to ensure that the FSC has the necessary legal authority to meet this obligation. • A multilateral memorandum of understanding (MMOU) provides a framework for regulatory co-operation and direct, reciprocal, communication |

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| | | | | <p>between the ECCB, ECSRC and the domestic regulatory bodies. Anguilla is a signatory to this MMOU, which is now in force. Under the terms of this MMOU, information obtained in the course of an inspection by the ECCB or by the FSC may be shared directly with the other regulator.</p> <ul style="list-style-type: none"> • A consultant has been engaged to draft the necessary amendments to the AML/CFT Regulations and Code. • Correspondence dated 7 June 2012 from the Deputy Governor at the Eastern Caribbean Central Bank confirmed that the responsibility of the AML/CFT oversight for domestic banks and their offshore subsidiaries, as well as the authority to impose sanctions for AML/CFT breaches, lies with the domestic regulators. • A consultant has been engaged to draft amendments to the FSC Amendment Act 2012 to allow the FSC powers regarding enforcement action for domestic banks. • FSC (Administrative Penalties) Regulations, 2012 will expand and more fully articulate the FSC’s authority to impose sanctions for AML/CFT breaches. These regulations are being finalised with the legislative drafter to be taken to the Executive Council for signature. • Amendments to the AML/CFT Regulations and Code are being concluded and will be taken to Executive Council for approval and Gazetting. • With respect to numbered accounts, Anguilla will seek to amend regulate 15(2) to read as follows: “A service provider shall not set up or maintain a numbered account, an anonymous account or an account in a name which it knows, or has reasonable grounds to suspect, is fictitious.” • With respect to the private banking, trusts that operate as personal holding vehicles and nominee arrangements, Anguilla will seek to amend the Code to require a service provider to carry out enhanced due diligence in the examples of higher risk category customers provided in the Methodology • With respect to reduced or simplified CDD measures, the Board of the FSC considered the Assessor’s recommendation and determined that no action be taken in respect of that recommendation at this time. The Board noted that Anguilla’s regime of full due |
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| | | | | <p>diligence keeps Anguilla’s standards higher than international practice. The Board agreed that the higher standard is justified. The Board will reconsider the issue at a later date, after the new methodology is published and the Revised Standards are more fully understood.</p> <ul style="list-style-type: none"> • With respect to the private banking, trusts that operate as personal holding vehicles and nominee arrangements, Anguilla will seek to amend 11A of the AML/CFT (Amendment) Code to read as follows: “(1) Without limiting section 123 of the draft AML/CFT Regulations, a service provider shall apply enhanced due diligence measures and undertake enhanced ongoing monitoring where a customer, transaction or business relationship involves private banking, legal entities or arrangements, including trusts, that are personal asset holding vehicles and companies that have nominee shareholders or shares in bearer form.” • With respect to reduced or simplified CDD measures, guidance was set out in the AML/CFT (Amendment) Code which makes clear that section 14 of the AML/CFT (Amendment) Regulations sets out the only basis for simplified due diligence. • In addition to drafting amendments to the FSC Amendment Act 2013, the draft Externally and Non-Regulated Service Providers Regulations (“ENRSPs Regulations”) have been drafted to provide the FSC powers regarding enforcement action against the domestic banks. The industry consultation process for the draft ENRSPs Regulations has been concluded and the ENRSPs Regulations are to be taken to the Executive Council in August 2013. • The AML/CFT (Amendment) Regulations and Code has been finalised and approved by Executive Council in August 2013. • Section 15 of the AML/CFT Regulations, R.R.A. P98-1 amended by the AML/CFT (Amendment) Regulations 2013 addresses the recommended action in relation to numbered accounts. Section 15 of the AML/CFT Regulations therefore reads “A service provider shall not set up or maintain a numbered account, an anonymous account or an account in a name which it knows, or has reasonable grounds to suspect, is fictitious.” These Regulations came into force on 25 September 2013. |
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| | | | | <ul style="list-style-type: none"> • With respect to reduced or simplified CDD measures, the Board of the FSC considered the Assessor’s recommendation and determined that no action be taken in respect of that recommendation at this time. The Board noted that Anguilla’s regime of full due diligence keeps Anguilla’s standards higher than international practice. The Board agreed that the higher standard is justified. Further, amendments to the Guidance in the AML/CFT Code 2013 highlights the exceptions to the due diligence requirements in section 14 of the AML/CFT Regulations, R.R.A. P98-1. • Section 11A of the AML/CFT Code 2013 requires enhanced due diligence with respect to private banking, trusts that operate as personal holding vehicles and nominee arrangements. The AML/CFT Code was published in the Gazette (Volume 40, No. 20 - 11 December 2013) after consultation with the Governor. • The Administrative Penalties Regulations, 2013 came into force on 25 September 2013. These Regulations allows the FSC to impose sanctions for AML/CFT breaches against regulated service providers. • Schedule 4 to POCA and sections 9-16 of the Externally and Non-Regulated Service Providers Regulations, 2013 allow the FSC to impose sanctions against non-regulated and externally regulated service providers. These Regulations came into force on 25 September 2013. |
| <p>6. Politically exposed persons</p> | <p>LC</p> | <p>Effectiveness of implementation cannot be assessed given the recent passage of the Regulations and Code compounded by the limited human resource capacity both in the FSC and at most service providers in this area.</p> | <ul style="list-style-type: none"> • The Anguillan Authorities should consider including domestic PEPs in the AML/CFT framework. • The Anguillan Authorities should consider having the UK extend the United Nations Convention against Corruption to their jurisdiction. | <ul style="list-style-type: none"> • In April 2011, Executive Council agreed in principle to the extension of the United Nations Convention against Corruption to Anguilla and requested a legislative analysis to ascertain the changes necessary to implement the Convention. • The FIU has made 4 presentations to stakeholders, including financial institutions and NPOs, regarding PEPs (domestic and foreign) and the need to implement enhanced CDD when dealing with such persons. • An AML/CFT Seminar was held on 13 and 14 June 2011 in which the FSC, FIU and the Attorney General Chambers made presentations to industry detailing |

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| | | | | <p>procedures for enhanced due diligence including politically exposed persons.</p> <ul style="list-style-type: none"> • Anguilla Authorities have considered including domestic PEPs in the AML/CFT framework and the necessary amendments to the AML/CFT Regulations have been drafted and approved by the Board of the FSC. • The FIU has made 4 presentations to stakeholders, including financial institutions, Money Service Businesses, NPOs and the general sector regarding the functions of the FIU, the reporting requirements, enhanced due diligence, PEPs both foreign and domestics, emerging ML/TF trends within Anguilla and the world. • The FIU has made three (3) presentations to two (2) financial institutions and the two registered money service businesses which covered the following topics: Terrorist Financing and Money Laundering Prevention – The Role of Financial Institutions, The Money Services Business – Identifying the Links to Crime, Taking Action Against Money Laundering and Terrorist Financing, PEPs both foreign and domestics, emerging ML/TF trends within Anguilla and the world. • The FIU also conducted two (2) presentations at Seminars held by Anguilla Financial Services Commission which was geared towards all sector participants. The areas covered were Tackling Something Suspicious – When to Make a Suspicious Activity Report and; Obligations under Proceed of Crime Act. • In relation to the inclusion of domestic PEPS in the AML/CFT framework, the AML/CFT (Amendment) Regulations section 5(3) and sections 12 & 12A have been amended to distinguish between foreign and domestic PEPS and persons entrusted with prominent functions by an international organisation. • The AML/CFT (Amendment) Regulations have been finalised and were approved by the Executive Council in August 2013. • The FSC made three presentations (20 March, 10 May and 12 June 2013) to service providers and discussed |
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| | | | | <p>enhanced due diligence procedures which included both domestic and foreign PEPS.</p> <ul style="list-style-type: none"> • Substitution of section 5 of the AML/CFT Regulations, R.R.A. P98-1 as amended by AML/CFT (Amendment) Regulations, 2013 and section 12 and 12A of the AML/CFT Code 2013 allows for the inclusion of domestic PEPS. These Regulations came into force on 25 September 2013. The AML/CFT Code was published in the Gazette (Volume 40, No. 20 - 11 December 2013) after consultation with the Governor. • The FSC and FIU made a presentation to the externally and non-regulated service providers on 11 December 2013 and discussed enhanced due diligence procedures including domestic and foreign PEPs. |
| 7. Correspondent banking | LC | <p>Effectiveness of implementation cannot be assessed given the recent passage of the Code, however the risk as it relates to cross-border correspondent banking in the jurisdiction is low.</p> <p>Cross-border correspondent banking requirements do not extend to other financial institutions that may engage in similar cross-border relationships.</p> | <ul style="list-style-type: none"> • The Anguillan Authorities should consider extending the requirements with regard to cross-border correspondent banking to other financial institutions that may engage in similar cross-border relationships. | <p>Anguilla Authorities have considered the Assessor’s recommendation and, based on the low level of risk, determined that no action was necessary at this time.</p> <ul style="list-style-type: none"> • Amendments have been made to the section 42A of the AML/CFT (Amendment) Code to extend the requirements with regard to cross-border correspondent banking to other financial institutions as follows: “Sections 41 and 42 also apply to a financial business that— <p>(a) undertakes securities transactions or funds transfers on a cross-border basis;</p> <p>(b) provides finance to facilitate international trade.”</p> <p>The amendment was approved by Executive Council with early release to be taken to House of Assembly.</p> <ul style="list-style-type: none"> • Section 41, 42 and 42A of the AML/CFT Code 2013 extend the requirements to cross border correspondent banking to other financial institutions. The AML/CFT Code was published in the Gazette (Volume 40, No. 20 - 11 December 2013) after consultation with the Governor. |
| 8. New technologies & non face-to-face business | LC | <p>Effectiveness cannot be assessed due to the recent passage of the POCA, Regulations and the Code.</p> | <ul style="list-style-type: none"> • The Regulations and or Code should provide for specific guidance (in line with Basel paper on Risk Management Principles for Electronic Banking) on measures to be applied in the delivery of electronic services to effectively mitigate the risk of ML/TF through this delivery channel. | <ul style="list-style-type: none"> • Sector specific guidance is under consideration by the Authorities. • Guidelines in line with the Risk Management Principles for Electronic Banking were presented for approval to the FSC’s Board of Directors on 18 |

