

INTERNATIONAL MONETARY FUND



Staff Country Reports

**Anguilla—Overseas Territory of the United Kingdom:
Assessment of the Supervision and Regulation of the Financial Sector—
Review of Financial Sector Regulation and Supervision**

This review of financial sector regulation and supervision in **Anguilla** in the context of the offshore financial center assessment program contains technical advice and recommendations given by the staff team of the International Monetary Fund in response to the authorities of Anguilla's request for technical assistance. It is based on the information available at the time it was completed in **October 2003**. The views expressed in these documents are those of the staff team and do not necessarily reflect the views of the government of **Anguilla** or the Executive Board of the IMF.

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**ASSESSMENT OF THE SUPERVISION AND REGULATION OF THE
FINANCIAL SECTOR**



Review of Financial Sector Regulation and Supervision

Anguilla

October 2003

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Contents

Page

Preface.....	4
Executive Summary.....	5
I. Financial System Overview.....	8
A. Background.....	8
Government.....	8
Economic activity.....	8
B. Financial Institutions and Markets.....	10
Banking.....	10
Insurance.....	11
Companies and trusts.....	11
C. Regulatory Framework, Oversight, and Market Integrity Arrangements.....	12
Legislation.....	14
D. Previous Regulatory Reviews.....	15
II. Strengths and Vulnerabilities in the Financial Regulatory and Supervisory Arrangements.....	16
A. Observance of Financial System Standards and Codes: Summary Assessments and Recommended Actions.....	16
Basel Core Principles for Effective Banking Supervision.....	16
III. Report on Observance of Standards and Codes—FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism.....	23
A. Introduction.....	23
B. Information and Methodology used for the Assessment.....	24
C. Main Findings.....	24
Criminal justice measures and international cooperation.....	24
D. Regulatory Arrangements in Relation to Other OFC Sectors.....	33
Oversight of company and trust services providers.....	33
Recommended plan of action for the company and trust services sector.....	35
Authorities’ response.....	35
Text Tables	
1. Estimated Gross Domestic Product.....	9
2. Number of Persons Employed September 1999.....	10
3. Bank Deposits.....	11
4. Gross Premiums Written for 2000.....	11
5. Company and Partnership Registration.....	12
6. Recommended Action Plan to Improve Compliance with the Basel Core Principles.....	20
7. Recommended Action Plan to Improve Compliance with the FATF Recommendations.....	30
8. Other Recommended Actions.....	32
9. Recommended Plan of Action for the Company and Trust Services Sector.....	35

PREFACE

At the request of the authorities, an MFD-led mission visited Anguilla from October 21 to November 1, 2002, to assess observance of financial sector supervisory standards in the context of a Module 2 offshore financial center assessment.¹ The mission assessed the extent to which the regulatory and supervisory arrangements for the offshore financial sector complied with internationally accepted standards in the banking sector and with good practices in the corporate and trust services sector. The assessment also included an evaluation of measures related to anti-money laundering and combating the financing of terrorist (AML/CFT) based on the October 11 version of the AML/CFT Methodology (Methodology), which was endorsed by the Financial Action Task Force (FATF).

Prior to the mission, it was agreed with the authorities that, with the exception of the AML/CFT components, the domestic markets would not be assessed at this time as this was to be covered as part of a regional FSAP of the Organization of Eastern Caribbean States in 2003. This did not pose practical difficulties for the mission because the domestic banking sector is governed by separate legislation and is supervised by the regional Eastern Caribbean Central Bank (ECCB).

The mission reviewed all of the relevant legislation and documentation, and held discussions with the regulatory authorities, government officials, the Governor, and a broad cross-section of the financial services industry. The mission was most grateful for the excellent cooperation, support, frankness and gracious hospitality of the staff of the Financial Services Department (FSD), government officials, and representatives of private sector organizations and institutions.

The mission was led by Mr. Manuel Vasquez (MFD), and included Ms. Margaret Cotter (LEG), Mr. Anthony Maxwell (Banking Advisor), Mr. Timothy Sullivan (Banking Advisor), and Ms. Candice Huggins (AML/CFT Advisor). Mr. Pierre Lapaque, a law enforcement expert from the OAS-CICAD, conducted an assessment of the implementation of the criminal law enforcement elements of the AML/CFT framework.

The report consists of two volumes. Volume I provides a general overview of the financial system and the AML/CFT framework as well as a summary of the assessment findings. Volume II presents a detailed assessment of compliance with the supervisory and regulatory principles relative to the Basel Core Principles for Effective Banking Supervision (BCP), and a review of practices relative to the draft OGBS² Statement of Best Practices for Trust and Companies Service Providers. It also contains a detailed assessment of Anguilla's AML/CFT regime.

¹ A Module 2 assessment is described in SM/00/136, Offshore Financial Centers—The Role of the IMF.

² The Offshore Group of Banking Supervisors.

EXECUTIVE SUMMARY

Anguilla's offshore sector is mainly based on company and trust services (CSP) and to a lesser extent on offshore banking. Investors are attracted by its zero-tax status, absence of foreign exchange controls, common law legal system and tourist sector. Its strategy has been to develop the CSP sector by the introduction a few years ago of Anguilla's Commercial Online Registration Network (ACORN). Offshore banking has not developed significantly and until recently most "offshore" type services had been conducted by domestic banks operating under domestic licenses. Two offshore banking licenses have now been issued to recently established subsidiaries of domestic banks that, when they become operational in 2003, plan to transfer their "offshore" business to these subsidiaries. The authorities are also considering introducing legislation for the administration of offshore mutual funds and captive insurance business.

Anguilla is in process of strengthening its legal and supervisory framework, which includes the creation of an operationally independent regulatory body, the Financial Services Commission (FSC). At the time of the mission, it was intended to establish the FSC by the end of December 2002, but this timeframe has now been extended to the end of September 2003. The proposed FSC will assume most of the regulatory and supervisory powers and responsibilities currently vested with the Governor and the FSD. Under the draft FSC law, the Commission will have a broad range of supervisory powers for the enforcement of the regulatory laws and the application of sanctions.

Anguilla was one of the first members of the Organization of Eastern Caribbean States (OECS) to request the ECCB to participate in the supervision of the offshore banking sector. To this end, the authorities entered into a Memorandum of Understanding (MOU) with the ECCB to conduct consolidated supervision of the offshore subsidiaries of domestic banks when they become operational. This MOU was signed in September 2002. A major challenge for the FSC will be to adequately resource its operations to enable it to undertake effective ongoing supervision of the rapidly expanding, albeit still modest, corporate and trust sector as well as the insurance industry. Plans to expand the offshore sector into mutual funds and captive insurance will also require additional supervisory resources.

Financial sector supervision has in the past been largely focused on offsite surveillance. Onsite supervision of the offshore banks will be led the ECCB while plans are underway for the FSD to implement a program of onsite inspections of CSPs. The current structure of the CSP industry, where 12 licensees³ do not have a physical presence and where business is introduced by overseas agents, poses a challenge to the implementation of onsite inspections. The FSD has indicated that strengthening staffing resources will be a primary objective of the new FSC.

³ Eight of these licensees are reported to be affiliates of foreign CSPs that are supervised in other jurisdictions under requirements that are broadly similar to those of Anguilla.

