



Mutual Evaluation Report

Anti-Money Laundering and
Combating the Financing of
Terrorism

Anguilla

JULY 6 2010

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PREFACE – information and methodology used for the evaluation of Anguilla

1. The Evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Anguilla was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004¹. The evaluation was based on the laws, regulations and other materials supplied by Anguilla, and information obtained by the Evaluation Team during its on-site visit to Anguilla from July 20th to 31st 2009, and subsequently. During the on-site visit the Evaluation Team met with officials and representatives of relevant Anguillan government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.
2. Anguilla had its first CFATF Mutual Evaluation in July 2000 and the second round Mutual Evaluation in October-November 2002. This Report is the result of the third Round Mutual Evaluation of Anguilla as conducted in the period stated herein above. The Examination Team consisted of Mr. Garvin Gaskin, Legal expert (The Bahamas), Ms. Maurene Simms, Financial Expert (Jamaica) Ms. Fidela Clarke, Financial Expert, (St. Kitts and Nevis) and Ms. Cheryl Kast, Law Enforcement Expert, (United States of America). The Team was led by Ms. Dawne Spicer, Deputy Executive Director, CFATF Secretariat. The Experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems. The Team would like to express its gratitude to the Government of Anguilla.
3. This Report provides a summary of the AML/CFT measures in place in Anguilla as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). It also sets out Anguilla's levels of compliance with the FATF 40+9 Recommendations (see Table 1).

¹ As updated February 2008.

EXECUTIVE SUMMARY

1. Background Information

1. The Mutual Evaluation Report (MER) of Anguilla summarises the anti-money laundering/combating the financing of terrorism (AML/CFT) measures in place in Anguilla at the time of the on-site visit (July 20th to 31st 2009). The Report also sets out Anguilla's level of compliance with the FATF 40 + 9 Recommendations, which are contained in Table 1 of the Report.
2. Anguilla is the northernmost Leeward Island in the Eastern Caribbean. Its economy is mainly dependent on tourism and construction. In 2008 however, Anguilla's economy contracted as a result of a slow down in visitor arrivals and the stoppage of a major construction project.
3. Anguilla has a small tightly knit population and a relatively low level of either petty or serious crime. The Authorities noted that Anguilla does have its proportionate share of cannabis cultivation, drug importation and dealing. Intelligence work in this area has however indicated that because of the low levels of these activities the sums generated do not appear to enter the mainstream economy via the financial institutions. It should also be noted however that a detailed analysis of ML trends or patterns is limited due to the lack of proper recording and collection of comprehensive data prior to the establishment of the current Financial Intelligence Unit (FIU) in 2008. Some data has however indicated suspicious money movement through money remitters and there has also been a problem with the running of an illegal lottery. Other predicate offences that have been noted by the FIU are theft and deception. Anguilla has captured a part of the offshore financial trade through legislative structures and a favourable tax regime and as such has also created vulnerabilities to ML. The Authorities have also noted that IBC abuse has been responsible for 33% of all SARs since 2008. However there has only been one instance in which money from a suspected IBC abuse remained in Anguilla. It is believed that ML threats will continue to come from the offshore industry in relation to mutual funds, trusts, IBCs and other like vehicles.
4. The four (4) main categories of financial institutions in Anguilla are (i) foreign/offshore and domestic insurance companies; (ii) mutual funds; (iii) company managers and (iv) banks. As of May 15, 2009 there were 422² types of financial institutions in Anguilla. Based on the definition of "service providers" contained at Schedule 2 of the Anti-Money Laundering and Terrorist Financing Regulations, 2009 (AML/TFR) all the financial activities listed in the FATF glossary are covered in addition to other types of regulated businesses. Several types³ of legal persons and legal arrangements can be established under the laws of Anguilla. With the exception of trusts, registers are required to be maintained in relation to all other types of legal persons and arrangements.
5. The policy objective of the Government of Anguilla is to ensure that only fit and proper persons and institutions, who satisfy the due diligence requirements in the AML/TFR and Code are allowed access to operate in or from Anguilla. Toward this end, Anguilla has continually increased and enhanced its legislative framework, regulatory infrastructure and institutional arrangements to manage and mitigate potential ML/FT risk. The Government's ML/FT risk management strategy is focused on regulating the gate keeping function of company managers/fiduciaries since given the nature of Anguilla's financial sector, DNFBPs and NPOs are all incorporated through the use of company managers. Anguilla's ML/FT risk management framework is administered by the Governor/Governor's Office, the Money Laundering Reporting

² See. Table 1 of the MER. (Page 10)

³ Local companies; international business companies; limited liability companies; trusts and unit trusts; mutual and hedge funds; protected cell companies; general and limited partnerships and foundations.

Authority (MLRA), the FIU, the Financial Investigation Unit, the Royal Anguilla Police Force (RAPF), H.M. Customs Anguilla, the Immigration Department, the Financial Services Commission (FSC), the Eastern Caribbean Central Bank (ECCB), the Eastern Caribbean Securities Regulatory Commission (ECSRC), the Anguilla Financial Services Association (AFSA), the Attorney General's Chambers, the Registrar of Companies and the Bar Association. In addition to the emphasis placed on company management compliance, all financial institutions are currently encouraged to adopt a risk based approach to their AML/CFT risk management framework. Anguilla has made significant progress since its last mutual evaluation through the enactment of new legislation, the establishment of a proactive FIU, increased resources to deal with AML/CFT issues, transformation of the FSD to the FSC and increased public awareness to name a few. (See Pages 30-33 of the MER for details).

2. Legal System and Related Institutional Measures

6. Money laundering has been criminalised in Anguilla in accordance with the relevant Articles of the Vienna and Palermo Conventions pursuant to the Proceeds of Crime Act, 2009 (POCA). Pursuant to Section 125 of the POCA, a person is guilty of ML offences as it relates to his relationship with criminal property i.e. concealing, disguising criminal property etc. Section 123 of the POCA provides that "criminal property" is property which constitutes or represents a person's benefit from criminal conduct, in whole or in part, whether directly or indirectly, and the alleged offender knows or suspects that it constitutes or represents such a benefit. The ML offence extends to any type of property, regardless of its value and whether it is situated in Anguilla or elsewhere.
7. When proving that property is the proceeds of crime, it is not necessary that the person be convicted of a predicate offence. The predicate offences in Anguilla do at a minimum include a range of offences in each of the 20 designated categories of offences. It should be noted that any offence that generates proceeds and carries a maximum prison term of one (1) year or more qualifies as a predicate offence, regardless of how it is tried (i.e. summarily or indictably). The appropriate ancillary offences to ML exist. The ML offence applies to both natural and legal persons. Additionally, making legal persons subject to criminal liability does not preclude the possibility of parallel criminal, civil or administrative proceedings. Both natural and legal persons are subject to effective, proportionate and dissuasive criminal⁴, civil or administrative⁵ sanctions for ML.
8. Anguilla has specifically criminalized FT under three UK Statutory Instruments that have been extended to it. Specifically, Section 3 of the TUNMOTO makes it an offence to collect funds by any means, directly or indirectly with the intention that they would be used for the purposes of terrorism, and Section 4 makes it an offence to make funds available directly or indirectly to a person who commits or attempts or participates in an act of terrorism. Sections 3 to 9 of the Al-Qai'ida Order creates offences with regard to the supply of goods, technical assistance or training, making funds available for terrorism purposes and the contravention of a freeze order. Under the ATO, which is the third Statutory Instrument, Sections 6 to 9 create a variety of offences with regard to FT (fundraising, use of money or other property for the purposes of terrorism, involvement in an arrangement that makes money or other property available to a person who it is suspected will use it for terrorism and the criminalisation of ML in respect to terrorist property). In their analysis, with regard to the applicability of terrorist offences to individual terrorist, terrorist groups or terrorist organisations, the Examiners noted that there was no distinction under the laws of Anguilla. Rather, the combination of the definition of 'person' and 'terrorism' and the language provided in the description of the offence create a regime that is sufficiently broad to capture the providing or collecting of funds for these various categories of terrorist. Criminal

⁴ Criminal sanctions provided for at Sections 125 to 127 of the POCA.

⁵ Legal persons are subject to administrative sanctions pursuant to Sections 27, 29, 32 and 35 of the FSCA.

liability for FT does extend to legal persons.

9. The POCA contains comprehensive provisions for the confiscation, freezing and seizure of the proceeds of crime, including provisions for civil forfeiture (See Parts 2 & 3 of the POCA). The POCA makes provision for the confiscation of property that has been laundered or which constitutes the proceeds from instrumentalities used in or intended for use in the commission of any ML, FT or other predicate offence. The amount that is recoverable under a confiscation order is the amount that is equal to the defendant's benefit from the conduct. Tainted property can also be forfeited. Part 3 of the POCA enables the Civil Recovery Authority to bring civil proceedings to recover property obtained through unlawful conduct or that is used in connection with unlawful conduct. The Court also has the power to make restraint orders under Section 5 of Schedule 2 of the ATO and Section 43 of the POCA. Pursuant to the ATO and Part 5 Division 5 of the POCA, a Judge can also make account monitoring orders. Protection is provided to bona fide third parties pursuant to Section 68(1) and (2) of the POCA. Anguilla also has effective laws and procedures to freeze terrorist funds or assets of persons designated under UNSCR 1267 and its successor resolutions. Section 5 of the TUNMOTO provides for the Governor to issue a notice to freeze funds without delay. Under Part 1 of Schedule 2 of the ATO, Section 5 provides that a prosecutor may apply for a restraint order to prohibit persons from dealing with property subject to the order. The ATO also provides for the enforcement of external freezing orders. The POCA, at Section 59, provides the Attorney General with the power to make a request for assistance to the government of another country with regard to the freezing of assets for persons under suspicion of FT, ML or any predicate offence.
10. The MLRA is legislatively responsible for functioning as the Financial Intelligence Unit for Anguilla and gained Egmont membership in 2003. The original format of the FIU was not very functional and in March 2008, the FIU in its present format was created by an MOU between the Police and the MLRA, which was later ratified pursuant to Section 117(4) of the POCA. Under Section 118 of the POCA, the MLRA, as the FIU, is has been responsible for the receipt, analysis and dissemination of SARs. Since March 2008 the FIU is encouraging the electronic submission of SARs. The FIU has timely and direct access to other law enforcement databases in Anguilla and also to administrative sub databases of the Standard Integrated Government Tax Administration System (SIGTAS) such as land and business registry, social security, etc. The dissemination of information is to the Financial Investigation Unit of the RAPF. At the time of the onsite, a legal advisor was not part of the Financial Investigation Unit; however the Unit works directly with the Attorney General's Chambers with regard to investigative and prosecutorial issues. Based on the structure of the FIU as a body subject to the direction and control of the MLRA (Section 118(4) of the POCA), the Examiners were of the view that the FIU was not an autonomous body.
11. The legislative framework for investigation, prosecution and confiscation is set out in the POCA, the AML/TFC and the AML/TFR. All investigations are conducted either by the Police or Customs and then referred to the AG's Chambers for prosecution. Sections 135 thorough 149 of the POCA provide a broad range of powers for the investigation of ML, FT and predicate offences. (See; Details at para. 304 of the MER). Members of the RAPF and the Financial Investigations Unit are empowered generally to stop, search and detain any vessel, boat, aircraft motor vehicle etc where it is suspected that anything stolen or unlawful is being conveyed. The Immigration and Passport Act provides immigration officers with similar powers. In Anguilla, there are several pieces of legislation which provide for the declaration of monetary instruments over a prescribed threshold and provide sanctions to any one who acts contrary to the listed Acts and Regulations. The competent authority for cross-border declaration and disclosure matters in Anguilla is HM Customs. At the time of the Mutual Evaluation, a new declaration form had been implemented and a new Report of International Transportation of Currency or Monetary Instruments was also gazetted. There are provisions for the restraint of recoverable cash under the POCA and for the forfeiture of currency or bearer negotiable instruments under the POCA and Customs Act. There is information sharing with regard to declarations that exceed the

prescribed thresholds; false declarations and for those where there is a suspicion of ML or FT. However, cross-border transactions are not yet computerized and therefore not readily available to law enforcement authorities in Anguilla. While there is provision for the cross-border transportation of currency or bearer negotiable instruments related to FT under the ATO, there has not been any specialized training in anti-terrorism issues.

3. Preventive Measures - Financial Institutions

12. At the onset, it should be noted that the Examiners were unable to assess the effectiveness of the preventive measures of Anguilla's financial institutions due to the recent passage of the relevant legislation. Anguilla is in the preliminary stages of establishing a risk-based approach to AML/CFT compliance. The FSC is the regulatory body for all financial institutions in Anguilla, with the exception of domestic commercial banks. The FSC requires all institutions to have structures in place to identify, measure, monitor and manage or mitigate all risk, including AML and CFT risk. The ECCB licenses and regulates domestic commercial banks. However the FSC is the sole supervisory authority for the purposes of Anguilla's AML/CFT framework and there is no provision either under the POCA or AML/TFR for this power to be delegated. Further, the ECSRC as part of its fit and proper test for market participants includes an assessment of the applicant's AML/CFT compliance policies and procedures. However, the authority for this, as noted before, lies with the FSC. This resulted in the Examiners finding that the regime for the supervision and sanction powers for domestic banks and their offshore subsidiaries was ambiguous. The CDD requirements for all service providers to know their customers' business, monitor customers' transactions and report STRs is contained in Sections 10 to 14 of the AML/TFR and Sections 10 to 23 of the Code. There are also provisions for enhanced due diligence for higher risk category of customers, for the timing of verification and that relate to the circumstance where there is the inability to complete CDD. A risk sensitive basis is used to deal with existing customers. The Examiners found that there was no requirement that enhanced due diligence be applied to private banking, trust that operate as personal holding vehicles and nominee arrangements.
13. With regard to PEPs, Section 12 of the Code imposes an obligation to establish, maintain and implement appropriate risk management systems to determine whether a customer, third party or beneficial owner is a PEP. There are also provisions (Sec. 12(2)) for service providers to ensure that no business relationship is established with a PEP or where the third party or beneficial owner is a PEP, unless the prior approval of the board and management has been obtained. Financial institutions are also required to take reasonable measures to establish the source of wealth and source of funds of customers, third parties and the beneficial owners identified as PEPs. Service providers indicated that there was ongoing monitoring of PEPs through World Check and other search engines. Correspondent banking is covered by Section 41 of the Code which sets out a comprehensive list of requirements in line with the FATF framework to guide banks in their correspondent relationships. Cross-border correspondent banking requirements do not extend to other financial institutions that may engage in similar cross-border relationships however the banks in Anguilla do not currently offer correspondent relationships as part of their service offerings. Consequently, the Examiners found that the ML/FT risk as it relates to cross-border correspondent relationships is currently low. Section 5(2) of the Code requires service providers to establish and maintain and implement systems and controls and take other measures as considered necessary to prevent the use of technological developments in ML and FT. The Code also makes provision for measures to be taken by service providers when they enter business relationships that involve non-face-to-face transactions.
14. With regard to third parties and introduced businesses, the AML/TFR provides for a service provider to rely on an introducer or an intermediary to apply CDD measures with respect to a customer, third party or beneficial owner if the introducer is a regulated person and the introducer or intermediary consents to being relied on. The Examiners found however that there was no requirement for financial institutions to immediately obtain the necessary information on the

elements of the CDD process required by E.C. 5.3 to 5.6. The high level of inherent risk presented by an introducer chain was also noted. Anguilla has several legal provisions in financial services enactments that provide adequate gateways for the sharing of information that is the subject of secrecy laws. However, under Section 20 of the FSC Act, information sharing by the FSC with foreign regulators could be subject to Court override. The AML/TFR requires a service provider to keep records as prescribed for a period of 5 years commencing on the date the business relationship ends or the occasional transaction is completed. The regulations also empower the competent authority to specify a period longer than 5 years for the retention of records and that the relevant records are made available on a timely basis when requested by law enforcement authorities. Service providers interviewed were all aware of the legal requirement to retain identification records, including customer files and business correspondence and indicated that they were actually kept for more than 5 years. Part 9 of the Code addresses the issue of wire transfers. A payment service provider is required to ensure that every transfer of funds is accompanied by full originator information. However, there is no requirement for each intermediary and beneficiary financial institution in the payment chain to ensure that full originator information accompanies a transfer. Full originator information is also required for domestic wire transfers; however there are certain exemptions such as transactions for goods and services settled with a credit or debit card, transfer of funds from an account holder's account, etc.

15. The AML/TFR, at Section 16(2), mandates a service provider to have policies, systems and controls relating to on-going monitoring which provide for the identification and scrutiny of complex and unusually large transactions, unusual patterns of transactions and any other activity which by its nature may be related to ML or FT. Service providers are also required to have systems in place that are designed to establish whether there is a rational explanation for the transaction and to keep a written record of those conclusions. Section 12(2)(b) of the AML/TFR requires a service provider, on a risk sensitive basis, to apply enhanced due diligence measure and undertake enhanced ongoing monitoring where the service provider has or proposes to have or carries out an occasional transaction with a person connected to a country that does not apply or insufficiently applies the FATF Recommendations. The Examiners found that service providers were only required to apply enhanced CDD and ongoing monitoring regarding dealings and transactions with countries with weak AML/CFT systems.
16. With regard to the reporting of suspicious transactions/activities as they relate to ML and FT, the Examiners found that, while there were provisions for the reporting of suspicion in both the POCA and the ATO, there were no explicit requirements to include attempted transactions in SARs. Additionally, there were issues regarding the effective implementation of sanctions. On the issue of the offence of tipping-off, Section 131 of the POCA creates the offence of prejudicing an investigation and tipping-off. The investigations covered include both ML and TF investigations under the POCA, the TUNMOTO and the Al-Qaida Order respectively. The tipping-off offence does not however cover situations where a SAR is being reported or provided to the FIU. While the POCA does provide protection for the disclosure of information (Section 133), there is no explicit protection for financial institutions, their directors and employees from criminal or civil liability for breach of contract etc. when reporting suspicious transactions. The POCA provides for feedback to be given to persons who have disclosed information to the FIU. In general, the FIU has given feedback on a case by case basis; however there was no general feedback given with regard to SARs statistics, current techniques, methods, typologies and trends. The MLRA, after consideration of the feasibility and utility of using a system of thresholds for the reporting of domestic and international wire transfers, found that it would not be feasible.
17. With regard to internal controls, Section 16 of the AML/TFR requires that a service provider establish, maintain and implement appropriate risk-sensitive policies, systems and controls to prevent ML and FT. The Regulations also require all service providers other than sole practitioners to appoint a ML compliance officer (MLCO). The MLCO has to be approved by the FSC. There is no requirement in either the Regulations or the Code for service providers to maintain an adequately resourced and independent audit function to test AML/CFT compliance.

There are also no provisions for other appropriate staff to have timely access to customer identification data and other CDD information. Section 9 of the AML/TFR provides for the application of Anguilla's AML/CFT regime to foreign branches and subsidiaries of service providers. With regard to shell banks, Anguilla has enacted the Prohibition of Licensing of Shell Bank Regulations, 2009 which specifically prohibits shell banks.

18. With regard to measures for the proper regulation and supervision of financial institutions, the Examiners' found that, as noted above, there was provision for oversight by the FSC, the ECCB and the ECSRC. However, it was also noted that there were limitations with the AML/CFT oversight by these institutions. For example, there is a lack of legal jurisdiction by the ECCB to effectively supervise AML/CFT implementation in domestic banks and their offshore subsidiaries, the ECSRC does not conduct any onsite inspections on its licensees and lacks the power to inspect and sanction for AML/CFT purposes and credit unions are not supervised for AML/CFT compliance. There are also problems with the ECCB's ability to share information with the FSC on AML/CFT matters without an MOU. Guidance for financial institutions for matters other than SARs is provided for in the Code; however they do not contain sector specific information. As to the supervisory powers to monitor and inspect, there is some ambiguity as the FSC which is responsible for monitoring AML/CFT compliance does not monitor the domestic banking sector, which represents the largest component of the financial sector in Anguilla. Further, the ECCB conducts AML/CFT onsite examinations even though it does not have the authority to do so and cannot directly share the results with the FSC. These and other issues noted in more detail at Section 3.10 of the Report led the Examiners to recommend in general that amendments be made to the relevant legislation to make the role of the ECCB and the functions of the ECSRC clearer. With regard to sanctions, issues arose with the ability of the ECCB and the ECSRC to apply sanctions for AML/CFT breaches. The Examiners also determined that the system for imposing administrative fines on domestic banks and their offshore banking subsidiaries for breaches of the POCA, Regulations and Code may be ineffective. Anguilla's AML/CFT regime applies to MVTs. However, the MSBA is not yet implemented and so MVT operators are not licensed under the Act. There is also no requirement for MVT operators to maintain a current list of agents. The MSBA provides enforcement actions however; the Examiners were of the view that the penalties lacked specificity and proportionality, thereby undermining their effectiveness and dissuasiveness.

4. Preventive Measures – Designated Non-Financial Businesses and Professions

19. Anguilla does not have an extensive range of sophisticated DNFBPs. Data provided showed an estimated number of 108 DNFBPs in Anguilla. It should be noted that trust and company service providers are licensed, supervised and regulated as financial institutions. The POCA, the Regulations and the Code make no distinction between financial service providers and DNFBPs and accordingly all are required to meet Rec. 5 requirements. There are currently no licensed casinos in Anguilla as the Executive Council has made a policy decision prohibiting their establishment. Since the legislation was recently enacted, the Examiners were unable to assess the level of effectiveness of the AML/CFT measures as they relate to DNFBPs. DNFBPs are required to file SARs, however there is no explicit requirement to file SARs on attempted transactions. As a result of the absence of a regulatory regime for DNFBPs, compliance with internal policy and control measures (Rec. 15) have not been instituted. Additionally, the FSC has not done any inspections on DNFBPs and the Examiners are of the view that the resources available to the FSC are inadequate to allow for proper supervision of the DNFBP sector.
20. Anguilla has identified securities trading platforms and lotteries as institutions that might pose a potential ML and FT risk. The Examiners were not made aware that any consideration had been given by the Anguillan Authorities with regard to the application of Recs. 5, 6, 8-11, 13-15, 17 and 21 to non financial businesses and professions other than DNFBPs that are at risk of being misused for ML and FT. While preventive measures have not been taken with regard to these institutions, the police and the Financial Investigations Unit have taken enforcement action

against the illegal lottery operating in Anguilla. The Payment Systems Act was recently enacted with a view to updating and enhancing the payment system requirements for financial institutions.

5. Legal Persons and Arrangements & Non-Profit Organisations

21. Anguilla uses the ACORN system, which is a real time online registry system that allows for the registration/incorporation of a company from anywhere in the world where there is Internet access. The incorporation of companies must be conducted through a licensed service provider, a company or individual providing fiduciary or company management services. Company managers and/or their overseas agents are allowed to hold CDD information on behalf of incorporated companies. All relationship information is held either by the local licensee or the overseas agent. Information on beneficial owners while not publicly available through the registry, is available to the FSC upon request. In Anguilla, legal persons are permitted to issue bearer shares. The bearer shares must be recorded, stored and immobilized in accordance with the requirements of the Custody of Bearer Shares Regulations, 2006.
22. In Anguilla, a trust may be created by oral declaration, by an instrument in writing, by conduct, by operation of law or in any other manner once the intention of the settler is clearly manifested. However, a unit trust can only be created by a written instrument. The Registrar of Companies is empowered to keep a Register of Trusts, which registers the details of the identity of the trust, settlor, beneficiary and the purpose for which the trust is established. Registration of a trust is optional, however. The information in the Register can only be accessed where the trustee authorises a person in writing to inspect the entry for the trust. All information held by a trust company/service provider is available to the FSC on request or through the onsite examination process. Only privileged information cannot be obtained from FSC licensees. The receipt of information has been repeatedly tested by the FSC. In Anguilla, independent legal professionals are now also deemed service providers under Schedule 2 of the AML/TFR. Service providers are required to obtain adequate due diligence and KYC on trusts. There have however been no onsite examinations/information requests of independent legal professionals with regard to trusts. Anguilla has legislatively provided for the establishment of foundations. There have also been no onsite examinations/information requests with regard to foundations. Accordingly, the Examiners were unable to determine the effectiveness of access by competent authorities to the relevant information.
23. The Anguillan Authorities have determined that the NPO sector presents a low risk of potential ML and FT activities. NPOs are required to maintain registers of members and directors and other records. Records that are held by the Registrar of Companies concerning NPOs that are incorporated are open to public inspection. However, since all NPOs are not registered the relevant information on all NPOs is not publically available. The NPO sector is not captured under the existing AML/CFT framework and is therefore not required to report SARs to the FIU. There are no established AML/CFT policies which specifically pertain to the NPO sector and no outreach programs currently exist to provide instruction to this sector. There is also no supervisory programme in place to ensure compliance with the AML/CFT legislation and no specified period for NPOs to keep records.

6. National and International Co-operation

24. The MLRA is the primary body for the coordination and cooperation nationally on developing and implementing policy and activity against ML and FT. The MLRA provides strategic and policy direction in AML/CFT measures on a national basis. The introduction of the Customs Declaration Form is an example of an action resulting from the MLRA's strategic direction. There has been collaboration between the Customs Department and the FIU with regard to cash seizures and joint patrols have taken place involving Customs, Immigration and the Drugs and Firearms Task Force of the Police Force. While there is no formal MOU in place to facilitate intra-agency cooperation and coordination, all the competent authorities were able to give details

on the level of their cooperation with each other on a national basis. The Examiners also found no impediments to cooperation with the FIU and the regulated institutions. With regard to the ratification and implantation of international conventions, 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 the Agreements from the UK. The 1988 Vienna Convention has been extended to Anguilla; however the Palermo Convention and the Convention for the Suppression of the Financing of Terrorism have not been extended to Anguilla. The Anguillan Government has, however enacted domestic legislation to implement the provisions of these Conventions. Anguilla has fully implemented UNSCRs, 1267, 1373 and the successor resolutions through the TUNMOTO and the ATO, which are supplemented by relevant provisions in the POCA and the Code.

25. The POCA along with the Criminal Justice (International Cooperation) (Anguilla) Act, 2000 (CJICA) and the ATO are the primary pieces of legislation that govern Anguilla's mutual legal assistance (MLA) programme. The CJICA makes full provision for obtaining warrants for search and seizure where criminal investigations are being carried out or proceedings have begun against a person outside of Anguilla. The CJICA also allows the Magistrate's Court to take evidence on oath and for the service of judicial documents in Anguilla. The POCA at Part 6 provides for external requests and the enforcement of external orders and the identification, freezing, seizure or confiscation of relevant property. The ATO also provides for freezing, seizing and confiscation of assets related to FT including compliance with MLA. Both the CJICA (Sections 2-8) and the POCA (Part 6, Schedule 3) enable MLA to be rendered in the absence of dual criminality, in particular, for less intrusive and non-compulsory measures. There is no requirement that the conduct constitute an offence under Anguilla law. All requests for MLA for the enforcement of external orders are executed in a timely manner and without undue delay since the requests are made directly to the Attorney General who can make an ex parte application for domestic orders that would enforce the external orders. A National Forfeiture Fund was established pursuant to Section 154 of the POCA. Anguilla shares assets that are the result of coordinated law enforcement actions. The Fund is used for law enforcement, health, education, etc. Anguilla has entered into an MOU with Denmark to share confiscated assets. There has been no request for MLA under the CFT legislation.
26. The relevant law with regard to extradition is contained in the Extradition (Overseas Territories) Order, 2002 (E(OT)O) and the Extradition Act, 1989 (EA). The E(OT)O extends the EA to Anguilla. ML is an extraditable offence and the definition of 'extradition crime' is wide enough to capture the range of ML offences established under the POCA. Anguilla extradites its own nationals. The Governor and the Attorney General comprise the central authority for sending/receiving extradition requests. To date, there have been no extradition requests to or from Anguilla. All of Anguilla's competent authorities are authorized to cooperate with their international counterparts. The Examiners are of the opinion that Anguilla has vibrant relationships with their international counterparts and that they cooperate to the fullest extent possible. Section 118(2) of the POCA provides for cooperation with foreign jurisdictions. Information can be exchanged both spontaneously and on request for both ML and the underlying predicate offences. There have been no MLA requests with respect to CFT.

7. Resources and Statistics

27. The Examiners found that there was a need for additional training in AML/CFT for prosecutors and the Judiciary and also for Customs with regard to cross-border issues and financial investigations. It was also concluded that the staff at the FSC was insufficient based on the number of financial institutions to be supervised. The FIU's office space was also considered to be inadequate.
28. With regard to statistics, Customs does not maintain statistics on the cross-border transportation of currency and bearer negotiable instruments. The Examiners also found that there were no

statistics maintained on cross-border incidents prior to 2008.

8. Examiners' views

29. Despite the deficiencies noted in some areas, the Examiners are of the view that Anguilla has a strong AML/CFT framework bolstered by the recent enactment of the POCA, the AML/TFR and the AML/TFC and a high level of public awareness of the issues relating to combating ML and FT. It is the Examiners' view that once the legislation is effectively implemented, Anguilla will be at the forefront of combating ML and FT.

MUTUAL EVALUATION REPORT

1. GENERAL

1.1 General information on Anguilla

1. Anguilla is the northernmost Leeward Island in the Eastern Caribbean. It has an area of 35 square miles and is sixteen miles long and 3.5 miles wide at its widest point. It lies to the north of St Martin/ St Maarten and by contrast is very flat. There is one airport on Anguilla, which accommodates daily flights from Puerto Rico, Antigua, St Thomas USVI, St Maarten and executive jets from the United States of America. There is one sea ferry terminal at Blowing Point which facilitates sea travel between Anguilla and neighbouring St Martin/St Maarten. There is one main cargo port at Road Bay.
2. Anguilla is one of the five overseas territories of the United Kingdom in the Caribbean. It is an associate member of the Organization of Eastern Caribbean States (OECS) and CARICOM, and a member of the Eastern Caribbean Central Bank (ECCB) and the Eastern Caribbean Securities Regulatory Commission.

Macroeconomic performance

3. Anguilla's economy is mainly dependent on tourism, which represented between 21% and 31% of GDP during 2002 – 2007. Tourism is followed by construction and financial services (banking and insurance) as the second and third largest sectors; financial services accounted for 21% of the total GDP in constant prices in 2008.
4. Following a year of negative growth in 2002 preceded by the September 11th terrorist attack in the USA, economic growth rebounded in Anguilla and remained robust over the next several years up until 2007. Growth at the time was underpinned by a buoyant global economy which fuelled high levels of foreign direct investment (FDI) flows to the island. As a result there was a boom in construction which was geared primarily towards the tourism sector. The boom in construction led to significant labour shortages on the island which spurred an influx of foreign workers to the island to fill the gaps in the demand for labour.
5. Over this period, real GDP growth averaged 16.0 % reaching its zenith in 2007 when growth reached 21.0 %. Tourism contribution to GDP averaged about 30.6 % of GDP while construction accounted for 15.5 % of GDP – taken together, on average tourism and construction accounted for roughly 46.2 % of GDP over 2002-2007.
6. Credit growth accelerated over the period averaging 17 - 18 % of GDP per annum. The growth in credit was fuelled by the robust economic activity the economy enjoyed starting in about 2003 as a number of tourism related projects got off the ground. The boom in construction inevitably led to a shortage of labour, resulting in the mass immigration of labour that had individuals borrowing to accommodate these persons.

Recent Economic Developments 2008

7. In 2008 the economy contracted by 0.5 % in contrast to the average growth of 16.0 % witnessed over the last several years. The contraction was influenced by the slow down in construction activity caused by the stoppage of a major hotel project and a reduction in visitor arrivals.

8. Tourism activity as measured by activity in the hotels and restaurants sub-sector contracted by 12.7 % in 2008 compared to a 6.4 % expansion in 2007. The hotels and restaurants sector share of GDP fell from 26.8% per cent of GDP in 2007 to 22.5% of GDP in 2008. This performance was influenced by a contraction in visitor arrivals; total visitor arrivals contracted by 23.0 % (126,000) compared to a 1.9 % contraction in 2007, stay over arrivals decreased by 12.7 %.
9. Activity in the construction sector slowed, with a marginal increase of 6.6 % in 2008 compared to the 65.7 % increase in 2007. Construction share of GDP remained relatively flat for 2008 contributing 25.4 % of GDP up from 24.0 % in 2007.

1.2 General Situation of Money Laundering and Financing of Terrorism

The Money Laundering Situation

10. Anguilla is a small island with a small tightly knit population and a relatively low level of either petty or serious crime. There are very few offences committed on the island by the local populace that would generate substantial monies or profits from crime. Anguilla has its proportionate share of cannabis cultivation, drug importation and dealing. Principal seizures of drugs almost invariably relate to cannabis with very few seizures of cocaine or crack and none of heroin. There is a zero tolerance policy in relation to drug possession, use and trafficking on the island which is rigorously implemented by the Drugs & Firearms Task Force and HM Customs.
11. Because of the low level of these activities, intelligence indicates that the sums generated from drug related criminality are relatively modest and they do not appear to be entering the mainstream economy via financial institutions.
12. Any in depth analysis of the patterns and trends of money laundering on Anguilla is somewhat restricted due to the lack of proper recording and collection of comprehensive data and statistics prior to establishing a fully functional Financial Intelligence Unit in March 2008 as described more fully in Section 2.5.
13. Some trends of suspicious domestic money movement have been highlighted by money remitters on the island. There is a good working relationship with the Compliance Dept of Western Union and regular reports are received, prompted from transactions by volume or amounts exceeding set activity levels for individual customers. Such reports currently account for approximately 25% of all SAR reports since 2008.
14. On investigation it has been hard to establish the probability of criminality in these cases. The amounts are not abnormally large (often a number of transactions with the aggregate total amount involved not exceeding \$10,000) and the frequency of the transactions not showing any consistent patterns over a sustained period. The individuals concerned are rarely known to be connected directly or indirectly through association to criminality.
15. The other notable domestic laundering activity that came to light over the past year was proceeds generated from the running of a then burgeoning illegal lottery in Anguilla and the proceeds from it entering the financial systems. This prompted several reports (accounting for 10% of all current SAR reports since 2008) all of which were analyzed and referred to the Financial Investigation Unit of the Police for investigation. It is estimated the illegal lottery generated profits in excess of \$1 million. Five persons have been arrested in this matter and charged with lottery offences and some also with laundering the proceeds from the illegal lottery. These prosecutions are still pending. Cash was seized during this operation and assets placed under restraint on application to the courts. The Financial Investigation Unit is also

investigating reports to the Police of money laundering arising from the predicate offences of theft and deception.

16. The international picture is in complete contrast with that painted for the domestic scene. Anguilla as a country has targeted the world of offshore financial business and with legislation, structures and a favourable tax regime has captured part of that trade. In addition, advanced and forward thinking methods of company formation and incorporation have added to the small but successful and growing international offshore financial business of Anguilla.
17. Anguilla's success in developing its offshore industry has also created vulnerabilities to money laundering. The exact same things that make the country attractive to legitimate and high value international customers with legitimate requirements for offshore structures also makes it attractive to money launders attempting to layer monies through systems that allow some degree of anonymity.
18. International Business Companies (IBC's – similar to Delaware Corporations) can be incorporated by company service providers in Anguilla without the requirement to publicly register shareholders, directors etc. An IBC once incorporated is capable of holding assets and operating bank accounts, both on Anguilla and other foreign jurisdictions.
19. There have been cases where IBCs were used as "flow through" accounts, facilitating the mingling of monies, confusing money trails and generally assisting the layering process in money laundering. IBC abuse is responsible for 33% of all SAR reports (17 of 51) since 2008. There has only been one instance where the money from a suspected IBC abuse has remained in Anguilla. Analysis of the current situation shows that the majority of IBC abuse is related to fraud in one form or another. Examples of IBC abuse have been linked directly to Ponzi schemes that emanate from fraudulent land deals and mutual funds, manipulation of stocks by pump and dump schemes and boiler room fraud, unlawful selling of securities and monies suspected of being defrauded from a public purse. There have been no instances of IBC abuse that could be directly or even indirectly associated with cases of drug, firearm, or human trafficking.
20. The face of money laundering on Anguilla is not expected to change dramatically in the coming years. The biggest perceived threat will continue to come from abuses of the offshore industry in relation to mutual funds, trusts, IBC's, etc. The more stringent recently introduced Proceeds of Crime Act 2009 along with its attendant Code and Regulations are expected to have a significant impact in this area by making company service providers and others more accountable.
21. To date there has been no known terrorist financing operations on or from Anguilla

1.3 Overview of the Financial Sector and DNFBP

FINANCIAL INSTITUTIONS

22. Anguilla has a varied selection of relatively unsophisticated financial institutions operating in the financial system. These institutions provide a range of traditional services. The four main categories of financial institutions are:
 - (i) foreign/offshore and domestic insurance companies;
 - (ii) mutual funds;
 - (iii) company managers; and
 - (iv) banks.

The banking institutions provide the main source of funding for the domestic economy and represent a combination of indigenous institutions and branch operations of international foreign owned commercial banks.

23. Schedule 2 of the Anti-money Laundering and Terrorist Financing Regulations 2009 provides a broad definition of service providers which includes regulated business as well as the range of financial activities listed in the Glossary of the FATF 40 Recommendations. As such these entities are all accountable under the AML/CFT laws of Anguilla.

24. The table and graph below provide a current status and growth trend of financial institutions on Anguilla.

Table 1:

FINANCIAL INSTITUTIONS IN ANGUILLA

TYPE OF INSTITUTIONS	NO. AS AT 15 MAY 2009	REGULATOR	APPLICABLE LEGISLATION
Commercial Banks	4	ECCB*	The Banking Act
Securities Broker-Dealers	1	ECSRC**/ECCB	Securities Act, R.S.A. c. S13
Offshore Banks	3	FSC ^o	Trust Companies and Offshore Banking Act
Company Management	47	FSC	The Company Management Act
Trust Companies (General)	13	FSC	Trust Companies and Offshore Banking Act and the Trusts Ordinance
Trust Companies (Restricted)	5	FSC	
Mutual Funds	51	FSC	The Mutual Funds Act
Mutual Fund Intermediaries	32	FSC	
Domestic Insurance	25	FSC	The Insurance Act (based on definition of Insurance Business)
Offshore Insurance	178	FSC	
Foreign Insurance	14	FSC	
Insurance Intermediaries	43	FSC	
Money Transfer Agents	4	FSC	Money Services Act, 2009
Credit Unions	1	FSC	The Cooperative Societies Act
Friendly Societies	34	FSC	The Friendly Societies Act
Development Bank/Board	1	Ministry of Finance and the Caribbean Development Bank	Development Board Act
TOTAL	422		

* Eastern Caribbean Central Bank

** Eastern Caribbean Securities Regulatory Commission

Table 2: Growth Trends in Financial Institutions

25. The following chart sets out the types of financial institutions that are authorized to carry out financial activities that are listed in the Glossary of the FATF 40 Recommendations:

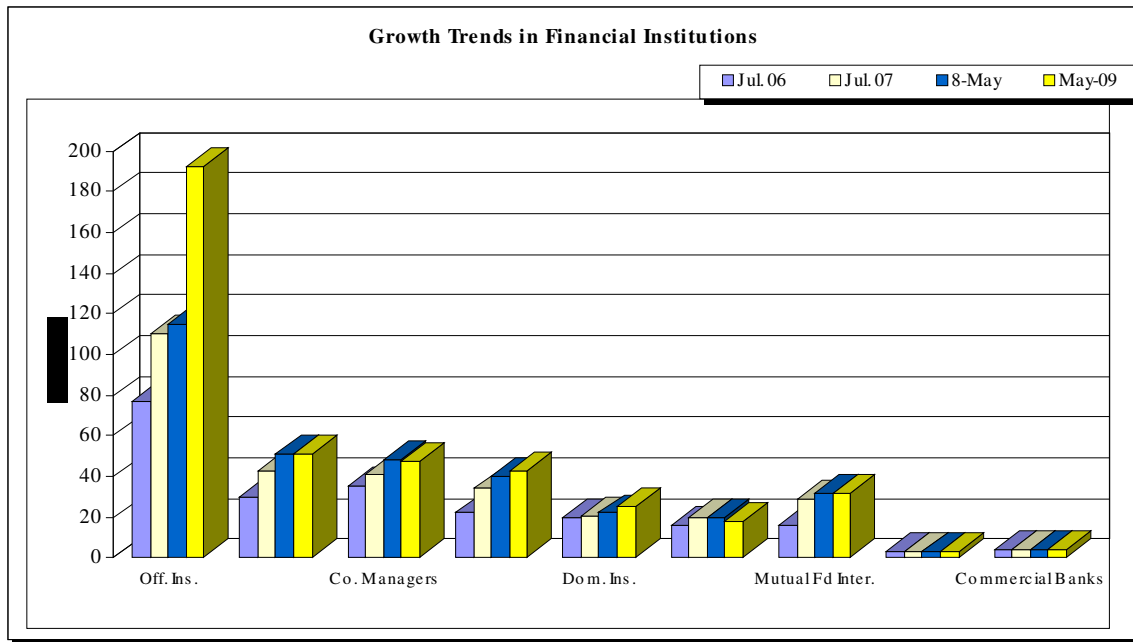


Table 3: TYPES OF FINANCIAL INSTITUTIONS AUTHORIZED TO CARRY OUT FINANCIAL ACTIVITIES LISTED IN THE GLOSSARY OF THE FATF 40 RECOMMENDATIONS

Type of financial institution that is authorized to perform this activity	Type of financial institution that is authorized to perform this activity
1. Acceptance of deposits and other repayable funds from the public (including private banking)	Commercial Banks, Offshore Banks
2. Lending (including consumer credit: mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting)	Commercial Banks, Regulated bodies providing loans to their members (namely those registered under the Co-operative Societies Act), Registered bodies providing loans to their members under the Friendly Societies Act); Anguilla Development Board.
3. Financial leasing (other than financial leasing arrangements in relation to consumer products)	Not Applicable
4. The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds).	Commercial Banks, Offshore Banks, Postal Service, Money Transfer Agents
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money).	Commercial Banks
6. Financial guarantees and commitments	Commercial Banks, Offshore Banks
7. Trading in: <ul style="list-style-type: none"> a) money market instruments (cheques, bills, CDs, derivatives, etc.); b) foreign exchange; c) exchange, interest rate and index instruments; d) transferable securities; e) commodity futures trading 	Not Applicable
8. Participation in securities issues and the provision of financial services related to such issues	Commercial Banks, Securities Broker
9. Individual and collective portfolio management	Mutual Funds
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	Commercial Banks, Trust and Company Service Providers
11. Otherwise investing, administering or managing funds or money on behalf of other persons	Mutual Funds
12. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers)	Insurance Companies
13. Money and currency changing	Commercial banks

Banks and Deposit taking Institutions:

26. There are 4 commercial banks and 3 offshore banks on Anguilla. Two of the offshore banks are fully owned subsidiaries of licensed domestic banks which provide private banking services. Total assets of the domestic banks totalled EC\$2101.2 million at March 31, 2009 in comparison to the offshore banks for the same period which totalled EC\$ 964.4 million.
27. The commercial banks are licensed under the Banking Act and are supervised by the Eastern Caribbean Central Bank (ECCB). Offshore banks are licensed under the Trust Company and Offshore Banking Act and are supervised by the Anguilla Financial Services Commission (FSC). Under the consolidated supervisory approach there is a shared responsibility with the ECCB for the two subsidiary offshore institutions. There is a memorandum of understanding (MOU) in place between the ECCB and the FSC that governs the collaboration between the institutions on the regulation of the offshore banks which are subsidiaries of domestic banks.
28. **Credit Unions and Friendly Societies:** These institutions are registered under the Co-operative Societies Act and Friendly Societies Act respectively, and provide small scale consumer credit to members. There is only one credit union in Anguilla with membership restricted to the employees of a private corporation. There are 34 friendly societies.
29. **Development Bank/Board:** The Anguilla Development Board (ADB) is a statutory body established by the Development Board Act, to provide concessional financing for approved productive investment. ADB is funded by the Caribbean Development Bank and the Anguilla Social Security Board. The Board does not accept deposits. At March 31, 2009, ADB's loan portfolio totalled ECD37.3 million, comprising chiefly mortgage loans as well as loans for education, tourism and agriculture/fishing.
30. **Insurance and Insurance Intermediaries:** The Insurance Act provides for 6 different classes of insurance licenses. Class A licenses permit a local or external insurer to carry on domestic insurance business in or from within Anguilla. Class B licenses provide for variations in authorized activities for foreign insurers to carry out foreign insurance business.
31. As of May 2009, there were twenty-five (25) Class A licensees. These represent three (3) locally incorporated companies, 16 incorporated within CARICOM and 6 incorporated outside the CARICOM. Class B licensees for the same period totalled 192, of which 178 were captive insurers.
32. The Act defines insurance intermediary business as the business of brokers, agents, sub-agents principal representatives and insurance managers. At May 2009 there were 43 insurance intermediaries in Anguilla.
33. **Mutual Funds and Fund Intermediaries:** The Mutual Funds Act (MFA) was introduced in 2004. Funds in Anguilla may be formed as companies, partnerships or protected cell companies. At May 2009 there were 51 registered mutual funds, approximately 90% of which were classified and recognised as private/professional funds, the remainder being registered public funds.
34. Fund administrators and managers who provide services in or from within Anguilla are required to be licensed. There were 32 licensed intermediaries at May 2009.
35. **Trust and Company Service Providers:** In Anguilla trust and company management business is generally conducted within the same legal entity although under separate legislation and specific license. Many service providers are stand alone companies conducting purely one or both of these licensable activities but with no other financial business within the company.

36. The Trusts and Offshore Banking Act also provides for trust business to be conducted by banks. The licensing regime for service providers administered by the FSC requires the maintenance of prescribed capital levels. Activities of these licensees are typically as follows:
- Company formation and establishment of business.
 - Ongoing compliance with legal, regulatory and listing requirements.
 - Arranging for bank accounts to be opened and acting as bank account signatories.
 - Acting as nominee shareholders and directors.
 - Providing registered office facility.
 - Liquidation and dissolution of companies and cessation of business.
 - Trust services.
37. **Money Transfer Agents:** The AML/CFT regime for Anguilla extends to money transfer agents which fall under the definition of service provider. There are no separate exchange bureaus or check cashing services engaging in money transmission services.
38. There are currently four money transfer agents who are registered and licensed under the Trade, Business, Occupation and Professional Licenses Act (TBOPLA) with the Ministry of Finance. Two of these institutions have been the subject of on-site AML/CFT examinations by the FSC.
39. However, a more comprehensive supervisory regime was recently put in place with the passage of the Money Services Business Act.
40. **Security Brokers/Dealers:** Participation in securities issues and financial transactions related to such issues are regulated by the Eastern Caribbean Securities Regulatory Commission. There is currently one licensed securities broker-dealer on the island, the National Bank of Anguilla.

OVERVIEW OF THE DNFBP SECTOR

Table 4: Number of DNFBPs.

TYPE ⁶	NO. AS AT 15 MAY 2009	REGULATOR	COMMENTS
Lawyers (firms and sole practitioners)	18	FSC	A number of these law firms are also engaged in company management business, a licensed and regulated activity.
Notaries	46		
Accounting Firms	2	FSC	One international firm (KPMG)
Dealers in Precious Stones	2	FSC	Two relatively small jewellery stores
Real Estate Agents	20	FSC	These are primarily lawyers, law firms, accountants and company managers.
Casinos	Nil		Policy decision by Government of Anguilla
TOTAL	108		

⁶ **Trust and company service providers** are licensed, supervised and regulated as financial institutions on Anguilla; and accordingly, these institutions are listed in the financial institutions table.

41. **Solicitors, Barristers and Notaries Public:** There are 12 law firms on Anguilla. The majority of law firms are partnerships with one to three partners. There are currently 6 sole practitioners. The Bar Association is a professional body comprising 46 members. At April 2009 there were 35 resident practicing barristers and 3 resident practicing solicitors.
42. The Notaries Public Act, R.S.A. c. N15, confers on the Chief Justice of the Eastern Caribbean Supreme Court the power to appoint any person, whom he considers a fit and proper person, to be a notary public for Anguilla⁷. There are presently forty six (46) notaries public enrolled in Anguilla under the Act. The Register is kept in the office of the Registrar of the High Court of Anguilla⁸. These notaries are deemed by the Act to be officers of the Eastern Caribbean Supreme Court and, upon a certificate from any Judge of the Court that he has been guilty of misconduct in the discharge of his duties, may be discharged by the Chief Justice from the duties of his office⁹. In Anguilla, notaries public generally witness and verify signatures on important documents such as wills or affidavits.
43. **Accountants:** There are 2 accounting firms in Anguilla, one being affiliated to the international firm KPMG.
44. **Dealers in precious metals and stones:** Business in this sector is represented by small scale retailers employing a few individuals as salespersons. A licensing/registration regime was recently established for this sector as part of the POCA and its Anti-Money Laundering /terrorist Financing Regulations and Code.
45. **Real estate agents:** There are approximately 20 real estate and property development businesses in Anguilla. A licensing/registration regime was recently established for this sector as part of the POCA and its Anti-Money Laundering /terrorist Financing Regulations and Code.
46. **Casinos (also includes internet casinos):** Anguilla does not have any land based casinos. This is a policy decision of the Government. There are no internet casinos operating from Anguilla.

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

47. The following legal persons and legal arrangements can be established or created under the laws of Anguilla and/or can own property in Anguilla:
 - local companies
 - international business companies
 - limited liability companies
 - trusts and unit trusts
 - mutual and hedge funds
 - protected cell companies
 - general and limited partnerships
 - foundations

⁷ See section 1 of the Act.

⁸ See section 3 of the Act.

⁹ See section 4 of the Act.

LOCAL COMPANIES (The Companies Act, R.S.A. c. C65)

48. **Formation of local companies** Local companies can be formed by electronically filing articles of incorporation with the Registrar of Companies¹⁰. A local company need not file its by-laws at the Companies Registry.
49. **Basic characteristics of a local company** A local company has the capacity and all the rights, powers and privileges of an individual¹¹ and thus can buy and sell property, sue and be sued, enter into contracts, hold assets including land in its own name and maintain bank accounts. Unless licensed to do so, a local company may not carry on banking, trust, insurance or company management business. A local company must at all times have a registered agent and registered office in Anguilla¹².
50. **Registers to be maintained by the Registrar of Companies.** The Registrar must maintain a Register of local companies in which the name of every company (a) that is incorporated, continued as a local company or restored to the Register under the Act; and (b) and has not been subsequently struck from the Register. The Registrar must also maintain a Register of foreign companies in which the name of every foreign company that has been registered under the Act is kept¹³. Also filed in the Register are the required annual returns, which are certified by a director or officer of the local company or by its registered agent, containing details of date of continuance or incorporation, its registered office and agent, shareholders/guarantors and directors and officers¹⁴, and of whether its shares are distributed to the public.
51. **Accounts record and registers to be maintained by a local company.** A local company must maintain at its registered office a copy of its financial statements¹⁵ and prepare and maintain at its registered office records containing its articles and by-laws and all amendments thereto, any unanimous shareholders agreement and amendments thereto, minutes of meetings of directors and shareholders, and resolutions of shareholders, directors and committees of directors¹⁶. The directors and shareholders of a company are to have access to these records¹⁷, during normal business hours, except minutes of directors and resolutions of the directors and any committees of the directors.
52. A local company must also prepare and maintain a register of all mortgages, debentures and charges affecting its property. This register is to be open to inspection by any creditor or shareholder of the local company¹⁸.

International Business Companies (IBCs) (International Business Companies Act)

53. **Formation of IBCs:** An IBC can be electronically incorporated using Anguilla's Commercial On-Line Registration Network System ("ACORN") by filing articles of incorporation¹⁹. An IBC is not required to file its by-laws at the Companies Registry. Foreign companies may be re-domiciled to Anguilla as IBCs.
54. **Basic Characteristics of an IBC:** An IBC is a separate legal entity. It has the power to carry on or undertake any lawful business or activity in or outside Anguilla and to enter into any

¹⁰ See section 5 of the Act.

¹¹ See section 17 of the Act.

¹² See sections 149 and 150 of the Act.

¹³ See section 233 of the Act.

¹⁴ See section 158 of the Act.

¹⁵ See sections 126 and 127 of the Act.

¹⁶ See sections 152 and 154 of the Act.

¹⁷ See section 157 of the Act.

¹⁸ See section 172 of the Act.

¹⁹ See section 2 of the IBC Act.

transaction²⁰, but is prohibited from carrying on business with persons in Anguilla, owning or holding an interest in real property situated in Anguilla or carrying on banking, insurance, company management or trust business²¹.

55. An IBC may have one director and one shareholder both of whom may be corporate and non-resident. An IBC must have a resident registered agent and a registered office in Anguilla²².
56. **Registers to be maintained by the Registrar of Companies:** The Registrar of Companies is to keep a register of IBCs, which is to contain such information as he thinks fit²³. An IBC is not required to, but may, elect to register details of its directors and shareholders. The Registrar therefore also maintains a Register of Shareholders and Directors which is to contain the election made by the IBC and the details of the directors or shareholders of the IBC as set out in the notice filed by the IBC²⁴. An IBC may also elect to register charges created by it and the Registrar is to keep a register of registered charges.
57. The information kept in these registers is public information. Members of the public may search these registers upon payment of the prescribed fee of US\$10²⁵.
58. **Records to be kept by an IBC:** The IBC Act does not make it mandatory to file the details of the director(s) and shareholder(s) of an IBC at the Companies Registry. Copies of the share register²⁶, the articles of incorporation, the by-laws and any amendments must however be kept at the IBC's registered office. An IBC must also keep accounting records and minutes of meetings and resolutions of directors, shareholders, committees of directors, officers and shareholders at its registered office or at such other place as its directors may by resolution determine²⁷. These records may be inspected by a shareholder of an IBC or his attorney²⁸, but are not available to the public for inspection. However, the records must be made available to the FSC on request.
59. An IBC must also keep a copy of the register of all relevant charges created by it at either its registered office or the office of its registered agent²⁹.

LIMITED LIABILITY COMPANY (LLC) (Limited Liability Company Act, R.S.A. c. L65)

60. **Formation of LLCs:** Filing articles of formation with the Registrar of Companies forms a LLC³⁰. The members of a LLC may also enter into a LLC Agreement concerning the affairs of a LLC and the conduct of its business, which need not be filed at the Companies Registry³¹. A LLC must have a registered agent and a registered office in Anguilla³².
61. **Basic Characteristics of a LLC:** A LLC is a separate legal entity distinct from its members³³. A LLC can carry on any business, purpose or activity not prohibited by laws of Anguilla. It also has the power to sue and be sued, complain and defend in its name, own or hold real or personal property or an interest therein which is located out of Anguilla, make contracts and

²⁰ See section 9 of the IBC Act.

²¹ See section 3(1) of the IBC Act.

²² See sections 36 and 37 of the IBC Act.

²³ See section 8(3) of the IBC Act.

²⁴ See section 128 of the IBC Act.

²⁵ See Schedule 3 Part 1 of the IBC Regulations.

²⁶ See section 24 of the IBC Act.

²⁷ See section 65 of the IBC Act.

²⁸ See section 66 of the IBC Act.

²⁹ See section 76 of the IBC Act.

³⁰ See section 11 of the LLC Act.

³¹ See section 12 of the LLC Act.

³² See sections 5 and 6 of the LLC Act.

³³ See section 11(4) of the LLC Act.

guarantees and incur liabilities, and to become a member of a general partnership, limited partnership, joint venture or similar association, company or any other LLC³⁴. A LLC is however prohibited from owning or holding an interest real property situated in Anguilla, or carrying on banking, insurance, trust or company management business unless licensed to do so³⁵.

62. **Registers to be maintained by the Registrar of Companies.** The Registrar is to keep a Register of LLCs in which he registers the articles of formation in respect of every LLC filed for registration and any amendment thereto, the date of formation, and any articles or merger or consolidation and any restated articles are entered³⁶. This Register is available to the public for inspection upon payment of the prescribed fee.
63. **Records to be maintained by a LLC:** A LLC is required to keep records relating to the true and full information regarding the status of the business and financial condition of the LLC; which include a current list of the name and last known business, residence or mailing address of each member, holder of an economic interest and manager; a copy of the LLC Agreement, the articles of formation and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the LLC Agreement and any articles and all amendments have been executed; relating to a true and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and that each member has agreed to contribute in the future, and the date on which each member became a member; and such other information regarding the affairs of the LLC as is just and reasonable³⁷.
64. These records are available for inspection by a member and each manager (for a purpose reasonably related to his position as manager) but are not available to the public for inspection. However, the records must be made available to the FSC on request.

