GLOBAL FORUM ON
TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

10 YEARS

Peer Review Report on the Exchange of Information on Request

ANGUILLA

2020 (Second Round)

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: Anguilla 2020 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

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Table of contents

Reader's guide 5

Abbreviations and acronyms 9

Executive summary 13

Summary of determinations, ratings and recommendations 17

Overview of Anguilla 25

Legal systems 25
Tax system 26
Financial services sectors 27
Anti-money laundering regime and assessment 28
Recent developments 29

Part A: Availability of information 31

A.1. Legal and beneficial ownership and identity information 31
A.2. Accounting records 80
A.3. Banking information 89

Part B: Access to information 95

B.1. Competent Authority's ability to obtain and provide information 95
B.2. Notification requirements, rights and safeguards 100

Part C: Exchanging information 103

C.1. Exchange of information mechanisms 103
C.2. Exchange of information mechanisms with all relevant partners 107
C.3. Confidentiality 107
C.4. Rights and safeguards of taxpayers and third parties 110
C.5. Requesting and providing information in an effective manner 111

Annex 1: List of in-text recommendations 121
Annex 2: List of Anguilla's EOI mechanisms 123
Annex 3: Methodology for the review 126
Annex 4: Anguilla's response to the report 130

Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 160 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic).

Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

The international standard of exchange of information on request (EOIR) is primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary and Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries and its commentary. The EOIR standard provides for exchange on request of information foreseeably relevant for carrying out the provisions of the applicable instrument or to the administration or enforcement of the domestic tax laws of a requesting jurisdiction. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including ownership, accounting and banking information.

All Global Forum members, as well as non-members that are relevant to the Global Forum's work, are assessed through a peer review process for their implementation of the EOIR standard as set out in the 2016 Terms of Reference (ToR), which break down the standard into 10 essential elements under three categories: (A) availability of ownership, accounting and banking information; (B) access to information by the competent authority; and (C) exchanging information.

The assessment results in recommendations for improvements where appropriate and an overall rating of the jurisdiction's compliance with the EOIR standard based on:

1. The implementation of the EOIR standard in the legal and regulatory framework, with each of the element of the standard determined to be either (i) in place, (ii) in place but certain aspects need improvement, or (iii) not in place.
2. The implementation of that framework in practice with each element being rated (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant.

The response of the assessed jurisdiction to the report is available in an annex. Reviewed jurisdictions are expected to address any recommendations made, and progress is monitored by the Global Forum.

A first round of reviews was conducted over 2010-16. The Global Forum started a second round of reviews in 2016 based on enhanced Terms of Reference, which notably include new principles agreed in the 2012 update to Article 26 of the OECD Model Tax Convention and its commentary, the availability of and access to beneficial ownership information, and completeness and quality of outgoing EOI requests. Clarifications were also made on a few other aspects of the pre-existing Terms of Reference (on foreign companies, record keeping periods, etc.).

Whereas the first round of reviews was generally conducted in two phases for assessing the legal and regulatory framework (Phase 1) and EOIR in practice (Phase 2), the second round of reviews combine both assessment phases into a single review. For the sake of brevity, on those topics where there has not been any material change in the assessed jurisdictions or in the requirements of the Terms of Reference since the first round, the second round review does not repeat the analysis already conducted. Instead, it summarises the conclusions and includes cross-references to the analysis in the previous report(s). Information on the Methodology used for this review is set out in Annex 3 to this report.

Consideration of the Financial Action Task Force Evaluations and Ratings

The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating terrorist financing (AML) standards. Its reviews are based on a jurisdiction's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the definition of beneficial ownership, as the FATF definition is used in the 2016 ToR (see 2016 ToR, annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combating money-laundering and terrorist financing) is different from the purpose of the EOIR standard (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum's mandate.

While on a case-by-case basis an EOIR assessment may take into account some of the findings made by the FATF, the Global Forum recognises that the evaluations of the FATF cover issues that are not relevant for the purposes of ensuring effective exchange of information on beneficial ownership for tax purposes. In addition, EOIR assessments may find that deficiencies identified by the FATF do not have an impact on the availability of beneficial ownership information for tax purposes; for example, because mechanisms other than those that are relevant for AML purposes exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

These differences in the scope of reviews and in the approach used may result in differing conclusions and ratings.

More information

All reports are published once adopted by the Global Forum. For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published reports, please refer to www.oecd.org/tax/transparency and http://dx.doi.org/10.1787/2219469x.

Abbreviations and acronyms

2010 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum in 2010
2014 Report	EOIR Round 1 Report on Anguilla
2016 Assessment Criteria Note	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015
2016 Methodology	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015
2016 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015
ACORN	Anguilla Commercial Online Registration Network
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
AML/CFT Regulations	Anti-Money Laundering and Terrorist Financing Regulations of Anguilla, enabled under Section 168 of POCA
AML/CFT Code	Anti-Money Laundering and Terrorist Financing Code of Anguilla
AML/CFT Code Guidance	Guidance issued under Section 169(9) of POCA
CDD	Customer Due Diligence
CMA	Company Management Act (as amended)

Competent Authority	The Anguillian competent authority
DTC	Double Tax Convention
EOIR	Exchange of Information on Request
ERSP	Externally regulated service providers
ENRSP Regulations	Externally and Non-Regulated Service Providers Regulations, 2013
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FOC	Foreign company (incorporated or formed under the laws of a country other than Anguilla) registered under the Companies Act to carry out activity in Anguilla pursuant to the same conditions as an Anguillian OC
FSC	Anguilla Financial Services Commission
FSC Act	Financial Services Commission Act (as amended)
Gazette	Official publication of the Government of Anguilla, published monthly on the last work day of each month
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
IBC	International Business Company
IBC Act	International Business Companies Act (as amended)
IBC Regulations	International Business Companies Regulations (as amended)
ICTIEA Act	International Co-operation (Tax Information Exchange Agreements) Act
IRD	Inland Revenue Department
LLC	Limited Liability Company
LLC Act	Limited Liability Company Act (as amended)

LP	Limited Partnership
Multilateral Convention or MAC	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
Permanent Secretary	Permanent Secretary of Finance
OC	Ordinary company
POCA	Proceeds of Crime Act, R.S.A. c. P98 of Anguilla
Registrar	Registrar of Companies
TIEA	Tax Information Exchange Agreement
TIE Act	Tax Information Exchange (International Co-operation) Act
TCOBA	Trust Companies and Offshore Banking Act
TBOPL Act	Trades, Business, Occupations and Professions Licensing Act
XCD	Eastern Caribbean Dollar

Executive summary

1. This report analyses the implementation of the international standard of transparency and exchange of information on request in Anguilla as part of the second round of reviews conducted by the Global Forum against the 2016 Terms of Reference. It assesses both the legal and regulatory framework as at 30 April 2020 and the practical implementation of this framework, in particular in respect of EOI requests received and sent during the review period from 1 January 2015 to 31 December 2017. This report concludes that Anguilla is rated overall **Non-Compliant** with the international standard. In August 2014 the Global Forum evaluated Anguilla against the 2010 Terms of Reference for both the legal implementation of the international standard as well as its operation in practice. The report of that evaluation (the 2014 Report, see Annex 3) concluded that Anguilla was rated Partially Compliant overall.

Comparison of ratings for First Round Report and Second Round Report

	Element	First Round Report (2014)	Second Round EOIR Report (2020)
A.1	Availability of ownership and identity information	PC	PC
A.2	Availability of accounting information	PC	NC
A.3	Availability of banking information	C	C
B.1	Access to information	PC	PC
B.2	Rights and Safeguards	C	C
C.1	EOIR Mechanisms	C	C
C.2	Network of EOIR Mechanisms	C	C
C.3	Confidentiality	C	C
C.4	Rights and safeguards	C	C
C.5	Quality and timeliness of responses	LC	NC
OVERALL RATING		**PC**	**NC**

C = Compliant; **LC** = Largely Compliant; **PC** = Partially Compliant; **NC** = Non-Compliant

Progress made since previous review

2. The 2014 Report made recommendations in respect of Anguilla's supervision and enforcement framework for ensuring the availability of ownership and identification information. The recommendations focused, inter alia, on the lack of compliance by service providers with AML obligations, the recent requirements to keep accounting information and underlying documentation, the failure by the Anguillian authorities to effectively exercise access powers to obtain information and the relative inexperience of the EOI team as regards dealing with incoming EOI requests. Since then, Anguilla has taken steps to address these recommendations, such as embarking on an awareness campaign to educate service providers regarding their responsibilities, imposing sanctions and penalties to try to ensure compliance, introducing new laws regarding the availability of accounting records and strengthening the EOI team by hiring additional staff and providing training and educational programmes. However, the progress made has not been sufficient to secure improvement to the rating and two major failures with respect to Elements A2 and C5, together with other issues as outlined below, have led to a downgrade in the overall rating.

Key recommendations

3. An important area of non-compliance relates to the availability of accounting information on Anguillian entities and arrangements (Element A.2). Until April 2014, there was no legislation requiring the keeping of reliable accounting information and underlying documentation. Despite the 2014 recommendation that Anguilla monitor the practical application of the new law in view of allowing for effective exchange of information, no effective monitoring took place. As a result, key accounting information has not been available for exchange purposes. Although the legal framework has required entities and arrangements to retain accounting information and underlying documentation since 2014, the service providers (rather than the entity or arrangement) have been the relevant information holders and the information has been unavailable when the company has been struck off or dissolved. Anguilla introduced laws in 2018 and 2020 to try to address these issues. However, it is not clear whether reliable accounting records are actually maintained and there is no measure to incite entities to do so, such as any obligation to file accounts in Anguilla, and very few entities are required to prepare audited accounts.

4. The second area of non-compliance to the international standard relates to the timeliness and organisation of exchange of information. During the review period for the 2014 Report, Anguilla only received five EOI requests and it was therefore noted that the organisational process had not

been sufficiently tested in practice. During this review period, Anguilla received significantly more EOI requests, in particular with respect to the same international service provider, and was unable to effectively respond to most of the requests. The EOI team also experienced some personnel changes which negatively affected their work. Although Anguilla has made positive changes since the review period, such as hiring new staff and more efficiently responding to EOI requests, as Element C5 is specifically related to the review period, the rating is non-compliant and Anguilla should ensure timely provision of requested information and better communication with its partners.

5. Other issues and recommendations raised in this report relate to gaps identified regarding: the availability of legal and beneficial ownership information (Element A.1); the lack of strong supervision programmes for ensuring the availability of legal and beneficial ownership information and accounting records (Elements A.1 and A.2); and access to accounting and other company information (Element B.1).

Overall rating

6. Anguilla has achieved a rating of Compliant for six Elements (A.3, B.2, C.1, C.2, C.3, C.4), Partially Compliant for two Elements (A.1, B.1) and Non-Compliant for two Elements (A.2 and C.5). Although Anguilla has made significant improvements in its EOI infrastructure and in supervision and monitoring, substantial shortfalls regarding the availability of information and exchange of information in practice have remained. Anguilla's overall rating is Non-Compliant based on a global consideration of its compliance with the individual Elements.

7. This report was approved at the Peer Review Group of the Global Forum on 6 July 2020 and was adopted by the Global Forum on 18 August 2020. A follow up report on the steps undertaken by Anguilla to address the recommendations made in this report should be provided to the Peer Review Group no later than 30 June 2021 and thereafter in accordance with the procedure set out under the 2016 Methodology.

Summary of determinations, ratings and recommendations

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The legal and regulatory framework is in place but needs improvement	In respect of the dissolution and winding up of Anguillian companies, articles of dissolution and rules regarding the dissolution of IBCs and LLCs do not allocate responsibility for document retention regarding ownership information. The allocation of responsibility for OCs is at the discretion of persons involved in winding up the OC or the court, and the court may oblige record retention requirements for a period of less than 6 years. This is partly mitigated by the AML obligations on service providers. There is also no timing requirement for the retention of company management documentation following the surrender or revocation of a licence, in particular where the company manager is wound up.	It is recommended that Anguilla introduce document retention requirements in respect of IBCs and LLCs which have been wound up; clarify the rules regarding who the nominated persons to retain records are (and that the records should be kept for a minimum period of five years) for OCs and introduce document retention and timing requirements for FSC licensees following the surrender or revocation of a (company manager) licence.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The legal and regulatory framework is in place but needs improvement *(continued)*	Ordinary companies, IBCs and LLCs are not obliged to furnish legal ownership information to Anguillian authorities upon restoration following dissolution and strike off. Further, there is no time limit for the revival of LLCs so at any time an LLC may be revived once dissolved.	Anguilla is recommended to mandate the provision of membership information upon dissolution and restoration of Anguillian OCs, IBCs and LLCs and establish a time limit for the revival of LLCs which have been wound up.
	There is a class action pending regarding whether the AML obligations in AML legislation apply to independent legal practitioners acting in that capacity. A stay was granted in 2014 and was recently extended to July 2020 in order to allow this matter to be reviewed by the Anguillian Attorney General. This uncertainty triggers an uncertainty regarding the availability of legal and beneficial ownership where lawyers act as registered agents.	It is recommended that Anguilla confirm the position of whether independent legal practitioners are subject to AML law.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The legal and regulatory framework is in place but needs improvement *(continued)*	Although Anguilla has confirmed that in practice the Registrar only permits company managers who are licensed service providers and AML obliged persons to incorporate companies, under law, neither a domestic ordinary company nor a general partnership is required to engage a licensed service provider and as a result there may be a gap with respect to beneficial ownership information availability for those companies and arrangement. Similarly, the Trust Act does not provide for the identification of beneficial owners in accordance with the standard and the AML framework would apply only to the extent an AML-service provider is engaged, which is not a requirement.	Anguilla is recommended to consider introducing beneficial ownership requirements for domestic ordinary companies and general partnerships and introduce requisite beneficial ownership requirements for all relevant trusts.
Partially Compliant	As the obligation to inform the Registrar of changes in the details of registered companies and file returns is with service providers and the company share register generally resides at the office of the service provider, there is a risk that legal and beneficial ownership information in respect of those companies may not be available where a service provider is dissolved (which occurred during the review period and led to failure to exchange information requested by EOI partners).	It is recommended that Anguilla monitor the retention of legal and beneficial ownership information by service providers and Anguilla is recommended to consider an oversight regime regarding the retention of documentation relating to the activities of Licensees themselves (independent of the companies managed by the Licensee) so that ownership information regarding service providers is available even if such service providers are wound up or cease to exist.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Partially Compliant *(continued)*	Anguillian company managers have confirmed that in 2018 there were 2 436 753 bearer shares held by 133 companies. As all bearer shares in existence in December 2018 are now considered null and void in Anguillian law, Anguilla considers that all bearer shares previously in existence are now either converted or null and void. The laws introduced to end the bearer share regime required that bearer shares were to be converted to registered shares, all beneficial owners of bearer shares were to be notified, IBCs were required update their shareholder register and IBCs for which shares were converted were required to file a declaration in the manner designed by the Registrar by 31 March 2019 confirming that any bearer shares issued by the IBC were registered in the form required. Anguilla has been unable to confirm whether notification took place, whether any IBC shareholder registers were updated or whether any declarations were filed with the Registrar (or whether the Registrar prepared such forms) as required.	It is recommended that Anguilla ensures that the necessary documentation and filings in respect of the conversion or voidance of bearer shares be prepared and filed with the Registrar of Companies in such a way to confirm that all bearer shares previously in existence are now void or converted.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Partially Compliant *(continued)*	Registration of trusts is not mandatory. While the Registrar may seek information on beneficiaries and beneficial owners through the Trust Act, this does not capture all the relevant parties to a trust and it is not clear whether the Registrar has ever used its powers in this regard. Although the Anguilla Financial Services Commission monitors service providers who assist with trust services, it is possible that an AML obliged service provider could be assisting with trust services but not necessarily registered as such. Further, it is not clear how many trusts exist with an Anguillian trustee who is not an AML obliged person.	Anguilla is recommended to review its oversight regime in respect of trusts so that all reasonable measures are taken to ensure that beneficial ownership information is available in respect of express trusts governed by the laws of Anguilla, administered in Anguilla or in respect of which a trustee is resident in Anguilla.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The legal and regulatory framework is in place but needs improvement	It is not clear whether accounting records are required to be in the possession or under the control of a person in Anguilla in all circumstances, including when the company manager surrendered its licence or ceases to exist.	Anguilla is recommended to ensure that accounting information is always in the possession or control of a person in Anguilla and available for exchange purposes.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Non-Compliant	The amendments to the IBC Act and LLC Act are recent and their practical implementation has not been assessed. The amendment provides for a paper trail to ascertain the location of accounting records but this is dependent on the service provider. The obligation to retain accounting records is on directors and liquidators (for an IBC) and managers and members (for an LLC) who may not be in Anguilla.	Anguilla is recommended to monitor and supervise the implementation of the recent amendments to the IBC Act and LLC Act and to ensure the availability of accounting records, even where kept offshore.
	Anguilla's laws required that accounting records should be kept during the review period but the practical application of these laws was not sufficient to ensure the availability of accounting records. There is no legal authority that oversees or supervises the maintenance of accounting records. Further, the Partnership Act and the Trusts Act stipulate an enforcement penalty of XCD 5 000, however no monitoring or supervision is taking place to ensure that partnerships, trusts or foundations keep accounting records in line with the international standard.	Anguilla is recommended to ensure the practical implementation of its laws by ensuring adequate supervision and enforcement of the obligations so that accounting information is available in line with the standard for all entities and arrangements.
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is place		
Compliant		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The legal and regulatory framework is place		
Partially Compliant	Anguilla has powers in place to obtain information but has not effectively exercised these powers in practice, in particular to obtain accounting information.	Anguilla should exercise its powers effectively to obtain all types of information requested (including accounting information).
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The legal and regulatory framework is place		
Compliant		
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is place		
Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is place		
Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The legal and regulatory framework is place		
Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The legal and regulatory framework is place		
Compliant		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework:	This Element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	
Non-Compliant	The Anguilla Competent Authority operated with a lack of continuity. During part of the review period, Anguilla did not have any operational delegated Competent Authority/EOI Unit to work on EOIR incoming requests.	Anguilla is recommended to have procedures in place to ensure the continuity of the Competent Authority functions for EOIR.
	All the delegated Competent Authority/EOI Unit members also had other concurring functions and assignments, leading to a lack of sufficient dedication to EOIR, which has negatively affected Anguilla's EOI practice.	Anguilla is recommended to ensure and monitor that the Competent Authority is sufficiently resourced to effectively and timely process the incoming requests for information.
	During the review period, Anguilla was unable to demonstrate an ability to exchange information in a timely manner. No requests were responded to within 180 days and only 6% of requests were responded to within a year. The newly constituted EOI team was not provided with specific initial training and/or mentoring and the EOI manual available did not provide for a sufficient level of detail to compensate.	Anguilla is recommended to adopt appropriate operational processes to ensure that all EOI requests are processed and responded to in a timely manner.
	During the review period, Anguilla did not systematically provide a status update to its EOI partners within 90 days when the competent authority was not able to provide a substantive response within that timeframe.	Anguilla should provide status updates to EOI partners within 90 days in all those cases where it is not possible to provide a response within that timeframe.

Overview of Anguilla

8. This overview provides some basic information about Anguilla that serves as context for understanding the analysis in the main body of the report.

9. A British Overseas Territory, Anguilla is nestled between the British Virgin Islands and Sint Maarten. Anguilla is a small Caribbean island territory with a population of 15 602 inhabitants. In December 1980, Anguilla formally disassociated from Saint Kitts to become a separate British dependency.[1] Anguilla remains a British Overseas Territory to this day.

10. As a small island territory reliant on tourism and at risk of climate-related natural disaster, Anguilla has attempted to diversify its economy over time. Anguilla has attracted the attention of the international financial services, offshore business sectors, financial technology (or FINTECH) and, recently, the start-up community looking to obtain .ai domain name addresses. As a result, Anguilla counts over 22 000 companies.

11. In 2019 the main economic activities in Anguilla in terms of GDP contribution were respectively: hotels and restaurants; real estate, renting and business activities; construction; wholesale and retail trade; transport storage and communications; public administration, defence and compulsory social services; and financial intermediation. In recent years, the tourism industry has been markedly affected by storms and hurricanes and as a result of the global COVID-19 crisis, access to Anguilla (dependent on airports in neighbouring islands) has been closed to residents and visitors, hotels have closed and the economy is under strain.

Legal systems

12. Anguilla is an English common law jurisdiction. Its judicial system is administered by the Eastern Caribbean Supreme Court and has three tiers: Magistrate's Courts, High Court and the Court of Appeals. The appeal process culminates with the Privy Council of the United Kingdom.

1. See the UK legislation, Anguilla Act 1980.

13. The hierarchy of laws in Anguilla is as follows: Constitution,[2] primary legislation (i.e. Acts), secondary legislation (i.e. Regulations) and others (i.e. guidance, guidelines, resolutions, administrative rules). As primary legislation must give effect to international EOI instruments, they sit at the primary legislation level in the hierarchy.

14. Anguilla, as a British Overseas Territory, cannot sign or ratify any transnational convention on its own behalf. Anguilla must instead, through the Governor, request the extension of treaties from the United Kingdom. Pursuant to Letters of Entrustment, Anguilla is granted permission to agree international agreements relating to taxation, including TIEAs, Double Taxation Agreements and Double Tax Conventions, providing that they allow for exchange of information on tax matters as per the international standard.

15. As a British Overseas Territory, the Head of State is the Queen of England, who is represented in Anguilla by a Governor. The Governor chairs an Executive Council, which includes four Ministers of Government led by the Premier, who is the Head of Government and is usually the leader of the majority party or coalition. The Constitution gives the Governor fundamental reserve powers regarding certain matters, set out in Article 28, including international financial services or any directly related aspect of finance. The powers of the Governor are reasonably extensive. The Companies Act and the LLC Act, for example, provide that the Governor may make any regulations that are required for the better administration of such Acts. The FSC also reports to the Governor and prepares an annual report on such matters as the Governor may prescribe.[3]

16. The legislative branch of government is unicameral and legislative power in Anguilla is vested in both the Executive Council and the eleven-seat House of Assembly. Seven members of the House of Assembly are directly elected, two are appointed by the Governor and two are ex-officio (i.e. the Attorney General and Deputy Governor). The Governor and/or the Queen of England must assent to all legislation.

Tax system

17. Anguilla does not operate a personal income tax, corporate tax, capital gains or value added tax regime. Tax revenues primarily derive from indirect taxes and fees imposed on a territorial basis. The primary sources of recurrent revenue are import duties, customs surcharges, accommodation

2. The UK Anguilla (Constitution) Order 1976 established the first Anguillian Constitution. The Constitution was then revoked by the Anguilla Constitution Order 1982 and amended in 1990 and 2019.
3. Section 270 Companies Act, Section 90 LLC Act, Section 17 FSC Act.

tax, the interim stabilisation levy (which is a tax on payroll first introduced in 2011 and renewed annually), and stamp duty.

Financial services sectors

18. The international financial services sector in Anguilla is the responsibility of the Governor, although the day-to-day regulation is assigned to the Anguilla Financial Services Commission (FSC). The FSC was established in 2004 by the FSC Act and is an independent regulatory body that focuses on licencing, supervision of licensees, monitoring of financial services in general, reviewing existing financial services legislation and making recommendations for new legislation as well as maintaining contact with appropriate foreign and international regulatory authorities. The FSC is the prudential regulator for the financial services sector, except for domestic banks, which are regulated by the Eastern Caribbean Central Bank, and securities brokers, which are regulated by the Eastern Caribbean Securities Regulatory Commission. The FSC is also the supervisory authority for Anguilla's AML/CFT regime, which encompasses all financial service providers and non-profit organisations.

19. The financial services sector in Anguilla includes offshore and domestic banking, offshore and domestic insurance companies, mutual funds, company managers (see paragraph 20), trust company managers and trust companies. Designated non-financial businesses and professions (i.e. non-regulated service providers) such as real estate agents and micro lenders also operate in Anguilla. The offshore banking sector is relatively small (only one offshore bank is operating in Anguilla as of April 2020). The total assets held by the two domestic banks as of April 2020 are XCD 1 455 293 000[4] (EUR 496 million ca.).

20. The primary focus of Anguilla's financial and corporate sector is the incorporation and management of companies which is primarily carried out by third party company managers (also referred to as registered agents) governed by the Company Management Act. Company managers are engaged in the incorporation of companies, acting as registered agents, providing registered offices, preparing and filing statutory documents on behalf of companies or acting as a director, manager, officer or nominee shareholder of local and foreign companies. As of 20 March 2020, there are 55 company managers, 4 trust company managers and 1 trust company (restricted). There are 20 registered external and non-regulated service providers with the FSC.

4. https://www.eccb-centralbank.org/statistics/commercial-banks-assets-datas/country-report.

There are also 59 licensees across these categories that may provide nominee services.

21. Anguilla has developed its insurance sector since the 2014 Report. As of 20 March 2020, there are 26 domestic and 128 offshore insurance companies, 16 Insurance Protected Cell Companies[5] and 4 foreign insurance companies with 37 insurance intermediaries. The mutual fund sector consists of 5 mutual fund companies and 5 intermediaries.