In the areas of AML/CFT, there has been progress in the legislative and regulatory framework but more intensified efforts are required to implement the legislation. Priority should be given to improving the system for suspicious transaction reports (STRs), enhancing the customer due diligence requirements for introduced business, and conducting onsite inspections of CSPs to ascertain implementation of customer due diligence requirements. In addition, the reasons for the low incidence of STRs in the financial sector should be reviewed. Notwithstanding, the Governor (who is constitutionally responsible for the offshore sector) and the FSD are to be commended for the progress achieved so far in advancing measures to improve the regulatory and supervisory structure, and in strengthening the AML/CFT framework. The recommendations contained in the detailed assessment reports identify a number of additional measures that are required to help Anguilla meet international standards and best practices.

A number of other initiatives are also under consideration by the authorities including the introduction of industry codes for the CSP sector. The aim is to issue regulatory and industry codes that broadly meet the recommended best practices as contained in the draft OGBS Statement. These codes are intended to lay the groundwork for practical implementation of the applicable legislation and best practices.

Although Anguilla has recently licensed two offshore banks, it has still to put in place the necessary mechanisms for compliance with many of the Basel Core Principles. Most of the identified weaknesses are associated with the absence of prudential risk management requirements or guidelines. The proposed establishment of the FSC should significantly improve its capacity to address many of the identified shortcomings. The mission also made a number of forward looking recommendations that would better prepare the FSC for the supervision of the offshore banks, when they become operational. In order to facilitate the consolidated supervision of these banks, the FSC should formally adopt, as appropriate, prudential regulations/guidelines that are broadly similar to those issued by the ECCB for domestic banks, and to introduce new ones as necessary. In addition, once the offshore banks become operational, the MOU with the ECCB should be fully implemented, particularly with respect to onsite inspections. A fuller assessment of Anguilla's compliance with the BCPs, as well as the ECCB's supervisory processes, will only be possible once the MOU has been implemented and the regional ECCB FSAP is conducted in September–October, 2003.

Anguilla first introduced legislation for the regulation and supervision of CSPs in 1995.⁴ Regulations issued under these laws impose relatively comprehensive and rigorous licensing requirements for applicants. Forty licensees have been issued so far. The mission was unable to review the processes used to implement the licensing requirements. The FSD is drafting a regulatory Code of Practice for the CSP sector that may be adopted by the Anguilla Financial Services Association (AFSA) which has recently issued (October 2002) its own Code. Supervision of this sector, which has mainly relied on prudential visits to some of the service

⁴ Legislation for CSPs was amended in December 2000.

providers that have a physical presence on the Island, needs to be strengthened through periodic onsite inspections. As the FSD has yet to commence onsite examinations of CSPs, the mission was unable to review the extent of adherence with the regulatory requirements and the Codes of Practice.

Anguilla has a relatively strong legal framework for countering money laundering and the financing of terrorism. The primary money laundering legislation provides appropriate tools for the criminalization of ML, freezing and confiscation of the proceeds of crime, and for international cooperation. AML Regulations impose legal obligations on financial institutions for customer identification, record-keeping, monitoring and reporting of suspicious transactions, and staff training. AML Guidance Notes have been issued under the Money Laundering Reporting Act to give practical directions to covered institutions for complying with the Regulations. The Guidance Notes are intended to represent good industry practice and are not mandatory, but they could be taken into account by a court in determining compliance with the AML Regulations. A number of recommendations were made to improve the legislative and regulatory framework, particularly in the areas of extradition, affirmative requirements for financial institutions to file STRs, streamlined Regulations and Guidance Notes, and the implementation of a program of periodic compliance inspections by the FSD/FSC, particularly for the CSP sector. In addition, there is a need for enhanced awareness and training in the regulated sectors as well as improvements in the staff capacity of the FSD/FSC. As implementation of the AML/CFT laws improves, the number of STRs is expected to increase which will require enhancement of staffing capacity for the Money Laundering Reporting Authority (Anguilla's financial intelligence unit).

I. FINANCIAL SYSTEM OVERVIEW

A. Background

1. Anguilla is a coral limestone Caribbean island with sub-tropical climate that is 90 square kilometers (35 square miles) in size with an estimated population of 11,560. It lies 113 km north of the island of St. Kitts, eight km to the north of St. Maarten, and is east of Puerto Rico and the Virgin Islands. It is known as a friendly, low-crime society and is establishing a reputation as a high-end tourist destination. Its offshore sector is modest by international standards mainly consisting of two licensed offshore banks and a company and trust services sector that has grown in recent years but is small relative to other offshore centers.

Government

2. Anguilla is a British Overseas Territory that became a Dependent Territory in 1980 after being administered as a single federation with St. Kitts and Nevis from 1958 to 1962. Constitutionally, Anguilla is an internally-governing Overseas Territory. It enjoys a high degree of political and social stability. Government is enacted through a Governor appointed by the Crown, an elected House of Assembly and an Executive Council. Her Majesty Queen Elizabeth II is the Head of State and the Constitution gives the Governor certain fundamental powers. All legislation is assented to by the Governor acting as Her Majesty the Queen's representative. The Governor has constitutional responsibility for all international (offshore) financial services but the day-to-day supervisory responsibility rests with the FSD which forms part of the Ministry of Finance. The supervision of domestic banks is undertaken by the ECCB of which Anguilla is a member jurisdiction.

3. Anguilla is a common law jurisdiction based on English law. Its judicial system is administered by the Eastern Caribbean Supreme Court but the appeal process culminates with the Privy Council in England.

Economic activity

4. Anguilla's main industry is tourism with GDP per capita of about EC\$20,500 (2001—at market prices) and an unemployment rate of 7.8 percent (2002). It also has a small but growing tourism and offshore financial sector with the latter primarily focused upon the incorporation and management of international business corporations.

5. Anguilla is a neutral tax jurisdiction. There is no income, capital gains, estate, profit or other forms of direct taxation either on individuals or corporations, whether resident in Anguilla or not. In addition, there are no exchange controls and the official currency is the Eastern Caribbean Dollar.⁵ The United States dollar is commonly used.

⁵ Exchange rates: US\$1.00 = EC\$2.68 (fixed)

6. With the exception of 2000, the table below shows that over the last five years Anguilla's economy has been performing well with real Gross Domestic Product (GDP) growing at an average of about five percent over the period 1997 to 2001. In nominal terms, GDP grew on average about 6.5 percent during the same period. In 2000, GDP growth was flat with real GDP showing a -0.3 percent decline.

7. As a share of GDP, the hotel and restaurant industry accounts for some 30 percent with the finance sector contributing about 16 percent and construction 12 percent. Agriculture, mining and manufacturing together only account for about 7 percent of GDP. It is important to note that the contribution to the economy made by the finance industry has been growing steadily over the last five years and was the only sector that recorded significant growth in 2000 and 2001.

Table 1. Estimated Gross Domestic Product: 1997 to 2001
(In EC\$ millions)

Year	Real GDP at factor cost	Percent change	Nominal GDP at factor cost	Percent change
1997	162.1	9.2	194.2	10.5
1998	170.5	5.2	209.2	7.7
1999	185.2	8.6	233.0	11.4
2000	184.6	(0.3)	233.4	0.2
2001	188.3	2.0	239.9	2.8

Source: Anguilla Planning Unit and ECCB

8. The table below shows that the majority of the work force is employed in the hotel and restaurant business reflecting economic concentration in the tourism industry. Government is the second largest employer while the number of persons employed in the financial services industry is comparatively small accounting for less than 7 percent of those employed. As at July 2002, the unemployment rate stood at 7.8 percent.