TRUSTS (The Trusts Act, R.S.A. c. T70)

65. **Creation of a trust or unit trust³⁸:** No formalities are required to create a trust in Anguilla if the intention of the settlor to create a trust is clearly manifested. A trust, other than a unit trust, may therefore be created in by oral declaration, or by an instrument in writing including a will or codicil, by conduct, operation of law or in any other manner. However, a trust in respect of land situated in Anguilla, other than one arising by operation of law, is unenforceable unless evidenced in writing. Only an instrument in writing may create a unit trust³⁹.
66. **Basic characteristics of a trust:** An Anguillan trust is not a separate legal entity. Trust property is therefore held or owned by a trustee and not the trust. The Trust Act provides that a trust exists where a trustee holds property for the benefit of a beneficiary and/or for any valid charitable or non-charitable purposes, which is not for the benefit only of the trustee. The settlor may also be a trustee, beneficiary or protector of the trust. A trustee may be resident in or out of Anguilla⁴⁰.

³⁴ See section 8(4) of the LLC Act.

³⁵ See section 8(2) of the LLC Act.

³⁶ See sections 11(5) and 16 of the LLC Act.

³⁷ See section 25 of the LLC Act.

³⁸ A unit trust is defined by section 1 of the Trusts Act as a trust established for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for participation by them as beneficiaries under the trust in any profits or income arising from the acquisition, holding, management or disposal of property.

³⁹ See section 4 of the Act.

⁴⁰ See section 1 of the Act.

GENERAL PARTNERSHIPS (Partnership Act, R.S.A. c. P5)

67. **Creation of a partnership:** No formalities are prescribed by the Act for the creation of a partnership. Various rules are however laid down in the Act for determining if a partnership exists⁴¹.
68. **Basic characteristics of a partnership:** A partnership is not a separate legal entity. Partnership property is therefore to be held by the partners exclusively for the purposes of the partnership and the legal estate or interest in any land which belongs to the partnership is held in trust for the partners beneficially interested in it⁴².
69. **Register of firms:** The Act does not require partnerships to be registered and no such Register is kept. However, every firm must obtain an annual business licence under the Trades, Businesses, Occupations and Professions Licensing Act and a register is kept of all licensed businesses under the said Act.

LIMITED PARTNERSHIPS (Limited Partnership Act, R.S.A. c. L70)

70. **Creation of a limited partnership:** A limited partnership is formed by two or more persons executing a Partnership Agreement which regulates the conduct of the business of the partnership and the rights and obligations of the partners⁴³. A body corporate and a partnership may be a partner⁴⁴.
71. **Basic characteristics of a limited partnership:** A limited partnership is not a separate legal entity and under section 3(2) of the Limited Partnership Act a limited partnership has a continuous and successive existence in the persons of its partners until its dissolution. Every limited partnership must be registered under the Act by filing a statement in the prescribed form with the Registrar of Companies⁴⁵. A limited partnership must have a registered office and agent in Anguilla⁴⁶. Any such registered agent and office must hold a licence. A limited partnership may undertake any lawful purpose within or outside Anguilla and can, among other things, maintain bank accounts in Anguilla invest in stocks or equities and own or hold interests in land whether situated in or outside of Anguilla.
72. **Register(s) to be maintained by the Registrar of Companies:** The Registrar of Companies must maintain a Register of Limited Partnerships in which he registers every limited partnership. The Registrar is to record all statements filed in respect of a limited partnership in the Register of Limited Partnerships, which is to be available for inspection by the public. The statement filed on application for registration must include the name of the partnership; the general nature of the business of the partnership; the address and registered office of the partnership; the name and address of the registered agent of the partnership; the term, if any, for which the partnership is entered into or, if for an unlimited duration, a statement to that effect and the date of its commencement; the full name, address and mailing address of each general partner, specifying each of them as a general partner. If any of the general partners is a body corporate, this statement must be accompanied by its certificate of incorporation or a certificate of its registration under the Companies Act.
73. **Records to be maintained by a limited partnership.** The general partners of a Limited Partnership must maintain or cause to be maintained at its registered office the partnership agreement and every amendment thereto; a register in writing of all persons who are limited

⁴¹ See section 4 of the Act.

⁴² See section 21 of the Act.

⁴³ See section 4 (1) of the Act.

⁴⁴ See section 3(6) of the Act.

⁴⁵ See section 11 of the Act.

⁴⁶ See sections 6 and 7 of the Act.

partners showing their full names and addresses and specifying in relation to each limited partner (i) the amount that he has agreed to contribute to the capital of the limited partnership and the dates or events upon which the contributions are to be made, (ii) the amount and date of each contribution made to the capital of the limited partnership; the amount and dates of any payments representing a return of his contributions or part thereof; and where an agreement to make a contribution is released in whole or in part, the amount and date of the release; and copies of all documents filed with the Registrar of Companies⁴⁷.

74. These documents and records are to be open to inspection by any general or limited partner during normal business hours.

MUTUAL FUNDS

75. Basic characteristics of a mutual fund⁴⁸: Mutual funds were established in Anguilla in 2004 under the Mutual Funds Act, ("the Act"). The Act defines mutual fund as a company incorporated, a partnership formed, a unit trust organized or other similar body formed under the laws of Anguilla or any other jurisdiction that (i) collects and pools together investor monies for the purpose of investing collectively; and (ii) issues shares⁴⁹ that entitle the holder of those shares to receive on demand an amount calculated by reference to the value of a proportionate interest in the whole or in a part of the net assets of the company, partnership, the unit trust or similar body.

76. The Act also regulates the managers and administrators who provide administrative support services to mutual funds. The Act creates and regulates three (3) types of mutual funds:

- public fund: one which offers shares in the entity to the general public through the issuance of a prospectus and which is not a private or a professional fund.
- private fund: one which is constituted of no more than ninety nine (99) investors and whose constituent documents specify that the invitation to purchase shares is to be made on a private basis.
- professional fund: one whose shares are made available for purchase only to professional investors (whose initial investment is not less than US\$100,000.00) who are defined by the Act as persons whose ordinary business involves dealing in investments or who has signed a declaration that he, whether individually or jointly with his spouse, has a net worth of US\$1 million or its equivalent or any other currency and that he consents to being treated as a professional investor.

77. The constitutional or formation documents required in the case of:

- a mutual fund company are the memorandum and articles of associations, the articles of incorporation or other instruments of incorporation;
- a mutual fund partnership is the agreement or other instrument by which the partnership is formed or governed; and
- a mutual fund unit trust is the trust deed or other instrument by which the unit trust is organized or governed.

⁴⁷ See section 14 of the Act.

⁴⁸ See section 1 of the Act.

⁴⁹ Shares are defined as shares in the share capital of a mutual fund company and include interests in a mutual fund partnership and a unit in a mutual fund unit trust.

Registration and or Recognition in Anguilla
Public Funds

78. A public fund must be registered under the Act before it carries on its business or manages or administered its affairs in or from within Anguilla.⁵⁰ An application for registration under the Act is to be made to the FSC in the prescribed form and must be accompanied by (a) a statement setting out the nature and scope of the business to be carried on by the applicant in or from within Anguilla, including the name of any other country or jurisdiction where the applicant is carrying on or intends to carry on business; (b) the prescribed fee; (c) certified copies of the instruments by which the applicant is constituted or such other proof as may be satisfactory to the FSC that the applicant is lawfully constituted under the laws of Anguilla or of any other country or jurisdiction; (d) notices⁵¹ of the address of the applicant's place of business and its address for service in Anguilla; the name and address of a person resident in Anguilla who is authorised to represent the applicant and to accept service on its behalf; and the address of any place of business that the applicant may have outside of Anguilla; and (e) such other documents or information as the FSC may reasonably require for the purpose of determining the application⁵².

Private and Professional Funds

79. A private fund and professional fund must be recognized under the Act before it carries or its business or manages or administers its affairs in or from within Anguilla⁵³. A professional fund is however granted a maximum 'grace' period of 14 days during which time it may carry on its business or manage or administer its affairs in or from within Anguilla without being recognized under the Act⁵⁴.
80. An application, by a private or professional fund constituted under the laws of Anguilla for recognition under the Act is to be made to the FSC in the prescribed form for registration and must be accompanied by (a) proof satisfactory to the FSC that it is a private or professional fund within the of meaning of the Act and is lawfully constituted under the Act; and (b) notices⁵⁵ of the address of the applicant's place of business and its address for service in Anguilla; the name and address of a person resident in Anguilla who is authorised to represent the applicant and to accept service on its behalf; and the address of any place of business that the applicant may have outside of Anguilla⁵⁶.
81. An application, by a private or professional fund constituted under the laws of a country or jurisdiction other Anguilla, for recognition under the Act is to be made to the FSC by way of a letter setting out the nature and scope of its business to be carried on from or within Anguilla and must be accompanied by (a) the prescribed fee; (b) proof satisfactory to the FSC that it is a private or professional fund within the of meaning of the Act and is lawfully constituted under the laws of another country or jurisdiction; and (c) notices⁵⁷ of the address of the applicant's place of business and its address for service in Anguilla; the name and address of a person resident in Anguilla who is authorised to represent the applicant and to accept service on its

⁵⁰ See section 5 of the Act.

⁵¹ See section 23(1) of the Act.

⁵² See section 6 of the Act.

⁵³ See section 14(1) of the Act.

⁵⁴ See section 14(2) of the Act.

⁵⁵ See section 23(1) of the Act.

⁵⁶ See section 15(1) of the Act.

⁵⁷ See section 23(1) of the Act.

behalf; and the address of any place of business that the applicant may have outside of Anguilla⁵⁸.

82. Registers to be maintained by the FSC⁵⁹. The FSC is to keep separate registers for all:

- i) registered public funds;
- ii) recognised private funds;
- iii) recognized professional funds; and
- iv) licensed managers and administrators.

83. The register must show:

- i) information required to be included in the notices (by section 23) which are to accompany an application with respect to each registered public fund, recognized private fund and licensed manager or administrator;
- ii) the date of registration, recognition or licence;
- iii) the status of such registration, recognition or licence if cancelled and the date thereof.

84. The Registers kept by the FSC are to be open to public inspection during normal hours on payment of the prescribed fee.

85. Records to be maintained by a mutual fund company/partnership/unit trust⁶⁰: Every registered public fund must maintain adequate accounting records and prepare financial statements in respect of each financial year in accordance with generally accepted accounting principles. If the public fund is a: company it will also be required to keep such records as mandated by the Companies Act; or a partnership it will also be required to keep such records as prescribed by the Partnership Act. These records must be made available to the FSC on request.

PROTECTED CELL COMPANIES

86. Protected cell companies were established in Anguilla in 2004 under the Protected Cell Companies Act, 2004. The Act provides for a single company with individual parts, known as cells, which are kept separate from each other. Each cell is only liable for its own debts and not for the debts of any other cell within the company. However, the establishment of a protected cell account does not create a legal person distinct from the protected cell company⁶¹. A protected cell company is thus one legal entity.

87. Formation of a protected cell company: A company incorporated, continued or registered under the Companies Act and which is engaged in insurance business, or if not so engaged, with the approval of the FSC may apply to the Registrar of Companies to be registered as a protected cell company.

88. Formal (constituent) documents: The rights, interests and obligations of account owners in a protected cell account is to be evidenced in a governing instrument, which is one or more written agreements, instruments, by-laws, prospectuses, resolutions of directors, registers or other documents (including electronic records), setting out the rights, obligations and interests of account owners in respect of a protected cell account.

⁵⁸ See section 15(2) of the Act.

⁵⁹ See section 3 of the Act.

⁶⁰ See section 9 of the Act.

⁶¹ See section 13 of the Act.

89. **Basis characteristics of a protected cell company:** An account owner is the beneficial owner of a protected cell account. An account owner is defined by the Act as any person who is (a) registered holder of shares which are issued by a protected cell company and linked to that protected cell account; (b) expressly identified in the governing instrument linked to a protected cell account as being an account owner for the purposes of the Act in respect of that protected cell account; or (c) expressly designated in the records of the protected cell company as being an account owner in respect of that protected cell account.
90. The directors of a protected cell company control it. A protected cell account is controlled by a person known as a manager who is designated, by the protected cell company and the account owners of any protected cell account, in a governing instrument or otherwise.
91. **Register to be maintained by the Registrar of Companies:** The Registrar is to maintain a register of protected cell companies. After registering a protected cell company the Registrar is to issue a certificate showing the date of registration and a copy of which is to be placed on the public file maintained by him in respect of the company. The register is to be available for inspection by members of the public⁶².
92. **Accounts, records and registers to be maintained by a protected cell company:** Every protected cell company must maintain in accordance with sections 126 and 127 of the Companies Act at its registered office: (a) records that will enable financial statements to be prepared in accordance with accepted accounting principles so that the records shall, to the best of the knowledge, information and belief of the directors and officers of the protected cell company, clearly show the share capital, proceeds or rights issues, securities, reserves, assets, liabilities, income and expenses, dividends and distributions that are linked to each cell account; (b) a record of each transaction entered into by the protected cell company; and (c) maintain a general account which records in accordance with the Act all of the assets and liabilities of the protected cell company which are not linked to a protected cell account and which discloses any assets intended by the parties to be applied to a risk of any nature, and which therefore exposes such assets to liability or loss.
93. Where a protected cell company engages in insurance business and the Insurances Act accordingly applies to it, these records are to be kept at its principal office. A protected cell company is to maintain a register of account owners which sets out their respective interests in any protected cell account together with the particulars required in respect of the members of the protected cell company as set out in the Companies Act. This register of account owners is not to be open to public inspection and in the case of a protected cell company, which is a mutual fund; the register of account owners is to be open to inspection by any person without the consent of the protected cell company. An account owner is however entitled to receive a copy of the information in the register pertaining to his interest in the protected cell company. The records referred to in the preceding paragraph must be made available to the FSC on request.

FOUNDATIONS (Anguilla Foundation Act, 2008)

94. **Formation of a foundation:** A foundation is an estate-planning vehicle which is a civil law concept and an alternative to the common law trust. A foundation may be established by one or more natural persons or legal entities by a declaration of establishment in writing during their lifetime or will by a single founder which has been probated in the High Court of Anguilla⁶³. A foundation may adopt by-laws which needed not be filed with the Registrar of Companies.

⁶² See section 4 of the Act.

⁶³ See section 3 of the Act.

95. A foundation may be registered or deposited (if it does not have a commercial purpose) by its registered agent by delivering the declaration of establishment together with the prescribed fees to the Registrar of Companies⁶⁴ for registration or deposit.
96. **Basic characteristics of a foundation:** An initial property endowment of at least \$10,000.00, which can be subsequently increased, must be placed under the control of the intended registered agent of the foundation and become the property of the foundation upon registration or deposit of the foundation's documents. Further assets contributed as property endowments of a foundation become irrevocably vested in the foundation and cease to be the assets of the contributor⁶⁵.
97. An Anguilla foundation is a hybrid entity which has the characteristics of both a corporation and a trust. Unlike a trust but like a corporation, a foundation is a separate and independent legal entity from the date of its registration⁶⁶ that can buy and sell property, sue and be sued, enter into contracts and hold assets in its own name⁶⁷. Like a corporation, a foundation must have a registered agent in Anguilla who is to be a regulated person (that is, the holder of a licence). The objectives and purposes of a foundation are carried out by its Foundation Council⁶⁸.
98. **Register and records to be kept by the Registrar of Companies:** The Registrar is to maintain a Register of Foundations in which the names of all foundations registered under the Act by him are entered. The Registrar is also to allocate to every registered or deposited foundation a number which is to be the registration number or deposit number of the foundation. The documents kept by the Registrar may be inspected by the registered agent or any person authorised in writing by any member of the Foundation Council of a foundation but are not available for inspection by the public and are only to be disclosed by the Registrar upon an order of the High Court or a written request of the FSC or any other body duly authorised under any other statute⁶⁹.
99. **Accounts, records and registers to be maintained by a foundation:** Every foundation must maintain at its registered address a Register in which it records and maintains the identification particulars of the member of its Foundation Council and its Secretary⁷⁰. The Secretary of the foundation or, if there is no Secretary, the foundation's registered agent must also keep or cause to be kept, at the foundation's registered address or such other place designated by the Foundation Council, a Register in which is recorded the identification particulars of the guardian and beneficiaries and auditors and any person having power of attorney granted by the foundation⁷¹. Further, the foundation must also keep or cause to be kept, at its registered address or such other place designated by the Foundation Council, such accounts and records as its Foundation Council considers to be necessary or desirable in order to reflect the financial position of the foundation; a copy of its declaration of establishments and by-laws and any amendment or change thereto; and minutes of all meetings of its Foundation Council and copies of all resolutions consented to by its Foundation Council. These records are to be open to inspection by the registered agent and the members of the Foundation Council, the Secretary, guardian or auditor but are not open to inspection by members of the public.

⁶⁴ See sections 13 and 14 of the Act.

⁶⁵ See sections 3 and 12 of the Act.

⁶⁶ See section 15 of the Act.

⁶⁷ See section 5(3) of the Act.

⁶⁸ See section 20 of the Act.

⁶⁹ See sections 14(3) and 60 of the Act.

⁷⁰ See section 30 of the Act.

⁷¹ See section 37 of the Act.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

100. Anguilla fully recognises the importance of the fight against money laundering and terrorist financing and has continually increased and enhanced its legislative framework, regulatory infrastructure and institutional arrangements to manage and mitigate potential ML/FT risk.
101. Given the nature of Anguilla's financial sector, DNFBPs⁷² and NPOs, which are all incorporated through the use of company managers, the emphasis of Anguilla's ML/FT risk management strategy is focussed on regulating the gate keeping function of these company managers/fiduciaries. The emphasis of the licensing and oversight for company managers is on AML/CFT compliance. Given this emphasis on AML/CFT compliance, all licensees of the FSC and all 'service providers' under the AML/CFT Regulations and Code are required to have appropriately trained senior officers designated as a Compliance Officer and a Money Laundering Reporting Officer.
102. The policy objective of the Government of Anguilla is to ensure that only fit and proper persons and institutions, who satisfy the due diligence requirement in the AML/CFT Regulations and Code, are allowed access to operate in or from Anguilla. Accordingly, company managers, the entry point for all incorporation/registrations, are required to demonstrate that they have systems and procedures in place to comply with the due diligence requirements of the AML/CFT Act, Regulations, Code and any applicable regulatory directives. These service providers must also demonstrate that they are in a position to provide the competent authority with access to all due diligence information in Anguilla.
103. The emphasis of Anguilla's ML/FT risk management strategy is on the gate keeping and monitoring role of company managers. This is augmented by ongoing training for company managers and the industry in general.
104. The jurisdiction is provided with technical assistance from the UK Treasury on its ML/FT risk mitigation efforts.
105. The effectiveness of Anguilla's ML/FT risk management efforts is tested at the micro and macro levels. At the micro level, the review concentrates on relevant persons' and institutions' compliance with the previous and current AML/CFT Legislation, Regulations and Code/Guidance Notes. At the macro level, the emphasis of the review is on the development of an annual ML/FT threat assessment for the jurisdiction. The micro review includes prudential meetings and seminars with the industry, individual institutions and particular groups of employees to assess the AML/CFT compliance culture in the jurisdiction. This review also extends to onsite assessments of institutions' AML/CFT policies and procedures, internal controls, the adequacy of AML/CFT training, etc. The macro level threat assessment, which is prepared by the Financial Intelligence Unit, concentrates on ML/FT typologies, trends in SAR reporting, and sector specific areas of vulnerability.
106. The results of these assessments suggest that institutions, with the exception of the banks, are not dedicating sufficient resources to AML/CFT compliance. Institutions are not fully compliant with their internal policies and procedures, and with the relevant legislation, regulations and other directives. The primary area of weakness is in the ongoing monitoring of institutions and transactions. At the macro level, the primary area of weakness is the vulnerability of the company management sector.

⁷² This applies to incorporated DNFBPs, which excludes some lawyers.

107. The following are the initiatives under consideration for enhancing Anguilla's regulatory infrastructure to combat money laundering and terrorist financing:

- The establishment of a local accredited certification programme for compliance officers. Discussions on this initiative have already commenced with the regional compliance officers association to establish a module of the programme for Anguilla.
- Enhance the profile of the local compliance association.
- Provide semi-annual training locally for compliance officers. The private sector is currently considering this initiative.
- Formalise the information submission procedures for overseas agents by defining the reasonable time requirement in the relevant legislation through issued guidelines⁷³ to require overseas agents to submit all information requested by the FSC within 72 hours of such a request.
- To conduct onsite examinations on all company managers at least once every 24 months.
- The Commission is currently, in collaboration with ECCB and CARTAC, working on new financial reporting forms for all financial institutions. These new reporting forms, which will provide the input for an electronic database, will enhance the Commission's offsite monitoring and risk profiling of licensees. While the emphasis of the forms is on financial reporting, the information will assist in identifying transaction flows by type, amounts and geographic area, which will assist in building a risk vulnerability profile for financial licensees.
- Law enforcement in general are focusing on awareness training for all staff in light of the powers granted in the Proceeds of Crime Act 2009. This in turn will lead to a more proactive stance across law enforcement in terms of AML/CTF in general. The Financial Intelligence Unit will be spearheading the awareness training and extending it in conjunction with the FSC to compliance managers across the financial sector. The identified problem with money laundering from the lottery appears to have abated pending prosecutions; however the situation is being monitored by the Financial Intelligence Unit.

108. H.E. the Governor of Anguilla has overall responsibility for Anguilla's ML/FT risk management. The Governor's portfolio includes responsibility for foreign affairs (international relations and international cooperation), justice (law enforcement and prosecution) and financial sector regulation. In some areas of his responsibilities the Governor can act based on his own initiative and in other areas the Governor must act in consultation with the Executive Council. Executive Council comprises H E the Governor, the Deputy Governor, the Ministers of Government from the Government's side of the House of Assembly, and the Attorney General. In practice, policy and legislative decisions (the passage of Regulations and Codes and the issuance of Guidelines) pertaining to AML/CFT compliance are made by H E the Governor in consultation with Executive Council.

⁷³ Since the onsite visit, Guidelines were issued requiring select information, including information regarding beneficial owners, geographical location of business and nature and type of business, to be maintained on Anguilla.

109. The Governor has assigned to him an advisor from the UK Treasury who provides general advice on financial sector regulation/supervision in the UK Overseas Territories.

Institutional framework

110. Anguilla's ML/FT risk management/mitigation framework is administered by the following key offices/agencies/departments or units:

i) The **Governor/Governor's Office**: The Governor has overall responsibility for ML/FT risk management/mitigation on Anguilla. The Governor is responsible for appointing the members of the Money Laundering Reporting Authority, the Board of the Financial Services Commission, the Director of the Commission, the Commissioner of Police, the Head of the FIU, and the Attorney General. These are all key persons and agencies in the combating of money laundering and terrorist financing on Anguilla.

The Governor also receives periodic reports, directly or through his financial regulation advisor, on the regulation of financial institutions on Anguilla. The governor's office also receives via the UK Foreign Office notification of UN and other foreign countries sanctions lists which are disseminated to the Customs, Immigration Department and the Attorney General's Chambers.

- ii) The **Money Laundering Reporting Authority (MLRA)**: The Money Laundering Reporting Authority Act established the Money Laundering Reporting Authority (MLRA) which had the responsibility for the receiving, analysis and dissemination of SAR's (being a financial intelligence unit). The MLRA also adopted a broader executive role dealing with AML/CFT policy and with responsibility for coordinating Anguilla's ML risk management strategy. The MLRA is continued and preserved under the Proceeds of Crime Act 2009.

Pursuant to the authority granted under Section 117(2) of the POCA, the following persons currently serve on the MLRA:

- i) the Attorney General, ex officio (delegated to Sr. Crown Counsel-Civil);
- ii) the Deputy Commissioner of Police, appointed by the Governor after consulting with the Commissioner of Police;
- iii) the Director of the Financial Services Commission, ex officio;
- iv) a Deputy Comptroller of Customs, appointed by the Governor after consulting with the Comptroller of Customs;
- v) a Deputy Immigration Officer, appointed by the Governor after consulting with the Chief Immigration Officer.

The Governor has the authority to appoint another person to the MLRA; however, that seat is currently vacant. The Head of the FIU has been appointed by the MLRA pursuant to the POCA 117(4) to assist the MLRA in the performance of its duties. As such he attends all meetings of the MLRA. In addition to its responsibility for the receipt, analysis and dissemination of SARs the MLRA is also responsible for the establishment of Anguilla's national AML risk management policies and strategies, coordinating the implementation of this strategy, coordinating the work of the various agencies involved in combating money laundering and terrorist financing.

The MLRA's scheduled bi-monthly meetings receive a none specific appraisal of SARs and general work being undertaken by the Financial Intelligence Unit on their behalf, they review Anguilla's ML/FT risk management strategy, provide comments on the coordination of the work of the various ML/FT risk management agencies, and

consider enhancements to existing legislation, regulations, codes, guidelines and regulatory directives. The MLRA does not have an independent budget.

- iii) The **Financial Intelligence Unit**: this is the operational arm of the MLRA and is responsible for the day to day intelligence function by receiving, analysing and disseminating of SARs, maintaining records on a database for statistical purposes, the production of an annual report for public consumption and an annual threat assessment to help inform the intelligence picture for the MLRA when they are deciding AML/CFT policy. The Financial Intelligence Unit is also undertaking awareness training across law enforcement and the financial sector.
- iv) The **Financial Investigation Unit**: this is a dedicated unit of the Royal Anguilla Police Force under the command of the Supt. Operations which deals with financial crime including fraud, money laundering and terrorist financing. In practise the unit is synonymous with the Financial Intelligence Unit in that they share the same staffing and resources but do operate as separate entities and perform differing roles. The Financial Investigation Unit is currently the only body capable in law enforcement of investigating money laundering and mounting a prosecution for the same. Thus all SAR's relating to Anguilla needing investigating are referred to the Financial Investigation Unit. The Unit is capable of launching its own money laundering investigations arising out of the investigation of predicate offences and or on matters referred directly to them by the public or other bodies.
- v) The **Royal Anguilla Police Force (RAPF)**: the RAPF provides logistical and manpower support to the Financial Intelligence Unit as needed, it maintains and runs the Financial Investigation Unit and also plays a role in AML/CFT policy by being part of the MLRA. The Proceeds of Crime Act, 2009 extends cash seizure powers (Section 106(3)) to anywhere on Anguilla thus the RAPF will be playing a greater role in ML risk management by increased use of this power.
- vi) The **H.M. Customs Anguilla**: a department of the Ministry of Finance is the body responsible for the control of goods entering and leaving Anguilla and in particular the detection of cross border transshipment of currency, securities etc. used in ML/TF. They have introduced a currency reporting form (set within the prescribed limits at \$10,000 USD) to assist in this matter. They also play a role in AML/CFT policy by being part of the MLRA.
- vii) The **Immigration Department**: this is the body that is responsible for identifying persons subject to sanctions lists and preventing human trafficking by monitoring of all persons entering Anguilla. The up to date sanctions lists provided from the UK are preloaded onto a "Watch List" used by the Dept at all entry ports. The entry database maintained by the Immigration Department is also available to other law enforcement agencies to assist in investigation and prosecution of AML/CFT cases. They also play a role in AML/CFT policy by being part of the MLRA.
- viii) The **Anguilla Financial Services Commission**: the FSC was established by the Financial Services Commission Act, 2003. The Commission has a five person board appointed by the Governor.

The Commission is responsible for ensuring that financial institutions, DNFBPs and NPOs⁷⁴ adequately identify measure, monitor, manage and mitigate their ML/FT risk. This includes the establishment of a robust licensing process for financial institutions

⁷⁴ DNFBPs and NPOs are recent additions to the Commission's regulatory responsibility.

and registration requirements (to be established) for DNFBPs and NPOs. As part of the licensing process, the Commission evaluates the ML/FT risk management policies and procedures of applicants, assesses the fit and proper nature of the applicant and all principal stakeholders (including the compliance officer and the money laundering reporting officer), reviews the systems in place for adequate storage and retrieval of information, considers the structures in place for identifying and reporting SARs and generally tries to determine whether the applicant has the ability and willingness to comply with all applicable AML/CFT requirements (legal, regulatory and industry best practices).

The Commission is responsible for licensing/registering all financial institutions (with the exception of commercial banks), DNFBPs and NPOs; monitoring, supervising or regulating these institutions and persons; issuing guidelines for the regulation/supervision of licensees and registrants; providing training to the industry, sector or specific institutions (on request or at the Commission's initiative), establishing policies for financial sector regulation; working with regional and international regulators and regulatory bodies on the sharing of information to combat money laundering and terrorist financing; etc.

The Commission works closely with the Financial Intelligence Unit, the Financial Investigation Unit and the Attorney General's Chambers to ensure that there are no regulatory gaps in Anguilla's ML/FT risk management strategy.

- ix) The **Eastern Caribbean Central Bank (ECCB)**: The ECCB, in accordance with the Banking Act has regulatory responsibilities for the domestic commercial banks on Anguilla, namely, National Bank of Anguilla Limited, Caribbean Commercial Bank (Anguilla) Ltd, FirstCaribbean International Bank (Barbados) Ltd and Scotiabank Anguilla Ltd. The regulatory responsibility includes making recommendations to the Minister of Finance on the licensing, suspension or revocation of the licences of domestic banks, the onsite and offsite review of domestic banks' operations, and the monitoring of domestic banks' compliance with all applicable legislation, regulations and codes (including AML/CFT compliance).
- x) The **Eastern Caribbean Securities Regulatory Commission (ECSRC)**: The ECSRC is the regulatory authority for securities business conducted on Anguilla. The ECSRC's regulatory authority is detailed in the Securities Act, R.S.A. c. S13. The ECSRC's fit and proper test for market participants includes an assessment of the applicant's AML/CFT compliance policies and procedures. The one licensed securities broker-dealer on the island is a bank, National Bank of Anguilla Limited, which is subject to full regulatory oversight by the ECCB.
- xi) The **Anguilla Financial Services Association (AFSA)**: AFSA is a private sector organisation which has as one of its objectives enhancing compliance standards in Anguilla through training, industry cooperation, the promotion of a culture of compliance, the issuance of guidelines to its members, and recommendations on improvements to legislation, regulation and guidelines.

AFSA has a compliance committee which is dedicated to advancing the compliance-related objectives of AFSA.
- xii) The **Attorney General's Chambers**: is responsible for the prosecution of all AML/CFT cases based on the evidence provided to them by law enforcement investigators and the consideration of all matters pertaining to mutual legal assistance and extradition (on referral from the Governor). The Attorney General is also the point person for the CFATF in Anguilla.

The Attorney General's Chambers plays an important role in drafting and advising on current and proposed legislation.

xiii) The **Registrar of Companies**: is responsible for maintaining the registers relating to companies and other legal entities registered in Anguilla. The registers contain information relating to shareholders, share allocations, directors, managers, etc.

xiv) The **Bar Association** is a professional body comprising 46 members. Its executive board is responsible for disseminating relevant information to its membership, including AML/CFT issues.

c. Overview of policies and procedures

111. Anguilla is in the preliminary stages of establishing a risk-based approach to AML/CFT compliance. This compliance regime is currently at the stage of preparing enhanced reporting forms, collecting statistical data and introducing a new electronic database for the storage and analysis of submitted data. However, despite the preliminary nature of the risk based regime, the FSC has, consistent with the jurisdiction's AML/CFT strategy, placed enhanced emphasis on the supervision of company managers because of the important gate keeping function they perform.
112. In addition to the emphasis placed on company management compliance, all financial institutions are currently encouraged to adopt a risk based approach to their AML/CFT risk management framework. The review of this framework plays an important role in determining the scope of any onsite examination.

d. Progress since the last mutual evaluation

113. Anguilla's last mutual evaluation of 2004 highlighted a number of deficiencies in Anguilla's compliance with the requirements the FATF 40 + 9 recommendations. The jurisdiction has done a substantial amount of work since the last evaluation to address the identified deficiencies. The following is an update on the action taken to date to address the identified deficiencies:
 - **Enhanced AML/CFT legal framework:** In July 2007 Anguilla revised and enhanced its Guidance Notes on Anti-Money Laundering which were originally issued in 2004. These have been fully replaced by the now enforceable Anti-Money Laundering and Terrorist Financing Regulations, 2009 and the Anti-Money Laundering and Terrorist Financing Code, 2009. The suite of new legislation is now fully compliant with the FATF 40 + 9 Special Recommendations.
 - **The recently enacted legislation:** – the Proceeds of Crime Act 2009, Anti-Money Laundering and Terrorist Financing Regulations, 2009 and the Anti-Money Laundering and Terrorist Financing Code, 2009 – fully criminalises money laundering and broadens the scope of predicate offences, provides for enhanced confiscation and seizure powers, makes new provision for investigation by customer information orders and improved international co-operation. The new legislation also enhances the provisions in place for customer due diligence (establishes specific requirements for different types of customers) and

establishes core customer identification requirements in the AML/CFT regulations and code.

- **Provide industry with guidelines:** The Commission, through the Governor, issued guidance notes on the AML regulations in 2004. The guidelines were amended and enhanced and reissued in July 2007. These have been replaced by the enforceable Anti-Money Laundering and Terrorist Financing Code, 2009 which includes Guidance Notes which are incorporated within it.
- **SARs – create explicit SAR requirements with sanctions:** Sections 28 to 31 of the Proceeds of Crime Act, 2009, establish explicit reporting requirements for any person gaining knowledge during the course of a relevant business to report suspicions of money laundering. The report could be made directly to the Financial Intelligence Unit or through a Money Laundering Reporting Officer⁷⁵, where applicable. The MLRO⁷⁶ of a service provider or any MLRO⁷⁷ is required to report, as soon as is practicable, any information on suspicions of money laundering that might have come to his/her attention.
- A person who is found guilty of not complying with these sections of the Act is liable –
 - i. on summary conviction, to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$200,000 or to both;
 - ii. on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine without limit or to both.
- **SARs – develop administrative arrangements:** Sections 25 to 28 of the Anti-Money Laundering and Terrorist Financing Code, 2009 and related provisions of the Guidance Notes provides an administrative structure by which the financial sector should, by use of a stipulated form, make reports of any suspicious activity that relates to criminal conduct, including money laundering to the Financial Intelligence Unit. In 2008 the Financial Intelligence Unit, on behalf of the MLRA, revised and updated the Suspicious Activity Reporting Form. The new reporting form, which is available in electronic and hard copies together with guidance for completion of the form were disseminated to all financial institutions on Anguilla. The Financial Intelligence Unit also hosted individual industry practitioners at its offices to discuss the SAR reporting, storage, dissemination and investigation process.
- **Implement an organised process for SAR analysis:** the MLRA delegated the analysis of SARs to the Financial Intelligence Unit from March 2008 onwards. The Financial Intelligence Unit is staffed with experienced Financial Investigators who analyze every SAR. The information from them is captured on searchable databases and readily available for statistical purposes or further research. Analysis invariably involves gaining more information from the disclosing party and then full research of all the information across law enforcement, commercial and publicly available databases prior to decisions being made on referral. All work undertaken is subject to internal review.

⁷⁵ See section 128 (1)

⁷⁶ See section 129 (1)

⁷⁷ See section 130 (1)

- **Expanded sanctioning powers to enforce AML/CFT compliance:** The enforceable Anti-Money Laundering and Terrorist Financing Regulations 2009 and the Anti-Money Laundering and Terrorist Financing Code 2009 have provided expanded sanctioning powers to enforce AML/CFT compliance.
- **Transform the FSD to the FSC:** The FSC was established by the enactment of the Financial Services Commission Act, which was passed on 26th November 2003 and commenced operations on 1st January 2004. The creation of the FSC allows Anguilla to meet international standards in the structure and administration of its financial services regulatory body.
- **Devote more resources to AML/CFT:** Since the last mutual evaluation the FSC has increased its technical staff by 100% to six officers. This staff complement is expected to expand to 10 officers by the second quarter of 2010. Currently four of the technical officers have a portfolio of financial institutions to supervise/regulate, including ensuring AML/CFT compliance. However, with additional staff, the intention is to establish a dedicated unit within the FSC for AML/CFT compliance for financial institutions, DNFBPs and Not for Profit Organisations.
- **Enhanced obligation for financial institutions:** the Anti-Money Laundering and Terrorist Financing Code, 2009, and the Anti-Money Laundering and Terrorist Financing Regulations, 2009, establish detailed requirements for financial institutions and DNFBPs in the areas of due diligence, know your customer and employees, internal controls, document storage and retrieval, etc.
- **Establish a proactive FIU:** the Financial Intelligence Unit, established in March 2008, is a dedicated specialist unit that reports to the MLRA and has the requisite expertise to effectively receive, analyse and disseminate SARs. The Unit has taken a proactive stance in ensuring a maximum intelligence dissemination and case referral, often by directly engaging overseas agencies.
- **Increased public awareness:** The FSC and the Financial Intelligence Unit have hosted a series of seminars, workshops, presentations, meetings with the industry, select sectors and targeted institutions (boards, senior management and compliance/MLRO officers). A presentation was also made to the Anguilla Chamber of Commerce and Industry. In addition, Section 122 of the Proceeds of Crime Act 2009 provides for the publication of an annual report which it is intended will be a public document outlining statistics, trends, typologies etc.
- **Extradition:** Money laundering is an extraditable offence. The definition of “extradition crime” in section 2(1) of the Extradition (Overseas Territories) Order 2002 (UK SI 2002 No. 1823) is wide enough to capture the range of ML offences set out in both the POCA and its predecessor, the PCCA. The UK SI extends parts of the UK Extradition Act of 1989 to Anguilla. The applicable law permits extradition of persons “belonging to” Anguilla, as its nationals are known. The procedures for extradition are set out in sections 7 through 17 of the UK 1989 Act.
- **Legal reform – enhance the AML/CFT legal framework:** The recently enacted Proceeds of Crime Act, Anti-Money Laundering and Terrorist Financing Regulations, 2009, Anti-Money Laundering and Terrorist Financing Code, 2009.

- **Advance training for investigators and prosecutors:** The Financial Investigative Unit and Attorney's General Chambers enhanced their staff complement in the areas of investigators and prosecutors respectively. However, both agencies recognised the need for more trained staff in the referenced areas.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1 & 2)

2.1.1 Description and Analysis

Recommendation 1

114. Money laundering has been criminalised in Anguilla in accordance with Article 3(1)(b)&(c) of the Vienna Convention and Article 6(1) of the Palermo Convention. The said criminalisation has been done pursuant to the Proceeds of Crime Act, 2009.
115. Under Section 125 of the POCA a person is guilty of a money laundering if he:
- Conceals criminal property;
 - Disguises criminal property;
 - Converts criminal property;
 - Transfers criminal property; or
 - Removes criminal property from Anguilla.
116. Pursuant to Section 123 of the POCA “criminal property” is property which constitutes or represents a person’s benefit from criminal conduct, in whole or part and whether directly or indirectly; and the alleged offender knows or suspects that it constitutes or represents such a benefit. Section 123 also provides that it is immaterial who carried out the conduct, who benefited from it, or whether the conduct occurred before or after the commencement date of the POCA. A person’s benefit is the property obtained as a result of or in connection with the conduct.
117. Criminal conduct is defined in the POCA as conduct which constitutes an offence or would constitute an offence if it had occurred in Anguilla. An offence is defined under the POCA as one that is or may be proceeded with on indictment or that may only be tried summarily and the maximum penalty on conviction is a term of imprisonment of one (1) year or more. Section 126 of the POCA provides that a person is guilty of an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates, by whatever means, the acquisition, retention, use or control of criminal property by or on behalf of another person.
118. Section 127 of the POCA provides that a person is guilty of an offence if he acquires, uses or possesses criminal property. For the purposes of determining whether a person has committed an offence, the following provisions apply—
- a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;
 - a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the use or possession of the property; and
 - the provision by a person of goods or services which he knows or suspects may help another to carry out criminal conduct is not consideration.
119. The offence of ML does extend to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime. The POCA defines “property” in section 1 as property of every kind, whether situated in Anguilla or elsewhere, and includes money; all

forms of real or personal and heritable or moveable property, and things in action and other intangible or incorporeal property. Section 3 of the POCA provides that “property” is held by a person if he holds an interest in it, and that property is obtained by a person if he obtains an interest in it. An interest is defined in the POCA as including a right (including a right to possession); any legal interest or estate; and any equitable interest or power.

120. When proving that property is the proceeds of crime it is not necessary that a person be convicted of a predicate offence. Under the POCA one has to prove that the proceeds were obtained as a result of conduct which constitutes an offence or would constitute an offence if it had occurred in Anguilla.
121. The predicate offences for money laundering in Anguilla at a minimum include a range of offences in each of the designated categories of offences. The said offences are shown in Table 5 below.

Table 5: Designated Category of Offences

FATF 20 DESIGNATED CATEGORY OF OFFENCES	ANGUILLA'S EQUIVALENT LEGISLATION
Participation in an organized criminal group and racketeering	Section 89A of the Criminal Code: Participation in an organised Criminal Group.
Terrorism including Terrorist Financing	Sections 3 & 4 of the Terrorism (UN Measures) (OT) Order 2001: Collection of and making funds available for the purposes of Terrorism respectively.
Trafficking in human beings and migrant smuggling.	Section 239A of the Criminal Code: Dealing in slaves; section 239B of the Criminal Code: Dealing in persons under 18 for removal of body parts or engagement of forced labour; section 239D of the Criminal Code: Migrant Smuggling.
Sexual exploitation including sexual exploitation of children	Section 239B of the Criminal Code: Dealing in persons under 18 for sexual exploitation; section 150 of the Criminal Code: Causing or encouraging prostitution of a minor; section 148 of the Criminal Code: Living on earnings of prostitution of a minor; section 174 of the Criminal Code: Person exercising control over a prostitute.
Illicit Trafficking in Narcotic Drugs and Psychotropic substances	Sections 4 & 5 of the Drugs (Prevention of Misuse) Act: Restriction on importation and exportation of a controlled drug, respectively sections 6 & 7 of the Drugs (Prevention of Misuse) Act: Restriction on production and supply.
Illicit Arms Trafficking	Export of Goods (Military) (Control)(OT) Order 2004; Section 4 of the Firearms Act: Restriction on importation, exportation and transhipment of Firearms and Ammunition.
Illicit trafficking in stolen and other goods	Section 264 of the Criminal Code: Handling Stolen Goods; Section 114 of the Customs Act: Offering smuggled Goods for Sale.
Corruption and Bribery	Section 98 of Criminal Code: Official Corruption;

	Section 100 of Criminal Code: Public Officers receiving property to show favour; Section 12 of House of Assembly (Powers and Privileges) Act: Acceptance of Bribes by Members.
Fraud	Section 256 of the Criminal Code: Obtaining property by deception; Section 261 of the Criminal Code: False Statements by Company Directors or Officers.
Counterfeiting currency	Section 289 of the Criminal Code: Counterfeiting Notes and Coins.
Counterfeiting and Piracy of products	Section 21 of the Industrial Designs Act: Infringement by Exploitation of a registered Industrial Design; Section 36(3) of the Trademarks Act: Infringement of Trademark.
Environmental crime	Section 76 of Biodiversity and Heritage Conservation Act: Damage or destruction to critical habitat.
Murder, Grievous bodily injury	Sections 186 & 203 of Criminal Code: Murder and causing grievous bodily harm respectively.
Kidnapping, illegal restraint and hostage taking	Section 235 of the Criminal Code: Kidnapping; Section 239 of the Criminal Code: Wrongful Confinement; Section 235A of the Criminal Code: Hostage Taking.
Robbery or theft	Section 249 of Criminal Code: Robbery; Section 248 of Criminal Code: Theft.
Smuggling	Sections 31, 40 & 41 of the Customs Act. Restrictions on importation and exportation of prohibited or restricted goods, respectively.
Extortion	Section 263 of Criminal Code: Blackmail.
Forgery	Section 282 of Criminal Code: Forgery.
Piracy	Section 60 of Criminal Code: Piracy. Schedule 5 of the Aviation Security and Piracy (OTs) Order, 2000
Insider trading, market manipulation	Section 114 of Securities Act: Insider Dealing; Section 116 of Securities Act: Price Rigging. Section 117 of Securities Act: Market Manipulation.

122. Anguilla applies a combined approach to determine ML predicate offences. Predicate offences include all indictable offences and offences that are only triable summarily and, carry a penalty on conviction of one (1) year or more imprisonment.
123. The newly enacted POCA addresses this gap in the previously existing regime by eliminating the requirement that an offence be an indictable offence. As noted above, any offence that generates proceeds and carries a maximum prison term of one (1) year or more qualifies as a predicate offence, regardless of how it is tried.
124. Predicate offences for ML do extend to conduct that occurred in another country, which constitutes an offence in that country, and which would have constituted a predicate offence had it occurred in Anguilla. Under the POCA, for the purposes of ML all predicate offences wherever committed, are considered “criminal conduct” in Anguilla.

125. The offence of ML applies to persons who commit the predicate offence. Section 123(2) of the POCA provides that it is immaterial who carried out the criminal conduct.
126. There are appropriate ancillary offences to the offence of ML, including conspiracy to commit, attempt, aiding and abetting, facilitating, and counselling the commission. Section 1 of the POCA defines “money laundering offence” to specifically include attempt, conspiracy or incitement, aiding, abetting, counselling or procuring the commission of any of the ML offences created under sections 125, 126 or 127.

Additional Element

127. A ML offence may arise where the proceeds of crime are derived from conduct that occurred in another country, which is not an offence in that other country but which would have constituted a predicate offence had it occurred in Anguilla. The definition of “criminal conduct” in section 1 of the POCA specifically includes conduct that was committed elsewhere but would have constituted an offence if it had occurred in Anguilla.

Recommendation 2

128. The offence of ML does apply to natural persons that knowingly engage in ML activity.
129. The English common law, which is applicable in Anguilla, provides that intent can be inferred from objective factual circumstances. Additionally, Section 11(4) of the Criminal Code provides that, in determining whether a person has committed an offence, a Court or jury, “shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.”
130. In Anguilla, criminal liability for ML does extend to legal persons. The Interpretation and General Clauses Act, provides that a “person” includes any corporation, either aggregate or sole, and any club, society, association or other body, of one or more persons. That definition applies to the ML offence provisions of the POCA.
131. Making legal persons subject to criminal liability for ML does not preclude the possibility of parallel criminal, civil or administrative proceedings. Section 60 of the POCA provides for the civil recovery (or civil forfeiture) of property obtained, *inter alia*, through conduct contrary to the criminal law of Anguilla. Subsection 2 thereof provides that civil recovery is available whether or not any proceedings have been brought for an offence in connection with the property.
132. Natural and legal persons are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions for ML. Sections 125 to 127 of the POCA provide that any person convicted of a ML offence is liable on summary conviction to a fine of \$200,000 or to imprisonment for a term of 5 years or to both imprisonment and a fine. On conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine without limit or both imprisonment and a fine. A legal person obviously would not be liable to imprisonment. The POCA also provides that proceeds from a ML offence are liable to confiscation or to civil forfeiture.
133. Legal persons are subject to administrative sanctions under sections 27, 29, 32 and 35 of the FSCA. These sanctions include revocation or suspension of the legal person’s licence and financial penalties.

Recommendation 32*Statistics- Money laundering investigations/prosecution data*

134. Statistics are maintained by the Financial Intelligence Unit in relation to ML investigations, prosecutions and convictions on Anguilla and also support given directly by Anguilla to overseas ML investigations. Since 2008, these overseas supported investigations have arisen directly out of Financial Intelligence Unit referrals. All of the said statistics were generated under the regime of the Proceeds of Criminal Conduct Act, which was passed in 2000 and repealed and replaced by the POCA.

Table 7: Money laundering investigations, prosecutions and convictions

Year	ML Investigations	ML Prosecutions	ML Convictions	Overseas Supported ML Investigations	Overseas Prosecution	Overseas Conviction
2003	3	0	0	0	0	0
2004	0	0	0	0	0	0
2005	0	0	0	0	0	0
2006	0	0	0	1	1	0
2007	0	0	0	0	0	1
2008	6	4	0	3	0	0
2009	1	0	0	3	0	0
Total	10	4	0	7	1	1

135. The three investigations undertaken in 2003 by the Anguilla Police were basic and lacking support from trained and or experienced financial investigators. It is understood none led to a prosecution due to lack of knowledge, lack of resources and or ability to gather relevant financial evidence generally in Anguilla. Lack of resources and experience hindered further investigations until March 2008. Of the six investigations started by the Financial Investigation

Unit in 2008, four were SARs referred to them after analysis by the Financial Intelligence Unit and have resulted in persons being charged and pending prosecution through the Courts in each instance. The other two investigations by the Financial Investigation Unit arose from the investigation of predicate offences directly reported to it. These are ongoing investigations and persons will be charged and prosecuted (in addition to predicate offences) with money laundering in both instances. There have been no prosecutions for ML under the POCA. All of the prosecutions were pursuant to the PCCA in any event, as the aforementioned pellucidly demonstrates, effectiveness has been lacking over the preceding five (5) years in respect of ML investigations and prosecutions.

Additional Element

136. The Police Criminal Records office maintains comprehensive statistics on all criminal sanctions for all offences. There have been no criminal sanctions for ML offences.
137. Due to the high number of ML cases referred to overseas law enforcement as discussed in section 2.5 of this Report but still heavily supported by information acquired from Anguilla the Financial Intelligence Unit also maintain statistics in relation to those investigations, prosecutions and convictions.
138. Changes to Anguilla's legal framework prior to the POCA have expanded the summary jurisdiction of the Magistrate's Court to include matters that were once only triable on indictment. Policy makers determined that offences that did not involve violence, weapons or drugs would be placed within the Magistracy's jurisdiction. An unintended result of the said determination was the removal of several offences from the range of predicate offences under the PCCA. However, under the POCA the said offences are recaptured as predicate offences. Indictable offences are heard by the Criminal High Court.

2.1.2 Recommendations and Comments

139. The Anguillan Authorities should ensure that the relevant bodies engage in consistent and apposite training on the ML provision of the POCA with the aim of obtaining ML prosecutions and convictions.

2.1.3 Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating⁷⁸
R.1	LC	<ul style="list-style-type: none"> • There have been no ML prosecutions under the POCA, thus effectiveness cannot be duly determined.
R.2	LC	<ul style="list-style-type: none"> • There have been no ML prosecutions under the POCA, thus effectiveness cannot be duly determined.

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and Analysis

Special Recommendation II

140. Terrorist financing (TF) is specifically criminalized in Anguilla under three UK Statutory Instruments extended to it:

- Terrorism (United Nations Measures) (Overseas Territories) Order 2001 (SI 3366/2001) (2001 Terrorism Order) (TUNMOTO)
- Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002 (SI 112/2002) (Al-Qa'ida Order). As the name suggests this order criminalises terrorist financing specifically in relation to Usama bin Laden, Al-Qa'ida and Taliban.
- Anti- Terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 (S.I. 2002 No. 1822) (Anti- Terrorism Order). (ATO)

141. These instruments cannot be amended directly by Anguilla.

142. The TUNMOTO at Section 3 makes it an offence to collect funds by any means, directly or indirectly, with the intention or the knowledge that they will be used for purposes of terrorism. Section 4 makes it an offence to make funds available directly or indirectly to a person who commits (or attempts) or participates in an act of terrorism. Section 6 makes it an offence to facilitate or enable an offence under either of those sections.

143. Sections 3 through 9 of the Al-Qa'ida Order create offences in respect of supplying goods, technical assistance or training, making funds available for terrorism purposes, and contravention of a freeze order.

144. Sections 6 through 9 of the ATO create a variety of offences in respect of TF. Section 6 criminalises "fundraising", i.e. inviting another to provide, money; or receiving or providing money intending it or having reasonable cause to suspect that it may be used for the purposes of terrorism. Section 7 creates an offence if any person uses money or other property for the purposes of terrorism or possesses money or other property and intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism. Section 8 makes it an offence for a person to enter into or become concerned in an arrangement as a result of which money or other property is made available or is to be made available to another and that a person knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism. Section 9 criminalises money laundering in respect of terrorist property.

145. There is no distinction under the laws of Anguilla between an individual terrorist, a terrorist group or a terrorist organization. "Person" is defined in Anguilla's Interpretation and General Clauses Act to include any corporation, either aggregate or sole, and any club, society, association or other body, of one or more persons. The TUNMOTO and the ATO both speak in terms of providing or collecting funds "for the purposes of terrorism". "Terrorism" is broadly defined to mean the use or threat of action where

- (b) the use or threat of action is designed to influence the government or intimidate the public or a section of the public, and
- (c) the use or threat of action is made for the purpose of advancing a political, religious or ideological cause.

(2) the said action

- (a) involves serious violence against a person,
- (b) involves serious damage to property,

- (c) endangers a person's life, other than that of the person committing the action,
 - (d) creates a serious risk to the health or safety of the public or a section of the public, or
 - (e) is designed seriously to interfere with or seriously to disrupt an electronic system.
146. This definition, combined with the language of the provisions criminalising funding for the “purposes of terrorism” and the Interpretation and General Clauses Act definition of “person” create a regime that is sufficiently broad to capture the providing or collecting of funds with the intention that they should be used or in the knowledge that they are to be used in full or in part to carry out a terrorist act, by a terrorist organisation or by an individual terrorist.
147. The TUNMOTO and the Al-Qa’ida Order speak in terms of “funds”. Section 2 of the TUNMOTO defines “funds” as “financial assets, economic benefits and economic resources of any kind.” Section 2 of the Al-Qa’ida Order defines “funds” as “financial assets and economic benefits of any kind, including (but not limited to) gold coin, gold bullion, cash, cheques, claims on money, drafts, money orders and other payment instruments; deposits with financial institutions or other entities, balances on accounts, debts and debt obligations; securities and debt instruments (including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures, debenture stock and derivatives contracts); interest, dividends or other income on or value accruing from or generated by assets; credit, rights of set-off, guarantees, performance bonds or other financial commitments; letters of credit, bills of lading, bills of sale; documents evidencing an interest in funds or financial resources, and any other instrument of export financing.”
148. In section 1 of the ATO, property is defined to include property wherever situated and whether real or personal, heritable or moveable, and things in action and other intangible or incorporeal property. In section 5 it defines “terrorist property” as—
- money or other property which is likely to be used for the purposes of terrorism,
 - proceeds of the commission of acts of terrorism, and
 - proceeds of acts carried out for the purposes of terrorism.
149. “Proceeds of an act” is defined to include a reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission).
150. Under Section 1 of the Criminal Code, the term “offence” is defined to include an attempt. Similarly, aiding, abetting, counselling, and procuring an offence are criminalised generally under Section 25 of the Criminal Code.
151. Terrorist financing under all 3 of the UK Orders can be prosecuted summarily or on indictment. Based on the definition of “offence” under section 1 of the POCA, terrorist financing is a predicate offence for ML.
152. Section 18 of the ATO Order provides that if a person does anything outside Anguilla, and his action would have constituted the commission of an offence under any of the Sections 6 to 9 offences if it had been done in Anguilla, he shall be guilty of the offence.
153. In Section 4(4) of the ATO and Section 2 of the TUNMOTO, the definition of terrorism is extended to include action outside of the territory, persons or property wherever situated, a

public of the country outside of Anguilla and a government other than the Government of Anguilla.

154. There is no distinction between ML and FT in relation to the inference of mens rea from objective factual circumstances. See discussion at Section 2.1 of this Report.
155. Criminal liability for FT does extend to legal persons pursuant to the definition of “person” in the Interpretation and General Clauses Act, which applies to all laws in Anguilla, and states that the use of the word “person” includes any corporation, either aggregate or sole, and any club, society, association or other body, of one or more persons. Additionally, the UK Orders specifically provide that they apply to legal persons.
156. Making legal persons subject to criminal liability for FT does not preclude the possibility of parallel criminal, civil or administrative proceedings.
157. Natural and legal persons are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions for FT. TF under the Orders carry maximum penalties of imprisonment ranging between 7-14 years and/or a fine (without limit). Legal persons are subject to administrative sanctions under Sections 27, 29, 32 and 35 of the FSCA.