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| | | | | <p>February 2014 and forwarded for publication in the Gazette and on FSC's website. See link -</p> <p>http://www.fsc.org.ai/PDF/Guidelines%20Risk%20Management%20of%20Electronic%20Banking_02%202014.pdf</p> |
| 9. Third parties and introducers | PC | <p>Effectiveness cannot be assessed due to the recent passage of the POCA, Regulations and Code.</p> <p>No requirement for financial institutions to immediately obtain necessary information on the elements of the CDD process in criteria 5.3 to 5.6.</p> <p>High level of inherent risks presented by an introducer chain.</p> | <ul style="list-style-type: none"> The Anguillan Authorities should amend the Code or Regulations to require financial institutions to immediately obtain CDD information (E.C. 5.3 to 5.6) from Introducers. The Anguillan Authorities should consider amending the Regulations or Code to include the requirement that a service provider accept introduced business solely from an introducer or intermediary who itself has face to face contact when completing CDD measures on which the service provider rely. | <ul style="list-style-type: none"> Amendment of AML/CFTC section 26(1)(e), relating to information to be obtained where the service provider intends to rely on an intermediary, is under consideration by the Authorities. It is anticipated that drafting of the recommended amendments to the AML/CFTC will commence in the near future. A consultant has been engaged to draft the necessary amendments to the AML/CFT Regulations and Code. This amendment, or an amendment to this effect, remains under consideration by Authorities. Anguilla Authorities have considered the Assessor's recommendation regarding a requirement that service providers accept business solely from an introducer or intermediary who itself has face to face contact and determined that no action should be taken. In relation to financial institutions immediately obtaining CDD information, section 13(2A) of the AML/CFT (Amendment) Regulations provides that "Where a service provider relies on an introducer or an intermediary to apply customer due diligence measures in respect of a customer, third party or beneficial owner, the service provider shall immediately obtain from the introducer or intermediary, the customer due diligence information concerning the customer, third party or beneficial owner." The AML/CFT (Amendment) Regulations have been finalised and will be taken to Executive Council in August 2013. Section 13(2A) of the AML/CFT Regulations, R.R.A. P98-1 was amended by AML/CFT (Amendment) Regulations 2013 to require financial institutions to immediately obtain CDD information from Introducers. The AML/CFT (Amendment) Regulations 2013 came into force on 25 September 2013. |

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| 10. Record keeping | LC | Effectiveness cannot be assessed due to recent passage of the POCA, Regulations and Code. | | <ul style="list-style-type: none"> • All service providers inspected to date (21 as of 31 July) have demonstrated full compliance with AML/CFT record keeping requirements. • With the enactment of the draft FSC (Administrative Penalties), which are to be taken to the Executive Council in August 2013, any service provider failing to demonstrate full compliance will be subject to penalties. • The Administrative Penalties Regulations, 2013 came into force on 25 September 2013. • The Externally and Non-Regulated Service Providers Regulations, 2013, which allow the FSC to impose sanctions against non-regulated and externally regulated service providers, came into force on 25 September 2013. |
| 11. Unusual transactions | LC | Effectiveness cannot be assessed due to recent passage of the POCA, Regulations and Code. | | <ul style="list-style-type: none"> • During 2011, 60% of all SARs received by the Financial Intelligence Unit were categorised as unusual transactions. In 2012, as of July, 51% were categorised as unusual transactions. • As of January 2013 to July 2013 the Financial Intelligence Unit received 54 Suspicious Activities Reports which is categorised as unusual transactions. This is represented as approximately 65% of total submissions. • During July 2013 to date, 69% of all SARs received by the Financial Intelligence Unit were catergorized as unusual transactions. |
| 12. DNFBP–R.5, 6, 8-11 | PC | <p>Due to the recent enactment of the AML & CFT Code, effective implementation of AML/CFT measures as they relate to all DNFBPs cannot be assessed.</p> <p>Deficiencies noted in Recs, 5, 6, 8-11, are also applicable to DNFBPs</p> | <ul style="list-style-type: none"> • Deficiencies identified for all regulated businesses as noted for Recommendations 5, 6, 8-11 in the relevant sections of this report are also applicable to DNFBPs • The outreach and training for DNFBPs, especially those which were not previously licensed by the FSC should be enhanced. • Supervision of the entire DNFBP sector should commence without delay. | <ul style="list-style-type: none"> • An AML/CFT and Legal Services Unit has been established within the FSC. Responsibilities include implementation of a regulatory regime for NPOs and DNFBPs. • Regulations specific to DNFBPs are in the final stages of the drafting process. Authorities anticipate they will come into effect in the very near future. • The FSC has developed an outreach plan for DNFBPs, including a series of handshake visits by the Commission, a formal training programme jointly |

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| | | | | <p>conducted with the FIU, and a brochure for DNFBPs will be posted to the FSC website. This plan will be implemented immediately on the coming into force of the DNFBP Regulations.</p> <ul style="list-style-type: none"> • Industry consultation process for the Non-Regulated Service Providers (Registration) Regulations, 2011 concluded. Amendments arising from consultation are being finalised and the Regulations will be taken to Executive Council for approval and Gazetting. • Additional amendments to the Non-Regulated Service Providers Regulations necessary to incorporate supervision of entities licensed by the ECCB and ECSRC have been drafted. Externally Regulated and Non-Regulated Service Providers Regulations under review by Anguilla Authorities. • Industry consultation on the draft ENRSP Regulations has been concluded. The ENRSP Regulations are to be taken to Executive Council in August 2013. • The Externally and Non-Regulated Service Providers (ENRSPs) Regulations 2013 came into force on 25 September 2013. • Presentations by FSC and FIU were made to the ENRSPs on 11 December 2013 which included obligations under the AML/CFT legislation. • Registration of the ENRSPs commenced on 1 January 2014 with two site inspections scheduled for 25 and 27 February 2014. • On 6 February 2014, a Consent Order was signed staying section 3 of the Externally and Non-Regulated Service Providers Regulations, 2013, section 152E of the Proceeds of Crime Act, R.S.A. c. P98, section 1(f) of Schedule 2 of the Anti-Money Laundering and Terrorist Financing Regulations, R.S.A. c. P98-1 as it applies to Barristers, Solicitors and Notaries Public. This matter is to be heard in June 2014. |
| <p>13. Suspicious transaction reporting</p> | <p>PC</p> | <p>No explicit requirement to include attempted transaction in SARs.</p> <p>Issues regarding the effective implementation of sanctions.</p> | <ul style="list-style-type: none"> • The Regulations or Code should be amended to make mandatory the requirement for the MLRO of a service provider to make a report to the Reporting Authority with regard to attempted transactions. | <ul style="list-style-type: none"> • Amendment of AML/CFT section 30 to add a provision removing the MLRO's discretion in the event of an attempted transaction is under consideration by the Authorities. Such a provision would make it clear that the MLRO is required to report all attempted transactions, regardless of the amount, to the Reporting Authority. It is anticipated |

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| | | | <ul style="list-style-type: none"> • The Authorities should clarify the legal framework for the application of administrative sanctions by the FSC, as it relates to domestic banks. • Service providers should be provided with specific guidance as to how to treat with breaches that involve tax matters. | <p>that drafting of the recommended amendments to the AML/CFTC will commence in the near future.</p> <ul style="list-style-type: none"> • The FSC has prepared a paper addressing the need to resolve this matter, and other related issues, and circulated same to the ECCB and other countries who subscribe to the ECCB Agreement. • The matter of regulatory collaboration with ECCB/ECSRC/FSC had been afforded a confirmed place on the agenda of the ROC regional video conference scheduled for September 03, 2010. • A consultant has been engaged to draft the necessary amendments to the AML/CFT Regulations and Code. • Discussions were held with the FSC and ECCB on 3 September 2010, 3 December 2010 and 4 March 2011. It was agreed that responsibility for the AML/CFT oversight for domestic banks and their off-shore subsidiaries, including the ability to enforce sanctions for non-compliance, was to lie with the domestic jurisdiction. For Anguilla, this decision places the responsibility with the FSC. The Anguilla Authorities have requested an analysis of Anguilla’s legislative framework to ensure that the FSC has the necessary legal authority to meet this obligation. • Correspondence dated 7 June 2012 from the Deputy Governor at the ECCB confirmed that the responsibility of the AML/CFT oversight for domestic banks and their offshore subsidiaries as well as the issuing of sanctions for AML/CFT breaches lies with the national regulators. The national regulator in this instance is the FSC. Additional amendments to the Non-Regulated Service Providers Regulations necessary to incorporate supervision of entities licensed by the ECCB and ECSRC have been drafted. Externally Regulated and Non-Regulated Service Providers Regulations under review by Anguilla Authorities. • Amendments to the AML/CFT Regulations and Code necessary to implement the Assessor’s recommendation are being finalised. • Amendments to the Code to include guidance concerning the requirement to report tax offences are included in the draft amendments to the AML/CFT Code, which are currently being finalised. New paragraphs (x) to (xii) have been added to the Guidance Notes following AML/CFT Code section 31 |
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| | | | | <p>(reports to Reporting Authority) and spell out specifically that reporting requirements apply to predicate offences that are tax offences or that may involve or relate to tax matters.</p> <ul style="list-style-type: none"> • Industry consultation has been concluded. The AML/CFT (Amendment) Regulations and Code reflecting the Assessor’s recommendations have been finalised and will be taken to Executive Council in August 2013. • Draft ENRSP Regulations allow the Commission to supervise the domestic banks for AML/CFT compliance and to impose sanctions. The draft ENRSP Regulations have been finalised and are to be taken to the Executive Council in August 2013. • Section 29 of the AML/CFT Code 2013 requires MLROs to make a report to the Reporting Authority regarding attempted transactions. • Guidance concerning the requirement to report tax offences are listed after section 31 at (x) in the AML/CFT Code 2013. The AML/CFT Code 2013 was published in the Gazette (Volume 40, No. 20 - 11 December 2013) after consultation with the Governor. • The ENRSP Regulations 2013 allows the FSC to supervise domestic banks for AML/CFT purposes and to impose sanctions. These regulations came into force on 25 September 2013. |
| <p>14. Protection & no tipping-off</p> | <p>PC</p> | <p>Tipping-off offence not applicable to SARs that are being reported to the FIU.</p> <p>No explicit protection for financial institutions, their directors and employees from criminal or civil liability for breach of contract etc. for reporting suspicious transactions.</p> | <ul style="list-style-type: none"> • The relevant legislation should be amended so that the offence of tipping-off is applicable where a SAR is being reported. • The relevant legislation should be amended to make explicit the protection provided to financial institutions, their directors and employees from criminal or civil liability for breach of any restriction on disclosure of information, breach of contract etc. for reporting their suspicion in good faith. | <ul style="list-style-type: none"> • Amendment of the POCA section 131(2)(a) is under consideration by the Authorities. Such an amendment would adjust the verb tense so that a disclosure in the process of being made, as opposed to one that has been made, would be captured as well. It is anticipated that drafting of the recommended amendments to the POCA will commence upon resolution of the issues arising from the relationship between the FSC and the ECCB/ECSRC. • A consultant has been engaged to draft the necessary amendments to the AML/CFT Regulations and Code. • Amendments to POCA necessary to implement the Assessor’s recommendation with respect to tipping off, and protection provided to financial institutions, their directors and employee are being finalised. • Industry consultation has been concluded; Amendments to the Proceeds of Crime Act 2013 |