Table 2. Number of Persons Employed September 2002

Industry Sector	Total number employed (full and part time)
Agriculture, fishing & manufacturing	344
Utilities & construction	988
Trade, hotels & restaurants	1,970
Transport & communications	363
Finance, real estate and business services	376
Government, community and social services	1,454
Total Employed	5,495
Total Labor Force	5,962
Total Unemployed (7.8 percent)	467

Source: Anguilla Government Labor Survey, July 2002

B. Financial Institutions and Markets

9. Anguilla offers a modest range of financial services with most financial assets being concentrated in the domestic banking sector. However, a significant proportion of financial assets are held by nonresidents that are in process of being transferred to offshore banking subsidiaries. None of the offshore banks was operational at the time of the mission. The CSP sector has been reporting a high rate of growth in recent years but is still relatively small.

Banking

10. Anguilla has licensed four domestic and until recently two offshore banks. Bank deposits in the domestic sector at the end of December 2002 totaled EC\$783 million (of which \$613 million were foreign currency deposits) reflecting a significant increase from EC\$488 million in June 1999. The relatively large proportion of foreign currency (78 percent) and nonresident deposits contributed to a decision by some banks to establish offshore subsidiaries to which some of these deposits are being transferred. It is intended that only foreign currency deposits held by nonresidents will be transferred to the offshore banks.

Table 3. Bank Deposits
1998 to 2002
(EC\$'000)

As at December	Foreign Currency Deposits	Nonresident Depositors	Total Deposits
1999 (June)	362,432	97,350	488,037
2000	471,600	131,795	621,980
2001	428,116	127,995	683,378
2002	613,377	151,393	783,591

Source: Anguilla Government Statistics

Insurance

11. The insurance industry in Anguilla is relatively small. There are 20 registered insurers including two domestic companies with local shareholding. All of the others are foreign-based institutions underwriting domestic business and subject to home country regulation and supervision. Most of the insurance entities are engaged in property and casualty insurance with only five carrying on life business only. Total gross premiums are as follows:

Table 4. Gross Premiums Written for 2000

Category of business	In EC\$'000
Motor vehicles	3,774
Life and health	6,795
Property and casualty	4,000
Other	1,449
Total	16,018

Source: Financial Services Department, Ministry of Finance

Companies and trusts

12. The company services sector has been the fastest growth area of Anguilla's offshore industry. The attraction of Anguilla in this area of activity is mainly its tax neutral status and the ease and flexibility of incorporation. The number of licensed company managers and trust companies as at October 2002 were 29 and 12, respectively.

13. As at August 2002, 4,642 companies and partnerships had been registered as shown in the following table. Only 78 trusts had been reported to the authorities although there is no

requirement to register trusts. Accordingly the precise level of trust activity may not be known.

Table 5. Company and Partnership Registration

Category of business	Number of Entities
International business companies	3,041
Ordinary companies	1,466
Limited liability companies	128
Limited partnerships	7
Total	4,642

Source: Financial Services Department, Ministry of Finance

14. Company registration is being actively promoted through Anguilla’s Commercial Online Registration Network (ACORN). This registration system was developed with the assistance from Companies House UK and the UK Government that enables instant electronic incorporation and registration of Anguillian corporate and trust entities. ACORN allows companies to be incorporated electronically from anywhere in the world 24 hours a day, 365 days a year. Users can file all required incorporation documents electronically in a variety of languages, and the system will provide guidance on completing registration documents. Electronic access is available to all licensed company and trust services providers and to authorized intermediaries. The FSD conducts due diligence on behalf of the Registrar of Companies on all overseas intermediary clients (“introducers”) for fit and proper purposes.

15. There is only one entity engaged in securities business in the Island and one unit trust that operates under a trust license.

C. Regulatory Framework, Oversight, and Market Integrity Arrangements

16. Under the Constitution, the Governor has responsibility for international financial services. Responsibility for regulation has been delegated to Inspectors under various pieces of financial sector legislation. The Inspector in this context is the Director of the Financial Services Department (FSD) which forms part of the Ministry of Finance. The supervision of domestic banks is undertaken by the ECCB.

17. The main functions of the FSD are:

- Licensing recommendations made to the Governor
- Compliance and inspections
- International supervisory initiatives
- Legislative initiatives

18. The FSD comprises a Director, a Deputy Director, an Assistant Director, a Senior Executive Officer and an Administrative Assistant. It also encompasses the Registry of Commercial Activities (mainly company registration) which includes a Registrar, a Deputy Registrar, and administrative staff of four.

19. Draft legislation is currently under consideration to transform the FSD into an operationally independent Financial Services Commission (FSC). The original intention was for the FSC to be established by the end of 2002 but this has been postponed to the end of September 2003. The mission encouraged the authorities to establish the FSC and to implement plans for adequately funding and resourcing its operations. The FSC Act will transfer to the FSC all of the statutory functions, powers and duties currently vested with the Inspectors under the offshore banking, company, trust and insurance laws. Constitutionally the Governor will still have overall responsibility for offshore finance, including the power to make regulations under the applicable financial laws. Under the draft FSC Act, the FSC is expected to assume 13 functions but the principal ones will be:

- to supervise all licensees in accordance with the Act, the financial services laws and the Regulatory Code to be issued by the FSC;
- to consider and decide on the issue of licenses;
- to monitor compliance with the Anti-Money Laundering Regulations, 2000 and such other enactments or Guidelines relating to money laundering;
- to monitor activity in the financial services sector and to take enforcement action against persons carrying on unauthorized activities;
- to make recommendations to the Governor on new laws or legislative amendments;
- to maintain contact and forge relations with foreign regulatory authorities and to provide assistance to such authorities; and
- to provide such information and advice to the public concerning financial services.

20. It is the intention for the FSC to be operationally independent from the Governor and the Government. Suitable funding arrangements mainly arising from industry fees should support its autonomy and operations. Under the draft FSC Act, the Governor will approve the annual budget of the FSC but any modifications he may require must be agreed with the FSC in writing.

21. The FSC will be governed by a Board of Directors consisting of the FSC's Director as an *ex officio* member, and not less than four or more than five other individuals appointed by the Governor. No more than one member may be a public officer. The Governor will appoint the Chair and Deputy Chair of the Board. No person who is a member of the House of Assembly, who is an undischarged bankrupt or who has been convicted of an offence involving dishonesty can qualify as a Board member. In making appointments, the Governor

is required to ensure that individuals are fit and proper persons with appropriate knowledge and expertise that are relevant to the functions of the FSC. All appointments to the Board shall be published in the *Government Gazette*.

22. The FSC will prepare an Annual Report to be submitted to the Governor, along with audited accounts, within six months of the end of its financial year. Audited accounts shall be completed within three months of the financial year end. The Governor shall table the Annual Report and audited accounts before the House of Assembly within two months of receiving them, and publish them in the *Gazette*.

23. The authorities consider that the development of the offshore financial sector will largely depend on maintaining a clean reputation. Consequently, the proposed FSC will be vested with appropriate powers to vet new applicants for business and to enforce the regulatory laws. Provisions have been made in the draft FSC Act for the FSC to obtain information, to cooperate with overseas regulators, to approve the appointment of compliance officers of licensees, to conduct compliance inspections, and to take enforcement and disciplinary action against licensees. A major thrust of its activities will be to review compliance with AML/CFT requirements, particularly in the company and trust services sector.