22. As noted above, FINTECH is a growing sector in Anguilla. Domain registration is bourgeoning, and registration for .ai addresses alone is projected to bring in more revenue than revenue received in respect of company registrations, fees and filings.[6]

Anti-money laundering regime and assessment

23. The third mutual evaluation of Anguilla's compliance with the AML/CFT standards was conducted by the Caribbean Financial Action Task Force (CFATF) in 2009. The report concluded that, despite deficiencies noted in some areas, Anguilla had a strong AML/CFT framework bolstered by the enactment of the Proceeds of Crime Act (POCA), the Anti-Money Laundering/Terrorist Financing Regulations (AML/TFR) and the Anti-Money Laundering/Terrorist Financing Code (AML/TFC), together with a high level of public awareness of the issues relating to money laundering and financing of terrorism. Compliance with FATF's Recommendation 10 was rated Largely Compliant while FATF's Recommendation 22 was rated Compliant.[7] However, Anguilla's technical compliance with FATF's Recommendations 24 and 25 was rated Partially Compliant. Based on this result, Anguilla entered the enhanced follow-up process.[8]

5. As the law, practice and monitoring/enforcement in respect of protected cell companies (PCCs) has not changed since 2014, and they are treated as OCs, PCCs have not been considered in further detail.
6. Anguilla has projected a revenue figure of EXD 12 million for 2020, compared with XCD 8 million expected to be received for company registrations, fees and filings.
7. The CFATF report is available at https://www.cfatf-gafic.org/index.php/documents/mutual-evaluation-reports/anguilla-1/2-anguilla-3rd-round-mer/file.
8. As noted from pages 184 – 191 of the CFATF Report, the issues were as follows: Recommendation 10 on Record keeping; Recommendation 22 on Foreign branches and subsidiaries; Recommendation 24 on designated non-financial business and professions: supervision and monitoring; Recommendation 25 on Guidance and Feedback.

24. After the adoption of the report, Anguilla focused on enacting, amending and implementing legislation that would strengthen its AML/CFT framework and address the deficiencies noted. Legislative measures have been introduced; the FSC has provided training and service providers, financial institutions and other relevant persons have been supervised by the FSC. The FATF Plenary in November 2015 acknowledged that Anguilla had made significant progress in addressing the deficiencies identified in the CFATF report and therefore Anguilla exited the follow-up process.[9]

25. Anguilla is scheduled to undergo an on-site review in the third quarter of 2022 as part of the Fourth Round of Mutual Evaluation led by the CFATF. Anguilla has confirmed that as of April 2020, a national risk assessment is currently underway to allow for the identification of risks and implementation of measures to address deficiencies in the AML/CFT regime.

Recent developments

26. After the review period (which covers the years 2015 to 2017), Anguilla has received 13 EOI requests (7 in 2018 and 6 in 2019) which Anguilla, for the most part, was able to respond to. Two requests were not received by the Anguillian competent authority in 2018 (according to Anguilla this was due to the use of improper channels of communication and the requesting jurisdiction confirmed this to Anguilla) and were re-sent in 2019. Anguilla is satisfied with the EOIR relationship it has fostered with peers and the improvements it has made to its EOIR process. Anguilla has received two EOI requests in 2020 as of May 2020. Anguilla was recently made aware of an EOI request sent by post in 2019 and Anguilla has requested that the relevant requesting jurisdiction re-send the request using express mail service or electronically.

27. Anguilla is in the process of preparing a major overhaul of its company law legislation, which should streamline its availability of information and access powers. Anguilla is also in the process of introducing a bespoke company registration and information repository system which includes a beneficial ownership register. The development of this system is underway and scheduled to be completed by December 2020. As of April 2020, contract negotiations with the software provider are underway and part of the system has been set up to roll out in future.

9. In the eighth follow-up report, the FATF Plenary concluded that Anguilla had addressed the deficiencies noted in the Core and Key Recommendations rated PC/NC to a level that was comparable to at least an LC. However, Recommendations 24 and 25 were still rated Partially Compliant.

28. With respect to its broadened EOI mechanisms since the 2014 Report, Anguilla has implemented the Common Reporting Standard and exchanged financial account information in 2018 and 2019, and implemented the US Foreign Account Tax Compliance Act (and exchanged financial account information in 2017, 2018 and 2019). Anguilla has joined the OECD Inclusive Framework for Base Erosion and Profit Shifting and implemented Country-by-Country Reporting, and substantial activities requirements in 2019. Anguilla also signed TIEAs with Isle of Man in December 2019 and with Guernsey in February 2020.

29. Anguilla has confirmed that the FSC will be monitoring the maintenance of accounting records, together with the Registrar who has responsibility for monitoring and enforcing new requirements on substance under BEPS.[10]

30. An overhaul of Anguilla's company law is currently envisaged by Anguilla with the introduction of one consolidated piece of legislation that companies are incorporated under, to be called the Anguilla Business Companies Act (ABC Act) and the ABC Act will, inter alia, refine the rules regarding the maintenance of reliable ownership information and accounting records.

10. However no formal guidance has been issued or law passed to confirm the appointment of these authorities to oversee the implementation of accounting record requirements in practice.

Part A: Availability of information

31. Sections A.1, A.2 and A.3 evaluate the availability of ownership and identity information for relevant entities and arrangements, the availability of accounting information and the availability of banking information.

A.1. Legal and beneficial ownership and identity information

Jurisdictions should ensure that legal and beneficial ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

32. The 2014 Report concluded that the rules requiring availability of legal ownership information in respect of all relevant entities and arrangements in Anguilla were in place and in line with the international standard. Legal ownership information was available through a combination of obligations imposed under Anguilla's company laws and AML/CFT legislation. However, since legal amendments regarding ownership of LLCs, trusts and bearer shares were recent, Anguilla was recommended to monitor their implementation.

33. Since 2014, there have been no amendments to the laws regarding the maintenance of legal ownership information, except to cater for the abolition of bearer shares.

34. The international standard was strengthened in 2016 and beneficial ownership information as regards relevant entities and arrangements is required to be available. Anguilla has legislated for the availability of beneficial ownership information through its AML regime. Not all relevant entities and arrangements are required to engage an AML obliged service provider or company manager as a licensed registered agent such that beneficial ownership information in respect of relevant entities and arrangements, but it should be available in most instances, in particular in cases of requests on IBCs, which are the most frequent. However, gaps in the legal framework and monitoring regime as regards the requirement to engage an AML obliged service provider have led to recommendations in this report.

35. As regards the implementation of the legal framework in practice, the 2014 Report found that the practical implementation of the law in Anguilla was generally not in line with the international standard. While the FSC inspection regime had exposed a significant lack of compliance by service providers with their AML obligations, no penalties had been imposed. This gave rise to concerns about the availability of information in practice. Accordingly, it was recommended that Anguilla ensure that it effectively enforces compliance by service providers with all their obligations under the AML laws, including by levying penalties. In response to this recommendation, the FSC enhanced its supervisory process by applying sanctions in response to AML violations.

36. As at March 2020, there are 55 registered agents licensed by the FSC in Anguilla, 32 of which are based at an overseas location. Between March 2015 and October 2017, the FSC conducted offsite reviews of all of its licensees carrying on company management businesses to ascertain the level of compliance with CDD under the AML/CFT legislation and issued administrative penalties against 13 licensees who failed to comply with their obligations.[11]

37. The 2014 recommendation is therefore removed, but some other deficiencies have been identified.

38. During the peer review period, Anguilla received 53 requests related to ownership and identity information.[12] Anguilla was expressly asked to provide beneficial ownership information on 12 occasions. The Competent Authority reports that any failures have not been due to breaches of the law on maintaining ownership information, but rather due to access and operational challenges (see Elements A.2. and C.5.2 below). To mitigate these problems, Anguilla has committed to implementing a central registry of legal and beneficial ownership information which is intended to be available from December 2020. AML-obliged service providers will be required to upload ownership information to the new system which will be monitored by the FSC. As a result, even where service providers are dissolved and information on entities and arrangements cannot be obtained via traditional means (which Anguilla has experienced in the past), ownership information should still be available and retained in the database. It remains the case that the information was not always available for exchange of information purposes during the review period.

11. http://fsc.org.ai/documents/Publications/EnforcementAction/Offsite%20Reviews%202015%20-%202017.pdf.

12. In respect of 1 of the 53 requests, the provision of information was based on determining whether a specific person was the owner of an Anguillian company. This was not so determined. The jurisdiction noted to Anguilla that they would follow up if further information was required and Anguilla did not receive any further correspondence on the matter.

39. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified	In respect of the dissolution and winding up of Anguillian companies, articles of dissolution and rules regarding the dissolution of IBCs and LLCs do not allocate responsibility for document retention regarding ownership information. The allocation of responsibility for OCs is at the discretion of persons involved in winding up the OC or the court, and the court may oblige record retention requirements for a period of less than six years. This is partly mitigated by the AML obligations on service providers. There is also no timing requirement for the retention of company management documentation following the surrender or revocation of a licence, in particular where the company manager is wound up.	It is recommended that Anguilla introduce document retention requirements in respect of IBCs and LLCs which have been wound up; clarify the rules regarding who the nominated persons to retain records are (and that the records should be kept for a minimum period of five years) for OCs; and introduce document retention and timing requirements for FSC licensees following the surrender or revocation of a (company manager) licence.
	Ordinary companies, IBCs and LLCs are not obliged to furnish legal ownership information to Anguillian authorities upon restoration following dissolution and strike off. Further, there is no time limit for the revival of LLCs so at any time an LLC may be revived once dissolved.	Anguilla is recommended to mandate the provision of membership information upon dissolution and restoration of Anguillian OCs, IBCs and LLCs and establish a time limit for the revival of LLCs which have been wound up.
	There is a class action pending regarding whether the AML obligations in AML legislation apply to independent legal practitioners acting in that capacity. A stay was granted in 2014 and was recently extended to July 2020 in order to allow this matter to be reviewed by the Anguillian Attorney General. This uncertainty triggers an uncertainty regarding the availability of legal and beneficial ownership where lawyers act as registered agents.	It is recommended that Anguilla confirm the position of whether independent legal practitioners are subject to AML law.

	Although Anguilla has confirmed that in practice the Registrar only permits company managers who are licensed service providers and AML obliged persons to incorporate companies, under law, neither a domestic ordinary company nor a general partnership is required to engage a licensed service provider and as a result there may be a gap with respect to beneficial ownership information availability for those companies and arrangements. Similarly, the Trust Act does not provide for the identification of beneficial owners in accordance with the standard and the AML framework would apply only to the extent an AML-service provider is engaged, which is not a requirement.	Anguilla is recommended to consider introducing beneficial ownership requirements for domestic ordinary companies and general partnerships and introduce requisite beneficial ownership requirements for all relevant trusts.
Determination: The Element is in place, but certain aspects of the legal implementation of the Element need improvement.		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified	As the obligation to inform the Registrar of changes in the details of registered companies and file returns is with service providers and the company share register generally resides at the office of the service provider, there is a risk that legal and beneficial ownership information in respect of those companies may not be available where a service provider is dissolved (which occurred during the review period and led to failure to exchange information requested by EOI partners).	It is recommended that Anguilla monitor the retention of legal and beneficial ownership information by service providers and Anguilla is recommended to consider an oversight regime regarding the retention of documentation relating to the activities of Licensees themselves (independent of the companies managed by the Licensee) so that ownership information regarding service providers is available even if such service providers are wound up or cease to exist.

	Anguillian company managers have confirmed that in 2018 there were 2 436 753 bearer shares held by 133 companies. As all bearer shares in existence in December 2018 are now considered null and void in Anguillian law, Anguilla considers that all bearer shares previously in existence are now either converted or null and void. The laws introduced to end the bearer share regime required that bearer shares were to be converted to registered shares, all beneficial owners of bearer shares were to be notified, IBCs were required to update their shareholder register and IBCs for which shares were converted were required to file a declaration in the manner designed by the Registrar by 31 March 2019 confirming that any bearer shares issued by the IBC were registered in the form required. Anguilla has been unable to confirm whether notification took place, whether any IBC shareholder registers were updated or whether any declarations were filed with the Registrar (or whether the Registrar prepared such forms) as required.	It is recommended that Anguilla ensures that the necessary documentation and filings in respect of the conversion or voidance of bearer shares be prepared and filed with the Registrar of Companies in such a way to confirm that all bearer shares previously in existence are now void or converted.
	Registration of trusts is not mandatory. While the Registrar may seek information on beneficiaries and beneficial owners through the Trust Act, this does not capture all the relevant parties to a trust and it is not clear whether the Registrar has ever used its powers in this regard. Although the Anguilla Financial Services Commission monitors service providers who assist with trust services, it is possible that an AML obliged service provider could be assisting with trust services but not necessarily registered as such. Further, it is not clear how many trusts exist with an Anguillian trustee who is not an AML obliged person.	Anguilla is recommended to review its oversight regime in respect of trusts so that all reasonable measures are taken to ensure that beneficial ownership information is available in respect of express trusts governed by the laws of Anguilla, administered in Anguilla or in respect of which a trustee is resident in Anguilla.
Rating: Partially Compliant		

A.1.1. Availability of legal and beneficial ownership information for companies

40. There are three types of companies in Anguilla (set out below). Anguilla is in the process of preparing an overhaul and consolidation of its company law regime to streamline the law and guidance. At present, specific legislation is in place to govern various company and arrangements types, such as IBCs, LLCs and LPs, in addition to the overarching Companies Act (as amended). There is separate legislation dealing with the administration of company law such as the CMA, the Companies Registry Act and the Companies Regulations. In addition, there is new supplementary legislation, such as the Companies (Amendment) Act 2019 which was introduced to address economic substance requirements and recent changes to the IBC Act, LLC Act and LP Acts to address gaps with respect to the availability of information and align Anguillian law with international standards. Anguilla has engaged the services of an external consultant to assist with drafting the overhaul legislation and it is intended that significant changes will be made to the IBC regime:

- **Ordinary Company (OC):** governed by the Companies Act. OCs can be either domestic (i.e. used within Anguilla) or non-domestic (a company that does not maintain a physical presence, office or staff in Anguilla or that does not engage in any revenue generating activities in Anguilla); companies limited by shares, by guarantees or by both shares and guarantees are subject to the same requirements as concerns ownership information;
- **International Business Company (IBC):** governed by the IBC Act. Prior to the IBC Amendment Act, 2018 an IBC could not carry on business with persons resident in Anguilla or own or hold an interest in real property in Anguilla but now IBCs may do so. IBCs are, however, still prohibited from carrying on a banking or trust business or a company management business. Further to the changes to the IBC Act introduced in 2018, there is now little practical distinction between an IBC and a non-domestic OC. Anguilla has noted that the 2018 amendments were introduced to bring the IBC regime in line with international standards. IBCs were previously restricted from operating in Anguilla whereas OCs could always operate in Anguilla and would only be deemed non-domestic if they did not "maintain a physical presence, office or staff in Anguilla or that does not engage in any revenue generating activities in Anguilla";[13]

13. Definition of "non-domestic company" in Companies Act.

- **Limited Liability Company (LLC):** governed by the LLC Act. An LLC provides limited liability to members; can carry on any business, purpose or activity not prohibited by the laws of Anguilla, including with persons in Anguilla; can become a member of a general partnership, limited partnership, company or any other LLC and can carry on banking, insurance, trust or company management business with proper licence, but is prohibited from owning or holding an interest in real property situated in Anguilla. Members may designate a person to manage the LLC and such manager may share in the LLC profits, losses and distributions from the LLC. Members or managers may also lend money to or borrow money from the LLC.

41. Foreign companies (i.e. incorporated or formed under the laws of another country) that carry on business[14] in Anguilla must register and are treated as OCs (hereinafter an FOC for foreign Ordinary Company, which is not a term used in Anguilla but is used in this report to differentiate between domestic/non-domestic OCs on the one hand, and foreign companies which have been registered under the Companies Act on the other hand, where there is a difference in their treatment).[15]

42. The overwhelming majority of companies in Anguilla are IBCs (89% as of February 2020). Companies represent almost all registered entities and arrangements. The table below shows the number of entities and arrangements per type. The figures below for the current review period, compared with the end of the previous review period (end of 2013), represent a 14% decrease of IBCs, a 19% decrease of OCs and a 25% decrease of LLCs.

14. The meaning of the term, "carry on business" is not defined in the Companies Act so it is difficult to establish the nexus which these types of companies have with Anguilla. Anguilla has noted that the meaning of this term is "the ordinary meaning of this phrase. It is a common phrase used throughout Anguillian and other laws." Anguilla has referred to the TBOPL Act which does not define the term "business" but provides a list in the schedule to the Act of business activities covered pursuant to the Act. As foreign companies in Anguilla do not generally have their headquarters or head office or, owing to the tax regime, their tax residency, place of effective management, permanent establishment or management and control, in Anguilla, they are consequently unlikely to have sufficient nexus with Anguilla in application of the 2016 Terms of Reference.
15. The term FOC is not used in Anguilla but is used for the purposes of this Report as there are distinctions between the ownership obligations for OCs and foreign OCs.

Category	End 2013	End 2017 (review period)	February 2020
OC (domestic, non-domestic and foreign)	1 819	1 656	1 474 [a]
IBC	17 605	20 659	15 099
LLC	497	437	370
LP	42	38 [b]	45
Trusts registered	13	16	16
Foundations	40	Figure not known	Figure not known [c]

Notes: a. Anguilla has confirmed that 75 of these OCs are FOCs. In addition, 57 of these are Protected Cell Companies, which are described in the 2014 Report.

b. Anguilla Commercial Registry's 2017 Annual Report.

c. In total 51 Foundations were struck off during the period 2014-June 2020 (31 voluntary liquidations and 20 resignation of registered agent).

43. There is a significant number of companies which have been struck off or voluntarily or involuntarily dissolved.

44. Anguilla has explained that the reason for such a variation in the number of IBCs is largely due to the abrupt closure of a number of service providers related to the so-called Panama leaks case discussed in this report at paragraph 204). Anguilla has provided the following breakdown in respect of strike off figures:

Number of entities struck off divided by type and year

Year	OC	IBC	LLC	LP	Trust
2014	249	3 021	44	8	0
2015	236	3 246	11	0	0
2016	149	3 496	33	2	0
2017	202	3 350	123	4	0
TOTAL	836	13 113	211	14	0

Note: As at January 2020, the total number of struck-off companies in the records of the Registrar was 44 235, made of 36 801 IBCs, 6 658 OCs, 736 LLCs, 39 LPs and 1 trust.

45. Issues have arisen during the review period to answer requests that related to struck off companies, being either the entity about which information was requested or the service provider of the concerned company. In most of these cases, the information was not available in Anguilla, i.e. in possession or control of a person in Anguilla.

46. Another feature of the Anguilla company law is that entities that have been struck off can be restored afterwards.

Struck-off entities which were restored and re-registered within the relevant year

Year	OC	IBC	LLC	LP	Trust
2014	100	311	3	0	0
2015	57	325	2	1	0
2016	53	268	5	0	0
2017	44	298	6	0	0
TOTAL	254	1 202	16	1	0

47. While the number of restorations is not high – representing less than 10% of the number of IBCs and LLCs stricken off – these entities raise transparency issues.

48. The following sections will thus address the availability of legal and beneficial ownership information of companies at the stages of creation, life, struck off and restoration.

Legal Ownership and identity information requirements

49. The legal requirements with respect to providing, keeping and updating information in respect of OCs, IBCs and LLCs were analysed in the 2014 Report (paragraphs 44 to 117). These requirements have not substantively changed. In Anguilla, the Registrar maintains the companies register that contains details of corporate entities including OCs, IBCs and LLCs and which includes ownership information which is publicly available. The companies register is maintained in electronic form and is called ACORN (Anguilla's Commercial Online Registration Network, the general website of which is www.commercialregistry.ai/). Other documents such as instruments, deeds and agreements are maintained in physical form. In particular, members of the public can see when a company registered with the Registrar has been dissolved (the Registrar maintains the companies register in respect of the names of OCs incorporated, continued or restored under the Companies Act). Since data filed with ACORN is maintained in electronic form, such data is easily retrievable and may be kept indefinitely. However, the Registrar may destroy any document filed in respect of a company which has been dissolved for 20 years or more, if the Registrar is of the opinion that it is no longer necessary to retain the relevant information.[16]

50. The availability of legal ownership information is set out primarily in company law (via the Companies Act, the IBC Act and the LLC Act, and the amendments thereto) and AML law. The following table summarises those requirements.

16. Section 14 Companies Registry Act.

Legal framework for the availability of legal ownership of companies [a]

Type	Company law	Tax law	AML law
Domestic OCs	Some	None	Some [b]
Non-domestic OCs	Some	None	All
Foreign OCs	Some	None	Some [c]
IBCs	Some	None	All
LLCs	Some	None	All

Notes: a. "All" in this context means that every entity of this type created is required to maintain ownership information for all of its owners (including where bearer shares are issued) and that there are sanctions and appropriate retention periods. "Some" means that an entity will be required to maintain information if certain conditions are met.

b. Anguilla has confirmed that in practice the Registrar will only permit the use of ACORN for company registration by company managers who are licensed and subject to the AML regime. However, Domestic OCs are only obliged by law to engage a "registered agent" and such person is not obliged to hold a relevant licence under the CMA or TCOBA.

c. Similar to Domestic OCs, a registered agent is required but such person is not obliged to hold a relevant licence under the CMA or TCOBA.

Ordinary companies

51. The main governing statute for OCs (including FOCs) is the Companies Act. Pursuant to Section 154 of the Companies Act, OCs are obliged to prepare and maintain records containing a register of shareholders ("Share Register"). Section 154(3) provides that an OC which grants conversion privileges, options or rights to acquire shares of that OC must also maintain a register showing the name and latest known address of each person to whom the privileges, options or rights have been granted and other relevant particulars ("Transferor Register", together with the Share Register, the "Registers"). An agent may be appointed by the OC to prepare and maintain the Registers (subsection (4)). OCs are obliged at all times to have a registered office in Anguilla (Section 151) and the Share Register must be kept at the registered office (Section 154(5)). Where the shares of a public OC are listed on a stock exchange in a jurisdiction outside Anguilla,[17] the Share Register may be kept at that jurisdiction but a copy must be kept at its registered office (Sections 114, 154(6)). The Transferor Register, however, can be maintained outside Anguilla (to be specified by a directors' resolution) and shareholders meetings can take place outside Anguilla (Section 105). Records and minutes of meetings and directors resolutions are also required to be kept in the registered office of the OC or elsewhere in Anguilla (Section 156) and the OC and its agents are obliged under Section 158 to take reasonable precautions in respect of record preservation.

17. Anguilla has confirmed that as of April 2020, 57 public OCs are listed.

52. The Share Register provisions in the Companies Act do not indicate which details should be kept in the Share Register and there is no detail regarding how frequently the Share Register should be updated. The only timing indication relates to the obligation of directors to gather a list of shareholders in advance of shareholders meetings.

53. The Revised Regulations of Anguilla under the Companies Act (Companies Regulations) provide that an instrument of transfer must be used to transfer shares in an OC and the transfer is recognised by the OC (a) upon registration or a court order mandating registration and (b) upon presentation of the registration to the OC (Section 5). While there is one reference within Section 5 of the Companies Regulations to the transfer of the beneficial interest in shares, it appears that this Section is intended to cover the transfer of legal or nominal ownership interest. Further, the reference to the "registration" of the transfer is not clear but Section 9 stipulates requirements for the OC to update its Share Register to include new transferees. Upon presentation of the transfer of shares, an OC must issue a certification of the transfer to the transferor (Section 7) and within five weeks after the allotment of shares or within two months of the presentation of a share transfer the OC must prepare a "proper certificate" in respect of the relevant share (Section 8). The registration (assumed, for these purposes, to be registration in the Share Register) of a person as a shareholder or the issue of a share certificate constitutes representation by the OC that the relevant person is entitled to the relevant shares (Section 10). As a result of the above, and further to confirmation received from Anguilla, recognition of share transfers and responsibility for acknowledging the transfers rests with the OC and accordingly legal ownership information for EOI purposes is at the registered office of the OC.

54. Part 2 Division 3 of the Companies Act governs the registration of foreign companies which then become FOCs and can carry on business in Anguilla.[18] It is an offence for a foreign company to carry on activities in Anguilla without registration.[19] FOCs registered under the Companies Act are obliged to file up-to-date constitutional documents with the Registrar (Section 192) but do not appear to be obliged to submit details of their shareholders if their charter/statutes/articles of association/other constitutional

18. An FOC must not carry on business in Anguilla unless it is registered under Division 3 and such FOCs must apply for registration to the Registrar using the prescribed form and specify the name and address of its registered agent in Anguilla. It is not clear what constitutes "doing business". Anguilla has confirmed that such concept is used throughout Anguillian law and the law of other jurisdictions on which Anguillian law is based and such term means that FOCs may not conduct any commercial activity whatsoever in Anguilla prior to registration but this is not clear from the legal framework.

19. Section 190 of the Companies Act.

instrument does not contain such details. The Registrar keeps a register of bodies corporate registered as an FOC (Section 235) (FOC Register). The Companies Regulations provide a Form 8 for FOCs to notify the Registrar of a change to the constituting instrument of the company and there are penalties specified for failure to do so.

55. To incorporate an Anguillian OC, articles of incorporation must be filed with the Registrar pursuant to Part 4 Division 1 of the Companies Act, which include the name and mailing address of the first registered agent but do not include the details of the shareholders at the point of incorporation, although this information is subsequently required as part of the annual return.

56. All OCs (including FOCs) are obliged to file annual returns with the Register (Sections 160 and 193 respectively). Schedule 2 of the Companies Regulations provide a form to be completed by OCs.[20] Each form requests shareholder information, as follows: name, address, nationality, number of shares, changes (e.g. change of name or address). When OCs file an annual return, they pay an annual fee, which ranges from XCD 400 to 1 500 (EUR 135 to 608 dca.).