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| | | | | <p>reflecting the Assessor’s recommendations have been finalised and approved by Executive Council in August 2013.</p> <ul style="list-style-type: none"> • Section 131A of the Proceeds of Crime Act, R.S.A. P98 has been inserted by the Proceeds of Crime (Amendment) Act, 2013 so that the offence of tipping off is applicable where there are “relevant disclosures”. • Section 133 of the Proceeds of Crime Act, R.S.A. P98 has been amended by the Proceeds of Crime (Amendment) Act, 2013 to make explicit the protection offered to a service provider, director, officer or employee of a service provider from criminal or civil proceedings. The Proceeds of Crime (Amendment) Act came into force on 25 September 2013. |
| <p>15. Internal controls, compliance & audit</p> | <p>LC</p> | <p>No requirement to maintain an adequately resourced and independent audit function to test AML/CFT compliance.</p> <p>No provision for other appropriate staff to have timely access to customer identification data and other CDD information.</p> | <ul style="list-style-type: none"> • The Regulations and or Code should be amended to include a requirement to maintain an adequately resourced, independent internal audit function to test compliance (including sample testing) with a service providers AML/CFT framework. • Appropriate staff other than the MLCO should have timely access to customer identification data and other CDD information. . | <ul style="list-style-type: none"> • AML/CFTR section 20 and AML/CFTC section 8 are under review to determine what amendments might be made to clarify the existing provisions that establish the requirement to maintain an adequately resourced, independent internal audit function to test compliance. • Amendment of AML/CFTC section 34, relating to the manner in which records are kept, is under consideration by the Authorities. It is anticipated that drafting of the recommended amendments to the AML/CFTC will commence in the near future. • A consultant has been engaged to draft the necessary amendments to the AML/CFT Regulations and Code. • The following amendments to the AML/CFT Regulations and Code are being finalised with the consultant— <ul style="list-style-type: none"> ◦ amendment to s. 5 of the Code to include a requirement that service providers maintain an audit function to test compliance with requisite procedures, policies and controls. ◦ amendment to s. 34 of the Code to require access to customer identification data and due diligence information to be provided to appropriate staff of the service provider. • Industry consultation has been concluded; AML/CFT (Amendment) Regulations and Code reflecting the |

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| | | | | <p>Assessor's recommendations have been finalised and are to be taken to the Executive Council in August 2013.</p> <ul style="list-style-type: none"> • Section 5 and 34 of the AML/CFT Code 2013 address the recommended actions. The AML/CFT Code was published in the Gazette (Volume 40, No. 20 - 11 December 2013) after consultation with the Governor. |
| 16. DNFBP-R.13-15 & 21 | PC | <p>Deficiencies identified for financial institutions for R13, R15 and R21 in sections 3.7.3, 3.8.3 and 3.6.3 of this Report are also applicable to DNFBPs.</p> <p>Due to the recent enactment of the Code, it is difficult to assess whether all DNFBPs have been filing STRs and SARs.</p> <p>DNFBPs are not required to file SARs on attempted suspicious transactions regardless of the amount of the transaction.</p> | <ul style="list-style-type: none"> • The AML & TF Code should be amended to include attempted transactions. • Other recommendations set out in section 3.7 of this Report as they relate to Recommendation 13 would also pertain to this section. | <ul style="list-style-type: none"> • Amendment of AML/CFT section 30 to add a provision removing the MLRO's discretion in the event of an attempted transaction is under consideration by the Authorities. Such a provision would make it clear that the MLRO is required to report all attempted transactions, regardless of the amount, to the Reporting Authority. It is anticipated that drafting of the recommended amendments to the AML/CFT will commence in the near future. • An AML/CFT and Legal Services Unit has been established within the FSC. Responsibilities include implementation of a regulatory regime for NPOs and DNFBPs. • Regulations specific to DNFBPs are in the final stages of the drafting process. Authorities anticipate they will come into effect in the very near future. • The FSC has developed an outreach plan for DNFBPs, including a series of handshake visits by the Commission, a formal training programme jointly conducted with the FIU, and a brochure for DNFBPs will be posted to the FSC website. This plan will be implemented immediately on the coming into force of the DNFBP Regulations. • By application of section 24(2)(c) of the AML/CFTR, the requirement for DNFBPs to file SARs on attempted suspicious transactions came into effect as of 1 November 2009. • A consultant has been engaged to draft the necessary amendments to the AML/CFT Regulations and Code. • Industry consultation process for the Non-Regulated Service Providers (Registration) Regulations, 2011 concluded. Amendments arising from consultation are being finalised and the Regulations will be taken to Executive Council for approval and Gazetting. |

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| | | | | <ul style="list-style-type: none"> • Amendments to the AML/CFT Regulations and Code necessary to implement the Assessor’s recommendation are being finalised. • Additional amendments to the Non-Regulated Service Providers Regulations necessary to incorporate supervision of entities licensed by the ECCB and ECSRC have been drafted. NRSP Regulations have been renamed as the Externally Regulated and Non-Regulated Service Providers Regulations and are currently being finalised by Anguilla Authorities. • Sections 28 & 29 of the AML/CFT (Amendment) Code has been amended to reflect the Assessor’s recommendation. Industry consultation has been concluded; AML/CFT (Amendment) Regulations and Code reflecting the Assessor’s recommendations have been finalised and were approved by Executive Council in August 2013. • The industry consultation process for the draft ENRSPs Regulations have been concluded and are to be taken to the Executive Council in August 2013. • Section 28 and 29 of the AML/CFT Code 2013 address the recommended action in relation to attempted transactions. The AML/CFT Code was published in the Gazette (Volume 40, No. 20 - 11 December 2013) after consultation with the Governor. • The ENRSP Regulations 2013 came into force on 25 September 2013. Registration commenced on 1 January 2014 with two site inspections scheduled for 25 and 27 February 2014 to determine compliance with the AML/CFT legislation. • Guidance concerning the requirement to report tax offences are listed after section 31 at (x) in the AML/CFT Code 2013. The AML/CFT Code 2013 was published in the Gazette (Volume 40, No. 20 - 11 December 2013) after consultation with the Governor. |
| 17. Sanctions | PC | The ECCB does not have the power to sanction for AML/CFT breaches. | <ul style="list-style-type: none"> • The Authorities should clarify the framework for the application of sanctions (including the levying of administrative fines on domestic banks and their | <ul style="list-style-type: none"> • The FSC has prepared a paper addressing the need to resolve this matter, and other related issues, and |

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| | | <p>System for levying administrative fines on domestic banks and their offshore banking subsidiaries for breaches of the POCA, Regulations and Code may be ineffective.</p> <p>The ECSRC does not have the power to sanction for AML/CFT breaches.</p> <p>The ECCB may only apply sanctions where breaches were discovered during an examination.</p> <p>The sanction powers available to the ECCB are not congruent to those available under the POCA framework for AML/CFT breaches.</p> <p>Applicable sanctions under the POCA and the Code are fairly new therefore effectiveness cannot be properly tested.</p> | <p>offshore banking subsidiaries), given that all AML/CFT supervisory and sanction powers are vested in the FSC, which has no delegation powers in this regard.</p> <ul style="list-style-type: none"> • The Banking Act should be amended so that ECCB could be granted the power to apply sanctions for AML/CFT breaches. • The Securities Act should be amended so that the ECSRC could be granted the power to apply sanctions for AML/CFT breaches. | <p>circulated same to the ECCB and other countries who subscribe to the ECCB Agreement.</p> <ul style="list-style-type: none"> • The matter of regulatory collaboration with ECCB/ECSRC/FSC had been afforded a confirmed place on the agenda of the ROC regional video conference scheduled for September 03, 2010. • Amendment of the Banking Act is addressed in the FSC's paper referred to above and will be considered by the parties. • Amendment of the Securities Act is addressed in the FSC's paper referred to above and will be considered by the parties. • Discussions were held with the FSC and ECCB on 3 September 2010, 3 December 2010 and 4 March 2011. It was agreed that responsibility for the AML/CFT oversight for domestic banks and their off-shore subsidiaries, including the ability to enforce sanctions for non-compliance, was to lie with the domestic jurisdiction. For Anguilla, this decision places the responsibility with the FSC. The Anguilla Authorities have requested an analysis of Anguilla's legislative framework to ensure that the FSC has the necessary legal authority to meet this obligation. • In the discussions noted above, amendments to the Banking Act and the Securities Act were considered. However, as these acts are harmonised throughout the region, it was determined that amending them was not a suitable solution. Instead, each regulatory authority was to determine their powers under the AML/CFT framework, or other relevant legislation, in their jurisdiction. As noted above, the Authorities have requested an analysis of Anguilla's legislative framework to ensure that the FSC has the necessary legal authority to meet its oversight responsibilities. • Correspondence dated 7 June 2012 from the Deputy Governor at the ECCB confirmed that the responsibility of the AML/CFT oversight for domestic banks and their offshore subsidiaries as well as the issuing of sanctions for AML/CFT breaches lies with the national regulators. The national regulator in this instance is the FSC. Additional amendments to the Non-Regulated Service Providers Regulations necessary to incorporate supervision of entities licensed by the ECCB and ECSRC have been drafted. Externally |
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| | | | | <p>Regulated and Non-Regulated Service Providers Regulations under review by Anguilla Authorities.</p> <ul style="list-style-type: none"> • The industry consultation process for the draft ENRSPs Regulations have been concluded and are to be taken to the Executive Council in August 2013. • The Externally and Non-Regulated Service Providers (ENRSP) Regulations 2013 allow for the supervision of service providers licensed by the Eastern Caribbean Central Bank and the Eastern Caribbean Securities Commission Exchange for AML/CFT purposes as well as administering sanctions. The ENRSP Regulations, 2013 came into force on 25 September 2013. |
| 18. Shell banks | C | This Recommendation has been fully observed. | The Anguillan Authorities should consider including an explicit prohibition of shell banks in the Regulations or Code. | Shell banks are explicitly prohibited in law by the Prohibition of Licensing of Shell Banks Regulations, 2009 (No. 26 of 2009); made by the Governor in Council on 24 September, and effective from 30 September, 2009. |
| 19. Other forms of reporting | C | This Recommendation is fully observed. | | |
| 20. Other NFBP & secure transaction techniques | NC | <p>The two institutions identified by the authorities as being at risk for AML/CFT are not subject to the requirements of Recommendations 5, 6, 8, 11, 13 – 15, 17 and 21.</p> <p>The Payment Systems Bill has not yet been implemented.</p> | <ul style="list-style-type: none"> • All institutions other than DNFBS and designated financial institutions, which pose a potential AML/CFT risk should be required to adhere to the FATF AML/CFT requirements. • Lotteries in particular should be subject to licensing and supervisory requirements. • The Payment Systems Bill should be implemented without delay. | <ul style="list-style-type: none"> • The internet platform for securities training has been informed by the FSC of the need to be licensed by the ECSRC without delay. • The Authorities are actively considering application of AML/CFT requirements to lotteries • ECSRC has indicated to the Anguilla FSC that they are working with internet platform for securities trading on the licensing application process. • On 7th March 2013, the Executive Council approved the drafting of legislation to regulate non-domestic investment business. The FSC has retained a Consultant to draft this legislation and the first tranche of deliverables are due end of September 2013. • The draft Investment Business Act and consultation paper was approved by the FSC's Board of Directors and circulated for comment on 19 February 2014. • A policy paper to amend the AML/CFT Regulations, R.R.A. P98-1 to include lotteries as a |