24. There is legislation in place covering the regulation of banks (both domestic and offshore), insurance, companies and trust services providers. Securities legislation, including collective investment schemes, was passed in 2001 as part of a regional ECCB effort to establish a common securities market. This legislation, however, is primarily for the domestic sector. The ECCB has established a regional stock exchange (The Eastern Caribbean Securities Exchange–ECSE) for its member countries.

Legislation

25. **Banking.** The legislation relating to offshore banking is the Trust Companies and Offshore Banking Act, 2000 and Regulations. It sets out a regime for licensing offshore banks, and also addresses other matters including: maintenance of capital, responsibility of the Inspector, confidentiality, and the issue of regulations and a code of practice. The applicable legislation for domestic banks is the Banking Act, Regulations, guidelines and the Eastern Caribbean Central Bank Agreement Act. Supervision and regulation of domestic banks is the primary responsibility of the Eastern Caribbean Central Bank (ECCB). However, a MOU has been signed between the Governor and the ECCB under which the ECCB accepts responsibility for supervising Anguilla's two recently licensed offshore banks, while the making of regulations remains the responsibility of the Governor.

26. **Company Management.** The applicable legislation is the Company Management Act, 2000, and Regulations. The Company Registry is currently under the administrative responsibility of the FSD although legal responsibility lies with the Registrar. Twenty nine

company managers have been licensed and are subject to supervision by the FSD. Of these, 12 do not have a physical presence (cubicle agents)⁶. Registration of companies can be made online using the automated ACORN system by company managers and authorized overseas sub-agents which are vetted for fit and proper requirements by the FSD. There are currently 62 authorized sub-agents who, for purposes of the Anti-Money Laundering Regulations and Guidance Notes, are classified as approved introducers of business. The other company laws include: the Companies Act, 2000 and Regulations, the International Business Companies Act, 2000 and Regulations, the Limited Liability Companies Act, 2000 and Regulations, and the Limited Partnership Act, 2000 and Rules. The International Business Companies Act allows for the issue of bearer shares but plans are underway to amend the law to immobilize bearer shares.

27. **Trust Companies.** The applicable legislation is the Trust Companies and Offshore Banking Act, 2000, and Regulations, and the Trust Ordinance, 1994. Trust companies are authorized to carry on company management business and are supervised by the FSD.

28. **Insurance.** The applicable legislation is the Insurance Act and Regulations. However, the FSC is in process of preparing a new Insurance Act to include provisions for captive insurance business, and to allow for the supervision of insurance intermediaries. The FSD is responsible for the supervision of insurance companies.

29. **Securities/Funds.** The Eastern Caribbean Securities Exchange is based in the ECCB in St. Kitts. ECCB member countries have introduced a Securities Act and ten subsidiary Regulations. The authorities plan to introduce mutual funds legislation in an effort to diversify the offshore sector.

30. **Anti-Money Laundering.** The principal legislation consists of the Proceeds of Criminal Conduct Act, the Money Laundering Reporting Authority Act, the Drug Trafficking Offences Act, the Criminal Justice (International Cooperation) (Anguilla) Act, Regulations, and the Anti-Terrorism (Financial and other Measures) (Overseas Territories) Order. Codes of Practice and Guidance Notes have also been issued to guide financial institutions in the implementation of the various laws.

D. Previous Regulatory Reviews

31. In March 1999, the UK Government White Paper "Partnership for Progress and Prosperity: Britain and the Overseas Territories" was presented to the UK Parliament. The White Paper recognized that the international financial service industry has grown dramatically in recent decades and that a significant number of the Overseas Territories have developed offshore financial sectors. The White Paper further commented that it was essential for the future of the financial services sector that the Overseas Territories reputation

⁶ Eight of these licensees are reported to be affiliates of foreign CSPs that operate and are supervised under requirements that are broadly similar to those of Anguilla.

for honest administration and probity be preserved and enhanced. The accounting firm of KPMG was appointed in December 1999 to assess the Overseas Territories' performance against international standards and good practice, and to make recommendations for improvement where any territory falls below those standards. The KPMG review found that Anguilla has many features necessary to be considered a well-regulated jurisdiction but identified a number of areas of concern that the authorities are addressing, including the implementation of legislation.

32. In July 2000, the Caribbean Financial Action Task Force (CFATF) carried out an evaluation of Anguilla's anti-money laundering regime. The CFATF found that Anguilla had introduced legislation that addressed many of the FATF and CFATF Recommendations but that implementation mechanisms were still required.

33. In the second quarter of 2000, the Financial Stability Forum published its report on Offshore Financial Centers (OFCs) that placed Anguilla in the bottom group (group 3) defined as a jurisdiction that is generally perceived as having a low quality supervisory oversight, and/or as being noncooperative with onshore supervisors.⁷

II. STRENGTHS AND VULNERABILITIES IN THE FINANCIAL REGULATORY AND SUPERVISORY ARRANGEMENTS

A. Observance of Financial System Standards and Codes: Summary Assessments and Recommended Actions

Basel Core Principles for Effective Banking Supervision

General

34. An assessment of the current state of Anguilla's compliance with the Basel Core Principles for Effective Banking Supervision (CP) was conducted in the context of the IMF's October 2002 Module 2 Offshore Financial Center assessment program assessment, and updated in September 2003 during the Eastern Caribbean Central Bank (ECCB) Financial Sector Assessment Program (FSAP). Its scope is limited to the regulation and supervision of offshore banks licensed in Anguilla. An assessment of domestic banking regulation and supervision, which are the responsibility of the ECCB, is being carried out separately as part of the 2003 FSAP.

⁷ The FSF stated in its press release of May 26, 2000, "It is important to stress that the categorization of OFCs into these three groupings is based on responses of OFC supervisors and the impressions of a wide range of onshore supervisors at a particular point in time. The categorization does not constitute judgments about any jurisdiction's adherence to international standards."

35. This assessment serves several purposes. First, it benchmarks the current state of preparations for the supervision of Anguilla's offshore banks, recognizing the progress made to date with the enactment of Trust Companies and Offshore Banking Act (2000) and the September 2002 MOU with the ECCB. Second, it suggests a number of further steps, some already contemplated, that will further strengthen the regulation and supervision of offshore banks in Anguilla. Thus, the report provides key input for the development of an action plan to move towards full compliance with the Core Principles.

Institutional and macroprudential setting, market structure—overview

36. Under the Constitution the Governor has overall responsibility for international financial services in Anguilla, including the power to issue regulations under the various regulatory laws. Responsibility for the supervision of offshore banks currently rests with the FSD. A draft Financial Services Commission (FSC) Act has been developed that initially aimed to transform the FSD into an autonomous supervisory agency by the end of 2002. The target date for its establishment has now been extended to September 2003. In September 2002, a MOU was entered into between the Governor and the ECCB that delegates to the ECCB responsibility for the consolidated supervision of the two Anguillian offshore banks. However, before the MOU can be fully implemented, Anguilla needs to put in place appropriate regulations and prudential requirements suitable for offshore banks. The ECCB will, however, apply existing prudential guidelines to the offshore banks.