57. This requirement should ensure that the Register receives updated ownership information at least once a year.

Ordinary companies that are non-compliant, inactive or have ceased to exist

58. Section 243 of the Companies Act provides the Registrar with reasonably broad powers to strike off an Anguillian OC including where the OC fails to send certain documents to the Registrar, if the OC has not commenced business within three years after its incorporation or if the Registrar is satisfied that the OC has ceased to carry on business or is not in operation. OCs may also be struck off for failing to provide timely notification to the Registrar of a change of registered agent (Section 153). OCs may also be struck off under Sections 208, 209 and 210 of the Companies Act where the relevant OC has not issued any shares or has no property and no liabilities or has issued more than one class of shares by special resolution of the holders of each class, whether or not they are otherwise entitled to vote. For FOCs, a notice must be filed with the Registrar to be removed from the FOC Register (although this notice is not specified in the Companies Regulations). In addition, the Registrar may remove the name of the FOC from the FOC Register if the Registrar is satisfied that by any other means a foreign company has ceased to carry on business in Anguilla.

20. As the forms are enacted under regulations, the provision of shareholder information in the forms is considered to be a legal requirement in Anguilla.

59. Part 5 of the Companies Act sets out the rules for the dissolution, winding up and restoration of an OC. OCs may be dissolved by way of the preparation of a statement of intent to dissolve and articles of dissolution. Anguilla has confirmed that in respect of an intent to dissolve, companies file (a) a plan of dissolution which includes a directors' resolution and (b) notification to the public of the intent to dissolve and close all financial matters posted on ACORN. As part of this type of dissolution, forms are required to be submitted to the Registrar. Neither of the forms prepared for dissolution or revival set out in the Schedules to the Companies Regulations requires shareholder information, but they require the name and address of the person keeping the documents and records of the company and specify that documents and records of the company shall be kept for six years from the date of dissolution. Anguilla considers that the share registers would be part of the "documents and records of the company" and Section 154 of the Companies Act which mandates the preparation of share registers is titled "records of the company".

60. Part 5 also allows court-ordered dissolutions pursuant to which the court may make an order directing the custody or disposal of the documents and records of the OC, including the register of shareholders and the register of directors (Section 225(4) of the Companies Act). A person who has been granted custody of the documents and records of such a dissolved OC remains liable to produce those documents and records for six years following the date of the OC's dissolution, or until the expiry of a shorter period ordered by the court (Section 227 of the Companies Act). Anguilla has confirmed that in practice ownership information for struck off companies is kept by company managers and subject to the six-year AML retention period, and other records are retained by former directors or shareholders. There is no obligation that a person in Anguilla has possession or control over the information. **Anguilla should clarify the rules regarding who the nominated persons to retain records are (and that the records should be kept for a minimum period of five years) for OCs.**

61. Section 244 of the Companies Act provides that the liability of the OC and every director, officer or shareholder continues after striking off but there are no further provisions clarifying the legal status of OCs between dissolution and restoration, although Anguilla has confirmed that OCs lose legal personality following dissolution and strike off and the right to own assets (any property of an Anguillian OC not disposed of at the date of dissolution vests in the crown). The Anguillian authorities do not have sight of shareholder information in respect of dissolved and struck off companies for long periods between dissolution and restoration.

62. An OC may be restored within 20 years of dissolution by the Registrar (where the relevant OC has not issued any shares or has no property

or liabilities) or, upon application, by the Court.[21] Form 11 (Articles of Revival), as set out in the Companies Regulations, to be submitted to the Registrar on restoration, does not require shareholder information but does require detailed information on the company, including the reasons for dissolution/strike off, the interest of the applicant in revival and the relationship of the applicant to the company. **Anguilla is recommended to mandate the provision of membership information upon dissolution and restoration of Anguillian OCs.** Further restrictions and rules should be introduced regarding the legal status of a wound up OC (see Annex 1 and LLC below).

63. Where FOCs cease to carry on business in Anguilla, they must file a notice with the Registrar and the name of the FOC is removed from the FOC Register. The Registrar may also remove the name of the FOC of his/her own volition.[22] As also noted above in footnote 15, FOCs are not Anguillian companies and are unlikely to have sufficient nexus with Anguilla in application of the 2016 Terms of Reference; FOCs thus lose their connection with Anguilla after removal from the FOC Register (other than in respect of their

21. Both restorations granted by (i) the Registrar (Section 206 Companies Act) and (ii) the Court (Section 207 Companies Act) must be made within 20 years of the date of dissolution of the company.

(i) Registrar Restoration: Where a company has been struck off the register and dissolved under the former Anguillian Companies Act (i.e. Companies Act, Revised Laws 1961, Cap 335 (Former Act), which is not relevant given the time limit) or sections 153, 210 and 243 of the Companies Act as described in paragraph 58 of this Report, certain persons (shareholder, director, creditor, debenture holder, liquidator or receiver) may apply to the Registrar for the revival of the company. The Registrar must be satisfied that at the time the company was dissolved it (a) was still carrying on business, (b) was a party to legal proceedings, (c) was in liquidation or receivership or (d) had property that had not been disposed of. The restoration may be "upon such reasonable terms as [the Registrar] considers appropriate". In addition, the Registrar may require the payment of certain fees and penalties and for any legal provisions the company had failed to comply with prior to dissolution to be complied with. The Registrar may also refer an application for restoration to the Court.

(ii) Court Restoration: where restoration under (i) can not apply, any interested person may apply to court for an order that a struck off company be restored to the register. The applicant must notify the Registrar of the application and the Registrar may appear and be heard at the hearing of the application. If the Court is "satisfied that it is just for the company to be revived" the Court may order that the company be revived and restored to the register. The Court may also require the payment of fees or penalties and for any legal provisions the company had failed to comply with prior to dissolution to be complied with.

22. See Section 195(2) of the Companies Act.

service providers, who (if AML obliged) remain obliged to maintain information related to FOCs for five years). Unlike OCs, FOCs cannot be restored. In order for an FOC previously removed from the FOC Register to once more legally do business in Anguilla, it must again complete the standard registration process described above in paragraph 54.

Ordinary companies summary

- Domestic and non-domestic OCs must maintain Share Registers in Anguilla at their registered office, which contain some details of shareholders including recent transferee shareholders although the information therein may not be up to date and it can vary depending on the approach of each OC.
- Domestic and non-domestic OCs must maintain Transferor Registers which can be kept outside Anguilla at a location specified by a directors' resolution which in turn should be kept in Anguilla so there should be a paper trail within Anguilla to keep track of that register. The details required to be maintained in the Transferor Register is not stipulated by law and may not be up-to-date.
- FOCs are not obliged to maintain registers of shareholders and there are no rules in place as regards keeping track of the transfer of shares in an FOC. Whether legal ownership information is provided to the Registrar in respect of an FOC therefore depends on the requirements of the law of its place of incorporation.
- The Registrar maintains a basic registry of the names of domestic and non-domestic OCs and keeps an FOC Register. Annual returns containing shareholder information are required to be filed with the Registrar every year so shareholder information is retained by the Registrar. The Registrar does not appear to store this data separately on its records in a systematic manner, such information is only updated on a yearly basis and Anguilla does not track compliance with completing this Section of the forms so it is possible that such information is not being provided to the Registrar.
- Domestic OCs (and FOCs) are not required to engage a licensed service provider and legal ownership information in respect of the company might be not available with any AML-obliged person.
- Non-domestic OCs are required to engage a licensed service provider who, under the CMA and AML/CFT rules, would hold legal ownership information on the company as part of the beneficial ownership information requirements set out below.

64. As domestic OCs and FOCs are not required to engage a licensed service provider (which is particularly relevant for the retention of documentation following dissolution and at restoration), Anguilla is reliant on the ownership information held by the Registrar and by the company itself at its registered office, and both sources may be out-of-date. Accordingly, Anguilla should ensure that up-to-date legal ownership information is available at all times in respect of OCs and FOCs, including for at least five years after OCs and FOCs cease to exist (see Annex 1).

IBCs

65. The main governing statute for IBCs is the IBC Act and the amendments introduced pursuant to the IBC Amendment Act 2018. IBCs are a specific type of companies which are restricted from the following activities :

a. carrying on a banking or trust business within the meaning of TCOBA

b. carrying on business as an insurance or a reinsurance company, insurance agent, insurance broker, or insurance manager

c. carrying on company management business within the meaning of the CMA.

66. IBCs are the most popular corporate vehicle and a flagship product for attracting offshore foreign investment in Anguilla. Anguillian IBCs bear similar hallmarks to other offshore business vehicles. There are no requirements to file accounts with Anguillian authorities and shareholders meetings can take place anywhere. They must pay an annual fee to remain in good standing. The IBC Act provides protections to shareholders, directors, officers, agents and liquidators in respect of personal liability for debt obligations and defaults of the company.

67. To incorporate an IBC, articles of incorporation, which do not include shareholder details, are submitted to the Registrar. IBCs may elect to file information regarding shareholders or directors with the Registrar (Section 128) although Anguilla has confirmed that IBCs do not generally elect to file.

68. IBCs are obliged to maintain a register of shareholders (IBC Share Register) which must show, inter alia, the name and latest known address of each person (confirmed by Anguilla to mean both legal and natural persons) who holds a registered share in the IBC and the dates on which each person was entered on the IBC Share Register and ceased to be a shareholder (Section 24 of the IBC Act). A copy of the IBC Share Register commencing from the date of the registration of the IBC is required to be kept at the registered office of the IBC or at the office of its registered agent, both of which must be in Anguilla (Part 4 of the IBC Act). A change of either office

or agent must be notified to the Registrar. As these two locations will often be the same, the registered agent is likely to have possession of the IBC Share Register.

69. IBCs have more discretion than OCs as regards their by-laws. For example, IBCs may choose whether to issue share certificates (Section 23) and fractions of shares in an IBC may be issued (Section 18). Further, the IBC may specify the requirements as regards share transfers and if written instruments of transfer are not required by the IBC, the directors may accept such evidence of a transfer of shares as they consider appropriate. Subject to its articles or by-laws, an IBC must enter the name of the transferee in respect of a registered share in its IBC Share Register upon application by the transferor or transferee (Section 26). There does not appear to be a time limit for this registration although it is an offence to contravene this requirement to update the IBC Share Register. Anguilla should introduce a more formal and standardised approach to IBC share transfers so that such transfers can be more easily verified (see Annex 1).

The striking off, dissolution and restoration of IBCs

70. Similar to OCs, IBCs may be struck off the companies register for failing to provide timely notification to the Registrar of a change of registered agent, for failing to submit documentation required to be filed to the Registrar, for carrying on a business outside the scope of an IBC or for failing to pay any fee or penalty required to be paid (Sections 38 and 109).

71. IBCs may be wound up in two ways, namely (i) compulsory winding up or (ii) voluntary winding up. Upon the commencement of a winding up, a plan of dissolution and articles of dissolution must be prepared and a liquidator should be appointed. The IBC Regulations provide a form for articles of dissolution which does not request shareholder information or allocate responsibility for document retention so it is not clear who is retaining relevant IBC documentation following dissolution from the IBC legislation.[23] However, as all IBCs are obliged to engage an AML-obliged service provider, legal ownership information should be kept for at least five years from the end of the relationship.

72. Upon completion of the winding up and dissolution, the Registrar strikes the IBC off the companies register and issues a certificate of dissolution. Notice of the striking off is published in the Gazette and in a publication of general circulation in the country where the company has its principal office, which is prudent given the international nature of IBCs. The effect of strike off is set out in the IBC Act (Section 112) and directors, shareholders,

23. Form 13, Schedule 2 IBC Regulations.

liquidators and receivers are prohibited from commencing legal proceedings, carrying on any business or in any way dealing with the assets of the company and cannot defend any legal proceedings commenced after the date the company is struck off the companies register, make any claim or claim any right for, or in the name of, the company.

73. Where an IBC has been struck off the Register, Article 111 of the IBC Act allows restoration to the companies register within 20 years. IBCs complete a Form 14 (Schedule 2 of the IBC Regulations) and pay fees to be restored. Form 14 does not require any information on the IBC shareholders, similar to OCs and LLCs.

IBC summary

- The Registrar does not hold information on the shareholders of IBCs.
- IBCs are required to retain an IBC Share Register in Anguilla which must be updated to reflect share transfers. An IBC must have a registered office in Anguilla and a registered agent in Anguilla at all times. It is likely that its IBC Share Register is kept at the office of its registered agent.
- The update of the IBC Share Register may not be strictly up to date. As there is no timing requirement and as directors have discretion as regards confirming valid share transfers depending on the particular by-laws of the IBC, it would be very difficult for Anguillian authorities to verify up-to-date shareholder information.
- IBCs can be dissolved and struck off and later restored within 20 years. There are no record retention requirements between dissolution and restoration, other than the 5-year retention of KYC and CDD information by the AML-obliged service provider, and ownership information is not mandated at restoration.

74. **It is recommended that Anguilla introduce document retention requirements in respect of IBCs which have been wound up. Anguilla is also recommended to mandate the provision of membership information upon dissolution and restoration of Anguillian IBCs.**

Limited liability companies (LLCs)

75. The LLC Act governs LLCs. Foreign LLCs can continue in Anguilla as an LLC by applying to the Registrar and are thereafter subject to the same rules. Similar to IBCs, LLCs enjoy greater regulatory autonomy than OCs and are restricted from undertaking numerous types of activities in particular regulated activities in Anguilla, including banking, insurance and company management business (see Section 8 LLC Act).

76. To form an LLC, articles of formation, which do not need to contain the names of members, are filed with the Registrar. Persons who acquire an LLC interest are called members and become so (i) upon formation of the LLC, (ii) as set out in the LLC agreement or (iii) when their membership admission appears in the records of the LLC. Rather than prepare by-laws, LLC members can enter into a written LLC agreement (Section 12) to set out the LLC rules.

77. Section 5 of the LLC Act provides that LLCs must maintain a register containing the name, address and other specified details (such as the date every member and manager is appointed and ceases to be a member or manager) as regards every member and manager of the LLC (LLC Interest Register). The LLC Interest Register must be kept at the registered office in Anguilla.

78. LLCs must have a registered office in Anguilla and a registered agent (who holds a licence pursuant to the CMA or TCOBA) in Anguilla at all times. The registered office must also be provided by a person who holds a licence pursuant to the CMA or TCOBA.

79. Section 26 of the LLC Act provides that an LLC may maintain its records in other than written form if such form is capable of conversion into written form within a reasonable time. The meaning of "reasonable time" is not clear.

80. In the 2014 Report, Anguilla was recommended to amend its laws to introduce a practical mechanism to ensure that registered agents keep information on all the owners of LLCs, as a 10% threshold was in place and although the Interest Register had been introduced, the practical mechanisms that other companies had to ensure that all identity and ownership information could be obtained (such as information held by commercial registry, registered agent, FSC and the company itself) were not available in respect of LLCs. Anguilla has confirmed that the Registrar does not hold information on the membership of LLCs and the Registrar maintains a basic registry of the names of LLCs registered. During the onsite visit for this report, authorities from the FSC indicated that registered agents are required to identify all legal and beneficial owners of LLCs. Although representatives from the Anguilla Compliance Association stated that, in practice, the 10% threshold is applied when undertaking CDD, Anguilla has confirmed that legal ownership information is ensured through the LLC Act (Section 5) rather than through the AML provisions which allow for a 10% threshold for legal ownership through the definition of significant owners (see paragraph 92 below). Information on the beneficial owners of an LLC should be available through the licensed service provider, as further detailed below at paragraph 84 which implies knowing the legal owners. Therefore the recommendation in the 2014 Report no longer applies and the primary concern as regards ownership

information is where an LLC or its service provider ceases to exist. Anguilla has confirmed that ownership information is available at the local registered office of the LLC.

LLCs ceasing to exist

81. There are several routes for the dissolution and winding up of an LLC set out in the LLC Act, including pursuant to the LLC agreement or an order of the High Court. Upon conclusion of the dissolution and winding up, the Registrar strikes the LLC off the Register. Similar to the rules for OCs, the Registrar may also strike an LLC from the companies register if the LLC contravenes the LLC Act or the Registrar is satisfied that the LLC has ceased to carry on business or is not in operation. Anguilla has confirmed that, regarding whether the LLC has ceased carrying on a business or is not in operation, the Registrar is informed if an LLC is carrying on business by the registered agents and failure to file annual fees results in an LLC being struck from the companies register and listed in the Gazette and its bank accounts are frozen. Section 60 of the LLC Act provides that the Registrar may revive a struck off and dissolved LLC upon the application of an interested person with the prescribed form and upon payment of fees. There is no time limit for this revival so at any time an LLC may be revived. **It is recommended that Anguilla establish a time limit for the revival of LLCs which have been wound up.**

82. Responsibility for document retention is not allocated upon dissolution or winding up so it is not clear who is retaining relevant LLC documentation following a wind up. **It is recommended that Anguilla introduce document retention requirements in respect of LLCs which have been wound up.** Information as regards the LLC membership is not submitted to the Anguillian authorities at either dissolution or revival so the Anguillian authorities have no sight of up-to-date membership at either point. **Anguilla is therefore recommended to mandate the provision of membership information for LLCs upon dissolution and restoration.** Finally, the LLC Act does not clarify the legal status of LLCs between dissolution and restoration save to note that its property vests in the Crown. This is similar to the OC provisions and restrictions and rules should be introduced regarding the legal status of a wound up LLC (see Annex 1).

LLC summary

- The Registrar does not hold information on the membership of LLCs.
- LLCs are required to retain an LLC Interest Register in Anguilla at its registered office although this may not be up to date.

- An LLC must have a registered office in Anguilla and a registered agent in Anguilla at all times. It is likely that its LLC Interest Register is kept at the office of its registered agent.
- LLCs can be dissolved and struck off and later restored anytime. There are no record retention requirements following dissolution, the legal standing of a dissolved LLC is not clear and Anguillian authorities do not have any sight of membership information during either the dissolution or restoration process.
- LLCs are required to engage a licensed service provider who, under the CMA and AML/CFT rules, would hold legal ownership information on the LLC as part of the beneficial ownership information requirements set out below.

Corporate mobility

83. Anguillian law allows for corporate mobility. Foreign companies can be continued under Anguillian law and Anguillian companies can be continued under foreign law. In the latter case, some ownership information on the Anguillian company would remain available in Anguilla with the registered agent for five years pursuant to AML law provided an AML-obliged entity is engaged (as the Companies Act, IBC Act and LLC Act do not specify rules regarding the retention of their records). As noted elsewhere in this report, an AML-obliged service provider is often engaged, either mandated by law or as a matter of practice.

Registered Agents and AML/CFT framework

84. As a matter of practice, in Anguilla, companies are generally incorporated through a registered agent (also called a company manager) licensed by the FSC pursuant to the CMA.[24] Anguilla has confirmed that the initial source of information for EOI requests is the company managers.

85. Section 152 of the Companies Act provides that OCs and FOCs must at all times have a "registered agent" in Anguilla. The first registered agent is the person specified in the "articles" (which for these purposes is assumed to mean articles of incorporation, as per Section 7, which are submitted to the Registrar on incorporation but could mean any one of the items listed under the definition of "articles") and thereafter the person notified to the Registrar.

24. Domestic OCs may have a non-licensed registered agent (Companies Act, Section 152), although it is a long-standing policy of the Registrar not to accept registration of such companies without a licensed registered agent. Foreign registered OCs (i.e. FOCs) are also not obliged to engage a licensed registered agent.

The registered agent of a non-domestic OC must hold a relevant licence, issued under the CMA or TCOBA (subsection 152(5)). All OCs and FOCs are therefore obliged to have a registered agent in Anguilla. The breakdown is as follows:

Company	Service provider required	Licence	Share/interest register	Annual return	Regulatory body
Domestic OC	Registered agent in Anguilla	None prescribed	Kept in Anguilla at the OC registered office	Yes, filed with Registrar	Registrar
Non-domestic OC	Registered agent in Anguilla	Must hold a relevant licence under CMA or TCOBA [a]	Kept in Anguilla at the OC registered office	Yes, filed with Registrar	FSC for service provider/ Registrar
FOC	Registered agent in Anguilla	None prescribed	No	Yes, filed with the Registrar	Not clear
IBC	Registered agent in Anguilla	Must hold a relevant licence under CMA or TCOBA [b]	Kept in Anguilla at the IBC registered office or at the office of its registered agent	No [c]	FSC for service provider
LLC	Registered agent in Anguilla	Must hold a relevant licence under CMA or TCOBA [d]	Kept in Anguilla at the LLC registered office	No	FSC for service provider

Notes: a. Section 152(5) Companies Act.

b. Section 37(5) IBC Act.

c. Anguilla has confirmed that returns are not filed by IBCs and LLCs but rather they are required to "pay [an] annual fee to remain in good standing. The annual fee provides the company details along with the registered agent/office information".

d. Section 6(2) LLC Act.

86. There are six main governing statutes for licensed registered agents (for the purposes of this Section, a "Licensee"), namely the CMA, the Companies Register Act, the FSC Act, AML/CFT Regulations, the AML/CFT Code and POCA, and there is detailed guidance published by the FSC to assist Licensees. In addition, TCOBA governs business licences which general partnerships generally avail of to do business in Anguilla.

Companies Management Act (CMA)

87. The CMA primarily deals with Licensee applications and the issuance of licences by the FSC in respect of the carrying out of a "company management business". Licensees are required to be (i) an OC incorporated or continued under the Companies Acts, (ii) an FOC registered under the Companies Acts or (iii) an attorney-at-law admitted to practise before the Eastern Caribbean Supreme Court in Anguilla. The activities of a Licensee are restricted. No shares or other interest in a Licensee may be issued, transferred or otherwise disposed of without the prior authorisation of the FSC (although certain Licensees may be exempt) (Section 12), director appointments must be approved in writing by the FSC (Section 13) and the FSC may require some Licensees to take out insurance (Section 17).

88. Licensees are not currently obliged to file returns to the FSC,[25] although the FSC intends to amend its governing legislation to request that all Licensees file returns. Anguilla notes that Licensees are required by the FSC to file accounts with the FSC as a regulatory practice which would assist the FSC monitor the activities of and compliance by Licensees in Anguilla.

89. In respect of its company management business, a Licensee is obliged to maintain and keep books or records, which accurately reflect the business of the Licensee, in Anguilla (Section 15), although it is not clear for how long such documentation is to be retained. Further, although Licensees which are the company types (i) and (ii) above (i.e. OC or FOC) are required to file annual returns with the Registrar, attorneys at law are not required to do so.

AML/CFT Regulations and AML/CFT Code

90. The AML/CFT Regulations prescribe the rules for CDD and certain definitions including beneficial owner, considered in more detail below.

91. Regulation 10 of the AML/CFT Regulations provides that a "service provider" must apply CDD measures before establishing a business relationship or carrying out an occasional transaction and in other circumstances such as where the service provider doubts the veracity of documentation.[26]

25. Section 9 of the CMA provides that the FSC may, by notice published in the Gazette, issue directions to licensees for the making of returns, or the furnishing of documentation, to the FSC for regulatory purposes. Anguilla has confirmed that such Gazette notice has not been published.

26. The term "business relationship" is defined as a business, professional or commercial relationship between a service provider and a customer which is expected by the service provider, at the time when contact is established, to have an Element of duration. The meaning of "occasional transaction" is set out in Regulation 3 and includes monetary thresholds.

The meaning of "service provider" includes Licensees but is also much broader and includes most service providers as it accounts for persons who provide the following services to third parties by way of business:

i. acting as a secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons or arranging for another person to act in one of the foregoing capacities or as the director of a company;

ii. roviding a business, accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;

iii. acting as, or arranging for another person to act as, a nominee shareholder for another person; and

iv. arranging for another person to act as a nominee shareholder for another person.[27]

92. Service providers are also obliged to carry out CDD at other appropriate times to existing customers as determined on a risk-sensitive basis and must obtain identification information where there is a change in the identification information or beneficial ownership of a customer. The term "identification information" and further information on the CDD measures to be applied is specified in the AML/CFT Code. For CDD, service providers are obliged to identify who a customer is, determine whether the customer is acting for a third party and verify the identity of the customer, any third party for whom the customer is acting and the beneficial owner (Section 4 AML/CFT Regulations and Code Guidance). The term "customer" is not defined save as to mean including a prospective customer.[28] Section 13 of the AML/CFT Code stipulates the following identification for individuals: full legal name, any former names, and any other names used; gender; principal residential address; and date of birth. For legal entities, Section 15(2) stipulates the following identification information:

(a) the full name of the legal entity and any trading names that it uses;

(b) the date of the incorporation, registration or formation of the legal entity;

(c) any official identifying number;

27. AML/CFT Regulations Schedule 2, Section 1(b).
28. Anguilla notes that this term "has its ordinary meaning" and the FSC is considering the definition.

(d) the registered office or, if it does not have a registered office, the address of the head office of the legal entity;

(e) the name and address of the registered agent of the legal entity (or equivalent), if any;

(f) the mailing address of the legal entity;

(g) the principal place of business of the legal entity;

(h) the names of the directors of the legal entity;

(i) identification information on those directors who have authority to give instructions to the service provider concerning the business relationship or occasional transaction;

(j) identification information on individuals who are significant owners.