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| | | | | <p>means of capturing them for AML/CFT supervision was approved by Executive Council on 13 February 2014. Amendments to the AML/CFT Regulations are currently being drafted.</p> |
| <p>21. Special attention for higher risk countries</p> | <p>PC</p> | <p>Service providers only required to apply enhanced CDD and ongoing monitoring regarding dealings and transactions with countries with weak AML/CFT systems.</p> <p>Effectiveness cannot be assessed due to recent passage of the POCA, Regulations and Code.</p> | <ul style="list-style-type: none"> Regulation 22 should be amended to authorise the relevant authorities to require service providers to take appropriate actions or counter-measures for countries that do not apply or insufficiently apply the FATF Recommendations. The Anguillan Authorities should consider a wider range of counter-measures that should be taken against countries that fail to apply appropriate AML/CFT standards. | <ul style="list-style-type: none"> Amendment of AML/CFTR section 22 is under consideration by the Authorities. It is anticipated that drafting of the recommended amendments to the AML/CFTR will commence in the near future. Advisory issued by FSC in response to FATF statements re Iran and DPRK, as well as countries with weak AML/CFT systems. (See http://www.fsc.org.ai/PDF/Notice%20for%20Overseas%20Jurisdictions.pdf for copy of Notice) Advisory issued by FSC in response to most recent FATF statements regarding countries with weak AML/CFT systems. (See http://www.fsc.org.ai/PDF/PRESS%20RELEASE_FATF_1.2012.pdf for copy of Notice) The amendments necessary to meet the assessor's recommendation regarding section 22 of the AML/CFT Regulations have been drafted and are currently being finalised. The Anguillan Authorities have considered the range of counter-measures that may be taken against countries that fail to apply appropriate AML/CFT standards. Amendments to the AML/CFT Regulations have been drafted to include new provisions that set out a wider range of counter-measures and create offences for non-compliance. Advisory issued by FSC in response to most recent CFATF and FATF public statement regarding countries with strategic AML/CFT deficiencies. Item # 49 and 50. http://www.fsc.org.ai/pubs.shtml (See copy of Notice) Industry consultation has been concluded; AML/CFT (Amendment) Regulations and Code reflecting the Assessor's recommendations have been finalised and are to be taken to the Executive Council in August 2013. Section 22 of the AML/CFT (Amendment) Regulations 2013 deleted section 22 of the AML/CFT Regulations, R.R.A. P98-1 and |

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| | | | | <p>substituted sections 22, 22A, 22B and 22C to give directions by the FSC to financial businesses. Sections 22 to 22C state as follows:</p> <p>“Directions may be given by Commission to financial businesses</p> <p>22. (1) The Commission may give a direction of a type specified in section 22A to a financial business, financial businesses of a specified type or description of financial business or all financial businesses, in relation to transactions or business relationships with—</p> <ul style="list-style-type: none"> (a) the government of, or (b) any person or persons— <ul style="list-style-type: none"> (i) carrying on business in, or (ii) resident, incorporated, constituted or formed in, <p>a country in relation to which one or more of the conditions specified in subsection (2) applies.</p> <p>(2) The conditions referred to in subsection (1) are that—</p> <ul style="list-style-type: none"> (a) the FATF has advised that measures should be taken in relation to the country because of the risk that money laundering or terrorist financing is being carried on— <ul style="list-style-type: none"> (i) in the country, (ii) by the government of the country, or (iii) by persons resident in the country; or (b) the Commission reasonably believes that there is a risk that money laundering or terrorist financing is being carried on— |
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| | | | | <p>(i) in the country,</p> <p>(ii) by the government of the country, or</p> <p>(iii) by persons resident in the country;</p> <p>and that this poses a significant risk to the interests of Anguilla.</p> <p>(3) A direction—</p> <p>(a) shall be given in the manner specified in section 22B;</p> <p>(b) shall be proportionate having regard to the advice given by the FATF or, as the case may be, the risk referred to in paragraph (2)(b) or (c) to the interests of Anguilla; and</p> <p>(c) may make different provision in relation to different financial businesses, designated persons, circumstances or cases.</p> <p>(4) The Commission shall take appropriate measures to monitor the compliance of financial businesses with the requirements of any directions given.</p> <p>Types of directions that may be given</p> <p>22A.(1) A direction may require the financial business—</p> <p>(a) to undertake enhanced customer due diligence measures—</p> <p>(i) before entering into a transaction or business relationship with a designated person, and</p> |
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| | | | | <p>(ii)during a business relationship with such a person;</p> <p>(b) to undertake enhanced ongoing monitoring of any business relationship with a designated person;</p> <p>(c) to provide such information and documents as may be specified in the direction relating to transactions and business relationships with designated persons; or</p> <p>(d) not to enter into or continue to participate in—</p> <p>(i)a specified transaction or business relationship with a designated person, or</p> <p>(ii)any transaction or business relationship with a designated person.</p> <p>(2) A direction under paragraph (1)(c)—</p> <p>(a) shall specify how the direction is to be complied with, including—</p> <p>(i)the person to whom the information and documents are to be provided, and</p> <p>(ii)the period within which, or intervals at which, information and documents are to be provided; and</p> <p>(b) is not exercisable in relation to privileged material.</p> |
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| | | | | <p>(3) Where a direction includes requirements of a kind specified in paragraph (1)(d), the Commission may, either in the direction or by separate notice in writing, exempt acts specified in the direction or notice from the requirements.</p> <p>(4) An exemption may—</p> <ul style="list-style-type: none"> (a) be a general exemption or may apply to a particular financial business; (b) be subject to conditions; (c) have effect for the duration of the direction or be subject to an expiry date; and (d) be varied or revoked by the Commission at any time. <p>Procedures for giving directions and granting exemptions</p> <p>22B. (1) Where a direction is a general direction or an exemption is a general exemption, the Commission must publish the direction or exemption in such manner as it considers appropriate.</p> <p>(2) A general direction is subject to annulment by resolution of the House of Assembly.</p> <p>(3) Where a general direction or a general exemption is varied or ceases to have effect, whether on revocation or otherwise, the Commission must publish that fact in such manner as it considers appropriate.</p> <p>(4) Where the Commission gives a direction or grants an exemption to a particular financial business, the Commission must give written notice of the direction or the exemption to that financial business.</p> <p>(5) Where a direction or exemption referred to in subsection (4) is varied or ceases to have effect,</p> |
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| | | | <p>whether on revocation or otherwise, the Commission must give notice of that fact to the financial business.</p> <p>(6) A direction, whether a general direction or a direction to a particular financial business —</p> <ul style="list-style-type: none"> (a) may be varied or revoked by the Commission at any time; and (b) if not previously revoked, ceases to have effect at the end of one year from the date that it was first given. <p>Offences</p> <p>22C. (1) Subject to subsection (2), a financial business is guilty of an offence if the service provider—</p> <ul style="list-style-type: none"> (a) fails to comply with a direction; or (b) for the purpose of obtaining the grant of an exemption under section 22A(3)— <ul style="list-style-type: none"> (i) provides information that is false in a material respect or a document that is not what it purports to be, and (ii) knows that, or is reckless as to whether, the information is false or the document is not what it purports to be. <p>(2) A financial business does not commit an offence under paragraph (1)(a) if the financial business took all reasonable steps and exercised all due diligence to ensure that the direction would be complied with.</p> <p>(3) A financial business that is guilty of an offence under this section is liable—</p> |
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| | | | | <p>(a) in the case of a company or a partnership—</p> <p>(i) on summary conviction, to a fine of \$10,000, and</p> <p>(ii) on conviction on indictment, to a fine of \$50,000; and</p> <p>(b) in the case of any other person—</p> <p>(i) on summary conviction, to imprisonment for a term of 6 months or to a fine of \$10,000 or to both; or</p> <p>(ii) on conviction on indictment, to imprisonment for a term of 1 year or to a fine of \$50,000 or to both.”.</p> <p>The Amendments to the AML/CFT Regulations, 2013 came into force on 25 September 2013.</p> <ul style="list-style-type: none"> Advisory issued by FSC in response to most recent CFATF public statement regarding countries with strategic AML/CFT deficiencies, item 49 <p>http://www.fsc.org.ai/pubs.shtml</p> |
| 22. Foreign branches & subsidiaries | C | This Recommendation has been fully observed. | | |
| 23. Regulation, supervision and monitoring | PC | <p>Fit and Proper requirements do not currently apply to money service providers and credit unions</p> <p>Financial Co-operatives (Credit Unions) are not supervised for AML/CFT compliance.</p> | <ul style="list-style-type: none"> The POCA and its attendant Regulations should make clear the role of the ECCB as it relates to the supervision of AML/CFT implementation in domestic banks and other financial institutions licensed under the Banking Act. The Directors, Senior Managers and Shareholder controllers of Money Services Businesses and | <ul style="list-style-type: none"> The FSC has prepared a paper addressing the need to resolve this matter, and other related issues, and circulated same to the ECCB and other countries who subscribe to the ECCB Agreement. The matter of regulatory collaboration with ECCB/ECSRC/FSC had been afforded a confirmed place on the agenda of the ROC regional video conference scheduled for September 03, 2010. |