37. At the time of the assessment, two banks had recently been licensed to carry on offshore banking business, although none was yet in operation. These licenses were granted to subsidiaries of Anguillian domestic banks that plan to commence offshore operations in 2003.⁸ The offshore subsidiaries plan to transfer business currently conducted by the parent banks meet the requirements of the Offshore Banking Act and to more efficiently provide services to nonresidents in foreign currencies. The parent banks estimate that between 25–30 percent of their current business will be transferred to their offshore subsidiaries which amount to approximately 17 percent of the total deposits in the domestic banking sector.

General preconditions for effective banking supervision

38. Although the licensed offshore banks have not commenced operations, Anguilla has developed an appropriate legal framework that would allow for their effective supervision, including adequate provisions for enforcement and information sharing arrangements. A main drawback is the absence of an independent regulatory authority but this will be largely be remedied by the implementation of an Act to establish the Financial Services Commission

⁸ An offshore banking license was granted to an international bank operating in the domestic market. However, the license has remained dormant and there are no plans to activate it in the foreseeable future.

by December 2003. Once established, it will be necessary to hire and broaden the professional and managerial strength of the regulatory Commission. The participation of the ECCB in the consolidated supervision of the two offshore banks, which are subsidiaries of domestic banks, should also strengthen supervision. Draft amendments to the uniform Banking Act for domestic banking are being considered to provide additional powers to the ECCB for the supervision of domestic bank affiliates.

Main findings

39. The assessment of compliance with the Basel Core Principles is mainly based on the supervisory framework in place for licensed offshore banks which at the time of the mission had not started operations. The assessment also takes into account the planned transformation of the FSD into an autonomous Financial Services Commission to be established by the end of September 2003. The mission did not undertake a full review the supervisory processes of the ECCB which, as the home supervisor, is responsible for the consolidated supervision of the offshore banks. A full assessment of the ECCB supervisory processes is being undertaken as part of the regional FSAP in September–October 2003.

40. The assessment found that Anguilla's is either compliant or largely compliant with many of the Basel Core Principles. It has a relatively strong legal framework, which clearly sets out the supervisory objectives for the proposed FSC, and has robust provisions for sharing of information, licensing and for monitoring bank ownership and control. In addition, the FSC has put in place suitable arrangements to effectively conduct offsite and onsite supervision of offshore banks through an MOU recently signed with the ECCB. However, there is still a need to formally adopt prudential regulations and guidelines suitable for offshore banking, and to make the MOU fully operational once the offshore banks commence operations.

41. The regulatory framework for managing investment and credit risk still needs to be put in place. There is also a need to implement appropriate regulations and guidelines governing investment criteria, connected lending, market and other operational risks. In the area of anti-money laundering, the authorities have taken measures to raise the level of awareness in the banking sector. The ECCB also recently commenced onsite inspections to review compliance with local anti-money laundering requirements that included the parent banks of the licensed subsidiaries. These inspections will extend to the offshore banks under the terms of the MOU. Training of staff on AML for the banking sector has commended but there is still a need to enhance training for banking staff on the identification and reporting of suspicious activities. This training should also focus on increasing the level of awareness of senior bank officers on the particular financial and reputational risks posed by money laundering to their institutions and to the banking sector.

Objectives, autonomy, powers and resources (CP 1)

42. Anguilla has developed an appropriate legal framework for the supervision of offshore banks, including adequate provisions for enforcement and information sharing

arrangements. Although the FSD currently does not enjoy legal and operational independence, the authorities will largely remedy the shortcomings with the passage of a Bill creating the FSC by the end of December 2003. Much will depend, however, on there being suitable funding arrangements for its operations, and on preserving the other provisions of the August 27, 2002 draft Bill. Also, attention should be given to broadening the professional and managerial strength of the proposed FSC. The participation of the ECCB in the consolidated supervision of offshore banking subsidiaries should also help to reduce staff constraints.

Licensing and structure (CPs 2-5)

43. The Trust Companies and Offshore Banking Act (TCOB Act) does not appropriately address the issue of major investments or acquisitions. Laws or regulations should define and specify investment criteria and supervisory approval requirements. With respect to licensing, ownership and permissible activities, Anguilla has robust legal provisions and procedures. In order to enhance compliance, the authorities plan to amend the current licensing documentation under the TCOB regulations and adopt the licensing procedures developed by the ECCB to enhance implementation of the requirements under CP 3.

Prudential regulations and requirements (CP 6-15)

44. With the exception of CP 15, there is still a need to implement the necessary regulatory framework to achieve compliance with these core principles. The overriding deficiency in all cases is the absence of comprehensive regulations or guidelines relating to credit, investment and other banking risks. In the case of connected lending and market risks, the authorities plan to formally adopt and implement regulations and guidelines which are broadly similar to those issued by the ECCB.

45. With regards to money laundering (CP 15), the ECCB recently implemented a program of onsite AML/CFT inspections of domestic banks that included the parent institutions of Anguillian offshore banks. To maintain effective compliance with CP 15, much will depend on the implementation of the MOU with the ECCB to enable consolidated supervision of the offshore banks, and on the continuation of AML/CFT inspections. Training of bank staff has commenced through the Caribbean Anti-Money Laundering Programme, but there is still a need to enhance skills in the identification of suspicious activities, and to raise the level of awareness of senior management on the risks posed by money laundering.

Methods of ongoing supervision (CPs 16-20)

46. With the signing of the MOU with the ECCB, Anguilla has put in place a suitable arrangement for ongoing supervision, including for onsite inspections, of offshore banks. Consequently, there is a high degree of compliance with these principles. CP 20—consolidated supervision—was determined to be not applicable.

Information requirements (CP 21)

47. The supervisory authorities need more control over the choice of accounting standards to be used for record-keeping and supervisory reports. In addition, there is a need to specify the scope of, and standards to be applied in, external and internal audits, and supervisors should have the power to revoke the appointment of bank auditors. To address these deficiencies, the authorities have arranged to discuss this matter with the ECCB to ensure compatibility with their procedures and requirements. This is particularly important in view of the status of the Anguillian offshore banks as subsidiaries of domestic banks that are supervised by the ECCB.

Formal powers of supervisors (CP 22)

48. The supervisor does not have adequate authority, backed by legal sanctions against the bank/management/directors, to take appropriate remedial action to address problems such as failure to meet prudential requirements and violations of regulations. The proposed FSC Act should address most of these shortcomings. However, the respective enforcement powers of the Inspector and the ECCB under the MOU need to be clarified to ensure compatibility with the TCOB and FSC Act.

Cross-border banking (CPs 23-25)

49. CPs 23 and 24 were not applicable to Anguilla. With respect to CP 25, there are no provisions for home supervisors to readily conduct on-site inspections of Anguillian offshore banks. However, under the proposed draft FSC Act the FSC may allow a foreign regulatory authority to participate in the inspection of banks only in conjunction with FSC inspections. There are at the moment no significant risks associated with CP 25 as the offshore banks have not commenced operations as yet. Once they become operational, the MOU with the ECCB should provide an appropriate mechanism to facilitate onsite examinations of the two offshore banks covered by the MOU.