93. CDD measures include verifying that any individual purporting to act on behalf of a customer is authorised to do so and identifying and verifying the identity of that person and must include verification on the basis of documents, data or information from a reliable and independent source. Verification (and if necessary re-verification) includes using evidence from at least one independent source for low risk clients and two sources for higher risk or high risk. Verification for low risk individuals concerns the name of the individual and either the residential address or date of birth.[29] For a low risk entity, service providers must verify its name, the official identifying number and the date and country of its incorporation, registration or formation. For higher risk, service providers verify the address of the registered office or head office and the address of the principal place of business of the entity (if different). For high risk, the service provider verifies "such other components of the legal entity's identification as it considers appropriate" (Section 16(4) AML/CFT Code). Service providers are required in all cases to verify the identity of any director of an entity.

94. Additional CDD information is gathered if the relevant entity presents a higher level of risk (such as where the customer has not been physically present for identification purposes[30]), in which case enhanced CDD and ongoing monitoring must apply (Section 12 of the AML Regulations).

29. For higher risk, verification relates to the name, residential address, date and place of birth, nationality and gender. For high risk, nationality or address and government issued identity number or other government identifier are added.

30. Other cases include where any of the persons related to the customer are politically exposed persons, where the customer, transaction or business relationship involves private banking or companies that have nominee shareholders or where the service provider decides that by its nature there is a higher risk of money

The AML/CFT Code Guidance provides some suggestions, such as taking additional steps to verify the CDD information is obtained, obtaining due diligence reports from independent experts to confirm the veracity of CDD information held, requiring board or senior management approval for higher risk customers and requiring more frequent reviews of high risk business relationships.

95. A "significant owner", as specified in Section 15(2)(j) above, owns (whether legally or beneficially) at least 10% of the legal entity or its parent or has the power to exercise or control the exercise of at least 10% of voting rights in the legal entity or its parent. It remains unclear how the 10% threshold for significant owner interacts with the definition of beneficial owner and Anguilla should monitor the interpretation by Licensees of this provision (see Annex 1).

96. Section 17 of the AML/CFT Regulations sets out record retention rules. Service providers are obliged to keep records in a form that enables them to be made available on a timely basis for five years. The meaning of records includes "a copy of the evidence of identity obtained pursuant to the application of customer due diligence measures or ongoing monitoring, or information that enables a copy of such evidence to be obtained". Accordingly, even where a relationship has ended between the relevant company and licensed service provider, the service provider is still obliged to retain some ownership information for at least five years from the end of the relationship.

Service providers ceasing activity

97. The CMA provides that licences may be surrendered, subject to certain conditions, and the FSC may apply to the High Court to wind up a Licensee. There are no stipulations as regards document retention following the surrender of a licence or winding up. Therefore it is not clear whether the retention of documentation relating to the activities of Licensees is ensured so that ownership information regarding service providers is available even if such service providers are wound up or cease to exist. **Anguilla is recommended to consider an oversight regime regarding the retention of documentation relating to the activities of Licensees themselves (independent of the companies managed by the Licensee) so that ownership information regarding service providers is available even if such service providers are wound up or cease to exist.**

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laundering (such as where the customer is connected to sectors vulnerable to corruption such as arms or oil sales).

Licensee summary

- Licensees are required to keep records regarding their company management business including some ownership and identity information and supporting documents for a period of five years beginning on the date that the business relationship ends.
- It is not clear whether Licensees are required to know all of the ultimate beneficial owners of entities or arrangements they provide services to. There is no definition of ultimate beneficial owner in the AML law.
- Anguilla refers to Section 15 of the AML Code as the legal ownership requirements for Licensees. The meaning of significant owner includes both beneficial and legal owners. Therefore the legal ownership information requirements in AML law (Section 15(2) of the AML Code) may be subject to a 10% ownership/control threshold).
- Licences can be surrendered and Licensees can be wound up although there is no document retention stipulation in such circumstances.
- Document retention requirements for Licensees appear to only apply in respect of their company management relationships and not the activities of the Licensee per se.

Nominees

98. As noted in the 2014 Report, any person engaged in the business of acting as a nominee shareholder of a company (whether domestic or foreign) in Anguilla is considered to be carrying on a company management business and must be licensed under the CMA. This results in the nominee being subject to Anguilla's AML regime as a service provider. The FSC has confirmed that as of April 2020 there are 59 Licensees that may provide nominee services in Anguilla. Anguilla has further confirmed that as registered agents hold all beneficial ownership information of companies, all nominee services should be known by the registered agent.

99. Anguilla notes that it did not encounter any instance of a person other than a company manager providing nominee shareholder services during the review period or since and neither did it receive EOI requests related to nominees. In 2019, Anguilla did receive a request for information on nominees and was able to provide information to the satisfaction of the requesting peer.

Legal ownership information – Enforcement measures and oversight

100. As addressed in the 2014 Report, a range of sanctions under the governing legislation for the various entities is available to enforce compliance with information-keeping and filing requirements (2014 Report, paragraphs 196 to 214). The Companies Act foresees sanctions for failing to maintain ownership records, making a false or misleading report, and failing to file an annual report (Companies Act, Schedule 1). Fines range from XCD 25 000 (Eastern Caribbean Dollars, EUR 8 500 ca.) for a legal entity to XCD 5 000 (EUR 1 700 ca.) for directors of the entity responsible for the failure. These penalties are to be levied by the Registrar and it is the duty of the Deputy Registrar to ensure that the electronic registers and physical documents are correctly maintained. As noted in the 2014 Report, the Registrar may suspend a registered agent's access to the ACORN system as a penalty for failure to comply with its obligations. In the case of serious or continuing defaults, on receipt of a report from the Registrar, the FSC can cancel the licence of the relevant service provider.

101. Despite the offences and sanctions outlined under governing legislation, there is no record of consistent sanctions in practice. The oversight regime in respect of FOCs is the same as the oversight regime for OCs. The Registrar does not undertake any system of monitoring or inspections and the supervisory activities of the Registrar and Deputy Registrar are limited to the carrying out of quarterly checks on whether all annual returns have been correctly filed and striking off the companies register any OC or FOC that does not provide its annual report.

102. In practice, these quarterly checks yield results. It is the practice of Anguilla to strike off companies which do not comply with obligations to file annual returns and pay the associated fees or which do not pay requisite fees to remain in good standing, rather than impose administrative sanctions. During the period under review, 6 901 OCs and FOCs[31] were struck off for failure to submit annual returns and pay the required annual fee. As noted above (paragraph 40) in parallel to annual return filings, companies also recently began to submit filings to the Registrar pursuant to substance requirements. While failures to submit substance filings involve the imposition of administrative fines, the practice regarding annual returns involves only the initial payment upon submission and then strike off if companies fail to comply. The Registrar does not analyse this data or historic data as regards compliance rates with filing annual returns so it is not clear what the percentage rate of compliance is.

103. There is also no practice of carrying out off-site or on-site inspections of companies by the Registrar to check whether OCs, FOCs, IBCs or LLCs

31. IBCs and LLCs do not submit returns.

keep a register of shareholders or members (as applicable). This is a concern in particular for the regulatory oversight of domestic OCs and FOCs which do not need to engage service providers who hold a licence under CMA or TCOBA. For FOCs there does not appear to be any way to track shareholder information other than through the registered agent. Anguilla should strengthen its monitoring and enforcement regime to ensure that ownership information is available (see Annex 1).

104. The approach of the Registrar (i.e. no complementary measures to the quarterly check of annual returns) together with the lack of a corporation tax system mean that great reliance is placed on the FSC and the AML/CFT regime. Anguilla has advised that the FSC's supervisory regime as regards service providers is robust enough to ensure that legal ownership information is available in line with the international standard.

105. The AML/CFT legislation imposes strict penalties for failure to comply with requirements. The enforcement and supervision activities of the FSC are considered in detail below. The FSC's supervisory regime focuses on the availability and accuracy of information held by registered agents, although it does not extend to monitoring the compliance of service providers with filing obligations with the Registrar.

106. As outlined in the 2014 Report, while IBCs are required to maintain an IBC Share Register, companies formed under the IBC Act are not required to file information regarding shareholders or directors. While they may elect to do so, only a very small number of IBCs file.[32]

107. Moreover, it is not clear whether any authority is actually checking whether FOCs, IBCs or LLCs retain share or member registers. As IBCs are the most common company type, it would be prudent to ensure that IBC Share Registers in particular are maintained.

108. The lack of a robust monitoring and supervisory regime by the Registrar may undermine both the availability and the accuracy of the legal ownership information maintained in Anguilla.

Availability of legal ownership information of Companies in EOI Practice

109. The registration and filing requirements regarding the legal ownership of companies have not substantively changed since the 2014 Report. During the review period, some specific issues were encountered as regards the availability of legal ownership which were, for the most part, due to a unique EOIR case, as detailed below. In the review period, Anguilla received

32. Anguilla has estimated that the filing rate is less than 10% of registered IBCs.

53 requests for legal ownership information and was able to provide the information in 9 cases. The failure to provide legal ownership information in 44 cases was due to the relevant information holder ceasing to exist and the specific circumstances of that matter are considered below. Since the review period, 11 requests for legal ownership information have been dealt with and Anguilla was able to provide the information in 10 cases.

110. In light of the problems both peers and Anguilla have encountered in relation to specific instances where service providers have been dissolved and documentation held by such persons has not been available, it is possible that legal ownership records may no longer be accessible to the Anguillian authorities once a service provider dissolves. Anguilla has noted that it is bringing in legislative changes to require the retention of records following the dissolution of a service provider, **it is recommended that Anguilla monitor the retention of legal and beneficial ownership records by service providers and companies in practice.**

Availability of beneficial ownership information

111. Under the international standard as strengthened in 2016, beneficial ownership information on companies should be available. In Anguilla, this aspect of the standard is generally met through its AML/CFT legislation. The main AML legislation is POCA, the AML/CFT Regulations and the AML/CFT Code and the accompanying AML/CFT Code Guidance.[33]

Legal framework for the availability of beneficial ownership of companies

Type	AML law
Domestic OCs	Some
Non-domestic OCs	All
Foreign OCs	Some
IBCs	All
LLCs	All

112. Anguilla's AML/CFT regime imposes strict requirements on service providers to conduct CDD, ongoing monitoring and recordkeeping. These requirements apply to all persons, natural and legal, who fall within the definition of "service provider".

33. The AML/CFT Code has the status of law in Anguilla. The Guidance Notes are incorporated within the AML/CFT Code but do not have the status of law; nonetheless, the POCA requires that a court consider whether a person has followed the Guidance in determining whether he/she has committed an offence under the AML/CFT Code.

Meaning of service provider

113. The list of service providers, which is similar to the list set out in the 2014 Report (paragraph 120), is reasonably comprehensive and includes certain specified persons such as "independent legal professionals" and the persons specified in the Section *Registered Agents and AML/CFT* above together with the following regulated activities:

- licensees under the Banking Act
- offshore banking licensees[34] and trust companies licensed under TCOBA
- Licensees under the CMA
- certain insurers, brokers and agents licensed under the Insurance Act
- managers and administrators licensed under the Mutual Funds Act
- persons licensed under certain provisions in the Securities Act
- money services businesses licensed under the Money Services Business Act.

114. While in most jurisdictions the main sector on which authorities might rely for keeping beneficial ownership information on its clients is the banking sector, in Anguilla the most widespread source of information are the registered agents; i.e. company manager or service provider.

115. The AML/CFT Code Guidance also notes that there are three types of service providers:

> (a) regulated persons, that is persons regulated by the [FSC];
>
> (b) externally regulated persons, that is persons regulated by the Eastern Caribbean Central Bank or the Eastern Caribbean Securities Regulatory Commission; and
>
> (c) certain non-financial businesses and professions whose businesses are considered to pose a money laundering or terrorist financing risk to the jurisdiction. These non-financial businesses and professions, which are termed "non-regulated service providers", include real estate agents, lawyers and accountants.

116. Most relevant entities in Anguilla will need to engage the services of at least one of the services providers covered by the AML/CFT Regulations and once a person is within the "service provider" regime it is then generally subject to the full range of AML rules including the obligation to carry out CDD.

34. As noted below, there is currently only one offshore bank operating in Anguilla.

117. Companies (OCs, FOCs, IBCs and LLCs) are required by law to engage the services of a registered agent throughout the lifetime of the entity and if, for example, a company engages a company manager licensed under the CMA, an accountant and an investment manager, that company may have three service providers for AML purposes.

118. In addition to the above, the FSC keeps a register of externally regulated service providers pursuant to the Externally and Non-Regulated Service Providers Regulations, 2013 (ENRSP Regulations) which mandate the application of AML obligations for such persons and there are penalties for failure to register with the FSC accordingly.

119. Separate to the CMA, TCOBA and TBOPL regimes, company services can be performed by legal professionals. The Anguillian authorities interpret the legislation in such a way that lawyers, when licensed to carry on a company management business, are subject to the legal obligations created under this Act or any other Act that regulates company managers/service providers. There should be no distinction in the treatment of licensees who are attorneys at law and those who a companies.

120. However, at present the AML framework does not apply to legal professionals providing company services in such capacity. There is a class action pending since June 2014 when a stay on the application of the AML framework in POCA, the ENRSP Regulations and the AML Regulations to independent legal professionals was granted. On 18 December 2019 a status update on this case was heard by Justice Innocent in the Eastern Caribbean Supreme Court and an adjournment was granted to July 2020 in order to allow this matter to be reviewed by the Anguillian Attorney General.

121. While the Anguillian authorities are of the view that this Court order does not extend to legal practitioners acting as company managers as they should be subject to the CMA regime, such interpretation is not clear from the order of Court and it is possible that a legal practitioner could be acting as a service provider for a client without being subject to regulatory scrutiny as regards carrying out CDD.

122. **As a result, it is recommended that Anguilla confirm the position of independent legal practitioners are subject to AML law.**

123. While domestic OCs and FOCs are required to engage a registered agent, the agent does not legally need to be licensed under a specific regulatory regime and is not subject to record keeping and information gathering requirements and therefore beneficial ownership information would not be available in respect of those companies because the AML regime may not apply to the agents they engage. The standard requires that beneficial ownership be available for all domestic companies, and for foreign companies to the extent they have a relationship with an AML-obliged service provider that is

relevant for the purposes of EOIR. As noted above, Anguilla has confirmed that it is a long-standing policy of the Registrar not to accept registration of domestic OCs and foreign companies without a licensed registered agent. Anguilla has also noted that as a result of the application of the CMA and AML/CFT rules, there are no unlicensed registered agents within Anguilla in practice. Anguilla also plans to amend legislation to align it on the current practice. **Anguilla is recommended to introduce beneficial ownership requirements for domestic ordinary companies.**

Beneficial ownership definition

124. Sections 10 and 11 of the AML/CFT Regulations and the AML/CFT Code require service providers (within the meaning of the AML/CFT Regulations) to undertake CDD measures to identify their customers and verify their identity. Section 4(1)(d) of the AML/CFT Regulations defines CDD as including:

> identifying each beneficial owner of the customer and third party, where either the customer or third party or both are not individuals.

125. Beneficial owner is defined under Section 2(1)(3) of the AML/CFT Regulations as:

> (a) an individual who is an ultimate beneficial owner of the legal person, partnership or arrangement, whether or not the individual is the only beneficial owner; and
>
> (b) an individual who exercises ultimate control over the management of the legal person, partnership or arrangement, whether alone or jointly with any other person or persons.

126. The definition of beneficial owner in the AML/CFT Regulations provides for two of the three aspects of beneficial ownership as defined under the international standard (i.e. controlling ownership interest and control through other means). However, as there is no ownership threshold in the law, the Anguillian definition of beneficial owner could capture more beneficial owners than a cascade approach. Accordingly, this cumulative approach appears to be consistent with the international standard, but it remains unclear how the absence of a threshold for beneficial ownership interacts with the 10% threshold on legal ownership (see paragraphs 80 and 93).

127. While the provision does not explicitly refer to direct or indirect ownership or control, the Anguilla authorities clarified that they are captured by the definition through the word "ultimate". It is however noted that the definition of beneficial owner refers to beneficial owner, i.e. is circular and may lead to implementation issues. Accordingly, Anguilla should monitor

the interpretation by Licensees of the definition of beneficial owner to ensure that information on all relevant beneficial owners is obtained (see Annex 1).

128. Anguilla notes that the beneficial owner must be identified based on the legal entity's incorporation documents and its register of shareholders, information and documents provided by the client (or its representative), or information received from other independent data sources. The AML obliged person is required to maintain documents proving the identity of the beneficial owner (such as valid passport, ID card or driving licence) as specified in AML/CFT Code.

129. Accordingly, AML law in Anguilla requires the identification of beneficial owners in line with the international standard where an AML obliged service provider is engaged as a company manager or registered agent. As noted in paragraph 123, Anguilla is recommended to ensure that beneficial ownership information requirements are in place for domestic OCs.

Application of Customer Due Diligence

130. Section 10 of the AML/CFT Regulations requires service providers to conduct ongoing monitoring of their customers and to obtain identification information where there is a change in the beneficial ownership of a customer, a change in the third parties or a change in the beneficial ownership of third parties.

131. Section 4(5) of the AML/CFT Regulations defines "ongoing monitoring of a business relationship" as follows:

> (a) scrutinising transactions undertaken throughout the course of the relationship, including where necessary the source of funds, to ensure that the transactions are consistent with the service provider's knowledge of the customer and his business and risk profile; and
>
> (b) keeping the documents, data or information obtained for the purpose of applying CDD measures up-to-date and relevant by undertaking reviews of existing records.

132. Service providers must appoint an AML/CFT compliance officer (Section 20 AML/CFT Regulations) and put in place appropriate risk-based systems and controls to determine whether any further customer information (including updating existing information) is required for ongoing CDD processes and must have processes to perform the monitoring required by law. The AML/CFT Code Guidance states that the FSC would expect service providers to update CDD information annually for high-risk customers and at least every five years for low risk customers. As noted above, the AML/CFT Regulations require service providers to keep copies of documents for a period of five years from the end of the relationship.

133. The AML/CFT Regulations allow a service provider to rely on an introducer and an intermediary to apply CDD measures with respect to a customer, third party or beneficial owner, if (a) the introducer or intermediary is a regulated person or a foreign regulated person;[35] and (b) the introducer or intermediary consents to being relied on. The AML/CFT Code imposes additional conditions. A service provider must carry out a risk assessment to determine whether it is appropriate for it to rely on the intermediary or introducer and, if so, whether it should put in place any measures to mitigate the additional risk. The service provider must also obtain immediately the CDD information concerning the customer or beneficial owner. All other information with an intermediary or introducer should be available to the FSC immediately upon request, or, if it is held at a location outside Anguilla, pursuant to the Guidelines on Introduced Business issued by the FSC it must be made available within 72 hours. While there is no specific penalty in the Guidelines for failure to do so, failure to comply with the due diligence requirements of the AML/CFT Regulations and Code will be considered in assessing whether licensees should continue to maintain a relationship with delinquent intermediaries/introducers. The Anguillian service provider remains responsible for any default of the introducer. In practice, the FSC reported that there had been no instance where an intermediary or introducer had failed to provide information on request.

134. Generally under the FSC Act, failure to provide records in accordance with a request from the FSC is subject to an XCD 25 000 (EUR 8 500 ca.) penalty. Administrative penalties also apply. Repeated non-compliance on the part of intermediaries/introducers will have an impact on a licensee's fit and proper status and its eligibility to continue to hold a company management licence.

Beneficial ownership information – Enforcement measures and oversight

135. The AML/CFT Regulations state that it is an offence to fail to apply CDD measures and ongoing monitoring and a service provider in contravention is liable on summary conviction to a fine of XCD 100 000 (EUR 34 000 ca.; Section 11(7)). Additionally, Section 6 of Schedule 1 of the Administrative Penalties Regulations imposes an administrative penalty in the range of XCD 15 000 (EUR 5 100 ca.) to XCD 100 000 (EUR 34 000 ca.) for the contravention of an AML/CFT obligation. Failure to keep the necessary records, including ownership information, is punishable on summary conviction by a fine of up to XCD 50 000 (EUR 17 000 ca.).[36]

35. Both terms are defined in the AML/CFT Regulations.
36. Section 17 AML/CFT Regulations.

136. In Anguilla, the FSC is the supervisory authority for purposes of Anguilla's AML/CFT regime, in particular for service providers, which includes company managers/registered agents governed by the CMA (a financial service enactment under the Financial Services Enactment Regulations) who are subject to regulatory sanctions in addition to those related to AML/CFT. The FSC undertakes monitoring and enforcement activities to ensure compliance.

137. The 2014 Report noted that the FSC inspection regime had exposed a lack of compliance by service providers with their AML obligations although no penalties were imposed. It was recommended that Anguilla ensure effective enforcement of compliance by service providers with all their obligations under the AML laws, including by levy of penalties. Since 2014, Anguilla has made significant progress on its monitoring and enforcement regime in the AML context. This recommendation became more pertinent with the requirement to ensure the availability of beneficial ownership information as part of the international standard as strengthened in 2016 and as beneficial ownership information is available in Anguilla exclusively under the AML regime.

138. The supervisory and enforcement measures of the FSC include the submission of annual reporting forms, demand letters, onsite inspections, administrative penalties, directives, suspensions and revocations of licences (Section 35(2) of the FSC Act and Part 7). Where the licensee is a company incorporated or continued under the Companies Act, the FSC can apply to court for the liquidation and dissolution of the company under Section 217(1)(b) of the FSC Act.

139. The FSC currently consists of 12 staff members and the Supervision Department consists of 9 staff members (including the Director and Deputy Director). The Department applies a risk-based approach to supervision. The FSC conducts both offsite analysis and onsite visits. During its on-site inspections, the FSC inspects the records of the registered agent and the records of a sample of the companies incorporated by the registered agent. The assessment includes verifying beneficial ownership information and confirming how the beneficial owner has been identified. It is the duty of the registered agent to maintain all ownership and identity details.

140. During the review period, the FSC conducted onsite reviews of all of its licensee company managers and trust company managers to ensure compliance with specific AML/CFT obligations. Those obligations included identification and verification information of the customer, any third party for whom the customer was acting, each beneficial owner of the customer and third party, and any person purporting to act on behalf of the customer, per Section 10 of the AML/CFT Regulations and Sections 13 and 14 of the AML/CFT Code. The activity of the FSC for the past number of years is set out below.

	2014		2015		2016		2017		2018		2019	
Type of licensee	**R**	**S/C**	**R**	**S/C**	**R**	**S/C**	**R**	**S/C**	**R**	**S/C**	**R**	**S/C**
Offshore banks	0	0	0	0	0	0	0	0	0	0	0	0
Company management	0	3	0	2	0	0	0	0	1	4	0	4
Trust companies (general)	0	0	0	1	0	2	0	0	1	0	0	0
Trust companies (restricted)	0	0	0	0	0	0	0	0	0	2	0	0
Mutual funds	1	0	0	2	1	4	3	3	2	1	0	0
Mutual funds intermediaries	3	0	0	2	1	0	3	18	0	2	1	1
Domestic insurance	0	0	0	0	0	0	0	0	0	1	0	1
Offshore insurance	15	22	20	28	2	33	4	29	3	23	9	31
Foreign insurance	0	1	1	0	0	1	0	1	0	0	0	0
Insurance intermediaries	1	3	3	2	0	1	0	0	0	0	2	3
Money services business	0	0	0	0	0	0	0	0	0	0	0	0
Total	**20**	**29**	**24**	**37**	**4**	**41**	**10**	**51**	**7**	**33**	**12**	**40**

Note: **R** means licence revoked; **S/C** means licence Surrendered or Cancelled.

141. Following the review period, the FSC continued assessing service providers' compliance with AML/CFT legislation, in particular POCA, the AML/CFT Regulations, the AML/CFT Code and the ENRSP Regulations. Nine offsite inspections were conducted from January to October 2018. In total in 2018, 12 inspections (9 offsite and 3 onsite) were carried out, of which 10 were AML/CFT inspections and 2 were prudential inspections and in 2019, 6 AML/CFT inspections and 3 prudential inspections were carried out. As part of the inspections, the FSC inspectors reviewed the records, files and written policies and procedures maintained by service providers on a sample basis and held discussions with management and staff involved in strategic, operational and compliance matters. A report was furnished for each service provider inspected. Where appropriate, specific areas for improvement were identified and deadlines were set for remedial action by service providers. The FSC has monitored the implementation of the corrective actions taken by service providers through follow ups. Below is a summary of FSC enforcement activity in respect of service providers. With respect to the interaction between the table below and the table at paragraph 140 above, when a license is surrendered or cancelled, it is a voluntary action on behalf of the Licensee. However, when a license is suspended, this is enforcement action taken by the FSC against a Licensee for breach of the legislation. Anguilla has confirmed that, in relation to the large number of surrenders or cancellations, this has been mainly in the insurance sector (captives) where there has been a number of re-domiciliations out of Anguilla.

Enforcement activity	2016	2017	2018	2019
Notices of Intent to Suspend	16	6	5	18
Suspensions	2	4	3	6
Notices of Intent to Revoke	2	17	12	16
Revocations	4	10	7	12
Notices of Intents to impose an administrative penalty	32	19	8	3
Administrative penalty	5	19	4	1

142. The FSC reported that the issues that were identified under the current supervision programme related to: failure to apply adequate CDD measures; failure to conduct ongoing monitoring; and failure to certify that original documentation to verify the identity of a principal of a company was reviewed. The FSC imposed administrative penalties in various amounts depending on the particular circumstances of the violations and the factors listed in the Schedules to the Administrative Penalties Regulations.