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| | | <p>Lack of legal jurisdiction by the ECCB to effectively supervise AML/CFT implementation in domestic banks and their offshore subsidiary banks.</p> <p>The ECSRC does not conduct onsite inspections of any kind on its licensees and lacks power to inspect and sanction for AML/CFT purposes.</p> <p>The ECCB cannot directly share information with the FSC on AML/CFT matters pertaining to licensees without an MOU.</p> <p>MSBs are not yet subject to a licensing regime.</p> | <p>Financial Co-operatives should be subject to a fit and proper test at the time of licensing.</p> <ul style="list-style-type: none"> Financial Co-operatives should be supervised for AML/CFT compliance. | <ul style="list-style-type: none"> Amendment of the POCA and its attendant Regulations is addressed in the FSC’s paper referred to above. Whether such an amendment is necessary and the extent of any such amendment will be dependent on the outcome of the decisions taken by the ECCB and other parties to the ECCB Agreement. Two of the four Money Services Businesses operating on Anguilla have become licensed under the MSB Act. As such, they were subjected to the fit and proper test. The FSC is actively working with the remaining companies to complete application process. Amendment of the Co-operative Societies Rules to impose fit and proper requirements on committee members and treasurers is under consideration by the Authorities. The Anguillan Authorities are considering a harmonized draft of new Co-operative Societies legislation. Such legislation would make Anguilla’s only co-operative society a “service provider” for the purposes of the AML/CFT legislation and would bring them under the supervision of the FSC for AML/CFT compliance. Discussions were held with the FSC and ECCB on 3 September 2010, 3 December 2010 and 4 March 2011. It was agreed that responsibility for the AML/CFT oversight for domestic banks and their off-shore subsidiaries, including the ability to enforce sanctions for non-compliance, was to lie with the domestic jurisdiction. For Anguilla, this decision places the responsibility with the FSC. The Anguilla Authorities have requested an analysis of Anguilla’s legislative framework to ensure that the FSC has the necessary legal authority to meet this obligation. As noted in the previous Follow-Up Report, 2 MSBs are licensed. The application of one of the remaining MSBs has been determined and the licence was not granted. MSB operations by that entity have been terminated. <p>The application for licensing of the last MSB is under consideration, with an AML/CFT onsite visit scheduled in the next week. It is anticipated that the application will be determined soon thereafter.</p> <ul style="list-style-type: none"> FSC provided AML/CFT training to the MSBs in May 2011. |
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| | | | <ul style="list-style-type: none"> • FSC along with the FIU provided several training sessions on AML/CFT training to financial institutions staff and board of directors in October and November 2010 and April 2011. • The Anguilla FSC has engaged the co-operative society in consultations. An on-site inspection is soon to be scheduled. • Correspondence dated 7 June 2012 from the Deputy Governor at the Eastern Caribbean Central Bank confirmed that the responsibility of the AML/CFT oversight for domestic banks and their offshore subsidiaries as well as the issuing of sanctions for AML/CFT breaches lies with the national regulators. The national regulator in this instance is the Financial Services Commission. Additional amendments to the Non-Regulated Service Providers Regulations necessary to incorporate supervision of entities licensed by the ECCB and ECSRC have been drafted. Externally Regulated and Non-Regulated Service Providers Regulations under review by Anguilla Authorities. • The applications of the four (4) Money Services Businesses have been determined with two MSBs granted licences, one (1) has been denied and one (1) has been recommended for denial. In the latter case, although the decision has not been finalised, the fit and proper test was applied in making the recommendation for denial. All MSBs operating in Anguilla are now licensed and were made subject to the fit and proper test. • Further consultations were held with the Executive of the co-operative society on 2 July 2012. • An AML/CFT Seminar was held with industry members on 13 and 14 June 2012. Presentations were made by the Chairman, Director and member of the FSC, FIU along with a feature address by the Attorney General. • The MSB Act sets out a “fit and proper” test in s. 5(5) of the MSB Act and, as “financial services enactment” under the Financial Services Enactments Regulations, MSBs are subject to the “fit and proper” guidelines adopted by the FSC under s. 49 of the FSC Act. Credit Unions are also subject to the FSC’s “fit and proper” guidelines, as the Co-operative Societies Act is also a “financial services enactment”. |
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| | | | | <ul style="list-style-type: none"> • On 2 November 2012, the Commission held an annual meeting with the Financial Services Industry in which the topic “Compliance in a Successful IFC” was discussed by several speakers. Further on 24 January 2013, the Commission discussed AML/CFT compliance with industry members. • The industry consultation process for the FSC (Amendment) Act 2013 and draft ENRSPs Regulations have been concluded. The legislation clarifies the role of the Commission as the supervisory authority of the domestic banks for AML/CFT compliance. The FSC (Amendment) Act 2013 has been approved by Executive Council and the ENRSP’s Regulations are to be taken to Executive Council in August 2013. • The domestic banks have commenced registration (1 January 2014) with the FSC in its role as AML/CFT supervisor in accordance with the ENRSP Regulations 2013. These regulations came into force on 25 September 2013. • An onsite inspection of the sole financial cooperative was conducted on 28 January 2014. |
| <p>24. DNFBP - regulation, supervision and monitoring</p> | <p>PC</p> | <p>Unable to assess effective implementation of the Code due to its recent enactment.</p> <p>DNFBPs which are not licensed by the FSC are not monitored for compliance with AML/CFT statutes.</p> <p>Resources available to the FSC are inadequate to allow for proper supervision of the DNFBP sector.</p> | <ul style="list-style-type: none"> • Training and outreach to the DNFBP sector should continue. | <ul style="list-style-type: none"> • An AML/CFT and Legal Services Unit has been established within the FSC. Responsibilities include implementation of regime for NPOs and DNFBPs. • Regulations specific to DNFBPs are in the final stages of the drafting process. Authorities anticipate they will come into effect in the very near future. • Once the DNFBP Regulations are in effect, the FSC will implement its outreach plan, including a series of handshake visits by the Commission, a formal training programme jointly conducted with the FIU, and a brochure for DNFBPs will be posted to the FSC website. • Industry consultation process for the Non-Regulated Service Providers (Registration) Regulations, 2011 concluded. Amendments arising from consultation are being finalised and the Regulations will be taken to Executive Council for approval and Gazetting. • The Financial Services Commission has, as of July 2011, further increased its capacity by filling the position of Deputy Director. |

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| | | | <ul style="list-style-type: none"> • Additional amendments to the Non-Regulated Service Providers Regulations necessary to incorporate supervision of entities licensed by the ECCB and ECSRC have been drafted. Externally Regulated and Non-Regulated Service Providers Regulations under review by Anguilla Authorities. • The FSC Board has approved the recruitment of a regulator for the AML/CFT unit specifically to assist with the supervision of the NRSPs and recruitment has begun. • Since the last Report, the FIU has made 4 presentations to stakeholders, including DNFBPs, regarding the functions of the FIU, the reporting requirements, enhanced due diligence, PEPs both foreign and domestics, emerging ML/TF trends within Anguilla and the world. • The FIU has made three (3) presentations to two (2) financial institutions and the two registered money service businesses which covered the following topics: Terrorist Financing and Money Laundering Prevention – The Role of Financial Institutions, The Money Services Business – Identifying the Links to Crime, Taking Action Against Money Laundering and Terrorist Financing, PEPs both foreign and domestics, emerging ML/TF trends within Anguilla and the world. • The FIU also conducted two (2) presentations at Seminars held by Anguilla Financial Services Commission which was geared towards all sector participants. The areas covered were "Tackling Something Suspicious – When to Make a Suspicious Activity Report" and "Obligations under Proceeds of Crime Act." • On 1 February 2013, the Commission hired a regulator for the AML/CFT Unit specifically to assist with the supervision of the Externally and Non-Regulated Service Providers (including the DNFBPs). • The industry consultation process for the draft ENRSPs Regulations have been concluded and are to be taken to the Executive Council in August 2013. • On 11 December 2013, the FSC and FIU made presentations to the ENRSPs (DNFBPs) concerning |
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| | | | | <p>their obligations under the AML/CFT legislation in particular the ENRSP Regulations 2013.</p> <ul style="list-style-type: none"> • Registration of the ENRSPs commenced in January 2014 with two inspections scheduled for 25 and 27 February 2014. |
| 25. Guidelines & Feedback | PC | <p>No general feedback given with regard to SARs statistics, current techniques, methods, typologies and trends.</p> <p>The Guidance Notes do not contain sector specific information.</p> <p>The effectiveness of the newly issued Guidance provided in the Code could not be assessed due to the recent passage of the Code.</p> <p>Unable to assess effective implementation of the Code due to its recent enactment.</p> | <ul style="list-style-type: none"> • Sector specific guidance on money laundering and terrorist financing should be placed in the Guidance Notes. • The review of the FSCA should commence as soon as possible and the range of sanctions available to the FSC be made more proportional and dissuasive. | <ul style="list-style-type: none"> • The FIU has published its Annual Report for 2009, which contains general feedback, including statistics and information on current techniques, methods and trends or typologies. • Review of the FSC Act has been completed and an Amending Act is in the final stages of the drafting process. It is anticipated that this Act will be passed in the very near future. • The FIU has published its Annual Report for 2010, which contains general feedback, including statistics and information on current techniques, methods and trends or typologies. • Industry consultation process for the Bill for the FSC (Amendment) Act, 2011 has concluded. Amendments arising from consultation are being finalised and the Bill will be taken to Executive Council for approval and placement on the legislative agenda. • Administrative Penalties Regulations made under the FSC Act are currently being drafted. • The FIU has published its Annual Report for 2011, which contains general feedback, including statistics and information on current techniques, methods and trends or typologies. The published annual report has been disseminated via Egmont Secure Web Portal and to the various to the sectors in Anguilla. • Amendments to the FSC (Amendment) Act, 2012 are being finalised. • The FIU has published its Annual Report for 2012 on 26/07/2013, which contains general feedback, including statistics and information on current techniques, methods and trends or typologies. The published annual report has been disseminated via Egmont Secure Web Portal and to the various to the sectors in Anguilla. • The 2012 Themed Findings of the AML/CFT inspections have been published on the Commission's |

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| | | | | <p>website which assessed the licensed service providers' compliance with the obligations under the AML/CFT legislation.</p> <ul style="list-style-type: none"> • Industry consultation process for the FSC (Amendment) Act 2013 and the draft FSC Administrative Penalties Regulations has been concluded. The FSC (Amendment) Act 2013 has been approved by Executive Council and the FSC Administrative Penalties Regulations will be taken to Executive Council in August 2013. • Additional guidance was added to the AML/CFT Code 2013. • Guidelines specific to banks in accordance with Risk Management Principles for Electronic Banking were approved by FSC's Board of Directors on 18 February 2014 and published on the Commission's website. See link below – http://www.fsc.org.ai/PDF/Guidelines%20Risk%20Management%20of%20Electronic%20Banking_02%202014.pdf • Guidelines in relation to NPO's were approved by FSC's Board of Directors on 18 February 2014. • The Administrative Penalties Regulations, 2013 are now in effect in relation to regulated service providers and the ENRSP Regulations to externally and non-regulated service providers. |
| Institutional and other measures | | | | |
| 26. The FIU | PC | <p>The FIU is not an autonomous body.</p> <p>Office space not sufficient at the FIU to adequately accommodate the staff.</p> <p>Amount of FIU staff not sufficient to allow inclusion of the DNFBSs in the regulatory regime.</p> | <ul style="list-style-type: none"> • The Anguillan Authorities should consider enacting separate legislation for the creation and functions of the FIU so as to alleviate the problem with autonomy. | <ul style="list-style-type: none"> • During the past year, the MLRA has actively considered many issues relevant to the administration and structure of the Financial Intelligence Unit. These issues include establishment of the Financial Intelligence Unit as an autonomous body and recruitment of additional personnel. • To date, the MLRA has approved— <ul style="list-style-type: none"> • rental of additional, secure, office space outside the RAPF headquarters |