Recommendation 32

Statistics-Terrorist financing investigation/prosecution data

158. Until recently, the Financial Intelligence Unit (FIU) had not received any SARs, from within Anguilla or elsewhere, that would indicate the occurrence of terrorism or of terrorism financing in Anguilla. Therefore there have been no investigations, prosecutions or convictions for FT offences. Additionally there have been no international requests made relating to terrorism or the financing of terrorism in the circumstances, there are no statistics available in respect of FT investigations, prosecutions and convictions. However, the FIU is currently conducting analysis on SARs recently received to determine if the matter is related to terrorist financing and should therefore be investigated. Statistics relating to this analysis, and any future SARs that indicate FT offences, will be kept by the FIU.

Additional Element

159. All criminal convictions and sanctions thereto are maintained in Anguilla by the Police Criminal Records office. This obviously would duly include terrorist financing convictions, however there have been no such convictions thus statistics on sanctions are not available.

2.2.2 Recommendations and Comments

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	LC	<ul style="list-style-type: none">• There have been no FT investigations or prosecutions under the CFT legislation, thus effectiveness cannot be duly determined.

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1 Description and Analysis

Recommendation 3 .

160. The POCA contains comprehensive provisions for the confiscation, freezing and seizure of proceeds of crime, including provisions allowing for civil forfeiture. These provisions are found in Parts 2 and 3 of the POCA. Part 2 enables the court to make a confiscation order following a conviction for any predicate offence. Proceedings are conducted according to the civil standard of proof, i.e. on the balance of probabilities. In certain circumstances the court is empowered to assume that the defendant's assets, and his income and expenditure during the period of 6 years before proceedings were brought, have been derived from criminal conduct and to calculate the confiscation order accordingly. Part 2 also enables restraint orders to be made to freeze property that may be or represent the proceeds of crime and the appointment of management and enforcement receivers.
161. Part 3 of the POCA enables the Civil Recovery Authority ("the Authority") to bring civil proceedings to recover property that is or represents property obtained through unlawful conduct or property that has been used in, or in connection with, or is intended to be used in, or in connection with, unlawful conduct. This can be done whether or not proceedings for an offence have been brought in connection with the said property. This is an entirely new right of action, and is reserved to the Authority, who is the Attorney General. The civil recovery scheme is set out in Sections 60 to 105. It also enables cash which is or represents property obtained through unlawful conduct (conduct contrary to Anguillan criminal law), or is intended to be used in such conduct, to be frozen or forfeited in civil proceedings before the High Court or the Magistrate's Court, where cash only is involved. With the introduction of an all encompassing civil forfeiture regime, Anguilla had the potential to enter a new sphere of greater effectiveness in AML/CFT.
162. The POCA makes provision for the confiscation of property that has been laundered or which constitutes proceeds from and instrumentalities used or intended for use in the commission of any ML, FT or other predicate offence, and property of corresponding value. This is due to the overarching definition of property and criminal property, as discussed in section 2.1 above. Property intended for use in the commission of the said offences can only be confiscated under the POCA, on the criminal side, where a defendant is convicted of an inchoate offence like conspiracy, attempt or abatement. Pursuant to the civil forfeiture provisions, proceeds from and instrumentalities used or intended for use in the commission of the said offences can be confiscated. Sections 60-72 and 112 of the POCA duly provide for the forfeiture of recoverable property, that is, any property obtained through unlawful conduct or any property used or intended for use in, or in connection with unlawful conduct.
163. Section 62 of the POCA defines 'unlawful conduct' as any conduct, whether occurring in Anguilla or not, that would be contrary to the criminal law of Anguilla. Pursuant to Section 15 of the ATO, on conviction any money or property may be forfeited which the convict, at the time of the offence had in his possession or under his control and which at that time, he had intended should be used, or had reasonable cause to suspect might be used for the purposes of terrorism. Pursuant to Section 16 of the ATO, cash intended to be used for the purpose of terrorism or obtained through terrorism, is subject to forfeiture in civil proceedings before a Magistrate's Court.
164. Section 14 of the POCA authorises the Court to make a confiscation order where it is determined that the defendant has benefited from his criminal conduct. Criminal conduct is defined and discussed at Section 2.1 of this Report.

165. The Court will determine the value of property obtained by a person as a result of or in connection with his criminal conduct. In making such a determination the Court will look at the value of the property at the time when the person obtained it, adjusting such value to take account of later changes in the value of money.
166. In the context of civil recovery, pursuant to Section 65 of the POCA, for purposes of forfeiture, if a defendant or any other person enters into a transaction by which he disposes of recoverable property, and he obtains other property in place of it, that other property is deemed the original property. In addition, the property disposed of also continues to represent the original property.
167. Pursuant to Section 16 of the POCA, where the Court seeks to impose a confiscation order, the amount that is recoverable is an amount equal to the defendant's benefit from the conduct concerned. This provision is very wide and thus would include profits or other income derived from the proceeds of crime.
168. In the context of civil recovery, pursuant to section 67 of the POCA, if a person who has recoverable property obtains further property consisting of profits accruing in respect of the said recoverable property, the said profits are subject to forfeiture. The POCA provides for the category of "tainted property" being recoverable (subject to forfeiture). Pursuant to Section 61 of the POCA, tainted property is property that has been used in, or in connection with, unlawful conduct (conduct contrary to Anguillan criminal law); or is intended to be used in, or in connection with, unlawful conduct.
169. Pursuant to Section 112 of the POCA, a Magistrate may forfeit cash seized by a police officer, if duly satisfied that the cash is intended by any person for use in unlawful conduct.
170. The Court, when determining the value of the benefit derived from criminal conduct and assessing the recoverable amount, will take into consideration tainted gifts (The POCA: Sections 10, 64-67). The value of the tainted gifts made at the time of the confiscation order will be included when determining how much is to be recovered or confiscated.
171. The ATO also provides for the forfeiture of terrorist property, which is defined in Section 5 as money or other property which is likely to be used for the purposes of terrorism; proceeds of the commission of acts of terrorism; and proceeds of acts carried out for the purposes of terrorism. Pursuant to Section 15 of Schedule 3 of the ATO, where a person who has terrorist property and obtains further property, consisting of profits accruing in respect of the said terrorist property, those profits are to be treated as property obtained through terrorism, and would therefore be subject to forfeiture.
172. The POCA contains several provisions aimed at securing property that is subject to confiscation. Section 42 provides that the Court may on application by the prosecutor prohibit a specified person from dealing with any realisable property held by him i.e. impose a restraint order over property. Section 42(6) of the POCA allows a police officer to seize property which is subject to the restraint order for the purpose of preventing the removal of the property from Anguilla.
173. Section 74 of the POCA also makes provisions for freezing orders to be made if proceeding with civil recovery. Under that section, the Civil Recovery Authority may apply to the Court for a property freezing order before or after instituting proceedings. The freezing order prohibits any person from dealing with property specified in the order.
174. Notably, the POCA provides, under Section 124, for the Money Laundering Reporting Authority (FIU) to withhold from a person, for a period of thirty (30) days, what is termed, *the appropriate consent* to do what amounts to a prohibited act, i.e. ML, when requested by another person to so do. The moratorium period (as the said period is called) begins when notice is

received by the person that the appropriate consent is refused. Appropriate consent is defined as where a person makes a disclosure, as required by the POCA, to the FIU and the FIU gives consent to that person to do the prohibited act. A refusal of consent must be given by the FIU no later than seven (7) working days after the person makes the said disclosure. Section 124(8) particularly provides that a Money Laundering Reporting Officer (MLRO) of a financial service provider is guilty of an offence if he gives consent to the doing of a prohibited act where the FIU has not given the said consent, and he knows or suspects that the act is a prohibited act. This offence carries a maximum penalty of twelve (12) months imprisonment and/or a fine of \$50,000.00 on summary conviction; and a maximum penalty of five (5) years imprisonment and/or a fine of \$100,000.00 on conviction on indictment.

175. Section 5 of Schedule 2 of the ATO provides for the High Court to make a restraint order, on application by the prosecutor, where either a forfeiture order has been made or it appears to the Court that one will be made in the proceedings for the offence.
176. Section 43 of the POCA allows for a restraint order to be made on an *ex parte* application to a judge in chambers. It also allows for the restraint order to provide for notice to be given to persons affected by the order. There have been no restraint applications under the POCA in part due to the recent passage of the legislation.
177. Section 74(3) of the POCA provides for an application for a freezing order to be made without notice if the circumstances are such that notice of the application would prejudice any right of the Civil Recovery Authority to obtain a recovery order in respect of any property.
178. Section 5 of Schedule 2 of the ATO provides for an application for a restraint order to be made *ex parte* to a judge in chambers.
179. The PCCA also made provisions for the restraint order to be made *ex parte*. There were four (4) restraint orders obtained under the PCCA by *ex parte* application.
180. Part 5 of the POCA provide tools that are available to the police and the Financial Intelligence Unit (FIU). Pursuant to Sections 135, 139, 142, and 146 of the POCA, the police are given the power to apply for production orders, search and seizure warrants, customer information orders and account monitoring orders, respectively. Pursuant to Section 150 of the POCA, an application for any of these orders can be made *ex parte* to a Judge in chambers.
181. Pursuant to Schedule 4 of the ATO, A Judge may on application to him by a constable, make an account monitoring order if he is satisfied that the tracing of terrorist property is desirable for the purpose of a terrorist investigation.
182. Pursuant to Section 118 of the POCA, the FIU may by written notice require the production of information from any person, for the purpose of clarifying or amplifying information disclosed to it. None of the said powers have been exercised pursuant to the POCA.
183. Rights of bona fide third parties are protected under the POCA in a variety of ways. With respect to civil forfeiture, Section 68(1) is important in protecting third party rights. It provides, in effect, that recoverable property does not include property that is transferred to a third party “in good faith, for value and without notice that it was recoverable property”. Section 68(2) also provides important third party protections. It provides that property is not recoverable if—
 - it is vested, forfeited or otherwise disposed of pursuant to powers conferred under the POCA; or

- when, in pursuance of a judgment in civil proceedings (whether in Anguilla or elsewhere), the plaintiff obtains property from the defendant and the plaintiff's claim is based on the defendant's unlawful conduct; or
 - when a payment is made to a person or a person otherwise obtains property in pursuance of a compensation order
184. The POCA at Section 100 enables a person who claims that any property alleged to be recoverable property, or any part, belongs to him, to apply for a declaration that it is not recoverable property. If the declaration is made, the property is not recoverable property. This is intended, primarily, to protect victims of theft, although it actually gives wider protection to bona fide third parties.
185. Although Section 101 of the POCA enables exemptions to be made by regulations, the Anguillan Authorities do not anticipate any at the moment. These could be used to protect third parties if it was found to be necessary.
186. Finally, Section 102 provides for compensation to be paid to a bona fide third party where his property was made subject to a property freezing order or to an interim receiving order.
187. Pursuant to Section 36(3)(a) of the POCA, a person affected by a confiscation order is allowed to make representations to the Court in order to duly reduce the prejudice of the said order as it relates to him.
188. However, note Section 16(4)(b) that excludes what would be preferential debts in a bankruptcy or liquidation from the recoverable amount. Section 21(4) gives priority to a Criminal Code compensation order.
189. The important bona fide third party protection in section 68(1) and (2) of the POCA carry through to the cash forfeiture regime because the definition of “recoverable cash” in Section 106(1) imports the concept of “recoverable property”.
190. In addition, see Section 115 of the POCA which protects victims by enabling a person, who makes a legitimate claim to seized cash, to apply to the Magistrate’s Court for the release of the whole or part of the cash to him. Section 116 of the POCA, enables compensation to be paid where property is seized and no forfeiture order made.
191. Pursuant to Section 16 of Schedule 3 of the ATO, if a person disposes of terrorist property and the person who obtains it does so in good faith, for value and without notice, the property may not be followed into that person’s hands.
192. The POCA contains a number of provisions aimed at preventing actions of others from prejudicing confiscation. Sections 46, 47, 50 & 54(2) (c) allow the Court to extinguish any interest in property, where the person knew or should have known, with a view to maintaining realisable property (*property held by the defendant or by the recipient of a tainted gift*) for the ultimate satisfaction of a confiscation order. Sections 65, 66, 70, 71 & 72 provide that, for the purposes of civil forfeiture, property can be traced, regardless of who holds it, to determine if it has been obtained through unlawful conduct and then disposed (*a transfer of interest*); if it so has, it is subject to forfeiture. Section 45 of the POCA provides an innovative prevention mechanism that allows a prosecutor, who applies for a restraint order to apply to the Registrar of Lands to restrict or prohibit any dealing with any registered land, that are the subject matter of the restraint application.

Additional Element

193. The definition of “person” under the Interpretation and General Clauses Act of Anguilla specifically includes natural and legal persons, the latter including organisations. The same provisions as are applicable to natural persons with regards to confiscation are applicable to organisations whether a group of three or more persons or otherwise found to possess property which is criminal in nature.
194. Section 60(1) of the POCA provides that civil proceedings can be brought for civil recovery of property obtained through unlawful conduct or used or intended to be used in or in connection with unlawful conduct. Further Section 60(2) provides that proceedings for civil recovery can be initiated whether or not any criminal proceedings have been brought for an offence in connection with the property.
195. Section 14 of the POCA provides that the court will examine the extent to which the defendant has benefited from his criminal conduct and determine the amount to be recovered from him and make a confiscation order requiring him to pay that amount. Section 25 allows the defendant to demonstrate the lawful origin of property that is the subject matter of Section 14 confiscation proceedings. Section 37 allows a defendant against whom a confiscation order has been made, to make an application to vary the confiscation order where he believes and the court finds that the amount to be confiscated in the original order is too large. The application to vary the confiscation order might be based on evidence to show that the original calculation includes money that was lawfully obtained.

Statistics

E.C. 32.2 (b)(ii)

196. Annual statistics are kept on the number of ML, FT and criminal proceeds were property has been frozen, seized and confiscated.

Table 8: Money laundering confiscations

Money Laundering Confiscation Data - Amounts in US Dollars				
Year	No. of cases	Frozen	Seized	Confiscated
2003	0	0.00	0.00	0.00
2004	0	0.00	0.00	0.00
2005	0	0.00	0.00	0.00
2006	0	0.00	0.00	0.00
2007	0	0.00	0.00	0.00
2008	4	1,476,390.65	59,781.88	0.00
2009	0	0.00	0.00	0.00

197. The amounts frozen and seized in 2008 relate to proceedings for ML and predicate offences. To date, the orders that prevent any dealing, transfer or disposal of the property are all still in effect in relation to one of the cases. There have been no cases of freezing, seizing or confiscating assets in relation to FT.

Additional Element

198. Anguilla’s Financial Intelligence Unit has maintained comprehensive statistics on the number of cases, amounts frozen, seized and confiscated relating to predicate offence since 2008.

199. During 2008, there were four cases of property being frozen in money laundering investigations. Of these, seventy five percent (75%) was resultant from the predicate offence of running an illegal lottery and twenty five percent (25%) from a predicate offence of insider trading. The three lottery cases also account for all the property seized. The lottery restraints have been duly discharged by the Court, as they were brought under the PCCA (now repealed) and an illegal lottery was not a predicate offence thereunder; but this offence is now a predicate offence under the POCA.

Table 9: Amounts restrained, seized and confiscated

No.	Type	Amount Restrained	Date	Amount Seized	Date	Amt. Conf	Date	Pred. Offence
1	ML	1,110,758.27	29/09/2008	N/A		0		Insider Trading
2	ML	28,611.12	09/12/2008	30,731.65	10/12/2008	0		Illegal lottery
3	ML	24,455.98	09/12/2008	14,966.23	10/12/2008	0		Illegal lottery
4	ML	312,565.28	09/12/2008	14,084.00	10/12/2008	0		Illegal lottery
Total		1,476,390.65		59,781.88		0		

2.3.2 Recommendations and Comments

200. The police/FIU should endeavour to make use of the restraint, confiscation and other measure in the POCA and the anti-terrorism legislation.

2.3.3 Compliance with Recommendations 3

	Rating	Summary of factors underlying rating
R.3	LC	<ul style="list-style-type: none"> • There have been no confiscations, restraints and/or or seizures under the POCA or the CFT legislation, thus effectiveness cannot be duly determined.

2.4 Freezing of funds used for terrorist financing (SR.III)

2.4.1 Description and Analysis

Special Recommendation III

201. Anguilla has effective laws and procedures to freeze terrorist funds or other assets of persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee in accordance with UNSCR 1267 and its successor resolutions. The Al-Qa'ida Order applies to "listed persons", which is defined to include Usama bin Laden and persons designated by the United Nations Sanctions Committee (adopted January 16, 2002) as a member of the Al-Qa'ida

organisation, a member of the Taliban or an individual group, undertaking or entity that is associated with such persons.

The Al-Qa'ida Order

202. Section 2 of the Al-Qa'ida Order defines “funds” as financial assets, economic benefits and economic resources of any kind.
203. Section 8 of the Al-Qa'ida Order provides that the Governor, where he has reasonable grounds for suspecting that the person by, for or on behalf of whom any funds are held is or may be a listed person, may issue a notice that funds are not to be made available to that person. Since this relates to a matter of external affairs, the Governor can act in his discretion, pursuant to Section 28(2)(a) of the Anguilla Constitution Order. This provision allows the Governor to issue a notice immediately upon receipt of information that provides reasonable grounds for suspicion. The Governor also has unfettered discretion to make the notice to freeze funds effective immediately and to continue in effect for a limited or an unlimited period. The A notice to freeze funds or other assets is given without prior notice to the designated persons involved. Pursuant to Section 8(5) of the Al-Qa'ida Order, notice is first given to the person holding the funds, who is guilty of an offence if he fails to comply with the notice without delay.

The TUNMOTO

204. Pursuant to Section 5 of the TUNMOTO, the Governor, acting in his discretion pursuant to Section 28(2)(a) of the Anguilla Constitution Order, may issue a notice to freeze funds without delay where he has reasonable grounds for suspecting that the person by, for or on behalf of whom any funds are held is or may be a person—
- who commits, attempts to commit, facilitates or participates in the commission of acts of terrorism
 - controlled or owned directly or indirectly by such a person or
 - acting on behalf of, or at the direction of, such a person.
205. As noted above, the Governor is not required to consult Executive Council before issuing a notice to freeze funds accordingly; such freezing takes place without delay. Therefore, the Governor may issue a notice immediately upon receipt of information that provides reasonable grounds for suspicion. The notice to freeze funds can continue in effect for a limited or an unlimited period.
206. A notice to freeze is given without prior notice to the designated persons involved. As previously stated, Section 5(5) of the TUNMOTO provides that notice is first given to the person holding the funds. Where this person fails to comply with the notice without delay, he is guilty of an offence. Upon receipt of a notice directing that funds be frozen, the person holding the funds must send a copy of the notice to the owner (or person on whose behalf the funds are held). However, this requirement does not delay the process of freezing the funds.
207. Pursuant to Section 5(6), of the TUNMOTO, the recipient is treated as complying with the requirement to send notice to the owner if, without delay, the recipient sends a copy of the notice to the owner's last known address, or if arrangements are made for a copy of the notice to be supplied to the owner at the first available opportunity. As such, under the law, it is possible for funds to be frozen, without delay and without prior notice to the owner, or other person responsible for the funds.

The ATO

208. Under Part 1 of Schedule 2, of the ATO, Section 5 provides that a prosecutor may apply to the High Court to make a restraint order to prohibit a person from dealing with the property that is the subject of the order. Such an application can be made whether proceedings have been instituted or a criminal investigation has been started in respect of any offence related to terrorist financing. Section 5(4) of Schedule 2 of the ATO provides that such an application may be made *ex parte* to a judge in chambers.
209. With regard to the enforcement of an external freezing order, Part 2 of Schedule 2 of the ATO, provides that the Governor, acting in his discretion pursuant to Section 28(2)(a) of the Anguilla Constitution Order, may make an order for the enforcement within Anguilla of the said order made by another jurisdiction. The external order may provide for the forfeiture or terrorist property or it may prohibit dealing with the property that is the subject of the order.
210. Section 5 of the ATO defines “terrorist property” quite broadly to mean—
- money or other property which is likely to be used for the purposes of terrorism,
 - proceeds of the commission of acts of terrorism, and
 - proceeds of acts carried out for the purposes of terrorism.
211. The ATO empowers the Governor, acting in his discretion, to make an order for the immediate enforcement within Anguilla of an external order made by another jurisdiction. For this purpose, pursuant to Schedule 2, Section 11 of the ATO, an external order may include either an external restraint order or an external forfeiture order on terrorist property, which was made in any country or territory, including any part of the United Kingdom or territory, or another British Overseas territory.

The POCA

212. Section 59 of the authorises Anguilla’s Attorney General to forward a request for assistance to the government of another country, asking that country to freeze the assets of a person under investigation for suspicion of terrorist financing, ML or any other predicate offence.
213. Assistance to a foreign jurisdiction may also be rendered under Section 9 of the CJICA, where provision is made for the Governor to provide for the enforcement of an order for the forfeiture and other disposal of anything in respect of a relevant offence which is made by a Court in a jurisdiction other than Anguilla. In the spirit of reciprocity, the Governor, given his Constitutional responsibility for external affairs, may render assistance in an appropriate case.
214. To ensure the prompt determination, according to applicable national legal principles, whether reasonable grounds or a reasonable basis exists to initiate a freezing action in respect of an external order, the Governor has the capability to communicate directly with the AG to obtain advice without delay as to the sufficiency of the grounds contained in an external order and its supporting documentation.
215. Under the POCA, Part 6 and Schedule 3 establish a regime under which the Attorney General may apply to the Court, on behalf of an overseas authority, to give effect to an external restraint or an external confiscation order in Anguilla. The application by the AG can be made *ex parte* to a Judge in Chambers.

216. The POCA's Schedule 3, Section 2 establishes guidelines to ensure the prompt determination, according to applicable national legal principles, whether reasonable grounds or a reasonable basis exists to give effect to an external restraint order. Those grounds include the fact that proceedings have begun in the requesting country and that there is reasonable cause to believe that the defendant named in the request has benefitted from his criminal conduct.
217. In respect of an external confiscation order, Schedule 3 Section 11 provides that the Court to whom an application is made must be satisfied, inter alia, that an external order is in force' post conviction of the person named in the order, and there is no appeal pending in respect of it. These 'give effect' provisions do not appear unreasonable and thus will not duly hinder the granting of a request.

Freezing Actions

218. Pursuant to the UK Orders in Council and POCA (including its regulations and guidelines), the freezing actions referred to above in Criteria III.1 – III.3 do extend to funds which, for the purpose of all 3 Orders in Council, are defined to include financial assets and economic benefits of any kind. Under Section 5(1) of the ATO, "terrorist property" is defined as
- money or other property which is likely to be used for the purposes of terrorism,
 - proceeds of the commission of acts of terrorism, and
 - proceeds of acts carried out for the purposes of terrorism.
219. Pursuant to Section 5(2) of the ATO, a reference to proceeds of an act of terrorism includes a reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission).
220. In addition, Schedule 3, Part 5, Sections 11 through 15 of the ATO addresses terrorist property. Specifically, Section 14 provides that the portion of the mixed property which is attributable to the property earmarked as terrorist property represents the property obtained through terrorism and, as such, the provisions regarding the freezing of assets apply. Further, Section 15, Schedule 3 of the ATO provides that property consisting of profits accruing in respect of property earmarked as terrorist property is to be treated as representing the property obtained through terrorism.
221. Under the POCA, Section 3 states that property is held by a person if he holds an interest in it. As such, shared ownership of funds or an asset will not preclude application of the Act. Section 42 provides that, in the context of a criminal proceeding or investigation, a restraint order may apply to all "realisable property" held by a person or transferred to a person after the order is made. Section 6 defines "realisable property" as any property held by the defendant and any property held by the recipient of a tainted gift. In the context of civil recovery, Sections 64 through 67 provide that property may be recovered regardless of whether it is mixed with other property, consists of profits generated by or accruing in the recoverable property, or has been disposed of (so long as it is traceable).
222. Specific written guidance is provided for financial institutions concerning their obligations to freeze funds of designated terrorist and terrorist organisations or check their accounts against UN or national terrorist lists. Changes in the UN list are sent by the UK Foreign and Commonwealth Office to the Governor's Office. This arrangement is potentially vulnerable as the timely receipt of the UN list depends wholly on the efficiency of the foreign commonwealth office in sending it. These changes are notified in the Official Gazette and forwarded to the FSC, which in turn is responsible for actually notifying the Compliance Staff of the four banks

on the island and all other regulates of the FSC. Financial institutions are additionally advised to monitor relevant websites for names of suspected terrorists and terrorist organizations. The said notices have in fact been communicated in an effective manner. Financial institutions, on interview, attested to receiving notices in a clear and timely manner.

223. Clear guidance to financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms is contained in each order issued.
224. For Anguilla, the public notification of “de-listed” persons would take place after an updated list of persons designated by the UN Sanctions Committee is received by the Foreign and Commonwealth Office and forwarded to the Governor for dissemination and publication in the Official Gazette. The public is deemed to have notice of any matter published in the Official Gazette, which is published monthly. In addition to the Official Gazette, Extra-Ordinary Gazettes may be published at any time as needed. This arrangement is also potentially vulnerable as the receipt of the delisted persons depends wholly on the efficiency of the Foreign Commonwealth Office in sending it.
225. The procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism are included in the relevant legislation. Under Section 5(3) of TUNMOTO and Section 8(3) of the Al-Qa’ida Order, the Governor may, at any time, revoke any notice which directs that funds be frozen, thereby unfreezing any funds that were restrained.
226. Where funds are frozen pursuant to a notice from the Governor under TUNMOTO or the Al-Qa’ida Order, the effect of such notice is that the funds are not to be made available to any person, “except under the authority of a licence granted by the Governor.” TUNMOTO: Section 5(1) and the Al-Qa’ida Order: Section 8(1)). The Governor is therefore vested with the discretionary power to make such funds as he deems appropriate available to whomever, and for such purpose as he considers appropriate. The Governor has not applied these provisions in practice, but when interviewed, he indicated that he has and will continue to duly participate in AML/CFT training, which will lead to the proper exercise of the instant discretion inter alia.
227. Anguilla has appropriate procedures through which a person or entity whose funds or other assets have been frozen can challenge that measure with a view to having it reviewed by a court. Under both Section 5(7) of TUNMOTO and Section 8(7) of the Al-Qa’ida Order, any person by, for or on behalf of whom those funds are held may apply for an order of the High Court to set aside the said direction to freeze assets.
228. Under Schedule 2, Section 6(2) of the ATO, any person affected by a restraint order may apply to a Judge of the High Court for the restraint order to be discharged or varied. Under Schedule 3, Section 5 provides that a person whose cash was seized may make an application to the magistrate’s court for the cash to be released and Schedule 3, Section 9 provides that any person who claims the cash belongs to him but that he was deprived of it through criminal conduct may apply to the magistrate’s court for the release of the cash.

Freezing, Seizing and Confiscation in other circumstances

229. Owing to the fact that terrorist financing is criminalised all of the freezing, seizing and confiscation provisions, as well as the ML provisions, of the POCA apply to terrorist-related property. This certainly gives the Authorities in Anguilla an array of options in CFT and thus the ability to prudently choose the best course of action to be in the particular circumstances on the ground.

230. Schedule 3, Sections 2 and 3 of the ATO allow for cash to be immediately seized and detained by an authorised officer if that officer has reasonable grounds for suspecting that the cash is terrorist cash. Such cash may be detained for 48 hours in the first instance. That period may be extended to as much as 3 months by an order of the magistrate's court and, on subsequent order, for up to 2 years from the date of the first order.
231. While the cash is detained, an application for forfeiture can be made to a Magistrate's Court by an authorised officer under Schedule 3, section 6 of the ATO.
232. Section 15 of ATO makes provision for the forfeiture of any money or other property in possession or under control of the defendant that he intended to use or had reasonable suspicion might be used for the purpose of terrorism. Additionally, the court can forfeit any money or other property which wholly or partly and directly or indirectly is received by any person as a payment or other reward in connection with the commission of the offence.
233. Schedule 4, Section 2 of ATO empowers a Judge, on the application of a constable, to issue an account monitoring order for the purpose of tracing terrorist property.

General Provisions

234. Laws and other measures do provide protection for the rights of bona fide third parties. Schedule 2, Section 6(2) of the ATO allows a person affected by a restraint order to apply that the order be discharged or varied. Schedule 3, Section 16 of the ATO also makes several exceptions to the freezing of property earmarked as terrorist property for the protection of bona fide third parties. Subject to certain exceptions, there are three circumstances where property ceases to be earmarked as terrorist property. They are, firstly, if it is obtained in good faith for value and without notice that it was so earmarked. Secondly, if a civil judgement is pursued (anywhere) and the plaintiff obtains the property from the Defendant on the basis of the defendant's criminal conduct. Thirdly, when a person obtains property in pursuance of a compensation or restitution order, in respect of a loss of injury suffered as a result of criminal conduct. These are prudent provisions if duly utilised to mitigate or eliminate undue prejudice to an innocent actor. They have not been used thus far in Anguilla.
235. The police are primarily responsible for enforcing compliance with the requirements of the 3 Orders in Council discussed in this section. Financial institutions are required under Section 10(1) of the Al-Qa'ida Order to disclose to the Governor, knowledge or suspicion as to whether any customer or person dealt with during the course of business is either a listed person or has made funds available to a listed person. The FSC, as part of its regulatory oversight, is responsible for ensuring that licensed financial institutions have procedures in place to continuously monitor and take action against designated entities. See discussion at Section 3 of this Report. The FSC has duly carried out onsite compliance inspections and has for the most part seen compliance in this regard.
236. The offence of a breach of a freezing order issued by the Governor under TUNMOTO or the Al-Qa'ida Order is liable on conviction on indictment to imprisonment for a term not exceeding seven years or to a fine, or to both and, on summary conviction, to imprisonment for a term not exceeding six (6) months or to a fine not exceeding £5,000 or its equivalent or both. All of the aforementioned legislative provisions dealing with freezing, seizing and confiscation carry criminal sanctions for failure to comply therewith.

Additional Elements

237. Measures outlined in the Best Practices paper where possible and applicable in relation to Anguilla have been implemented in particular to competent authorities or Courts for freezing

etc of terrorist funds, facilitating communication and co-operation (via Governor's Office to UK) with foreign governments, ensuring adequate compliance controls and reporting in the private sector and ensuring thorough follow up and co-ordination with law enforcement.

238. Frozen funds may be released under a licence issued by the Governor under TUNMOTO: Section 13. Section 42 of the POCA provides that a restraint order may make such provision as the Court thinks fit for reasonable living expenses and certain reasonable legal expenses; or enabling any person to carry on any trade, business, profession or occupation. These procedures are consistent with UNSCR 1373(2001) and the spirit UNSCR 1452(2003).

Recommendation 32 (terrorist financing data)

239. There have been no cases in Anguilla of any action pursuant to or under UN resolutions in relation to freezing of property concerning terrorist financing and thus no statistics are available. The FIU had been designated as the body to record and maintain AML/CFT statistics. The FIU's office was visited by the Examiners and it was found that they in fact have the ability to maintain the said statistics.

2.4.2 Recommendations and Comments

240. The Authorities in Anguilla should duly arrange a less vulnerable process of listing and de-listing. This recommendation does not affect the rating of the Recommendation.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	LC	<ul style="list-style-type: none"> • Arrangement for listing and delisting can be compromised. • There have been no restraint orders made with regard to FT thus effectiveness cannot be duly determined.

Authorities

2.5 The Financial Intelligence Unit and its functions (R.26)

2.5.1 Description and Analysis

Recommendation 26

241. The Money Laundering Reporting Authority (MLRA) is legislatively responsible for functioning as the financial intelligence unit for Anguilla. It was established by law in 2000 and is preserved under Section 117(2) of the POCA. Pursuant to Section 117(2) the MLRA shall comprise the Attorney General, a senior police officer appointed by the Governor in Council after consulting with the Commissioner of Police, the Director of the Financial Services Commission, a senior customs officer appointed by the Governor in Council after consulting with the Comptroller of Customs, a senior immigration officer, appointed by the Governor in

Council after consulting with the Chief Immigration Officer and any such other person having appropriate qualifications or experience, as the Governor may appoint, for such term as the Governor specifies. Pursuant to Section 117(4) of the POCA, the Head of the Financial Intelligence Unit has been appointed to the MLRA to assist the Reporting Authority in the execution of its functions. The MLRA operates as an executive body and the daily intelligence function is undertaken by the Financial Intelligence Unit (FIU) (authorised under Section 118 (4), on behalf of the MLRA which formalises the previously existing arrangement reached via an “MOU” between the MLRA and the Police.

Functions of the FIU

242. The MLRA was created in 2000 by the Money Laundering Reporting Authority Act, M100, and the board consisted of heads of law enforcement, the FSC, who held the chair, and Senior Crown Counsel from the AG Chambers. There was no true analytical or data collection capacity and matters were noted or passed to the Police on an ad hoc basis. The quality and number of SAR reporting were both low. In July 2003, Anguilla gained Egmont status through the MLRA and was able, in a limited style, to respond to foreign FIU requests for information. In 2005, the Police allocated the services of one officer to financial investigation (fraud, money laundering etc) who became the contact point with the MLRA board and was relied on heavily to assist in the intelligence function.
243. In March 2008, the FIU in its present format was created by the Police and functioned via an MOU between the Police and the MLRA, which was later ratified by the POCA. The FIU serves as the national centre for receipt, analysis and dissemination of SARs for and on behalf of the MLRA and at the direction of the MLRA, which is established as an independent government authority. According, to Section 118 of the POCA, the MLRA is the financial intelligence unit for Anguilla and, as such, is responsible for receiving (and, where permitted by this or any other Act, requesting), analysing and disseminating (a) disclosures made under this Act, and in accordance with subsection (3), terrorist financing disclosures and (b) other such disclosures of financial information that may be required or permitted by any enactment for the purposes of combating money laundering or the financing of terrorism.
244. Since March 2008, the FIU has developed and is encouraging electronic submission of SARs to the access restricted email box of the Unit. Submitting entities are being encouraged to use a pre-agreed unique password to further protect the electronic SAR. This practise has been rolled out to the banks and will be extended to all reporting entities. Submissions are also accepted by hand delivery and fax. On receipt of a SAR, they are stored both electronically on the highly secure and restricted network of OTRCIS and a physical copy in the locked and secure filing system of the Unit. This is supplemented by a clean desk policy in the Unit. A review of the Financial Investigations Unit revealed that the file cabinets housed within the Unit are not approved fire resistant cabinets. All SARs from 2000 onwards are filed in a separate locked cabinet. If the Financial Investigation Unit undertakes an investigation of a referred SAR, they create a new file for their investigation which is kept separate and distinct in another locked cabinet and in a different part of the office so that there is no accidental transference of confidential intelligence into an evidence file.

Analysis of SARs

245. Analysis of each SAR takes place by full recording of the data for statistical purposes and then on a tactical basis by exhaustive research into the circumstances of each SAR. The work undertaken is subject to a full and ongoing review process that ensures both the timeliness and quality of this research. If the research finds that there should be more analysis, the case is referred to the Director of the Financial Investigations Unit, and then referred back to a police officer assigned to the Unit to conduct more research/investigation. During this process, feedback is provided to the financial institution that provided the information.

Guidance/training

246. The Financial Services Commission had previously issued (September 2007) non-enforceable guidance notes on AML to the financial sector concerning the manner of reporting and specification of forms and procedures to be followed. This guidance has now been updated and replaced by the enforceable Anti-Money Laundering and Terrorist Financing Code, 2009 issued by the FSC under section 159 of the POCA. Since the POCA 2009 has been newly enacted, it was difficult to determine the effectiveness in this area of the new Act. However, based on interviews with the financial institutions (not the DNFBPs), they were aware of the Financial Investigations Unit and had received guidance and training from them previously.
247. The Anti-Money Laundering and Terrorist Financing Regulations, 2009 issued by the Governor under section 158 of the POCA provide guidance as well. Specifically, Section 21(1) of the Anti-Money Laundering and Terrorist Financing Regulation indicates that the Money Laundering Reporting Officer (of the reporting entities) should submit reports where they consider an activity to be suspicious in nature as it pertains to Money Laundering and Terrorist Financing.

Access to information

248. The FIU has timely access directly (in addition to its own databases) to the following law enforcement databases:- Immigration Information, Customs Imports Information, all Police records including Criminal Convictions and reports as well as intelligence via the OTRCIS system. The FIU also has direct or indirect access to the following administrative sub databases of the Standard Integrated Government Tax Administration System "SIGTAS"
- Land Registry
 - Business Registry
 - National Population Information
 - Motor Vehicles Registration Information
 - Social Security
 - Death Information
 - Marriage Information, etc.
249. The FIU also has immediate but indirect access to the Company Registry database which is called ACORN; this database houses the necessary information for all Corporate entities as well as all International Business Companies (IBCs).
- The Financial Intelligence Unit has access via departmental request to financial information from the Treasury, Inland Revenue and Ministry of Finance
250. Information accessed indirectly is normally available upon request or is provided within a few days.
251. The FIU is authorised under section 118 2(b) of the POCA, to obtain information from any person directly by written notice. This is for the purpose of clarifying and amplifying information which was disclosed to the Financial Intelligence Unit. It was indicated to the Examiners that the FIU had asked for additional information from reporting bodies to clarify and properly analyze information that had been disclosed and that there were no impediments from supplying additional information.

Dissemination and security of information

252. The FIU is authorised by section 119 of the POCA to disclose any information (including SAR) to any Law Enforcement Agency in Anguilla and to overseas Financial Intelligence Units subject to appropriate safeguards for investigation of suspected ML or FT offences. Statistics provided by the Financial Investigations Unit indicated that there had been from 2003 to the present, 86 SARs filed with the FIU and 12 of those were referrals for investigation. Intelligence was shared with 38 other jurisdictions Of those twelve (12) SARs were referred to the Royal Anguilla Police Force, another jointly to the Royal Anguilla Police and law enforcement in Denmark for a joint investigation. Five (5) of the SARs were shared with both law enforcement and regulatory agencies overseas.
253. In practise, domestic dissemination of financial information by the Financial Intelligence Unit is done by way of a paper process referral to the Financial Investigation Unit of the Royal Anguilla Police Force.
254. The process described and shown to the Examiners was as follows: the staff of the Financial Intelligence Unit (FIU) and the Financial Investigations Unit is one Unit situated within the Royal Anguillan Police Force Headquarters. These two units are housed in a separate office within the Headquarters Building and is staffed with four (4) police officers. All members of the FIU are able to receive, review, analyze and disseminate SARs and related information and in practice, the functions of both are kept separate and distinct.
255. There is presently no legal advisor who is part of the Unit. However, the Unit works directly with the Attorney General's office with regard to investigative and prosecutorial issues.
256. When SARs are received by the FIU, the information is recorded by any of the four officers based in the Unit and reviewed by the Head of the FIU. The Head assigns the SAR to ne of the staff, who conducts all research and analysis of the information. After this process and a further review by the Head of the FIU, If the information indicates money laundering activity and points to evidence available with which to mount a prosecution, then the matter ~~case~~ is referred to a police officer in the Financial Investigation Unit for the collection of evidence and the ongoing investigation of a criminal prosecution.
257. SARs in which there is no money laundering or economic crime issues can be forwarded to the Criminal Investigations Division (CID) of the Police Force or other appropriate agency for review.

Independence and autonomy

258. The Financial Intelligence Unit which is subject to the direction and control of the MLRA (the POCA Section 118(4)), which in itself is a totally autonomous governmental agency only answerable to the Governor, has sufficient operational independence to ensure that it is free from undue influence or interference from any other persons, organizations or committees. On a daily functioning level, that operational independence is enshrined in the "National Policy on Maintaining the Independence of the Financial Intelligence Unit" (see attached supplemental material). The Financial Intelligence Unit is synonymous, in terms of shared staffing and resources, with the Financial Investigation Unit of the Police but functions as a separate and distinct autonomous body as described in the "National Policy on Maintaining the Independence of the Financial Intelligence Unit" (see attached at Annex 3).
259. Pursuant to the MOU between the MLRA and the Commissioner of Police of the Anguilla Police Force, the day to day management and responsibilities of the Financial Intelligence Unit have been assigned. Specifically, Paragraph 10 of the MOU states that 'the Commissioner also agrees that the day to day work responsibilities of the Financial Intelligence Unit will be assigned to a qualified Detective Inspector from within the RAPF who will act as the Head of

the FIU and who will be responsible for insuring that all intelligence functions of the FIU remain separate and distinct from the investigative arm of the FIU’.

260. Among other things, the MOU seeks to ensure that the Commissioner undertakes to establish an FIU which is capable of carrying out all the intelligence gathering, analysis and dissemination requirements in accordance with the requirements of the MLRA. The MLRA will maintain a strategic overview and provide direction to the FIU from time to time. The Commissioner undertakes to insure that the FIU remains in full partnerships with and compliant with all the provisions of the international intelligence sharing organization known as the Egmont Group. Further, the Commissioner undertakes to provide a secure and separate location within the RAPF HQ building sufficient to allow the FIU to operate independently from all other operational units within the RAPF.
261. The MOU is revocable at any time with termination becoming effective ~~as~~ from the reception of the written notification from the other Authority.
262. While the MOU seeks to ensure that the FIU remain an autonomous body and at this time in practice it strives to remain autonomous, the very wording of the MOU shows that it is not. The Commissioner of Police does have a say in the hiring of the employees at the FIU, as well as being in charge of the funding and budget of the FIU. Additionally, the MLRA maintains a strategic overview and provides direction to the FIU. Further, the FIU is mandated to carry out all the intelligence gathering, analysis and dissemination requirements in accordance with the requirements of the MLRA. The Examiners are of the view that there would be more autonomy if there were a separate act creating the FIU as a separate entity.
263. An on-site review of the FIU revealed that the FIU is housed in its own secure office accessible only by the four (4) staff members of the Unit, at Police Headquarters, in the Valley, Anguilla. Police Headquarters is a highly secured building which is covered by closed circuit cameras and keypad door locks. Within the office of the Unit, physical documents are stored in locked filing cabinets and all electronic material is stored on a restricted password protected secure government computer network and in a password protected format. The four staff members of Unit are the only persons within the jurisdiction that have the ability to access the office and the information.
264. Information sharing or exchange is safeguarded by internal practises which adhere to the EGMONT principles on the exchange of information (only to be used for stated purpose, treated confidentially, no further unauthorised dissemination) and governed by section 119 of the POCA. In addition all intelligence is treated in accordance with the UK standard of 5x5x5 intelligence recording principles which requires the author to assess and grade where and to whom intelligence may be disseminated.
265. A safeguard is provided in law by Section 121 of the POCA, which speaks to it being an offence for any breach of the confidentiality of information which is disclosed and sanctions that are administered to anyone including members of the MLRA or Financial Intelligence Unit found guilty of such an offence except as required or permitted (a) by the POCA or any other enactment; or (b) an Order of the Court.

Public reports

266. The Financial Intelligence Unit has commenced the compilation of its first Annual Report covering the year 2008, which the MLRA has determined will be distributed to the public and will contain information concerning the statistics, typologies and trends as well as information regarding its activities over the aforementioned period. This publication will be distributed by summer 2009 in order to be compliant with the principles of the new POCA which under section 122 states that the annual report should be due on or before 30 April of each year and should

cover a one year period ending on the previous 31st December. This requirement will start in April 2010 and cover the current year (2009). The Royal Anguilla Police Force FIU, provided a Threat Assessment on Money Laundering, (July 2008). In the document, a number of areas were identified that were susceptible to money laundering. Case studies were provided as well as recommendations for several of those areas to be monitored and possible investigations to be opened, including the use of special investigative techniques in those investigations.

Egmont membership

267. The MLRA became a member of the Egmont Group since July 2003. Accordingly, the Financial Investigations Unit is a signatory to Egmont via the MLRA. The Examiners are of the view that should the FIU become a separate unit, the issue of Egmont membership would have to be reviewed, since as stated the MLRA is the actual signatory to Egmont.
268. As a member of Egmont, the MLRA and by natural extension the Financial Intelligence Unit, has regards for ~~to~~ and is fully compliant with the Egmont Group Statement of Purpose and its Principles of Information Exchange between Financial Intelligence Units for Money Laundering cases. The FIU administers these principles when utilizing the mechanisms for information exchange both to Egmont Group members and non members by ensuring confidentiality and protection of information; not undertaking or allowing further dissemination without permission; giving and requiring a sufficient reason for the information exchange etc.

Recommendation 30

Resources-FIU only

269. As previously stated, the Money Laundering Reporting Authority (MLRA) is responsible for functioning as the financial intelligence unit for Anguilla. It was established by law in 2000 and is preserved under Section 117 of the POCA. The MLRA is styled as an executive body and the daily intelligence function is undertaken by the Financial Intelligence Unit, authorised under Section 118(4) of the POCA, subject to the direction and control of the MLRA. There is a MOU in place between the Competent Authorities of Anguilla (MLRA) and the Commissioner of Police – The Royal Anguilla Police Force concerning the management and responsibilities of the Financial Intelligence Unit (FIU) in all matters.
270. The Head of the FIU is designated by order of the Governor pursuant to Section 118(4) of the POCA and is currently a contracted experienced Detective Inspector who joined the Unit in September 2008 (who is also the Head of the Financial Investigation Unit of the Royal Anguilla Police) and has been appointed by the Police Commissioner. Other staff within the Financial Intelligence Unit consists of an Acting Detective Sergeant who has been involved with financial crime and the Unit since 2005, an experienced contracted Detective Constable who joined the Unit in March 2008 and a trainee Detective Constable transferred to the Unit in March 2009. Both contracted officers have long and extensive international career experience in dealing with financial investigation and the particular requirements in dealing with both intelligence and investigation aspects of financial investigation.
271. With the increasing work load due to the new legislation and assisting in training requirements to the law enforcement and financial sectors, there is a strongly anticipated need for an increase in staffing levels. In the first instance there is a need for an analyst and a Hi-Tech forensic specialist, the funding for which is already being explored by the Head of the intelligence unit. Further, because of the inclusion of the DNFBPs into the reporting requirements, there will need to be more emphasis on training and ensuring that these non-financial institutions are

prepared to understand their requirements under the POCA namely to identify suspicious activity, to prepare the SAR and to know where those reports should be filed.

272. The Financial Intelligence Unit is currently funded directly from the Police budget under a formal MOU between the MLRA and the Commissioner of Police, which covers the Police being currently responsible for the provision of equipment, staff and premises for use by the Financial Intelligence Unit but with control and direction of the staff coming from the MLRA. The POCA facilitates the establishment of a National Forfeiture Fund (Section 154) that allows the Governor on recommendation of the MLRA to authorise payment from the fund for the purposes relating to Sub-Section paragraph 3(b)) meeting the costs and expenses of the MLRA and by extension the FIU). However there is no money currently in the fund, its source of income being derived from confiscation and forfeiture activity (Sub-section (2)).
273. As previously mentioned, the FIU is located in Police Headquarters and has a small office which houses the four current police officers stationed there. The office is extremely cramped and small with several desks, file cabinets and computers and correspondent printers, etc. An onsite review of the offices revealed that to get to the office there is a water obstacle caused by a hole in the ceiling which is allowing the air conditioning of the building to drip all over the floor. While this doesn't disturb the FIU as it is, it creates an unsafe environment for the workers.
274. While presently, the level of technical resources is adequate, with each Intelligence Unit member having a government networked computer, access to a stand alone computer, a series of printers (inclusive of a colour one and a plotter for analytical work), scanner, analytical software and access to commercially purchased relevant databases; resources may need to be increased in the near future to accommodate the increase that should result from the inclusion in the legislation of DNFBPs. Consideration will need to be given to providing adequate training to the DNFBPs regarding the law. Further, there may be an increase in the filing of SARs once they are fully briefed with regard to their obligations under the law. There are fax facilities and adequate filing storage space. There will need to be additional space to accommodate the increased need for storage space and adequate fire-proof safes and/or file cabinets.
275. The operational independence of the Financial Intelligence Unit arises from the MOU previously referred to between the Police and the MLRA and is demonstrated by the National Policy on the Independence of the Unit (see attached). In practice, the FIU operates as an independent entity, but in theory, with the MOU as it is written, indicates that the FIU may not be able to operate as independently as it needs to. Consideration should be given to having separate legislation making the FIU an independent body and answerable to only the Police Commissioner or the Governor General.
276. As previously stated, the FIU is staffed by four serving police officers (three of whom are experienced Financial Investigators) who have been exemplary in conduct and ability during their career. Their conduct is subject to Section 28 of the Anguilla Police Regulations which establishes a number of discipline offences designed to maintain high professional standards (including confidentiality) in addition to the Government Code of Ethics. Background checks are conducted on prospective officers and their social and financial standings scrutinized before they are considered eligible for selection to the FIU. Training within the Unit emphasizes the highest standards of honesty, integrity and confidentiality in the day to day function of the Unit. Officers undergo a period of training where their daily work load is monitored and directly supervised by a senior officer for integrity and quality with feedback provided to the officer. High professional standards are maintained through ongoing monitoring of work with regular dip sampling and review of all files.
277. The staff of the Financial Intelligence Unit have received ongoing training in relation to Money Laundering, CFT, Human Trafficking and Smuggling and all other predicate offences

(indictable only or those that may be tried summarily for which the maximum term of imprisonment is 1 year or more) .

278. Staff are trained as Financial Investigators and equipped with suitable skill sets such as computer skills and analytical capabilities. A review of the training which was provided to the members of the FIU indicate that while they have been provided training, they may need additional training in Advanced Financial Investigations. Further, because of the new legislation implementing civil forfeiture provisions, as well as the establishment of a National Forfeiture Fund, training in both criminal/civil forfeitures, may be needed. This training should be provided to not only investigators, but also to prosecutors and judicial personnel.
279. The FIU requires that its members keep themselves abreast with emerging trends and typologies in ML and CFT and undertake formal training as a Financial Investigator.
280. The FIU presently has a mentoring process in place whereby the less experienced investigators benefit from the extensive overseas experience of the two trained and contracted financial investigators. This is in addition to the various training courses being attended on financial investigation techniques and AML/CFT. Additionally, Anguilla may consider that the two less experienced investigators in the FIU receive assistance in special training and/or certification for financial investigators such as CAMs (Certified Anti-Money Laundering Specialist or Certified Asset Forfeiture Specialist. These certifications are offered through the U.S. but many investigators within the Region have been certified. At times the certification exams are provided in countries in the Caribbean.
281. The following are some of the courses and workshops from which the members of the Financial Intelligence Unit have benefitted through attendance or participation: Interpol Training 124/7 (Trinidad & Tobago 2005), Financial Investigators Beginners Course (Jamaica, 2005), Financial Investigation & Terrorist Financing held in St Thomas (2005), Financial Investigation Techniques (Jamaica, 2006), Financial Investigation Conference (St Vincent 2007), Overseas Territories Financial Intelligence Unit Conference (Miami, 2007), CFTF Mutual Evaluation Trainers Course (Martinique 2008), Financial Manipulation Analysis (Barbados, 2008), Overseas Territories Financial Intelligence Unit Conference (Miami, 2008), Advanced Financial Investigation Course (St Lucia, 2009), Information Technology Audit and Security Training (Anguilla 2005), IDEA Course (Anguilla 2005), Border Control & Security (Anguilla, 2008) Fraud Awareness & Prevention (Anguilla 2009), Insurance seminar on Money Laundering (Anguilla 2008), annual refresher I2 analytical training, seminars on trusts and mutual fund structures (Anguilla 2009), along with anti money laundering and confiscation training in the UK (2005) and United States (2006) and Tactical Analysis Training (from AUSTRAC & FinCEN) to be undertaken in July 2009. All knowledge/expertise gained is cascaded to other members.

Recommendation 32(FIU)

Statistics

282. From 2003 up to May 2009 there have been 86 SARs received from reporting entities as indicated in the chart below, which demonstrates the type of institution making the submission.

Table 10: Number of SARs received by each type of reporting entity

SAR by Reporting Entity							
Year	Bank	Company Service s	Trust	Insurance	Money Remitte r	Other DNFBP	Other
2003	4	4	0	0	0	0	0

2004	4	0	0	0	1	0	0
2005	2	4	0	1	0	0	2
2006	4	1	0	0	0	0	2
2007	4	1	0	0	0	0	1
2008	18	5	0	0	6	0	1
2009	11	3	0	0	7	0	0
Total	47	18	0	1	14	0	6

283. Many of the SARs received in Anguilla involved foreign countries and foreign nationals. The Financial Intelligence Unit analyses all SARs and makes frequent spontaneous disseminations of intelligence arising from them to foreign jurisdictions. To this end statistics are also maintained on every SAR where intelligence is shared (or disseminated) as well as those SARs which are referred for investigation directly to an investigating agency either in Anguilla or abroad.

Table 11: Number of STRs referred for investigation

Year	SARs	Referrals for investigation	SAR Intelligence Shared
2003	8	3	4
2004	5	0	0
2005	9	0	2
2006	7	0	0
2007	6	0	1
2008	30	6	25
2009	21	3	6
Total	86	12	38

284. Statistics in relation to international wire transfers are held by the four banks in Anguilla and are submitted to the Eastern Caribbean Central Bank via regulatory report BS10. These statistics are not held by the FIU and accordingly were not provided to the Examiners. There is no currency threshold reporting in Anguilla.

Additional Elements

285. Statistics are maintained on the number of SARs that are referred for investigation and if those result in a prosecution, the ultimate result of that prosecution and whether the matter concerned is money laundering, terrorist financing or an underlying predicate offence.
286. Of the twelve (12) SARs referred for investigation, all were suspected cases of money laundering and all were or are being investigated. Six were referred to the Royal Anguilla Police Force, another jointly to the Royal Anguilla Police Force and law enforcement in Denmark and five others to overseas agencies.
287. Three of the early Royal Anguilla Police referrals (2003) were concluded without the matter going to prosecution. The latter three (2008) have resulted in ongoing prosecutions in Anguilla in addition to one being jointly prosecuted for money laundering in Anguilla and insider trading

in Denmark. The remaining five overseas referrals are ongoing active money laundering investigations being supported by ongoing research from the Anguilla Financial Intelligence Unit.

288. In 2008, a historical review and analysis of all SARs was undertaken which resulted in a SAR from a previous year being referred and five others having intelligence disseminated about them.

2.5.2 Recommendations and Comments

289. The Anguillan authorities should consider enacting separate legislation for the creation and functions of the FIU so as to alleviate the problem with autonomy.

Recommendation 30

290. The FIU should expand its offices to accommodate the current staff and any future increases in staff.
291. Anguilla should obtain additional staff at the FIU to prepare for the inclusion of the DNFBPs in the regulations and such staff should include a dedicated legal advisor.
292. The FIU should be provided with fire resistant filing cabinets for the storage of their SARs.
293. The staff of the FIU should be provided with training in advanced financial investigations, civil and criminal forfeiture provisions and terrorist financing.

Recommendation 32

294. Customs should maintain statistics regarding cross border transportation of currency and bearer negotiable instruments.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	PC	<ul style="list-style-type: none"> • The FIU is not an autonomous body. • Office space not sufficient at the FIU to adequately accommodate the staff. • Amount of FIU staff not sufficient to allow inclusion of the DNFBPs in the regulatory regime. • No fire resistant filing cabinets for the storage of the SARs.