Table 6. Recommended Action Plan to Improve Compliance with the Basel Core Principles

Reference Principle	Recommended Action
Independence - CP 1(2)	<p>Enact the Financial Services Commission Bill largely in its present form and establish the FSC by September 2003 as an operationally independent supervisory agency.</p> <p>Implement funding arrangements for the FSC that would not compromise its autonomy and broaden its professional and managerial capacity.</p>

Reference Principle	Recommended Action
Enforcement powers – CP 1(4)	Grant the supervisor legal authority to take prompt remedial action and/or impose a range of sanctions. These powers would be in addition to the power of the Governor to suspend and revoke licenses.
Licensing criteria - CP 3	Augment the licensing criteria to cover corporate governance, etc.
Investment criteria - CP 5	Define the types and amounts of acquisitions and investments requiring supervisory approval, etc.
Capital adequacy - CP 6 Credit policies – CP 7 Loan evaluation and loan loss provisioning – CP 8 Large exposure limits – CP 9 Connected lending – CP 10 Country risk – CP 11 Market risk – CP 12 Other risks – CP 13 Internal control and audit – CP 14	Formally adopt and implement appropriate prudential regulations or guidelines for offshore banks that are broadly similar and compatible with those which the ECCB has issued for the domestic banks.
Money Laundering – CP 15	Continue training to enhance awareness of the risks of money laundering to the banking sector and training on the identification and reporting of suspicious transactions.
Bank management contact - CP-17	The ECCB implements an appropriate program of regular meetings that extend beyond a review of annual accounts, and requires banks to notify the ECCB of any material adverse developments.
Off-site supervision – CP 18	Establish the principles and norms regarding the consolidation of accounts as well as the accounting techniques to be used, etc.
Validation of supervisory information – CP 19	Grant the supervisor the authority to monitor the quality of work done by external auditors for supervisory purposes, etc.
Accounting standards – CP 21	Grant the supervisor the authority to specify the accounting standards to be used in preparing supervisory reports, etc.

Reference Principle	Recommended Action
Remedial Measures – CP 22	Grant the supervisor the authority, backed by legal sanctions, to take an appropriate range of remedial actions and to impose penalties, etc. Clarify respective enforcement roles of ECCB and FSC under MOU.
Host country supervision – CP 25	Grant home country supervisors on-site access to local offices and subsidiaries for safety and soundness purposes without having to wait for a compliance inspections by the host supervisor, etc.

Authorities' response

50. The Government of Anguilla was pleased to respond to the IMF's assessment. With respect to the recommendation to pass the Financial Services Commission Bill, which will convert the existing financial services regulatory body into an independent commission, the delay in passing the FSC Bill has been due to the need to seek HMG's approval for the proposed structure of the Commission. This approval was received in June 2003 and the Bill is due to be enacted before the end of 2003, at which time the Commission will be ready to commence operations. As the IMF Report indicates, the setting up of the Commission will give additional strength to Anguilla's regulatory and supervisory powers.

51. With respect to the assessment of compliance with the other Basel Core Principles for Effective Banking Supervision (BCPs), the IMF has made recommendations on a number of the BCPs. It should be noted that at the time of the IMF assessment, there were in operation in Anguilla only four domestic banks, which are regulated by the Eastern Caribbean Central Bank (ECCB), based in St Kitts, since Anguilla forms part of the Eastern Caribbean Currency Union. The legislation covering the regulation and supervision of domestic banking is the Banking Act. An IMF assessment of the ECCB and domestic banking regulation will take place during September–October 2003.

52. Anguilla has, however, separate legislation for licensing and supervising offshore banks. Offshore banking is defined as dealing in a currency other than Eastern Caribbean dollars with nonresidents. During 2002 Anguilla granted offshore banking licenses to the subsidiaries of two Anguillian domestic banks. Since the ECCB is the domestic regulator, a Memorandum of Understanding was signed on September 30, 2002, between the Governor of Anguilla and the ECCB, whereby the ECCB accepts responsibility for the consolidated supervision of the two banks, establishing offshore banking subsidiaries. The MOU details further the procedures for supervisory cooperation and on-site inspections.

53. The IMF Report makes reference to the fact however that in order to meet Basel Core Principles fully there is a need for Anguilla to implement in its offshore banking legislation a

number of appropriate technical regulations and guidelines governing bank investment criteria, connected lending, market risks, credit risks and other operational risks. It should be noted that a number of these BCP recommendations will be addressed by the ECCB through the proposed amendments to the domestic Banking Act.

54. In anticipation of the two banks commencing offshore banking operations in late 2003, Anguilla's regulatory body wrote in June 2003 to the Barbados-based Caribbean Technical Assistance Center (CARTAC), with a request to assist Anguilla in speeding up the drafting of such regulations and guidelines. CARTAC responded that it was carrying out similar work for the ECCB and recommended that, as the regulations and guidelines are developed, the ECCB should transmit the same to Anguilla for review and implementation in its offshore banking legislation.

55. In the meantime, Anguilla's financial services regulatory department has already drafted amendments to the existing offshore banking legislation in order to cover a number of the IMF recommendations and is in contact with the ECCB on the remaining BCP recommendations, covering specifically the issuance of guidelines for country, transfer, market, liquidity, interest rate and operational risks, as mentioned above. Such an approach will ensure appropriate consistency between the domestic and offshore banking legislation and supervision.

III. REPORT ON OBSERVANCE OF STANDARDS AND CODES—FATF RECOMMENDATIONS FOR ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

A. Introduction

56. This Report on the Observance of Standards and Codes for the FATF 40 Recommendations for Anti-Money Laundering and 8 Special Recommendations for the Financing of Terrorism was prepared by a team of assessors that included staff of the International Monetary Fund (IMF) and experts under the supervision of the IMF staff. An independent law enforcement expert (IAE) not under the supervision of the IMF also participated in the assessment. IMF staff reviewed the relevant AML/CFT laws and regulations, and supervisory and regulatory systems in place to deter money laundering (ML) and the financing of terrorism (FT) in the regulated financial sector. The IAE reviewed the capacity and implementation of criminal law enforcement systems.⁹

⁹ The assessment was conducted by Mr. Manuel Vasquez (Mission Chief, MFD); Ms. Margaret Cotter and Mr. Stuart Yikona (both LEG); Ms. Candice Huggins (Technical Expert); and Mr. Pierre Lapaque (Independent Law Enforcement Expert, Organization of American States—CICAD⁹). Ms. Cotter, Ms. Huggins and Mr. Lapaque were part of a larger
(continued)

57. This report provides a summary of the level of observance with the FATF 40+8 Recommendations, and proposes a number of measures for strengthening compliance with these Recommendations. The views expressed in this document are those of the team members and do not necessarily reflect the views of the Government of Anguilla or the Executive Board of the IMF.

B. Information and Methodology used for the Assessment

58. In preparing the detailed assessment, IMF staff and other experts under the supervision of the IMF reviewed the relevant AML/CFT laws, regulations, guidelines and associated instruments, as well as the supervisory and regulatory systems in place to counter money laundering and the financing of terrorism in the regulated financial system. The review of the financial sector focused mainly on the banking sector but also reviewed the AML/CFT systems in place for the company and trust services sector. The IAE not under the supervision of IMF staff reviewed the capacity and implementation of criminal law enforcement systems¹⁰. The assessment is mainly based on information available at the time of the mission which was completed on November 1, 2002.

C. Main Findings

Criminal justice measures and international cooperation

59. **Anguilla has a relatively comprehensive legal and institutional AML/CFT framework, particularly with respect to measures to combat terrorism and terrorist financing; criminalization of offenses; confiscation of the proceeds of criminal conduct; international cooperation; and law enforcement and prosecution powers.** Its legislation contains many of the principal elements required for compliance with the FATF Recommendations and efforts are underway to introduce improvements in the AML/CFT regime and for addressing a number of recommendations made in the KPMG Report.¹¹

Criminalization of ML and FT

60. As an Overseas Territory of the United Kingdom (UK), Anguilla is not able to ratify conventions but depends upon extensions to it by the UK. It has, however, implemented the provisions of the Vienna Convention and of the Convention for the Suppression of the

OFC mission led by Mr. Vasquez to both Anguilla and Montserrat during October 21 – November 1, 2002.