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| | | <p>No fire resistant filing cabinets for the storage of the SARs.</p> | | <ul style="list-style-type: none"> • immediate recruitment of a financial analyst • establishment of an independent budget to cover training and other needs of the Financial Intelligence Unit • purchase of fire resistant filing cabinets for the storage of SARs • Administrative arrangements necessary to implement these decisions are currently underway. • In November 2011, Executive Council authorised the creation of a Financial Analyst position under the Governor’s Office budget, achieving the separation of intelligence and investigative functions in line with international standards. The Financial Analyst is now in situ. • In May 2012, the Government of Anguilla agreed to increase the police budget to pay the salary of an Inspector-Financial Crime • Executive Council noted that effective Financial Crime Investigation Unit, Financial Intelligence Unit and Financial Analysis Units will require increased financial resources from the Consolidated Fund in future financial years • Fire resistant file cabinets have been purchased and put into use • New office space for the FIU and the FCIU adjacent to the Royal Anguilla Police Force building is currently under construction. • On 27 September 2012, the MLRA considered enacting separate legislation regarding the FIU. The MLRA concluded that, at this time, there were not sufficient resources available to undertake separate legislation; however, it will reconsider the issue at a later date. • The position of Financial Analyst for the Financial Intelligence Unit has been filled since July 2012. • The position of Detective Inspector in charge of the Financial Intelligence Unit and the Financial Crimes Investigation Unit is expected to be filled by the end of August 2013. |
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| | | | | <ul style="list-style-type: none"> • New office space for both the Financial Intelligence Unit and the Financial Crimes Investigation Unit is expected to be occupied by the end of August 2013. • Budget for the Financial Intelligence unit was approved in January 2013. The budget is expected to cover the areas of training and operational requirements for both the Financial Intelligence Unit and the Financial Crimes Investigation Unit. Also it will provide the necessary furniture and fittings required for new office space. • The new Detective Inspector, Head of FIU has been in post since beginning of September 2013. • The Commissioner of Police, Chairman of the MLRA, and Head of FIU have signed a new revised Memorandum of Understanding; setting out and agreeing the separation and autonomy of the FIU. • The new purpose built offices for the FIU will be ready for occupation by May 2014. |
| 27. Law enforcement authorities | C | This Recommendation has been fully observed. | | |
| 28. Powers of competent authorities | C | This Recommendation has been fully observed. | | |
| 29. Supervisors | PC | <p>The FSC which is responsible for ensuring AML/CFT compliance does not monitor the domestic banking sector, which is the largest component of the financial sector in Anguilla.</p> <p>The ECCB which does conduct the onsite inspections (though it does not have the authority to do so), does not share the information directly with the FSC.</p> <p>The FSC does not ensure that recommendations for remedial action as set out in the ECCB's report are implemented.</p> | <ul style="list-style-type: none"> • The Banking Act should provide that the ECCB can examine licensees to ascertain compliance with other statutes that apply to these entities, especially where AML/CFT is concerned. • The Banking Act should be amended so that ECCB could be granted the power to apply sanctions for AML/CFT breaches. • The ECSRC should be expressly given the authority to supervise its licensees for AML/CFT. • The MSB Act should be implemented without delay. | <ul style="list-style-type: none"> • The FSC has prepared a paper addressing the need to resolve this matter, and other related issues, and circulated same to the ECCB and other countries who subscribe to the ECCB Agreement. • The matter of regulatory collaboration with ECCB/ECSRC/FSC had been afforded a confirmed place on the agenda of the ROC regional video conference scheduled for September 03, 2010. • Amendment of the Banking Act is addressed in the FSC's paper referred to above and will be considered by the parties. • Amendment of the Securities Act is addressed in the FSC's paper referred to above and will be considered by the parties. |

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| | | <p>The ECCB has no legal authority to conduct onsite AML/CFT inspections.</p> <p>The ECSRC has no authority to conduct onsite AML/CFT inspections.</p> | | <ul style="list-style-type: none"> • Two of the four Money Services Businesses operating on Anguilla have become licensed under the MSB Act. The FSC is actively working with the remaining companies to complete application process. • Discussions were held with the FSC and ECCB on 3 September 2010, 3 December 2010, 4 March 2011. It was agreed that responsibility for the AML/CFT oversight for domestic banks and their off-shore subsidiaries, including the ability to enforce sanctions for non-compliance, was to lie with the domestic jurisdiction. For Anguilla, this decision places the responsibility with the FSC. The Anguilla Authorities have requested an analysis of Anguilla’s legislative framework to ensure that the FSC has the necessary legal authority to meet this obligation. • The AML/CFT Department of the FSC has scheduled 11 AML/CFT compliance visits to be conducted from July 2011 to October 2011. As of 1 September, 6 of the 11 have been completed. • Correspondence dated 7 June 2012 from the Deputy Governor at the Eastern Caribbean Central Bank confirmed that the responsibility of the AML/CFT oversight for domestic banks and their offshore subsidiaries as well as the issuing of sanctions for AML/CFT breaches lies with the national regulators. The national regulator in this instance is the Financial Services Commission. Additional amendments to the Non-Regulated Service Providers Regulations necessary to incorporate supervision of entities licensed by the ECCB and ECSRC have been drafted. Externally Regulated and Non-Regulated Service Providers Regulations under review by Anguilla Authorities. • The AML/CFT Unit of the FSC has scheduled 17 AML/CFT compliance visits to be conducted from March to November 2012. As of 31 July 2012, 10 AML/CFT visits were been completed. • The MSB Act has been implemented and all MSBs operating in Anguilla are now licensed and supervised for AML/CFT compliance. Please see discussion at R.23 • The AML/CFT Unit of the Commission has scheduled 25 AML/CFT compliance inspections to be conducted |
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| | | | | <p>from February to October 2013. As of 31 July 2013, 15 inspections have been completed.</p> <ul style="list-style-type: none"> • The industry consultation process for draft ENRSPs Regulations has been concluded. The Regulations clarify the role of the Commission as the supervisory authority of the domestic banks for AML/CFT compliance. The regulations are to be taken to the Executive Council in August 2013. • The ENRSP Regulations 2013 came into force on 25 September 2013. These enable the FSC to supervise domestic Banks and licensees under the Securities Act for AML/CFT compliance and to impose administrative and other sanctions against them. • In 2013, the AML/CFT Unit of the FSC conducted 24 site inspections and 12 follow-up site inspections. In 2014, there are 27 scheduled site inspections of which five site inspections were conducted as of 27 February 2014. |
| <p>30. Resources, integrity and training</p> | <p>PC</p> | <p>Insufficient training for Customs in cross-border issues and financial investigations.</p> <p>Insufficient office space for the FIU.</p> <p>Lack of sufficient staff to properly review additional sectors.</p> <p>SARs not maintained in fire resistant filing cabinets.</p> <p>Insufficient training in AML/CFT for prosecutors and the Judiciary.</p> <p>Insufficient staff at the FSC, given the number of financial institutions to be supervised.</p> | <ul style="list-style-type: none"> • Customs should be provided more training in cross – border issues, and financial investigations, and asset forfeiture. • The FIU should expand its offices to accommodate the current staff and any future increases in staff. • Anguilla should obtain additional staff at the FIU to prepare for the inclusion of the DNFBPs in the regulations and such staff should include a dedicated legal advisor. • The FIU should be provided with fire resistant filing cabinets for the storage of their SARs. • The staff of the FIU should be provided with training in advanced financial investigations, civil and criminal forfeiture provisions and terrorist financing. • The Anguillan Authorities should provide prosecutors and Judges with training in financial investigations, civil/criminal forfeiture, ML/TF. • The Anguillan Authorities should consider amending the POCA to make clear the institutional arrangements between, and the roles and functions of, the policy making MLRA and the operational FIU. | <ul style="list-style-type: none"> • Customs officers (including Deputy Comptroller) received training in recognition of cash connected with drug cartels on 21 July 2010. • All Customs officers received training in risk assessment during the week of 17 August and the first week of September 2010. A risk assessment team will be formed in the near future to ensure effective implementation of risk assessment techniques. • Authorities are considering secondment of legal counsel to the FIU. • The Financial Services Commission has, as of March 2010, established a dedicated AML/CFT and Legal Services Unit, whose responsibilities include implementation of the regulatory regime for NPOs and DNFBPs. • During the past year, the MLRA has actively considered many issues relevant to the administration and structure of the Financial Intelligence Unit. These issues include establishment of the Financial Intelligence Unit as an autonomous body and recruitment of additional personnel. • To date, the MLRA has approved— <ul style="list-style-type: none"> • rental of additional, secure, office space outside the RAPF headquarters |

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| | | | <ul style="list-style-type: none"> • The FSC should be provided with additional staff so as to adequately meet its supervisory functions for all the financial institutions under its supervision. | <ul style="list-style-type: none"> • immediate recruitment of a financial analyst • establishment of an independent budget to cover training and other needs of the Financial Intelligence Unit • purchase of fire resistant filing cabinets for the storage of SARs • Administrative arrangements necessary to implement these decisions are currently underway. • Workshop for Eastern Caribbean Financial Investigators and Prosecutors sponsored by the UK FCO held in Antigua 22nd – 23rd March 2011 and attended by Crown Counsel and a member of the Financial Crimes Unit of the RAPF. Topics included review of ML in each jurisdiction including legislation and typologies; establishment of regional computer investigation laboratory; international cooperation and asset sharing; functions of the Serious Organised Crime Agency; audit of financial legislation and updates in ML case law • 2 day workshop during the last week of March 2011 on implementation of the Proceeds of Crime Act 2009, its investigative powers and measures for freezing, seizure, confiscation and civil forfeiture was attended by the following law enforcement authorities— <ul style="list-style-type: none"> ○ All members of the FIU ○ 4 members of Attorney General’s Chambers comprising 2 prosecutors, 1 Civil Crown Counsel and 1 Parliamentary Counsel ○ 2 Customs Officers ○ 1 Immigration Officer ○ Head of the FSC AML/CFT Unit • Magistrates and prosecutor attended week long workshop in November 2010 on the Proceeds of Crime and prosecutions conducted by Mark Sutherland Williams and Dan Suter sponsored by the British High Commission’s Eastern Caribbean Financial Investigation Advisory Team. • High Court Judge and Registrar attended 1 day workshop during the last week of March 2011 on the Proceeds of Crime Act 2009 |
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| | | | <ul style="list-style-type: none"> • Acting Senior Crown Counsel (Criminal) attended Commonwealth Caribbean Prosecutors’ Conference April 29 – May 1, 2011. Conference topics included The Proceeds of Crime Act: The Advocate’s Perspective and Investigative Tools and Proceedings; Combating the Financing of Terrorism; Extradition: the Approach and Recommended Best Practices. • The Financial Services Commission has, as of July 2011, further increased its capacity by filling the position of Deputy Director. • Interviews have been conducted to fill vacancy on Board of Directors by September 30, 2011. • In June 2011, the secondment of a CFTC consultant to the FSC to assist with oversight and training of the Insurance Sector was approved. • Representative of UK Crown Prosecution Services seconded to AG’s Chambers for 6 weeks, from 31 October to 9 December 2011. Workshops conducted for prosecutors and law enforcement, including Customs, Immigration and members of the FIU and the Guns and Firearms Taskforce, on all aspects of investigating and prosecuting ML offences, including restraint and confiscation. Specifically, Customs officers attended training modules on cash seizure and asset forfeiture. • Financial Analyst added to staff of FIU • Fire resistant cabinets have been purchased • New office space for the FIU and the FCIU adjacent to the Royal Anguilla Police Force building is currently under construction. • One member of FIU attended a week-long training in the UK presented by NPIA in November 2011. Topics covered included ML/TF concepts and methods, investigation processes, gathering of intelligence, report writing, investigative tools, confiscation • 7-9 February 2012: Workshop attended by AGC prosecutor and member of Criminal Investigation Division (CID) on serious and organised crime investigation. Topics covered included mutual assistance and international co-operation, drug and illegal migrant trafficking, and organised crime investigation. |
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| | | | <ul style="list-style-type: none"> • The Financial Services Commission increased its staffing capacity in March 2012 by the addition of an administrative assistant and in April 2012 by the addition of two regulators. • The Financial Services Commission Board has also approved the recruitment of a regulator to join the AML/CFT Unit to assist with the NRSPs and recruitment has begun • The vacancy for the FSC Board member was filled in March 2012. • A consultant sponsored by the Commonwealth Secretariat joined the FSC in March 2012 to assist with the oversight and training of the Insurance Sector. • The FSC has finalised and implemented an AML/CFT Compliance Examination Manual to guide personnel responsible for AML/CFT compliance visits. • In March and April 2012, the FSC conducted 2 training sessions for personnel engaged in AML/CFT compliance activities. • On 1 February 2013, the Financial Services Commission hired a regulator to join the AML/CFT Unit to assist with the ENRSPs. • In March 2013, the Financial Services Commission provided training sessions for personnel engaged in AML/CFT compliance inspections. • 13th – 16th March 2013: Parliamentary/Crown Counsel at AGC and investigator at RAPF attended a workshop in Bermuda. Workshop for prosecutors and investigators on investigating and prosecuting complex transnational crimes (money laundering, corruption, asset recovery, cross border assistance, organised crime and cyber-crime). • A consultant sponsored by the Commonwealth Secretariat will join the FSC in March 2014 to assist with the oversight and training of the Insurance Sector. • All 4 members of the Anguilla FIU; 2 officers from RAPF CID; 2 officers from Anguilla Customs; and Crown Counsel from the AG’s Chambers, all received training on advanced financial investigation techniques; money laundering; criminal asset recovery; and terrorist financing as part of the two week long Anguilla Financial |
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| | | | | <p>Investigation Course (18th to 29th November 2013). This training was delivered by a company accredited by the UK National Crime Agency (NCA).</p> <ul style="list-style-type: none"> • All course attendees have been given access to the NCA's Financial Investigators Support System (FISS) online database as an on-going learning and research • Further training will be delivered to staff from the Anguilla FIU; Anguilla Customs; RAPF Drugs & Firearms Task Force; Anguilla Immigration Dept., at a date to be agreed in May 2014. This training will focus upon identifying and investigating Cash Couriers, and it will also include training on Terrorist Financing. This 3-day training course will be delivered by a consultant from the United Nations Office for Drugs & Crime (UNODC), who is also a former Senior Customs Officer from the UK. • Both of these training courses are paid for from the National Forfeiture Fund. |
| 31. National cooperation | C | This Recommendation has been fully observed. | | |
| 32. Statistics | PC | <p>Customs does not maintain statistics on cross-border transportation of currency and bearer negotiable instruments.</p> <p>No statistics maintained on cross-border incidents prior to 2008.</p> | <ul style="list-style-type: none"> • Customs should maintain statistics regarding cross-border transportation of currency and bearer negotiable instruments. • Customs should ensure that all cross-border incidents be reported and documented on the OTRIS system, thus providing continued and timely access to this information by Police, the FIU and other competent authorities. • The FIU should put in place the appropriate mechanisms to allow for the collection and analysis of statistics on wire transfers carried out by the financial institutions. | <ul style="list-style-type: none"> • An electronic form consistent with the Report of International Transportation of Currency or Monetary Instrument has been programmed into the OTRICS system, enabling access to the information obtained by the Police, FIU and other competent authorities. This new programming is currently undergoing beta testing and it is anticipated that it will be fully operational in the very near future. • Beta testing of an electronic form consistent with the Report of International Transportation of Currency or Monetary Instrument has been completed and brought into active use on the OTRICS system, enabling access to the information obtained by the Police, FIU and other competent authorities. • All data collected since the Report of International Transportation of Currency or Monetary Instruments came into use has been entered into the OTRICS system. This allows Customs to maintain statistics on cross-border transportation of currency and bearer |