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27 & 28)

2.6.1 Description and Analysis

Recommendation 27

295. The legislative framework for investigation, prosecution and confiscation was set out in the Proceeds of Criminal Conduct Act (PCCA) 2000 which was later amended in 2004. This has now been replaced by the Proceeds of Crime Act (POCA) 2009 and the attendant Anti-Money Laundering and Terrorist Financing Code and the Anti-Money Laundering and Terrorist Financing Regulations issued under the Proceeds of Crime Act. It should be noted that, under Anguilla's legislative framework, prosecutors in the Attorney General's Chambers do not have independent investigatory powers. Evidence gathering and charging which would lead to a prosecution is undertaken by the Police or Customs and then the matter is referred for the physical prosecution at Court to the Attorney General's Chambers.
296. Police, Customs and Immigration are all considered responsible for AML/CFT matters within their own field, as demonstrated by the makeup of the MLRA with each body being represented. The Financial Intelligence Unit is the recognised and dedicated unit to whom SARs are referred on behalf of the MLRA. The Financial Investigations Unit of the Royal Anguilla Police Force conducts the criminal investigations of a SAR when such is warranted. This situation is acknowledged amongst all law enforcement and they regularly consult with the Financial Intelligence Unit and seek advice on potential money laundering matters. The Examiners determined that most of the law enforcement personnel interviewed during the Mutual Evaluation stated that if they have any indication in their cases that it may involve a possible money laundering or financial case, they will contact the Financial Intelligence Unit for assistance.
297. There are no written laws in Anguilla that specifically addresses the issue postponing and waiving an arrest or seizure of money for the purpose of identifying persons or gathering evidence during the course of money laundering investigations. However, these particular investigative techniques are implied in Section 13 of the ATO which allows a person to participate in fund raising, use and possession of property or money, funding arrangements and money laundering for purposes of terrorism with the express consent of a constable. Postponement of arrest and seizure are techniques that the FIU has already used, together with a controlled purchase scenario used to gather evidence, during the course of money laundering investigations. In one particular case, these techniques were utilized and the case was charged and prosecuted, indicating that evidence from such techniques has been submitted in court and went unchallenged.
298. Specialist techniques have been used in a recent money laundering investigation where controlled purchases, surveillance and undercover techniques were utilized in the investigation of money laundering and the predicate offence.

Additional Elements

299. As noted above, Section 13 of the ATO allows a person to participate in fund raising, use and possession of property or money, funding arrangements and money laundering for purposes of terrorism with the express consent of a constable in a wide ranging power and which would facilitate undercover operations and controlled deliveries.
300. Statistics indicate that that FIU has frozen and confiscated proceeds of crime. Further, this unit assists other law enforcement officers within Customs and Immigration in the event that they have need to utilize their financial expertise. .

301. There is at present no dedicated unit to the specifics of asset forfeiture; however statistics indicate that that FIU has frozen and confiscated proceeds of crime. Further, this unit assists other law enforcement officers within Customs and Immigration in the event that they have need to utilize their financial expertise. It is understood that at the present time, the FIU is the responsible entity to conduct asset forfeiture investigations involving financial crimes.
302. The Financial Investigation Unit has cooperated with foreign competent authorities who have used special investigative techniques of suspects in joint operations i.e. covert surveillance of persons suspected of money laundering and seeking wire taps. Adequate safeguards were provided by the legislation of the foreign competent authority concerning surveillance.
303. The FIU undertakes a joint annual threat assessment of money laundering within Anguilla which informs the discussion and setting of strategic priorities on an inter-agency basis with the MLRA Board members who represent all law enforcement and competent authorities of Anguilla. A copy of a report was provided to the Examiners of the typologies and indications of possible money laundering and other predicate offenses which appear in Anguilla.

Recommendation 28

304. Sections 135 through 149 of the POCA provide a broad range of powers for the investigation of money laundering, predicate offences and terrorist financing. These provisions are detailed below:
 - Section 135 of the POCA states that Production Orders may be made by a senior police officer or a police officer who is authorised in writing to make the particular application by a senior police officer.
 - Section 137 of the POCA states that where a judge makes a productions order in relation to material on any premises he may on the application of a senior police officer or a police officer who is authorised in writing to make the application by a senior police officer, order any person to be entitled to grant entry to the premises to allow him to obtain access to the material
 - Further, Section 138 states that where any material specified in an application for a production order consists of information contained in a computer, an order under section 136 shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and give access to the material in a form in which it is visible and legible. This information can be copied in compliance with the production order.
 - Section 139 of the POCA states that application to a judge may be made for a search and seizure warrant by a senior police officer or other police officer who is authorised in writing to make the particular application.
 - Customer information orders: Under Section 142 of the POCA, senior police officers and other authorised police officers can make an application for a customer information order if the person specified in the application is subject to a criminal recovery investigation or a money laundering investigation or that property specified in the application appears to hold the property.

- Account monitoring orders: Section 146 of the POCA, states that an application for an account monitoring may be made to a judge provided that a person specified in the application is subject to a criminal recovery investigation or a money laundering investigation or the property is subject to a civil recovery investigation and a person specified in the application appears to hold the property.
305. At the time of the Mutual Evaluation, amendments were made to the POCA to provide the addition of a definition of terrorist financing in the interpretation section, to amend cross references and references to the AML/TFR. This would allow police officers to be able to investigate, and utilize the special investigative techniques listed above. Provisions for investigations including the use of special investigative techniques are also included in the TUNMOTO, the ATO and the Al-Qa'ida Order.
306. As members of the Police Force, members of the Financial Investigations Unit are empowered generally under section 20(d) of the Anguilla Police Act to “stop, search, and detain any vessel, boat, aircraft, motor vehicle, cart or carriage in or on which there shall be reason to suspect that anything stolen or unlawfully obtained or any smuggled goods may be found and also any person who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully obtained or any smuggled goods.
307. Section 2(3) of the Immigration and Passport Act gives immigration officers all the powers of a police officer, as well as the right to board and search any vessel arriving in Anguilla for the purpose of performing his duties. Sections 14 and 28 empower immigration officers to demand production of identification documents.
308. Part 10 (sections 89 to 107) of the Customs Act, R.S.A. C169 provides customs officers with a very wide range of powers, including—
- the right to examine baggage and anything contained therein or carried with a person arriving or departing Anguilla
 - right of access to, and a power of search of any part of a customs port, approved wharf, customs airport or other customs area and any vehicle or goods found at such a place, including the right to open any building or container that is locked and seize anything that is concealed
 - the power to require that vessel or aircraft to stop and to board and search any part of it
 - the power to examine and take account of any goods, including requiring any container to be opened or unpacked
 - the power to take samples
 - the power to search premises, vehicle and person anywhere within Anguilla
 - the power to compel the production of information and evidence.
309. Additionally, sections 132 – 133 of the Customs Act empower a customs officer to detain and seize any items or goods. Schedule 3 of the said Act set out the lawful process by which this power can be enforced.
310. The Magistrate’s Code of Procedure Act and part 7 of the Criminal Procedures Act provides the Court with powers to compel witnesses to present themselves to the Court for the purpose of giving evidence. In addition, members of the Police and the Financial Investigation Unit investigators are able to interview witnesses and take witness statements on a voluntary basis for the investigation of ML, FT and predicate offences.

Recommendation 30 (Law enforcement and prosecution authorities only)

Royal Anguilla Police Force

311. Both Police and Customs are empowered to investigate offences under the POCA. Pursuant to the definitions included in the POCA, the term “police officer” includes a person appointed as a Customs officer. Both are sizeable organisations with well established structures, staffing and resources. The Immigration Department is also committed to AML/CTF, which is demonstrated by its involvement in the MLRA and having procedures and systems in place for when encountering persons on sanction lists. The Examiners were told that they receive these lists on a regular basis. These are actively monitored via a Watch List on the OTRCIS system at ports of entry. To date, Immigration officials have had no incidences of hits relating to sanctioned terrorists.
312. The Financial Investigation Unit of the Royal Anguilla Police Force in reality would be heavily involved if not completely managing any ML/TF investigation likely to occur on Anguilla. The Examiners conducted interviews with other law enforcement authorities in Anguilla including the Immigration, Customs and Drug Task Force. All entities stated that in the event they were investigating a crime with a financial bent, they would contact the FIU to assist in the investigation of the case.
313. The Police Service is free of undue influence or interference of a political or other nature as the Commissioner of Police is empowered to act independently and is answerable only to the Governor of Anguilla.
314. The FIU is currently provided with an adequate level of technical equipment. It is reasonable to expect that in the not to distant future they will need to expand their office facilities to allow for the expected growth in the overall Financial Investigative Unit operations. Both Immigration and Customs officials indicated to Examiners that they are funded adequately and adequately staffed.
315. Given the requirements of the new POCA and the expected increase in the number of financial investigations on Anguilla, as well as the requirements for the DNFBPs to come under the regulatory regime, it is anticipated that the Financial Investigation Unit will need to expand its human resources to include one additional investigator position and one technical support position.

The Attorney General’s Chambers

316. Prosecutions are conducted by Crown Counsel in the Attorney General’s Chambers (Chambers), which is adequately structured, funded, staffed and provided with sufficient technical and other resources to effectively perform the prosecution functions required in a small jurisdiction. There are currently one Crown Counsel/Parliamentary Counsel, one Crown Counsel, one Acting Senior Crown Counsel (Criminal) and the Attorney General who are involved in combating money laundering and terrorist financing. There is also a four (4) member clerical staff to assist these prosecutors. The position of Senior Crown Counsel (Criminal) has been vacant (other than the acting appointment) since March 2009. Recruitment efforts to substantively fill this position have not, to date, been successful and the current economic climate and resulting budgetary constraints have lead to the implementation of austerity measures that include temporary discontinuance of recruitment and a hiring freeze. There are presently no legal advisors assigned to the FIU. The FIU does have access and assistance from the Attorney General’s office as necessary.
317. As recently as January 2009, one prosecutor was sent to the Crown Prosecuting Service in the UK on a 2 week attachment to learn about proceeds of crime and money laundering. However, prior to 2009, training was limited to sessions conducted by the FIU. More training in the

complexities of prosecuting ML offences and ML typologies is needed on an ongoing basis, but the aforementioned budgetary restraints make this goal difficult to attain. The following are copies of the training provided to the Crown Prosecuting Service. A review of the training for the Members of Chambers showed that other than the one prosecutor attending the 2-week training in the UK, there were no training seminars provided to Chambers in the financial investigations, asset forfeiture, money laundering or terrorist financing arena. This is critical, as cases related to the above are being brought forward for prosecution, and it is necessary for a successful prosecution to have trained prosecutors to adjudicate the cases.

318. The following is a schedule of training completed by the Members of Chambers.

	Year	Training	Country
Attorney General until 2006	2006	OT's- AG Conf	Bermuda
		UKOT'S & Bermuda Law Enforcement Conf	Anguilla
		Witness Protection	Miami
		American Bar Association American Bar Association	USA
Senior Crown Counsel, Criminal (Acting)	2006	Access to Justice	UK
Crown Counsel (Criminal)	2006	Caribbean Ombudsman Assoc.	Barbados
Parliamentary Counsel	2007	CFATF Examiners Training	Martinique
		CARICOM PANCAP/Legislator Drafting – HIV/AIDS	
Senior Crown Counsel (Resigned)	2007	Institute of Prosecutors	Jamaica
	2008	Regional CPC Conf.	St. Kitts
		45 th CPC Meeting	Grenada
Attorney General	2008	CFTAF – Plenary Air Services Cons. AG's Conference	St. Kitts Florida TCI
Senior Crown Counsel (Resigned)	2008	Conference – Enhancing Effectiveness of Prosecution in the Region	Jamaica
		UNDP Anti-Corruption Program	Barbados
Crown Counsel (Civil)	2008	UNDP Anti-Corruption Program	Barbados
Crown Counsel (Civil)	2009	Attachment – Prosecution Service	UK
Senior Crown Counsel (Criminal – Acting)	2009	Prosecutor's Seminar –AML/CFT legal issues	Bermuda

Parliamentary/Crown Counsel	2009	To negotiate TIEAs with UK and Nordic Countries	UK/Germany
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319. The FIU members are subjected to the police disciplinary code found in the Anguilla Police Regulations, the Public Service Code of Ethics and the Criminal Code concerning corruption in public office. As well, they are vetted vis-à-vis due diligence and background inquiries, suitability interviews and a comprehensive selection process before being offered a position on the unit. The Director of the FIU was hired for the position by the Commissioner of Police.

POLICE

320. The police officers attached to the Financial Intelligence Unit and Financial Investigation Unit are well trained in AML techniques as well as the investigation of Money Laundering offences. The units presently have a mentoring process in place whereby the less experienced investigators benefit from the extensive overseas experience of the two trained financial investigators. This is in addition to the various training courses being attended on Financial Investigation Techniques and AML/CFT. However, as noted in Section 2.5 above, the Examiners are of the view that additional training should be provided in advanced financial investigation techniques and civil/criminal forfeiture and terrorist financing.

Additional Elements

321. In August 2008, the FIU conducted an educational awareness program in relation to Court staff (both Magistrates and High Court) concerning AML/TF issues in relation to the Financial Intelligence Unit and judiciary. The Eastern Caribbean Supreme Court (ECSC) sponsored a programme facilitated by the Caribbean Anti-ML Agency on the issues of ML and FT in Trinidad in 2002. Turnover in the judiciary since that time necessitates ongoing training in AML/CFT. The Eastern Caribbean Supreme Court is receptive to such training, but is prohibited from engaging in same by budgetary constraints. In addition, one of Anguilla's prosecutors was sent to the UK for ten (10) days of training concerning AML/TF issues conducted by Crown Prosecuting Service (CPS), Proceeds of Crime Delivery Unit.
322. At the time of the Mutual Evaluation, a list of training courses was provided to Examiners regarding Lawyers in Chambers. As noted above, there was no indication that any judiciary was provided training in Financial Investigations, Money Laundering and/ or Terrorism Financing issues.

2.6.2 Recommendations and Comments

Recommendation 30

323. The Anguillan Authorities should provide prosecutors and Judges with training in financial investigations, civil/criminal forfeiture, money laundering and terrorist financing.

2.6.3 Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	C	This Recommendation has been fully observed.
R.28	C	This Recommendation has been fully observed.

2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and Analysis

Special Recommendation IX

Disclosure/Declaration system

324. The general laws that give powers to HM Customs and its officers as well as Police Officers are:

- Customs Act, R.S.A c. C169
- Customs Act, R.S.A. c. R30 – Customs (Declaration Form) Direction, 2009
- Customs Act, R.S.A. c. R30 – Customs (Currency Report) Direction, 2009
- Al-Qa’ida and Taliban (United Nations Measures) OTs Order 2002
- Mutual Legal Assistance (USA) Act, R.S.A. c. M110
- Proceed of Crime Act, 2009
- Terrorism (UN Measures) (OTs) Order 2001
- Anti-terrorism Financial and other Measures) (OTs) Order 2002
- Criminal Code R.S.A c C140

325. These Acts allow for the declaration of monetary instruments over a prescribed threshold and provide sanctions to any one who acts contrary to the listed Acts and Regulations.

326. The competent authority for Anguilla is HM Customs. Declarations are required generally under Anguilla’s Customs Act, section 89(1) and details of such declarations are implemented by the Customs (Declaration Form) Direction, 2009. Under this legislation, any person entering Anguilla shall at such place and in such manner (being the declaration form) make a declaration that they are importing or exporting currency or monetary instruments over \$27,000 ECD or its equivalent which is roughly \$10, 000 USD.

327. At the time of the Mutual Evaluation, the form had been implemented, but had been changed to include declaration for animals under the CITES convention, as well as firearms and ammunition and other issues of interest to Anguilla. The revamped declaration form states that ‘passengers are reminded that they are required by law to make a full and true declaration to the Customs Officer. All persons are subject to further questioning and their personal belongings, baggage, and their person are subject to search.’ Further, a new Report of International Transportation of Currency or Monetary Instruments was gazetted on July 31, 2009, on the last day of the onsite Evaluation. The form is expected to enter into force on September 1, 2009. Therefore, the effectiveness of this new form could not be assessed by the Examiners.

328. At the time of the Mutual Evaluation, the Declaration form required reporting in the amount of 5000 EC dollars. Signs at the airport stated that a verbal declaration was required to be provided to the Customs Officer on duty. The Examiner’s also noted that while the \$27,000 ECD declaration was to be imposed, a sign at Blowing Point did not reflect the new changes regarding the requirements of declaration. This could make for some confusion on the part of individuals as to what requirements are in effect at the present time.

329. Customs are also empowered to make enquiries of persons disembarking Anguilla. This is done on both a targeted basis, based on intelligence or suspicion and on a random basis. The Examiners noted, upon arrival at Blowing Point after a trip to St. Maarten, that all travellers into Anguilla were subject to various questions from Customs officers on duty.

330. Section 13 of the Al-Qa'ida Order was amended by a subsequent Order to reads as follows:

13. (1) Any person who is about to leave the Territory shall, if he is required to do so by an officer authorized for the purpose by the Governor—
- (a) declare whether or not he has with him any restricted goods which are destined for a listed person or for delivery, directly or indirectly, to or to the order of any listed person; and
 - (b) produce any such goods as aforesaid which he has with him.
- (2) Any such officer, and any person acting under his direction, may search that person for the purpose of ascertaining whether he has with him any such goods as aforesaid: Provided that no person shall be searched in pursuance of this paragraph except by a person of the same sex.

It should be noted that there is no specific reference to international transportation of cash or bearer negotiable instruments relating to the financing of terrorism.

331. All persons are subject to further questioning by any officer upon the discovery of a false declaration/disclosure of currency or bearer negotiable instruments or a failure to declare/disclose of currency or bearer negotiable instruments to any officer. Section 89(2) of the Customs Act states: "Any person entering or leaving Anguilla shall answer such questions as the proper officer may put to him with respect to his baggage and anything contained therein or carried with him, and shall, if required by the proper officer, produce that baggage and any such thing for examination at such place as the Comptroller may direct." Likewise, Section 13 of the Al-Qa'ida Order, empowers authorised officers to search any person who is about to leave the Territory for restricted goods which are destined for a listed person or for delivery, directly or indirectly, to or to the order of any listed person.

332. Section 106 of the Customs Act also give Customs Officers the powers to require any information and the production of evidence to support any claims made by persons, this is within a seven (7) year period of the importation or exportation of currency or bearer negotiable instruments. Any person failing to comply with this request will commit an offence and be liable to a fine of \$10, 000 ECD.

Restraint of Currency

333. Part 3, Division 8, Sections 106 to 116 of the POCA deal with cash seizures. Pursuant to Section 108, a Police Officer (Customs Officer included) may seize cash which is suspected of being recoverable cash and cash where part of the cash is recoverable and it is not reasonably practicable to seize only that part. Recoverable cash pursuant to the definition under Section 106 of the POCA is specifically cash (a) which is recoverable property or is intended by any person for use in unlawful conduct; and (b) the amount of cash is not less than the minimum amount (EC\$500). This definition of recoverable cash includes cash, which is defined to include bearer negotiable instruments.

334. Pursuant to Section 109 of the POCA, an Officer who has seized cash under section 108 of the POCA and continues to have reasonable grounds for his or her suspicion may detain the said cash:

- Initially for a period of 72 hours.
 - Period may be extended by an order made by the Magistrate Court for no more than three (3) months and no more than two (2) years if any other order from the POCA applies.
335. Pursuant to Section 89 of the Customs Act and Schedule 1 of the Customs (Declaration Form) Direction, 2009 if there has been a false declaration then the currency or bearer negotiable instruments is liable for forfeiture. Under Section 132(1) of the Customs Act, anything that is liable to forfeiture may be seized or detained by any Customs Officer or Police Officer. The 'Report of International Transportation of Currency or Monetary Instruments' states that the provision of any false information on the form is subject to a penalty of three times the value of the currency or monetary instrument and that the currency or monetary instrument is liable to forfeiture. The form is to be completed by persons entering and leaving Anguilla who are in possession of or posting for delivery abroad or receiving from abroad, currency, cheques and other monetary instruments that are of or exceeding EC\$27,000 (US\$10,000). It should be noted that there have been seizures of currency at the airport by Customs as noted in the statics provided at paragraph 381 below.
336. Likewise, under section 98 of the Customs Act, where a Customs Officer has reasonable grounds to believe that anything that is liable to forfeiture by virtue of any customs enactment is kept at or concealed in any building or other place or that any offence has been committed under or by virtue of any customs enactment, he may, upon written authorization by the Comptroller to do so, enter that building or place at any time, whether by day or night, on any day and search for, seize and detain or remove any such thing.
337. It should be noted that Section 1 of the Customs Act defines "customs enactment" to mean the provisions of the Customs Act, any subsidiary legislation made under it and any other enactment that relates to an assigned matter. An "assigned matter" means any matter in relation to which the Comptroller is for the time being required in pursuance of any enactment, to perform any duty.

Information sharing and cooperation

338. HM Customs has systems and policies in place to deal with what is done with the information that is collected on the following occasions:
- Where a declaration which exceeds the prescribed threshold is made
 - Where there is a false declaration/disclosure
 - Where there is a suspicion of money laundering or terrorist financing.
339. The information for all three scenarios will be captured on a secured database that is utilized by all law enforcement entities within Anguilla (The OTRCIS system). At the time of the Mutual Evaluation, this information had not yet been captured in OTRIS. However, according to statistics provided by H.M. Customs detailed that seizures had taken place and those seizures of cash were provided to the FIU to assist in a financial investigation and a SAR was completed.
340. As mentioned above the captured details obtained through the processes implemented will be stored on a secured database (OTRCIS) which is directly available to the FIU.
341. There have been adequate co-ordinated efforts between all Law Enforcement Agencies (i.e. MLRA - Financial Intelligence Unit, HM Custom, HM Immigration and the Police Force) within Anguilla as it relates to the issues of implementing the FATF Special Recommendation

IX. The MLRA is constituted by a senior office from the entire mentioned LEA and also includes the Attorneys General Office. The MLRA has been instrumental in ensuring that this recommendation was adhered to by the Country. As stated previously, the details and the seizure of cash or other monetary instruments are provided to Anguillian Police and the FIU to ensure that checks are made with all law enforcement.

342. The Examiners were informed that meetings between the Drug Task Force, the FIU, the Immigration Service and the Customs Service are held on a weekly basis.
343. HM Customs and Anguilla have a wide variety of ways and means by which customs information can be shared or exchanged to other customs authorities or to foreign competent authorities. These are listed below:
- Mutual Legal Assistance (United States of America) Act, M110
 - Through the Caribbean Customs Law Enforcement Council – signed Memorandum of Understanding
 - Regional Clearance System – signed Memorandum of Understanding
 - Proceed of Crime Act, 2009
 - There is also a signed MOU between the members of the World Customs Organization which allows for the sharing of information and accessibility of various resources
 - There is also a bi-literal agreement between Anguilla and Cuba

Sanctions

344. Declarations are required under Anguilla's Customs Act, section 89(1). There is a range of punishments for persons who make false declaration or fail to disclose anything in contravention of section 89. Under subsection (3), a person who fails to declare any baggage or thing as required is liable to a maximum fine of \$10,000 or 3 times the value of the thing not declared or the baggage or thing not produced, as the case may be, whichever is the greater. Under subsection (4), anything that is being taken into or out of Anguilla contrary to any prohibition or restriction by virtue of any enactment is liable to forfeiture.
345. At the time of the Mutual Evaluation, a new Declaration Form was put into effect. This form was required to be filed out by all passengers. The form allows for all passengers to declare currency or monetary instruments over the amount of EC \$27,000.00. Further, it states that the transportation of currency or monetary instruments, regardless of the amount, is legal. However, if you bring into or take out of Anguilla more than EC \$27,000 (or foreign equivalent or combination of both), you are required by law to file a report of International Transportation of Currency or Monetary Instruments with HM Customs. Monetary Instruments include notes and coin in any currency, postal order, cheques of any kind, including travellers cheques and cashiers cheques, bankers drafts, stocks, bonds or any other type of bearer instrument and any instrument prescribed as cash under the Proceeds of Crime Act 2009.'
346. As discussed above, and pursuant to Section 89(1) of the Customs Act, any person entering Anguilla shall at such place and in such manner as the Comptroller may direct, declare anything contained in this baggage or carried with him that (a) he has obtained outside of Anguilla or (b) being dutiable goods or chargeable goods that he has obtained in Anguilla without the payment of duty. Any person failing to do so is guilty of an offence and is liable to a fine of EC\$10,000 or three times the value of the thing not declared or the baggage or thing not produced, as the case may be, whichever is greater. While legal person is not defined in the Customs Act, the term 'person' in the laws of Anguilla is defined to include legal persons.
347. Further, anything chargeable with any tax that is found concealed or is not declared and anything that is being taken into or out of Anguilla contrary to any prohibition or restriction for

the time being in force under or by virtue of this enactment is liable to forfeiture. The Examiners feel that these sanctions are appropriate.

348. If prosecuted under the Customs Act for failure to declare, or false declaration, the Comptroller of Customs is the competent authority empowered to apply the required sanctions against persons who have carried out a physical cross-border transportation of currency or bearer negotiable instruments.
349. While currency and negotiable instruments are not specifically defined in the Customs Act, it has been noted by the Examiners that seizures of currency by Customs at the border have been turned over to the Royal Anguilla Police Force for investigation.
350. The POCA at Sections 124 to 127 provide that any person convicted of a money laundering offence is liable on summary conviction to both imprisonment and a fine on conviction on indictment. The proceeds from a money laundering offence are also subject to confiscation or civil forfeiture. Section 125 provides that, subject to subsection (2), a person is guilty of an offence if he conceals, disguises, converts, transfers or removes property from Anguilla. Further, a person convicted on indictment is liable to a fine without limit or to imprisonment for a term not exceeding fourteen (14) years or to both imprisonment and a fine. A legal person would not be liable to imprisonment.
351. The POCA provides at Sections 107 and 108 that a police officer (which is defined to include a customs officer) may search a person and seize any recoverable cash found on the person. Section 106(3) provides that the provisions pertain to cash found 'anywhere in Anguilla.'
352. Further, 'property' under the POCA is defined as property of every kind whether situated in Anguilla or elsewhere, and includes money, all forms of real or personal and inheritable or moveable property and things in actions and intangible property. The Examiners are of the view that sanctions relating to money laundering under the POCA are appropriate.
353. Pursuant to Part 2 (seizure and detention) and Part 3 (forfeiture) of the Anti-terrorism (financial and other measures)(Overseas Territories) Order, 2002 an 'authorized' officer can seize cash where he has reasonable grounds for suspecting that it is (a) to be used for the purposes of terrorism or (b) is, or represents property obtained through terrorism. The term 'cash' is not specifically defined in this order.
354. Penalties apply if a person is found guilty under articles 6-9 of the POCA and on conviction or indictment can be imprisoned for a term not exceeding fourteen (14) years, to a fine or both; or (b) on summary conviction to a term not exceeding six (6) months, or to a fine not exceeding the statutory maximum or both. The Examiners are of the view that these penalties are appropriate.

Cross border transportation re terrorist financing

355. Cross border transportation of currency or bearer negotiable instruments relating to terrorist financing would be an offence under Section 7 of the ATO which creates the offence of use or possession of money or other property for terrorism and / or Section 10 of the Order (money laundering in anyway). Both would be predicate offences under the Proceeds of Crime Act 2009 and open to the full range of restraint and confiscatory powers provided by that Act in addition to any under specific terrorist legislation.
356. These powers extend fully to funds or assets, in or from or for terrorism belonging to or jointly owned, directly or indirectly. Al-Qa'ida Order provides laws and such as procedures for

immediate freezing and without prior notice of funds or assets in accordance with S/RES/1267(1999) and S/RES/1373(2001).

357. Provisions within the Proceeds of Crime Act allow for persons affected by any order to make application to the court to discharge or vary any restraint order and in like manner orders can accommodate basic expenses, fees etc.

Cross border transportation re gold and precious metals/stones

358. As a matter of policy the discovery of any unusual cross-border movement of gold, precious metals or precious stones HM Customs Anguilla would take the following actions:
- notifying, as appropriate, the Customs Service or other competent authorities of the countries from which these items originated
 - notifying, as appropriate, the Customs Service or other competent authorities of the countries from which these items to which they are destined
 - co-operate with a view toward establishing the source, destination, and purpose of the movement of such items
 - would look to move towards taking the appropriate action which is necessary
359. Notification will be made to other countries that are signatories to the CCLEC MOU. Countries that have membership in the World Customs Organization will receive similar notification.
360. HM Custom Anguilla is also apart of the Caribbean Customs Joint Intelligence Unit which operates out of St. Lucia.

Additional Elements

361. Anguilla has x-ray machines for both in and outbound traffic at both ports, access to canine capacity on a loan basis from other Overseas Territories Customs and officers have been trained in Behavioural Analysis. The Examiners reviewed Customs techniques on their entry into Anguilla at the Blowing Point station. Our belongings were X-rayed prior to leaving Anguilla and boarding the boat to St. Maarten. The Examiners have been told that law enforcement has access to trained canines from St. Maarten and that they have utilized them in the past for specific operations.
362. With regard to a system for reporting the cross border transportation of currency, Anguilla has implemented a Form designated as Report of International Transportation of Currency or Monetary Instruments. This form had not yet been gazetted and in place at the time of the Mutual Evaluation; however, it was explained that the form is to be completed by any person entering or departing Anguilla in possession of, or posting for delivery abroad or receiving from abroad, currency, cheque and/or monetary instrument of or exceeding EC\$27,000 (\$10,000 USD) in total. At the time of the Evaluation this process was not as yet in place for review. It is the intention of the Anguillan government to enter these reports in a computerized database (OTRIS) for access by the FIU and other law enforcement authorities.

Recommendation 30 (Customs authorities)

363. The Customs Department falls under the Ministry of Finance. The Comptroller is responsible for the administration of the Customs Act and for any other enactment relating to any assigned matter, pursuant to Part 2, Section 3(2) of the Customs Act. The Customs Department is composed of—

•	Comptroller	1	
•	Deputy Comptrollers	2	1 Administration / 1 Enforcement
•	Assistant Comptrollers	2	1 Administration / 1 Enforcement
•	Senior Officers	11	2 Enforcement
•	Customs Officers	16	3 Enforcement
•	Asst. Customs Officers	19	2 Enforcement

364. The management team consists of the Comptroller the Deputies and Assistant Comptrollers. The Customs Department has responsibility for three ports of entry (one airport, one passenger sea port and one cargo sea port) and three sections (Entry processing, Post Office, and Enforcement Unit (Task Force)). The Enforcement Unit has primary responsibility for dealing with matters of AML/ CFT nature.
365. Funding for the Customs Department is provided by the Government of Anguilla in the annual budget. As the result of recent economic difficulties and budgetary restraints, there are sometimes limitations in acquiring the technical and other resources at times. The operational independence and autonomy to ensure freedom from undue influence and interference can be found throughout the Customs Act, which provides the Comptroller with broad discretionary powers.
366. All Customs Officers are subject the General Orders and Public Service Code of Ethics. Under Part 11 of the Customs Act, all officers are subject to sanctions if the have committed any of the offences listed:
- Section 109(1) makes the provision when any customs officer has been found taking a bribe and or collusion and is found guilty that that officer will be liable to a fine of EC\$20,000 or to imprisonment for a term of two (2) years, or to both and may be arrested.
367. All customs officer have to abide by the secrecy obligation as it pertains to their duty. Under Section 5 of the Customs Act all officers who are appointed and employed in carrying out any of the requirement of, or any duty imposed or any power granted by, any customs enactment and discloses to an unauthorised person any information, document or confidential instruction which he gained possession of in his or normal course of duty or permit anyone to have access to any records in his possession or custody is guilty of an offence and is liable to a fine of EC\$20,000 or to imprisonment for a term of two (2) years, or to both and may be arrested.
368. Also all public officers are subject to the sanctions set out by the Criminal Code, C140, Part 10 dealing with Corruption and the Abuse of Office :
- Section 98 deals with the Public or Official corruption
 - Section 99 deals with extortion by Public officers
 - Section 100 deals with Public Officers showing favour
 - Section 101 deals with Public Officers charged with special duties and having a conflict of interest
 - Section 102 deals with False claim by officials
 - Section 103 deals with Abuse of Office
369. Therefore all public servants (including HM Custom Officers) are required to maintain a high level of professionalism, integrity and is expected to have a high level of confidentiality at all times.

Customs – Technical expertise and training

370. The Customs Department has provided training to its officers in relation to money laundering and counter financing of terrorism over the last eight (8) years. This training has produced more competent and efficient staff members who are able to detect and deter instances of money laundering and terrorist financing. In particular, four accredited financial investigators have been trained.
371. HM Custom officers receive ongoing training in relation to Money Laundering (especially customs related offences that would spawn ML cases), Terrorist Financing, Drug Trafficking, Human Trafficking and Smuggling.
372. HM Custom requires that its officers are acquainted with emerging trends and typologies in Money Laundering, Financing of Terrorism, Drug Trafficking and customs related offences.
373. HM Custom officers have been exposed to the following courses and seminars across the Caribbean:

<i>Training - Customs Officers – Anguilla</i>		
Caribbean Border Enforcement Training CBET II	1 person	2007
Regional Integrity Workshop	1 person	2007
Financial Investigation Course	1 person	2009
Introduction to Financial Investigation	1 person	2008
Intelligence Gathering and Analysis	1 person	2008
Introduction to Financial Investigation	1 person	2009
Intelligence Gathering and Analysis	1 person	2009
Techniques of financial investigation	1 person	2009
Human Trafficking/Smuggling	1 person	2009

374. A review of the Training for Customs Officers indicated that only two persons attended a Financial Investigation Course in 2009, and in 2008. Further, there were no individuals trained in Asset Forfeiture or Bulk Smuggling investigations. Further, there appeared to be no officers trained in Anti-terrorism training. Customs should be provided more training in cross – border issues (Bulk Smuggling), and financial investigations, and asset forfeiture. Certainly with the advent of civil forfeiture under the newly legislated POCA, Customs may have the ability to utilize this technique in their investigations

Recommendation 32

375. Cross border currency and bearer negotiable instrument reports will be recorded and maintained on the OTRCIS system which will allow for the creation of annual statistics. However this only having just been introduced there are none recorded instances and thus no statistical information to provide.
376. Statistics for reported Suspicious Transactions were provided to the Examiners. It revealed that only \$23,800 in 2008 was reported and turned over to the Royal Anguilla Police Force for further investigation. In 2009, \$600,000 was reported as suspicious; however, while this was turned over to the Police Force for further investigation, it appears that these monies were from

a courier who was sending monies from a bank in Dutch St. Maarten to a local bank in Anguilla. These monies were also turned over to the Royal Anguilla Police Force for further investigation. In all instances the monies were declared to a Customs Officer on duty.

377. The Statistics regarding Customs reported suspicious transactions were provided to the Examiners and are the following:

YEAR	DATE	PLACE	Amount US\$	Mode	Action Taken
2008	25 July	Blowing Point	15,100.00	Passenger	Turned over to Police
2008	2 November	Blowing Point	8,700.00	Passenger	Turned over to Police
2009	27 May	Bank in St. Maarten to local Bank in Anguilla	600,000.00	Courier	Turned over to Police

- In all instances the monies were declared to the Customs Officer on duty

378. Prior to 2008 no records were kept with regard to cross border seizures. The records pertaining to cross border declaration are just now being entered in the OTRIS system, but at the time of the MEVAL this had not yet been in place, and therefore, no information could be provided.

2.7.2 Recommendations and Comments

SR. IX

379. Anguillan Authorities/H.M. Customs should remove the incorrect sinage with regard to the declaration at its ports of entry.

380. Anguilla should consider including in their POCA a section specifically relating to the seizure of cash and bearer negotiable instruments at their borders.

Recommendation 30

381. Customs should be provided with more training in cross – border issues, and financial investigations, civil/criminal forfeiture and bulk smuggling.

Recommendation 32

382. Customs should ensure that all cross-border incidents be reported and documented on the OTRIS system, thus providing continued and timely access to this information by Police, the FIU and other competent authorities.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	PC	<ul style="list-style-type: none"> • Cross-border transactions not yet computerized and therefore, not readily available to law authorities in Anguilla. • No specialized training in anti-terrorism issues.

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

3.1 Risk of money laundering or terrorist financing

383. The FATF AML/CFT Assessment Methodology allows for a country to determine whether to apply AML/CFT requirements, or to reduce/simplify the measures taken on the basis that the financial activity is undertaken occasionally or there is little or no risk of ML or FT in relation to a particular activity. Anguilla is in the preliminary stages of establishing a risk-based approach to AML/CFT compliance. However, until the Authorities make such a determination, the AML/CFT requirements apply fully to the below listed slate of regulated licensees and service providers.
384. Anguilla's Institutional arrangements and legal framework for the combating of ML and FT are codified in the newly enacted Proceeds of Crime Act, 2009, (POCA), UK extended Terrorism (Overseas Territories) Orders⁷⁹, the Financial Services Commission Act (FSCA), the Anti-Money Laundering and Terrorist Financing Regulations, 2009, (AML/TFR) and the Anti-Money Laundering and Terrorist Financing Code, 2009, (the Code) . The AML/TFR and the Code are established pursuant to Sections 158 and 159 of the POCA respectively, and together set out the AML/CFT requirements with which service providers are required to comply. Specifically, the Code which provides detail AML/CFT guidance to service providers is subordinate legislation, consequently, the Guidance Notes (GN) which have been folded into the Code as further guidance, do not themselves form part of the legal framework for the purposes of the Methodology and therefore are not considered other enforceable means (OEM).
385. The Anguillan Authorities have identified the greatest vulnerability to ML/FT abuse, as its offshore industry, with the highest threat emanating from abuses of legal vehicles and structures such as mutual funds, trusts, IBCs and other similar vehicles. Consequently, the FSC has heightened its supervisory focus on these company service providers as reflected in its examination schedule for 2009, where sixty percent (60%) of all examinations conducted for 2009 to date, related to these service providers.
386. The FSC regulatory responsibilities extends to ensuring that financial institutions have adequate ML and FT risk management structures in place. The FSC requires all institutions to have structures in place to identify, measure, monitor and manage or mitigate all risk, including AML and CFT risk.
387. The FSC advises that the adequacy of financial institutions' risk management structures is assessed as part of the licensing process to allow the institution to operate in the financial system. Ongoing assessments are conducted via onsite examination (general and targeted) and compliance and prudential meeting with licensees.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

⁷⁹ Terrorism is criminalised under three UK statutory Instruments (Orders), The Terrorism Order, Al-Qa'ida and Taliban Order and the Anti-Terrorism Financial Order (see section 2)

3.2.1 Description and Analysis

388. The Financial Services Commission (FSC) is established pursuant to Section 2 of the Financial Services Commission Act, as the regulatory body for all financial institutions in Anguilla, with the exception of domestic commercial banks. Domestic commercial banks are licensed and regulated/supervised by the Eastern Caribbean Central Bank, (ECCB). However, as regards AML/CFT matters, under POCA, the authority and responsibility in this regard devolves to the FSC in its mandatory capacity as competent authority for all service providers and regulatory licensees, including domestic banks. The FSC advises that the ECCB which conducts safety and soundness examination under a MOU also conducts AML/CFT examinations on its behalf for two offshore subsidiaries of two domestic banks.

389. The FSC administers the following pieces of financial services enactments which establish the FSC's regulatory authority with respect to the financial institution identified in the enactment:

- Company Management Act
- Fraudulent Disposition Act
- Friendly Society Act
- Insurance Act
- Mutual Funds Act
- Protected Cell Companies Act
- Trust Companies and Offshore Banking Act
- Trust Act

390. The AM/TFR and the Code impose customer due diligence obligations on a number of financial institutions. These obligations apply equally to all service providers (detailed in schedule 2 of the AM/TFR and which include regulatory licensees (listed in Schedule 1 of the AM/TFR)

391. The service providers that are subject to AML/CFT CDD requirements in Anguilla are as follows:

1. A person who, by way of business, provides any of the following services to third parties, when providing such services—
 - 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;
 - providing a business, accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
 - acting as, or arranging for another person to act as, a nominee shareholder for another person;
 - arranging for another person to act as a nominee shareholder for another person;
2. A person who conducts as a business one or more of the following activities for, or on behalf of, a customer—
 - lending, including consumer credit, mortgage credit, factoring, with or without recourse, and financing of commercial transactions, including forfeiting;

- financial leasing;
 - issuing and managing means of payment, including credit and debit cards, cheques, travellers' cheques, money orders and bankers' drafts and electronic money;
 - financial guarantees or commitments;
 - participation in securities issues and the provision of financial services related to such issues;
 - providing advice on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings;
 - safekeeping and administration of cash;
 - investing administering or managing funds or money;
 - money broking;
3. A person who, as a business, trades for his own account or for the account of customers in—
- money market instruments, including cheques, bills, certificates of deposit and derivatives;
 - foreign exchange;
 - exchange, interest rate and index instruments;
 - financial futures and options;
 - commodities futures; or
 - shares and other transferable securities;
4. A person who, by way of business—
- provides accountancy or audit services;
 - acts as a real estate agent, when the person is involved in a transaction concerning the buying and selling of real estate;
5. An independent legal professional;
6. A high value dealer.
7. The following are “service providers”, when acting in the course of a business, whether carried on in, from within or outside Anguilla—
- a mutual fund registered or recognised, or required to be registered or recognised, under the Mutual Funds Act c. M 107 when marketing or otherwise offering its shares;
 - a person who, although not licensed under the Mutual Funds Act c. M 107, acts as the administrator or manager or manager of a public fund registered, or required to be registered, or a private or professional fund recognised, or required to be recognised, under the Mutual Funds Act c. M 107.
8. A person that carries on insurance business is a service provider only where it carries on—
- long-term business; or
 - any form of life insurance business or investment related insurance business that may be classified as general business.
9. A person who carries on business as—
- an insurance agent;
 - an insurance broker;

- an insurance sub-agent;
 - a principal representative (insurance);
- is a service provider only where the person acts with respect to any type of business referred to in paragraph 8 above.

392. Regulatory licensees are Schedule 1 licensees under the following Acts:

- The Banking Act
- The Trust Company and Off-shore Banking Act
- The Company Management Act
- The Insurance Act, (which covers, insurance agents, brokers, sub-agents, principal representatives, managers)
- The Mutual Funds Act
- The Securities Act

393. The ECCB, in accordance with the Banking Act, has regulatory responsibilities for the domestic commercial banks on Anguilla, namely, National Bank of Anguilla Limited, Caribbean Commercial Bank (Anguilla) Ltd, FirstCaribbean International Bank (Barbados) Ltd and Scotiabank Anguilla Ltd. The regulatory responsibility includes making recommendations to the Minister of Finance on the licensing, suspension or revocation of the licences of domestic banks, the onsite and offsite review of domestic banks' operations, and the monitoring of domestic banks' compliance with all applicable legislation, regulations and codes (including AML/CFT compliance).

394. There appears to be a lack of clarity as it relates to AML/CFT supervision for domestic banks. Under the POCA, the FSC is the named relevant supervisory authority for regulated service providers. As it relates to non-regulated service providers, consistent with the provisions of Section 23 of the AM/TFR, the FSC has also been designated as the supervisory authority for these entities. The FSC therefore, is the sole supervisory authority for the purposes of Anguilla's AML/CFT framework. Neither the POCA nor the AM/TFR allows for the FSC to delegate its supervisory authority to another person or body. While the FSC undertakes AML/CFT examinations for other regulated service providers, it does not undertake these exercises for domestic banks. The ECCB is the safety and soundness regulatory authority under the Banking Act, advises that, as part of the scope of its safety and soundness examinations, AML/CFT matters are routinely looked at. Based on the foregoing therefore, it appears that domestic banks are not being supervised for AML/CFT matters in keeping with the framework set out by POCA. Further, there is no formal information sharing arrangement between the ECCB and the FSC in relation to AML/CFT examination undertaken for domestic banks.⁸⁰ The FSC advises that the ECCB has not shared any of its AML/CFT examination findings for domestic banks neither have the FSC participated in any on-site examinations undertaken by the ECCB despite such a request being made. The Examiners note however, that under the Banking Act, the ECCB has general powers to impose sanctions for the violation of any law or regulation to which the institution or person is subject.

395. The authorities advise that the ECCB has responsibility for the regulation/supervision (including AML/CFT implementation) of the off-shore banking subsidiaries of two domestic banks. The FSC also advises that there is an MOU in place between the ECCB and the FSC to facilitate information sharing for the on-site AML/CFT examinations of the off-shore operations of domestic banks carried out on behalf of the FSC. However, as mentioned earlier,

⁸⁰ There is a MOU in place whereby the ECCB undertakes AML/CFT examination of offshore subsidiaries of two domestic banks on behalf of the FSC.

neither POCA nor the AM/TFR allows for the delegation of the FSC's supervisory powers in this regard. Notwithstanding the foregoing, the collaboration between the FSC and the ECCB with regard to AM/CFT examination findings of off-shore banking operations appear ineffective. In practice the ECCB's examination cycle appears to be longer than three (3) years. The ECCB advises that the formal safety and soundness report of examination findings is provided to the MOF who in turn shares them with the FSC.

396. The Eastern Caribbean Securities Regulatory Commission (ECSRC) is the safety and soundness regulatory authority for securities business conducted on Anguilla. The ECSRC's regulatory authority is detailed in the Securities Act, (SA). The ECSRC's fit and proper test for market participants includes an assessment of the applicant's AML/CFT compliance policies and procedures, although the authority for AML/CFT supervision devolves to the FSC. The one licensed securities broker-dealer on the island is the National Bank of Anguilla Limited, which is subject to regulatory oversight from the ECCB. However, as noted earlier, the FSC is the body vested with the supervisory powers for AMC/CFT supervision and the Commission has never undertaken such an examination. Further, similar to the situation with domestic banks, there is no evidence that the FSC's supervisory authority has been delegated to the ECCB as it relates to the supervision of securities broker/dealers. In interviews it was confirmed that the NBA's securities broker-dealer activities, which are reportedly kept separate from its commercial banking business, (albeit not in a separate legal vehicle), have never undergone an AML/CFT examination.
397. The FSC, as the sole supervisory authority for AML/CFT regime in Anguilla, has supervisory responsibility for 422 regulated financial institutions in addition to 108 DNFBP licensees. Majority of the entities supervised by the FSC are captive insurance companies (178) that are managed by company managers that are also covered under the regime. Additionally, the authorities advise that most of the thirty-eight (38) law firms under the DNFBP regime are also company managers listed as financial entities for the purposes of the POCA. When adjusted for these overlaps, the number of entities for which the FSC has AML/CFT supervisory responsibility totals 314. The FSC has a staff complement of six (6) persons (including the Director), making the entity per examiner ratio approximately fifty-three (53). Between January 2006 and June 2009, the FSC conducted fifty-three (53) examinations five of which were the subject of a subsequent examination.

Recommendation 5

398. The provisions pertaining to customer due diligence are found in the Sections 10 to 14 of the AML/TFR and Sections 10 to 23 of the Code. These sections of the relevant legislation establish mandatory requirement for all service providers to know/understand the customers' business, monitor customer transactions, and report suspicious transactions to the relevant authority. While the Code came into force on July 16, 2009 consequent on the passage of the POCA on the same date, the AML/TFR has a staggered implementation date for those service providers who were not previously subject to the now repealed AML regime, (advised as real estate brokers and accountants). In this regard, Sections 15 (2) and (15 (3) have immediate effect while Sections 1 to 11 (except for 10 (4)) and 13 and 14, will not become effective until 1 August 2009 with the remaining provisions coming into effect on 1 November 2009. In this regard, issues such as Enhanced CDD (Sec. 12), ongoing monitoring (Sec. 10(4)), relationships with shell banks and anonymous accounts (Sec. 15 (1), Policies, systems and controls to prevent and detect ML and TF (Sec. 16), Records required to be kept (Sec.17), Retention period for records to be kept (Sec. 18), Training (Sec. 19), MLRO (Sec. 20 and 21) Directions re FATF counter-measures (Sec. 22), and Designated Authority (Sec. 23) all fall outside the implementation timeframe contemplated by the methodology for rating purposes. It is noted

however that these issues for the most part are also covered in the Code which are considered subordinate legislation.

399. Section 15(2) of the AML/TFR prohibits a service provider from setting up or maintaining an anonymous account or an account in a name which it knows or has reasonable grounds to suspect, is suspicious. Section 10 of the Code requires service providers to obtain customer due diligence (CDD) information, including identification procedures, on every customer, third party and beneficial owner. However, neither the AML/TFR nor the Code expressly prohibits numbered accounts and how service providers should treat with such accounts. It should be noted that the authorities advise that there are no existing numbered accounts on Anguilla. Given the recent passage of the Regulations, the Examiners were unable to assess the effectiveness of their implementation.
400. However, in interviews, service providers attested that it was their practice to identify all applicants for business prior to conducting a one off transaction or establishing a relationship and to keep identification documents available to the relevant authorities. The FSC reports that based on exam findings in the past, service providers do keep records in line with identification procedures set out in previously existing guidelines and include official picture documents, personal professional references and international database searches. Further, on occasions where physical identification documents are kept by overseas introducers, these records were made available to the FSC within 72 hours as required by directives.

When is CDD required

401. Section 10(1)(a) of the AML/TFR requires financial institutions in Anguilla to obtain satisfactory evidence of the identity of prospective client before establishing a business relationship or carrying out occasional transactions with these clients.
402. An occasional transaction is defined as a transaction carried out otherwise than as part of a business relationship and is carried out as part of a single transaction or linked transaction that exceeds EC\$2,500 (US\$1000 equivalent) for money service businesses, and EC\$37,500 (US\$14,000 equivalent) for service providers other than money service businesses.
403. Section 10(1)(b) of the AML/TFR further makes it mandatory for a service provider to apply customer due diligence measures where money laundering or terrorist financing is suspected or where there is doubt as to the veracity or adequacy of documents, data or information previously obtained. Anguilla does not have a threshold reporting requirement and service providers are required to apply CDD requirements on a risk sensitive basis - Section 10(4) of the AML/TFR requires service providers to assess the risks of ML/TF when conducting customer due diligence.
404. With regard to wire transfers that are occasional, Section 46(1) 43 (1) of the Code requires service providers to ensure that every transfer of funds is accompanied by the full originator information. Full originator information, is defined in Section 43 as the name and account number of the payer, together with the payer's address, and either, the payer's date and place of birth or the customer identification number or national identity number. Where the payer does not have an account, a unique identifier that allows the transaction to be traced back to the payer is required.

Required CDD Measures- Identification of Customers

405. Sections 10 and 11 of the AML/TFR and of the Code require service providers to undertake CDD measures prior to establishing a business relationship or executing an occasional transaction. Section 4(1) of the AML/TFR defines Customer due diligence to include

identification and the verification of identification of a customer, a third party for whom a customer may be acting, beneficial owner(s) of a customer and third party where either the customer or third party, or both are not individuals. In the case of beneficial owners of a legal entity, the Code requires identification measures of shareholders owning twenty percent (20%) or more.

406. The verification measures required to be undertaken by a service provider should be such that he is satisfied as to the identity of each beneficial owner and third party. These measures are applicable in the case of both individuals and legal arrangements, such as a body corporate, partnerships, foundations, trusts or similar arrangements. Part 3 of the Code and the attendant Guidance Notes in this particular set out verification methods in line with the Basel CDD Paper that may be utilized by service providers in ensuring independence of verification.
407. Section 4(2)(a) of the AML/TFR mandates that a person purporting to act on behalf of a legal arrangement, is authorised to do so. It also requires service providers to identify and verify the identity of that person. Section 15(1) of the Code sets out the identification information requirements for legal persons which include inter alia, name and address of legal entity, incorporation details, principal place of business, name of directors, identification information on those directors who have authority to act on behalf of the business. The identification information requirements for trusts and other legal arrangements are set at the same legal standard as that for corporations.
408. Service providers of insurance business are also required by Section 4(2)(b) of the AML/TFR to apply these CDD measures for beneficiaries under any long term or investment linked policies.
409. Section 10(1) of the AML/TFR requires that a service provider obtain customer due diligence information as defined in Section 4 (1)(e) on every customer, third party and beneficial owner. Customer due diligence is defined to include verification of identification in line with the Basel Committee standards.
410. The GN reinforces the requirement for identification and verification of identity of beneficial owners and third parties acting on behalf of legal persons and arrangements, codified in both the Regulations and Code. Further, service providers interviewed indicated that in practice, the identification and verification process for all customers including beneficial owners and all third parties acting on behalf of legal persons/arrangements is completed prior to finalisation of transactions. Banks interviewed indicated that in the case of deposits, no withdrawals are allowed until the CDD process is complete.
411. Section 11(1) of the AML/TFR Code sets out the information requirements for service providers to govern business relationships with their customers. Service providers are required to obtain relationship information which is defined to include: the purpose and intended nature of the business, type, volume and value of expected activity, source of funds, and where the relationship or occasional transaction is regarded as high risk, the source of wealth of the customer, third party or beneficial owner; and such other information concerning the relationship that on a risk sensitive basis, the service provider considers appropriate.
412. In the case of a trust, service providers are required to obtain such information to allow it to determine on the type of trust, as well as the nature of its activities and the places where these activities are undertaken. Where the trust is part of a more complex structure, details of that structure including any underlying companies or other legal structures, must be obtained. In the case of a company, service providers must obtain details of any group of which the company forms a part, including details of the ownership of the group. Additionally, Section 15(2) of the Code requires that service providers obtain identification information on individuals who are the ultimate holders of twenty percent (20%) or more of a legal entity.

413. With regard to ongoing due diligence, Section 10(3) of the AML/TFR requires service providers to undertake ongoing due diligence on a business relationship, while Sections 11(3) of the Code provides for the termination of that relationship if the service provider is unable to carry out on-going monitoring of the relationship. Further, Section 10(2)(e) of the AML/TFR requires service providers to periodically update customer due diligence information and adjust its risk assessment accordingly. Section 4 (5) defines “ongoing monitoring” in line with the FATF methodology - ongoing due diligence should include scrutiny of transactions undertaken throughout the course of the relationship to ensure consistency with the institutions knowledge of the customer, their business and risk profile, including the source of funds where necessary.

Risk

414. On the issue of enhanced due diligence for higher risk categories of customer, business relationship or transaction, this area is governed by Sections 12 of both the AML/TFR assures, and enhanced on-going monitoring to mean those measures and processes that involve specific and adequate measures to compensate for the higher risk of money laundering or terrorist financing.
415. Section 12(2) of the Regulations sets out the measures that service providers must apply on a risk sensitive basis when carrying out enhanced due diligence. Specifically, Section 12(2) requires that:
- (2) A service provider must, on a risk-sensitive basis, apply enhanced due diligence measures and undertake enhanced ongoing monitoring—
 - (a) where the customer has not been physically present for identification purposes;
 - (b) where the service provider has, or proposes to have, a business relationship with, or proposes to carry out an occasional transaction with, a person connected with a country or territory that does not apply, or insufficiently applies, the FATF recommendations;
 - (c) where the service provider is a domestic bank that has or proposes to have a banking or similar relationship with an institution whose address for that purpose is outside Anguilla;
 - (d) where the service provider has or proposes to have a business relationship with, or to carry out an occasional transaction with, a politically exposed person;
 - (e) where any of the following is a politically exposed person—
 - (i) a beneficial owner of the customer;
 - (ii) a third party for whom a customer is acting;
 - (iii) a beneficial owner of a third party described in subparagraph (ii);
 - (iv) a person acting, or purporting to act, on behalf of the customer.
 - (f) in any other situation which by its nature can present a higher risk of money laundering or terrorist financing.
416. Notwithstanding paragraph (2)(f), the Examiners did not note any reference in either the AML/TFR or Code to private banking, trusts that operate as personal asset holding vehicles and nominee arrangements as cases in which it is recommended that enhanced due diligence be applied.

417. Section 12(3) of the AML/TFR treats contravention of Section 12 as an offence and a service provider that contravenes this section is liable on summary conviction, to a fine of \$100,000. It is also noted that the FSC, under Section 35 of the FSCA (as amended by section 167 of the POCA) was recently conferred the power to apply administrative sanctions for breaches of the AM/TFR and Code. The applicable sanction in this regard is limited to a maximum fine of \$50,000. However, it is unclear as to how the system of administrative sanctions would be applied to domestic banks as the FSC does not now supervise these entities. Further, as mentioned earlier, the regime for AML/CFT supervision for domestic banks needs to be clarified as the Authorities advise that such examinations are routinely undertaken by the ECCB, there are no formal or legal arrangements in this regard.
418. The FATF framework allows for financial intermediaries to apply reduced or simplified CDD measures when identifying and verifying the identity of a customer where the risk of ML and TF are low. Section 10 of the AML/TFR as well as Section 10 of the Code make it mandatory for service providers to apply a risk sensitive approach to determining the extent and nature of the CDD measures to be applied to a customer and any third party or beneficial owner. However, while both the AML/TFR and the Code address circumstances warranting enhanced due diligence, they are silent on the circumstances that would warrant simplified or reduced CDD measures. Further, Section 14 of the AML/TFR sets out the exceptions to the application of customer due diligence for the following persons and circumstances once the service provider has reasonable grounds for believing that the customer is :
- (i) a regulated person;
 - (ii) a foreign regulated person;
 - (iii) a public authority in Anguilla; or
 - (iv) a body corporate, the securities of which are listed on a recognised exchange.
 - (b) in the case of life insurance business, the product is a life insurance contract where the annual premium is no more than EC\$2,000 or where a single premium of no more than EC\$5,000 is paid.
419. This exception however does not apply to a third party for whom the customer may be acting or with respect to the beneficial owners of such a third party. Likewise, if money laundering or terrorist financing is suspected, the exceptions do not apply.
420. As mentioned earlier, the AML/TFR is silent on how CCD measures should be applied to circumstances where the risk of ML/TF is low. As such no guidance is given in relation to the application of reduced CDD measures when entering business relationships with customers resident in another country. The Authorities posit that service providers are not permitted to apply reduced CDD measures as a result of risk profiling, however Section 10 of the AM/TFR and Code does not make this requirement explicit.
421. Section 10(1)(b)(i) of the AML/TFR specifically requires that where a service provider suspects ML or TF, then full CDD measures should be applied. Full CDD measures are also applicable where there is doubt with regard to previously obtained customer information and at other appropriate times to existing customers as determined on a risk sensitive basis. This is further bolstered by Section 14(3) of the AML/TFR which states that exceptions to CDD application measures do not apply in cases where ML or TF is suspected.