¹⁰ Throughout this report, the assessments relating to law enforcement conducted by the IAE are shown in italics.

¹¹ 1999 UK Review of Financial Regulation in the Caribbean Overseas Territories and Bermuda.

Financing of Terrorism in local legislation. Since the UK has not yet ratified the Palermo Convention, it has not been extended to Anguilla.

61. Anguillian legislation is broadly consistent with international standards. It criminalizes money laundering and extends to the proceeds of all serious offences including those that occur extraterritorially. The offences of money laundering apply to both individuals and legal entities.

62. Legislation for combating the financing of terrorism is strong. These laws apply to terrorists and terrorist organizations irrespective of whether terrorist acts occur in Anguilla or in other countries. For both ML and FT offences, there are appropriate dissuasive sanctions including confiscation of property, fines and, with respect to regulated entities, the legislation provides for the suspension and revocation of licenses.

63. While the basic elements are in place, the legal framework could be strengthened in a number of areas. Anguillian legislation does not allow for the extradition of individuals for financing of terrorism and money laundering offences. The authorities are also considering the adoption of a number of provisions contained in the new UK Proceeds of Crime Act which should significantly strengthen the AML/CFT regime. With regards to combating the financing of terrorism, the authorities are still to develop appropriate administrative arrangements for the filing and analysis of suspicious activity reports. Specific guidance to the industry on this issue is also required.

Confiscation of proceeds of crime or property used to finance terrorism

64. Confiscation and seizure provisions are generally available in the Anguillian ML and FT legislation. Under these provisions law enforcement authorities can freeze property but only after criminal proceedings have been initiated for ML offences. For FT offences, ex parte restraint orders may be obtained once an investigation has commenced. The counter-terrorism laws contain comprehensive seizure and confiscation provisions, including for the seizure of cash under civil proceedings. The rights of innocent and bona fide third parties are protected under law for restraint and confiscation orders. Law enforcement authorities also have adequate powers to identify and trace property, particularly with respect to the production of material. Adoption of the provisions similar to those contained in the new UK Proceeds of Crime Act would also improve the seizure and confiscation regime for ML, particularly those relating to account monitoring orders, restraining orders and the voiding of contracts.

65. *Law Enforcement Considerations—There have been no seizure or confiscation of property arising out of ML and FT cases. A few suspicious transaction reports have been filed but these have not resulted in seizures or confiscations. Notwithstanding, a system has been developed to keep statistics on such issues. Training has been provided to police officers through the Trinidad and Tobago-based Caribbean Anti-Money Laundering Program on basic money laundering investigations but more advanced training is now required. Training has also been provided to prosecution staff on money laundering issues.*

No timeframe has been established for the provision of advanced training for law enforcement officers.

The FIU and processes for receiving, analyzing and disseminating intelligence

66. The Money Laundering Reporting Authority (RA) has been designated under the Money Laundering Reporting Authority Act as Anguilla's FIU with general functions to receive and disseminate information on suspicious transactions relating to suspected ML offences. The law does not specify a responsibility for the RA to analyze reports of suspicious transactions and in practice it has not fully developed an analytical role for processing such reports. Reports of suspected terrorism financing activities are not filed with the RA but are provided directly either to the police or to the Governor. The RA is required to provide information on suspicious activity to the police and customs authorities for investigation. In practice most reports are forwarded by the police to an investigative agency of the UK (WCCIT)¹² established overseas for assistance in their investigations.

67. The RA has access to financial, administrative and law enforcement databases and is authorized to disclose information to law enforcement authorities in Anguilla and abroad. When disclosing information to a foreign agency, due regard is given to the interests of third parties and on the use of such information by the recipients. However, there is no specific provision in the law that mandates reporting institutions to provide additional information to the RA upon request although in practice this is reported to occur.

68. *Law Enforcement Considerations—The RA is comprised of the Commissioner of Police, a senior police officer, the Comptroller of Customs and the Director of Financial Services. The RA does not have an independent budget and given the current resource constraints, processing of suspicious transaction reports is not conducted in a systematic manner. There have been a few cases of suspicious activity reported to the RA (5) and no requests for assistance have been made or received from foreign FIUs. There is no centralized system for filing of suspicious activity reports which can be sent to any one of the agencies that comprise the RA. There is a need to develop a centralized reporting mechanism and for keeping statistics of such reports as well as for requests for assistance when these occur.*

Law enforcement and prosecution authorities, powers and duties

69. Law enforcement authorities have adequate powers to compel the production of records from financial institutions to assist in ML and FT investigations by applying to the High Court. More robust powers are required for money laundering cases particularly those relating to account monitoring and tracking orders, similar to those contained in the new UK Proceeds of Crime Act and in the FT laws.

¹² White Collar Crime Investigation Team is a joint UK/US police unit based in Florida, USA.

70. *Although law enforcement staff has undergone basic training on money laundering, their skills are underutilized locally as most reports of suspicious transactions (STRs) are sent overseas for assistance from WCCIT. As the number of STRs increases, there will be a need to develop local intelligence and investigative capacity that could include the creation of a law enforcement/intelligence task force comprising police, customs and immigration officials. The pooling of resources would help alleviate the current resource constraints.*

71. *The use of undercover operations, including controlled deliveries, is not unlawful in Anguilla. In the past, local law enforcement agencies have collaborated with overseas counterparts in an undercover operation.*

International cooperation

72. Anguillian law provides for a wide range of assistance to be granted to foreign authorities in criminal investigations and proceedings, including on a discretionary basis. In addition, compulsory measures are possible under the legislation and a mutual legal assistance treaty (MLAT) with the USA. The authorities may also enforce foreign restraining and confiscation orders for various types of cases, including for terrorism finance. The RA can also share information freely with foreign law enforcement authorities through various mechanisms, including Interpol and a regional information sharing network (OTCRIS). A main drawback to international cooperation is the inability under Anguillian law to extradite individuals for money laundering and terrorist financing cases. Notwithstanding, the Governor is authorized to deport individuals who are deemed to be “undesirables”.

73. *Law Enforcement Considerations—In light of the small number of requests for mutual legal assistance received each year (2-3) from abroad, there is no immediate need to maintain statistics and assign staff solely for this purpose. None of these requests has involved ML or FT cases.*

Preventive measures for financial institutions

Prudentially-regulated sectors (Banking, insurance, and company and trust services)

74. **The establishment of an operationally autonomous Financial Services Commission (FSC) has been postponed from December 2002 to September 2003. The proposed FSC should significantly strengthen Anguilla’s ability to implement its AML/CFT laws. However, its effectiveness will largely depend on the financial and staffing resources available to the FSC to undertake ongoing supervision of financial institutions, particularly onsite inspections. Important amendments to the Anti-Money Laundering Regulations and Guidance Notes are also required as well as extension of the AML/CFT laws to specifically cover insurance agents and certain aspects of mutual funds business.**

General framework

75. The ML Regulations and Guidance Notes comprise the primary legal and institutional instruments for anti-money laundering controls in Anguilla. The Guidance Notes, which are not mandatory, were issued under the ML legislation to provide practical assistance to financial institutions for complying with the AML requirements. They also form the basis by which they are supervised for compliance. Both the Regulations and the Guidance Notes apply to a wide range of financial service providers including but not limited to banking (both domestic and offshore), insurance companies, company managers, trust companies and money transmission services.