143. Additionally since the 2014 Report the FSC embarked on a campaign to educate service providers on their responsibilities, as stated in the AML/CFT Regulations and Code. The education campaign included Industry Day presentations, numerous training sessions and one-on-one meetings as well as guidelines and publications via its website. Anguilla undertook several actions to strengthen the enforcement and monitoring regime of the AML law (including stipulating conditions on the licensees, imposing administrative penalties, suspensions, revocations, the issuance of directions and conducting compliance visits). Presently Anguilla's AML/CFT regime seems largely consistent with the international standard, and regulators exercise a level of supervision and enforcement that appears adequate in ensuring that entities comply with their obligations to maintain legal and beneficial ownership information on clients. During the onsite visit the representatives from the service providers displayed a strong understanding of their obligations under the AML laws. The recommendation in the 2014 Report is therefore considered to be addressed.

Availability of beneficial ownership information in EOI Practice

144. During the current review period Anguilla was expressly asked to provide beneficial ownership information to at least three of its EOI partners. Three have received responses and were satisfied with the quality of the information received. Anguilla notes that unanswered requests have been due to the specific case considered below regarding particular service providers ceasing to exist.

A.1.2. Bearer shares

145. During the review period, only IBCs could issue bearer shares pursuant to the IBC Act.[37] The Custody of Bearer Shares Regulations required bearer shares to be in the custody of a "custodian". A bearer share that was held by any person other than a custodian was disabled. The custodian was required to identify the beneficial owners of the shares and to maintain a register containing the name and address of the beneficial owner of a bearer share and, within 14 days of receipt of the bearer share, send written notice to the registered agent of the company stating (i) that he/she is the custodian of the share, (ii) that he/she has identified the beneficial owner of the share and has entered into a custody arrangement with the beneficial owner and (iii) shall provide the name and address of the beneficial owner.

146. The 2014 Report noted that the practical application of the custodian system had some significant challenges and that Anguilla did not have sufficiently clear legal and practical mechanisms to provide information related to bearer shares.

147. On 20 September 2018, Anguilla passed an amendment to the IBC Act (Bearer Share Amendments) which prohibited the issuance of bearer shares and mandated the conversion of all existing bearer shares into registered shares by 31 January 2019. All bearer shares which were not converted are now considered null and void with no apparent process to claim back rights in court. Prior to the conversion, the FSC sent two surveys to licensees, in 2016 and 2018, which requested information on bearer shares. The 2016 survey indicated that there were 47 014 882 bearer shares held by 1 267 companies and the 2018 survey indicated that there were 2 436 753 bearer shares held by 133 companies, for which services were provided by five licensed service providers.

148. The Bearer Share Amendments stipulated the following:

a. bearer shares were not to be issued after 30 September 2018

b. bearer shares issued and outstanding were to be converted to registered shares before 31 January 2019

c. notification was to be given to all beneficial owners of bearer shares before 30 October 2018 of the requirements detailed at a) and b) above

d. an IBC was required to enter the name of the shareholder or custodian into the register of shareholders by 31 January 2019

37. Section 28(5) of the Companies Act provides that "No company may issue bearer shares or bearer share certificates".

e. an IBC for which shares were converted was required to file a declaration in the manner designed by the Registrar by 31 March 2019 confirming that any bearer shares issued by the IBC had been registered in the form required

f. the Custody of Bearer Shares Regulations were repealed.

149. Anguilla has not been able to confirm how many bearer shares were converted or how many were voided in the process outlined above. As part of the annual returns submitted to the FSC by service providers, company managers have been asked, inter alia, to confirm the number of companies with bearer shares still outstanding and no company managers have indicated the issuance of bearer shares in the last returns submitted on 30 June 2019.[38] Accordingly, Anguilla considers that all bearer shares previously in existence are now either converted or null and void. However, there is no available data as regards whether any documentation was actually prepared or filed by companies or company managers in respect of the conversion of bearer shares or whether the Registrar notified companies or company managers regarding which company filings were required to be were submitted (i.e. d) and e) above). It appears that the Registrar did not design any precedent declarations as required (see e above). Similarly, as per the issues outlined in A.1.1 above, there does not appear to be any authority in Anguilla confirming the accuracy of information provided or retained by the company managers as regards bearer shares. **It is therefore recommended that Anguilla ensures that the necessary documentation and filings in respect of the conversion or voidance of bearer shares be prepared and filed with the Registrar of Companies in such a way as to confirm that all bearer shares previously in existence are now void or converted.** Anguilla has confirmed that the FSC will contact the five service providers in June 2020 to inquire as to whether the bearer shares were converted or voided.

A.1.3. Partnerships

150. In Anguilla, partnerships are not separate legal entities and the rules of equity and common law apply in so far as they are not inconsistent with the express provisions of the relevant acts. A partnership is the relationship between persons carrying on a business in common with a view to profit. Partnerships can be either general or limited. General partnerships are

38. Company managers were asked to confirm the following: 1) Names of companies with bearer shares issued and outstanding; 2) number of bearer shares for each company identified in 1 that are issued and outstanding; 3) number of certificates for bearer shares issued by each company identified in 1; 4) Number of beneficial owners of bearer shares for each company identified in 1; and 5) Name of the custodian of the bearer shares issued and outstanding.

governed by the Partnership Act and limited partnerships ("LP") are governed by the Limited Partnership Act.

151. The 2014 Report provided a detailed explanation of partnerships in paragraphs 150 to 164. As of February 2020 there were 45 LPs registered with the Registrar and in total there were 129 active partnerships licensed to conduct business in Anguilla and 163 inactive partnerships.[39]

152. Obligations under the respective governing laws and the AML/CFT legislation generally require that identity and beneficial ownership information regarding partners is available for both public authorities and service providers, other than as set out below.

General partnership

153. As noted in the 2014 Report, general partnerships are required to keep the books of the partnership at the place of business of the partnership or principal place of business but it is not clear whether this includes identity information on all partners. The Partnership Act is reasonably limited in scope. Anguilla has noted that Anguillian partnerships are neither incorporated nor registered under the Partnership Act and the rules of equity and of common law apply in addition to the Partnership Act.

154. A general partnership carrying on a trade, business, occupation or profession (as specified in the TBOPL Act) in Anguilla must obtain an annual business licence with the Ministry of Finance under the TBOPL Act by providing information on the partners including identity information. The application form requires the provision of partner information, together with management and control information. Once the application is approved, the required fee is sent to the Inland Revenue Department (IRD) for payment and applicants complete a form for Registration of a Non-Individual Enterprise in which partnerships must list partners details in respect of 100% of the partnership. Upon receipt of payment, the IRD issues a business licence; which the business owner is required to display in the place of business. Non-Individual Enterprises, which include partnerships, are required to be registered with the IRD and provide it with information on partners and management. The TBOPL Act also requires the licensee to immediately give notice to the Permanent Secretary of any material changes that have taken place including on identity information. With respect to document retention for TBOPL licences, the Ministry of Finance handles business licence

39. Anguilla has confirmed that inactive means that the partnership is no longer licensed, the licence would have expired and would not have been renewed in such circumstances.

applications and the IRD handles licence renewals when the type of business remains unchanged.

155. Although the schedule to the TBOPL Act comprising the types of trades, business, occupations and professions subject to the act is comprehensive (including accountants, business advisors and lawyers), it is possible that the availability of identity information is not secured by the TBOPL Act in respect of all partnerships (i.e. unlicensed or "inactive" partnerships). Further, it is not clear from the Partnership Act whether partners of a general partnership are obliged to furnish identity information to the persons managing the partnership or the partnership's service provider. With respect to document retention, the Partnership Act provides specific requirements to retain accounting information for six years but does not, neither does the TBOPL Act, specify how long identity information should be retained in respect of the partnership. However, as set out in Section 11 of the Partnership Act, partners in a general partnership are jointly liable for all debts and obligations of the partnership and are therefore likely to know the identity of other partners. In addition, Anguilla notes that in practice all operating general partnerships are subject to the TBOPL licensing regime and as a result identity information for active general partnerships should be kept with the Permanent Secretary and updated on a yearly basis as part of the licensing regime.

Limited partnership

156. An LP is required to register with the Registrar and file an annual return in a process similar to that in operation for OCs and FOCs discussed above. If an LP fails to register, it is deemed to be a general partnership. LPs are required to utilise the services of a registered agent who holds a licence (i.e. under the CMA or TCOBA) and in some instances that of a registered office provider. Both persons would be service providers for AML purposes and therefore obliged to retain documentation relating to the LP for at least five years.

157. The general partners of an LP are required to maintain at its registered office in Anguilla, inter alia, the partnership agreement, a register in writing of all persons who are limited partners (showing their full names and addresses and specifying in relation to each limited partner the amount that he/she/it has agreed to contribute to the capital of the LP) and copies of all documents filed with the Registrar. These documents must be open to inspection by any general or limited partner. The register of all limited partnerships must be updated within 21 business days of any change. Anguilla has been unable to confirm whether a transfer of interests in an LP is not valid if the register is not updated within 21 days.

Availability of beneficial ownership information

158. The same AML obligations as described in respect of companies generally apply in respect of partnerships as long as an AML obliged service provider is engaged. In such circumstances, appropriate measures must be taken to identify the beneficial owners of partnerships, and sanctions apply in the case of failure to do so. When carrying out CDD measures, service providers must take reasonable measures, on a risk-sensitive basis, to verify the identity of each beneficial owner of the customer and third party so that the service provider is satisfied that it knows who each beneficial owner is, "including, in the case of a legal person, partnership, foundation, trust or similar arrangement, taking reasonable measures to understand the ownership and control structure of the legal person, partnership, foundation, trust or similar arrangement" (Section 4 AML/CFT Regulations).

159. Also similar to the rules for companies, beneficial ownership information is required to be updated and retained for at least five years after the end of the business relationship. The definition of beneficial owner in the AML/CFT Regulations makes specific reference to partnerships and the AML/CFT Code Guidance states that the rules as regards legal entities specifically apply to both limited and general partnerships.[40]

160. Although AML obligations cover relevant financial institutions and professionals (including accountants and auditors) only LPs have an obligation to engage an AML obliged person (a service provider acting as registered agent). General partnerships are not required to engage an AML obliged service provider because there is no requirement to have a registered agent, bank account or other similar requirement. It is, however, likely that a partnership carrying on a business in Anguilla will have a bank account with a local bank which will be subject to AML/CFT requirements and therefore obliged to identify beneficial owners of the relevant account holder. **Anguilla is recommended to consider introducing beneficial ownership requirements for general partnerships.**

Oversight, enforcement and availability of Information in Practice

161. The supervision of rules ensuring the availability of information on partners of partnerships and their beneficial owners as per the international standard is performed partly in the same way as in respect of companies, i.e. based on AML supervision by the FSC and as a result is dependent on the relevant partnership engaging a service provider. Beneficial ownership and identity information for LPs is available with registered agents.

40. Section 2 AML/CFT Regulations.

162. For general partnerships, information is available and held by the Anguillian authorities and therefore they are subject to supervision and enforcement only to the extent that the general partnership has an ongoing relationship with an AML-obliged person or is subject to the TBOPL licensing regime, which in practice covers most of the partnerships. In addition, the several and joint liability of partners limits their exposure to international transactions. The Anguillian authorities have stated that general partnerships have low materiality for purposes of this review as most general partnerships are informal arrangements between local individuals. During the onsite visit, the Anguillian authorities could not provide any details as regards the potential number of unlicensed general partnerships in Anguilla but considering the small population, any unlicensed business would not remain unnoticed for long. Anguilla has not received any EOI requests concerning limited or general partnerships during the period under review. Anguilla, however, should consider its supervision regime in respect of unlicensed general partnerships which do not engage an AML-obliged service provider or are not subject to the TBOPL licensing regime (see Annex 1).

A.1.4. Trusts

163. Anguilla being a common law jurisdiction, the Anguillian trusts regime is largely based on English trust law, codified in 2014 pursuant to the Trusts Act which governs the creation and administration of trusts and allows for the creation of trusts including commercial or charitable purpose trusts, unit trusts, spendthrift trusts and variant trusts. Any person who has the capacity under the law of Anguilla to own and transfer property may be the settlor of a trust and, contrary to general common law principles, a settlor may also be a trustee, a beneficiary or a protector of the trust (Section 8 Trusts Act). Trustees are not required to be resident in Anguilla. There are also no prohibitions on a resident acting as a trustee, administrator, protector or otherwise in a fiduciary capacity in relation to a trust formed under foreign law.

164. The 2014 Report considered trusts at length, concluding that the combination of TCOBA, rules on the optional registration of a trust (the register of trusts maintained by the Registrar under Section 70 TCOBA ("Trusts Registry")[41] and AML/CFT legislation generally ensured that legal identity information is available to the Anguillian authorities. However,

41. Presently there are 16 trusts registered with the Registrar. The Trusts Act requires that the Registrar keeps a Register of Trusts, however registration of trusts is not mandatory and it is at the discretion of the trust company. Registration is completed manually and not on ACORN. An application for registration of a trust must be accompanied by a certified copy of the instrument creating the trust as

the 2014 Report highlighted potential gaps and made recommendations for Anguilla to ensure that these do not go against the international standard, as follows:

- Although a trustee would know the identity of settlors and beneficiaries on account of its duties towards them, this was not expressly stated in the law.
- The Trusts Registry may not be reliable or complete, as registration is optional.
- The AML regime in relation to trusts was the source of the duty for a trustee carrying on a trade or business to have identity information on the settlor, protector and enforcer of the trust. Anyone providing trust services as part of a trade or business would either have to be a trust company licensed under the TCOBA, a domestic bank or an attorney at law and would in all three cases be subject to the AML/CFT regime. There was, however, no obligation to engage a professional service provider or use a trust company as a trustee and so there was a risk that information on settlor, protector and enforcers may not be available to Anguillian authorities.
- Prior to April 2014, trust service providers were only obliged to obtain identification information on trust beneficiaries where he/she determined that any business relationship or occasional transaction concerning the trust presented a higher level of risk. At that point, identification information on each beneficiary with a vested right and each beneficiary and each person who was an object of a power who the service provider determined presented a higher level of risk would be identified.

165. It continues to be the case that identity information on trusts could be available with trustees by virtue of the requirements under the Trusts Act, with service providers under the AML/CFT laws or with the Registrar, but it is not mandatory to utilise the services of an AML obliged person and the registration with the Registrar remains optional. Because the trustee can also be the settlor and the beneficiary of an Anguilla trust, the risk of trustees not subject to AML obligations is higher as the person may derive income other than fees from the trust.

166. The 2014 Report recommended monitoring the practical implementation of laws. During the onsite visit, the Anguillian authorities as well as the representatives from the service provider sector could not provide any estimates on the number of unregistered trusts in Anguilla. Another issue

well as the name of the trust, the settlor and the beneficiary or the purpose for which the trust is established.

is that Anguilla specifically noted in the 2014 Report that if an EOI request was received in relation to trust information, as POCA extended to independent legal professionals, thus information on trusts could be requested from them. As noted above, such persons may be out of the scope of POCA and could thus provide trust services without being subject to AML rules (see paragraph 119 and related recommendation in paragraph 122 on independent legal professionals).

167. It falls to the trustee to obtain and retain identity information. The 2014 Report description above remains accurate, i.e. that a trustee has a duty to know the identity of the settlor, protector and any beneficiaries but the manner in which this information is kept by the trustee and for how long is not set out in law. Furthermore, as trustees are not obliged to be Anguillian resident, this information may be kept anywhere.

Availability of beneficial ownership information

168. As per above, there are two separate legislative frameworks in respect of information related to trusts, the first being the Trusts Act and the second being AML legislation (AML/CFT Regulations, the AML/CFT Code and TCOBA).

169. In order to address a substantial deficiency identified in the 2014 Report, amendments to the Trusts Act were introduced in April 2014 such that trustees are obliged to take all reasonable measures to identify (i) each "beneficial owner" with a vested interest and (ii) each person who is entrusted with some authority in respect of a trust, subject to the terms of the trust and as soon as reasonably practicable after the trustee has been identified or appointed. The Trusts Act also enables the Registrar to request that a trustee of a registered trust provide him/her with information relating to the identity of any "beneficiary" as the Registrar may reasonably require.[42] Anguilla considers that the obligations under the Trusts Act would necessarily require all trustees to maintain such information as may be necessary to comply with a request.

170. However, the provision, by referring first to beneficial owners and then to beneficiaries is not clear on the concepts. There is no definition of beneficial owner prescribed in the Trusts Act and the meaning of the terms "vested interest" and "entrusted with some authority" are not set out. It is questionable whether the terms relate to the international standard on beneficial ownership.[43] There is also no oversight or enforcement regime provided

42. Both Section 27 Trusts Act.
43. See for instance section 34, which provides that "trustee shall have in relation to the trust property all the powers of a beneficial owner" and section 10 on the

for in the Trusts Act to ensure that that information is actually obtained and retained.

171. Section 2 of the AML/CFT Regulations and Section 18 of the AML/CFT Code stipulate the identification and verification of the beneficial owner of a trust.[44] Section 4 of the AML/CFT Regulations specifically requires obliged service providers carrying out CDD to take reasonable measures, on a risk-sensitive basis, to verify the identity of each beneficial owner of the relevant customer and third party so that it is satisfied it knows who the beneficial owner is and understand the ownership and control structure of a trust or arrangement. During the onsite visit, Anguilla noted that the definition of beneficial owner in the AML law is interpreted in the case of trusts to mean the trustees, settlors, protectors and beneficiaries. The representative from the Anguillian Compliance Association confirmed that this was the understanding of the AML law. The Anguillian authorities further noted that the term "ultimate" means that direct and indirect beneficial ownership must be identified (see paragraph 126). However, given the circular definition of beneficial owner in the AML law, it is possible that the identity of all beneficial owners may not be ascertained (see paragraph 127). Finally, as noted above, the AML rules will only apply in respect of trusts in certain instances (where an AML-obliged service provider is engaged) and not in all cases, and there is an uncertainty on the scope of professionals covered. **Anguilla is recommended to introduce requisite beneficial ownership requirements for all relevant trusts.**

172. While noting that trusts are a common law concept and all elements of trust law are not obliged to be codified, Anguilla is expected to take all reasonable measures to ensure that trust identity information is available under Element A.1.4 of the 2016 ToR.

Oversight, enforcement and availability of trust information in practice

173. The TCOBA provides for two types of trust licence: a general trust licence which allows the licensee to offer trustee services to the general public and a restricted trust licence, which limits the licensee to

"nature of a beneficial interest", which provides that 1) The interest of a beneficiary is personal property; 2) Subject to the terms of the trust, the interest of a beneficiary may be sold, pledged, charged, transferred or otherwise dealt with in any manner whatsoever".

44. A beneficial owner is (a) an individual who is an ultimate beneficial owner of the legal person, partnership or arrangement, whether or not the individual is the only beneficial owner; and (b) an individual who exercises ultimate control over the management of the legal person, partnership or arrangement, whether alone or jointly with any other person or persons. See paragraph 125.

administering a limited number of trusts and providing the names of the settlors required to be listed in the application. Provided the person providing trust services is doing so by way of business, he/she will be licensed by the FSC under TCOBA and subject to the supervision of the FSC.

174. The supervisory programme by the FSC is as described in Element A.1.1. The FSC reports that it supervises five trustees as of April 2020 who as service providers are subject to the same scrutiny as described above.

175. While the Registrar may seek information on beneficiaries of registered trusts, this does not necessarily capture all the relevant parties to a trust and it is not clear whether the Registrar has ever used its powers in this regard. It is also not clear whether the FSC and the Registrar communicate with one another regarding trust information.

176. Further, as noted in paragraph 166, it is not clear how many trusts exist with an Anguillian trustee who is not an AML obliged person, and there is a doubt on the extent of persons covered by the AML obligations, while legal professionals are often involved in trust administration. **Anguilla is recommended to review its oversight regime in respect of trusts so that all reasonable measures are taken to ensure that beneficial ownership information is available in respect of express trusts governed by the laws of Anguilla, administered in Anguilla or in respect of which a trustee is resident in Anguilla.**

177. Anguilla has not received any EOI requests concerning trusts during the period under review.

A.1.5. Foundations

178. Foundations in Anguilla can be established under the Foundation Act for any purpose(s) which is not unlawful, immoral or contrary to public policy. Foundations need to be registered with the Registrar. The same procedure as in the case of companies applies to the registration of foundations except that the registration of foundations is completed manually and not online. For a foundation to be established in Anguilla, a declaration of establishment or a testamentary declaration of establishment must be filed with the Registrar. Such declaration is publicly available[45] and contains details of its ownership information. A foundation established outside Anguilla may operate in Anguilla by filing its articles of continuance with the Registrar (See the 2014 Report, paragraphs 183 to 194).

45. A foundation for non-commercial purposes is "deposited" rather than registered, the difference being that for a non-commercial purpose foundation, the information in the application would not be made open to the public.

179. A foundation must have a registered agent at all times, who must be licensed under either the CMA or the TCOBA. Every foundation is also obligated under the law to have a secretary who is a regulated person residing in Anguilla. The secretary may also be the registered agent of the foundation. The secretary or the registered agent must keep a register with the identification particulars of the council members, guardian, beneficiaries, auditors, where applicable, and any person having power of attorney by the foundation.

180. As the registered agent of a foundation licensed under either the CMA or the TCOBA he/she is also a service provider for AML/CFT purposes and is therefore obligated to maintain up-to-date identity information regarding its clients and their beneficial owners.

181. The Foundation Act further requires the foundation to keep a copy of its declaration and by-laws and any amendment or change thereto. The foundation must within 14 days of a change, file or deposit with the Registrar a notice, signed by the registered agent containing the details of the change.

182. All records required to be kept under the Foundation Act must be kept for a period of not less than six years after the end of the period to which they relate (Section 6). Although the Foundation Act is not explicitly named as a "Registry Act" for the purposes of the Companies Registry Act, as a matter of policy the Registrar applies the same retention requirements to documents filed under the Foundations Act as it does to documents filed under the Companies Registry Act and treats foundations as companies for the purposes of Section 14.

183. A foundation that does not have a registered agent who is a regulated person (i.e. holding a licence under the CMA or TCOBA) commits an offence under the Foundations Act and is liable to a penalty of XCD 500 (EUR 170 ca.), the equivalent of the annual fee. The same penalty applies in the case of a failure to keep accounts and records (Foundation Regulations, Part 2(3), (4) and (5)).

Oversight, enforcement and availability of information in practice

184. Overall, the supervision in relation to foundations follows the general supervision program by the FSC as described in Element A.1.1 and the Registrar has the power to strike a foundation for failure to pay the required annual fee.[46] Foundations are not considered high-risk by the Anguillian authorities. As AML/CFT is the primary source of both legal and beneficial ownership and identity for all relevant entities and arrangements, a risk-based approach is taken. Anguilla has confirmed, that in respect of monitoring, foundations are registered with the Registrar (or deposited as per footnote

46. Section 51 Anguilla Foundation Act.

56 below) and annual fees are payable for both to remain in good standing with the Registrar. All foundations are registered by a registered agent with the Registrar. Registered agents are regulated persons of the FSC. Anguilla confirms that, the portfolios of the registered agents include foundations and are therefore subject to the supervision of the FSC for prudential and AML/CFT purposes.[47]

185. Anguilla has not received any EOI requests concerning foundations during the period under review.

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

186. The 2014 Report considered Anguilla's legal framework for ensuring the availability of accounting records for all relevant entities and its practical implementation. The report concluded that Anguilla's legal framework did not ensure the maintenance of accounting records and underlying documentation in line with the international standard. However, shortly before the 2014 Report, Anguilla had made several amendments to its laws aimed at conforming its legal framework to the international standard and a recommendation was therefore made for Anguilla to monitor the practical implementation of the new laws to ensure that all relevant entities maintain accounting records and underlying documentation and that all types of information are exchanged in line with the international standard.

187. The implementation of these new accounting requirements in practice has proven difficult. During the current review period, Anguilla received 53 requests for accounting information. Information was accessed on only five occasions by the Anguillian authorities and provided to peers on four occasions (as the requesting jurisdiction withdrew its request in the fifth case).[48]

188. In order to bolster its legal framework, Anguilla has introduced legislation amending its IBC Act and LLC Act on 27 February 2020 to ensure the retention of accounting records after an IBC or LLC is struck, dissolved or wound up. This legislation was introduced as a reaction to significant

47. Section 13 of the Anguilla Foundation Act.
48. The relevant request was submitted as part of multiple requests sent by post to Anguilla which were not received by the Competent Authority until a significant amount of time after they were originally sent. When the Competent Authority contacted the requesting authority in respect of the relevant request, that authority had settled the matter with the taxpayer and was no longer pursing the matter.

problems Anguilla encountered in practice during the review period regarding the availability of accounting information. This significant change should help ensure the availability of accounting records if implemented properly. Anguilla has endeavoured to notify company managers of the amendments to the IBC Act and LLC Act by issuing letters to Licensees and the draft legislation was distributed to company managers and industry groups for comment and consultation prior to its entry into force to ensure that company managers are aware of the change in law.

189. The implementation of the accounting record keeping obligations were found to be partially compliant with the international standard in the 2014 Report prior to the amendments to the law. Up to the end of this review period, the situation had not improved significantly in practice compared with the 2014 Report. The situation has improved since the end of the review period and Anguilla has been able to provide accounting information for registered entities in several EOIR cases from 2017 on.

190. Due to the significant issues experienced in practice in relation to the retention of accounting records and the failure by Anguilla to take practical or monitoring and enforcement steps to ensure the availability of accounting information in line with the international standard and to adhere to the 2014 Report recommendations, certain aspects of the 2014 Report recommendations remain and Anguilla is rated non-compliant on the practical implementation of this Element.

191. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified	It is not clear whether accounting records are required to be in the possession or under the control of a person in Anguilla in all circumstances, including when the company manager surrendered its licence or ceases to exist.	Anguilla is recommended to ensure that accounting information is always in the possession or control of a person in Anguilla and available for exchange purposes.
Determination: The Element is in place, but certain aspects of the legal implementation of the Element need improvement		

Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified	The amendments to the IBC Act and LLC Act are recent and their practical implementation has not been assessed. The amendment provides for a paper trail to ascertain the location of accounting records but this is dependent on the service provider. The obligation to retain accounting records is on directors and liquidators (for an IBC) and managers and members (for an LLC) who may not be in Anguilla.	Anguilla is recommended to monitor and supervise the implementation of the recent amendments to the IBC Act and LLC Act and to ensure the availability of accounting records, even where kept offshore.
	Anguilla's laws required that accounting records should be kept during the review period but the practical application of these laws was not sufficient to ensure the availability of accounting records. There is no legal authority that oversees or supervises the maintenance of accounting records. Further, the Partnership Act and the Trusts Act stipulate an enforcement penalty of XCD 5 000, however no monitoring or supervision is taking place to ensure that partnerships, trusts or foundations keep accounting records in line with the international standard.	Anguilla is recommended to ensure the practical implementation of its laws by ensuring adequate supervision and enforcement of the obligations so that accounting information is available in line with the standard for all entities and arrangements.
Rating: Non-Compliant		

A.2.1. General requirements and A.2.2. underlying documentation

192. Anguilla's accounting record keeping requirements for the relevant entities and arrangements are contained in company law, the governing laws for specific entities and arrangements (such as for IBCs and foundations) and the AML/CFT laws. No requirements to keep accounting records exist for tax purposes, as Anguilla does not maintain an income-based taxation system.

Ordinary Companies and International Business Companies

193. All IBCs are required to keep accounting records that are sufficient to record and explain the transactions of the company and will, at any time, enable the financial position of the company to be determined with reasonable accuracy. Records must be kept for six years (IBC Act, Section 65).

194. Section 128 of the Companies Act provides that where the records of an OC are kept outside Anguilla, the OC must ensure that it keeps at its registered office accounts and returns which are sufficient to enable the directors to ascertain the financial position of the OC with reasonable accuracy on a quarterly basis and a written record of the place or places outside Anguilla where its accounting records are kept.

195. During the review period, the records and books of an IBC could be kept at the registered office of the IBC or at such other place as the directors may by resolution determine. There was no requirement that accounting records of IBCs be kept in Anguilla.

196. During the review period, Anguilla received 53 requests, all of which sought accounting records of IBCs. Further to those requests, it is understood that 18 requests were withdrawn by the requesting jurisdiction as too much time had lapsed for the responses to be relevant at that point. At the time of the onsite visit, 26 requests were still pending and Anguilla has not been able to acquire the requested records to respond to those requests. Since the review period the Competent Authority is no longer seeking any information relating to requests from the review period and has treated all requests as closed where (a) information was partially or fully exchanged or (b) the jurisdiction was informed of the failure to access the information. The Competent Authority sought these records from the registered agents of the concerned entities but in all cases although the relevant entities and arrangements were obliged to prepare accounts, the accounting records were maintained in a location other than the registered office. It was evident that although Anguilla's laws required that accounting records should be kept but the practical application of these laws was not sufficient to ensure the availability of accounting records. Anguilla has further confirmed that, for the most part, failed requests related to the same registered agent and "as the link between the Competent Authority and company was broken by the failure of the registered agent, access was thwarted."

197. The problem with access to information in relation to accounting records appears to arise from the absence of a requirement that accounting records be maintained in the possession or control of a person in Anguilla and reliance on access to information through registered agents who may be wound up.

198. Anguilla amended its IBC Act on 20 September 2018 to require that where an IBC keeps its accounting records at a place other that its registered office, that IBC must keep with its registered agent a written record indicating the physical address of where the records and books are actually kept, the name of the person maintaining the records and an undertaking from the IBC that the registered agent will, upon request, be granted access to the records and books without delay.

199. The amendment also requires IBCs to update their records held by the registered agent within 14 days of any change. The registered agent of an IBC is required to keep track of the location of the IBC's records and books and, when required by the FSC or the Competent Authority, request the accounting records and underlying documents from the IBC (Section 10). This would secure that a person in Anguilla, even if not in possession of the accounting information, would have control over them.

200. The amendment was made after the review period, and as such its practical implementation has not been assessed. It may be difficult to monitor and enforce these provisions. **Anguilla is recommended to supervise the implementation of the 2018 amendments to the IBC Act and to ensure the availability of accounting records of IBCs even where kept offshore.**

Ordinary companies and LLCs

201. All OCs are required to keep accounting records that are sufficient to record and explain the transactions of the company and will, at any time, enable the financial position of the company to be determined with reasonable accuracy. Records must be kept for six years (Companies Act, Section 126). FOCs do not have accounting record obligations under Division 3 of the Companies Act (which FOCs register under and file annual returns pursuant to).[49]

202. The LLC Act requires that the manager of an LLC keep accounting records, books, deeds, contracts, vouchers and receipts for (a) all sums of money received and expended by the LLC and the matters for which the receipt and expenditure takes place, (b) all sales and purchase of goods and services and other related transactions of the LLC and (c) the assets and

49. Anguilla notes that unless otherwise provided in Division 3, the obligations in respect of domestic or non-domestic companies as appropriate apply.

liabilities of the LLC. The LLC Act also requires that the accounting records must be sufficient to explain all monetary transactions of the LLC and must (a) contain sufficient details to enable a transaction to be understood, (b) disclose with reasonable accuracy the financial position of the LLC at any time and (c) be in a format that allows financial statements to be prepared and audited. Any manager, director or officer of an LLC who breaches these provisions is liable for a penalty of XCD 25 000 (EUR 8 500 ca.). Records must be kept for six years (Sections 38 and 39 LLC Act).

203. During the current review period Anguilla did not receive any requests for accounting records for an LLC. There is, however, no systematic regime for the monitoring and enforcement of the requirements under the LLC Act and as such the effectiveness in practice can still not be assessed. **Anguilla is recommended to monitor and supervise the implementation of the recent amendments to the LLC Act and to ensure the availability of accounting records, even where kept offshore**.

Companies and service providers that have ceased to exist

204. Anguilla has highlighted a specific case related to an Anguillian service provider with a Panamanian parent company. Attempts by Anguilla to access client information and accounting information to answer related EOI requests were frustrated following the wind down of the service provider. The only information available to the Competent Authority was (a) in cases where agent had disappeared, registration documentation and (b) in cases where the company was originally registered by a different agent or subsequently transferred to another agent, information was either partially or fully available to the Competent Authority. Anguilla considers that this was a once-off event that was ultimately reflective of a poor governance structure within the parent group. This case can also be seen as evidence for the need of more supervision on the implementation of legislation.

205. As there is no corporate tax system in Anguilla and most companies are not obliged to file accounts with Anguillian authorities (other than regulated entities and public companies), the responsibility for preparing and maintaining accounting records falls to the companies themselves and service providers are the first, and often only, line of defence. Where the relevant company or service provider is dissolved, this creates a significant obstacle for the availability of reliable accounting records as there is no other source of information. As the service provider sector is relied upon for ensuring the availability of information in Anguilla, there are potential gaps where service providers, and not just companies, cease to exist. If the Anguillian authorities cannot get to the service provider, they may have no route to the company.

206. As noted in Element A.1 above, there are no stipulations as regards document retention following the surrender of a company manager licence or the winding up of a service provider and Anguilla is **recommended to ensure that accounting information is always in the possession or control of a person in Anguilla and available for exchange purposes**.

207. When a domestic OC has been wound up, the Companies Act requires the Court to make an order directing the custody or disposal of the documents and records of the company and a person who has been granted custody of the documents and records of a dissolved OC remains liable to produce those documents and records for six years following the date of the OC's dissolution, or until the expiry of a shorter period ordered by the court the books and papers.

208. Where an IBC registered in Anguilla which had no operations in Anguilla and never maintained its accounting records in a registered office or with its registered agent in Anguilla ceases to exist, the accounting records of the IBC may not be available to Anguilla and the Anguillian authorities have struggled in the past to obtain accounting records in such circumstances. Anguilla has recently amended the IBC Act to require the directors or liquidator to retain records where an IBC has been dissolved or wound up, for a period of at least six years from the date on which the company was struck, dissolved or wound up.

209. Anguilla has recently amended the LLC Act to require the managers or members (as applicable) to retain records for a period of at least six years from the date on which the LLC was struck, dissolved or wound up, in order to address the legal gap in relation to the retention of accounting records by dissolved LLCs.

Partnerships, trusts and foundations

210. Section 29 of the Partnership Act requires that partners keep, for a period of at least six years, proper accounting records including accounts, books, deeds, contracts, vouchers and receipts for (a) all sums of money received and expended by the partnership and the matters for which the receipt and expenditure takes place, (b) all sales and purchase of goods and services and other related transactions of the partnership and (c) the assets and liabilities of the partnership. The Partnership Act also provides that the accounting records must be sufficient to explain all monetary transactions of the partnership and must (a) contain sufficient details to enable a transaction to be understood, (b) disclose with reasonable accuracy the financial position of the partnership at any time and (c) be in a format that allows financial statements to be prepared and audited. As noted in Element A.1 above, accounting information relating to a general partnership should remain available following dissolution.

211. The Limited Partnership Act (LP Act) provides that a general partner of a limited partnership is also bound by the requirements of the Partnership Act and as such the accounting requirement of Section 29 of the Partnership Act will apply and which should continue to apply following winding up of an LP.

212. The Trusts Act and Foundations Act contain provisions similar to that of the Partnership Act requiring trustees and foundations to keep proper accounting records including underlying documents for a period of at least six years, which should continue to apply following dissolution.

Oversight, enforcement and availability of information in practice

213. The Partnership Act and the Trusts Act stipulate an enforcement penalty of XCD 5 000 (EUR 1 703 ca.). However no monitoring or supervision is taking place to ensure that partnerships, trusts or foundations keep accounting records in line with the international standard. There is, also, no systematic regime for the monitoring and enforcement of the requirements under the Companies Act and the LLC Act and as such the effectiveness in practice cannot be assessed.

214. As discussed in the 2014 Report, this gap is partly compensated by the obligation for service providers under the AML/CFT Code to retain records relating to transactions with customers, including the name and address of the customer, the currency and amount of transaction, the customer's account number, the date of the transaction, the details of the counterparty and the nature and details of the transaction. The AML/CFT Regulations require service providers, in respect of every transaction conducted, to retain all account files and business correspondence relating to business relationships and occasional transactions. Such records must include sufficient information to enable reconstructions of individual transactions and must be kept for a minimum of five years. However, the AML requirements will only apply in certain cases, i.e. where a service provider is engaged and where a person subject to those rules is responsible for undertaking the entity or arrangement's recordkeeping generally. In addition, the accounting records that are submitted to the FSC are those of the registered agent and not those of the entities or arrangements for which the registered agent provides services.

215. The practical application of these provisions is not in line with the international standard. There is no legal authority that oversees or supervises the maintenance of accounting records, and although Anguilla has confirmed that the FSC is responsible for monitoring and supervising the maintenance of accounting records in practice this specific role is not formally set out in guidance or law, save for Section 10 of the IBC Amendment

Act which provides that whenever required to do so by the FSC or any other competent authority in Anguilla the registered agent of the IBC must request and obtain the records and underlying documents in respect of the relevant IBC. Anguilla has noted that in practice, as part of FSC inspections of trust and company service providers, sample files are reviewed to determine compliance with statutory enactments including the requirement to maintain accounting records pursuant to the IBC Act. As regards other company types, there is no systematic regime for the monitoring and enforcement of the requirements under the LLC Act and as such the effectiveness in practice can still not be assessed.

216. Licensees are required to capture information on the legal structures incorporated or otherwise formed in Anguilla such that records and underlying documents required to be kept under Section 65 of the IBC Act are kept. In the event that accounting records are not held at the office of a licensee/registered agent, a copy of a directors' resolution for the relevant IBC should provide full details of where accounting records are kept. Anguilla has confirmed that the Licensee's knowledge of, and adherence to the record retention period for accounting records should also be assessed as part of FSC inspections. In such circumstances, the Licensee would be required to take steps to obtain assurances that accounting records are maintained in accordance with the IBC Act.

217. The Companies Act makes it an offence for an OC to fail to keep sufficient accounting records, or records of minutes or failing to take reasonable care of such records and imposes a penalty of XCD 25 000 (EUR 8 500 ca.) for a corporation and the same fine and/or imprisonment for six months for an individual. When an OC fails to file financial statements with the Registrar the penalty is XCD 5 000 for both a corporation and an individual and it is an offence for a public company to fail to file accounts.[50] However there is no evidence of the enforcement of these provisions or monitoring to ensure compliance.

218. Although Anguilla has made commendable efforts to improve its legal framework, several issues remain in respect of the availability of accounting information including that (a) it remains difficult to check the accounting records of IBCs where records are held offshore and (b) there is no regulatory authority actually monitoring and enforcing the law as regards the maintenance of accounting records other than the specific IBC provision regarding the request for information.

219. Audit and accounting requirements in Anguilla are reasonably lenient (e.g. accounts do not need to be prepared by specific persons) and Anguilla has not confirmed how many auditors are licensed to practice.

50. Section 135 Companies Act.

Anguilla has noted that, in general, companies are required to keep records such that the financial position of the company can be ascertained and public companies, statutory bodies and regulated entities are required to prepare audited accounts. Anguilla also notes that the FSC intends to carry out future inspections in relation to trust and corporate services providers (TCSPs) which will include testing the ability of licensees to retrieve and provide accounting records and the results of the inspections will be shared pursuant to memoranda of association between Anguillian competent authorities.[51] Anguilla is also planning to review the wider financial services industry to address any other threats or risks identified to Anguilla's overall effectiveness of its compliance with the international standard. Anguilla has also highlighted a specific EOIR issue encountered regarding the unavailability of accounting records which, in Anguilla's view, was a historic and once-off event.

Conclusion

220. Anguilla has improved its legal framework in respect of the availability of accounting information. In a similar manner to the 2014 Report, some of the changes to the law have only recently been made, after the onsite visit. However, a persistent issue remains, as per the 2014 Report, with respect to the practical implementation of accounting obligations and the consequence of this problem was clear during the review period when Anguilla was unable to obtain or exchange accounting information in most of its EOIR cases. Accordingly, **Anguilla is recommended to ensure the practical implementation of its laws by ensuring adequate supervision and enforcement of the obligations so that accounting information is available in line with the standard for all entities and arrangements.**

A.3. Banking information

Banking information and beneficial ownership information should be available for all account holders.

221. The 2014 Report concluded that record keeping requirements for banks and the implementation of the rules in practice were in line with the international standard. The relevant provisions are set out in Anguilla's AML/CFT legislation and, for the purposes of ensuring compliance with AML/CFT

51. In respect of the interaction between the FSC and the FIU, Anguilla has confirmed that the FSC is concerned with granting of licences and regulatory matters while the FIU is concerned chiefly with AML/CFT compliance and enquiry. While the bodies work together, the FSC is the supervisory authority.

obligations, banks are supervised by the FSC. The 2014 Report found that the FSC took adequate supervisory and enforcement measures to ensure banks' compliance with their record keeping obligations.

222. The Standard now requires that beneficial ownership (in addition to legal ownership) information in respect of account holders should be available to Anguillian authorities. In this regard, the AML/CFT framework and the FSC's supervision programme are the safeguards in place in Anguilla for the availability of information in practice.

223. Anguilla's banking sector is relatively small with two domestic banks (NCBA, which is a wholly government owned bridge bank formed in 2016, and Republic Bank Anguilla) and three offshore banks[52] (CCIB, Foreign Commerce Banks and National Bank of Anguilla Private Banking and Trust (NBAPBT)), two of which (CCIB and NBAPBT) are in administration with their parent banks in receivership. Banking is a regulated activity and banks must be licensed under TCOBA and the Banking Act.

224. During the review period, all requests for banking information related to IBCs and as IBCs were prohibited from holding domestic bank accounts in Anguilla, the Competent Authority treated all requests for information on IBC bank accounts as requests for accounting information. Accordingly, Anguilla has not received any EOI requests related to information on an Anguillian bank account.

225. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework
Determination: The Element is in place
Practical Implementation of the standard
Rating: Compliant

A.3.1. Record-keeping requirements

226. In Anguilla, banks fall within the definition of "service provider" for AML/CFT purposes and are therefore subject to the rules set out in the AML/CFT Code and AML/CFT Regulations. Service providers who hold a licence issued under the Banking Act or an offshore banking licence under TCOBA are regulated for AML/CFT purposes.

227. Pursuant to Section 154 of POCA, the FSC is the supervisory authority for AML/CFT purposes for regulated service providers and Externally regulated service providers (ERSPs), i.e. persons regulated by the Eastern

52. Licensed under the Trust Companies and Offshore Banks Act.

Caribbean Central Bank or the Eastern Caribbean Securities Regulatory Commission.[53] Domestic banks (i.e. person who holds a licence issued under the Banking Act) are ERSPs as per the definition under Schedule 3 of the AML/CFT Regulations.

228. The AML/CFT rules in Anguilla require banks and other ERSPs to conduct CDD procedures, including identifying legal and beneficial owners, when opening or making alterations to accounts and confirm the accuracy of client information and periodically update such records. Banks must also keep records of all financial transactions performed by account holders and keep the following:

- a copy of the evidence of identity obtained pursuant to the application of CDD measures or ongoing monitoring, or information that enables a copy of such evidence to be obtained
- the supporting documents, data or information that have been obtained in respect of a business relationship or occasional transaction which is the subject of CDD measures or ongoing monitoring
- a record containing details relating to each transaction carried out in the course of any business relationship or occasional transaction
- all account files, and
- all business correspondence relating to a business relationship or an occasional transaction.[54]

229. For natural persons, including beneficial owners, the information must include the full legal name (and former names, if any), gender, date of birth, and principal residential address. The AML/CFT law requires a bank to obtain additional identity information where it determines that the individual presents a higher risk and specifies additional identification information that must be obtained.[55]

230. For legal entities and arrangements (e.g. corporations, partnerships), certain information should be obtained as a standard requirement such as the name of the entity and any trading names that it uses; the date of the incorporation, registration or formation of the legal entity; any official identifying number; the name and address of the registered agent of the legal entity (or equivalent), if any; the mailing address of the legal entity; the principal place of business of the legal entity; the names of the directors of the legal entity;

53. The Eastern Caribbean Central Bank is responsible inter alia for prudential regulation of all domestic banks within member states including Anguilla under the Banking Act.
54. Section 7 AML/CFT Regulations.
55. Section 13 AML/CFT Code.

identification information on those directors who have authority to give instructions to the service provider concerning the business relationship or occasional transaction; identification information on individuals who are significant owners.[56]

231. Where it is not possible to carry out CDD measures in line with the AML law (e.g. where no sufficient information is provided) the bank must not continue with a transaction. With regard to other services, the bank must not enter into a customer relationship and must end any existing relationship if adequate CDD cannot be obtained.

232. CDD and transaction records must be maintained for at least five years from the termination of business relations or the conclusion of a transaction, and must be kept in a form that enables them to be made available on a timely basis, when lawfully required, to the FSC or competent authorities in Anguilla.

Definitions of beneficial owner(s)

233. The beneficial ownership definition in Section 2 of the AML/CFT Regulations that banks apply are identical to the definitions discussed in Element A.1.1, i.e. any individual that is an "ultimate beneficial owner" and any person that exercises "ultimate control" over the management of the account holder, which is a circular definition. The definition in the AML/CFT law includes control by direct or indirect means and Anguilla has confirmed that there is no threshold and accordingly due diligence should be applied in respect of all beneficial owners. As noted in Element A1 above, the definition of beneficial owner refers to beneficial owner, i.e. is circular and may lead to implementation issues. Accordingly, Anguilla should monitor the interpretation by relevant banks of the definition of beneficial owner to ensure that information on all relevant beneficial owners is obtained (see Annex 1).

Enforcement provisions to ensure the availability of banking information

234. The FSC undertakes ongoing surveillance and comprehensive monitoring of the two domestic banks and one offshore bank to ensure their compliance with AML/CFT rules. As discussed in Element A.1, the FSC regularly undertakes onsite and offsite inspections, issues warning letters, and applies pecuniary fines.

235. An onsite inspection was conducted in May 2017 on one domestic bank. The inspection was based on data and information contained in the

56. Section 15 AML/CFT Code.

records submitted to the FSC, documents and files reviewed onsite, as well as representations made by executives of the bank. The FSC evaluated its compliance with POCA, the AML/CFT Regulations, AML/CFT Code and the related AML/CFT Code Guidelines. The inspection focused on but was not limited to CDD, risk assessment and related issues in relation to its obligations under AML/CFT legislation. A report was produced after the inspection was conducted. An overall rating was assigned at the level of compliance with the list of recommendations that the FSC considered must be implemented. A timeframe was assigned for each recommendation to be addressed. Anguilla has confirmed that the FSC closely monitors the domestic bank regarding its compliance with the recommendations and monthly reports are made by the domestic bank to the FSC regarding its progress and to ensure compliance by the stipulated deadlines. To date, no fines have been imposed against domestic banks in Anguilla.

Part B: Access to information

236. Elements B.1 and B.2 evaluate whether competent authorities have the power to obtain and provide information that is the subject of a request under an EOI arrangement from any person within their territorial jurisdiction who is in possession or control of such information, and whether rights and safeguards are compatible with effective EOI.

B.1. Competent Authority's ability to obtain and provide information

> Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

237. The 2014 Report found that the Anguillian legal framework granted the Competent Authority adequate powers to obtain all types of information in line with the international standard. Such powers were however not applied effectively in practice and Anguilla was therefore recommended to exercise its powers effectively to obtain all types of information.

238. Since the 2014 Report, some changes have been made to laws governing Anguillian access powers. The Tax Information Exchange (International Co-operation) Act (TIE Act) enacted in 2016 repealed the International Co-operation (Tax Information Exchange Agreements) Act (ICTIEA Act) and extended the Competent Authority's information-collecting powers to include search and seizure procedures.

239. In spite of the improvement to Anguilla's legal framework, Anguilla's practical application of its powers to obtain information for EOI purposes during the review period was not effective and it remains to be tested whether Anguilla is exercising its powers effectively even after the review period. In light of challenges faced by Anguilla, the recommendation in the 2014 Report is maintained.

240. It is noted however that Anguilla has most recently given more continuity to the application of EOI processes, as outlined in C.5 below. The staff assigned to the functions of Competent Authority by delegation/EOI Unit starting from June 2016, maintained the same composition in the subsequent years and there is now one member whose responsibilities relate solely to EOI duties, potentially enhancing the Competent Authority's experience and ability to access information in practice.

241. The table of recommendations, determination and rating is as follows:

Legal and Regulatory Framework		
Determination: The Element is in place		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified	Anguilla has powers in place to obtain information but has not effectively exercised these powers in practice, in particular to obtain accounting information.	Anguilla should exercise its powers effectively to obtain all types of information requested (including accounting information).
Rating: Partially Compliant		

B.1.1. Ownership, identity, banking and B.1.2. Accounting information

242. The 2014 Report analysed the general procedures applicable for obtaining information and the specific aspects for obtaining banking information. Generally, the same rules continue to apply with a few changes. The TIE Act, which replaced the ICTIEA Act, provides Anguilla's Competent Authority with the power to obtain and provide information (including ownership, identity, banking and accounting information) for EOI purposes.

243. The TIE Act identifies either the Comptroller of Inland Revenue or the Permanent Secretary of Finance (as is stipulated in the relevant international agreement) as the Competent Authority. Section 3(3) of the TIE Act then authorises the Permanent Secretary to delegate in writing to a specified person or authority, all or any of his/her functions under the Act.

244. In practice, the Permanent Secretary of Finance is the Competent Authority for EOIR. The Permanent Secretary of Finance has delegated this authority to the Anguillian EOI team consisting of three officers from the Attorney General Chambers, the Comptroller of Internal Revenue Department and the Ministry of Finance (together "the Competent Authority").

245. In terms of access powers, the TIE Act provides the Competent Authority with a number of options to obtain information for EOI purposes.

246. In the first place, the Competent Authority may request information from "any person in Anguilla" by issuing a notice in writing requiring that person to deliver or to make available for inspection the documents specified in the notice that are in his/her possession or control (Section 6). A person from whom this information is requested has a statutory duty to provide it within the time indicated in the notice.

247. In practice, the Competent Authority indicated that the requested person would normally be given between 3 and 21 days to deliver the information or to make available for inspection the documents, depending on the type and volume of information required and the availability of the information to the person, who may not be the information holder but may be legally required to access and supply it. Some extensions may be granted to the time indicated in the notice, depending on the specific circumstances.

248. A "person" is defined under the Interpretation and General Clauses Act (Section 1) as including any corporation, either aggregate or sole, and any club, society, association or other body, of one or more persons. The TIE Act also defines "person" as including financial institutions. The effect of these definitions is sufficiently broad to include all entities in Anguilla, including banks, financial institutions and any person acting in an agency or fiduciary capacity, such as service providers, nominees and trustees. In practice, the Anguillian authorities indicated that most of their requests are directed at service providers, in particular registered agents and company managers. The statutory powers of the Competent Authority have not been challenged to date.