422. With regard to the application of CDD measures on a risk sensitive basis as allowed for under Section 10 of the AMLL/TFR, the Anguillan Authorities have not provided specific guidance as it relates to the application of reduced or simplified CDD measures. However as previously noted there is specific guidance for when enhanced due diligence is applicable.
423. As it relates to introduced business, Section 26 of the Code provides specific guidance for service providers where they rely on introducers and intermediaries to conduct CDD measures. The section requires that where reliance is placed on intermediaries and introducers, service providers must be satisfied that the CDD measures applied are of an equivalent standard to the AML/TFR and the Code. Section 26 of the AML/TFR also requires that before relying on an intermediary or an introducer to apply customer due diligence measures in accordance with section 13 of the AML/TFR with respect to a customer, a service provider shall satisfy itself that the intermediary or introducer is a regulated person or a foreign regulated person and has procedures in place to undertake customer due diligence measures in accordance with, or equivalent to, the AML/TFR and the Code.

Timing of Verification

424. As indicated previously, service providers are required to apply customer due diligence measures in accordance with section 4 of the AML/TFR, before establishing a business relationship or carrying out an occasional transaction. Section 11(1) of the AML/TFR stipulates that a service provider shall not establish a business relationship or carry out a one off transaction if that service provider is unable to apply CDD measures. Section 4 of the AML/TFR defines CDD measures which apply equally to customers, third parties acting on behalf of customers, beneficial owners of the customer and third party where either the customer or third party or both are not individuals.
425. Sections 10(5) & (6), of the AML/TFR provide for completion of verification of customer and beneficial owner identity following establishment of the relationship if it is necessary not to interrupt the normal conduct of business, there is little risk of money laundering or terrorist financing occurring as a result and verification of identity is completed as soon as reasonably practicable after the contact with the customer is first established.
426. Section 10(6) of the AML/TFR allows for the establishment of an account provided that there are adequate safeguards to ensure that, before verification has been completed, the account is not closed and transactions are not carried out by or on behalf of the account holder including any payment from the account to the account holder. A fine of EC\$100,000 is applicable for failure to comply with these provisions; however this is on summary conviction.

Inability to complete CDD

427. Section 11 of the AML/ TFR details the actions required when a service provider is unable to comply with identification and verification procedures as set out in criteria 5.3 to 5.5. In this regard service providers may not establish the business relationship or carry out the occasional transaction.
428. Section 11(2) of the AML/TFR provides for the termination of a business relationship if the service provider is unable to complete the requisite verification procedures of the identity of the customer, third party or beneficial owner after the establishment of that business relationship.
429. Additionally, Section 11(4) of the AML/TFR requires the service provider to consider whether he is required to make a money laundering disclosure or a terrorist financing disclosure in relation to the termination of the business relationship in each of the scenarios described above.

Existing Customers

430. With regard to existing customers, Section 10(1)(c) of the AML/TFR requires that CDD measures be applied to these business relationships on a risk sensitive basis or other appropriate times. Section 11(3) of the AML/TFR requires a service provider to terminate a business relationship with a customer if he is unable to undertake ongoing monitoring with respect to the business relationship. The Authorities advice that it is a requirement of the FSC that licensees update their CDD information on an ongoing basis based on material changes in the customer's operations, nature of business, ownership, types of transactions, among others, and that licensees are also required to obtain due diligence information on pre-existing customers who pre-date the passage of the current AML/CFT legislation. The Authorities also advice that the FSC is currently working with a number of institutions to update their CDD information.
431. Section 15(2) of the AML/TFR specifically provides that 'A service provider shall not set up or maintain an anonymous account or an account in a name which it knows, or has reasonable grounds to suspect, is fictitious'.

Recommendation 6

432. Section 5 of the AML/TFR appropriately defines a politically exposed person (PEP) Section 12 of the Code imposes the obligation to establish, maintain and implement appropriate risk management systems to determine whether a customer, third party or beneficial owner is a PEP. Further, these risk management systems should take into account that an individual may become a PEP after the establishment of the business relationship.
433. Section 12(2)(e) of the AML/TFR requires a service provider to, on a risk sensitive basis, apply enhanced due diligence measures and undertake enhanced ongoing monitoring where any of the following is a PEP;
- (i) a beneficial owner of the customer;
 - (ii) a third party for whom a customer is acting;
 - (iii) a beneficial owner of a third party described in subparagraph (ii);
 - (iv) a person acting, or purporting to act, on behalf of the customer.
434. Section 12 (2) of the Code stipulates that a service provider shall ensure that no business relationship is established with a PEP or where the third party or beneficial owner is PEP, unless the prior approval of the board and management has been obtained. Section 12(3) requires that where a service provider has established a business relationship with a customer and the customer, third party or beneficial owner is subsequently identified as a PEP, the business relationship shall not be continued unless the approval of the board or senior management has been obtained.
435. Section 12(5) of the Code requires financial institutions to take reasonable measures to establish the source of wealth and the source of funds of customers, third parties and the beneficial owners identified as PEPs.
436. With regard to CDD measures and ongoing monitoring, service providers indicated that thEy have access to commercial electronic databases listing PEPs, such as World Check among others, as well as extensive use of the web based search engine, Google. Service providers

interviewed were all aware of the definition of PEPs and indicated that their systems were adequate to allow them to identify such persons for the application of the requisite enhanced due diligence. The Examiners are however concerned as to the capacity of service providers to effectively implement the requirements of the Code in this regard, given the paucity of resources available to the AML/CFT function in most instances. This is particularly true of the captive insurance industry. The resources reportedly dedicated to the AML/CFT function for service providers interviewed, for the most part appeared inadequate for the size of their operations. In the case of one insurance service provider that was interviewed, its AML/CFT function was reportedly staffed with a single officer, resident in a foreign country and who had responsibility for the group AML/CFT function in that jurisdiction in addition to the branch operations in Anguilla.

Additional Elements

- 437. The requirements with regard to PEPs are not extended to PEPs who hold prominent public functions domestically.
- 438. Anguilla has not signed, ratified or implemented the 2003 UN Convention against Corruption. As a British Overseas Territory Anguilla has to request that international conventions be extended to it. The Government of Anguilla makes the request when it determines that it is appropriate to do so. No request has been made with regard to the UN Convention against Corruption.

Recommendation 7

- 439. Section 41 of the Code sets out a comprehensive list of requirements in line with the FATF framework, to guide banks in their correspondent relationships. These requirements which contemplates a risk-based approach to the application of customer due diligence, include information sufficient to fully understand the nature of the respondent's business, its reputation and the quality of supervision to which it is subject.
- 440. Section 41(c) of the Code stipulates that a bank that proposes to be a correspondent bank shall assess the respondent bank's AML/CFT systems and controls to ensure that they are consistent with the requirements of the FATF Recommendations. Subparagraph (vi) requires senior management approval prior to establishing a correspondent relationship, while subparagraph (viii) requires an annual review of the correspondent relationship by senior management.
- 441. With regard to documentation of the respective AML/CFT responsibilities of each institution involved in the correspondent arrangements, Section 41(c)(vii) requires that the domestic bank ensures that the relevant responsibilities of each party are understood and properly documented.
- 442. Section 42 of the Code addresses the issue of payable through accounts. Specifically Section 42 requires that where a correspondent bank provides customers of a respondent bank with direct access to its services, whether by way of payable through accounts or by other means, it shall ensure that it is satisfied that the respondent bank (a) has undertaken appropriate customer due diligence and, where applicable, enhanced customer due diligence in respect of the customers that have direct access to the correspondent bank's services; and (b) is able to provide relevant customer due diligence information and verification evidence to the correspondent bank, upon request.

443. The above arrangements governing correspondent relationships apply only to banks and do not include similar relationships to banking, as contemplated under the FATF framework. The Authorities advise that payable through accounts are not generally offered by financial institutions. Similarly, banks in Anguilla do not currently offer correspondent relationships as part of their service offerings. Consequently the ML/TF risk as it relates to cross-border correspondent relationships is currently low.

Recommendation 8

444. Section 5(2) of the Code requires service providers to establish, maintain and implement systems and controls and take such other measures as it considers appropriate to guard against the use of technological developments in money laundering or terrorist financing. However, neither the Regulations nor the Code provide specific guidance on measures to be applied in the delivery of electronic services to effectively mitigate the risk of ML/TF through this delivery channel.
445. Section 23 of the Code, requires a service provider who enters into a business relationship with an individual who is not physically present, in addition to the CDD measures covered in Section 10 of the AML/TFR, to perform at least one additional check designed to mitigate the risk of identity fraud; and apply such additional enhanced customer due diligence measures or undertake enhanced ongoing monitoring, as the service provider considers appropriate.
446. Sections 20 23 and 24 of the Code detail the measures to be adopted by service providers when engaged in a non-face to face transaction including the use of properly certified documents. Specifically, Section 21 24(1) of the Code requires that a certifier on whom a service provider relies should be a professional who is subject to rules of conduct which provide the service provider with a reasonable level of comfort. Section 24 also prescribes a number of steps that a certifier must complete in certifying the identity of a non face-to-face customer. These steps include the obligation of the service provider to ensure that the certifier is real, if the certifier is located in a higher risk jurisdiction.

3.2.2 Recommendations and Comments

Recommendation 5

447. The Regulations and Code should expressly prohibit numbered accounts or alternatively, specify how these should be treated.
448. Regulations and Code should include private banking, trusts that operate as personal asset holding vehicles and nominee arrangements as cases in which it is recommended that enhanced due diligence be applied.
449. For clarity, the Authorities should consider providing specific guidance as it relates to the application of reduced or simplified CDD measures, as a result of required risk assessment by service providers in keeping with the FATF methodology.
450. The Authorities should clarify the legal framework for the application of administrative sanctions by the FSC, as it relates to domestic banks.

Recommendation 6

451. The Anguillian Authorities should consider including domestic PEPs in the AML/CFT framework.

452. The Anguillian Authorities should consider having the United Kingdom extend the United Nations Convention against Corruption to their jurisdiction.

Recommendation 7

453. The Anguillian Authorities should consider extending the requirements with regard to cross-border correspondent banking to other financial institutions that may engage in similar cross-border relationships.

Recommendation 8

454. The Regulations and or Code should provide for specific guidance (in line with Basel paper on Risk Management Principles for Electronic Banking) on measures to be applied in the delivery of electronic services to effectively mitigate the risk of ML/TF through this delivery channel.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	PC	<ul style="list-style-type: none">• Effectiveness cannot be assessed due to the recent passage of the POCA, Regulations and the Code.• The regime for the supervision of and sanction powers for domestic banks and their off-shore subsidiaries ambiguous.• No requirement in the Regulations or Code that enhanced due diligence be applied to private banking, trusts that operate as personal holding vehicles and nominee arrangements.
R.6	LC	<ul style="list-style-type: none">• Effectiveness of implementation cannot be assessed given the recent passage of the Regulations and Code compounded by the limited human resource capacity both in the FSC and at most service providers in this area.
R.7	LC	<ul style="list-style-type: none">• Effectiveness of implementation cannot be assessed given the recent passage of the Code, however the risk as it relates to cross-border correspondent banking in the jurisdiction is low.• Cross-border correspondent banking requirements do not extend to other financial institutions that may engage in similar cross-border relationships.
R.8	LC	<ul style="list-style-type: none">• Effectiveness cannot be assessed due to the recent passage of the POCA, Regulations and the Code.

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

Recommendation 9

455. Section 13(1) of the AML/TFR provide for a service provider to rely on an introducer or an intermediary to apply CDD measures with respect to a customer, third party or beneficial owner if the introducer is a regulated person and the introducer or intermediary consents to being relied on. The service provider however remains liable for any failure to apply those measures where he relies on an introducer or intermediary. Further, a service provider who relies on introduced business is required to assess the risk of relying on the intermediary or introducer, to determine whether it is appropriate to place reliance on the intermediary and whether additional measures should be taken to manage such a risk in this regard.
456. The GN details the factors that a service provider may consider in completing a risk assessment on an introducer/intermediary. These factors include inter alia, the stature and regulatory track record, nature of the business in which the introducer is involved, the adequacy of the supervisory regime to combat ML/TF to which the introducer is subject, and the extent to which the intermediary or introducer itself relies on third parties to identify its customers and hold evidence of identity or to conduct other due diligence procedures, and if so who those third parties are. A service provider may, as a result of the risk assessment, determine that additional measures are necessary to mitigate the additional risk and these measures may include inter alia, considering whether it is appropriate to rely solely upon the information provided by the introducer, and whether additional CDD information and or/ documentation should be required.
457. Section 26 of the Code sets out the requirements that a service provider must satisfy before relying on an introducer or intermediary to apply CDD measures. In this regard, the service provider must satisfy itself that the introducer is a regulated person and has procedures in place to undertake CDD measures in accordance with, or equivalent to the AML/TFR Regulations and the Code.
458. With regard to necessary information concerning critical elements of the CDD process, Section 13(1A) of the AML/TFR mandates that a service provider obtain documented assurance from the introducer that he has applied the CDD measures on which the service provider intends to rely; that the introducer is required to and does keep a record of the evidence of identification of the relevant customer and that the introducer will immediately provide the information in that record to the service provider on his request. Further, Section 26(1)(d) of the Code mandates that that where a service provider intends to rely on an introducer he should obtain written confirmation from the introducer that each introduced customer is an established customer of the introducer as well as obtain sufficient information about each such customer to enable it to assess the risk of ML/TF involving that customer. The requirement that the specified CDD elements (E.C. 5.3 to 5.6) should be made immediately available to financial institutions is not explicit in the Code or Regulations.
459. Section 39 of the Code requires a service provider to periodically review the accessibility of, and the condition of, paper and electronically retrievable records and consider the adequacy of the safekeeping of record and periodically test procedures relating to the retrieval records.
460. Notwithstanding the measures that have been mandated to mitigate the risk of ML/TF of introduced business, a critical inherent weakness of introduced business, is the extent to which an introducer or intermediary relies on other third parties to complete CDD measures. The extent of this reliance could be several layers deep with consequential heightening of the ML/TF risk at each successive level. This risk is higher in the off-shore sector, in particular the insurance sector, than in the domestic sector where service providers advised that all customer identification records regardless of whether they were introduced, are required to be provided at account opening or commencement of the business relationship.
461. Under Anguilla's AML/CFT regime, a service provider is not obliged to refuse from entering into a business relationship with a customer of an introducer who in turn relies on another third

party for the completion of CDD measures. Further, the GN which are not themselves OEM, only recommends that a service provider consider this aspect of ML/TF risk, in its mandatory risk assessment of an introducer or intermediary. Specifically the GN states, “*In carrying out a risk assessment the service provider will need to consider...the extent to which the intermediary or introducer itself relies on third parties to identify its customers and to hold evidence of identity or to conduct other due diligence procedures, and if so who those third parties are*”.

462. It is the Examiners view that the effectiveness of Section 13 (1A) of the AML/TFR could be compromised by the higher level of risk presented by an introducer chain. The Authorities should therefore consider amending the Regulations or Code to include the requirement that a service provider accept introduced business solely from an introducer or intermediary who itself has face-to-face contact when completing customer CDD measures on which the service provider rely.

3.3.2 Recommendations and Comments

463. The Anguillan Authorities should amend the Code or Regulations to require financial intuitions to immediately obtain CDD information (E.C. 5.3 to 5.6) from Introducers.
464. The Anguillan Authorities should consider amending the Regulations or Code to include the requirement that a service provider accept introduced business solely from an introducer or intermediary who itself has face to face contact when completing CDD measures on which the service provider rely.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	PC	<ul style="list-style-type: none"> • Effectiveness cannot be assessed due to the recent passage of the POCA, Regulations and Code. • No requirement for financial institutions to immediately obtain necessary information on the elements of the CDD process in criteria 5.3 to 5.6. • High level of Inherent risks presented by an Introducer chain.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

Recommendation 4

465. There are several legal provisions in financial services enactments that provide adequate gateways for the sharing of information that is the subject of secrecy laws. One such provision is contained in Section 133(2) of the POCA, which allows for a protected disclosure or authorised disclosure to the competent or reporting authority, not to be treated as a breach of any enactment, rule of law or agreement restricting the disclosure of information. Further, the protected disclosure shall not give rise to civil proceedings. The POCA also provides for extensive information gathering by law enforcement as well as the reporting authority (FIU) for the purposes of receiving SARs under the AML/CFT regime. The POCA also confers powers

on the FIU to share information. In this regard, Section 118 (2)(d) allows for the FIU to enter into written agreements, arrangements or MOUs with foreign financial intelligence units as it considers desirable, for the discharge or performance of its functions, including the exchange of information.

466. Section 32 of the Banking Act, prohibits the divulgence of information by persons who have acquired that information including employees or agents of the Eastern Caribbean Central Bank (ECCB), except inter alia,
- when lawfully required to make disclosure by any court within Anguilla; or
 - Under the provisions of any law of Anguilla or agreement among the Participating Governments.

Section 32(2) allows for the ECCB to share any information received or any report prepared in the performance of its duties, with any local or foreign authority responsible for the supervision or regulation of a financial institution, or for maintaining the integrity of the financial system.

467. Section 20 of the FSC Act, confers on the Commission, the power to gather specific information where it is required for the proper discharge of its functions or on the written request of a foreign regulatory authority. However, the Commission is required to notify the licensee of this information request and the licensee, under section 20(7), may apply to the Court to have the notice set aside. An application under subsection 7 must be made within three (3) days of the receipt of the notice from the FSC or before the expiration of the time specified for the production of the information, whichever is earlier. The Court may confirm, set aside or modify the notice and the Commission is entitled to be heard at the application hearing.
468. Where a foreign regulator makes a written request to the Commission to provide assistance in connection with the exercise of regulatory functions, under Section 23 of the FSC Act, the Commission may disclose information or provide documentation in its possession to the foreign regulatory authority.
469. Section 3 of the Money Laundering Reporting Authority Act, exempts the FIU from the operation of the Confidential Relationships Act with regard to confidential information received pursuant to any relevant Act or Regulations. Further, a permitted disclosure under any relevant Act/Regulation shall not be treated as a breach of any enactment or rule of law restricting the disclosure of information and shall not give rise to civil proceedings. The section also allows for the disclosure of such information not only to law enforcement agencies in Anguilla but to law enforcement agencies in foreign jurisdictions, subject to such conditions that the FIU may impose on further disclosure.
470. The Anguilla FIU is a member of the Egmont group and has participated actively in sharing information with other Egmont members and as part of established bilateral MOUs.

3.4.2 Recommendations and Comments

471. The Anguillan Authorities should consider reviewing Section 20 of the FSC Act to ensure that there is no impediment to the sharing of information as contemplated by the FATF.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	LC	<ul style="list-style-type: none"> • Information sharing by the FSC with foreign regulators could be subject to court override.

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and Analysis

Recommendation 10

472. Section 18(1) of the AML/TFR requires a service provider to keep records and such additional records as may be prescribed in the Code for at least five (5) years commencing on the date the business relationship ends or the occasional transaction is completed. The specified records to be kept include relevant information obtained at the CDD stage of the business relationship or occasional transaction including evidence of identity. Information obtained as a result of ongoing monitoring, a record of details relating to each transaction carried out during the relationship, all account files and all business correspondence relating to a business relationship or an occasional transaction. Additionally, Section 17 (3) of the AML/TFR requires that the relevant records be kept in such a form and include sufficient information to enable the reconstruction of individual transactions.
473. The AML/TFR at Section 18 (2) empowers the Competent Authority or the Reporting Authority to specify a period longer than five (5) years for the retention of relevant records. Additionally, Section 17(4) of the AML/TFR extends the above record retention requirements to a service provider on whom a third party relies for the completion of CDD and other record keeping measures, commencing at the date on which he is relied on in relation to any business or occasional transaction.
474. Pursuant to Section 17 (1)(a) of the AML/TFR, the relevant records and information are to be made available on a timely basis, when requested by the competent and law enforcement authorities.
475. In the case of a service provider who acts as an introducer or intermediary, Section 17(5) of the Regulations stipulates that that service provider must make available to the party for whom he provides that introducer service, upon that party's request, a copy of the relevant records and information.
476. Further, Section 34(1) of the Code provides guidance as to the manner in which records should be kept. In this regard, the Code requires that records should be kept in a manner that facilitates ongoing monitoring and their periodic updating, and ensures that they are readily accessible to the service provider in Anguilla, and enables the Competent Authority and internal and external auditors to assess the effectiveness of systems and controls that are maintained by the service provider to prevent and detect ML/TF.
477. Section 34(2) of the Code addresses the issue of records other than in legible form. Such records are required to be kept in such a manner that enables them to be readable at a computer terminal in Anguilla and be readily produced in Anguilla in legible form.
478. All transaction records containing sufficient details to enable a transaction to be understood and enable an audit trail of funds or asset movements to be readily constructed, are required to be kept by Section 35 of the Code, while Section 35(2) requires a service provider to keep all records concerning a business relationship or occasional transaction, as well as all customer files and business correspondence relating to the business relationship or occasional transaction for a minimum of five (5) years.
479. Service providers interviewed were aware of the legal requirement to retain identification and transaction records including customer files and business correspondence and all indicated that they kept such records for periods in excess of five (5) years.
480. The Authorities have advised that the Competent Authority, the FSC, has imposed a condition on licensees requiring them to be able to make available to the FSC, in Anguilla, all due diligence information within seventy-two (72) hours of a request. The FSC has further advised

that they have had occasion to request such information from a service provider in the off-shore sector and such information was made available within the stipulated timeframe.

Special Recommendation VII

481. Part 9 of the Code addresses the issue of wire transfers. In this regard, Section 43 of the Code defines full originator information in line with the FATF requirement, and includes the name and account number of the payer together with the payer's address and either the payer's date of birth or his customer identification number or national identity number. Where the payer does not have an account, a unique identifier that allows the transaction to be traced back to the payer is acceptable. Section 46(3) of the Code requires a payment service provider to verify the full originator information on the basis of documents, data or information obtained from a reliable and independent source.

Cross Border Wire Transfers

482. With regard to executing wire transfers, a payment service provider is required by Section 46 (1) of the Code to ensure that every transfer of funds is accompanied by full originator information. Where the payment relates to a batch file transfer from a single payer or originator, the service provider is not required to include full originator information for each individual transfer if the batch file contains the complete information on the payer and the individual transfers bundled in the batch file carry the account number or unique identifier of the originator.
483. Where funds are being transferred from an existing account, the Code allows that a payment service provider may deem verification of the full originator information to have taken place if it has complied with the AML/TFR and the Code with regard to the verification of the identity at the account opening stage.
484. With regard to funds that are not being transferred from an account, Section 46(5) of the Code permits payment service providers to deem full originator information as being verified if the amount to be transferred does not exceed EC\$2,500, the transfer is not carried out in several operations that appear to be linked and together do not exceed EC\$2,500, and the payment service provider does not suspect that the payer is engaged in ML/TF or other financial crime.
485. Section 46(6) of the Code mandates that a payment service provider keepS all records of full originator information for a period of at least five (5) years.

Domestic Transfers

486. As is the case for cross-border transfers, full originator information is required for wire transfers within Anguilla; however a number of exemptions from the operation of Part 9 requirements apply. Section 45 of the Code sets out the relevant exemptions from the operation of Part 9. Section 45 precludes transactions for goods and services settled with a credit or debit card which is accompanied by a unique identifier that allows the transfer to be traced back to the payer. However, if a credit or debit card is used as a payment system to effect transfer of funds it is subject to the full originator information. Transfers using electronic money or stored value cards are also exempt from full originator information if the value of the electronic purse does not exceed EC\$1000.
487. A transfer of funds from a mobile telephone or any other digital device is exempt from full originator information if the transfer is pre-paid and does not exceed \$1000 or is post paid and

the payee has an agreement with the service provider permitting payment for the provision of goods and services. In this regard, a unique identifier allowing the transaction to be traced back to the payer accompanies the transfer of funds, and the service provider is a licensee.

488. The following cases are also exempt from full originator information for the purposes of section 45: A transfer of funds from an account holders' account, transfers between the accounts of two parties providing that there is prior authorization and a unique identifier accompanies the transfer, a transfer to government or a public body in Anguilla for taxes, duties and other charges. Exemption from full originator information also applies if both parties to the transfer transaction are service providers.
489. Although Section 46(1) of the Code requires that the payment service provider verify that full originator information is received, neither the AML/TFR nor Code explicitly address the issue of a payment chain that may include a series of intermediaries and beneficiary financial institutions whereby each party in the payment chain is required to ensure that full originator information that should accompany a wire transfer, is transmitted with the transfer.
490. With regard to the requisite retention of originator information where technical limitations prevents originator information from accompanying a wire transfer, Section 47(6) of the Code requires an intermediary payment service provider that uses a system with such limitations to keep the records of all the information on the originator that it has received for a period of at least five (5) years.
491. Section 47(5) of the Code addresses the requirement for a beneficiary financial institution to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. The section stipulates that missing or incomplete information shall be a factor in the risk-based assessment undertaken to determine if a report should be made to the reporting authority as a suspicious transaction or activity.
492. Section 46(8) of the Code requires that where a payment service provider is not provided with full originator information with a wire transaction, the payment service provider can request this information from the transmitting institution and such information is required to be provided within three (3) working days. Where the information is not forthcoming, section 43 (9) allows for the payment service provider to notify the Competent Authority who will further require that the request be complied with.
493. As mentioned earlier, the FSC has full supervisory responsibility for AML/CFT implementation for financial service providers both in the domestic as well as the off-shore sector in Anguilla. With regard to the domestic banks, the ECCB is the supervisory authority for safety and soundness issues which it executes through a MOU with the Anguillan Authorities. Although the MOU does not explicitly require the ECCB to assess and monitor a financial institution's arrangements for the prevention and detection of ML/TF, the ECCB advises that it nonetheless includes these assessments in its scope of examination. The findings of these examinations are however not shared directly with the FSC neither has the FSC to date, participated in any examinations conducted by the ECCB on its behalf, this in spite of such requests being made by the FSC. The ECCB advises that it provides a report of its examination to the Minister of Finance who then passes the report to the FSC for action.
494. With regard to sanctions for non-compliance with AML/CFT requirements, there are appropriate criminal sanctions under Sections 128 to 130 of the POCA. Further, Section 29(2) of the FSCA confers to the FSC a broad range of enforcement action for breaches of applicable laws and regulatory rules including contravention of the AML/TFR and Code. These sanctions include issuing of a directive for specific action by the offending service provider, appointing a qualified person at the cost of the licensee to advise the licensee on the proper conduct of its

business, appointing an examiner to conduct an investigation and revocation or suspension of a license.

495. The FSC also has a limited power to issue administrative sanctions – disciplinary action under Section 35 of the FSCA - for the commission of a disciplinary offence. A service provider commits a disciplinary offence if he contravenes:

- A provision of the FSCA, or a financial services enactment specified in the regulations; or
- A provision of a Regulatory Code for which a penalty is provided.

Under recent amendments, the maximum applicable penalty by the FSC for a disciplinary offence in the above regard is EC\$50,000. As mentioned earlier, the regime for administrative sanctions as it relates to domestic banks and their off-shore subsidiaries may be ineffective.

496. The FSC advised that earlier in 2009, it eventually revoked the licence of one company management service provider whose licence had first been suspended on the basis that the principal's fit and proper status had been impugned on a substantiated client allegation of theft. Aside from this single instance of revocation of licence, no other enforcement or disciplinary action has been advised by the FSC. Further, the financial penalty of EC\$50,000 applicable to disciplinary actions was recently prescribed (September 2009). Consequently, the Examiners are not in a position to assess effectiveness of sanctions given their limited application up to the point of the Mutual Evaluation.

3.5.2 Recommendations and Comments

Special Recommendation VII

497. The Code should explicitly address the issue of a payment chain that may include a series of intermediaries and beneficiary financial institutions whereby each party in the payment chain should be required to ensure that full originator information that accompanies a wire transfer is transmitted with the transfer.

498. The regime for supervision and sanction powers for domestic banks and their offshore subsidiaries should be clarified.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	LC	<ul style="list-style-type: none"> • Effectiveness cannot be assessed due to recent passage of the POCA, Regulations and Code.
SR.VII	PC	<ul style="list-style-type: none"> • No requirement for each intermediary and beneficiary financial institution in the payment chain to ensure that full originator information accompanies transfer. • Effectiveness cannot be assessed due to recent passage of the POCA, Regulations and the Code and the limited supervisory actions that have been taken. • The regime for supervision and sanction powers for domestic banks and their off-shore subsidiaries are ambiguous.

Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 & 21)

3.6.1 Description and Analysis

Recommendation 11

499. Section 16(2) of the AML/TFR mandates a service provider to have policies, systems and controls relating to on-going monitoring which provide for identification and scrutiny of complex and unusually large transactions, unusual patterns of transactions and any other activity which by its nature may be related to money laundering and terrorist financing.
500. With regard to the requirement for service providers to document findings as to the background and purpose of complex, and unusual transactions and patterns of transaction, for the purposes of section 27 of the Code, these transactions are designated as transactions that are higher risk and therefore subject to enhanced scrutiny. As such a service provider is required to have in place systems that are designed to establish whether there is a rational explanation, an apparent economic or visible lawful purpose for such a transaction and that a written record be kept of the service provider's conclusions.
501. Section 36(1)(d) of the Code stipulates that a service provider shall keep for a period of five (5) years from the date a business relationship ends, or from the completion date of an occasional transaction, records concerning reviews of complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or visible lawful purpose. Further Section 34(1)(c) of the Code requires a service provider to ensure that records are kept in such a manner that enables the Commission, internal and external auditors and other competent authorities to assess the effectiveness of systems and controls that are maintained by the service provider to prevent and detect ML and TF.

Recommendation 21

502. Section 12(2)(b) of the AML/TFR provides that a service provider must, on a risk-sensitive basis, apply enhanced due diligence measures and undertake enhanced ongoing monitoring where the service provider has, or proposes to have, a business relationship with, or proposes to carry out an occasional transaction with, a person connected with a country or territory that does not apply, or insufficiently applies, the FATF Recommendations.
503. Section 16(2)(c) of the AML/TFR requires a service provider to establish, maintain and implement appropriate risk sensitive AML/CFT policies, systems and controls that include determining whether a proposed business relationship is with a country which is subject to measures connected to the prevention and detection of ML and TF or sanctioned by the European Union or the United Nations. The FSC also posts a listing of approved jurisdictions on its website. The Authorities advise the URL for that list is <http://www.fsc.org.ai/PDF/approved.pdf>⁸¹
504. Section 27(1)(c) of the Code provides that a service provider's ongoing monitoring policies, systems and controls shall require that any unusual or high risk activity is examined by an

⁸¹ At the time of the writing of this Report, the URL provided at paragraph 511 indicates that the page cannot be found. A visit to the FSC's website indicates that the website is being updated.

appropriate person to determine the background and purpose of the activity or transaction and require a written record to be kept of the service provider's conclusions.

505. Section 22 of the AML/TFR deals with the issue of counter measures to be applied for those countries that do not apply or insufficiently apply the FATF Recommendations and how the authorities may act in these circumstances. Specifically, the Regulations confers on the supervisory authority the power to direct a service provider:

- not to enter into a business relationship,
- not to carry out an occasional transaction,
- not to proceed any further with a business relationship or occasional transaction;
- to impose any prohibition, restriction or limitation relating to a business relationship or occasional transaction, or
- to apply enhanced due customer due diligence measures to any business relationship or occasional transaction,

with any person who is situated or incorporated in a country to which *the FATF has decided to apply counter measures*.

506. Further, while service providers are required to apply enhanced due diligence and on-going monitoring when treating with high risk customers including those from countries that do not apply or insufficiently apply the FATF Recommendations, neither the Regulations or Code provide other available counter-measures (in line with the FATF guidance in this regard) that should be applied when doing business with these countries.

3.6.2 Recommendations and Comments

Recommendation 21

507. Regulation 22 should be amended to authorise the relevant authorities to require service providers to take appropriate actions or counter-measures for countries that do not apply or insufficiently apply the FATF Recommendations.

508. The Anguillan Authorities should consider a wider range of counter-measures that should be taken against countries that fail to apply appropriate AML/CFT standards.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	LC	<ul style="list-style-type: none"> • Effectiveness cannot be assessed due to recent passage of the POCA, Regulations and Code.
R.21	PC	<ul style="list-style-type: none"> • Service providers only required to apply enhanced CDD and ongoing monitoring regarding dealings and transactions with countries with weak AML/CFT systems. • Effectiveness cannot be assessed due to recent passage of the POCA, Regulations and Code.

3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

3.7.1 Description and Analysis

Recommendation 13& Special Recommendation IV

509. Part 5 of the AML/CFT Code sets out the requirements for service providers on the matter of reporting suspicious activities and transactions. Section 28 of the Code requires that a service provider establish and maintain procedures that among other things:
- Communicate the identity of the Money Laundering Reporting Officer (MLRO) to employees;
 - Require that a report is made to the MLRO of any information or other matter coming to the attention of any employee handling relevant business which, in the opinion of that person, gives rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is engaged in money laundering or terrorist financing; and
 - Provide for the information or other matter contained in a report to be disclosed as soon as is reasonably practicable, by the MLRO to the Reporting Authority in writing, where the MLRO knows, suspects or has reasonable grounds to know or suspect that another person is engaged in money laundering or terrorist financing.
510. For the purposes of reporting, ML as defined by the POCA applies to all funds that are the proceeds of all offences that are required to be included as predicate offences under Recommendation 1. Specifically, the POCA defines money laundering as an act which constitutes a money laundering offence, or attempt, conspiracy or incitement to commit a money laundering offence or aiding and abetting or procuring the commission of a money laundering offence. A ML offence is defined by the POCA, as the act of concealing, disguising, converting, transferring or removing criminal property.
511. With regard to attempted transactions, there is no explicit mandatory requirement for the MLRO of a service provider to make a report to the Reporting Authority. Section 29(1)(b) of the Code, requires service providers to establish internal reporting procedures that would include the reporting of attempted transactions and business that has been refused. Whereas Section 29(1)(b) of the Code requires an employee to make an internal report to the MLRO of attempted transactions and business that has been refused, there is no explicit obligation on the part of the MLRO to make such a report to the Reporting Authority, pursuant to Section 31 of the Code that deals with reports to the Reporting Authority. Section 31 of the Code mandates a service provider to require the MLRO to make suspicious activity reports directly to the Reporting Authority as soon as practical. The report, which should be in the form specified by the Reporting Authority, should include:
- Full details of the customer and as full a statement as possible of the information giving rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion;
 - If a particular type of criminal conduct is suspected, a statement of this conduct;
 - Where a service provider has additional relevant evidence that could be made available, the nature of this evidence; and
 - Such statistical information as the Reporting Authority may require.
512. The Authorities are of the view that because the MLRO is required to report all suspicious activities (as against transactions), an attempted transaction would be covered under suspicious activities. It is the Examiners view however, that the Code should be explicit in requiring that attempted transactions be treated as suspicious to remove any ambiguity or discretionary reporting in this regard.

513. With regard to the requirement to report suspicious transactions that are thought, among other things, to involve tax matters, while Section 31 of the Code generally requires that SARs be made on the suspicion of criminal conduct, it does not specifically address these matters. Similarly, the Guidance notes do not address this issue. It is noted that there is no applicable income tax in Anguilla; however Customs duties and other such taxes are relevant. The Authorities argue that “criminal conduct” is defined as one that constitutes an offence and given that there are a variety of laws in Anguilla that impose taxes, contravening any of these laws would constitute an offence. As such, the breaching of tax laws would therefore be treated as criminal conduct and be captured by the Code. However, the Examiners are of the view that for clarity, service providers should be provided with specific guidance as to how treat with breaches that involve tax matters.

Sanctions for failure to report.

514. The POCA sets out the sanctions for failure to report knowledge or suspicion of ML matters (summary conviction EC\$75,000 and two (2) years or both and on conviction on indictment, ten (10) years or EC\$250,000, while the Code requires that a service provider establish and maintain arrangements for disciplining any employee who fails, without reasonable excuse, to make a SAR where he or she has knowledge of, or reasonable grounds for suspicion of money laundering or terrorist financing. These sanctions appear to be proportionate and dissuasive. However, the effectiveness might be compromised as a result of the issues raised with regard to Recommendation 17. See. Section 3.10 of the Report.
515. With regard to terrorist financing, the ATO makes relevant non-reporting an offence. Applicable sanctions for failure to report knowledge or suspicion of terrorist financing matters are dealt with under Section 10(9) of the ATO viz:
- On conviction on indictment, to imprisonment for a term not exceeding five years, to a fine or to both;
 - On summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

Recommendation 14

516. Section 133 of the POCA provides for when a disclosure is a protected disclosure. In order to be a protected disclosure, the information must be received in the course of a person’s trade, profession or business, the information or other matter disclosed must cause the person making the disclosure to know or suspect, or gives him reasonable grounds for knowing or suspecting, that another person is engaged in money laundering and the disclosure must be made to the FIU or the relevant MLRO in accordance with his employer’s procedures, as soon as practicable after the information comes to him.
517. The protection extends not just to persons carrying on relevant business who are required to make disclosures in order to avoid committing an offence under section 128 of the POCA, but also to those carrying out any trade, profession or business (even if this is not relevant business) who voluntarily make disclosures about ML to the FIU. This includes those exercising a profession in a voluntary capacity such as accountants or solicitors giving free advice. It does not, however, mean that they become subject to the failure to disclose offence at Section 128.
518. Section 133 (2) of the POCA provides that a protected disclosure, which for these purposes includes an authorised disclosure, shall not be treated as a breach of any enactment, rule of law

or agreement restricting the disclosure of information and shall not give rise to civil proceedings.

519. While Sections 133 and 128 of the POCA provides general protection against criminal and civil liability action for authorised disclosures, it does not explicitly provide protection for financial institutions, their directors and employees, for reporting their suspicion in good faith, in breach of statute as contemplated by the FATF methodology. Further it is not clear as to the protection that is provided for the financial institution itself in these circumstances.
520. Protection for relevant persons making authorised disclosures for TF matters is provided for under sections 13(3) and (4) of the ATO and section 2 of the Schedule 1 thereto, as well as section 10(2) of the Al-Qa'ida Order and section 1(5) of the schedule thereto.
521. Section 131 of the POCA creates offences of prejudicing an investigation and tipping off. The first offence is committed by a person who prejudices an investigation or prospective investigation by making a disclosure about it or by tampering with evidence relevant to the investigation. The investigations covered by section 131 of the POCA include a ML investigation, while obstructing investigations involving TF matters are dealt with under section 9(6) of the TUNMOTO, section 17(3)(c) of the Al-Qaida Order and section 5 of Schedule 3 thereto. The tipping off offence is created by a person who, knowing or suspecting that an authorised or protected disclosure has been made, makes a disclosure which is likely to prejudice any investigation which might be conducted following that disclosure. The tipping-off offence however does not cover situations where a SAR is being reported or provided to the FIU.

Additional Elements

522. Section 121 of the POCA prohibits any person, member alternate member, employee or agent of the FIU from disclosing any information or matter the he acquires as a result of his connection with the FIU except as permitted by another enactment of an order of the Court.

Recommendation 25 (only feedback and guidance related to STRs)

523. Section 118(2) of the POCA stipulates inter alia, that the Reporting Authority (FIU) may provide such feedback to persons who have disclosed information to the FIU, and shall collect, compile and publish annually in such manner and form as the FIU determines, statistical information relating to disclosures made to the FIU and any dissemination of such disclosures.
524. In interviews, the FIU indicated that in keeping with the mandatory requirement of the POCA for the production of an annual report containing such statistical information relating to disclosures received and any dissemination of such disclosures, the Unit was in the process of completing its first report (2008) in this regard. On the matter of feedback to service providers in relation to SARs, the FIU indicated that generally feedback was given on a case by case basis, and in all cases acknowledgement of receipt of a SAR is provided. The Unit also advised that a reporting entity is provided with status updates of a case resulting from the reportage of the suspicion. Service Providers interviewed also advised receipt of acknowledgment from the FIU of SARs that were forwarded.
525. In relation to general feedback with regard to statistics on the number of disclosures in the form contemplated by the FATF, information on current techniques, methods trends or typologies, and sanitised examples of actual money laundering cases, service providers including DNFBPs interviewed indicated that aside from individual feedback on reported SARs, no such feedback has been received. The FIU advised that these measures are proposed to be included in the upcoming report being produced by the FIU. The Authorities also advised that the FIU, in presentations to banks and other financial sector businesses utilised sanitised cases.

Recommendation 19

526. The MLRA has considered the feasibility and utility of a system where banks and other financial institutions and intermediaries would be able to report domestic and international wire transfers that are above a fixed amount and has found that it would not be feasible to venture into this form of reporting. The reasons for this decision were documented and the document was provided to the Examiners.
527. Prime among the factors underpinning this decision, was the issue of the definition of a meaningful threshold in line with international standards. This would result in setting the threshold at a point where it would generate vast numbers of reports, resulting in excessive strain being placed on the recipient FIU, with an official staff complement of four (4) operational personnel.
528. At present, service providers, as part of their AML strategy, are required to utilize a risk based assessment approach which incorporates anticipated individual currency transaction thresholds and exceeding them could lead to suspicion of money laundering and or terrorist financing. The MLRA considers this to be the more suitable and practical structure for Anguilla and thus has reportedly carried out several training seminars highlighting the requirements set out in legislation and the guidance notes for the adoption of this approach.

Recommendation 32

Statistics

529. From 2003 up to May 2009 there have been 86 SARs received from reporting entities as indicated in the chart below, which demonstrates the type of institution making the submission.

Table 12: Number of SARs received from reporting entities

SAR by Reporting Entity							
Year	Bank	Company Services	Trust	Insurance	Money Remitter	Other DNFBP	Other
2003	4	4	0	0	0	0	0
2004	4	0	0	0	1	0	0
2005	2	4	0	1	0	0	2
2006	4	1	0	0	0	0	2
2007	4	1	0	0	0	0	1
2008	18	5	0	0	6	0	1
2009	11	3	0	0	7	0	0
Total	47	18	0	1	14	0	6

530. As stated previously, most of the SARs received in Anguilla involved foreign countries and foreign nationals. The FIU analyses all SARs and makes frequent spontaneous disseminations of intelligence arising from them to foreign jurisdictions. To this end statistics are also maintained on every SAR where intelligence is shared (or disseminated) as well as those SARs

which are referred for investigation directly to an investigating agency either in Anguilla or abroad.

Table 13: Number of SARs referred for investigations

Year	SARs	Referrals for investigation	SAR Intelligence Shared
2003	8	3	4
2004	5	0	0
2005	9	0	2
2006	7	0	0
2007	6	0	1
2008	30	6	25
2009	21	3	6
Total	86	12	38

3.7.2 Recommendations and Comments

Recommendation 13

- 531. The Regulations or Code should be amended to make mandatory the requirement for the MLRO of a service provider to make a report to the Reporting Authority with regard to attempted transactions.
- 532. Service providers should be provided with specific guidance as to how to treat with breaches that involve tax matters.
- 533. The Authorities should clarify the legal framework for the application of administrative sanctions by the FSC, as it relates to domestic banks.

Recommendation 14

- 534. The relevant legislation should be amended so that the offence of tipping-off is applicable where a SAR is being reported.
- 535. The relevant legislation should be amended to make explicit the protection provided to financial institutions, their directors and employees from criminal or civil liability for breach of any restriction on disclosure of information; breach of contract etc for reporting their suspicion in good faith.

Recommendation 25

- 536. The FIU should provide general feedback including statistics in the form contemplated by the FATF, as well as information on current techniques, methods and trends or typologies to service providers.

Special Recommendation IV

537. The Regulations or Code should be amended to make mandatory the requirement for the MLRO of a service provider to make a report to the Reporting Authority with regard to attempted transactions re financing of terrorism.

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	PC	<ul style="list-style-type: none">• No explicit requirement to include attempted transaction in SARs.• Issues regarding the effective implementation of sanctions.
R.14	PC	<ul style="list-style-type: none">• Tipping-off offence not applicable to SARs that are being reported to the FIU.• No explicit protection for financial institutions, their directors and employees from criminal or civil liability for breach of contract etc for reporting suspicious transactions.
R.19	C	This Recommendation has been fully observed.
R.25	PC	<ul style="list-style-type: none">• No general feedback given with regard to SARs statistics, current techniques, methods, typologies and trends.
SR.IV	PC	<ul style="list-style-type: none">• No explicit requirement to include attempted transaction in SARs.• Issues regarding the effective implementation of sanctions.

Internal controls and other measures

3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)

3.8.1 Description and Analysis

Recommendation 15

538. Section 16 of the AML/TFR mandates that a service provider establish, maintain and implement appropriate risk- sensitive policies, systems and controls to prevent and detect ML and TF. These should relate to CDD measures and ongoing monitoring, reporting of disclosures, record-keeping, internal controls, including the monitoring and management of AML/CFT framework put in place by the service provider to detect and prevent ML/TF, risk management systems, and employee screening.
539. Section 20 of the AML/TFR requires a service provider, other than a sole trader, to appoint an individual at an appropriately senior level as its ML compliance officer, (MLCO). This appointment is subject to the approval of the competent authority, the FSC. A sole trader who is a service provider is the MLCO in this regard. The Regulation also stipulates that the MLCO must have timely access to all records that are necessary or expedient for the purpose of

performing the function as MLCO. Further, Section 21(1)(d) of the Code requires a service provider to establish and maintain reporting procedures that requires reporting to the money laundering reporting officer (MLRO), any information or other relevant matter that gave rise to knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is engaged in ML or TF. Section 20(7) of the AML/TFR provides for the MLCO to be also appointed as the MLRO for the purposes of the POCA. However, neither the AML/TFR nor the Code make it clear whether access to relevant information is extended to other appropriate staff.

540. Section 20(4) of the AML/TFR sets out the principal function of the MLCO as the oversight and monitoring of a service provider's compliance with the Act, all legislation for the time being in force concerning terrorist financing, the Regulations and the AML/CFT Code.
541. Neither the Regulations nor Code requires that a service provider maintain an adequately resourced and independent audit function to test compliance with requisite procedures, policies and controls. One international bank interviewed indicated that internal audit was a group function and that the AML/CFT arrangements of the domestic operations were subject to internal audit reviews from time to time. Another bank interviewed, a domestic bank that offers private banking in the offshore sector, also indicated that its internal audit was a group function, however the staff complement for the unit reportedly consisted of two (2) persons to service the entire group including both domestic banking operations and private banking done through an off-shore subsidiary.
542. With regard to training of employees, Section 19 of the AML/TFR requires that a service provider takes appropriate measures to make relevant employees aware of the AML/CFT framework put in place by the service provider as well as the applicable laws in Anguilla relating to ML/TF. The Regulation also requires a service provider to provide relevant employees with training in the recognition and handling of transactions carried out and on behalf of any person who is or appears to be engaged in ML or TF, and any other conduct that indicates that a person is or appears to be engaged in ML or TF. The specified training should also include, the provision of information on current money laundering techniques, methods, trends and typologies. Section 32 of the Code requires service providers to provide basic AML/CFT training to employees whose duties do not relate to the provision of relevant business. The training is also applicable to contract and temporary staff.
543. Service providers interviewed all indicated that relevant employees are provided with ongoing training. They also advised that they had benefitted from industry training provided by the FSC and other relevant agencies, including the FIU. As indicated earlier, the FIU had not up to the time of the on-site visit, produced a formal report including the relevant information as contemplated by the FATF.
544. As discussed above, Section 16 of the AML/TFR requires among other things, that a service providers' AML/CFT framework allows for employee screening as part of the hiring process. Further, Section 32(10)(c) of the Code mandates that a service provider vet the competence and probity of employees whose duties relate to the provision of relevant business at the time of their recruitment and at any subsequent change in role and that their competence and probity be subject to on-going monitoring. The GN provide details as to how service providers can effectively execute this function which include the following steps:
 - *Obtaining and confirming references;*
 - *Confirming employment history and qualifications;*
 - *Requesting and verifying details of any regulatory action taken against the employee concerned; and*
 - *Requesting and verifying details of any criminal convictions.*

Recommendation 22

545. With regard to the application of Anguilla's AML/CFT regime to foreign branches and subsidiaries of service providers, this is addressed by Section 9 of the AML/TFR. Section 9 requires that a financial business that has a branch located in a foreign country or has a subsidiary incorporated in a foreign country, shall, to the extent that the laws of the foreign country permit comply with the Regulations and Code. Further, where that branch or subsidiary is located in a jurisdiction that does not apply or insufficiently applies the FATF Recommendations, the service provider is required to apply the applicable measures to which it is subject, to its foreign operations.
546. Section 9(3) of the AML/TFR requires that where a foreign branch or subsidiary operates in a jurisdiction where the standards for the detection and prevention ML and TF are more stringent than those provided for in the Regulations and Code, the service provider shall ensure that the more stringent requirements are complied with by its branch or subsidiary.
547. With regard to host countries where their laws do not permit a branch or subsidiary of a financial business to comply with the Regulations and Code, Section 9(4) of the AML/TFR stipulates that the financial business shall notify the FSC in writing and to the extent that the laws of the host country permits, apply alternative measures to ensure compliance with the FATF framework, to effectively deal with the risk of ML and TF

3.8.2 Recommendations and Comments

Recommendation 15

548. The Regulations and or Code should be amended to include a requirement to maintain an adequately resourced, independent internal audit function to test compliance (including sample testing) with a service providers AML/CFT framework.
549. Appropriate staff other than the MLCO should have timely access to customer identification data and other CDD information.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	LC	<ul style="list-style-type: none">• No requirement to maintain an adequately resourced and independent audit function to test AML/CFT compliance.• No provision for other appropriate staff to have timely access to customer identification data and other CDD information.
R.22	C	This Recommendation has been fully observed

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

Recommendation 18

550. While the Banking Act does not explicitly prohibit the establishment of a shell bank., the provisions for obtaining a banking licence requires that an applicant provide a statement of the address of its head office, as well as the name and address of every member of its board of directors as part of the documentation package. Subsequent to the onsite exercise of the MEVAL process, Anguilla, in September 2009, promulgated the Prohibition of Licensing of Shell Banks Regulations (2009), which specifically prohibits the licensing of an offshore bank that does not have a physical presence in Anguilla, involving meaningful decision-making and management.
551. Section 15 (1) of the AML/TFR sets out the jurisdiction's arrangements for the treatment of shell banks. The Section provides that a bank that carries on banking business in or from Anguilla, shall not enter into or continue a correspondent relationship with a shell bank, and shall take appropriate measures to ensure that it does not enter into or continue a correspondent banking relationship with a bank that is known to permit its accounts to be used by a shell bank.
552. The Code, at Section 41 reinforces the provisions of the Regulations and further states that in addition to not facilitating relationships with shell banks, a correspondent bank must apply customer due diligence measures on respondent banks using a risk-based approach. Section 41(C)) outlines the CDD measures that are applicable when entering into correspondent banking relationship and include the following in respect of the respondent bank:
- domicile
 - ownership and management structure
 - customer base and geographic location, nature of service provided, whether or not relationships are conducted on a non-face-face basis and the extent to which the correspondent relies on third parties to identify and hold evidence of identity on, or to conduct other due diligence on its customers;
 - determine from publicly available sources, reputation and quality of supervision to which the respondent bank is subject;
 - assess the AML/CFT systems and controls for consistency with FATF requirements.
 - Obtain prior approval from senior management before entering a relationship
 - Ensure that the respective AML/CFT responsibilities of each party to the correspondent relationship are understood and properly documented;
 - Ensure that the correspondent relationship and its transactions are subject to annual review by senior management.
 - Not enter into a correspondent relationship where the bank has knowledge or suspicion that the respondent or any of its customers is engaged in ML or TF.
553. The Examiners noted that correspondent services were not generally offered by banks in the jurisdiction.

3.9.2 Recommendations and Comments

554. The Anguillan Authorities should consider including an explicit prohibition of shell banks in the Regulations or Code. This Recommendation does not affect the rating of Recommendation 18.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	C	This Recommendation has been fully observed.

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs
Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)

3.10.1 Description and Analysis

Recommendation 23& 30 –Authorities/SROs roles and duties & Structure and resources

555. The FSC is responsible for ML/FT risk management in Anguilla for all financial institutions, DNFBPs and not-for-profit companies and organisations. This ML/FT risk management regulation process includes ensuring that all licensees have adequate procedures in place to identify measure, monitor and manage or mitigate ML/FT risk.
556. The ECCB is responsible for the supervision of institutions licensed under section 2 of the Banking Act, and has conducted several AML/CFT onsite inspections on both the domestic and international banking sectors.
557. The ECSRC is responsible for the supervision of the domestic securities sector and therefore licenses and regulates all broker/dealers and investment advisors.
558. All financial institutions are subject to the requirement of the AML/CFT legislation, regulations, code and guidelines which are benchmarked against the FATF 40 + 9 Recommendations. The FSC aggressively enforces compliance with all applicable legislation, regulations, codes and guidelines. Financial institutions are also provided with training on developing and/or enhancing their ML/FT risk management processes.
559. The effectiveness of implementation of the FATF recommendations is assessed via targeted and full scope onsite examinations. These onsite examinations measure each regulated entity's ability to successfully implement systems to detect and deter ML and TF. In particular, CDD systems, STR and SAR reporting, and general compliance with the AML/TFR and the AML/TF Code in which the FATF recommendations are embodied are assessed. Non compliance with the provisions stipulated in the above-mentioned AML/TF legislation would result in the application of sanctions available to the FSC which are discussed later in this Report.
560. Section 160 of the POCA and Section 23 of the AML/TFR identify the FSC as the authority for ensuring that financial institutions adequately comply with the requirements to combat ML and TF.
561. The FSC obtains its regulatory authority from the FSCA and the relevant financial services enactments pertaining to the various sectors (types of institutions) regulated/supervised. Section 3(1)(C) of the FSCA, establishes one of the functions of the FSC as to monitor compliance by regulated persons with applicable Anti-Money Laundering Regulations and such other Act, Regulations, Guidelines and Codes relating to AML and CFT.
562. The FSC regulatory/supervisory regime includes the following:
- i) The establishment of licensing procedures, the review of license applications and the determination of eligible financial institutions to operating in or from within Anguilla. The licensing process includes a review of the fit and proper status of all key personnel, a review of the licensees' customer due diligence

- ## The ECCB

- ### Table 14

Institution	Dates of AML/Follow-up Examinations	General Comments on Compliance
Scotiabank Anguilla	December 2004 August 2008	Inadequacies in customer due diligence and systems for identifying and monitoring high risk customers.
National Bank of Anguilla	July 2002 November 2005 August 2008	Retrospective due diligence to be

Institution	Dates of AML/Follow-up Examinations	General Comments on Compliance
Caribbean Commercial Bank	October 2002 November 2005 August 2008	completed; Delayed implementation of automated system to detect structuring and layering;
FirstCaribbean International Bank	July 2002 ⁸² November 2005 August 2008	

568. The FSC has conducted onsite inspections on the non-bank financial sector as well as the international banking sector. There appears to be a duplication of efforts where AML/CFT onsite inspections for the international banking sector are concerned as they are undertaken by both FSC and ECCB.
569. The Guidelines issued pursuant to Section 36 of the Banking Act also provide that the scope of the internal audit should include, “analysing systems established to ensure compliance with legal and regulatory requirements, codes of conduct and the institutions policies and procedures”. The Examiners have been informed that the scope of the internal audit should also cover testing for compliance with the AML/CFT legislation.