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| | | | | <p>negotiable instruments. The OTRICS system allows data to be broken down and sorted in ways that facilitate analysis. Further, entering this data into the system also allows the FIU, RAPF and other competent authorities continued and timely access to the data.</p> <ul style="list-style-type: none"> • The FIU and FSC are currently working together to develop a template for useful statistics on wire transfers. • All data collected since the Report of International Transportation of Currency or Monetary Instruments came into use has been entered into the Memex Patriarch Intelligence Database (previously the OTRICS system). This allows Customs to maintain statistics on cross-border transportation of currency and bearer negotiable instruments. The Memex Patriarch Intelligence Database allows data to be broken down and sorted in ways that facilitate analysis. Further, entering this data into the system also allows the FIU, RAPF and other competent authorities continued and timely access to the data. • Agreement has been obtained from all four (4) local banks that they will provide the MLRA (via the FIU) with quarterly statistics in respect of incoming and outgoing wire transfers. This will include information relating to the originating and destination countries for wire transfer. |
| 33. Legal persons–beneficial owners | C | This Recommendation has been fully observed. | | |
| 34. Legal arrangements – beneficial owners | LC | 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. | <ul style="list-style-type: none"> • It is recommended that the registration of a trust be made mandatory by law. This would allow the competent authorities at a minimum, to be duly aware of all trusts (and their accompanying due details) existent in Anguilla. | <ul style="list-style-type: none"> • As an alternative to mandatory registration of trust, amendments were made to section 18 of the AML/CFT Code to enhance the identification of trustees and other parties as follows: “(a) by repealing and replacing subsection (3) with the following – (3) The service provider shall request additional information from the trustee, protector or enforcer of the trust when the nature of a business relationship or occasional transaction for a trust that it is required to identify is of such a nature that the service provider reasonably believes that additional information is required; |

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| | | | | <p>(b) in subsection (4)(b) by deleting the phrase “who the service provider determines presents a higher level of risk.”</p> <ul style="list-style-type: none"> • The AML/CFT Code 2013 was published in the Gazette (Volume 40, No. 20 - 11 December 2013) after consultation with the Governor. |
| International Cooperation | | | | |
| 35. Conventions | LC | The Palermo Convention and the 1999 Terrorist Financing Convention have not been duly extended to Anguilla. | <ul style="list-style-type: none"> • Anguilla should request, forthwith, extension of the said un-extended Conventions. | <ul style="list-style-type: none"> • After receiving advice from the HMG in relation to the conventions, Anguilla will send a letter to HMG during the first week of March 2014 indicating that Anguilla is now confident that adequate legislation is in place to meet the requirements to request the formal extension of Palermo Convention and 1999 Terrorist Financing Convention. |
| 36. Mutual legal assistance (MLA) | C | This Recommendation is fully observed. | | |
| 37. Dual criminality | C | This Recommendation is fully observed. | | |
| 38. MLA on confiscation and freezing | C | This Recommendation has been fully observed. | | |
| 39. Extradition | LC | There have been no extradition requests to duly determine the effectiveness of MLA in this regard. | | <ul style="list-style-type: none"> • Acting Senior Crown Counsel (Criminal) attended Commonwealth Caribbean Prosecutors’ Conference April 29 – May 1, 2011. Conference topics included Extradition: the Approach and Recommended Best Practices. |
| 40. Other forms of co-operation | C | This Recommendation has been fully observed. | | |
| 9 Special Recommendations | | | | |
| SR.I Implement UN instruments | LC | The 1999 Terrorist Financing Convention has not been duly extended to Anguilla. | | <ul style="list-style-type: none"> • After receiving advice from the HMG in relation to the conventions, Anguilla will send a letter to HMG during the first week of March 2014 indicating that Anguilla is now confident that adequate legislation is in place to meet the requirements to request the formal extension of 1999 Terrorist Financing Convention. |

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| <p>SR.II Criminalize terrorist financing</p> | <p>LC</p> | <p>There have been no FT investigations or prosecutions under the CFT legislation, thus effectiveness cannot be duly determined.</p> | | <ul style="list-style-type: none"> • During 2010, the RAPF undertook an investigation of suspected TF activities. The investigation was recently concluded with no charges being brought. • Information gleaned from SARs relating to possible TF activities has been shared via Egmont with competent authorities in the relevant jurisdictions. • Since the last Report, information retrieved from SARs relating to suspected TF has been disseminated to competent authorities in the relevant jurisdictions. • Since the last Report, information retrieved from Suspicious Activities Reports by the Financial Intelligence Unit relating to suspected Terrorist Financing has been disseminated to competent authorities in the relevant jurisdictions via the Egmont Secure Web portal. |
| <p>SR.III Freeze and confiscate terrorist assets</p> | <p>LC</p> | <p>There have been no restraints orders made with regard to FT thus effectiveness cannot be duly determined.</p> | <ul style="list-style-type: none"> • The Authorities in Anguilla should duly arrange a less vulnerable process of listing and de-listing. | |
| <p>SR.IV Suspicious transaction reporting</p> | <p>PC</p> | <p>No explicit requirement to include attempted transactions in STR.</p> <p>Issues regarding the effective implementation sanctions.</p> | <ul style="list-style-type: none"> • The Regulations or Code should be amended to make mandatory the requirement for the MLRO of a service provider to make a report to the Reporting Authority with regard to attempted transactions re financing of terrorism. | <ul style="list-style-type: none"> • Amendment of AML/CFTC section 30 to add a provision removing the MLRO's discretion in the event of an attempted transaction is under consideration by the Authorities. Such a provision would make it clear that the MLRO is required to report all attempted transactions, regardless of the amount, to the Reporting Authority. It is anticipated that drafting of the recommended amendments to the AML/CFTC will commence in the near future. • See response at R.13. • See response at R.13. • See response at R.13. |
| <p>SR.V International cooperation</p> | <p>LC</p> | <p>There have been no MLA requests under the CFT legislation, thus the effectiveness of rendering MLA thereunder cannot be duly determined.</p> <p>There have been no extradition requests in relation to the FT, thus effectiveness cannot be duly determined</p> | <ul style="list-style-type: none"> • The Anguillan Authorities should criminalise the commission of terrorist acts as particularized and free standing crimes. | <ul style="list-style-type: none"> • Research for precedents of similar legislation has begun. |

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| <p>SR.VI AML requirements for money and value transfer services</p> | <p>PC</p> | <p>Money Services Business Act not yet implemented, therefore MVT operators are not licensed under the Act.</p> <p>No requirement for licensed or registered MVT operators to maintain a current list of agents.</p> <p>Penalties lack specificity and proportionality, thereby undermining their effectiveness and dissuasiveness.</p> | <ul style="list-style-type: none"> • All existing MVTs service operators should be licensed under the new MSBA without delay. • Licensed MVT service operators should be required to maintain a current list of agents. Such a list should be made available for inspection by the FSC. • Section 17(3) of the MSBA should refer to mandatory obligations under both AML and CFT enactments. | <ul style="list-style-type: none"> • Two of the four Money Services Businesses operating on Anguilla have become licensed under the MSB Act. The FSC is actively working with the remaining companies to complete application process. • Licensed MVT service operators are required by Section 9 of the MSB Act requires that an MSB may only carry out business at the location identified in its licence or approved by the Authority (the FSC). Any change in locations (whether by adding or terminating an agency relationship) must be notified to the FSC. As noted above, two of the four MVT service operators in Anguilla are licensed and the FSC is actively working to licence the remaining 2. • A request for such amendment has been made to the Legislative Drafting Unit. • As noted in the previous Follow-Up Report, 2 MSBs are licensed. The application of one of the remaining MSBs has been determined and the licence was not granted. MSB operations by that entity have been terminated. • The application for licensing of the last MSB is under consideration, with an AML/CFT onsite visit scheduled in the next week. It is anticipated that the application will be determined soon thereafter. • The applications of the four (4) Money Services Businesses have been determined with two MSBs granted, one (1) has been denied and one (1) has been recommended for denial. In the latter case, although the decision has not been finalised, the fit and proper test was applied in making the recommendation for denial. All MSBs operating in Anguilla are now licensed and were made subject to the fit and proper test. • Amendments to the Money Services Business Act to require licensees to maintain a list of agents and to comply with AML/CFT obligations were presented for first reading on the 12 February 2014. |
| <p>SR.VII Wire transfer rules</p> | <p>PC</p> | <p>No requirement for each intermediary and beneficiary financial institution in the payment chain to ensure that full originator information accompanies transfer.</p> | <ul style="list-style-type: none"> • The Code should explicitly address the issue of a payment chain that may include a series of intermediaries and beneficiary financial institutions whereby each party in the payment chain should be | <ul style="list-style-type: none"> • The FSC has prepared a paper addressing the need to resolve the ambiguities relating to supervision and sanction powers for domestic banks and their offshore subsidiaries, and other related issues, and |