249. As regards the interactions between the access powers under the TIE Act and the confidentiality provisions on the AML legislation for the gathering of beneficial ownership information from AML obliged persons, according to the TIE Act, a notice under section 6 – while not requiring a person to produce or to give access to items subject to legal professional privilege – has effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by any enactment, rule of law or otherwise. Furthermore, restrictions on disclosure of protected information do not apply where the disclosure is required or permitted by POCA or any other law, pursuant to section 15 (Gateways for the disclosure of information) of Schedule 4 (Powers and duties of supervisory Authorities in relation to externally regulated and non-regulated service providers) of POCA. The Anguillian authorities consider that the access powers for EOI purposes therefore permit access to AML confidential information, whether held by the obliged person or the supervisor.

250. Where the Competent Authority considers it necessary to obtain specified information from any person, and either that person has failed to comply with a notice or the Competent Authority has reasonable grounds for suspecting that a notice will not be complied with, the TIE Act empowers the Competent Authority to apply to a judge to issue an order for the production of the information requested. The involvement of a judge is also necessary with regards to the exercise of the power to receive evidence (Section 9) and search and seizure (Section 10). These powers have not been tested in practice to date.

251. In general, the possibility to gather information has been positively tested in practice during the review period. However, Anguilla's Competent Authority's practical application of its powers to obtain information for EOI purposes during the review period has been discontinuous (improving towards the end of the period) and not always effective.

B.1.3. Use of information gathering measures absent domestic tax interest

252. The concept of "domestic tax interest" describes a situation where a Competent Authority can only provide information to a partner if it has an interest in the requested information for its own tax purposes. This would not be in line with the international standard.

253. The TIE Act empowers Anguilla's Competent Authority to collect information from any person in Anguilla who is in possession or control of such information. A domestic tax interest is not necessary for the Competent Authority to request a person to provide information relevant for EOIR purposes.

254. In practice, Anguilla indicated that it had no domestic tax interest in the information it gathered and exchanged for the requests received during the review period.

B.1.4. Effective enforcement provisions to compel the production of information

255. The TIE Act covers a number of offences relating to non-compliance. In particular, a person who without lawful excuse fails to produce any information that is in his/her possession or is under his control, upon request of the Competent Authority, within the time specified by the Permanent Secretary by notice or a by a judge by order, or who alters, destroys, mutilates, defaces, conceals or removes the information, commits an offence and is liable on summary conviction to 2 years imprisonment and a fine of XCD 10 000 (EUR 3 400 ca.). Additionally, the TIE Act makes it an offence

for a person to refuse a summons to give evidence under Section 9 or impede a search and seizure warrant under Section 10 with a penalty of 1-year imprisonment and a fine of XCD 5 000 (EUR 1 700 ca.) on summary conviction. In practice, no sanctions or penalties have been levied on the holder of the requested information for failing to comply with the TIE Act, although a case of non-compliance is still ongoing (see below).

256. Regarding the practical experience on obtaining accounting records, the 2014 Report noted legal and practical impediments to an effective exchange, as Anguilla did not have sufficient practical mechanisms (e.g. involving penalties) to ensure that all relevant entities kept accounting records and underlying documentation in line with the international standard.

257. During the onsite visit, Anguilla highlighted a particular request for accounting records that was still pending. The request was received in July 2017 and Anguillian officials indicated that a notice had first been sent to the registered agent in September 2018, however the registered agent had responded that the requested records were not in its possession and indicated a reluctance to take efforts to obtain the requested information for the Competent Authority. Further notices were sent to the registered agent between September 2018 and March 2019 and the case was subsequently sent to the legal division for enforcement action in April 2019 and is pending. The registered agent has separately provided some information to the Competent Authority which has been exchanged with the requesting jurisdiction. Since the information was not in the possession of the registered agent, the sanctions in the TIE Act are not applicable. Nonetheless, the response of the registered agent seems to be in direct contravention of Section 158 of the Companies Act regarding the duty to care for records and Section 159 of the same Act regarding the requirement to keep records within Anguilla to be reviewed. In the meantime, the recommendation in the 2014 Report remains. **Anguilla is recommended to effectively utilise its powers under the law including by the imposition of penalties to ensure the effective exchange of accounting information requested (including accounting information).**

B.1.5. Secrecy provisions

258. Jurisdictions should not decline to provide information on the basis of bank or, with certain exceptions, professional secrecy. The rules in respect of bank secrecy and professional secrecy were analysed in the 2014 Report (paragraphs 277 to 290), however during the review period a new Banking Act was passed.

Bank secrecy

259. Section 177 of the Banking Act 2015, which applies to the domestic banking sector, prohibits the disclosure of information by persons who have acquired that information, save in exceptional cases as specified in the Section, which includes disclosure under the provisions of any law of Anguilla or international agreement. This Section is a restatement of Section 32 of the previous Banking Act. In practice, according to Anguillian officials the need to exercise the powers to access information from banks and non-bank financial institutions did not arise during the review period.

Professional secrecy

260. The TIE Act protects information exchanged between clients and legal representatives where the information is produced for the purpose of seeking or providing legal advice or for use in existing or contemplated legal proceedings. Once it is established that a communication falls within legal professional privilege, this information is treated as confidential and cannot be exchanged. Where there is a dispute as to whether information is subject to legal professional privilege, this matter is determined by a judge.

261. Anguilla has confirmed that legal professional privilege only pertains to communications between the legal practitioner and his/her client in his/her capacity as legal representative for expected or current litigation. Even in those cases, the privilege may be lost if the communication is made for criminal purpose. Because legal professional privilege has not been extended beyond the legal profession, if a lawyer acts as a service provider, company manager or registered agent, the privilege would not apply. Although there are no practical experiences available, the applicable rules should allow the Competent Authority to access information and exchange it in line with the international standard.

B.2. Notification requirements, rights and safeguards

> The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

262. The 2014 Report found that there were no issues regarding prior or post-exchange notification or appeal rights and the Element was determined to be in place. It appears still the case that application of rights and safeguards in Anguilla does not restrict the scope of information that the Competent Authority can obtain.

263. The table of determination and rating is as follows:

Legal and Regulatory Framework
Determination: The Element is in place
Practical Implementation of the standard
Rating: Compliant

B.2.1. Rights and safeguards should not unduly prevent or delay effective exchange of information

264. The TIE Act is silent on the need to inform a taxpayer when information is exchanged and it does not make specific reference to information that is to be included in a notice requesting information from a third party information holder. This is interpreted in practice as not requiring the Competent Authority to inform the taxpayer when fulfilling such an exchange. When a request for information is sent to a third party, the notice states:

- the governing legislation the request/authority of the CA falls under
- purpose of notice – request for information in relation to tax matters
- a statement noting that disclosure of the request or supply of information is prohibited under law, except where the disclosure is a privileged communication with a professional legal advisor (see paragraph 296 below)
- details of information requested
- the timeframe by which the requested information has to be provided.

265. The only circumstance under which notification is envisaged is if the information required is only available from the person concerned with the request. In this regard, the Anguillian authorities explain that the letter would provide only the minimum amount of information needed to allow the person to provide the required information. Anguilla advises that in such an instance, where the requesting competent authority had stated that the person is not to be notified, and that person is the only available source of information, Anguilla would consult the requesting competent authority before contacting the person. In practice, for the most part, during the review period, Anguilla contacted service providers and not the person concerned in order to obtain the information necessary to respond to an EOI request.

266. Section 17 of the TIE Act provides for a judicial review process which may be used by persons against whom an order to produce information (Section 9), an order requiring to give evidence (Section 9) or a search and seizure order (Section 10) has been made. They may make an application to

discharge the order on notice to the other parties in accordance with the rules of court. No judicial reviews occurred in relation to requests received during the review period.

267. In general, during the review period, no practical difficulties were experienced by Anguilla with regards to rights and safeguards preventing or delaying the effective exchange of information. No peers raised any concerns.

Part C: Exchanging information

268. Sections C.1 to C.5 evaluate the effectiveness of Anguilla's network of EOI mechanisms – whether these EOI mechanisms provide for exchange of the right scope of information, cover all of Anguilla's relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether Anguilla's network of EOI mechanisms respects the rights and safeguards of taxpayers and whether Anguilla can provide the information requested in a timely and effective manner.

C.1. Exchange of information mechanisms

Exchange of information mechanisms should provide for effective exchange of information.

269. The 2014 Report concluded that Anguilla's network of EOI mechanisms was in line with the international standard.

270. Anguilla's TIEAs are based on the OECD Model TIEA and adhere to its content. Furthermore, the Multilateral Convention has been extended to Anguilla with effect from 1 March 2014. Anguilla also has an old DTC that does not meet the international standard,[57] but this bilateral partner is also party of the Multilateral Convention and this DTC is in the process of being terminated. For these reasons, the considerations below will not address this DTC.

271. Since the 2014 Report, Anguilla has signed two TIEAs with Isle of Man and Guernsey in 2019 and 2020 respectively. Today, Anguilla has EOI relationships in line with the international standard with 128 jurisdictions, a

57. The 2014 Report noted that a DTC applies between Anguilla and Switzerland, which is an extension of a former DTC (1954) between the United Kingdom and Switzerland. This agreement does not meet the international standard. Anguilla confirmed that they had agreed with Switzerland that the DTC was out of date and should be terminated. Anguilla has informed that the United Kingdom has commenced termination procedures on behalf of Anguilla by way of a *Note Verbale* to the Swiss Confederation and the DTC will cease to exist on 1 January 2021 as per the agreement.

considerably larger network from the 77-jurisdiction network covered in the 2014 Report, mainly due to the increased number of jurisdictions participating in the Multilateral Convention.

272. The table of determination and rating is as follows:

Legal and Regulatory Framework
Determination: The Element is in place
Practical Implementation of the standard
Rating: Compliant

C.1.1. Foreseeably relevant standard

273. Exchange of information mechanisms should allow for exchange of information on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. All of the EOI arrangements applicable to Anguilla include the term "foreseeably relevant" for the information subject to assistance through exchange of information. Anguilla also continues to interpret and apply its TIEAs and the Multilateral Convention consistently with the principle of foreseeable relevance.

274. Anguilla does not require its partner jurisdictions to complete a standardised template for the formulation of requests and instead receives and accepts requests in a wide variety of formats, if they conform to the information required to be included in an EOI request as listed in Article 5(5) of the Model TIEA.

275. If Anguilla receives a request and it is unclear whether the foreseeable relevance standard is met, Anguilla would request additional information or clarifications from the requesting jurisdiction to resolve the identified issues.

276. During the period under review, Anguilla did not refuse to answer any EOI requests on the basis of lack of foreseeable relevance. Anguilla raised a foreseeable relevance query in relation to one EOI request and the matter was resolved between the peer and Anguilla. For another peer, Anguilla also requested confirmation that the information sought was foreseeably relevant. Anguilla did not indicate any cases where it requested clarification on the basis that the requests were considered overly broad or vague.

Group requests

277. None of Anguilla's EOI agreements or domestic laws contain language prohibiting group requests. Anguilla interprets its agreements and domestic law as allowing it to provide information requested pursuant to group requests in line with Article 26 of the OECD Model Tax Convention and related commentaries.

278. During the period under review, Anguilla did not receive any group request. The same access powers and general procedures would apply as in respect of other types of requests.

C.1.2 and C.1.3. Provide for exchange of information in respect of all persons and all types of information

279. None of Anguilla's EOI agreements restricts the jurisdictional scope of the exchange of information provisions to certain persons, for example those considered resident in one of the contracting parties. Each of Anguilla's EOI instruments provides that information held by banks, financial institutions, agents and fiduciaries must be exchanged as well as information regarding ownership.

280. Anguilla is generally able to exchange all types of information.

281. In practice, the requests received during the review period all related to at least an Anguillian legal person and involved, for the most part, another person being resident for tax purposes or domiciled in the requesting jurisdiction.

C.1.4. Absence of domestic tax interest

282. Although not having a direct tax system except for the interim stabilisation levy, Anguilla can answer EOI requests irrespective of a domestic tax interest in the information being requested (see also section B.1.4 above).

283. In practice, Anguilla exchanged information in the absence of any domestic tax interest.

C.1.5 and C.1.6. Exchange information relating to both civil and criminal tax matters and Absence of dual criminality principles

284. All of Anguilla's EOI agreements provide for EOI in respect of both civil and criminal tax matters. There are no dual criminality provisions in any of Anguilla's EOI agreements. In practice, during the review period, Anguilla received 10 requests involving both civil and criminal tax matters and 3 requests involving only criminal tax matters, whereas the remaining requests received related only to civil tax matters. According to Anguillian officials, there has not been any different treatment according to the civil or criminal nature of the subject of the requests.

C.1.7. Provide information in specific form requested

285. Anguilla is capable of providing information to the requesting jurisdiction in the form requested. There are no restrictions in Anguilla's EOI agreements or domestic laws that would prevent it from providing information in a specific form. This is also provided for in the TIE Act.

C.1.8 and C.1.9. Signed agreements should be in force and be given effect through domestic law

286. The 2014 Report noted that of Anguilla's 17 TIEAs, 11 were in force. The remaining six TIEAs, ten years after signature, are yet to be ratified. Anguilla advises it is in the process of bringing those TIEAs into force. Anguilla's EOI relationship with these jurisdictions is also covered by the Multilateral Convention on Mutual Administrative Assistance, which is in force with all of them. The two recent TIEAs that Anguilla has signed with Isle of Man and Guernsey in December 2019 and February 2020 respectively have not yet entered into force, as none of the signatories have ratified them, but Anguillian officials foresee their prompt conclusion.

EOI mechanisms

Total EOI relationships, including bilateral and multilateral or regional mechanisms	**128**
In force	**110**
In line with the standard	110
Not in line with the standard	0
Signed but not in force [a]	**18**
In line with the standard	18
Not in line with the standard	0
Among which – Bilateral mechanisms (DTCs/TIEAs) not complemented by multilateral or regional mechanisms	**3**
In force	**1** [United Kingdom]
In line with the standard	1
Not in line with the standard	0
Signed but not in force	**2**
In line with the standard	2 [Isle of Man and Guernsey]
Not in line with the standard	0

Note: a. Including the EOI relationship with jurisdictions covered by the Multilateral Convention for which the Convention has not entered into force, see Annex 2.

287. Anguilla has enacted domestic legislation, specifically the TIE Act, to give effect to its EOI arrangements. In broad terms, the TIE Act allows Anguilla to access and exchange information with foreign competent authorities as provided in Anguilla's EOI mechanisms.

C.2. Exchange of information mechanisms with all relevant partners

> The jurisdiction's network of information exchange mechanisms should cover all relevant partners.

288. The 2014 Report found Anguilla Compliant in respect of Element C.2. It was recommended that Anguilla continue to develop its EOI network with all relevant partners. The EOI network of Anguilla covers 128 partner jurisdictions, to a large extent due to the application of the Multilateral Convention.

289. Anguilla has signed in December 2019 and in February 2020 respectively two TIEAs with the Isle of Man and Guernsey to cover EOIR, as well as automatic and spontaneous exchange of information, as the Crown Dependencies and Overseas Territories participate in the Multilateral Convention by virtue of the United Kingdom's extension and therefore cannot apply this instrument in their mutual relationships (being subject to the same "Party" to the Convention).

290. No Global Forum member indicated having had difficulties entering an EOI agreement with Anguilla. The recommendation from the 2014 Report has thus been removed from the box. Anguilla should nonetheless continue to conclude EOI agreements with any new relevant partner who would so require (see Annex 1).

291. The new table of determination and rating is as follows:

Legal and Regulatory Framework
Determination: The Element is in place
Practical Implementation of the standard
Rating: Compliant

C.3. Confidentiality

> The jurisdiction's information exchange mechanisms should have adequate provisions to ensure the confidentiality of information received.

292. The 2014 Report concluded that the applicable EOI agreement provisions and statutory rules that apply to officials with access to EOI information and the practice in Anguilla regarding confidentiality were in accordance

with the international standard. Since that report, Anguilla has continued to ensure that its EOI confidentiality practices meet the requirements of the international standard. There are adequate confidentiality provisions protecting tax information under Anguilla's domestic tax laws. No case of breach of confidentiality has been encountered in the EOI context and no concerns have been reported by peers.

293. The table of determination and rating is as follows:

Legal and Regulatory Framework
Determination: The Element is in place
Practical Implementation of the standard
Rating: Compliant

C.3.1. Information received: disclosure, use and safeguards

294. All of Anguilla's EOI agreements meet the standard for confidentiality, including the limitations on disclosure of information received and use of the information exchanged, as reflected in Article 8 of the OECD Model TIEA.

295. Anguilla's domestic laws contain adequate confidentiality provisions protecting tax information, which are supported by administrative and criminal sanctions applicable in the case of breach of these obligations. These confidentiality obligations and related sanctions cover the competent authority (including former employees).

296. Since the 2014 Report, there have been some changes in Anguilla's domestic laws. The TIE Act, which replaced the ICTIEA Act, prohibits a person who is notified or required to take any action or required to supply any information from disclosing the notification or receipt of a request or supplying the information to another person except to his/her legal representative and any other person that the Competent Authority may authorise in writing. The TIE Act provides as a penalty for contravention of this provision a fine of XCD 2 000 (EUR 861 ca.) and imprisonment for six months on summary conviction.

297. The information contained in an EOI request received by Anguilla is treated as confidential. Information received from a treaty partner is only used for the purposes provided for it in the EOI agreement, especially as Anguilla as no direct taxation system. The international standard (including Article 26 of the OECD Model Tax Convention) has been updated to clarify that notwithstanding information received can only be used for tax purposes, it may be used for other purposes when such information may be used for such other purposes under the laws of both jurisdictions and the competent authority of

the supplying jurisdiction authorises such use. Correspondingly, the 2016 ToR indicate that although information exchanged cannot be used for purposes other than tax purposes, unless otherwise agreed between the parties and in accordance with their respective laws. In the period under review, Anguilla reported that there were no requests where the requesting partner sought Anguilla's consent to utilise the information for other (non-tax) purposes and Anguilla, not having sent any outgoing request, equally did not request its partners to use information received for other (non-tax) purposes.

Practical measures to ensure confidentiality of the received information

298. In Anguilla, all EOI related tasks are undertaken by the designated officers within the EOI Unit who are made aware of confidentiality principles. These confidentiality principles were not contained in the Unit's EOI manual made available during the onsite visit. Anguilla's Procedure Manual on Exchange of Information has been subsequently updated to include, among other practical provisions, a reference to the confidentiality principles.

299. Only EOI Unit officers have access to the EOI files and EOI database. EOI files are kept in a locked cabinet which is hosted in the office of the Compliance Manager, Ministry of Finance, Economic Development, Investment, Commerce and Tourism (FEDICT), who is a member of the EOI team. At the time of the onsite visit the office was shared with an official of the Ministry who was not a member of the EOI team; however, Anguilla has advised that officers who are not members of the EOI team do not have access to EOI files. The office was kept locked whenever the officers were not in the office. Subsequently to the onsite visit, Anguilla informed that the office where the EOI files and EOI database are kept is no longer shared. The office is located in a new building which now serves as the Government main headquarters. The office of the Compliance Manager is located in the portion of the building which serves as the Office of the Premier/Ministry of Finance which is separated from the rest of building which contains other offices of the Government. Anguilla confirmed also that the new office remains locked at all times when Compliance Manager is not present and other staff of the Ministry of Finance do not have access to the office.

300. All documents pertaining to an EOI request are stamped simply "confidential" without mentioning their treaty source, but there is no risk of commingling of information with domestic data since there is no direct taxation system in Anguilla. All responses are sent by courier or by email. In its communication with information holders, Anguilla does not provide the original request/letter from the requesting competent authority. It only provides the information contained in the request that is necessary for the third party to provide the information.

301. No case of a breach of the confidentiality obligation in respect of EOI has been encountered by the Anguillian authorities (other than the circumstance noted below) and no peers raised any concerns. When EOI requests are received by Anguilla by mail post, they are first received by the Permanent Secretary of Finance, who is the Competent Authority, and then sent to the EOI team, whereas for the requests received by e-mail there is a mailbox monitored by the EOI officials.

302. During the review period, the delegated Competent Authority left this role without a replacement being assigned to undertake his duties for approximately one year and a half. This created confidentiality risks as well as procedural issues for EOI (analysed in section C.5) in Anguilla, as the general staff of the Permanent Secretary was not trained on how to deal with and process EOI information. Anguilla explained however that all mail is logged and recorded once received in the general register and forwarded unopened to the Permanent Secretary. In any case, Anguilla should implement formal procedures to ensure the confidentiality of the information received from EOI partners (see Annex 1).

C.3.2. Confidentiality of other information

303. Confidentiality rules should apply to all types of information exchanged, including information provided by a requesting jurisdiction in a request, information transmitted in response to a request and any background documents to such request. Anguilla confirms that in practice they consider all types of information relating to an EOI request (including communications with the requesting competent authority) as confidential.

C.4. Rights and safeguards of taxpayers and third parties

The information exchange mechanisms should respect the rights and safeguards of taxpayers and third parties.

304. The international standard allows requested parties not to supply information in response to a request in certain identified situations where this might reveal a trade, business or other secret.

305. The 2014 Report concluded that Anguilla's EOI agreements and their application in practice were in line with the international standard. The two TIEAs signed with the Isle of Man and Guernsey are also in line with the international standard. No case occurred during the review period that involved consideration of any secrecy provision.

306. The table of determination and rating is as follows:

Legal and Regulatory Framework
Determination: The Element is in place
Practical Implementation of the standard
Rating: Compliant

C.5. Requesting and providing information in an effective manner

The jurisdiction should request and provide information under its network of agreements in an effective manner.

307. Considering that Anguilla received its first five requests in 2012, a full assessment of the effectiveness of its exchange practice was not possible in the 2014 Report (the review period was 2010 to 2012). The 2014 Report concluded that Anguilla appeared to have adequate resources and organisational processes in place to handle incoming EOI requests. Anguilla was recommended to monitor its EOI practices to ensure it can engage in effective EOI and provide information in a timely manner.

308. Despite this recommendation, Anguilla did not maintain the necessary resources to handle EOI requests during the current review period (2015-17).

309. The delays in responding and providing status updates is attributable mostly to a lack of clearly outlined systems and procedures for the EOI Unit in addition to an insufficient level of resources within the EOI Unit. Other issues related to whether requests were received, effective communication with requesting jurisdictions and the timely action of requests once received. Several requests sent to Anguilla only came to the attention of the subsequently re-established EOI Unit through the peer review process, leading to considerable delays in providing peers with the requested information.

310. Peer input was mixed regarding Anguilla's EOI practices. Most peers were satisfied with the content of the responses once received, however some information was also missing. Due to the substantial issues with the EOI process and organisation in Anguilla as well as the failure to action the recommendations from the 2014 Report, Element C.5 is rated as Non-Compliant.

311. The table of recommendations and rating is as follows:

Legal and Regulatory Framework		
This Element involves issues of practice. Accordingly, no determination has been made.		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified in the implementation of EOIR in practice	The Anguilla Competent Authority operated with a lack of continuity. During part of the review period, Anguilla did not have any operational delegated Competent Authority/EOI Unit to work on EOIR incoming requests.	Anguilla is recommended to have procedures in place to ensure the continuity of the Competent Authority functions for EOIR.
	All the delegated Competent Authority/EOI Unit members also had other concurring functions and assignments, leading to a lack of sufficient dedication to EOIR, which has negatively affected Anguilla's EOIR practice.	Anguilla is recommended to ensure and monitor that the Competent Authority is sufficiently resourced to effectively and timely process the incoming requests for information.
	During the review period, Anguilla was unable to demonstrate an ability to exchange information in a timely manner. No requests were responded to within 180 days and only 6% of requests were responded to within a year. The newly constituted EOI team was not provided with specific initial training and/or mentoring and the EOI manual available did not provide for a sufficient level of detail to compensate.	Anguilla is recommended to adopt appropriate operational processes to ensure that all EOI requests are processed and responded to in a timely manner.
	During the review period, Anguilla did not systematically provide a status update to its EOI partners within 90 days when the competent authority was not able to provide a substantive response within that timeframe.	Anguilla should provide status updates to EOI partners within 90 days in all those cases where it is not possible to provide a response within that timeframe.
Rating : Non-Compliant		

C.5.1. Timeliness of responses to requests for information

312. During the period under review (1 January 2015 to 31 December 2017), Anguilla received 53 requests for information. The information requests related to (i) legal ownership information (53 cases), (ii) beneficial ownership (12 cases) and (iii) accounting information banking information (53 cases). The entities for which information was requested were companies in all cases.

313. Anguilla's most significant EOI partners for the years 2015-17 (by virtue of the volume of exchanges) are Argentina and France.

314. The following table relates to the requests received during the period under review and provides an overview of Anguilla's final response times, together with a summary of other relevant factors impacting the effectiveness of Anguilla's EOI practice.