The ECSRC

570. Article 6, paragraph (k) of the Eastern Caribbean Securities Regulatory Commission Agreement, which is implemented as law in Anguilla by Section 2 of the Securities Act provides that the duties of the ECSRC include the following:

“take all reasonable steps to safeguard and protect the interests of investors in securities and to suppress illegal, dishonourable and improper practices in dealings in securities and in providing advice or other services relating to securities;”

571. Specifically, the ECSRC has a duty to determine whether the business of a company, which is or was at the relevant time, listed has been or is being conducted for a fraudulent or unlawful purpose, or whether a company was formed for a fraudulent or unlawful purpose.
572. The duties of the ECSRC do not extend to the verification of compliance with AML and CFT legislation.

Resources (Supervisors)

573. The Anguilla Financial Services Commission (FSC) is established under the Financial Services Commission Act 2003 as the regulatory and supervisory authority for the financial services sector.
574. The ECCB is responsible for the supervision of institution licensed under the Banking Act and undertakes the role of supervision and monitoring licensed financial institutions.
575. The ECSRC is responsible for enforcing the requirements of the Securities Act.

⁸² Heritage banks Barclays Bank PLC examined in 2002.

Financial Services Commission:

- 576. The FSC is a statutory body which is governed by an independent board of directors. The Directors are appointed by the Governor and are persons competent in the areas of law, accounting and public administration.
- 577. The FSC is independently funded from licence fees earned from the industry. However, there is a provision in the FSC Act which requires the Government of Anguilla to meet any funding shortfall of the FSC. However, to date, the FSC has never had to take advantage of this provision. Therefore, there are no budgetary constraints to restrict the FSC from effectively conducting its duties.
- 578. The FSC has a technical staff complement of six (6) persons, with each officer being responsible for the AML/CFT risk management for a portfolio of institutions. There is also an officer with overall responsibility for AML/CFT risk management compliance.
- 579. Based on the fact that the FSC is responsible for supervising 422 financial institutions of which 178 are captive insurers managed by twenty (20) insurance managers, the Examiners are of the view that the FSC will require additional staff to adequately execute its supervisory functions.

The ECCB

- 580. The ECCB is responsible for the supervision of institutions licensed under the Banking Act. The ECCB's Bank Supervision Department, with a staff complement of twenty (20), undertakes the role of supervision and monitoring licensed financial institutions. A member of ECCB's bank supervisory department acts as Anguilla's "country examiner" and has direct responsibility for ensuring regulatory compliance of Anguilla's banking sector with existing legislation. It is a usual practice for ECCB to ensure that a minimum of five (5) persons including the Examiner with the responsibility for monitoring banking activity in Anguilla, are included on the inspection team.

The ECSRC

- 581. The highest decision making authority for the Commission is the Monetary Council of the Eastern Caribbean Currency Union. The Council is a monetary policy body comprising the Ministers of Finance of each participating country. It has the authority to appoint and remove a member or members of the ECSRC. The ECCB-provides staff to undertake the technical work of the ECSRC. This Market Regulation, Examination and Enforcement Division is responsible for establishing and maintaining appropriate standards for fair, orderly and efficient securities dealings in the Eastern Caribbean Stock Market (ECSM). The Division reviews applications for licences of all prospective market participants and makes recommendations to the Monetary Council, conducts training and examinations of individual market intermediaries, and performs ongoing supervision and onsite examination of market participants.
- 582. The ECSRC has a staff complement of three (3) persons, the Deputy Director and two (2) Examiners. It receives administrative and legal services from the ECCB. In Anguilla, the ECSRC is responsible for one (1) licensed broker-dealer and also supervises twelve (12) other licensees in the Region.
- 583. As previously mentioned the ECCB provides the requisite staff and legal support to the ECSRC. Even though the ECSRC is the prudential regulator for the securities sector, it does not monitor for AML/CFT compliance. The FSC has indicated that AML/CFT onsite inspections are not conducted on the securities sector.

584. The ECCB and ECSRC have been given a mandate to supervise eight (8) territories with varying sizes of banking sectors with the staff complement stated above. The Examiners are of the view that staffing and resources available to the ECCB and ECSRC are inadequate and offsite surveillance techniques which are usually used may be inadequate to sufficiently monitor the domestic and international banking sectors as well as the securities sector for AML/CFT compliance.

Financial Services Commission

585. Staff of the FSC is required to comply with an established staff policy and adhere to a signed oath of confidentiality. Violation of the FSC's staff policy or code of confidentiality is ground(s) for termination of service.
586. The staff of the FSC are professional and well qualified to undertake supervisory duties assigned to them.

ECCB

587. There are confidentiality requirements to which supervisors must adhere, both under the ECCB Agreement Act and the Banking Act, 2005. All personnel within the ECCB take an oath of secrecy. AML training is periodically provided to staff of the Bank Supervision Department of the ECCB.

ECSRC

588. The ECCB provides staff to undertake the technical work of the ECSRC, therefore the confidentiality measures instituted by ECCB would apply.
589. The ECSRC and ECCB staff are well qualified and possess the requisite skills to undertake their supervisory functions.
590. Staff of the FSC are provided with ongoing training. The following are courses/workshops attended over the past four (4) years:

Table 15

Program	Date	Attendees
Fraud Awareness and Prevention ARPF Anguilla	19 May 2009	3
AML/CFT Workshop (Internet Gambling) Bahamas	27-29 October 2008	1
AML/CFT Compliance Workshop	13 June 2008	3
AML/CFT for Compliance Officers - Insurance	April 2008	4
AML-CFT Training Program (World Bank) Trinidad	1-7 June 2008	1
AML/CFT Workshop	20-26 January 2008	1
AML-CFT Compliance Officers Training	March 2007	4

AML/CFT Training Workshop Tortola	26-30 June 2006	1
AML/CFT Training Workshop Tortola	19-24 June 2005	2
AML/CFT Compliance Workshop Trinidad	29 Nov-2 Dec 2004	1
AML/CFT Compliance Workshop Panama	3-9 October 2004	1

ECCB

591. AML training is periodically provided to staff of the Bank Supervision Department of the ECCB. There is ongoing training via FSI Connect which is an online tutorial designed by the Financial Stability Institute. The following are courses/workshops attended over the last four years which would have had a module or covered some aspects of AML/CFT.

Table 16

Year	Training	# of Examiners
2005	<ul style="list-style-type: none"> Problem Bank Supervision (OCC/Caribbean Group of Bank Supervisors) 	12
2006	<ul style="list-style-type: none"> Anti-Money Laundering/Combating the Financing of Terrorism Workshop (IMF, ECCB) 	12
	<ul style="list-style-type: none"> Bank Analysis and Examination School (ECCB/Federal Reserve) 	12
2007	<ul style="list-style-type: none"> Bank Management School – Federal Reserve 	2
	<ul style="list-style-type: none"> Attachment - Federal Reserve Bank 	2
	<ul style="list-style-type: none"> Anti-Money Laundering Regional Training Program for the Securities Industry (U.S. Securities and Exchange Commission, US Agency for International Development). 	2

ECSRC

592. The ECCB provides staff to undertake the technical work of the ECSRC. Therefore the training available to ECCB staff members would also be available to ECSRC staff.

Recommendation 29& 17 – Authorities powers and Sanctions

FSC

593. Section 28 of the FSC Act, provides the power for the FSC to conduct compliance inspections on relevant persons, where relevant persons are licensees, former licensees, a subsidiary or holding company of a licensee or of a former licensee and a regulated person who is not a licensee.
594. Compliance inspections are onsite inspections which monitor and assess the relevant person's compliance with his obligations under the AML/TFR and such other Acts, Regulations, Guidelines or Codes relating to Money Laundering or the Financing of Terrorism.
595. During such inspections, the FSC may inspect the premises of any relevant person whether or not such a person's business is located in Anguilla. Section 28(2) of the FSC Act states that the relevant person's systems and controls, assets and documents may all be inspected by representatives of the FSC.

596. Based on its authority to request information from licensees under Section 20 of the FSC Act and under the individual financial services enactments, the FSC periodically reviews submissions of licensees through its offsite surveillance programme. Submissions/reports include external auditors' reports, risk management strategies, anti-money laundering procedures manual, operations manual and changes to all policies and procedures manuals.

ECCB

597. The ECCB assists with the supervision of institutions licensed under the Banking Act through on-site and off-site surveillance. The Banking Act provides the ECCB with various tools to ensure the compliance of these institutions with the requirements of the AML legislation and Guidance Notes.

598. To facilitate their off-site risk assessment, commercial banks are required to submit a number of documents. These include the following documents which are reviewed and assist in determining the timing of an AML examination at an institution.

- Minutes of Board of Directors Meetings and proposals for major policy decisions
- Minutes of Management Meetings
- Minutes of Audit Committee meetings and other sub-committees of the board
- Internal auditors/Own Inspectors reports
- External Auditors Reports
- Letters of Engagement of External Auditors
- External Auditors Management Letters
- Risk Management Strategies
- Loan Policies and funds management policies
- Anti-money Laundering Procedures Manual
- Operations Manual
- Changes to all Policies and Procedures Manuals

599. The ECCB conducts enhanced monitoring of institutions which are required to undertake remedial action. Where the remedial action is required due to AML/CFT breaches, such institutions are required to submit a monthly status report on the steps taken to satisfy the MOU/LOC items.

600. It should be noted however, that where an institution is required to take remedial action due to shortcomings detected in AML/CFT inspections, recommendations are made in the report and said report forwarded to the Minister of Finance. The Examiners were advised that it is a practice for the Minister of Finance to forward such a report to the FSC as it is the regulatory body ultimately responsible for AML/CFT in Anguilla. However, the FSC does not conduct follow up measures to ensure that the entity is complying with the recommendations put forward in the report.

601. In 2006, the enforcement powers in the Banking Act were enhanced and a new *Ladder of Enforcement Action* was implemented to address any problems of persistent non-compliance by financial institutions. Enforcement action is as follows:

- Stage I - Letter of Commitment
- Stage II - Memorandum of Understanding
- Stage III - Written Warning
- Stage IV - Cease and Desist Order

- Stage V - Fixed Monetary Penalty
- Stage VI - Institute Legal Proceeding
- Stage VII - Restriction/Revocation of Licence

To date, none of the deficiencies noted in onsite inspections of financial institutions have been severe enough to warrant progression to Stage III.

602. The ECCB also requires institutions to submit information on AML training programmes which are reviewed to determine the frequency and quality of training.

ECSRC

603. The ECSRC does not conduct examinations on licensees. In the event that the ECSRC were to exercise its authority under Part 12 of the Securities Act by conducting onsite inspections, they would be limited to verifying whether the requirements under the Securities Act have been breached.

FSC

604. As noted above, the FSC is empowered under Section 28 of the FSCA to conduct onsite compliance examinations of all licensees.
605. The FSC is also provided with the authority via the financial services enactments it administers to conduct onsite examinations on the relevant institutions to which the enactments apply.
606. The FSC's onsite examinations include a review and assessment of licensees' policies, procedures, books and records, including a sample testing of due diligence procedures.

ECCB

607. See discussion above. Further, the Banking Act (BA) provides that a licensed financial institution shall produce for inspection of any examiner appointed by the ECCB at such time as the examiner specifies all books, minutes, accounts, cash, securities, documents and vouchers relating to its business and the business of its affiliates as requested by the examiner for the purpose of the Act. The failure of the institution or affiliate to provide the requested information or the provision of false information is an offence punishable by a fine.
608. The ECSRC is authorised to request information and conduct investigations (relevant to securities business) in accordance with section 134 of the Securities Act. This section of the Act allows the ECSRC to enter the premises of the licensee and require the licensee or any other persons acting on behalf of the licensee to produce any document or record. In addition, the ECSRC may inspect or make copies or take possession of any document. Non-compliance with these provisions constitutes an offence under the law.

FSC

609. Part 4 (Sections 20–26) of the FSCA provides the FSC with broad powers to compel the production of information or documents from licensees. Section 20 states that the Commission may require that a licensee provide specific information or documents of a specified description. The Examiners are of the opinion that this provision is wide enough in scope to allow for the FSC to require any document including information related to accounts or other business relations and transactions to be submitted by the licensee on request.

ECCB

610. As mentioned above, the ECCB may require of a licensee, the production of books, minutes, account securities and documents relating to its business
611. Under section 131 of the Securities Act, the ECSRC has authority to compel information as follows:
- (1) The Commission may, by notice in writing, require a licensee to furnish it with such information as it may reasonably require for the exercise of its functions within such reasonable time and verified in such manner as it may specify.
 - (2) The duty to supply information under this section applies notwithstanding any other enactment or rule of law in Anguilla.
612. However, the Examiners have noted that the authority granted to the ECSRC with regard to compelling the production of documents, does not cover AML/CFT.
613. None of the competent authorities are required to obtain a Court order when compelling the production of or access to information for supervisory purposes.

FSC

614. The Enforcement powers granted to the FSC under Section 29 of the FSCA against licensees also extends to the directors and senior management of such licensees. Under Section 51(2) of the Act, senior management as well as directors may be held responsible and sanctioned for the licensee's failure to comply with the required legislation.
615. The FSC has the following enforcement powers pursuant to the FSCA:
- revoke the approval of a compliance officer (Section 27 (3))
 - suspend a licensee's operating licence (Section 29 (2))
 - revoke a licensee's operating licence (Section 29 (2))
 - appoint an examiner to conduct and investigation of the licensee (Section 29 (2))
 - appoint a qualified person at the cost of the licensee to advise on proper business conduct
 - issue a directive to the licensee, including the following (Section 32):
 - impose restrictions or conditions on the licensee
 - require the licensee to stop certain actions or take certain actions
 - require the licensee to remove and replace certain key employees, including directors.
 - impose a financial penalty not exceeding \$50,000 (Section 35(3)).

ECCB and ECSRC

616. Section 21 of the BA makes reference to the Central Bank's powers of enforcement and power to sanction financial institutions, and their directors or senior management for violating any law, regulation or guideline or engaging in unsafe or unsound practices in conducting the business of the institution. It should be noted that failure to comply with or properly implement requirements to combat ML and TF are not considered to fall under the scope of the "safety and soundness" principle stated in the Banking Act.

617. Under the BA, breaches of statutory provisions may result in criminal sanctions which would apply to the licensees as well as substantial shareholders, directors and officers
618. The ECSRC has enforcement powers for disciplinary offences which would arise due to a breach of the Securities Act.
619. The FSC has wide ranging powers granted under Sections 30, 32 and 35-37 of the FSCA and through the relevant provisions in the financial services enactments administered by the FSC. These powers apply in instances where financial institutions fail to comply with or properly implement requirements to combat ML and TF. Such sanctions apply equally to natural and/or legal persons covered by the FATF Recommendations.
620. Generally, criminal sanctions are available for offences under the POCA and the UK Orders in Counsel that criminalise FT. The sanctions applicable are fines and/or imprisonment. Under all of these legislative regimes, the sanctions are applicable to all natural and legal persons. The FSCA authorises the FSC to apply the relevant sanctions as discussed above. The sanctions allow for enforcement actions, revocation or suspension of licences and the imposition of prohibitions, limitations or restrictions.
621. The POCA allows for the freezing, forfeiture, seizing and confiscation of money and/or property directly or indirectly resulting from the proceeds of criminal activity.
622. Under the Banking Act, the ECCB may issue sanctions against a licensee, its affiliates and substantial shareholder director or employee for non-compliance with any law that it is subject
623. Sections 160 of the POCA and Section 23 of the AML/TFR identify the FSC as the regulatory/supervisory authority for monitoring compliance by service providers with the Anti-Money Laundering Legislation i.e. Regulations, Code and Guidelines. Therefore the sanctions discussed above can be applied by the FSC.
624. As previously discussed, The ECCB and ECSRC are well equipped through their respective legislations to issue sanctions against contravening parties. It should be noted however, that these sanctions would only apply where there are breaches of the requirements under the Banking Act and the Securities Act respectively.
625. The sanctions detailed in Sections 30, 32 and 35 – 37 of the FSCA, through the relevant sections of the Financial Services Enactments administered by the FSC and Sections 144 and 153 of the POCA, are applicable to both natural and legal persons. Pursuant to section 51(2) of the FSCA, where an offence is committed by a body corporate, a director or officer who authorized, permitted or acquiesced in the commission of the offence also commits an offence. Section 51(3) provides that, where an offence is committed by a body corporate and its affairs are managed by its members, subsection (2) applies to such members.
626. In relation to institutions regulated under the BA, liability for offences extends to the institution's directors and senior management, employee or responsible substantial shareholder. The FSC's enforcement powers pursuant to the FSCA above.
627. Further, there is a wide range of administrative penalties and fees available to competent authorities under the POCA and the AML/TFR. Some fees are applicable only in the event that licensee has been summarily convicted of a breach of the legislation.
628. Under Part 7 of the POCA, where a licensee is required to pay a fine and unable to do so, according to the amount of the fine required to be paid, the offending party may be subject to imprisonment between 12 months to ten (10) years.

ECCB sanctions

629. The BA makes provision for the ECCB to administer sanctions for breaches of any law which a licensee is subject to. However, the sanctions may only be issued if such breaches were detected during the inspection of the licensee. General breaches of the BA would attract a fine of EC\$100,000 in the case of a body corporate and \$50,000 in the case of an individual.

ECRSC sanctions

630. The ECSRC is not able to impose sanctions on its licensees for breaches of AML/CFT requirements.

Recommendation 23 –Market entry

631. The FSC has a licensing regime in place for all financial institutions, with the exception of domestic commercial bank and other financial institutions which are licensed by the ECCB. The licensing regime, which determines market access, reviews potential licensees' ML/FT risk management structure, policies and procedures. The licensing regime also reviews the fit and proper status of owners and all key officers; this is reviewed for both AML and CFT compliance.
632. The licensing process includes the conduct of comprehensive due diligence on all beneficial owner of prospective licensees, directors, senior officers and significant third party service providers. The form of application for each type of licensed institution is laid out in the individual services enactments.
633. The FSC's licensing process is published on its website under Publications, item number 34. Sections 3 and 7 of that document are standard requirements for all applicants. There is a mandatory requirement for personal questionnaires to be completed for all directors, senior officers and compliance officers as well as significant shareholders who have controlling interest of ten percent (10%) or more. In addition, the FSC obtains resumes and references of such persons and requires that disclosure is made as to the percentage of ownership these individuals have in other companies. Each applicant is required to submit information on the entity's operating policies and procedures which include due diligence procedures and record keeping and retention policies.

ECCB

634. The BA provides that a licensed financial institution shall produce for inspection of any examiner appointed by the ECCB at such time as the examiner specifies all books, minutes, accounts, cash, securities, documents and vouchers relating to its business and the business of its affiliates as requested by the examiner for the purpose of the Act. The failure of the institution or affiliate to provide the requested information or the provision of false information is an offence punishable by a fine.

FSC

635. Even though insurance companies and credit unions are subject to a licensing regime, there is no requirement for fit and proper tests to be done on directors and senior managers of credit unions. The Examiners were informed that there is harmonized draft legislation for the Eastern Caribbean Currency Union, of which Anguilla is a member, which addresses this requirement. This draft legislation is currently being considered and finalized.

636. The FSC conducts fit and proper assessments on persons applying to conduct business under the Trust Companies and Offshore Banking Act and the Company Management Act. In the event that a relevant person does not meet the requirements, the FSC may deny the application or request removal of the disqualified shareholder or officer. Such assessments are periodically reviewed and an assessment that an officer is not fit and proper is grounds for the suspension or revocation of a license.

ECRSC

637. Part 4 of the Securities Act requires fit and proper tests (reputation, character, financial integrity) of all applicants including senior managers, directors and shareholders, for any type of licence.
638. In Anguilla, there are only two types of institutions which may transfer value or change currency, a Money Services Business or a Commercial Bank. The Money Services Business Act, 2009 was recently passed in Anguilla; however, even though MVT operators do exist in Anguilla and were formerly registered under the Trade, Business, Occupation and Professional Licenses Act (TBOPLA), to date no MVTs have been duly licensed under the MSB Act. Therefore, MVTs are not yet subject to a licensing regime. All MVT operators and Commercial Banks are required to adhere to AML/CFT requirements. The FSC has conducted AML/CFT onsite inspections on two of the existing MVT operators in Anguilla.
639. Sections 1-4 of Schedule 2 to the AML/CFT Regulations define “service providers”. Accordingly, all service providers’ are required to meet and satisfy the same legal and regulatory requirements as financial ‘service providers’. The POCA regulations and the code provide extensive details on the regulatory and supervisory requirements for ‘service providers’.

Recommendation 23& 32 –Ongoing supervision and monitoring

640. The FSCs ongoing monitoring regulatory/supervisory regime - which includes offsite supervision, prudential meetings, training seminars, and onsite examinations (targeted and full-scope) – applies equally to safety and soundness issues and AML/CFT compliance. The FSC is currently responsible for the administration of the Insurance Act and ensures that the domestic and international insurance sectors are well regulated. Over the past five (5) years, the FSC has inspected ten (10) insurance companies and intermediaries to ensure compliance with AML/CFT requirements.

ECCB

641. The on-site examination process is guided by a manual of procedures which encapsulates the FATF 40 recommendations. These procedures have been adapted from the Bank Secrecy Act Examination Manual of the Board of Governors of the Federal Reserve Bank and the procedures of Federal Deposit Insurance Corporation (FDIC). The manual is being revised to include the special recommendations on terrorist financing.
642. ECCB reviews the processes used by financial institutions that it regulates to capture risk and ensure compliance with the relevant laws. Some transaction testing is done on-site to ascertain the level of risk to which such institutions are exposed. The system of controls for detecting and correcting violations of the relevant laws is also reviewed.

643. The ECCB subsequently incorporated AML in its overall risk-based (safety and soundness) on-site examination of financial institutions. Risk-based examinations are conducted on the basis of risk in an institution, which are identified from the ongoing review of the off-site information submitted to the ECCB⁸³.

ECSRC

644. The ECSRC is the prudential regulator for the securities sector and ensures compliance with the requirements of the Securities Act. However, it should be noted that this regulatory body neither conducts prudential onsite inspections nor AM/CFT inspections. As new entrants into the securities market are only monitored at the time of licensing, and there are no prudential or AML/CFT inspections, it would appear that there is very little regulatory oversight of this sector.
645. Money or Value Transfer Services (MVTs) are considered to be “service providers” under the AML/TFR and are therefore subject to the provisions of all AML/CFT legislation. The FSC has conducted ML/FT risk management compliance onsite examinations on two of the four money service transfer businesses in Anguilla.
646. MVT operators are currently not subject to a licensing or supervisory regime. They are registered under the Trade, Business, Occupation and Professional Licenses Act (TBOPLA) Act. However, The FSC conducts ML/FT risk management compliance onsite examinations on money service transfer businesses in Anguilla. The institutions are held to the same standards as other licensees as it relates to AML/CFT compliance.
647. There is one credit union whose services are provided to the members/employees of a particular company. This entity has never been evaluation by the FSC to determine its level of compliance with the FATF recommendations. During the interview the Examiners were made aware that officials at the credit union were not knowledgeable of the requirements under the law where AML/CFT is concerned. This institution however, due to the limited transactions conducted and the fact that members are employees of the “parent” company, does not constitute a high risk entity as the human resources division of the “parent” company conducts due diligence on the employees who are in turn the members of the credit union.

Statistics

648. The FSC conducted a total of 52 on-site examinations over the period 2004-2009 as follows:
- Trust & Company Service Providers - 35
 - Banks – 5
 - Insurance Companies & Intermediaries – 10
 - Money Transfer Agents – 2
649. The license of one trust company was revoked in 2009. A total of 21 institutions were required to take remedial action under specific instructions which included the following:
- Formal documentation of AML/CFT policies, procedures and internal controls

⁸³ A list of some of the documents required is provided under the caption “Offsite/Surveillance”.

- Installation of CDD software or processes for facilitating CDD measures and on-going monitoring
- Implementation of regular AML/CFT training programs
- Maintenance of training records
- Submission of CDD information held by introducers on a random selection basis

In each case, follow up examinations were also conducted to evaluate the progress made by the licensees in each area of deficiency.

ECCB

650. The Examiners requested statistics from the ECCB with regard to the number of AML/CFT onsite examinations conducted by them and any sanctions that may have been imposed and on any formal requests for assistance that were made or received by supervisors relating to AML/CFT. This information was however not provided by the ECCB.

Recommendation 25 –Guidelines (Guidance for financial institutions other than on STRs)

651. Sections 48 & 49 of the FSCA and Sections 158 & 159 of the POCA allow for the issue of Regulations and Regulatory Codes for the purpose of establishing sound principles for the conduct of financial services business in Anguilla.
652. The Guidance Notes (GN) on the Prevention of Money Laundering which was issued by the Governor pursuant to section 4 of the MLRA was replaced by the Guidance issued under the Code. The Guidance in the Code was formulated to provide assistance to financial institutions and other regulated businesses in the area of regulatory compliance.
653. The AML/CFT Guidance Notes are provided with the Anti-money Laundering and Terrorist Financing Code and provides guidance to assist service providers (as defined in Schedule 2 of the Regulations) to interpret the requirements of POCA, the Regulations and the Code. It also provides practical guidance on identification and verification of identity.
654. The Guidance forms a part of the Code and therefore has the status of “law”, section 158(5) of POCA requires the Court to consider whether a person has followed any guidance issued by the FSC in deciding whether a person has committed an offence under the AML/CFT Regulations. The FSC will also consider whether the Guidance has been followed in deciding whether a service provider has failed to comply with the Code.

3.10.2 Recommendations and Comments

Recommendation 17

655. The Authorities should clarify the framework for the application of sanctions (including the levying of administrative fines on domestic banks and their off-shore banking subsidiaries), given that all AML/CFT supervisory and sanction powers are vested in the FSC, which has no delegation powers in this regard.
656. The Banking Act should be amended so that ECCB could be granted the power to apply sanctions for AML/CFT breaches.

657. The Securities Act should be amended so that the ECSRC could be granted the power to apply sanctions for AML/CFT breaches.

Recommendation 23

658. The POCA and its attendant Regulation should make clear the role of the ECCB as it relates to the supervision of AML/CFT implementation in domestic banks and other financial institutions licensed under the Banking Act.
659. The Directors, Senior Managers and Shareholder controllers of Money Services Businesses and Financial Co-operatives should be subject to a fit and proper test at the time of licensing.
660. Financial Co-operatives should be supervised for AML/CFT compliance.

Recommendation 25

661. The Guidance Notes should contain sector specific information to provide additional direction to the regulated entities.

Recommendation 29

662. The Banking Act should provide that the ECCB can examine licensees to ascertain compliance with other statutes that apply to these entities, especially where AML/CFT is concerned.
663. The Banking Act should be amended so that the ECCB could be granted the power to apply sanctions for AML/CFT breaches.
664. The ECSRC should be expressly given the authority to supervise its licensees for AML/CFT.
665. The MSB Act should be implemented without delay.

Recommendation 30

666. The FSC should be provided with additional staff so as to adequately meet its supervisory functions for all the financial institutions under its supervision.

3.10.3 Compliance with Recommendations 23, 29, 17 & 25

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	PC	<ul style="list-style-type: none"> • The ECCB does not have the power to sanction for AML/CFT breaches. • System for levying administrative fines on domestic banks and their off-shore banking subsidiaries for breaches of the POCA, Regulations and Code may be ineffective. • The ECSRC does not have the power to sanction for AML/CFT breaches. • The ECCB may only apply sanctions where breaches were discovered during an examination. • The sanction powers available to the ECCB are not congruent to

		<p>those available under the POCA framework for AML/CFT breaches.</p> <ul style="list-style-type: none"> • Applicable sanctions under the POCA and the Code are fairly new therefore effectiveness cannot be properly tested.
R.23	PC	<ul style="list-style-type: none"> • Fit and Proper requirements do not currently apply to money service providers and credit unions • Financial Co-operatives (Credit Unions) are not supervised for AML/CFT compliance. • Lack of legal jurisdiction by the ECCB to effectively supervise AML/CFT implementation in domestic banks and their off-shore subsidiary banks. • The ECSRC does not conduct onsite inspections of any kind on its licensees and lacks power to inspect and sanction for AML/CFT purposes. • The ECCB cannot directly share information with the FSC on AML/CFT matters pertaining to licensees without an MOU. • MSBs are not yet subject to a licensing regime.
R.25	PC	<ul style="list-style-type: none"> • The Guidance Notes do not contain sector specific information. • The effectiveness of the newly issued Guidance provided in the Code could not be assessed due to the recent passage of the Code.
R.29	PC	<ul style="list-style-type: none"> • The FSC which is responsible for ensuring AML/CFT compliance does not monitor the domestic banking sector, which is the largest component of the financial sector in Anguilla. • The ECCB which does conduct the onsite inspections (though it does not have the authority to do so), does not share the information directly with the FSC. • The FSC does not ensure that recommendations for remedial action as set out in the ECCB's report are implemented. • The ECCB has no legal authority to conduct onsite AML/CFT inspections. • The ECSRC has no authority to conduct onsite AML/CFT inspections.

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis (summary)

Special Recommendation VI

667. Money or value transfer services form part of the definition of service providers in Schedule 2 of the AML/TFR and accordingly all requirements under the POCA the AML/TFR and the Code as they relate to monitoring, customer due diligence, reporting, appointing a compliance officer, apply equally to money and/or value transfer services. These services are required to fully comply with the FATF 40 + 9 Recommendations.

668. Under the Money Services Business Act, 2009, (MSBA) Money Services Business refers to entities which provide the following services:-

- (i) transmission of money or monetary value in any form
 - (ii) cheque cashing.
 - (iii) currency exchange
 - (iv) the issuance, sale or redemption of money orders or traveller's cheques and
 - (v) any other services the Minister may specify by notice published in the Gazette; or
 - (vi) the business of operating as an agent or a franchise holder of any of the businesses mentioned above.
669. The MSBA which was recently passed designates the FSC as the authority responsible for licensing and supervising MVT operators in Anguilla. However, it should be noted that the MVT operators which were previously registered under the Trade, Business, Occupation and Professional Licenses Act (TBOPLA) have not yet been licensed under the new MSBA.
670. Under the recently passed legislation, the FSC is required to license and/or register persons carrying on money services business in Anguilla, maintain a current list of the names and addresses of licensed and/or registered Money Services Business operators and be responsible for ensuring compliance with licensing and/or registration requirements.
671. The FSC has conducted onsite examinations on the two (2) licensed MVT operators to determine their level of compliance with Anguilla's AML/CFT framework.
672. By virtue of the fact that money or value transfer services are considered to be services providers in Anguilla, they are subject to the full range of mandatory obligations under the AML/CFT legislation. In addition, the FSC, which is the prudential regulator for the sector, also tests compliance on an ongoing basis, by conducting onsite inspections.
673. Money or value transfer services are monitored by the FSC through prudential meetings, training seminars and onsite AML/CFT examinations.
674. It should be noted that as the existing MVT operators have not yet been licensed under the new MSBA, onsite examinations conducted by the FSC have been carried out pursuant to the powers contained in the FSCA. The MSBA states that the Authority may conduct an examination to determine if the licensee "is in sound financial condition" and that the requirements of the Act have been complied with. Therefore the examination powers granted to the Authority under the MSBA are limited to determining safety and soundness only.
675. In Schedule 2, Form 1 of the MSBA, which specifies the information to be contained in and to accompany an application for the grant of a license, there is a requirement for the applicant to provide the name and address of each person who is an agent of the applicant. It should be noted however, that this obligation is made only at the time that the application is submitted for consideration by the FSC. Therefore, there is neither a requirement for Money Services Businesses to maintain a current list of their agents, nor a requirement for the Money Services Businesses to have the information on such agents available to the Authority.
676. Section 17(3) of the MSBA provides that a licensee should institute procedures to ensure that its accounting records and systems of business control comply with the enactments respecting anti-money laundering. Section 45 of the MSBA also states that if a licensee contravenes any provision or requirement of the Act for which no offence is specifically created or penalty provided, he commits an offence and is liable on summary conviction to a fine of EC \$50,000 or to imprisonment for a term of two (2) years or to both. It therefore appears as though these penalties lack proportionality and therefore effectiveness and dissuasiveness.
677. The AML/TFR provide for a range of sanctions to be applied if a service provider contravenes any of its sections. However, it should be noted that such a person would be guilty of an

offence and would be liable on summary conviction, to a prescribed fine (either EC\$50,000 or EC\$100,000).

678. The MSBA also provides for a number of enforcement actions that may be applied under various circumstances including where the business is being operated in a manner detrimental to the public interest or to the interest of customers. These measures include the suspension or revocation of licenses; however, the existing MVTs are not yet licensed under the MSBA. It is therefore questionable whether at present; the FSC would be able to apply these actions.

679. Under the FSCA, the FSC is given a wide range of enforcement tools which may be used when licensees contravene any provision or fail to meet other requirements (insolvency, comply with a directive etc.). Section 29 states that “If the Commission is entitled to take enforcement action under subsection (1), it may exercise one or more of the following powers –

- a. revoke or suspend the licensee’s license under section 30;
- b. appoint an examiner to conduct an investigation under section 33;
- c. appoint a qualified person at the cost of the licensee to advise the licensee on the proper conduct of its business;
- d. issue a directive under section 32

680. In addition to the foregoing, the FSC has the power at any time to revoke or suspend a license.

3.11.2 Recommendations and Comments

681. All existing MVTs service operators should be licensed under the new MSBA without delay.

682. Licensed MVT service operators should be required to maintain a current list of agents. Such a list should be made available for inspection by the FSC.

683. Section 17(3) of the MSBA should refer to mandatory obligations under both AML and CFT enactments.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	PC	<ul style="list-style-type: none"> • Money Services Business Act not yet implemented, therefore MVT operators are not licensed under the Act. • No requirement for licensed or registered MVT operators to maintain a current list of agents. • Penalties lack specificity and proportionality, thereby undermining their effectiveness and dissuasiveness.

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

684. Anguilla does not have an extensive range of sophisticated DNFBPs. There is currently no central or industry specific registry of DNFBPs on the island; however, the following is an estimate of the number of active DNFBPs on the island:

Table 17

TYPE ⁸⁴	NO. AS AT 15 MAY 2009	REGULATOR	COMMENTS
Lawyers (firms and sole practitioners)	38	FSC	A number of these law firms are also engaged in company management business, a licensed and regulated activity.
Notaries	46		
Accounting Firms	2	FSC	One international firm (KPMG)
Dealers in Precious Stones	2	FSC	Two relatively small jewellery stores
Real Estate Agents	20	FSC	These are primarily lawyers, law firms, accountants and company managers.
Casinos	Nil		Policy decision by Government of Anguilla
TOTAL	108		

685. Trust and company service providers are licensed, supervised and regulated as financial institutions on Anguilla; and accordingly, are required to comply with customer due diligence measures analysed in Section 3.2 of this Report.

686. The statutory authority for the regulation/supervision of DNFBPs is found in the AML/TFR and the Code. DNFBPs are identified in Sections (e) to (g) of Schedule 2 to the AML/TFR as 'service providers'. Accordingly, DNFBP 'service providers' are required to meet and satisfy the same legal and regulatory requirements as financial 'service providers'. The AML/TFR and the Code provide extensive details on the regulatory and supervisory requirements for 'service providers' as discussed in Section 3.2 of the Report.

687. The Interpretation section of the AML/TFR (Section 1) goes on to further define high value dealers as a person who in the usual course of business trades in goods which included precious metals and stones, and receives at least EC\$35,000 in a one-off transaction or multiple-linked transactions. In addition, an independent legal professional is considered to be a firm or sole practitioner who provides legal or notary services to other persons when preparing or carrying out transactions in relation to:

- the buying and selling of real estate and business entities;
- the managing of client money, securities or other assets;
- the opening of management of bank, savings or securities accounts;
- the organisation of contributions necessary for the creation, operation or management of companies; or
- the creation, operation or management of trusts, foundations, companies or similar structures, excluding any activity that requires a licence under the Trust Companies and Offshore Banking Act, or the Company Management Act.

⁸⁴Trust and company service providers are licensed, supervised and regulated as financial institutions on Anguilla; and accordingly, these institutions are listed in the financial institutions table.

688. Section 21 of the FSCA provides protection to a lawyer for privileged documents and information. The protection provided to persons dealing with privileged information is also detailed in Section 134 of the POCA.
689. The enhancement of AML/CFT legislation and regulations to extend coverage to DNFBPs was recently enacted; accordingly, an implementation regime has not been established as yet for DNFBPs. However, the establishment of such a regime is under active consideration by the FSC, the designated regulatory body. The FSC has approved an implementation plan for the regulation of DNFBPs which has a commencement date of December 2009.
690. The regulation of DNFBPs, once established, will include a registration requirement, a risk profiling of the various types of DNFBPs, the establishment of a SAR reporting requirement for DNFBPs, and a training/information dissemination programme for DNFBPs. Compliance with the regulatory regime will be reviewed primarily through prudential meetings with practitioners and targeted examinations based on the findings of the prudential meetings. The Examiners are of the view that the proposed regulatory framework to be established for DNFBPs appears to sufficiently address the existing shortcomings concerning such entities, once in place should lead to proper supervision of the sector, and the required flow of information between Regulator and licensee.

4.1 Customer due diligence and record-keeping (R.12) (applying R.5, 6, and 8 to 11)

4.1.1 Description and Analysis

691. In Anguilla, the POCA, the AML/TFR and the Code make no distinction between financial service providers and DNFBPs and accordingly all are required to comply with the requirements set out in Recommendation 5 at Section 3.2 of this Report. Consequently real estate agents, dealers in precious metals and precious stones, lawyers, notaries, accountants and other legal professionals, and trust and company service providers are all considered to be service providers.
692. There are currently no licensed casinos in Anguilla as there is a policy decision in place from the Executive Council prohibiting the establishment of such entities.

Recommendation 5

693. In accordance with Section 10 of the AML/TFR, all service providers including DNFBPs are required to apply CDD measures. The statutory and regulatory requirements for compliance with Recommendation 5 are detailed in Section 3.2 of this report. However, the effectiveness of the CDD requirements are affected by the fact that the regulatory framework for DNFBPs which are not Trust and Company formation agents, has recently been put in place and is still in its embryonic stage. In addition, real estate agents do not appear to have much understanding of their obligations under the law where AML/CFT is concerned and this sub-sector appears to be under-trained and uninformed in matters pertaining to AML/CFT.

Recommendation 6

694. As service providers, DNFBPs are required to comply with the requirements of Recommendations 6 and 8 - 11.

695. The statutory and regulatory requirements for compliance with Recommendation 5 are detailed in Section 3 of this report.

696. The requirements for CDD measures with respect to PEPs are set out in Section 12 of the Code and are outlined in section 3 of this report. It should be noted that in the case of the Real Estate sector, regulated persons seem to be unaware as to their obligations under the law where CDD measures for PEPs are concerned.

Recommendation 8

697. The policies and procedures to prevent the misuse of technological developments and to address the risks associated with non face to face business relationships are outlined in Section 3 of this Report.

Recommendation 9

698. Section 26 of the Code provides guidance for DNFBPs on introduced business. A full discussion can be found in Section 3 of this Report.

Recommendation 10

699. Part 7 of the Code provides guidance for DNFBPs on record keeping. A full discussion can be found in Section 3 of this Report.

Recommendation 11

700. Section 36 of the Code provides guidance for DNFBPs on complex and unusual transactions. Further discussion can be found in Section 3 of this Report.

4.1.2 Recommendations and Comments

701. Deficiencies identified for all regulated businesses as noted for Recommendations 5, 6, 8-11 in the relevant sections of this report are also applicable to DNFBPs

702. The outreach and training for DNFBPs, especially those which were not previously licensed by the FSC should be enhanced.

703. Supervision of the entire DNFBP sector should commence without delay.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	PC	<ul style="list-style-type: none">• Due to the recent enactment of the AML & CFT Code, effective implementation of AML/CFT measures as they relate to all DNFBPs cannot be assessed.• Deficiencies noted in Recs, 5, 6, 8-11, are also applicable to DNFBPs

4.2 Suspicious transaction reporting (R.16)

(Applying R.13 to 15 & 21)

4.2.1 Description and Analysis

- 704. Eligible DNFBPs as defined in the AML/TFR and consistent with the definition of DNFBPs as provided by the FATF, are required to comply with the requirements of Recommendation 13.
- 705. Casinos do not form part of the listing of DNFBPs authorised to operate in Anguilla.
- 706. Legal privilege for lawyers and other independent legal professionals is protected under Section 21 of the FSCA, and Section 134 of the POCA.
- 707. There is no specific requirement in the Code which mandates that a Service Provider which would also refer to a DNFBP should report suspicious attempted transactions regardless of the amount of the transaction.
- 708. With regard to tax matters, the discussion in Section 3.7 of the Report is also applicable to DNFBPs.
- 709. As 'service providers', all DNFBPs are required to send their SARs to the FIU as provided for in Section 31 of the Code.
- 710. DNFBPs as service providers are required to adhere to all the CDD, customer monitoring, and SAR reporting provisions of the AML/TFR and the Code, (see above).
- 711. In accordance with the requirement of Recommendation 14, service providers, which include DNFBPs, are protected under Section 133 of the POCA. This protection is provided for the disclosure of relevant information to the FIU.
- 712. DNFBPs are required by law to comply with the requirement of Recommendation 15 as detailed in criteria 15.1 -15.4 in Section 3.8 of this Report. However, in the absence of a regulatory regime for DNFBPs measures have not yet been instituted to ensure compliance with the requirements of the Recommendation. Given the recent enactment of the relevant legislation, compliance with this recommendation can only be expected of DNFBPs who are also licensees of the FSC.
- 713. The legal and regulatory requirements (excluding implementation) for DNFBPs as it relates to Recommendation 21 are detailed in Section 3.6 of this Report.

Additional Elements

- 714. The reporting requirements detailed in 16.5 extend to accountants and auditors in all professional activities. All DNFBPs are required to report relevant suspicious activities to the FIU.

4.2.2 Recommendations and Comments

- 715. The AML & TF Code should be amended to include attempted transactions.
- 716. Other recommendations set out in section 3.7 of this Report as they relate to Recommendation 13 would also pertain to this section.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	PC	<ul style="list-style-type: none"> • Deficiencies identified for financial institutions for R13, R15 and R21 in sections 3.7.3, 3.8.3 and 3.6.3 of this Report are also applicable to DNFBPs. • Due to the recent enactment of the Code, it is difficult to assess whether all DNFBPs have been filing SARs. • DNFBPs are not required to file SARs on attempted suspicious transactions regardless of the amount of the transaction.

4.3 Regulation, supervision and monitoring (R.24-25)

4.3.1 Description and Analysis

Recommendation 24

717. Anguilla has recently enhanced its AML/CFT legislation, regulations, code and guidelines to include DNFBPs. Accordingly, while the legislative requirements have been recently established, there are currently no regulatory structures in place for the regulation/supervision of most DNFBPs to ensure compliance with the applicable legislation.
718. At present, there are no casinos in Anguilla. This is due to the fact that the Government has implemented a policy whereby such entities are prevented from being licensed on the island and from operating on a whole. Therefore a designated competent authority to regulate and supervise casinos has not been established.
719. As casinos are expressly prohibited from being established in Anguilla, there is no necessity for regulatory measures to be in place to prevent criminals or their associates from holding or being the beneficial owner of a significant controlling interest in or being an operator of a casino.
720. DNFBPs were recently brought under the AML/CFT framework through legislative amendments. It should be noted however, that even though legislatively such entities are required to comply with AML/CFT legislation, due to the fact that training and outreach to this sector is in its embryonic stage, DNFBPs which are not currently licensed by the FSC do not adhere to AML/CFT requirements.
721. Real estate agents, dealers in precious metals and stones and other high value goods as well as lawyers, accountants and notaries are currently not subject to any regulation for AML/CFT compliance due to the recent enactment of legislation. Therefore such entities have not been inspected by the FSC.
722. The Anguilla FSC is the designated competent authority with responsibility for the regulation/supervision of the AML/CFT risk for DNFBP. This is provided for in Section 23 of the AML/TFR.
723. The FSC's current staffing level, financial resources, office space and technical expertise are not currently adequate to effectively execute its added responsibilities for DNFBPs and NPOs. Accordingly, the FSC is currently working with its board, the Governor's Office and the Executive Council to give effect to a proposed implementation plan to increase the FSC's resources, expertise and office space.

724. The primary area of technical deficiency is in the identification, assessment and mitigation of financing of terrorism risk.
725. The FSCA is currently under review in order to establish provisions for the regulation of DNFBPs and NPOs. Additionally, the Act will be amended to enhance the FSC's regulatory powers and improve the range of proportional and dissuasive sanctions.

Recommendation 25 (Guidance for DNFBPs other than guidance on STRs)

726. Guidelines are provided to service providers, including DNFBPs as part of the Code, 2009. The Commission also recently held a seminar/workshop for all service providers, including and specially targeting DNFBPs. The seminar, which was hosted by an expert in the field, provided participants with an overview of the requirement of the FATF Recommendations.

4.3.2 Recommendations and Comments

727. Training and outreach to the DNFBP sector should continue.
728. Sector specific guidance on money laundering and terrorist financing should be placed in the Guidance Notes.
729. The review of the FSCA should commence as soon as possible and the range of sanctions available to the FSC be made more proportional and dissuasive.

4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	PC	<ul style="list-style-type: none"> • Unable to assess effective implementation of the Code due to its recent enactment. • DNFBPs which are not licensed by the FSC are not monitored for compliance with AML/CFT statutes. • Resources available to the FSC are inadequate to allow for proper supervision of the DNFBP sector
R.25	PC	<ul style="list-style-type: none"> • Unable to assess effective implementation of the Code due to its recent enactment • The deficiencies noted for R. 25 at sections 3.7 and 3.10 apply to DNFBPs.

4.4 Other non-financial businesses and professions
Modern secure transaction techniques (R.20)

4.4.1 Description and Analysis

730. Anguilla has identified two (2) types of other institutions which might pose a potential money laundering and/or terrorist financing risk: **Securities trading platform**: There is an institution which operates from Anguilla which provides a securities trading platform for persons wishing to place trades on international securities exchanges. This institution, while not conducting

trades on behalf of its clients, provides the electronic platform and the back office support for the trades conducted. This institution is currently not regulated on Anguilla. **Lotteries:** There was recently one illegal lottery operating on Anguilla. This lottery was recently raided by the police; several persons were arrested and the assets of the lottery were restrained. This matter is currently before the Court.

- 731. The requirements of Recommendations 5, 6, 8, 11, 13 – 15, 17 and 21 are currently not applied to the institutions identified above. However, while not formally licensed and regulated, the institution operating the securities trading platform has filed a SAR with the MLRA, through the FIU, which has resulted in an AML investigation and the restraint of a significant sum of money. This investigation, which involved collaboration with a foreign regulator, is still ongoing. In addition, the Examiners were informed that there were at least two (2) lotteries licensed under the Lotteries Act in Anguilla. One such lottery is inactive as it does not conduct business with the general public. However, the Examiners were advised that there are significant transactions which take place through that lottery's bank account.
- 732. As indicated above, the police and Financial Investigations Unit have taken enforcement action against the illegal lottery operating in Anguilla.
- 733. It should be noted that even though the Anguillian authorities have made a policy decision with respect to the prevention of the establishment of Casinos on the island, that policy does not extend to Gaming on a whole. Therefore games of chance such as lotteries may be licensed under the Lotteries Act but are not subject to AML/CFT requirements.
- 734. Lotteries are not considered to be financial institutions and are therefore not subject to the requirement to have appropriate policies which have regard to the degree of risk of money laundering.
- 735. All financial institutions are required to have appropriate policies which have regard to the degree of risk of money laundering taking into account the type of customers, business relationships, products or transactions with which the relevant person's business is concerned.
- 736. The Examiners were not made aware of any consideration being made by the Anguillian authorities to the application of Recommendations 5, 6, 8-11, 13-15, 17 and 21 to non financial businesses and professions (other than DNFBPs) that are at risk of being misused for money laundering or terrorist financing.
- 737. Anguilla is actively taking measures to update and enhance its payment system. The Payment Systems Act was recently enacted and establishes enhanced requirements for financial institutions, particularly banks and money transfer agents, for conducting financial transactions.

4.4.2 Recommendations and Comments

- 738. All institutions other than DNFBPS and designated financial institutions, which pose a potential AML/CFT risk should be required to adhere to the FATF AML/CFT requirements.
- 739. Lotteries in particular should be subject to licensing and supervisory requirements.
- 740. The Payment Systems Bill should be implemented without delay.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	NC	<ul style="list-style-type: none"> • The two institutions identified by the authorities as being at risk for AML/CFT are not subject to the requirements of Recommendations 5, 6, 8, 11, 13 – 15, 17 and 21. • The Payment Systems Bill has not yet been implemented.

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and Analysis

741. Anguilla is home to the ACORN system, Anguilla Commercial Online Registry Network, a real time online registry system that allows for the registration/incorporation of a company from anywhere in the world with an Internet access. Incorporation can be accomplished within three (3) minutes and includes the provision of standard incorporation documents/certificates. ACORN is the central companies' registry for Anguilla.
742. Company incorporation - domestic, foreign and offshore companies – must be conducted through a licensed service provider; a company or individual providing fiduciary or company management services. Section 4 of the Companies Management Act prohibits conducting a company management business without a licence. Further, company management is defined by section 1 of the Act to include inter alia, the incorporating or forming of companies. Company managers are licensed and regulated by the FSC. Company managers are allowed to have overseas agents who represent them in jurisdictions in which the local licensee does not operate. There are obligations on the service providers under the AML/TFR Sections 10, 11 and 12, and Code, to understand the ownership and control structure and to identify beneficial owners and controllers.
743. Company managers and/or their overseas agents are allowed to hold due diligence information on behalf of incorporated companies. The required due diligence (KYC) procedures are detailed in Sections 10, 11 and 12 of the AML/TFR. Overseas agents are required to comply with all legal and regulatory requirements of the local licensee. Information held by the overseas agents must be made available to the FSC, by the local service provider within 72 hours of a request by the FSC (information can initially be provided as scanned documents).
744. All relationship information is held by the local licensee or the overseas agent. Information on beneficial owners is not publicly available through the Registry; however, this information is available to the FSC on request. Section 10(1) of the FSC Act states that at all times the Commission shall have access to and the right to inspect all documents filed with the Registrar. The Authorities advise that the FSC's access allows for viewing of information on a service provider and the details of the companies that that service provider has registered.
745. Legal persons are allowed to issue bearer shares in Anguilla. However, these bearer shares must be recorded, stored and immobilized in accordance with the requirements of the Custody of Bearer Shares Regulations, 2006. These Regulations provide for bearer shares to be held by designated approved custodians (persons licensed or approved by the FSC). All bearer shares must be deposited with an approved custodian, who must keep adequate records of the beneficial owner(s) of the shares. The Custodian is not allowed to transfer the bearer shares to any person except as follows:

- i) To another custodian
- ii) To the issuing company for the following purposes: a) to be converted or exchanged for registered shares; b) to be redeemed, purchased or otherwise acquired by the company; c) to be cancelled or forfeited.
- iii) To the registered agent of the company

746. Section 4(1) of the Custody of Bearer Shares Regulations places an explicit duty on the custodian to be able to identify the beneficial owners of the shares being held. The FSC has access to the beneficial ownership information on bearer shares through the custodian.

747. All legal persons must be incorporated or registered through a company manager licensed by the FSC. In this regard, general legal practitioners (termed in Anguilla as “independent legal professionals”) and accountants are prohibited from incorporating legal persons by virtue of the provisions of the Companies Management Act. The registered agent, which is a designated service provider, is required by law pursuant to the AML/CFTR and Sections 15 and 16 of the Code, to

- i) obtain the following identification information with respect to a legal entity
 - (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;
 - (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 mailing address of the legal entity;
 - (f) the principal place of business of the legal entity;
 - (g) the names of the directors of the legal entity;
 - (h) identification information on those directors who have authority to give instructions to the service provider concerning the business relationship or occasional transaction;
 - (i) identification information on individuals who are the ultimate holders of 20% or more of the legal entity;

5.1.2 Recommendations and Comments

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	C	This Recommendation has been fully observed.

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

748. In Anguilla a trust may be created by oral declaration, or by an instrument in writing (including a will or codicil), by conduct, operation of law, or in any other manner, once the intention of the

settlor to do so is clearly manifested (Section 4 of Trusts Act (the TA)). Thus, there are no formalities required to create a trust, with the one exception of a *unit trust*, which can only be created by an instrument in writing (Section 4(2) of the TA). Pursuant to Section 1 of the TA, a unit trust is defined as a trust established for the purpose, or having the effect, of providing for persons, funds available for investment, or facilities for participation by them as beneficiaries under the trust in any profits or income arising from the acquisition, holding, management or disposal of property:

749. The Registrar of Companies is empowered to keep a Register of Trusts, which registers the details of the identity of the trust, settlor, beneficiary, and the purpose for which the trust is established. Secondly, the said registration of a trust is optional (not mandatory) under the Act. Thirdly, the said register is not open for inspection by the public, but the trustee of a trust may in writing authorise a person to inspect the entry of that trust on the said register. (Section 66(8) of the TA). The Trusts Companies and Offshore Banking Act (TCOBA) provide that business must only be carried on by a trust company duly licensed in Anguilla. (Section 10 of the TCOBA). Trust business is defined as the carrying on of the business of acting as trustee of property (Section 1 of the TCOBA). Trust companies by virtue of the fact that they carry on regulated business are service providers as defined by Schedule 2 of the AML/CFT Regulations (Section 1 (a)).
750. In a maiden approach in Anguilla, independent legal professionals are now also deemed service providers by virtue of Schedule 2 of the AML/TFR. An *independent legal professional* means a firm or sole practitioner who, by way of business, provides legal or notarial services to other persons, when preparing for or carrying out transactions for a customer in relation to -
 - (a) the buying and selling of real estate and business entities;
 - (b) the managing of client money, securities or other assets;
 - (c) the opening or management of bank, savings or securities accounts;
 - (d) the organisation of contributions necessary for the creation, operation or management of companies; or
 - (e) the creation, operation or management of trusts, foundations, companies or similar structures, excluding any activity that requires a licence under the Trust Companies and Offshore Banking Act c. T 60 or the Company Management Act c. C 75;
751. As part of the due diligence and ongoing monitoring requirements in Section 4 (1) (e) of the AML/CFT Regulations, service providers are required to obtain adequate due diligence and KYC information on trusts. Anguilla states prudently in its guidance to service providers, that *“there are a wide variety of trusts, ranging from large, nationally and internationally active organisations subject to a high degree of public interest and quasi-accountability, through to trusts set up under testamentary arrangements and trusts established for wealth management purposes. It is important, in putting proportionate anti- money or prevention of terrorism financing policies, systems and controls in place, and in carrying out risk assessments, that service providers take account of the different money laundering or terrorist financing risks that trusts of different sizes and areas of activity present”*.
752. A service provider is duly required under Sections 18 and 19 of the AML/CFT Code, to obtain and verify the information on trusts. The said provisions require the due identification and verification of each trustee, settlor, protector or enforcer of the trust; and each beneficiary with a vested right or each beneficiary or person who is an object of a power.
753. All information held by the trust company/service provider is available to the FSC on request or through the onsite examination process. (Section 28 of the FSC Act). Compliance with this

requirement has been successfully tested repeatedly through onsite examinations, submitted requests for information to assist local investigations (whether by other competent authorities or not) or requests from foreign regulators. Pursuant to Section 118 of the POCA, the FIU is also empowered to require the provision of any information in relation to trusts, other than information that is privileged material, for the purpose of clarifying or amplifying information disclosed to it. The FIU can also share such information with foreign financial intelligence units. It is particularly noteworthy that there have been no onsite examinations or information requests of independent legal professionals in relation to trust arrangements.