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| | | <p>Effectiveness cannot be assessed due to recent passage of the POCA, Regulations and the Code and the limited supervisory actions that have been taken.</p> <p>The regime for supervision and sanction powers for domestic banks and their offshore subsidiaries are ambiguous.</p> | <p>required to ensure that full originator that accompanies a wire transfer is transmitted with the transfer.</p> <ul style="list-style-type: none"> The regime for supervision and sanction powers for domestic banks and their offshore subsidiaries should be clarified. | <p>circulated same to the ECCB and other countries who subscribe to the ECCB Agreement.</p> <ul style="list-style-type: none"> The matter of regulatory collaboration with ECCB/ECSRC/FSC had been afforded a confirmed place on the agenda of the ROC regional video conference scheduled for September 03, 2010. Discussions were held with the FSC and ECCB on 3 September 2010, 3 December 2010 and 4 March 2011. It was agreed that responsibility for the AML/CFT oversight for domestic banks and their off-shore subsidiaries, including the ability to enforce sanctions for non-compliance, was to lie with the domestic jurisdiction. For Anguilla, this decision places the responsibility with the FSC. The Anguilla Authorities have requested an analysis of Anguilla’s legislative framework to ensure that the FSC has the necessary legal authority to meet this obligation. Correspondence dated 7 June 2012 from the Deputy Governor at the ECCB confirmed that the responsibility of the AML/CFT oversight for domestic banks and their offshore subsidiaries as well as the issuing of sanctions for AML/CFT breaches lies with the national regulators. The national regulator in this instance is the FSC. Additional amendments to the Non-Regulated Service Providers Regulations necessary to incorporate supervision of entities licensed by the ECCB and ECSRC have been drafted. Externally Regulated and Non-Regulated Service Providers Regulations under review by Anguilla Authorities. The industry consultation process for the FSC (Amendment) Act 2013 and draft ENRSPs Regulations have been concluded. The legislation clarifies the role of the Commission as the supervisory authority of the domestic banks for AML/CFT compliance. The FSC (Amendment) Act has been approved by Executive Council. The ENRSPs Regulations are to be taken to Executive Council in August 2013. Part 9 of the AML/CFT Code 2013 addresses the issue of a payment chain that includes a series of intermediaries and beneficiary financial institutions. Section 9 of the AML/CFT Regulations, R.S.A. c. P98-1 “Application of Regulations and Code |
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| | | | | <p>outside Anguilla” refers to domestic banks and their offshore subsidiaries.</p> |
| <p>SR.VIII Non-profit organizations</p> | <p>NC</p> | <p>No supervisory programme in place to ensure compliance with AML/CFT legislation.</p> <p>All NPOs are not registered therefore the relevant information on all NPOs is not publicly available.</p> <p>Existing NPOs not required to adhere to AML/CFT legislation.</p> <p>No specified period for all NPOs to keep records.</p> <p>Unable to assess the effectiveness of domestic cooperation due to the current status of the NPO sector.</p> | <ul style="list-style-type: none"> • The Anguillan Authorities should undertake an outreach programme to the NPO sector with a view to protecting the sector from terrorist financing abuse. • The Anguillan Authorities should ensure that AML/CFT policies which specifically pertain to the NPO sector are finalized and implemented without delay. • Outreach programs which include AML/CFT training should be devised to provide instruction for the NPO sector. • A supervisory authority for the NPO sector should be designated without delay. • A mandatory registration/licensing system for all NPOs should be implemented as soon as possible. • The purpose and objectives of all NPOs should be publicly known. • NPOs should be required to adhere to the AML/CFT legislation. • The AML/CFT Code specifically for NPOs should be finalized and implemented without delay. | <ul style="list-style-type: none"> • An AML/CFT and Legal Services Unit has been established within the FSC. Responsibilities include implementation of a regulatory regime for NPOs and DNFBPs. • Implementation of the NPO outreach programme is a high priority for the Unit and has included the following, to date: <ul style="list-style-type: none"> • a series of handshake visits by the Commission to NPOs during the month of August • a formal training program jointly conducted with the FIU will take place September 8, 2010 • an informational brochure for NPOs has been posted to the FSC website at: http://www.fsc.org.ai/PDF/NPO%20Brochure.pdf • NPO Regulations were signed and Gazetted on 28 May 2010. They include policies regarding required disclosures and record keeping. • Part 2 of the NPO Regulations establishes the FSC as the supervisory authority and outlines its functions and duties as such. These specifically include monitoring for compliance with AML/CFT legislation. • Section 5 of the NPO Regulations requires that all NPOs must be registered unless they are exempt. An NPO is exempt if its gross annual income does not exceed \$5,000ECD and its assets do not exceed \$10,000ECD. The registration process is due to be fully implemented by 31 October 2010, as indicated by section 14. • Section 4(2) requires that the purpose and objectives, as well as the identity of the persons who own, control or direct the NPO shall be maintained in a public Register. • As noted above, NPOs will be monitored for compliance with AML/CFT legislation. • Implementation of the NPO Regulations is currently under way. Initial response from the sector has been positive and many NPOs have applied for registration. |

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| | | | | <p>The FSC is currently taking steps to identify those NPOs that have not applied for registration and initiate enforcement action.</p> <ul style="list-style-type: none"> • The AML/CFT Department of the FSC, as part of their NPO outreach programme, published three news releases in the local newspaper and on the FSC website. These news releases are as follows: <ul style="list-style-type: none"> • Safeguarding of the Non-Profit Organisations (NPOs) Sector in Anguilla, which can be found at http://www.fsc.org.ai/PDF/Safeguarding%20NPOs.pdf • Safeguarding of the Non-Profit Organisations (NPOs) Sector in Anguilla – Best Practice Principles, which can be found at http://www.fsc.org.ai/PDF/Safeguarding%20NPOs-Best%20Practice.pdf • Safeguarding of the Non-Profit Organisations (NPOs) Sector in Anguilla – Review of NPOs Regulations, which can be found at http://www.fsc.org.ai/PDF/Safeguarding%20NPOs-Regs.pdf • The NPO outreach programme was continued with presentations made by the FIU regarding potential abuse of NPOs and PEPs (domestic and foreign) and the need to implement enhanced CDD when dealing with such persons. • Registration of the NPOs continues to be positive with 25% increase in registration since the last follow up report. • From September 2011 to date, the FIU has made 4 presentation to stakeholders, including NPOs, regarding the functions of the FIU, reporting requirements, enhanced due diligence, PEPs both foreign and domestics, emerging ML/TF trends within Anguilla and the world. • There was an increase of 93% NPO registrations within the past 12 months. • In 2013, there were fifteen (15) NPOs that registered under the NPO Regulations 2010. • Draft NPO Code was approved by the FSC’s Board of Directors on 18 February 2014 with minor amendments. Draft NPO Code circulated to industry for comment by 26 February 2014. |
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| <p>SR.IX Cash Couriers</p> | <p>PC</p> | <ul style="list-style-type: none"> • Cross-border transactions not yet computerized and therefore, not readily available to law authorities in Anguilla. • No specialized training in anti-terrorism issues. | <ul style="list-style-type: none"> • Anguillan Authorities/H.M. Customs should remove the incorrect signage with regard to the declaration at its ports of entry. • Anguilla should include in their POCA a section specifically relating to the seizure of cash and bearer negotiable instruments at their borders. | <ul style="list-style-type: none"> • Incorrect signage has been removed; replacement signage will be ordered as soon as austerity measures are lifted. • Amendments proposed to the Customs Act providing specifically for the requirement to declare cash and bearer negotiable instruments at the border (including in the post) and for seizure of same. Amending Act to come into force 30 September 2010. • An electronic form consistent with the Report of International Transportation of Currency or Monetary Instrument has been programmed into the OTRICS system, enabling access to the information obtained by the Police, FIU and other competent authorities. This new programming is currently undergoing beta testing and it is anticipated that it will be fully operational in the very near future. • Customs (Amendment) Act, 2010 came into force on 30 September 2010. It contained the following provisions: Importation and exportation of goods by post ... (2A) Without prejudice to subsection (1) or (2), any person who— (a) claims a letter or postal package arriving in Anguilla; or (b) posts a letter or postal package in Anguilla for transmission abroad; which contains currency, cheques or monetary instruments, or any combination thereof, of or exceeding \$27,000, or the equivalent in any currency or combination of currencies, shall declare and make a report of same in such form and manner and containing such particulars as the Comptroller may direct. (2B) Any person failing to declare and make a report as required under subsection (2A) is guilty of an offence and is liable to a fine of \$10,000 or 3 times the value of the currency, cheques or monetary instruments not declared or reported, whichever is the greater. Customs control of persons entering or leaving Anguilla |

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| | | | | <p>(2) Any person entering or leaving Anguilla shall—</p> <p>(a) if he is in possession of currency, cheques or monetary instruments, or any combination thereof, of or exceeding \$27,000, or the equivalent in any currency or combination of currencies, shall declare and make a report of same in such form and manner and containing such particulars as the Comptroller may direct; ...</p> <ul style="list-style-type: none"> • (3) Any person failing to declare any baggage or thing as required under this section is guilty of an offence and is liable to a fine of \$10,000 or 3 times the value of the thing not declared or the baggage or thing not produced, as the case may be, whichever is the greater. • Incorrect signage has been replaced with accurate signs. • All 4 members of the Anguilla FIU; 2 officers from RAPF CID; 2 officers from Anguilla Customs; and Crown Counsel from the AG’s Chambers, all received training on Terrorist Financing as part of the Anguilla Financial Investigation Course (18th to 29th November 2013). This training was delivered by a company accredited by the UK National Crime Agency. • Further training will be delivered to staff from the Anguilla FIU; Anguilla Customs; RAPF Drugs & Firearms Task Force; Anguilla Immigration Dept., at a date to be agreed in May 2014. This training will focus upon identifying and investigating Cash Couriers, and it will also include training on Terrorist Financing. This 3-day training course will be delivered by a consultant from the United Nations Office for Drugs & Crime (UNODC), who is also a former Senior Customs Officer from the UK. • Both of these training courses are paid for from the National Forfeiture Fund. • The Customs Cash Declaration forms are recorded electronically on the OTRICS database. • The Governor’s Office has agreed to the purchase of passport scanners and scanners for customs/immigration forms. The officers will be |
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| | | | | able to match forms alongside passenger's information in OTRICS. |
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