Statistics on response time

		2015		2016		2017		Total	
		Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received [A+B+C+D+E]		4	100	1	100	48	100	53	100
Full response: ≤90 days		0	0	0	0	0	0	0	0
≤180 days (cumulative)		0	0	0	0	0	0	0	0
≤1 year (cumulative)	[A]	1	25	0	0	2	4	3	6
>1 year	[B]	1	25	0	0	5	11	6	11
Declined for valid reasons		0	0	0	0	0	0	0	0
Outstanding cases after 90 days		4	100	1	100	48	100	53	100
Status update provided within 90 days (for outstanding cases with full information not provided within 90 days, responses provided >90 days)		0	0	0	0	11	23	11	21
Requests withdrawn by requesting jurisdiction	[C]	2	50	0	0	16	33	18	34
Failure to obtain and provide information requested	[D]	0	0	1	100	25	52	26	49
Requests still pending at date of review	[E]	0	0	0	0	0	0	0	0

Notes: a. Anguilla counts each taxpayer in a request as one request, i.e. if a partner jurisdiction is requesting information regarding four persons in one request, Anguilla counts that as four requests. If Anguilla received a further request for information that relates to a previous request, with the original request still active, Anguilla will append the additional request to the original and continue to count it as the same request.

b. The time periods in this table are counted from the date of receipt of the request to the date on which the final and complete response was issued.

315. During the period under review, Anguilla has been unable to demonstrate an ability to exchange information in a timely manner. Although there is some uncertainty on whether some requests were actually delivered to the Anguilla's Competent Authority, as there were some problems in receiving information via its postal system in the jurisdiction (see paragraphs 317 and 322), for the requests that were unquestionably received, only 6% were responded within one year and 17% were full responded in total.

316. Different factors affected timeliness. First, Anguilla has informed that some requests indicated by peers were not successfully transmitted to Anguilla and the EOI Unit only became aware of those requests in the course of the peer review or when receiving a reminder from the partners. The EOI team has indicated that these requests have been processed as expeditiously as possible. These communication problems occurred with several partners during the years 2015-17 and the Anguillian authorities acknowledge that the international postal services are not optimal. It was however not until 2019 that they actively addressed the issue, by sharing information on their preferred/most efficient way of communication to partners, through the Global Forum secure site for competent authorities.

317. Second, Anguilla reported that it experienced several operational challenges with regard to EOI in practice. The delegated Competent Authority left role in November 2014, and from November 2014 to June 2016 (i.e. half of the review period) there was no operational EOI Unit or persons dealing with the day to day operations and the only Competent Authority in Anguilla was the Permanent Secretary of Finance. This resulted in a situation whereby requests, when received, were not acted upon. **Anguilla is recommended to have procedures in place to ensure the continuity of the Competent Authority functions for EOIR.**

318. The present EOI team has been established starting from June 2016. The current delegated competent authorities were appointed on 22 June 2016 whereas the former delegated competent authority left their role in November 2014. Whilst during this interval only a limited number of requests were received, the attribution of personnel in 2016 was accompanied by resource allocation issues and no formal handover occurred (e.g. no registry of open cases was handed over or explained to the new team). The officers were selected based on their previous expertise in the relevant laws (one being the drafter of the same as well as a qualified lawyer), and experience in the tax administration. However, none of the new team members had operational experience with EOI and they were not provided with appropriate training. Additionally, the members of the EOI team were sourced from varied government departments to work on requests on an ad hoc basis, faced with similar competing demands the previous team has suffered. Two of the three members have subsequently attended a Global Forum training seminar

in Paris in February 2017 and the team in February 2019 has received training from the United Kingdom tax administration, HMRC.

319. Anguilla has advised that particular attention has been paid to ensuring that the appropriate EOI framework is in place so that it can be a more effective EOI partner and meet its international obligations. As mentioned in section B.1 (paragraph 239) the staff assigned to the EOI team starting from June 2016 maintained the same composition in the subsequent years and there is now one member whose responsibilities relate solely to EOI duties. Anguilla continues to pursue information for all outstanding requests and has been demonstrating an enhanced ability to be able to exchange information in a more complete and timely fashion since the present peer review process started. In particular, according to information provided by Anguilla officials, the rate of full and timely responses significantly improved after the review period. They indicated that in the calendar years 2018 and 2019 they received 13 requests overall and were able to provide complete responses within 90 days to 11 of them and within 180 days to all 13 requests.

320. Most of the requests received during the period under review were received in 2017, i.e. 91% of them. They were mainly requesting a similar set of information and most were received in June and July (although sent by the partners in 2016), while in September 2017 Anguilla was affected by a weather emergency as a consequence of hurricane Irma. This event might have delayed to some extent the processing of requests but it is not the cause of the 52% failure to provide the information because the non-compliant service providers had already left the jurisdiction.

321. For almost half of the requests there was a failure to obtain and provide the information requested. During the review period Anguilla was unable to provide accounting records when requested, as discussed in Element A.2, particularly with regards to IBCs because the registered agents have not actually maintained accounting records of IBCs in Anguilla. Several meetings were held between officials of the government of Anguilla and industry bodies in order to develop a solution to this issue. They agreed that an amendment to the IBC Act would be pursued to require registered agents to access this information on receipt of a request. Anguilla advises that since the passage of the legislation in September 2018, registered agents have been attempting to comply with amended Section 65 of the IBC Act. Compliance with this new amendment to the IBC Act will require close monitoring to avoid other similar failures in exchanging information.

Communication with partners and status updates

322. There have been issues with the use of post to and from Anguilla. Documentation sent by peers to Anguilla by post has been lost or has taken an

inordinately long time for delivery. In relation to sending out documentation by post from Anguilla, the Competent Authority uses private postal services, which are costly but more reliable than registered post. As a result of the difficulties Anguilla has experienced with the use of post for EOIR, only in 2019 Anguilla has notified its peers that it wishes to receive requests in electronic format, and to provide notification and tracking details via electronic correspondence in case of exchanges via mail post, by indicating this as preferred mode of communication in the Global Forum Competent Authority Database.

323. Anguilla did not systematically provide status updates to its treaty partners, which has been highlighted by EOI partners in their peer input. Anguilla considers that the provision of status updates would put a strain on the resources (including monetary resources), which are already limited, in Anguilla. It is noted, however, that status updates can be provided by emails (without including any confidential information). **Anguilla should provide status updates to EOI partners within 90 days in all those cases where it is not possible to provide a response within that timeframe.**

C.5.2. Organisational processes and resources

Organisation of the Competent Authority

324. The organisational processes for exchanging information in Anguilla remain to a great extent analogous to those described in the 2014 Report (paragraphs 343-359), however, there have been some changes in the organisational structure of the EOI unit in Anguilla since the 2014 Report with associated issues which have adversely impacted the effective exchange of information.

325. In Anguilla, the Permanent Secretary of Finance is the Competent Authority for EOIR. An EOI team consisting of three persons; a representative from the Comptroller of Inland Revenue Department, a representative from the Attorney General's Chambers and the EOI compliance manager from the Ministry of Finance handle the EOIR process in Anguilla, on behalf of the Permanent Secretary.

326. The current staff strength of the EOI team is a reduction from the previous team of four members during the last review period (2010-12), whereas, the number of requests received by Anguilla during the current review period (2015-17) increased significantly to 53 from 5 in the previous review period. Two out of three EOI team members have a full workload in their respective organisations and concomitantly handle EOI processes and requests where needed. **Anguilla is recommended to ensure and monitor that the Competent Authority is sufficiently resourced to effectively and timely process the incoming requests for information.**

327. Anguilla reported that the new staff appointments in the EOI team occurred in June 2016, but no notification was given to the Global Forum to ensure an update of the secure Competent Authority database, however the Permanent Secretary who is the Competent Authority was listed on the database.

328. It is not clear whether Anguilla informed its relevant partners of the change of Competent Authority on a bilateral basis. The current delegated competent authorities were appointed starting from 22 June 2016 and the former delegated competent authority left their role in November 2014. As a result, in the period between 2014 and 2016 there were essentially no team members undertaking EOI functions. The vacancy of a delegated Competent Authority or EOI Unit resulted in requests held by the Permanent Secretary with no staff dealing with this activity, then resulting in inefficiencies and delays in the operational relations with partner jurisdictions and notably in dealing with incoming EOI requests.

Training and guidance

329. The Anguillian authorities stated that the EOI team has mostly received "on the job" training. Two of the three team members attended a Global Forum training seminar in Paris in February 2017 and the team received training from the United Kingdom tax administration HMRC in February 2019. There is no schedule or programme in place to train the staff of the EOI team but Anguillian authorities manifested the intention of have Global Forum training seminars attended when new staff joins the unit.

330. The EOI team reported using an EOI manual which aims to outline the procedures to be undertaken to process EOIR, including responding to an incoming request. The EOI manual, in the version provided during the on-site visit, was a reference document with no formal adoption by the Competent Authority, reproducing some parts of Module 1 of the OECD Manual on the Implementation of Exchange of Information Provisions for Tax Purposes. Although it could have provided some general reference on exchange of information for the EOI team, it lacked the level of detail to delineate which steps are to be undertaken and by whom, the timelines to be adhered to, guidance as to how to gather information from systems within the tax administration and from third parties, information on how to handle group requests, etc. For these reasons, that EOI manual could not provide any substantial support on the practices to be carried out by new staff in case no formal training or mentoring is provided. The EOI manual (now Procedure Manual on Exchange of information) has been subsequently[58] updated expanding its scope (now also

58. Reference to Version: 2.1 dated June 2019, provided to the assessment team on April 2020.

contains provisions on policies and practices to protect confidentiality and a section dedicated to spontaneous exchange of information), the provisions on operational aspects of exchange of information on request have been however only marginally touched by the update.

331. On the whole, it appears that the main reasons for the lack of timeliness and low response rates for request received during the review period were: the lack of continuity or succession planning when EOI Unit staff changes occurred; inappropriate organisational processes; as well as inadequate capacity and training. Although it is noted that Anguilla has suffered from severe weather emergencies including hurricanes in 2017, Anguilla did not take sufficient steps until recently to sufficiently and formally organise its EOI processes. Therefore, **it is recommended that Anguilla adopt appropriate operational processes to ensure that all incoming EOI requests are processed and responded to in a timely manner.**

Incoming requests

332. Based on the explanations provided by Anguilla during the on-site visit, the procedure that started to be followed towards the end of the review period is the following: when a request for information is received, the EOI team verifies whether it has been signed by a Competent Authority by checking the request against its internal database as well as the Global Forum competent authorities' database. The request is examined to determine whether it includes all necessary information to be processed and complies with the applicable EOI agreement. In case Anguilla finds that the request does not fulfil all the conditions, it will seek clarification from the EOI partner.

333. Once it is determined that the request fulfils the requirements above, it is entered into an electronic database. The details that are registered in the electronic database include (i) name of requesting party (country and reference number) (ii) date request received (iii) subject identification (iv) date of response to requesting party (request for additional information, compliance with request or denial) and (v) length of time between request and response.

334. The information requested is in most instances not held by the Anguillian Tax Authority as Anguillian law does not require the Tax Authority to maintain ownership information, accounting records or banking information. However, information held by another government authority can be accessed with minimal delays. The Competent Authority has direct access through electronic means to the company registry database (ACORN) to gather information pertaining to legal ownership and identity. In cases where the information is held by the FSC, the Permanent Secretary issues a notice in writing requesting the production of such information as may be specified in the notice. The notice may require the information (i) to be provided within

a specified time (ii) to be provided in specified form (iii) to be verified or authenticated in a specified manner. In practice, the FSC normally provides this information within 72 hours.

335. Where the information has to be obtained from a third party like a registered agent of a company, a trustee or a bank, the Permanent Secretary likewise issues a notice in writing requesting the production of such information.

336. During the review period, Anguilla encountered an instance where the service provider was unable to provide information when requested (see paragraph 257). This was a request for accounting information and the service provider was not required by law to maintain accounting records of the company. The law has been subsequently amended and the Anguillian authorities have requested that the service provider take steps to provide the requested information. The Service Provider eventually complied but was unable to provide all requested information including information which the service provider was required to keep under the AML/CFT Regulations. The case was forwarded to the FIU for prosecution under POCA. No penalties were levied against the Service Provider, but the case is still ongoing.

337. Once the information is received from the information holder, the Competent Authority checks it against the request to ensure that it is accurate and complete. The completeness is confirmed to the party which provided the information or if some more information is needed, the party is asked to provide it.

338. The process outlined by Anguilla for addressing incoming requests appears adequate, however during the review period Anguilla it was not applied consistently to respond to requests in a timely manner, due to the operational challenges highlighted above.

Outgoing requests

339. Anguilla has not sent any requests for information to its EOI partners, primarily because there is no income tax in Anguilla.

C.5.3. Unreasonable, disproportionate or unduly restrictive conditions for EOI

340. There are no other factors or issues identified in Anguilla's laws that could unreasonably, disproportionately or unduly restrict effective EOI.

Annex 1: List of in-text recommendations

The Global Forum may identify issues that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, it should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be stated in the text of the report. A list of such recommendations is reproduced below for convenience.

- **Element A.1.1** Anguilla should ensure that up-to-date legal ownership information is available at all times in respect of OCs and FOCs, including for at least five years after OCs and FOCs cease to exist (paragraph 64).
- **Element A.1.1** Anguilla should introduce a more formal and standardised approach to IBC share transfers so that such transfers can be more easily verified (paragraph 69).
- **Element A.1.1** Restrictions and rules should be introduced regarding the legal status of a wound up OC or LLC (paragraphs 62 and 82).
- **Element A.1.1** It remains unclear how the 10% threshold for significant owner interacts with the definition of beneficial owner and Anguilla should monitor the interpretation by Licensees of this provision (paragraph 93).
- **Element A.1.1** Anguilla should strengthen its monitoring and enforcement regime to ensure that ownership information is available (paragraph 103).
- **Element A.1.1** Anguilla is recommended to monitor the interpretation by Licensees of the definition of beneficial owner to ensure that information on all relevant beneficial owners is obtained (paragraph 127).
- **Element A.1.3** Anguilla should consider its supervision regime in respect of unlicensed general partnerships which do not engage an AML-obliged service provider or are not subject to the TBOPL licensing regime (paragraph 162).

- **Element A.3** Anguilla should monitor the interpretation by relevant banks of the definition of beneficial owner to ensure that information on all relevant beneficial owners is obtained (see paragraph 233)
- **Element C.2** Anguilla should continue to conclude EOI agreements with any new relevant partner who would so require (paragraph 290).
- **Element C.3.2** Anguilla should implement formal procedures to ensure the confidentiality of the information received from EOI partners (paragraph 302).

Annex 2: List of Anguilla's EOI mechanisms

Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Signature	Entry into force
1	Australia	TIEA	19-Mar-2010	17-Feb-2011
2	Belgium	TIEA	24-Sep-2010	Not in force
3	Canada	TIEA	28-Oct-2010	12-Oct-2011
4	Denmark	TIEA	2-Sep-2009	10-Apr-2011
5	Faroe Islands	TIEA	14-Dec-2009	20-Aug-2011
6	Finland	TIEA	14-Dec-2009	10-Apr-2011
7	France	TIEA	27-Dec-2010	15-Dec-2011
8	Germany	TIEA	19-Mar-2010	11-Apr-2011
9	Greenland	TIEA	14-Dec-2009	Not in force
10	Guernsey	TIEA	13 and 19-Feb-2020	Not in force
11	Iceland	TIEA	14-Dec-2009	Not in force
12	Ireland	TIEA	22-Jul-2009	Not in force
13	Isle of Man	TIEA	3 and 11-Dec-2019	Not in force
14	Netherlands	TIEA	22-Jul-2009	1-May-2011
15	New Zealand	TIEA	11-Dec-2009	Not in force
16	Norway	TIEA	14-Dec-2009	10-Apr-2011
17	Portugal	TIEA	28-Feb-2011	Not in force
18	Sweden	TIEA	14-Dec-2009	1-Jun-2011
19	Switzerland	DTC	1-Jan-1961	26-Aug-1963
20	United Kingdom	TIEA	20-Jul-2009	17-Feb-2011

Convention on Mutual Administrative Assistance in Tax Matters (as amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention).[59] The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

The original 1988 Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the international standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The Multilateral Convention was opened for signature on 1 June 2011.

The Multilateral Convention was extended to Anguilla by the United Kingdom with effect from 1 March 2014. Anguilla can exchange information with all other Parties to the Multilateral Convention which are not part of the United Kingdom.

The Multilateral Convention is in force in respect of the following jurisdictions, with which Anguilla can exchange information: Albania, Andorra, Antigua and Barbuda, Argentina, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Brazil, Brunei Darussalam, Bulgaria, Cameroon, Canada, Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus,[60] Czech Republic, Denmark,

59. The amendments to the 1988 Convention were embodied into two separate instruments achieving the same purpose: the amended Convention (the Multilateral Convention) which integrates the amendments into a consolidated text, and the Protocol amending the 1988 Convention which sets out the amendments separately.

60. Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".
Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Greece, Greenland (extension by Denmark), Grenada, Guatemala, Hong Kong (China) (extension by China), Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Korea, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Morocco, Nauru, Netherlands, New Zealand, Nigeria, Niue, North Macedonia, Norway, Pakistan, Panama, Peru, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay and Vanuatu.

In addition, the Multilateral Convention was signed by the following jurisdictions, where it is not yet in force: Armenia (entry into force on 1 June 2020), Benin, Bosnia and Herzegovina, Burkina Faso, Cabo Verde (entry into force on 1 May 2020), Gabon, Kenya, Liberia, Mauritania, Mongolia (entry into force on 1 June 2020), Montenegro (entry into force on 1 May 2020), Oman, Paraguay, Philippines, Thailand (signature on 3 June 2020),[61] Togo, United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).

European Union Directive on Mutual Administrative Assistance in Tax Matters

Anguilla can exchange information relevant for direct taxes upon request with EU member states under the EU Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation (as amended). The Directive came into force on 1 January 2013. All EU members were required to transpose it into their domestic legislation by 1 January 2013, i.e. Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom.

61. This signature took place after the cut-off date of the present report and therefore this EOI relationship is not taken into account in the core text of the report.

Annex 3: Methodology for the review

The reviews are based on the 2016 Terms of Reference and conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and the 2016-23 Schedule of Reviews.

The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 30 April 2020, Anguilla's EOIR practice in respect of EOI requests made and received during the three year period from 1 January 2015 to 31 December 2017, Anguilla's responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Anguilla's authorities during the on-site visit that took place from 23-26 October 2018 in Anguilla and afterwards.

List of laws, regulations and other materials received[62]

Administrative Penalties Regulations, R.R.A. F28-2

Anguilla Foundation Act R.S.A. c. A62

Anguilla Foundation Regulations R.R.A. A62-1

Anti-Money Laundering and Terrorist Financing Code R.R.A. P98-5

Anti-Money Laundering and Terrorist Financing Regulations R.R.A. P98-1

Anti-Money Laundering and Terrorist Financing (Amendment) Regulations, 2018 R.S.A. c. P 98

Banking Act 2015 No. 6/2015

Companies Act R.S.A. c C65

Companies Act Model General By-Laws Regulations R.S.A. c. C65

Companies (Amendment) Act 2019 No. 1/2019

62. Citations to be confirmed.

Companies Registry Act R.S.A. c. C70

Companies Regulations R.R.A. C65-1

Company Management Act R.S.A c. C75

Company Management Fees Regulations R.R.A. C75-2

Company Management Regulations R.R.A. C75-3

Confidential Relationships Act R.S.A. c. C85

Custody of Bearer Shares Regulations, R.R.A. c. I20-3

Externally and Non-Regulated Service Providers Regulations R.R.A. P98-6

Financial Services Commission Act R.S.A. c. F28

Guidelines for conducing company management business directly or through an intermediary in compliance with AML/CFT legislation issued under Section 61 of the Financial Services Commission Act R.S.A. c. F28

Insurance Act R.S.A. c. I16

International Business Companies Act R.S.A. c. I120

International Business Companies (Amendment) Act 2020 Act No. 3.2020

International Business Companies (Amendment) Act 2018 No. 9/2018

International Business Companies (Amendment) Act 2019 No. 3/2019

International Business Companies Act Model General By-Laws Regulations R.R.A. I20-2

International Business Companies Regulations R.R.A. I120-1 Interpretation and General Clauses Act R.S.A. c. I25

Tax Information Exchange (International Co-operation) Act 2016 No. 3/2016

Limited Liability Company Act R.S.A. c. L65

Limited Liability Company (Amendment) Act 2019 No. 2/2019

Limited Liability Company (Amendment) Act 2020 No. 2/2020

Limited Liability Company Regulations R.R.A. L65-1 Limited Partnership Act R.S.A. c L70

Limited Partnership (Amendment) Act 2019 No. 4/2019

Mutual Funds Act R.S.A. c. M107

Partnership Act R.S.A. c P5

Proceeds of Crime Act R.S.A. c. P98

Proceeds of Crime Act Non-Profit Organisations Regulations R.R.A. P98-2

Prohibition of Licensing of Shell Banks Regulations R.R.A. T60-3

Stamp Act R.S.A. c. S55

Trades, Businesses, Occupations and Professions Licensing Act R.S.A. C. T40

Trusts Act R.S.A. c. T70

Trusts Companies and Offshore Banking Act R.S.A. c. T60

Trusts Companies and Offshore Banking Regulations R.R.A. T60-1

Trusts Companies and Offshore Banking (Fees) Regulations R.R.A. T60-2

UK Anguilla Constitution Order 1976

UK Anguilla Constitution Order 1982

UK Anguilla Constitution (Amendment) Order 1990

UK Anguilla Constitution (Amendment) Order 2019

Authorities interviewed during on-site visit

EOI Unit

Registrar of Companies

Representatives of company managers, Service Provider

Representatives of the Financial Services Commission

Current and previous reviews

This report is the third review of Anguilla conducted by the Global Forum. Anguilla previously underwent a review of its legal and regulatory framework (Phase 1) in 2011 and a review of the implementation of that framework in practice (Phase 2) in 2014.

The Phase 1 and Phase 2 reviews were conducted according to the terms of reference approved by the Global Forum in February 2010 and the Methodology used in the first round of reviews.

Summary of reviews

Review	Assessment team	Period under review	Legal framework as of	Adoption by Global Forum
Round 1 Phase 1	Mr Michael Nugent of Australia, Mr Luis Antonio Gonzalez Flores of Mexico and Ms Amy O'Donnell of the Global Forum Secretariat	not applicable	May 2011	August 2011
Round 1 Phase 2	Mr Neil Cossins of Australia, Ms Marycelia Garcia Valle of Mexico and Mr Bhaskar Goswami from the Global Forum Secretariat	1 January 2010 to 31 December 2012	May 2014	August 2014
Round 2	Mr Fabio Giuseppone of Italy and later Global Forum Secretariat and replaced by Ms Valeria Pasquetti of Italy; Ms Natasa Akkidou of Cyprus; Ms Nana Mensah and Ms Clodagh Power from the Global Forum Secretariat	1 January 2015 to 31 December 2017	30 April 2020	August 2020

Annex 4: Anguilla's response to the report[63]

Anguilla would like to express its appreciation to the assessment team, the Global Forum Secretariat and the Peer Review Group in the preparation of this report. We are especially grateful for the support provided to Anguilla since the launch in June 2018. There was much learning through this process and Anguilla was able to tailor and make improvements to its regime following recommendations from the team. The conduct of the Peer Review processes so far has been very encouraging, demonstrating the integrity of the Peer Review Group and the Global Forum to ensure the effective implementation of the exchange of information upon request Standard.

During the period under review (2015-17) Anguilla, a small open economy, was adversely affected by several crises including an economic recession and a severe weather event in 2017 (Hurricane Irma), the latter resulting in damage and losses amounting to 100% of GDP. The attendant challenges impacted the resourcing of the Competent Authority as evidenced by the deficiencies in the exchange processes and practices. Additionally, Anguilla was adversely impacted by events unique to that period, which similarly affected its exchange of information practice. Particularly, Anguilla experienced challenges in accessing information when requests were made in relation to information held by a dissolved Panamanian Service Provider that was formerly licensed in Anguilla. The dissolution of the aforementioned service provider was significant to the exchange of information as this service provider served as the registered agent for companies, to which over 90% of Anguilla's requests during the review period related. The disorderly winding down of this Panamanian Service Provider hampered access to information in relation to such companies and reflected negatively in Anguilla's overall ability to exchange information in accordance with this Standard. These aforementioned events were restricted to the review period, and have not been repeated post-review period. Since the end of the review period in 2017, Anguilla's EOI experience has significantly improved both in the quality of the information exchanged as well as the timeliness of exchanges. As such,

63. This Annex presents the Jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.

Anguilla has submitted a request for a Supplementary Review to further demonstrate its progress to date in implementing the Standard and anticipates a favourable response.

Anguilla is committed to implementing further improvements as it works towards ensuring full compliance with the Standard. Since the review period, much work has been done to improve the overall legal and regulatory framework as well as exchange of information processes and there is more work scheduled to follow. The resourcing of the delegated Competent Authority has been improved with the addition of a new officer. Amendments were made to the Laws of Anguilla to strengthen the provisions relating to the availability and access to accounting records as well as the availability of ownership and identity information. Amendments have also been made to company formation legislation to further require the retention of accounting records by struck off entities. Further legislative reform is proceeding in respect of the overhaul of the company regime with an intention to subsequently repeal the International Business Companies Act. Oversight of availability and access to accounting records of Anguillian entities is being conducted by the Anguilla Financial Services Commission via company managers who are licensed by the Commission. Additionally, the Government of Anguilla has commenced development of an electronic repository that will host identity and ownership information on Anguillian entities.

In conclusion, Anguilla wishes to restate its continued commitment to meeting the international standard on Exchange of Information on Request and is further addressing the recommendations emanating from the report. Anguilla is confident that it can immediately demonstrate such progress through a Supplementary Review, once granted.

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request ANGUILLA 2020 (Second Round)

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 160 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

This report contains the 2020 Peer Review Report on the Exchange of Information on Request of Anguilla.

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