754. The competent authority, the FSC, is provided with the authority to gather information (with the exception of privileged information as defined) from licensees of the FSC. This authority is provided pursuant to Section 20 of the FSCA.
755. Access to and a review of the adequacy and comprehensiveness of information held by trust companies/service providers are tested via direct onsite examinations of the trust companies and/or through requests for information held by the trust company.
756. Anguilla has legislatively provided for the establishment of foundations. Through the Anguilla Foundation Act, (FA) a foundation may be established for any purposes which are capable of fulfilment and are not unlawful, immoral or contrary to public policy. The said purposes shall not include financial services business, unless and until such licence as may be required to conduct such business has been duly granted (Section 5). It therefore means that if the said licence is obtained, the foundation is duly brought under the regulation of the FSC. The foundation is required to be either *registered*, which means the identification details thereon are publicly available; or *deposited*, which means that the identification details are not available to the public; but the Registrar of Companies shall disclose information on the *deposited* foundation upon an order of the High Court, or upon a written request from the FSC or any other body duly authorised to request information under any other enactment (Sections 13 & 14). Identification details include the identification (and address) of the founder/s, foundation council members, guardian, secretary, registered agent, beneficiaries and the initial property endowment. A foundation has the status of a separate and independent legal person in its own right (Section 15). Any property transferred to a foundation is irrevocable by whosoever made such a transfer (Sections 12 & 45).
757. Under Section 68 of the FA, the FSC may for the purpose of monitoring and assessing a relevant person's compliance with laws relating to AML or CFT, inspect, examine and make copies of the accounts, assets (including cash) and records belonging to or in the possession or control of the said person that in its opinion relate to a foundation established under the Act. A relevant person under Section 68(4) of the FA is (a) the registered agent of the foundation (or former registered agent); (b) a subsidiary or holding company of a registered agent (or former registered agent) of the foundation; (c) the secretary of the foundation; or (d) a foundation council member who is resident in Anguilla and is a regulated person- i.e. a person licensed under the Companies Management Act or the Trust Companies and Offshore Banking Act.- There have been no onsite examinations or information requests by the FSC in respect of foundations.

Additional Elements

758. The ACORN system allows several financial institutions to view online the identification details of registered foundations.

5.2.2 Recommendations and Comments

759. It is recommended that the registration of a trust be made mandatory by law. This would allow the competent authorities, at a minimum, to be duly aware of all trusts (and their accompanying due details) existent within Anguilla.

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	LC	<ul style="list-style-type: none"> • There have been no onsite examinations/information requests of independent legal professionals (with respect to trusts), or in respect of foundations to duly determine the effectiveness of access, by competent authorities, to required information.

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and Analysis

760. The Authorities have determined that the NPO sector presents a very low risk for potential money laundering and terrorism finance activities. This view is supported by the fact that the sector is domestic in nature and no ML/FT issues have emerged to date that relate to NPOs.
761. Section 186 of the Companies Act, enables the incorporation of NPOs. As at 17 June 2009 ninety-five (95) NPOs had been incorporated since under the Act, of which fifty-one (51) are still active. All of these are domestic companies with fully disclosed members and directors.
762. It is understood that there is also a very small informal NPO sector comprising NPOs that are not formally incorporated or registered. In the circumstances, Anguilla has taken the decision to establish a regime for the registration of all NPOs, whether incorporated as companies under the Companies Act or unincorporated NPOs. Section 164 of the POCA defines a NPO as one that is (a) established solely or primarily for charitable, religious, cultural, educational, social or fraternal purposes or for the purpose of benefiting the public or a section of the public and (b) it raises or disburses funds in pursuance of those purposes. The POCA also enables the making of Regulations providing, amongst other things, for the registration of NPOs, the designation of a NPO Supervisor, the powers of the NPO Supervisor (including with respect to enforcement), the issuance of a Code, and the maintenance of records by NPOs. The NPO Regulations, which are very near to completion, will have the status of subordinate legislation.
763. It is anticipated that the NPO Regulations will designate the FSC as the NPO Supervisor. This has been approved by the FSC Board, and the Commission is building its regulatory capacity and infrastructure to supervise NPOS. It is anticipated that the supervisory structure for NPOs will be fully in place by late 2009. In April of 2009, NPOs were invited to attend AML/CFT training.
764. It is considered that the Companies Act regime currently provides significant control over those NPOs that are incorporated as not for profit companies and enables access to a considerable amount of information. NPOs that are incorporated under the Companies Act are treated under the Act in every way as any other company. As such, a not for profit company is constituted by an articles of incorporation and will usually have by-laws. It must have a registered office in

Anguilla and must appoint a registered agent. The person providing the registered office and acting as registered agent must hold a licence issued by the Commission under either the Company Management Act or the Trust Companies and Offshore Banking Act that authorises the person to provide such services. A not for profit company will be subject to the corporate governance requirements specified in the Companies Act and will be required to have one or more directors. Notice of the current directors must be filed with the registrar of Companies. A not for profit company is required to file an annual return containing key information, such as its members, directors and officers.

765. Not for profit companies are required to maintain registers of members and directors and other records, including minutes of meetings and resolutions of both members and directors and accounting records that are sufficient to record and explain its transactions and will, at any time, enable its financial position to be determined with reasonable accuracy.
766. The records held by the Registrar of Companies concerning not for profit companies are open to public inspection.
767. Section 250 of the Companies Act enables the Registrar of Companies to apply to the Court for an order directing that an investigator be appointed to investigate the affairs of the company or any of its affiliates. The grounds include that the company was formed for an unlawful company or that it is in the public interest that an investigation of the company is made. Although, given the domestic nature of not for profit companies, no investigation has ever been ordered, it is considered that the grounds would enable an inspector to be appointed to investigate a not for profit company suspected of engaging in money laundering or terrorist financing.
768. Anguilla has recently reviewed its body of domestic laws with regard to AML/CFT compliance, inclusive of regulation of NPOs and has identified the need for legislation to strengthen its legal and regulatory framework for the NPO sector. Anguilla has therefore decided to establish a separate framework for the registration and supervision of NPOs that will operate in addition to the Companies Act.
769. The Regulations will provide the NPO Supervisor with information gathering powers. These, combined with the already existing Companies Act powers, will enable the NPO Supervisor to obtain timely information on the activities, size and features of Anguilla's non-profit sector.
770. The NPO sector is not captured under the existing AML/CFT framework and is therefore not required to report SARs to the FIU.
771. There are no established AML/CFT policies which specifically pertain to the NPO sector nor are there any known outreach programs which currently exist to provide instruction for this sector. Section 164 of POCA provides for the issuance of an NPO Anti-Money Laundering and Terrorist Financing Code. Such a Code has not yet been issued.
772. Once the above noted legislation is place, outreach to the NPO sector will be undertaken by the FSC.
773. There are no very large NPOs in Anguilla. There are therefore no NPOs that account for a significant portion of the financial resources under control of the sector. As indicated, none of the not for profit companies, which represent the majority of NPOs in Anguilla, engage in any known international activities.
774. At present there is no designated supervisory authority for the NPO sector. It is anticipated that the supervision of the NPO sector will be conducted by the FSC as soon as the Governor in Council makes this designation and the Board of the FSC approves.

775. As far as the Examiners are aware, no training has been undertaken by the FIU or the FSC specifically for NPOs in relation to their awareness of the risks of terrorist abuses.
776. As there is no formal licensing regime for NPOs in Anguilla, some registrations are done through the Registrar of Companies. The service provider, who is licensed by the FSC and subject to AML/CFT requirements, is responsible for submitting all registration documents to the Registrar. The information on the beneficiaries is not publicly available, but may be obtained by relevant authorities from the service provider on request.
777. Under the Companies Act, all NPOs that are registered are required to maintain a register of members and directors. There is no requirement for the information of senior officers to be publicly available.
778. Information on the purpose and objective of the NPO are not publicly known as such information is not required to be submitted to the Registrar of Companies in the articles of incorporation.
779. It is a general provision of Anguilla Law that enforcement does not preclude parallel civil, administrative or criminal proceedings. This general principle also applies to NPOs.
780. The Companies Act contains a number of sanctions or enforcement provisions with respect to companies which would also apply to not for profit companies. These include:
- The appointment of an inspector
 - The dissolution of the company by order of the Court on just and equitable grounds, which as a matter of common law include that it is in the public interest for the order to be made (section 215).
 - Where the Court has ordered a not for profit company to be dissolved, section 218 of the Act gives the Court a number of powers, including the appointment of a liquidator (who would replace the directors) and an order restraining the directors from taking certain actions.
 - Striking a not for profit company off the Register of Companies if it fails to send in any return, notice or document to the Registrar.
 - The Court may make a director's disqualification order against an individual it considers is unfit to be concerned in the management of a company (section 66).
781. In addition, many contraventions of the Companies Act constitute a criminal offence. These include failure to maintain accounting records, failure to keep accounts and returns at registered office in Anguilla, failure to keep other records, failure to keep minutes of meetings, failure to take reasonable care of not for profit company's records, failure to file annual return with Registrar and making false or misleading report or return.
782. As the NPO Anti-Money Laundering and Terrorist Financing Code has not yet been passed, there are no known sanctions available to regulatory authorities which are specific to the NPO sector.
783. A mandatory registration or licensing regime for NPOs does not currently exist. Those NPOs which are registered as companies are registered at the Companies Registry, and the information publicly available. However, it should be noted that not all NPOs which are in

existence in Anguilla are registered. Therefore information on such entities is not available for scrutiny by the competent authorities.

784. As previously stated, only corporate NPOS are required to keep accounting records that are sufficient to record and explain the company's transactions and should at any time, enable its financial position to be determined with some degree of accuracy. Section 225 of the Companies Act states that in the event of the company's dissolution, a NPO's records must be kept for at least 6 years other than the instance previously mentioned, there does not appear to be a specific period for which NPOs must keep their records. The Examiners did not meet representatives of the Friendly Societies as scheduled and so were unable to verify that records are kept for this period of time.
785. Competent authorities would only be able to access the records of NPOs registered as companies.
786. Further record keeping requirements and access to information by the NPO Supervisor will be included in the forthcoming legislation discussed above.
787. Under the POCA, the full suite of investigatory powers is applicable in respect of NPOs that are reasonably suspected of engaging in money laundering. Since terrorist financing is a predicate offence, any NPO suspected of participating in same, could be investigated.
788. The NPO sector falls outside of the scope of the AML/CFT regime, as the existing Code does not apply to NPOs. In addition, there is no formal mandatory registration/licensing required. By virtue of this, the NPOs are not mandated to report suspicious transactions and all NPOs are not required to submit registration documents and other pertinent information to a designated licensing/registration authority.
789. In light of the foregoing, the only entities/persons which may otherwise possess information on NPOs are the Registrar of Companies (the information is publicly available) and the licensed service providers who register the entities.
790. Without specific laws or procedures to govern NPOs which would also provide for the mandatory submission of information and their overall supervision and regulation, the effectiveness of information sharing at a domestic level cannot be assessed.
791. The Companies Act provisions enabling the appointment of an inspector would also enable an investigation of the company to be undertaken and FT information would be disclosed by the inspector to the FIU or the police as a suspicion of terrorist financing must be disclosed by any person.
792. The Inspector noted above would only be privy to information for those NPOs which were registered as companies.
793. Anguilla has not developed and has not implemented any mechanisms for prompt sharing of information among all relevant competent authorities in order to take preventative or investigative action
794. It should be noted however, that the FIU and Financial Investigations Unit provide the requisite expertise to investigate NPOs that are suspected of either being exploited by or actively supporting terrorist activity or terrorist organisations. Because Anguilla's definition of "person" is sufficiently broad to apply to NPOs, the full spectrum of asset freezing and seizure mechanisms established under the three (3) UK Orders in Council that criminalise terrorist

financing are available in respect of NPOs. See section 2.4 of the Report for a full discussion of those mechanisms.

795. Formal requests for mutual legal assistance in matters relating to terrorist financing would be addressed under the CJICA and the three UK Orders in Council that criminalise terrorist financing. See section 6.3 of the Report for a full discussion.

5.3.2 Recommendations and Comments

796. The Anguillan Authorities should undertake an outreach programme to the NPO sector with a view to protecting the sector from terrorist financing abuse.
797. The Anguillan Authorities should ensure that AML/CFT policies which specifically pertain to the NPO sector are finalized and implemented without delay.
798. Outreach programs which include AML/CFT training should be devised to provide instruction for the NPO sector.
799. A supervisory authority for the NPO sector should be designated without delay.
800. A mandatory registration/licensing system for all NPOs should be implemented as soon as possible.
801. The purpose and objectives of all NPOs should be publicly known.
802. NPOs should be required to adhere to the AML/CFT legislation.
803. The AML/CFT Code specifically for NPOs should be finalized and implemented without delay.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	NC	<ul style="list-style-type: none"> • No supervisory programme in place to ensure compliance with AML/CFT legislation. • All NPOs are not registered therefore the relevant information on all NPOs is not publicly available. • Existing NPOs not required to adhere to AML/CFT legislation • No specified period for all NPOs to keep records. • Unable to assess the effectiveness of domestic cooperation due to the current status of the NPO sector.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and coordination (R.31 and 32)

6.1.1 Description and Analysis

Recommendation 31

804. The Anguilla Constitution Order 1982 (section 23) establishes an Executive Council consisting of the Governor, two ex-officio members (Attorney General and Deputy Governor), the Chief Minister and not more than three other of his ministers. This Executive Council, as it is called, is the overarching executive policy making and co-ordination body for the island.
805. The MLRA, established under the Money Laundering Reporting Authority Act and continued and preserved under the Proceeds of Crime Act, 2009, is the primary body for the co-ordination and co-operation nationally on developing and implementing policy and activity against money laundering and terrorist financing. Section 117 of the POCA sets out the composition of the MLRA. (See Section 2.5 of the Report). The Governor also has the authority to appoint one other person with appropriate qualifications or experience for such term as the Governor specifies. The Governor also has powers to remove persons from the MLRA. Section 117(4) of the POCA empowers the MLRA to appoint persons to assist the body in the performance of its functions as delineated in Section 2.5 of the Report. The MLRA is answerable to the Governor in relation to international financial services, and to the Governor and the Executive Council, in relation to all its other functions. The composition of the MLRA also facilitates co-ordination and co-operation between the agencies. The MLRA provides strategic and policy direction in AML/CFT measures on a national basis. The introduction of the Customs Declaration Form is an example of an action resulting from the MLRA's strategic direction to relevant parts of the competent authorities of Anguilla.
806. Customs and the FIU have collaborated to design and implement cash declaration forms. The Examiners were told that there have been many instances in which Customs has sought the assistance of the Financial Investigations Unit when dealing with cash seizures. Customs officials also indicated that cash seizures were sent to the Royal Anguilla Police Force, and if additional assistance was needed, they would work with the FIU. Further, regular joint patrols have taken place involving Customs, Immigration and the Drugs and Firearms Task Force of the Police Force.
807. There are MOUs in place between the domestic law enforcement agencies and while there is no formal mechanism (such as a MOU) in place to facilitate intra-agency cooperation and coordination, all competent authorities detailed to the Examiners their cooperation with each other on a national basis. This includes ongoing weekly meetings held by all competent authorities wherein specific cases are discussed and decisions made with regard to whether the investigation should be worked jointly with assistance of a financial investigator from the FIU.
808. As the competent authority for the receipt and dissemination of SARs, the FIU provides assistance on AML/CFT compliance to other key associations to ensure understanding of the law. Most, if not all, of the regulated institutions within Anguilla detailed their relationship with the FIU, and that there were no impediments to cooperation within the industry.

Additional Elements

809. The FSC - in conjunction with the Financial Intelligence Unit, the Commercial Registry and the Anguilla Financial Services Association (the privates sector SRO) – has introduced an annual financial services industry, and quarterly meetings with particular sectors. The objective of these meetings is to facilitate the exchange of ideas on the development and regulation of the financial services industry, including discussions on AML/CFT compliance. In this regard, interviewees advised that the sensitisation provided by the relevant authorities to the various industry groups and the wider public, played an important role in the recent passage of the slate of AML/CFT laws and regulations.

810. In addition, the FSC and the Financial Intelligence Unit also host periodic targeted training sessions/workshops with key stakeholders, institutions and relevant sectors.
811. In an effort to foster a closer working relationship with Compliance and MLRO Officers, the Financial Intelligence Unit has held institutions specific meetings with institutions to sensitise them on the work of the FIU and how information provided thorough the SAR is being effectively utilized in the combating of ML and FT.

Recommendation 32

812. As discussed in Section 2.5 of this Report, the MLRA is the primary body for the effective co-ordination and co-operation and review of Anguilla's AML/CFT regime. This Unit meets bi-weekly to review the effectiveness of their systems for combating money laundering and terrorist financing. The Examiners were provided with a report prepared by the FIU issues of concern to Anguilla with regard to their AML/CFT regime. This report was provided to the MLRA for their review.
813. The Examiners were provided with statistics regarding SARs and the amount that were received by the FIU, as well as the breakdown of the type of financial institution, DNFBP, or other business or persons making the STR. Statistics were provided to the Examiners by Customs on cross-border transportation of currency and bearer negotiable instruments. Anguilla did not provide information on these cross-border transactions prior to 2008, as no information was being maintained before that time. Statistics should be maintained for five (5) years.
814. Statistics regarding international wire transfers are kept by the financial institutions.
815. Statistics were received regarding the number of cases and the amounts of property frozen, seized and confiscated. This is delineated elsewhere in this Report.
816. As noted in Section 2.2 of the Report the FIU is currently conducting analysis on SARs recently received to determine whether or not it is a matter involving or related to terrorist financing. Statistics relating to this and any future SARs that indicate FT will be kept by the FIU.
817. Statistics relating to all mutual legal assistance and extradition requests are maintained however Anguilla did not have any extradition requests and did provide the Examiners with that information.
818. As discussed previously in the Report, Anguilla did not provide information regarding SARs resulting in investigation, prosecution or convictions for ML, FT or an underlying predicate offence, as well as the number of cases and the amounts of property frozen, seized, and confiscated. The FIU advised that it is in the process of preparing its first annual report, which would include trends, statistics and typologies.

Recommendation 30 –Resources (Policy makers)

819. As discussed above, Anguilla's institutional arrangements for combating ML/TF is spearheaded by the MLRA, the policy making body for the jurisdiction and whose members are drawn from across all the major stakeholders responsible for implementing, supervision and policing the system. The FIU, which is the operating arm of the MLRA, is staffed by officers drawn from the RAPF. It is also the Examiners understanding that the duties of these officers are not limited to activities of the Unit but also includes criminal investigations carried out by the

RAPF and on which they report to the Commissioner through the hierarchy. Anguilla's institutional arrangements for AML/CFT as it relates to policy making and the operational functions of the FIU therefore needs to be clarified.

820. The part of the UK Governor's Office involved in international co-operation on AML/CFT issues is funded and staffed by the UK Government out of monies voted to the Foreign and Commonwealth Office (FCO) by the UK Parliament. The structure is the responsibility of the Governor, in consultation with the Overseas Territories Directorate of the FCO.
821. A MOU between the MLRA and RAPF endorsed by the Executive Council, sets out that the RAPF should staff and provide adequate human, financial; and technical resources from the police budget from monies voted by the House of Assembly but under the control and strategic direction of the MLRA. On the matter of independence, although the FIU advises that operationally it is independent, the fact that statutorily it is indistinguishable from the policy making the MLRA impairs the Unit's independence. Further, officers of the FIU also carry out substantial RAPF duties and reports ultimately to the Commissioner, a practice that is not in keeping with the requirements of the FATF methodology in terms of independence.
822. Section 11(1) of the FSC Act sets down the funding of the FSC which includes fees and penalties as well as any monies voted by the House of Assembly and other grants, fees and borrowed finance. The Director is responsible for the correct management, structure and performance of the FSC as well as disbursement of all its resources. He is responsible to the FSC Board and chairman and through them to the Governor. Section 3 of the FSC Act sets down the FSC's functions. The FSC advised the Examiners that to date it has not called on the Treasury to meet its financing needs as its revenues have been sufficient to meet operational needs.
823. The Customs Department falls under the Ministry of Finance. The Comptroller is responsible for the administration of the Customs Act and for any other enactment relating to any assigned matter, pursuant to Part 2, section 3(2) of the Customs Act. The Customs management team consists of the Comptroller, 2 Deputy Comptrollers and 2 Assistant Comptrollers.
824. Funding for the Customs Department is provided by the Government of Anguilla in the annual budget. As the result of recent economic difficulties and budgetary restraints, there are sometimes limitations in acquiring the technical and other resources at times. The operational independence and autonomy to ensure freedom from undue influence and interference can be found throughout the Customs Act, which provides the Comptroller with broad discretionary powers.
825. Policies in respect of prosecutions are set by the Attorney General, who is independent from any other branch of Government. Section 34 of the Anguilla Constitution Order 1982 gives the Attorney General independent power in relation to criminal proceedings and section 66(1) establishes that the Attorney General is answerable directly to the Governor. As such, the Attorney General is insulated from undue influence.

Policy Makers only

826. Overall, the GOA General Orders requires established officers of the public service, as well as others that may be designated from time to time, to sign the Official Secrets Act. This shows that public servants are aware that they should not divulge information gained as a result of their employment. The GOA has also introduced a Code of Ethics for its employees. The AG's Chambers is also developing draft Integrity in Public Life Act. Once enacted, Anguilla would

be in a position to ask the UK to extend to the jurisdiction the UN Convention against Corruption (UNCAC).

827. Section 5 of the Customs Act makes it an offence for a member of Customs to disclose documents, records and information which comes into their possession by virtue of their job.
828. The Financial Intelligence Unit is staffed by four serving police officers (three of whom are experienced Financial Investigators) who have been exemplary in conduct and ability during their career. Their conduct is subject to the Section 28 of the Anguilla Police Regulations which establishes a number of discipline offences designed to maintain high professional standards (including confidentiality) in addition to the Government Code of Ethics. Background checks are conducted on prospective officers and their social and financial standings scrutinized before they are considered eligible for selection to the Financial Intelligence Unit. Training within the unit emphasizes the highest standards of honesty, integrity and confidentiality in the day to day function of the Unit. Officers undergo a period of training where their daily work load is monitored and directly supervised by a senior officer for integrity and quality with feedback provided to the officer. High professional standards are maintained through ongoing monitoring of work with regular dip sampling and review of all files. Staff are trained as Financial Investigators and equipped with suitable skill sets such as computer skills and analytical capabilities. Additionally, section 121 of POCA, makes it an offence to disclose documents, records and information which come into their possession by virtue of their job.
829. Members of the Governor's Office working on financial services issues are all members of HM Diplomatic Service. As such, they are subject to the provisions of the UK Official Secrets Act.
830. The Governor's Office staff are subjected to and have passed the UK's security vetting procedures required of all HM Diplomatic Service personnel.
831. The FSC Act (Section 4(3) states that a person cannot be appointed as a Board member of the FSC if he is an undischarged bankrupt, convicted of an indictable offence or an offence involving dishonesty (or a member of the House of Assembly). Section 8 deals with the appointment of the Director (by the governor in his discretion). Section 8 (2) says the Governor must be satisfied that the person is "fit and proper". Section 7(2) deals with the removal of a Board member by the Governor. Among the conditions are that the person is unfit to carry out the function or has become bankrupt.

Policy Makers only

832. Special training or educational programmes are provided for judges and courts in Anguilla concerning ML and FT. In August 2008, the Financial Intelligence Unit conducted an educational awareness program in relation to Court staff (both Magistrates and High Court) concerning AML/TF issues in relation to the Financial Intelligence Unit and judiciary. The Eastern Caribbean Supreme Court (ECSC) sponsored a programme facilitated by the Caribbean Anti-ML Agency on the issues of ML and FT in Trinidad in 2002. In addition, one of Anguilla's prosecutors was sent to the UK for 10 days of training concerning AML/TF issues conducted by Crown Prosecution Service (CPS), Proceeds of Crime Delivery Unit.

The following are courses/workshops attended over the past four years:

Table 18

Program	Date	Attendees
Fraud Awareness and Prevention ARPF Anguilla	19 May 2009	3
AML/CFT Workshop (Internet Gambling) Bahamas	27-29 October 2008	1
AML/CFT Compliance Workshop	13 June 2008	3
AML/CFT for Compliance Officers - Insurance	April 2008	4
AML-CFT Training Program (World Bank) Trinidad	1-7 June 2008	1
AML/CFT Workshop	20-26 January 2008	1
AML-CFT Compliance Officers Training	March 2007	4
AML/CFT Training Workshop Tortola	26-30 June 2006	1
AML/CFT Training Workshop Tortola	19-24 June 2005	2
AML/CFT Compliance Workshop Trinidad	29 Nov-2 Dec 2004	1
AML/CFT Compliance Workshop Panama	3-9 October 2004	1

833. The UK government has provided training for Governors and other Governor's Office personnel working in financial services issues. This was conducted by the UK Overseas Territories Financial Services Adviser (OTFSA) and conducted in London and Miami. The Governor's Office and OTFSA have access to funds from the UK's Overseas Territories Programme Fund (OTPF) which can be used for projects, including training. This was used for the attachment of the prosecutor to the UK CPS. Staff of the FSC are provided with ongoing training.

6.1.2 Recommendations and Comments

Recommendation 31

834. The Anguillan Authorities should consider amending the POCA to make clear the institutional arrangements between, and the roles and functions of, the policy making MLRA and the operational FIU.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	C	This Recommendation has been fully observed.

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

Recommendation 35

835. Anguilla as a British Overseas Territory, cannot sign or ratify any transnational convention on its own behalf. Instead, it must request, through the Governor, that such agreements be extended to it by the UK. However, Anguilla can enact legislation domestically to implement the provisions of relevant transnational conventions prior to requesting that they be extended.

836. The 1988 United Nations Convention on the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) was ratified by the UK Government and extended to Anguilla on 8th February 1995. The Vienna Convention is implemented in Anguilla by the Criminal Justice (International Co-operation) (Anguilla) Act, R.S.A. c. C145 (CJICA) and the Proceeds of Crime Act, 2009 (POCA). The Palermo Convention and the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism have not been duly extended to Anguilla. All of the relevant articles of the said conventions have been fully implemented into the domestic law. The following table duly demonstrates the aforementioned:

Table 19

Treaty	Articles	Anguilla's situation
Vienna Convention (1988)	3 (Offences and Sanctions)	Drugs (Prevention of Misuse) Act ("DPMA"), the Customs Act, the CJICA and the Proceeds of Crime Act, 2009 ("POCA").
	4 (Jurisdiction)	Criminal Code, Sections 3-6, 16, 17, 19 and 20.
	5 (Confiscation)	Proceeds of Crime Act, 2009, Part 2 (Confiscation) and Part 3 (Civil Recovery)
	6 (Extradition)	Extradition (Overseas Territories) Order 2002 extends the UK 1989 Extradition Act to Anguilla
	7 (Mutual Legal Assistance)	Part 2 of the Criminal Justice (International Co-operation)(Anguilla) Act (Criminal Proceedings and Investigations); The Mutual Legal Assistance (United States of America) Act

	8 (Transfer of Proceedings)	No legislation however, Where proceedings concerning an offender in Anguilla relate to the same or similar proceedings elsewhere, Anguilla engage in arrangements relating to transfer of proceedings on an informal basis. Anguilla would provide the evidence gathered to the foreign authority that has a better chance of securing a conviction/higher sentence.
	9 (Other forms of co-operation and training)	The MLRA
	10 (International Co-operation and Assistance for Transit states)	No legislation however, Anguilla is not considered a transit state. Anguilla has a drugs interdiction cooperation programme with both the UK and the USA.
	11 (Controlled Delivery)	Sections 124 through 127 of the POCA
	15 (Commercial carriers)	No legislation however, security checks are carried out at ports of entry to ensure that carriers are not used for unlawful drug activity.
	17 (Illicit Traffic at sea)	Sections 16, 17, 19 and 20 of the CJICA.
	19 (Use of mail)	Customs Act, Section 32.
Palermo Convention	5 (Criminalization of participation in an organized criminal group)	Sections 25 to 32 and 89A of the Criminal Code.
	6 (Criminalization of laundering of the Proceeds of Crime)	Proceeds of Crime Act; section 1.
	7 (Measures to combat money laundering)	Proceeds of Crime Act, 2009, Part 4 and the Anti-Money-Laundering and Terrorist Financing Regulations and the Anti-Money-Laundering and Terrorist Financing Code.
	10 (Liability of Legal persons)	Anguilla's Interpretation and General Clauses Act, which applies to all domestic legislation, specifies that "person" includes any

		corporation, either aggregate or sole, and any club, society, association or other body, of one or more persons.
	11 (Prosecution Adjudication and sanction)	Sections 5, 6, 8 and 23 of the POCA.
	12 (Confiscation and Seizure)	Proceeds of Crime Act, 2009, Part 2 (Confiscation) and Part 3 (Civil Recovery)
	13 (International Co-operation for the purposes of confiscation)	Schedule 3 of the Proceeds of Crime Act, 2009
	14 (Disposal of confiscated proceeds of crime or property)	Section 154 of the POCA.
	15 (Jurisdiction)	Sections 3, 4, 5, 6, and 89A of the Criminal Code.
	16 (Extradition)	Extradition (Overseas Territories) Order 2002 (extends the UK 1989 Extradition Act to Anguilla).
	18 (Mutual Legal Assistance)	Part 2 of the Criminal Justice (International Co-operation)(Anguilla) Act (Criminal Proceedings and Investigations)
	19 (Joint Investigations)	Section 118 of the POCA.
	20 (Special Investigative Techniques)	Sections 125, 126 and 127 of the POCA.
	24 (Protection of witnesses)	No specific legislation in Anguilla; section 47 of the Criminal Procedure Act provides that the laws of England and the practice of England's Superior Courts of criminal law shall apply when matters of procedure are not expressly provided for. As such, Anguilla may utilise procedures permitted under UK law to protect witnesses.
	25 (Assistance and protection of victims)	Sections 14(4), 100 and 155 of the POCA.
	26 (Measures to enhance cooperation with law enforcement authorities)	MOU amongst domestic law enforcement Authorities. MLRA. RAPF is a member of the Caribbean Commissioners of Police.
	27 (Law Enforcement cooperation)	The Drugs and Firearms Task Force, Customs and Immigration have jointly undertaken actions that have

		resulted in several targeted operations against transnational criminality. The Financial Intelligence Unit is a member of Egmont and fully participates in cross-border law enforcement matters.
	29 (Training and technical assistance)	Anguilla actively seeks training and technical assistance in the area of organised criminal group activity (albeit rarely able to provide it to other states). The Financial Intelligence Unit has attended seminars, conferences etc and partaken in joint training. Anguilla has also participated in exchange programs, sending both Prosecutors and Police Officers for training and secondment to foreign jurisdictions.
	30 (Other measures)	. Anguilla is a member of INTERPOL and has arrangements of cooperation with international bodies such as the FBI and the assistance of foreign bodies, such as the UK SOCA, is often sought.
	31 (Prevention)	. Financial Services Commission Act and the Proceeds of Crime Act, 2009; Anti Money Laundering and Terrorist Financing Regulations and the Anti Money Laundering and Terrorist Financing Code
	34 (Implementation of the Convention)	The terms of the Convention are being implemented through relevant legislative, administrative and procedural mechanisms as discussed above.
Terrorist Financing Convention	2 (Offences)	The Terrorism (United Nations Measures) (Overseas Territories) Order 2001 (SI 3366/2001) (2001 Terrorism Order) section 3, 4 and 6; Sections 3 through 9 of the Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002 (SI 112/2002) (Al-Qa'ida Order); Sections 6 through 9 of the Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 (S.I. 2002 No. 1822) (Anti-Terrorism Order 2002); Section 235A of the Criminal

		Code; Hijacking is criminalised under Schedule 2, section 1 of the Aviation Security and Piracy (Overseas Territories) Order 2000.
	4 (Criminalization)	2001 Terrorism Order, the Al-Qa'ida Order, the Anti-Terrorism Order 2002, the Criminal Code and the Aviation Security and Piracy (Overseas Territories) Order 2000,
	5 (Liability of legal persons)	There is no distinction under Anguilla law between an individual terrorist, a terrorist group or a terrorist organization. "Person" is defined in Anguilla's Interpretation and General Clauses Act to include any corporation, either aggregate or sole, and any club, society, association or other body, of one or more persons.
	6 (Justification for commission of offence)	"Terrorism" is defined in the 2001 Terrorism Order to include the use or threat of action where made for the purpose of advancing a political, religious or ideological cause. A similar provision is made under section 4 of the Anti- Terrorism Order 2002.
	7 (Jurisdiction)	Part IV of the Anti-terrorism Order 2002
	8 (Measures for identification, detection, freezing and seizure of funds)	Section 5 of the 2001 Terrorism Order; Anti-terrorism Order 2002.
	9 (Investigations & the rights of the accused).	Anti-terrorism Order 2002, section 9 of the Criminal Justice (International Co-operation) (Anguilla) Act and Schedule 3 of the Proceeds of Crime Act, 2009.
	10 (Extradition of nationals)	Extradition (Overseas Territories) Order 2002
	11 (Offences which are extraditable)	Schedule 2, section 2 of the Extradition (Overseas Territories) Order 2002.
	12 (Assistance to other states)	POCA sections 118(2), 119(2), 151 and Schedule 3, the CJICA

		and the Mutual Legal Assistance (United States of America) Act.
	13 (Refusal to assist in the case of a fiscal offence)	There is no provision in Anguilla law that permits a requests made for mutual legal to be refused on the sole ground that the offence is considered to involve fiscal matters. Under the CJICA, section 5(3)(a) and (b) places some restriction on mutual legal assistance requested in respect of fiscal matters, but the provisions do not serve as an absolute bar to such requests.
	14 (Refusal to assist in the case of a political offence)	There is no provision in Anguilla law that provides for refusing to assist in the case of a political offence.
	15 (No obligation if belief that prosecution based on race, nationality, political opinions, etc.)	No legislative provision however, if there are substantial grounds for believing that the request for mutual legal assistance is made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position, the request would be denied.
	16 (Transfer of prisoners)	Extradition (Overseas Territories) Order 2002, the Repatriation of Prisoners Act 1984 c. 47 (UK) as applied to Anguilla by the Repatriation of Prisoners (Overseas Territories) Order 1986.
	17 (Guarantee of fair treatment of persons in custody)	Article 17 of the Constitution.
	18 (Measures to prohibit persons from encouraging, organising the commission of offences and STRs, record keeping and CDD measures by financial institutions and other institutions carrying out financial transactions) and facilitating information exchange between agencies)	Criminal Code sections 25, 26, 27, 31 and 32; Anti-Money Laundering and Terrorist Financing Regulations and Code; POCA and the DTOA

837. As noted above, Anguilla cannot sign or ratify any transnational convention on its own behalf. However, as discussed above, Anguilla has maintained a high level of compliance with the relevant Conventions through its domestic legislation.

Special Recommendation I

Resolution 1267 and Resolution 1373

838. Anguilla has fully implemented the United Nations Security Council Resolutions relating to the prevention and suppression of FT, including UNSCR 1267(1999) and its successor resolutions and UNSCR 1373(2001).
839. The TUNMOTO Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002 (SI 112/2002) and ATO fully implement the United Nations Security Council Resolutions relating to the prevention and suppression of FT. These Orders in Council are supplemented by the POCA along with the Code,
840. Anguilla has a variety of laws and procedures to freeze terrorist funds or other assets, most of which are established by UK Orders in Council. The TUNMOTO criminalises collecting, receiving or providing funds for the purposes of terrorism and making funds or financial services available directly or indirectly to a person who commits, attempts to commit, facilitates or participates in the commission of acts of terrorism, or a person controlled or owned directly or indirectly by such a person or a person acting on behalf, or at the direction, of such a person. It also provided for freezing of funds. In 2002, the UK made 2 Orders in Council applicable to Anguilla: the Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002 (SI 112/2002) (Al-Qa'ida Order) and the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 (SI 1822/2002) (2002 Anti-terrorism Order). Both of these SIs criminalised terrorist financing and provided for freezing of funds and seizure of terrorist property. SI 1822/2002 also provided for the seizure and forfeiture of terrorist property, which is defined as—
- money or other property which is likely to be used for the purposes of terrorism
 - proceeds of the commission of acts of terrorism and
 - proceeds of acts carried out for the purposes of terrorism.
841. It further provides that a reference to proceeds of an act includes a reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission).
842. These Orders in Council are supplemented by the 2009 Proceeds of Crime Act, 2009 (POCA), under which any act of terrorism would constitute a predicate offence and allow for funds to be frozen, seized and confiscated. POCA, along with its Anti-ML and Terrorist Financing Regulations and Anti-ML and Terrorist Financing Code also provide for a number of regulatory safeguards and reporting requirements in respect of assets that might be used for terrorist financing.
843. Since 2001, there have not been any cases in Anguilla of any action pursuant to or under U.N. resolutions in relation to freezing of property concerning terrorist financing

Additional Elements

844. Although they have not been formally extended to Anguilla, the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the 2002 Inter-American Convention against Terrorism are fully implemented by the POCA and its regulations and code.

6.2.2 Recommendations and Comments

845. Anguilla should request, forthwith, extension of the said un-extended Conventions.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	LC	<ul style="list-style-type: none">• The Palermo Convention and the 1999 Terrorist Financing Convention have not been duly extended to Anguilla.
SR.I	LC	<ul style="list-style-type: none">• The 1999 Terrorist Financing Convention has not been duly extended to Anguilla.

6.3 Mutual Legal Assistance (R.36-38, SR.V)

6.3.1 Description and Analysis

Recommendation 36 and SR. V

846. The POCA, together with the Criminal Justice (International Co-operation)(Anguilla) Act, 2000 (CJICA) and the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 (SI 1822/2002) (2002 Anti-terrorism Order) are the primary pieces of legislation that govern Anguilla's participation in mutual legal assistance (MLA) with countries who may request it. The CJICA has been 'holding down the MLA fort' from as early as 2004 while the new POCA supplements the said existing provisions. Part 6 and Schedule 3 of the POCA combined with the CJICA's wide range of authority to assist other jurisdictions in AML/CFT investigations, prosecutions and related proceedings and the 2002 Anti-terrorism Order's range of powers in respect of assistance in matters concerning the FT give Anguilla authority to provide the broadest possible range of MLA.

847. Section 8 of the CJICA provides that where criminal investigations are being carried out or criminal proceedings have been instituted against a person in a country outside Anguilla a police officer can apply to the Magistrate for a warrant authorising the police officer to enter and search premises occupied by that person to seize any evidence found there. The warrant can also be granted to allow a police officer to search for material that may be relevant to an overseas investigation. The application for the warrant cannot be made unless there is a direction given by the Governor after a request is made from an overseas country or territory. As noted previously, assistance was granted to Denmark in 2007.

848. Section 5 of the CJICA also makes provision for a country/territory outside Anguilla to make a request to the Governor for assistance in obtaining evidence in Anguilla in connection with criminal proceedings/investigation in that country. The Governor, if he thinks fit, may refer the request to the Magistrate's Court to receive the evidence to which the request relates.

849. Section 2 of Schedule 1, of the CJICA gives the Magistrate's Court power to take evidence on oath. Schedule 1 of the CJICA makes provisions for originals or copies of relevant documents or other evidentiary items to be sent to the requesting country. Section 4(3) of Schedule 1 of the CJICA provides that the Magistrate's Court will furnish the Governor with the documents

(either original or a copy) and where it is an article (the article itself or a description, photograph or other representation) so that same can be transmitted to the Court, tribunal or authority that made the request.

850. Section 2 of the CJICA gives authority for service of judicial documents in Anguilla. A request for service outside Anguilla must be made through the Governor who then may cause it to be served either by post or, if personal service is requested, by the Commissioner of Police. The Commissioner of Police, in turn, will inform the Governor when and how the document was served and, if the Commissioner of Police is unable to cause it to be served, he shall inform the Governor of same.
851. Section 3(6) of Schedule 1 of the CJICA deals with the appearance of persons for the purpose of providing information or testimony to the requesting country. More specifically, Section 1 of Schedule 1 gives the Magistrate's Court the power to securing the attendance of a witness who will provide evidence for use in an overseas Court.
852. Under the POCA, Part 6 applies Schedule 3 to external requests and the enforcement of external orders and the identification, freezing, seizure or confiscation of "relevant property". Section 151(d) provides that property is "relevant property" if there are reasonable grounds to believe that it may be needed to satisfy an external order which has been or which may be made. This definition is sufficiently broad to include instrumentalities or assets of corresponding value, as any property held by a defendant or a recipient's tainted property is duly captured in an effort to satisfy the said order
853. Pursuant to Section 9 of the CJICA, the Governor may, by order published in the gazette, provide for the enforcement of a forfeiture order made in any drug case by an overseas Court. The forfeiture may be of anything in respect of which an offence has been committed, or which was used in connection with the commission of the said offence. Although Section 9 of the CJICA is only limited to drug offences it is complemented by the fact that the POCA has no such limitations.
854. Additionally, the 2002 Anti-Terrorism Order provides for freezing, seizure and confiscation of assets related to terrorist financing, including compliance with requests for mutual legal assistance. See section 2.4 of this Report for a full discussion.
855. Anguilla is able to provide the assistance in a timely, constructive and effective manner and have done so with regard to assistance provided to Denmark, St. Martin and St. Maarten.
856. Sections 150, 152 and Sections 2, 3 and 10 of Schedule 3 of the POCA allow the Attorney General to make an *ex parte* application for a restraint order, production order, customer information order or account monitoring orders and other external orders. Furthermore, the time for payment provided in Section 15 for an external order is six (6) months with an extension of twelve (12) months, if applied to the Court.
857. Additionally, the UK Orders in Council extended to Anguilla that criminalise terrorist financing all provide for timely, constructive and effective response to requests from other jurisdictions. These Orders are discussed above in respect of section 2.4, Freezing of Funds Used for Terrorist Financing.
858. With respect to the enforcement of external orders and requests, the restrictions that apply may be proportionate to the relief being sought and not unduly restrictive. Pursuant to Section 151 of the POCA a distinction is made between an external order and an external request. An external order is defined as a recovery or confiscation order made by an

overseas Court in respect of property found or believed to be obtained as a result or in connection with criminal conduct, an external request is defined as a restraint order.

859. Section 151 and Schedule 3 of the POCA govern external requests and orders. Section 2 of Schedule 3 provides that the Court may make a restraint order in response to an external request if proceedings have been initiated, but not concluded.
860. Section 11 of Schedule 3 provides the conditions that must be met for the Court to give effect to external orders. A Court in Anguilla will need to be satisfied that the external order has been granted post conviction; the said order is still in force, with no appeal pending; and the property, the subject matter of the said order, must not be subject to a charge. These conditions are reasonable and proportionate as they confirm and promote certainty and finality with respect to the said order.
861. Section 5 of the CJICA sets out the procedure for Anguillan evidence to be used overseas. More specifically, this section gives the Governor power to provide mutual legal assistance when the Governor is satisfied that an offence under the law of the country or territory in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed; and proceedings in respect of that offence have been instituted in that country or territory or that an investigation into that offence has been carried on there.
862. Part 2 of the CJICA provides the procedure that must be undertaken when a request is made for mutual legal assistance in Anguilla. More specifically, that Part provides that the request should be made through the Governor, who, once satisfied that certain conditions are met, will instruct the Magistrate's Court for the purpose of duly obtaining evidence.
863. Under Schedule 3 of the POCA, all requests for MLA for enforcement of external orders or restraint orders are made directly to the Attorney General, who is empowered under that Schedule to make ex parte application to the Judge in chambers for domestic orders that implement external orders. There has been no such assistance pursuant to the POCA to determine in actual fact how efficient this process is. However, the procedure itself is clear.
864. Requests made for mutual legal assistance in Anguilla are not refused on the sole ground that the offence is considered to involve fiscal matters.
865. Under the POCA, there is no requirement that requests for co-operation be refused on the ground that the request involves fiscal matters.
866. Under the CJICA, Section 5(3)(a) and (b) places some restriction on mutual legal assistance requested in respect of fiscal matters, but the provisions do not serve as an absolute bar to such requests. Where it appears to the Governor that the request relates to a fiscal offence in respect of which proceedings have not yet been instituted, the Governor shall not refer the request to the Magistrate's Court to receive evidence to which the request relates, unless—
- the request is made pursuant to a treaty which is in force in relation to Anguilla; or
 - the Governor is satisfied that the conduct constituting the offence would constitute an offence of the same or a similar nature if it had occurred in Anguilla.

It should be noted that no request for MLA was ever refused on the sole ground that the offence was considered to involve fiscal matters.

867. In addition, the Mutual Legal Assistance (United States of America) Act of 1990 gives effect to the terms of the Agreement Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, including the Government of Anguilla, for the exchange of information relating to tax matters and it extends

to any similar agreements the Government of Anguilla may enter into. The Mutual Legal Assistance (Tax Matters) Act, which was passed in 2005, implements the Directive of the Council of the European Union known as Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments. These Acts recognise the principle of transparency and the effective exchange of information in tax matters and apply only on the basis of bilateral arrangements through formally concluded agreements.

- 868. Anguilla does not refuse a request for mutual legal assistance on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBP.
- 869. Section 133 of the POCA deals with the protection of disclosures. More specifically Section 133(2) explains that a protected disclosure, which includes authorised disclosure, will not be treated as a breach of any enactment, rule of law or agreement restricting the disclosure of information and shall not give rise to civil proceedings.
- 870. Pursuant to the CJICA and the POCA, there are no restrictions on rendering mutual legal assistance on the ground of secrecy or confidentiality.
- 871. Anguilla allows the powers of competent authorities to be available for use in response to requests for mutual legal assistance.
- 872. The determination of the best venue for prosecution of defendants is made by the Attorney General based on the facts of each case and the best interests of justice. Recently, Anguilla participated in a case that involved a defendant who had committed insider trading in Denmark and ML in Anguilla. A MOU with Denmark was signed to facilitate the fullest possible range of co-operation and information sharing for the investigation and prosecution of these offences. In that matter, it was determined to be in the best interests of justice that the prosecution of the predicate offence be undertaken in Denmark, partially because the defendant was already in custody in Denmark.

Additional Elements

- 873. The powers of the competent authorities required under R.28 are generally not available for use when there is a direct request from foreign judicial or law enforcement authorities to domestic counterparts. Requests must be received pursuant to law (the CJICA) in order to duly trigger the mutual legal assistance. Exceptionally, the FIU is permitted by Section 118 of the POCA to disclose information to their foreign counterparts in response to a direct request. Letters rogatory are duly entertained by the High Court in Anguilla.

Special Recommendation. V

- 874. The competent authorities in Anguilla are able to provide the widest range of international co-operation in connection with criminal, civil, enforcement and administrative investigations in respect of financing terrorism, terrorist acts and terrorist organisations. The provisions discussed above with regard to Rec. 36 apply to terrorism related offences as they do to ML and other predicate offences. Additionally, the UK Orders in Council extended to Anguilla and which address terrorist financing all provide for timely, constructive and effective response to requests from other jurisdictions. These Orders are discussed above in respect of section 2.4, Freezing of Funds Used for Terrorist Financing. Sections 20 and 23 of the FSCA apply to administrative investigations regarding financing terrorism and terrorist organisations as they do to ML and other predicate offences.

Additional Elements

875. The mechanisms for determining the best venue for prosecution of defendants in connection with financing terrorism, terrorist acts and terrorist organisations, as discussed in Section 6.3 of the Report, and the powers of competent authorities required under R.28, as discussed in Section 6.3 of the Report, apply to terrorism related offences as they do to ML and other predicate offences.

Recommendation 37 and SR. V

876. The Criminal Justice (International Co-operation) Act and POCA apply in respect of dual criminality relating to mutual legal assistance. This includes mutual legal assistance relating to extradition. Sections 2- 8 of the CJICA, and Part 6 and Schedule 3 of the POCA, enable mutual legal assistance to be rendered in the absence of dual criminality, in particular, for less intrusive and non compulsory measures. Under the CJICA, mutual legal assistance may be rendered when there are reasonable grounds for suspecting that an offence under the law of the country or territory in question has been committed. There is no requirement that the conduct constitute an offence under Anguillan law.
877. Under the CJICA, Section 2 provides that the Governor may cause overseas process to be served in Anguilla and Section 3 allows the Governor to make arrangements to have Anguillan process served overseas. Further, Sections 4 and 5 of the CJICA make mutual provisions for obtaining evidence either overseas or in Anguilla for use in proceedings either in Anguilla or overseas, as the case may be. To obtain evidence in Anguilla for use in foreign proceedings, the Governor need only be satisfied that there are reasonable grounds for suspecting that an offence has been committed under the laws of the other territory and that an investigation is being carried on in that territory (see Section 5(2)). Sections 6 and 7 of the CJICA provide for transfer of prisoners to give evidence or to assist with proceedings or investigations, including for the purposes of being identified in such proceedings or investigations (see Section 6(1)(b)). Section 8 of the CJICA provides that the Magistrate may issue a warrant for search of any premises in Anguilla and seizure of evidence that is related to a foreign criminal investigation for which a person has been arrested.
878. Section 2 of the UK Extradition (Overseas Territories) Order 2002 (SI 2002 No. 1823) (UK Extradition Order) sets out in full the criteria and conditions for extradition. Dual criminality is a necessary condition for extradition under the applicable law.
879. The term “extradition crime” is extensively defined. A low penalty threshold of 12 months imprisonment is prescribed (See Section 2 of Schedule 2 to the UK Extradition Order, which extends parts of the UK Extradition Act 1989). Technical differences between the laws in the requesting and requested states, such as differences in the manner in which each country categorises or denominates the offence do not pose an impediment to the provision of mutual legal assistance. Section 2 of the UK Extradition Act 1989 specifically states that it applies to offences “however described”.

Special Recommendation. V

880. The provisions discussed in respect of Rec. 37 apply to terrorism related offences as they do to ML and other predicate offences.

Recommendation 38 and SR. V

881. Under Schedule 3 of the POCA, all requests for MLA for enforcement of external orders are executed in a timely way and without undue delays as all requests are made directly to the Attorney General, who is empowered under that Schedule to make an ex parte application to the Judge in chambers for domestic orders that would implement external orders.
882. Part 6 of the POCA applies Schedule 3 to external requests external orders and the identification, freezing, seizure or confiscation and the enforcement of “relevant property”. Section 151(C) provides that property is ‘relevant property’ if there are reasonable grounds to believe that it may be needed to satisfy an external order which has been or which may be made.’ This definition is sufficiently broad to include instrumentalities used or intended for use in committing ML, FT, or predicate offences, and any other assets because of the overarching definition of “property” found in Section 1 of the POCA.
883. Additionally, the 2002 Anti-Terrorism Order provides for freezing, seizure and confiscation of assets related to terrorist financing, including compliance with requests for mutual legal assistance. See section 2.4 of the Report for a full discussion.
884. Pursuant to Section 151 and Schedule 3 of the POCA, external orders are enforceable against ‘relevant property. Section 151(c) provides that ‘property is relevant property if there are reasonable grounds to believe that it may be needed to satisfy an external order which has been or which may be made.’ This definition is sufficiently broad to include property of corresponding value because of the overarching definition of ‘property’ found in Section 1 of POCA as discussed above.
885. Co-ordination of seizure and confiscation actions with other countries is handled by either the Governor or the Attorney General through and with the assistance of the Financial Intelligence Unit. The Governor is the relevant authority in respect of seizure and confiscation actions under the CJICA or the UK Orders in Council that criminalise terrorist financing, and the Attorney General is the relevant authority in respect of seizure and confiscation actions under the POCA.
886. Section 154 of the POCA provides for the establishment and administration of the National Forfeiture Fund. Under that section, provision is made for an asset forfeiture fund into which all or a portion of confiscated property will be deposited and which may be used for law enforcement, health, education or other appropriate purposes.
887. Anguilla has adopted the internationally recognised principles of asset sharing as a result of co-ordinated law enforcement actions. In early 2009, Anguilla entered into a MOU with Denmark to share any assets confiscated as a result of their combined efforts in a case involving ML and insider trading. Section 154(3)(c) of the POCA allows the National Forfeiture Fund to be used to satisfy any such obligation to share assets confiscated or forfeited in Anguilla.

Additional Elements

888. Anguilla does recognize and enforce foreign non criminal confiscation orders. Schedule 3 of the POCA provides for the enforcement of external orders. It should be noted that the definition of “external order” at section 151 of the POCA does not limit such orders to criminal confiscation orders.

Special Recommendation. V

889. The competent authorities in Anguilla are empowered to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate property related to financing terrorism, terrorist acts and terrorist organisations, instrumentalities used in or intended for use in the commission of these offences, or property of corresponding value. The provisions discussed in respect of Recommendation 38 apply to terrorism related offences as they do to ML and other predicate offences. Additionally, the UK Orders in Council extended to Anguilla that address terrorist financing all provide for timely, constructive and effective response to requests from other jurisdictions. These Orders are discussed above in respect of section 2.4 of the Report, Sections 20 and 23 of the FSCA apply to administrative investigations regarding financing terrorism and terrorist organisations as they do to ML and other predicate offences.

Additional Element

890. Any assets confiscated or forfeited in relation to financing terrorism, terrorist acts and terrorist organisations, instrumentalities used in or intended for use in the commission of these offences, or property of corresponding value could be dealt with in the same manner as assets confiscated or forfeited in connection with ML or any other predicate offence.

Recommendation 30 – Resources (Central Authority for receiving/sending mutual legal assistance requests)

891. The Governor and the Attorney General comprise the central authority for sending/receiving mutual legal assistance and extradition requests. They are both adequately structured, funded, staffed, and provided with sufficient technical and other resources in office to fully and effectively perform their functions.
892. The section of the UK Governor's Office involved in international co-operation on AML/CFT issues is funded and staffed by the UK Government out of monies voted to the Foreign and Commonwealth Office (FCO) by the UK Parliament. The structure is the responsibility of the Governor in consultation with the Overseas Territories Directorate of the FCO. Current staffing levels are sufficient to meet Anguilla's needs in respect of mutual legal assistance and extradition requests.
893. The AG is independent from any other branch of Government. Section 34 of the Anguilla Constitution Order 1982 gives the AG independent power in relation to criminal proceedings and Section 66(1) establishes that the AG is answerable directly to the Governor. As such, the AG is insulated from undue influence. The AG's Chambers is adequately structured, funded, staffed and provided with sufficient technical and other resources in office however, there still needs to be more AML/CFT focused training in order to effectively perform their functions, particularly, in the instant circumstances of rendering mutual legal assistance.. Although no one member of the AG's Chambers is dedicated to MLA/extradition requests, no such allocation of resources is necessary in Anguilla. The volume of requests for such assistance is quite low and does not warrant specifically dedicated personnel.
894. Members of the Governor's Office working on financial services issues are all members of HM Diplomatic Service. As such, they are subject to the provisions of the UK Official Secrets Act. Additionally, members of the Governor's Office staff are subjected to and have passed the UK's security vetting procedures required of all HM Diplomatic Service personnel.
895. Section 3.21 of the Government of Anguilla General Orders, provides that public officers, including members of the AG's staff, may not, without permission of the Governor, disclose copies of documents, papers or information which they may have obtained in their official capacity. Should they do so, they may become liable to prosecution under the Official Secrets

Act, and also to disciplinary action. The Government of Anguilla has also introduced a Code of Ethics for its employees.

896. The UK Government has provided training for Governors and other Governor's Office personnel working on financial services issues. This was conducted by the UK Overseas Territories Financial Services Adviser (OTFSA) and conducted in London and Miami. The Governor's Office and OTFSA have access to funds from the UK's Overseas Territories Programme Fund (OTPF) which can be used for projects, including training.
897. Members of the AG's Chambers have received training in the area of combating ML and FT. As recently as January 2009, a prosecutor was sent to the Crown Prosecution Service (CPS) in the UK on a two (2) week attachment to learn about proceeds of crime and money laundering. The funding for the said attachment was provided from the OTPF. General policies in respect of prosecutions are set by the AG.

Recommendation 32

Statistics

898. The Governor's Office has maintained a database from 2007 relating to inward and outward ML and extradition requests and other international requests for co-operation.
899. There have been no requests for extradition made or received since records have been kept. Two mutual legal assistance requests have been received. The first, from Denmark, which related to insider trading, was granted and fully resolved in a five month period. This included co-ordinating the evidence gathering to coincide with the foreign investigating officers being present on Anguilla and later submitting the evidence gathered through diplomatic channels. The second request has recently been received in June 2009 from the United States of America and is being duly processed under the Mutual Legal Assistance (United States of America) Act.
900. Anguilla has made three (3) requests for assistance. The first two, in 2008, were made to Dutch St. Maarten and French St. Martin for evidence in a murder case. The request to the Dutch authorities was complied with immediately. The request to the French authorities was complied with within three (3) months. The third was made in 2009 and sent to the United States for assistance in a theft and money laundering matter. A response was still awaited at the time of the onsite visit.

Additional Elements

901. The Governor's Office has maintained a database from 2007 relating to all inward and outward international requests for co-operation.

6.3.2 Recommendations and Comments

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	C	This Recommendation has been fully observed.
R.37	C	This Recommendation has been fully observed.
R.38	C	This Recommendation has been fully observed.
SR.V	LC	<ul style="list-style-type: none"> There have been no MLA requests under the CFT legislation, thus the effectiveness of rendering MLA thereunder cannot be duly

		determined.
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6.4 Extradition (R.37, 39, SR.V)

6.4.1 Description and Analysis

Recommendation 39 and SR. V

902. The applicable law is contained in the Extradition (Overseas Territories) Order 2002 (the E(OT)O) (UK SI 2002 No. 1823) and the Extradition Act 1989 (EA) (United Kingdom) Act of 1989 c.33. The E(OT)O extends parts of the EA to Anguilla. The provisions that are extended to Anguilla are contained in Schedule 2 to the E(OT)O. The law that is applicable depends on the parties to the extradition request.
903. Extradition between overseas territories OTs and other OTs, the UK, Republic of Ireland and Commonwealth countries is governed by the E(OT)O by way of the EA 1989
904. Extradition between OTs and foreign countries where the European Convention on Extradition (ECE) does not apply is governed by Schedule 1 to the E(OT)O by virtue of Section 37(3) of t Schedule 2 to the E(OT)O and the Extradition Act 2003 (Commencement and Savings) Amendment Order 2003. That Schedule (subject to limitations etc) would provide the extradition procedure to be followed regarding the United States of America (USA).
905. OTs and ECE countries to which the ECE applies in relation is also governed by the E(OT)O ECE countries are treated as other foreign countries where the ECE does not apply between them and the OT (as in the paragraph above). There are extradition arrangements which apply to the OTs in addition to those in relation to the USA and certain ECE countries.
906. The UK Extradition Act 2003 has not yet been extended to the OTs; however, extension of that Act to Anguilla is currently under consideration by the Foreign and Commonwealth Office.
907. Money laundering is an extraditable offence. The definition of “extradition crime” in Section 2 Schedule 2, to the E(OT)O is wide enough to capture the range of ML offences established under the POCA. The said section defines an extradition crime as conduct however described occurring in the jurisdictions of the UK, Ireland ,a designated Commonwealth country or a British Overseas Territory, which if it had occurred in Anguilla, it would be an offence, punishable by imprisonment of twelve (12) months or more. The said definition similarly captures extra-territorial offences, inclusive of situations where the said jurisdiction base their jurisdiction in a matter on the nationality of the offender.
908. Anguilla extradites its own nationals pursuant to the procedures set out in the Part III, Sections 7 to 17 of Schedule 2 to the E(OT)O. Accordingly, a measure pertaining to cooperation on this matter is not necessary.
909. Principles of domestic law provide that all extraditions must be compliant with the E(OT)O, which allows extradition requests and proceedings to be handled without undue delay. Under section 7 of Schedule 2 to the E(OT)O, upon receipt of an extradition request, the Governor may issue an authority to proceed unless it appears to him that an order for the return of the person concerned could not lawfully be made, or would not in fact be made, in accordance with the provisions of this Act. Under Section 8, a Magistrate may issue a warrant upon receipt of authority to proceed. In the absence of authority to proceed, a Magistrate may issue a “provisional warrant” if he is supplied with such evidence as would in his opinion justify the issue of a warrant for the arrest of a person accused or, as the case may be, convicted within his jurisdiction and it appears to him that the conduct alleged would constitute an extradition crime. In any event, Section 9 provides specifically that any person arrested pursuant to a magistrate’s

warrant must be brought *as soon as practicable* before a court of committal (a Magistrate's Court). To date, there have been no extradition requests to or from Anguilla.

Additional Elements

910. The Governor and the AG comprise the central authority for sending/receiving extradition requests. The Governor and the AG communicate directly.
911. Based on section 7(2) of Schedule 2 to the E(OT)O, persons cannot be extradited based only on warrants of arrests or judgements. Under that section, an extradition request must be accompanied by in the case of a person accused of an offence, a warrant for his arrest issued in the requesting country or territory or, in the case of a person unlawfully at large after conviction of an offence, a certificate of the conviction and sentence.
912. Under section 14 of Schedule 2 to the E(OT)O, a person may waive formal extradition proceedings. In such a case, the Magistrate may order the committal for return of the person with the person's consent at any time after his arrest.

Special Recommendation. V .

913. Terrorism and the financing of terrorism are extraditable offences under the Extradition (Overseas Territories) Order 2002, based on the definition of an 'extradition crime' at Section 2 of Schedule 2 to that Order. As noted above for ML offences the definition will also be wide enough to cover terrorism and financing of terrorism offences under the ATO. As already stated, Anguilla does extradite its own nationals.

Recommendation 37 and SR. V.

914. The Criminal Justice (International Co-operation) Act (CJICA) and the POCA apply in respect of dual criminality relating to mutual legal assistance. This includes mutual legal assistance relating to extradition. Sections 2 to 8, Part 2 of the CJICA, and Part 6 and Schedule 3 of the POCA, enable mutual legal assistance to be rendered in the absence of dual criminality, in particular, for less intrusive and non compulsory measures. Under the CJICA, mutual legal assistance may be rendered when there are reasonable grounds for suspecting that an offence under the law of the country or territory in question has been committed. There is no requirement that the conduct constitute an offence under Anguilla law.
915. Under the CJICA, Section 2 provides that the Governor may cause overseas process to be served in Anguilla and Section 3 allows the Governor to make arrangements to have Anguillan process served overseas. Sections 4 and 5 make mutual provisions for obtaining evidence either overseas or in Anguilla for use in proceedings either in Anguilla or overseas, as the case may be. To obtain evidence in Anguilla for use in foreign proceedings, the Governor need only be satisfied that there are reasonable grounds for suspecting that an offence has been committed under the laws of the other territory and that an investigation is being carried on in that territory (see section 5(2)). Sections 6 and 7 provide for transfer of prisoners to give evidence or to assist with proceedings or investigations, including for the purposes of being identified in such proceedings or investigations (see section 6(1)(b)). Section 8 provides that the Magistrate may issue a warrant for search of any premises in Anguilla and seizure of evidence that is related to a foreign criminal investigation for which a person has been arrested.
916. For a discussion of the range of mutual legal assistance available under the POCA, see the discussion on R.36 at section 6.3 of the Report.

917. The term “extradition crime” is extensively defined in Section 2 of Schedule 2 to the E(OT)O, discussed above. A low penalty threshold of twelve (12) months imprisonment is prescribed in the E(OT)O. Technical differences between the laws in the requesting and requested states, such as differences in the manner in which each country categorises or denominates the offence do not pose an impediment to the provision of mutual legal assistance. Section 2 of Schedule 2 to the E(OT)O specifically states that it applies to offences “however described”. The categorization or denomination of offences does not lead to technical differences between the law of requesting and requested states to the provision of mutual legal assistance.
918. As previously noted, the law related to extradition as discussed in this section of the Report would apply to FT and terrorist acts. Terrorist acts although defined have not been formally proscribed. However, the said act/conduct would not be committed without impunity, as they are in fact capture by the traditional crimes of murder, causing grievous bodily harm, damage to property etc. Dual criminality would not provide a bar to rendering assistance in matters concerning Terrorism or terrorist financing because as noted directly above Section 2 of Schedule 2 to the E(OT)O applies to offences ‘however described’.

Additional Elements

919. The additional element 39.5 (in R.39) (simplified extradition procedures) applies in extradition proceedings related to the underlying conduct in terrorist acts or FT.

6.4.2 Recommendations and Comments

920. The Anguillan Authorities should criminalise the commission of terrorist acts as particularised and free standing crimes.

6.4.3 Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	LC	<ul style="list-style-type: none"> There have been no extradition requests to duly determine the effectiveness of MLA in this regard
R.37	C	This Recommendation has been fully observed.
SR.V	LC	<ul style="list-style-type: none"> There have been no extradition requests in relation to the FT, thus effectiveness cannot be duly determined

6.5 Other Forms of International Co-operation (R.40 & SR.V)

6.5.1 Description and Analysis

921. All of Anguilla’s competent authorities which include the FIU, the Royal Anguilla Police Force, the Immigration Department and Her Majesty’s Customs are authorized to co-operate with their international counterparts. The extent of their interactions and co-operation has been discussed above in Section 2.5 of this Report. It is the opinion of the Examiners that Anguilla has vibrant relationships with their international counterparts and that they cooperate to the fullest extent possible. Anguilla provided examples of their requests received from other countries and it was noted that there were no impediments relating to ensuring that cooperation was complete.
922. The POCA provides for cooperation with foreign jurisdictions under Section 118(2). According to this provision, the FIU shall receive all disclosures of information, including information from

a foreign financial intelligence unit, which concerns the proceeds of crime, money laundering, terrorism or the financing of terrorism or the suspected proceeds of these offences. The FIU can also by written notice require any person to provide information other than information that is privileged material, for the purpose of clarifying or amplifying information that was disclosed to the Reporting Authority. The section also provides that the FIU can receive requests for information from foreign financial institutions concerning the proceeds of crime, money laundering, terrorism, the financing of terrorism or the suspected financing of terrorism. Further, the FIU can also enter into written agreements, arrangements or memoranda of understanding with foreign financial intelligence units.

923. The FSC is likewise empowered to co-operate with foreign counterparts by gathering information and making disclosures. This is mainly governed by the FSCA 2003. Part 4 of the Act deals with international co-operation.
924. Section 20 of the FSCA authorises the FSC to gather information on the written request of a Foreign Regulatory Authority (FRA). The FSC needs to notify in writing the persons listed in Section 20 (2) to provide the information in any form the FSC deems appropriate. The listed persons are licensee; person connected with a licensee; somebody operating in financial services who is unlicensed; somebody who is reasonably believed to have the information required by the written notification.
925. Section 23(6) of the FSCA states that the FSC need not exercise its power to meet these requests unless it is satisfied that: information will not be used in criminal proceedings against the person furnishing it other than offence under Section 26 (essentially failure to comply with Section 20 requests) or in the case of perjury or “any like offence”; FRA undertakes to make a contribution to the cost of acquiring the information; the FRA is subject to adequate disclosure conditions and won’t without written permission, disclose the information to anyone other than members of the FRA or employee engaged in prudential supervision; or take action on any information or documents provided to it.
926. Section 23 of the FSCA deals with provision of assistance to FRAs. As noted before, the requests must be in writing. But the FSC should not proceed to a Section 20 request or disclose existing information or documents in its possession unless it is satisfied that: the information/documentation requested is “reasonably required by the FRA for the purposes of its regulatory functions. The Act lays out benchmarks which should be considered when considering the request: whether the FRA would provide similar assistance to the FSC; whether the request relates to breaches of laws which have no parallel in Anguilla or are from a jurisdiction not recognised by Anguilla; the seriousness of the case and its importance to persons in Anguilla; whether the information or documentation is relevant to the enquiries in the request; whether it is in the public interest to provide the assistance sought.
927. The Governor plays a role in international co-operation in financial services issues (and other criminal issues) as laid down in the CJICA. Sections 4 and 5 deal with Mutual Provision of Evidence. See discussion at section 6.3 of the Report.
928. Section 4 deals with overseas evidence for use in Anguilla. Essentially, if the Magistrate or Judge, on application by the AG, are satisfied that an offence has, or there are reasonable grounds to believe that an offence may have been, committed in Anguilla they can issue a “Letter of Request” seeking assistance to obtain evidence outside of Anguilla for use in the proceedings or investigation. The AG can issue a Letter of Request directly if he too is satisfied that an offence has or may have been committed, or the offence in question is being investigated or he has begun proceedings in respect of it. The Letter of Request is sent to the Governor. He is then tasked with transmitting the request to the appropriate court, tribunal or Central Authority in the relevant jurisdiction.
929. Section 5 deals with requests for assistance from jurisdictions outside Anguilla. The Governor could receive a similar sort of request to that which he might send out under section 4. If so he needs to satisfy himself that: under the laws of the requesting country, an offence has been committed; or there are reasonable grounds to suspect that an offence has been committed; or

that proceedings in respect of that offence have begun; or that an investigation into that offence is being conducted. If he is then so satisfied, he may send the request to the Magistrate to receive the evidence. In practice the Governor might seek the advice of the Attorney General to ensure that sufficient grounds are provided.

930. Under Section 5(3), if the offence is a fiscal offence for which no proceedings have yet begun, the Governor should not exercise the powers in Section 5(2) unless there's a treaty in force in relation to Anguilla or he is satisfied that the conduct constituting the offence would be the same or a similar offence in Anguilla.
931. Anguilla provided an example of the operation of their mutual legal assistance in the matter where the Danes were investigating a case involving one of their nationals who had been charged with insider trading. The Danes requested information from the FIU through the British Embassy in Copenhagen. The FIU provided the procedure for obtaining evidence from Anguilla which involved cooperation and consultation between the Governor, the Attorney General and the Magistrate. The request essentially went to the Royal Anguilla Police Force for the collection of the evidence. While this was not a streamlined procedure, the end result was the collection of evidence for a foreign law enforcement entity and there were no impediments to obtaining and passing the evidence to the Danes. The Examiners were informed that they received a letter of acknowledgement and thanks.
932. The competent authorities in Anguilla are able to provide the widest range of international cooperation to their foreign counterparts.
933. Specifically, the POCA at Schedule 3 makes provision for another country to request assistance from Anguilla in respect of the following—

- Restraint orders (POCA,)- An application for a restraint order is made by the Attorney General on behalf of the requesting party (being a foreign jurisdiction) or an application may be made on an ex parte application to a judge in chambers. Where there is a restraint order made on behalf of a foreign jurisdiction over property in Anguilla, both the police and customs are empowered to seize property to prevent its removal from Anguilla (Schedule 3, section 6). The court may also appoint receivers who have a range of powers to deal with property under the restraint order (Schedule 3 section 8).
- Enforcement of external confiscation orders- The application is made by the Attorney General on behalf of the requesting party (POCA, Schedule 3 Section 10) may also appoint receivers who have a range of powers to deal with the confiscation order (Schedule 3 Section 16).
- Investigations by The Financial Intelligence Unit in relation to foreign money laundering, proceeds of crime, terrorism and terrorism financing (including suspected) (POCA section 118(2) and 119 (2).

934. Section 8 of the CJICA provides that where criminal investigations are being carried out or criminal proceedings have been instituted against a person in a country outside Anguilla a police officer can apply to the Magistrate for a warrant authorising the police officer to enter and search premises occupied by that person to seize any evidence found there.
935. As discussed above, Section 5 of the CJICA also makes provision for a country//territory outside Anguilla to make a request to the Governor for assistance in obtaining evidence in Anguilla in connection with criminal proceedings/investigation in that country. The Governor if he thinks fit may refer the request to the Magistrate's Court to receive the evidence to which the request relates.

936. Under Section 23 of the FSCA, the FSC may disclose information, or provide documentation, in its possession to the foreign regulatory authority. Section 19 authorises the FSC to require a person to produce information and documents, whether for its own purposes or in response to a request for a foreign regulatory body.
937. Anguilla is able to provide assistance in a rapid and effective manner. The legislation allows in some respects for direct counterpart interactivity without going through several indirect Government departments. Several instances of this scenario were provided to the Examiners. In all instances there appeared to be no impediments to providing this assistance.
938. Section 17 of the AML/TFR requires service providers to keep records in a form that enables information to be made available *on a timely basis*, when lawfully required, to the FSC or law enforcement authorities in Anguilla. Records that must be kept are listed in Section 17(2) and include all business correspondence relating to a business relationship or occasional transactions. The keeping of these records aids in providing rapid assistance.
939. Schedule 3 of the POCA has very detailed provisions on external orders and requests for assistance. To expedite the process for giving effect to an external order, Section 10 provides that the Attorney General's application to give effect to an external order may be made *ex parte* to a judge in chambers. Section 15 provides that the maximum time a person has to make payment of the amount ordered to be paid is 6 months. After that time, a receiver may be appointed.
940. Since 2004, Anguilla has been a member of the Egmont Group by extension through the MLRA and have provided examples of their requests to Egmont in section 2 of this Report.
941. The Financial Intelligence Unit has indirect but unrestricted access to Interpol via the relationship with the Royal Anguilla Police Force.
942. Section 118(2)(d) of the POCA provides that the Financial Intelligence Unit has authority to enter into agreements and memoranda of understanding with foreign FIUs for the reciprocal exchange of information. There are three MOUs already in existence between the Financial Intelligence Unit and Canada, Guatemala and the Netherlands Antilles. Section 119 empowers the Financial Intelligence Unit to disclose information to foreign intelligence units and Section 120 provides civil immunity to the Financial Intelligence Unit for anything done or omitted to be done under the POCA. This power to disclose, coupled with immunity from damages, removes any potential impediment to the prompt and constructive exchanges of information directly between counterparts.
943. Exchange of information is available both spontaneously and on request in relation to both money laundering and the underlying predicate offences.
944. Under Section 118(2)(d) of the POCA, the FIU may enter into such written agreements and memoranda of understanding with foreign FIUs for the reciprocal exchange of information. Such agreements or MOUs may provide for exchange of information both spontaneously and upon request and in relation to both money laundering and the underlying predicate offences.
945. Section 119(1) of the POCA covers 'Disclosure of the Reporting Authority'. Subsection 1 states that the FIU may disclose any information to any law enforcement agency in Anguilla. The cooperation between the national agencies within Anguilla is discussed in detail in Section 2.5 of the Report. According to information provided by Anguilla, the Examiners noted that there have been no impediments to information being provided to Customs on several of their cases, as well as the Drug Enforcement Unit. Cases are discussed on a weekly basis during coordinated law enforcement meetings.
946. Section 119(2) of the POCA empowers the FIU to disclose to a foreign financial intelligence unit information disclosed to it, in order to:
- Report the possible commission of an offence;

- Initiate a criminal investigation respecting the matter disclosed;
 - Assist with any investigation or criminal proceeding respecting the matter disclosed;
 - Generally, give effect to the purposes of this Act.
947. The FIU has direct and /or indirect access to all the databases delineated in Section 2.5 of the Report and as such is not restricted or limited by legislation with regard to sharing information from these databases to foreign counterparts upon inquiry.
948. The Financial Intelligence Unit is authorised to conduct inquiries on behalf of foreign counterparts.
949. As discussed above, sections 20 and 23 of the FSCA specifically authorise the FSC to conduct inquiries on behalf of foreign counterparts.
950. The FIU has timely access directly to the following databases in addition to its own—
- Immigration Information
 - Customs Imports Information
 - all Police records including Criminal Convictions and reports as well as intelligence
951. The FIU also has direct and or indirect access to the following sub databases of the Standard Integrated Government Tax Administration System “SIGTAS”
- Land Registry
 - Business Registry (excluding Corporate entities)
 - National Population Information
 - Motor Vehicles Registration Information
 - Social Security
 - Death Information
 - Marriage Information, etc.
952. The FIU also has indirect access to the Company Registry database, which is called ACORN; this database houses the necessary information for all corporate entities as well as all International Business Companies (IBCs).
953. Anguilla’s legislation does not restrict or limit the FIU’s use of these databases in respect of inquiries made on behalf of foreign counterparts. (POCA Sections 118(1) & (2), 119 (2))
954. The police and the Attorney General pursuant to law, as discussed in sections 6.3 and 6.4 of this Report, may also duly conduct inquiries on behalf of foreign counterparts.
955. As a party to the Egmont Agreement, the law enforcement and other competent authorities in Anguilla are authorised to conduct investigations on behalf of foreign counterparts.
956. The POCA at , Section 119(2) provides that the FIU may disclose to a foreign financial intelligence unit information disclosed to it, in order to initiate a criminal investigation respecting the matter disclosed or to assist with any investigation or criminal proceedings respecting the matter disclosed.
957. The CJICA at Section 8 provides that where criminal investigations are being carried out or criminal proceedings have been instituted against a person in a country outside Anguilla a police officer can apply to the Magistrate for a warrant authorising the police officer to enter and search premises occupied by that person to seize any evidence found there.
958. Section 5 of the CJICA also makes provision for a country/territory outside Anguilla to make a request to the Governor for assistance in obtaining evidence in Anguilla in connection with criminal proceedings/investigation in that country. The Governor if he thinks fit may refer the request to the Magistrate’s Court to receive the evidence to which the request relates.

959. The AML/TFR, Part 3, Section 17, makes provision for records to be kept by a service provider which must be made available to law enforcement authorities in Anguilla. Section 18 indicates the period for which these records must be kept. The information in these records can be disclosed to other countries where a request is made pursuant to section 118(2)(d) POCA.
960. Anguilla complies with the Egmont principles in relation to the exchange of information and the conditions imposed are in accordance with those principles. They are appropriate for confidentiality and prevention of unauthorised further dissemination, proportionate and not unduly restrictive.
961. Fiscal matters is not one of the conditions noted for the refusal of international requests for assistance as outlined in the Criminal Justice (International Cooperation)(Anguilla) Act.
962. Under the POCA, there is no requirement that requests for co-operation be refused on the ground that the request involves fiscal matters. Additionally, Anguilla complies with the Egmont principles in relation to the exchange of information and the conditions imposed are in accordance with those principles.
963. CJICA, section 5(3)(b) provides one restriction on requests received from another country for assistance in obtaining evidence in Anguilla for a fiscal offence. If a request is made in relation to proceedings which have not yet been instituted for a fiscal offence, the Governor shall not refer the request to the Magistrate's Court to receive evidence to which the request relates, unless
- the request is made pursuant to a treaty which is in force in relation to Anguilla or
 - the Governor is satisfied that the conduct constituting the offence would constitute an offence of the same or similar nature if it had occurred in Anguilla.
964. Requests for cooperation are not refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBP. Anguilla's legislation includes the Confidential Relationships Act, R.S.A. c. C85, which imposes confidentiality requirements in respect of financial and business information. However, section 2(2)(c) of that act states that the "Act does not apply to confidential information given to or received by ... a police officer in the execution of his duties, whether within or without Anguilla, investigating any criminal offence alleged to have been committed within Anguilla or that, if it had been committed within Anguilla, would have been a criminal offence under the law of Anguilla."
965. Section 133 of the POCA provides that a protected disclosure, which for the purposes of that section includes an authorised disclosure, shall not be treated as a breach of any enactment, rule or flaw or agreement restricting the disclosure of information and shall not give rise to civil proceedings.
966. Anguilla adheres to the controls and principles in place as a party to Egmont regarding safeguards requiring that information received is used only in an authorized manner. For a complete discussion see Section 2.5 of the Report. Section 121 of the POCA relates to the confidentiality of information disclosed and provides sanctions with regard to violations of that section.
967. No person shall disclose any information or matter that he requires as a result of his connection with the Reporting Authority except as required or permitted by this Act or by an Order of the Court. If any person contravenes this subsection, they are guilty of an offence and liable on summary conviction to imprisonment for a term of 12 months or to a fine of \$20,000 or to both and imprisonment for a term of 5 years or to a fine of \$100,000 or to both on conviction on indictment.

Additional Elements

968. There are clear and effective gateways to facilitate the prompt and constructive exchange of information directly and indirectly between the Financial Intelligence Unit and other law enforcement agencies, competent authorities and non-counterparts both locally and overseas. This is done either spontaneously or upon a request from the requesting agency when the information is related to both money laundering and or terrorist financing the underlying predicate offences. Such exchanges of information are specifically authorised under the POCA at sections 118(2)(d) and 119(2).
969. The FIU has also exchanged information through the following channels and mechanisms–
- Memorandum of Understandings (MOUs): the Financial Intelligence Unit has signed three MOUs with FIU in Canada, Guatemala and The Netherlands Antilles. We also have three pending MOUs with the Internal Revenue Service (IRS – USA), FIU Ukraine and The Security Exchange Commission (SEC – USA).
 - Exchanges made on the basis of reciprocity.
970. Under Egmont, the request must be for information relating to predicate offences, terrorist financing and money laundering offences. As a matter of practice, the FIU does require that the requesting FIU give some level of explanation as to the purpose of the request and on whose behalf the request is being made is to ensure that the appropriate details are captured and that the FIU will not over step its boundary. In like manner, the FIU when making a request to a foreign FIU does provide the justification, basis and for whom the request is made.
971. The FIU can, pursuant to the POCA section 118(2)(a), access information that is requested by a foreign counterpart FIU from any other competent authorities or other persons. For example, company information for an IBC that is request by a foreign FIU can be obtained from the Company Registry.

Special Recommendation V

972. There are three (3) pieces of legislation which deal specifically with terrorist financing and make provision for the mutual legal assistance and information exchange:
- Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002
 - Terrorism (United Nations Measures) (Overseas Territories) Order 2001
 - Al-Qa’ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002
973. See Section 2.4. As discussed in Section 2.5 of this Report, the criteria in relation to international assistance apply to the obligations under SR.V. Under Section 11 of the Anti-Terrorism (Financial and Other Measures)(Overseas Territories) it provides for the disclosure of information under the following instances. Further, Section 11(1)(2) provides the ability to make disclosures in overseas investigations, as well as the ability to confiscate and forfeit under request of an overseas order.
974. To date, Anguilla had not had any terrorism financing investigations nor have they had any requests form foreign jurisdictions relating to terrorism financing.

Recommendation 32

Statistics

975. The Governor's Office maintains a database on inward and outward MLA requests and other international requests for co-operation. These statistics are reviewed from time to time to assess the effectiveness of the AML/CFT regime.

6.5.2 Recommendations and Comments

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	C	This Recommendation has been fully observed.
SR.V	LC	There have been no MLA requests with respect to CFT to duly determine effectiveness.

7. OTHER ISSUES

7.1 Resources and statistics

Assessors should use this section as follows. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report i.e. all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report will contain only the box showing the rating and the factors underlying the rating, and the factors should clearly state the nature of the deficiency, and should cross refer to the relevant section and paragraph in the report where this is described.

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
R.30	PC	<ul style="list-style-type: none">• Insufficient training for Customs in cross-border issues and financial investigations.• Insufficient office space.• Lack of sufficient staff to properly review additional sectors.• SARs not maintained in fire resistant filing cabinets.• Insufficient training in AML/CFT for prosecutors and the Judiciary.• Insufficient staff at the FSC given the number of financial institutions to be supervised.
R.32	PC	<ul style="list-style-type: none">• Customs does not maintain statistics on cross-border transportation of currency and bearer negotiable instruments.

		<ul style="list-style-type: none"> • No statistics maintained on cross-border incidents prior to 2008.
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7.2 Other relevant AML/CFT measures or issues

Assessors may use this section to set out information on any additional measures or issues that are relevant to the AML/CFT system in the country being evaluated, and which are not covered elsewhere in this report.

7.3 General framework for AML/CFT system (see also section 1.1)

Assessors may use this section to comment on any aspect of the general legal and institutional framework within which the AML/CFT measures are set, and particularly with respect to any structural elements set out in section 1.1, where they believe that these elements of the general framework significantly impair or inhibit the effectiveness of the AML/CFT system.

TABLES

Table 1: Ratings of Compliance with FATF Recommendations

Table 2: Recommended Action Plan to improve the AML/CFT system

Table 3: Authorities' Response to the Evaluation (if necessary)

Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (NA).

Forty Recommendations	Rating	Summary of factors underlying rating⁸⁵
Legal systems		
1. ML offence	LC	There have been no ML prosecutions under the POCA, thus effectiveness cannot be duly determined.
2. ML offence – mental element and corporate liability	LC	There have been no ML prosecutions under the POCA, thus effectiveness cannot be duly determined.
3. Confiscation and provisional measures	LC	There have been no confiscations, restraints and/or or seizures under the POCA or the CFT legislation, thus effectiveness cannot be duly determined.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	LC	Information sharing by the FSC with foreign regulators could be subject to court override.
5. Customer due diligence	PC	Effectiveness cannot be assessed due to the recent passage of the POCA, Regulations and the Code. The regime for the supervision of and sanction powers for domestic banks and their off-shore subsidiaries ambiguous. No requirement in the Regulations or Code that enhanced due diligence be applied to private banking, trusts that operate as

⁸⁵ These factors are only required to be set out when the rating is less than Compliant.

		personal holding vehicles and nominee arrangements.
6. Politically exposed persons	LC	Effectiveness of implementation cannot be assessed given the recent passage of the Regulations and Code compounded by the limited human resource capacity both in the FSC and at most service providers in this area.
7. Correspondent banking	LC	<p>Effectiveness of implementation cannot be assessed given the recent passage of the Code, however the risk as it relates to cross-border correspondent banking in the jurisdiction is low.</p> <p>Cross-border correspondent banking requirements do not extend to other financial institutions that may engage in similar cross-border relationships.</p>
8. New technologies & non face-to-face business	LC	Effectiveness cannot be assessed due to the recent passage of the POCA, Regulations and the Code.
9. Third parties and introducers	PC	<p>Effectiveness cannot be assessed due to the recent passage of the POCA, Regulations and Code.</p> <p>No requirement for financial institutions to immediately obtain necessary information on the elements of the CDD process in criteria 5.3 to 5.6.</p> <p>High level of inherent risks presented by an introducer chain.</p>
10. Record keeping	LC	Effectiveness cannot be assessed due to recent passage of the POCA, Regulations and Code.
11. Unusual transactions	LC	Effectiveness cannot be assessed due to recent passage of the POCA, Regulations and Code.
12. DNFBP – R.5, 6, 8-11	PC	<p>Due to the recent enactment of the AML & CFT Code, effective implementation of AML/CFT measures as they relate to all DNFBPs cannot be assessed.</p> <p>Deficiencies noted in Recs, 5, 6, 8-11, are also applicable to DNFBPs</p>
13. Suspicious transaction reporting	PC	<p>No explicit requirement to include attempted transaction in SARs.</p> <p>Issues regarding the effective</p>

		implementation of sanctions.
14. Protection & no tipping-off	PC	<p>Tipping-off offence not applicable to SARs that are being reported to the FIU.</p> <p>No explicit protection for financial institutions, their directors and employees from criminal or civil liability for breach of contract etc. for reporting suspicious transactions.</p>
15. Internal controls, compliance & audit	LC	<p>No requirement to maintain an adequately resourced and independent audit function to test AML/CFT compliance.</p> <p>No provision for other appropriate staff to have timely access to customer identification data and other CDD information.</p>
16. DNFBP – R.13-15 & 21	PC	<p>Deficiencies identified for financial institutions for R13, R15 and R21 in sections 3.7.3, 3.8.3 and 3.6.3 of this Report are also applicable to DNFBPs.</p> <p>Due to the recent enactment of the Code, it is difficult to assess whether all DNFBPs have been filing STRs and SARs.</p> <p>DNFBPs are not required to file SARs on attempted suspicious transactions regardless of the amount of the transaction.</p>
17. Sanctions	PC	<p>The ECCB does not have the power to sanction for AML/CFT breaches.</p> <p>System for levying administrative fines on domestic banks and their offshore banking subsidiaries for breaches of the POCA, Regulations and Code may be ineffective.</p> <p>The ECSRC does not have the power to sanction for AML/CFT breaches.</p> <p>The ECCB may only apply sanctions where breaches were discovered during an examination.</p> <p>The sanction powers available to the ECCB are not congruent to those available under the POCA framework for AML/CFT breaches.</p>

		Applicable sanctions under the POCA and the Code are fairly new therefore effectiveness cannot be properly tested.
18. Shell banks	C	This Recommendation has been fully observed.
19. Other forms of reporting	C	This Recommendation has been fully observed.
20. Other NFBP & secure transaction techniques	NC	<p>The two institutions identified by the authorities as being at risk for AML/CFT are not subject to the requirements of Recommendations 5, 6, 8, 11, 13 – 15, 17 and 21.</p> <p>The Payment Systems Bill has not yet been implemented.</p>
21. Special attention for higher risk countries	PC	<p>Service providers only required to apply enhanced CDD and ongoing monitoring regarding dealings and transactions with countries with weak AML/CFT systems.</p> <p>Effectiveness cannot be assessed due to recent passage of the POCA, Regulations and Code.</p>
22. Foreign branches & subsidiaries	C	This Recommendation has been fully observed.
23. Regulation, supervision and monitoring	PC	<p>Fit and Proper requirements do not currently apply to money service providers and credit unions</p> <p>Financial Co-operatives (Credit Unions) are not supervised for AML/CFT compliance.</p> <p>Lack of legal jurisdiction by the ECCB to effectively supervise AML/CFT implementation in domestic banks and their offshore subsidiary banks.</p> <p>The ECSRC does not conduct onsite inspections of any kind on its licensees and lacks power to inspect and sanction for AML/CFT purposes.</p> <p>The ECCB cannot directly share information with the FSC on AML/CFT matters pertaining to licensees without an MOU.</p>

		MSBs are not yet subject to a licensing regime.
24. DNFBP - regulation, supervision and monitoring	PC	<p>Unable to assess effective implementation of the Code due to its recent enactment.</p> <p>DNFBPs which are not licensed by the FSC are not monitored for compliance with AML/CFT statutes.</p> <p>Resources available to the FSC are inadequate to allow for proper supervision of the DNFBP sector</p>
25. Guidelines & Feedback	PC	<p>No general feedback given with regard to SARs statistics, current techniques, methods, typologies and trends.</p> <p>The Guidance Notes do not contain sector specific information.</p> <p>The effectiveness of the newly issued Guidance provided in the Code could not be assessed due to the recent passage of the Code.</p> <p>Unable to assess effective implementation of the Code due to its recent enactment.</p>
Institutional and other measures		
26. The FIU	PC	<p>The FIU is not an autonomous body.</p> <p>Office space not sufficient at the FIU to adequately accommodate the staff.</p> <p>Amount of FIU staff not sufficient to allow inclusion of the DNFBPs in the regulatory regime.</p> <p>No fire resistant filing cabinets for the storage of the SARs.</p>
27. Law enforcement authorities	C	This Recommendation has been fully observed.
28. Powers of competent authorities	C	This Recommendation has been fully observed.
29. Supervisors	PC	The FSC which is responsible for ensuring AML/CFT compliance does not monitor the domestic banking sector, which is the largest component of the financial sector in

		<p>Anguilla.</p> <p>The ECCB which does conduct the onsite inspections (though it does not have the authority to do so), does not share the information directly with the FSC.</p> <p>The FSC does not ensure that recommendations for remedial action as set out in the ECCB's report are implemented.</p> <p>The ECCB has no legal authority to conduct onsite AML/CFT inspections.</p> <p>The ECSRC has no authority to conduct onsite AML/CFT inspections.</p>
30. Resources, integrity and training	PC	<p>Insufficient training for Customs in cross-border issues and financial investigations.</p> <p>Insufficient office space for the FIU.</p> <p>Lack of sufficient staff to properly review additional sectors.</p> <p>SARs not maintained in fire resistant filing cabinets.</p> <p>Insufficient training in AML/CFT for prosecutors and the Judiciary.</p> <p>Insufficient staff at the FSC, given the number of financial institutions to be supervised.</p>
31. National co-operation	C	<p>This Recommendation has been fully observed.</p>
32. Statistics	PC	<p>Customs does not maintain statistics on cross-border transportation of currency and bearer negotiable instruments.</p> <p>No statistics maintained on cross-border incidents prior to 2008.</p>
33. Legal persons – beneficial owners	C	<p>This Recommendation has been fully observed.</p>
34. Legal arrangements – beneficial owners	LC	<p>There have been no onsite examinations/information requests of independent legal professionals (with</p>

		respect to trusts), or in respect of foundations to duly determine the effectiveness of access, by competent authorities, to required information.
International Co-operation		
35. Conventions	LC	The Palermo Convention and the 1999 Terrorist Financing Convention have not been duly extended to Anguilla.
36. Mutual legal assistance (MLA)	C	This Recommendation has been fully observed.
37. Dual criminality	C	This Recommendation has been fully observed.
38. MLA on confiscation and freezing	C	This Recommendation has been fully observed.
39. Extradition	LC	There have been no extradition requests to duly determine the effectiveness of MLA in this regard.
40. Other forms of co-operation	C	This Recommendation has been fully observed.
Nine Special Recommendations	Rating	Summary of factors underlying rating
SR.I Implement UN instruments	LC	The 1999 Terrorist Financing Convention has not been duly extended to Anguilla.
SR.II Criminalise terrorist financing	LC	There have been no FT investigations or prosecutions under the CFT legislation, thus effectiveness cannot be duly determined.
SR.III Freeze and confiscate terrorist assets	LC	There have been no restraints orders made with regard to FT thus effectiveness cannot be duly determined.
SR.IV Suspicious transaction reporting	PC	No explicit requirement to include attempted transactions in STR. Issues regarding the effective implementation sanctions.
SR.V International co-operation	LC	There have been no MLA requests under the CFT legislation, thus the effectiveness of rendering MLA thereunder cannot be duly determined. There have been no extradition requests in relation to the FT, thus effectiveness cannot be duly determined
SR.VI AML requirements for money/value transfer services	PC	Money Services Business Act not yet implemented, therefore MVT operators

		<p>are not licensed under the Act.</p> <p>No requirement for licensed or registered MVT operators to maintain a current list of agents.</p> <p>Penalties lack specificity and proportionality, thereby undermining their effectiveness and dissuasiveness.</p>
SR.VII Wire transfer rules	PC	<p>No requirement for each intermediary and beneficiary financial institution in the payment chain to ensure that full originator information accompanies transfer.</p> <p>Effectiveness cannot be assessed due to recent passage of the POCA, Regulations and the Code and the limited supervisory actions that have been taken.</p> <p>The regime for supervision and sanction powers for domestic banks and their offshore subsidiaries are ambiguous.</p>
SR.VIII Non-profit organisations	NC	<p>No supervisory programme in place to ensure compliance with AML/CFT legislation.</p> <p>All NPOs are not registered therefore the relevant information on all NPOs is not publicly available.</p> <p>Existing NPOs not required to adhere to AML/CFT legislation.</p> <p>No specified period for all NPOs to keep records.</p> <p>Unable to assess the effectiveness of domestic cooperation due to the current status of the NPO sector.</p>
SR.IX Cross Border Declaration & Disclosure	PC	<p>Cross-border transactions not yet computerized and therefore, not readily available to law authorities in Anguilla.</p> <p>No specialized training in anti-terrorism issues.</p>

Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. General	No text required
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 & 2)	<ul style="list-style-type: none"> • The Anguillan Authorities should ensure that the relevant bodies engage in consistent and apposite training on the ML provision of the POCA with the aim of obtaining ML prosecutions and convictions.
2.2 Criminalisation of Terrorist Financing (SR.I)	
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	<ul style="list-style-type: none"> • The police/FIU should endeavour to make use of the restraint, confiscation and other measure in the POCA and the anti-terrorism legislation.
2.4 Freezing of funds used for terrorist financing (SR.III)	<ul style="list-style-type: none"> • The Authorities in Anguilla should duly arrange a less vulnerable process of listing and de-listing.
2.5 The Financial Intelligence Unit and its functions (R.26)	<ul style="list-style-type: none"> • The Anguillan Authorities should consider enacting separate legislation for the creation and functions of the FIU so as to alleviate the problem with autonomy.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	
2.7 Cross Border Declaration & Disclosure	<ul style="list-style-type: none"> • Anguillan Authorities/H.M. Customs should remove the incorrect sinage with regard to the declaration at its ports of entry. • Anguilla should include in their POCA a section specifically relating to the seizure of cash and bearer negotiable instruments at their borders.
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	<p>Recommendation 5</p> <ul style="list-style-type: none"> • The Regulations and Code should expressly prohibit numbered accounts or alternatively, specify how these should be treated. • Regulations and Code should include private banking, trusts that operate as personal asset holding vehicles and nominee arrangements as cases in which it is recommended that enhanced

	<p>due diligence be applied.</p> <ul style="list-style-type: none"> • For clarity, the Authorities should consider providing specific guidance as it relates to the application of reduced or simplified CDD measures, as a result of required risk assessment by service providers. • The Authorities should clarify the legal framework for the application of administrative sanctions by the FSC, as it relates to domestic banks. <p>Recommendation 6</p> <ul style="list-style-type: none"> • The Anguillan Authorities should consider including domestic PEPs in the AML/CFT framework. • The Anguillan Authorities should consider having the United Kingdom extend the United Nations Convention against Corruption to their jurisdiction. <p>Recommendation 7</p> <ul style="list-style-type: none"> • The Anguillan Authorities should consider extending the requirements with regard to cross-border correspondent banking to other financial institutions that may engage in similar cross-border relationships. <p>Recommendation 8</p> <ul style="list-style-type: none"> • The Regulations and or Code should provide for specific guidance (in line with Basel paper on Risk Management Principles for Electronic Banking) on measures to be applied in the delivery of electronic services to effectively mitigate the risk of ML/TF through this delivery channel.
<p>3.3 Third parties and introduced business (R.9)</p>	<ul style="list-style-type: none"> • The Anguillan Authorities should amend the Code or Regulations to require financial intuitions to immediately obtain CDD information (E.C. 5.3 to 5.6) from Introducers. • The Anguillan Authorities should consider amending the Regulations or Code to include the requirement that a service provider accept introduced business solely from an introducer or intermediary who itself has face to face contact when completing CDD measures on which the service provider rely.

3.4 Financial institution secrecy or confidentiality (R.4)	<ul style="list-style-type: none"> The Anguillan Authorities should consider reviewing Section 20 of the FSC Act to ensure that there is no impediment to the sharing of information as contemplated by the FATF.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	<p>Special Recommendation VII</p> <ul style="list-style-type: none"> The Code should explicitly address the issue of a payment chain that may include a series of intermediaries and beneficiary financial institutions whereby each party in the payment chain should be required to ensure that full originator that accompanies a wire transfer is transmitted with the transfer. The regime for supervision and sanction powers for domestic banks and their offshore subsidiaries should be clarified.
3.6 Monitoring of transactions and relationships (R.11 & 21)	<p>Recommendation 21</p> <ul style="list-style-type: none"> Regulation 22 should be amended to authorise the relevant authorities to require service providers to take appropriate actions or counter-measures for countries that do not apply or insufficiently apply the FATF Recommendations. The Anguillan Authorities should consider a wider range of counter-measures that should be taken against countries that fail to apply appropriate AML/CFT standards.
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	<p>Recommendation 13</p> <ul style="list-style-type: none"> The Regulations or Code should be amended to make mandatory the requirement for the MLRO of a service provider to make a report to the Reporting Authority with regard to attempted transactions. The Authorities should clarify the legal framework for the application of administrative sanctions by the FSC, as it relates to domestic banks. Service providers should be provided with specific guidance as to how to treat with breaches that involve tax matters. <p>Recommendation 14</p> <ul style="list-style-type: none"> The relevant legislation should be amended so that the offence of tipping-off is applicable where a SAR is being reported. The relevant legislation should be amended to make explicit the protection provided to financial

	<p>institutions, their directors and employees from criminal or civil liability for breach of any restriction on disclosure of information, breach of contract etc. for reporting their suspicion in good faith.</p> <p>Recommendation 25</p> <ul style="list-style-type: none"> • The FIU should provide general feedback including statistics in the form contemplated by the FATF, as well as information on current techniques, methods and trends or typologies to service providers. <p>Special Recommendation IV</p> <ul style="list-style-type: none"> • The Regulations or Code should be amended to make mandatory the requirement for the MLRO of a service provider to make a report to the Reporting Authority with regard to attempted transactions re financing of terrorism.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	<ul style="list-style-type: none"> • The Regulations and or Code should be amended to include a requirement to maintain an adequately resourced, independent internal audit function to test compliance (including sample testing) with a service providers AML/CFT framework. • Appropriate staff other than the MLCO should have timely access to customer identification data and other CDD information.
3.9 Shell banks (R.18)	<ul style="list-style-type: none"> • The Anguillan Authorities should consider including an explicit prohibition of shell banks in the Regulations or Code.
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	<p><u>Recommendation 17</u></p> <ul style="list-style-type: none"> • The Authorities should clarify the framework for the application of sanctions (including the levying of administrative fines on domestic banks and their offshore banking subsidiaries), given that all AML/CFT supervisory and sanction powers are vested in the FSC, which has no delegation powers in this regard. • The Banking Act should be amended so that ECCB could be granted the power to apply sanctions for AML/CFT breaches. • The Securities Act should be amended so that the ECSRC could be granted the power to apply sanctions for AML/CFT breaches. <p><u>Recommendation 23</u></p>

	<ul style="list-style-type: none"> • The POCA and its attendant Regulations should make clear the role of the ECCB as it relates to the supervision of AML/CFT implementation in domestic banks and other financial institutions licensed under the Banking Act. • The Directors, Senior Managers and Shareholder controllers of Money Services Businesses and Financial Co-operatives should be subject to a fit and proper test at the time of licensing. • Financial Co-operatives should be supervised for AML/CFT compliance. <p><u>Recommendation 25</u></p> <ul style="list-style-type: none"> • The Guidance Notes should contain sector specific information to provide additional direction to the regulated entities. <p><u>Recommendation 29</u></p> <ul style="list-style-type: none"> • The Banking Act should provide that the ECCB can examine licensees to ascertain compliance with other statutes that apply to these entities, especially where AML/CFT is concerned. • The Banking Act should be amended so that ECCB could be granted the power to apply sanctions for AML/CFT breaches. • The ECSRC should be expressly given the authority to supervise its licensees for AML/CFT. • The MSB Act should be implemented without delay.
3.11 Money value transfer services (SR.VI)	<ul style="list-style-type: none"> • All existing MVTs service operators should be licensed under the new MSBA without delay. • Licensed MVT service operators should be required to maintain a current list of agents. Such a list should be made available for inspection by the FSC. • Section 17(3) of the MSBA should refer to mandatory obligations under both AML and CFT enactments.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	<ul style="list-style-type: none"> • Deficiencies identified for all regulated businesses as noted for Recommendations 5, 6, 8-11 in the

	<p>relevant sections of this report are also applicable to DNFBPs</p> <ul style="list-style-type: none"> • The outreach and training for DNFBPs, especially those which were not previously licensed by the FSC should be enhanced. • Supervision of the entire DNFBP sector should commence without delay.
4.2 Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> • The AML & TF Code should be amended to include attempted transactions. • Other recommendations set out in section 3.7 of this Report as they relate to Recommendation 13 would also pertain to this section.
4.3 Regulation, supervision and monitoring (R.24-25)	<ul style="list-style-type: none"> • Training and outreach to the DNFBP sector should continue. • Sector specific guidance on money laundering and terrorist financing should be placed in the Guidance Notes. • The review of the FSCA should commence as soon as possible and the range of sanctions available to the FSC be made more proportional and dissuasive.
4.4 Other non-financial businesses and professions (R.20)	<ul style="list-style-type: none"> • All institutions other than DNFBPs and designated financial institutions, which pose a potential AML/CFT risk should be required to adhere to the FATF AML/CFT requirements. • Lotteries in particular should be subject to licensing and supervisory requirements. • The Payment Systems Bill should be implemented without delay.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> • It is recommended that the registration of a trust be made mandatory by law. This would allow the competent authorities at a minimum, to be duly aware of all trusts (and their accompanying due details) existent in Anguilla.
5.3 Non-profit organisations (SR.VIII)	<ul style="list-style-type: none"> • The Anguillan Authorities should undertake an outreach programme to the NPO sector with a view to protecting the sector from terrorist financing abuse.

	<ul style="list-style-type: none"> • The Anguillan Authorities should ensure that AML/CFT policies which specifically pertain to the NPO sector are finalized and implemented without delay. • Outreach programs which include AML/CFT training should be devised to provide instruction for the NPO sector. • A supervisory authority for the NPO sector should be designated without delay. • A mandatory registration/licensing system for all NPOs should be implemented as soon as possible. • The purpose and objectives of all NPOs should be publicly known. • NPOs should be required to adhere to the AML/CFT legislation. • The AML/CFT Code specifically for NPOs should be finalized and implemented without delay.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	<ul style="list-style-type: none"> • Anguilla should request, forthwith, extension of the said un-extended Conventions.
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	
6.4 Extradition (R.39, 37 & SR.V)	<ul style="list-style-type: none"> • The Anguillan Authorities should criminalise the commission of terrorist acts as particularized and free standing crimes.
6.5 Other Forms of Co-operation (R.40 & SR.V)	
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	<p>Recommendation 30</p> <ul style="list-style-type: none"> • Customs should be provided more training in cross – border issues, and financial investigations, and asset forfeiture. • The FIU should expand its offices to accommodate the current staff and any future increases in staff. • Anguilla should obtain additional staff at the FIU to prepare for the inclusion of the DNFBPs in the

	<p>regulations and such staff should include a dedicated legal advisor.</p> <ul style="list-style-type: none"> • The FIU should be provided with fire resistant filing cabinets for the storage of their SARs. • The staff of the FIU should be provided with training in advanced financial investigations, civil and criminal forfeiture provisions and terrorist financing. • The Anguillan Authorities should provide prosecutors and Judges with training in financial investigations, civil/criminal forfeiture, money laundering and terrorist financing. • The Anguillan Authorities should consider amending the POCA to make clear the institutional arrangements between, and the roles and functions of, the policy making MLRA and the operational FIU. • The FSC should be provided with additional staff so as to adequately meet its supervisory functions for all the financial institutions under its supervision. <p>Recommendation 32</p> <ul style="list-style-type: none"> • Customs should maintain statistics regarding cross-border transportation of currency and bearer negotiable instruments. • Customs should ensure that all cross-border incidents be reported and documented on the OTRIS system, thus providing continued and timely access to this information by Police, the FIU and other competent authorities. • The FIU should put in place the appropriate mechanisms to allow for the collection and analysis of statistics on wire transfers carried out by the financial institutions.
7.2 Other relevant AML/CFT measures or issues	
7.3 General framework – structural issues	

Table 3: Authorities' Response to the Evaluation (if necessary)

Relevant sections and paragraphs	Country Comments

ANNEXES

- Annex 1: List of abbreviations**
- Annex 2: Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others.**
- Annex 3: Copies of key laws, regulations and other measures**
- Annex 4: List of all laws, regulations and other material received**

LIST OF ABBREVIATIONS

AG	Attorney General
AML	Anti-Money Laundering
AML/TFR	Anti-Money Laundering Terrorist Financing Regulations, 2009
AML/TFC	Anti-Money Laundering Terrorist Financing Code, 2009
ATO	Anti-Terrorism Order, 2002
BA	Banking Act
CALP	Caribbean Anti-Money Laundering Programme
CDD	Customer Due Diligence
CID	Criminal Investigations Division
CFT	Combating Financing of Terrorism
CFATF	Caribbean Financial Action Task Force
CO	Compliance Office
DNFBP'S	Designated Non Financial Businesses & Professions
E(OT)O	Extradition (Overseas Territories) Order 2002; (UK SI 2002 No. 1823)
EA	Extradition Act 1989; (UK Act of 1989 c.33)
ECCB	Eastern Caribbean Central Bank
ECSRC	Eastern Caribbean Securities Regulatory Commission
ECE	European Convention on Extradition
ECSM	Eastern Caribbean Stock Market
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FRA	Foreign Regulatory Authority
FSC	Financial Services Commission
FSCA	Financial Services Commission Act
FT	Financing of Terrorism
GOA	Government of Anguilla
KYC	Know Your Customer
ML	Money Laundering
MLAT	Mutual Legal Assistance Treaty
MLRA	Money Laundering Reporting Authority
MOU	Memorandum of Understanding
MSBA	Money Services Business Act
OT	Overseas Territories
POCA	Proceeds of Crime Act, 2009
RAPF	Royal Anguillan Police Force
ROC	Regulatory Oversight Committee
SAR	Suspicious Activity Report
SIGTAS	Standard Integrated Government Tax Administration System
S/RES	Security Council Resolution
SRO	Self Regulatory Organisation
TCOBA	Trust Companies and Offshore Banking Act
TBOPLA	Trade Business, Occupation and Professional Licenses Act
TUNMOTO	Terrorist (United Nations Measures)(Overseas Territories) Order, 2001
UK	United Kingdom

Details of all bodies met on the Mission – Ministries, other government authorities or bodies, private sector representatives and others

1. Government

Governor's Office

Governor
Deputy Governor
Head of Governor's Office

Attorney General's Chambers

Attorney General
Chief Parliamentary Counsel
Senior Crown Counsel (Civil)
Senior Crown Counsel (Criminal) (Acting)
Parliamentary Counsel
Crown Counsel (Criminal)
Parliamentary/Crown Counsel

Financial Services Commission

Director
Deputy Director

Money Laundering Reporting Authority

Chairman MLRA
Member Attorney General's Chambers
Head of the FIU

Ministry of Finance

Minister of Finance
Permanent Secretary
Financial Consultant to the Ministry of Finance

2 Operational Agencies

Financial Intelligence & Investigations Unit

- Head, FIU
- Financial Analysts and Investigators

Royal Anguillan Police Force

- Commissioner of Police
- Inspector CID

Customs Department

- Comptroller of Customs
- Deputy Comptroller of Customs

Immigration Department

- Chief Immigration Officer
- Deputy Immigration Officer

3 Financial Sector – Government

Financial Services Commission (FSC)

- Director, FSC
- Deputy Director, FSC

Eastern Caribbean Central Bank

- Deputy Directors of Bank Supervision
- Legal Officer
- Bank Supervisor with responsibility for Anguilla

Eastern Caribbean Securities Regulatory Commission

- ECSRC Secretariat staff

4. Financial Sector – Associations and Private Sector entities

- National Bank of Anguilla
- International Bank National Bank of Anguilla
- Scotiabank
- ATU Anguilla, Trust Company
- LUTEA, Trust Company
- MAICO Insurance Company
- National Insurance Company
- Hyperion, Offshore Insurance Manger
- NAGICO, Insurance Agent
- Mutual Fund
- Cable and Wireless Credit Union
- Counsel Ltd, Company Managers
- CEG, Company Mangers
- Paragon Ltd.
- Anguilla Financial Services Association
- Financial Services Association
- Anguilla Insurance Association
- Anguilla Commercial Registry
- Western Union
- KPMG

5. DNFBPs

- Anguilla Bar Association

- Western Union
- Professional Corporate Services, Real Estate Agent
- Keithly Lake and Associates

List of all Laws, Regulations and other Material received

1. Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order, 2002
2. Anti-Money Laundering Terrorist Financing Regulations, 2009
3. Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order, 2002
4. Anti-Money Laundering and Terrorist Financing Code, 2009
5. Anti-Money Laundering Regulations (Repealed)
6. Anti-Money Laundering Guidance Notes, 2007
7. Attorney General's Chambers Staff Training statistics
8. Banking Act
9. Companies Act
10. Copy of the revocation document for the Trust Company
11. Criminal Code (Amendment) Act, 2009
12. Criminal Justice (International Cooperation) (Anguilla) Act
13. Criminal Justice (International Cooperation)(Anguilla)(Schedule Amendment) Regulations, 2009
14. Criminal Procedure Act
15. Customs Act
16. Customs (Currency Report) Direction, 2009
17. Customs (Declaration Form) Direction, 2009
18. Customs Form as amended
19. Custody of Bearer Shares Regulations
20. Drug Trafficking Offences Act
21. Evidence Act
22. Extradition (Overseas Territories) Order, 2002
23. Foundations Act
24. Financial Services Commission Act, 2003
25. FIU Independence Policy
26. FSC Staff Training Statistics
27. Lottery Act
28. Lottery Tax Act
29. Magistrates Code of Procedure Act
30. Money Laundering Reporting Authority Act
31. Money Services Business Act, 2009
32. Notes on amendments to the Financial Services Commission Act
33. Paragon Compliance Manual
34. Payment Systems Act, 2009
35. Police Act
36. Police Force statistics with regard to training in financial investigations
37. Predicate Offences Chart
38. Proceeds of Crime Act, 2009
39. Proceeds of Criminal Conduct Act (Repealed)
40. Report of International Transportation of Currency or Monetary Instruments
41. Securities Act
42. Statistics on number of institutions regulated by the FSC and number of insurance managers
43. Statistics on the number of FSC examinations for the period 2004-2009
44. Statistics on the current number of company managers.
45. Statistics on ML/FT investigations and prosecutions
46. Statistics on seizures and confiscations
47. Statistics on SARs
48. Treaty table (not Secretariat's)
49. Threshold Reporting Feasibility Study for Ex Co

2010

50. Terrorism (United Nations Measures) (Overseas Territories) Order, 2001

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