76. The Director of the Financial Services Department (FSD) in the Ministry of Finance is currently at the forefront of efforts to implement the AML/CFT laws of Anguilla. The planned establishment of the FSC as an omnibus supervisory body to replace the FSD will provide the authorities with enhanced supervisory powers, including for enforcing and applying disciplinary action for noncompliance with AML requirements. Much will depend, however, on maintaining a well-resourced cadre of supervisory staff for the new FSC. The recent signing of an MOU with the ECCB, which supervises domestic banks, should enable consolidated supervision of offshore and domestic banks for AML/CFT purposes. The authorities should formally assign responsibility to an agency, such as the FSC, for supervising compliance with CFT requirements.

77. To improve implementation of AML/CFT requirements in the financial sector, the authorities should consider revising the Guidance Notes to provide more industry-specific guidance and to require a more risk-focused approach for customer due diligence and monitoring activities. In addition, they should specifically address issues relating to CFT. Enhanced training and awareness in the financial sector is also required.

Customer due diligence, monitoring of transactions and record keeping

78. All covered financial institutions are required to have procedures in place that require evidence of the identity of customers, either occasional or habitual. What constitutes satisfactory evidence under the ML Regulations is to be determined by reference to the Guidance Notes. There is no legal requirement to periodically review customer identification and due diligence documentation but the Guidance Notes provide situations where further evidence of identify should be obtained. Records of customer identification and transactions are required to be retained for at least six years.

79. Important improvements can be made to the legal and institutional arrangements for customer identification and due diligence. These include the introduction of core customer identification requirements in the ML Regulations that: (i) establish general requirements for what constitutes satisfactory evidence of identity including for legal entities; (ii) require reverification of customer identity under certain circumstances; (iii) require identification and due diligence information for introduced business to be made available to financial institutions promptly on request; (iv) establish an obligation on company and trust services

providers to ascertain the adequacy of AML/CFT systems and controls of eligible introducers; and (v) require financial institutions to monitor for unusual complex transactions, and unusual patterns of transactions. In addition, FIs should be required to comply with the Directive on information for funds transfers to comply with the FATF 8 Special Recommendations on terrorist financing. Legislative initiatives are also planned with respect to money remittance firms which are expected to come under the supervision of the ECCB or the FSC.

Suspicious activity reporting

80. One of the areas requiring attention is the need for an explicit suspicious transaction reporting requirement supported by a more effective sanctioning system. Failure to promptly file a suspicious activity report should be made an offence. There is also a need for a more explicit requirement regarding the internal review and recording of unusual complex transactions and patterns of transactions. With regards to FT, additional guidance is required to assist financial institutions in identifying and reporting suspicious activity, including through amendments to the Guidance Notes and training for staff. The authorities should also investigate the reasons for the small number of suspicious activity reports filed to date.

Non-prudentially regulated sector (Company and trust services providers)

81. Company and trust services providers comprise the fastest growth area in financial services in Anguilla. Many licensed CSPs do not have a physical presence on the Island which will pose a challenge for the authorities in the conduct of onsite inspections for AML/CFT. With the establishment of the FSC, a program of periodic onsite examinations of CSPs should be fully implemented and focused on compliance with AML/CFT requirements. These examinations should extend to CSPs that do not have a physical presence in Anguilla and should review the implementation of arrangements for reliance on customer due diligence carried out by overseas introducers/sub-agents. CSPs should also be required to ascertain that the AML/CFT systems of overseas agents are at least as rigorous as those required under the Anguillian legislation and Guidance Notes.

Medium-term challenges

82. One of the principal challenges for the authorities will be the establishment of a well-resourced and functioning FSC that can continue to act as the lead agency in supervising the implementation of the AML/CFT requirements in the financial sector. Attracting and retaining qualified staff for the FSC should be a primary objective, as well as the implementation of the MOU with the ECCB for the supervision of offshore banks. Another challenge will be reviewing and enforcing compliance with AML/CFT requirements by CSPs that do not have a physical presence in Anguilla and who rely on eligible introducers for customer due diligence.

Summary assessment against the FATF Recommendations

83. **Overall, Anguilla complies well with the FATF 40+8 Recommendations.** Its legal framework is relatively strong but improvements in provisions relating to extradition and in the regulations would significantly improve the AML/CFT regime. Adoption of some of the provisions of the new UK Proceeds of Crime Act would also strengthen the legal framework. With regards to implementation, more comprehensive monitoring for compliance, heightened awareness and guidance for the financial sector, including for the combating of the financing of terrorism, would enhance compliance with the Recommendations. Table 7 below summarizes recommended action in areas that would assist the authorities in further strengthening the AML/CFT regime.

Table 7. Recommended Action Plan to Improve Compliance with the FATF Recommendations

Reference FATF Recommendation	Recommended Action
40 Recommendations for AML	
General framework of the Recommendations (FATF 1–3)	<p>Consider amending the Drugs Trafficking Offences Act to provide that disclosures to the Reporting Authority (FIU) are not treated as breaches of any restriction on disclosure of information.</p> <p>Consider broadening the disclosure provisions in the Eastern Caribbean Central Bank Agreement Act to enable the ECCB to disclose information to financial institution supervisors.</p> <p>In conjunction with the United Kingdom, introduce legislative mechanisms to allow for extradition for money laundering and terrorist financing.</p>
Scope of the criminal offense of money laundering (FATF 4–6)	None
Provisional measures and confiscation (FATF 7)	None
General role of financial system in combating ML (FATF 8–9)	<p>Specifically list mutual funds/mutual fund administrators and insurance agents as persons/entities covered by the AML Regulations.</p> <p>For AML/CFT compliance purposes, consider bringing money remittance firms under the supervision of the FSC or ECCB, as appropriate.</p>

Reference FATF Recommendation	Recommended Action
Customer identification and record-keeping rules (FATF 10–13)	<p>Establish core customer identification and recordkeeping requirements, in appropriate instances, in the regulations rather than guidance notes.</p> <p>Require company and trust services providers to ascertain that the AML/CFT systems of sub-agents/eligible introducers are appropriate for meeting Anguillian requirements and ensure that they are being effectively implemented.</p> <p>Require the identification of trust beneficiaries as appropriate.</p>
Increased diligence of financial institutions (FATF 14–19)	<p>Consider reporting suspicion of FT to the Reporting Authority rather than to a constable or the Governor.</p> <p>Impose an affirmative obligation to report suspicion of ML/FT promptly to the Reporting Authority and make it an explicit offence for failure to report.</p> <p>Ascertain the reason for the relatively small number of STRs filed to date by financial institutions.</p> <p>Require enhanced monitoring for suspicious activity by financial institutions, including through aggregation of related accounts.</p> <p>Require enhanced training by financial institutions on the recognition of suspicious transactions and activities.</p>
Measures to cope with countries with insufficient AML measures (FATF 20–21)	Introduce a specific requirement that financial institutions pay special attention to transactions with counterparties in higher risk countries.
Other measures (FATF 22–25)	Expedite the immobilization of bearer shares and review for compliance in the company and trust services sector, particularly by sub-agents.
Implementation & role of regulatory and other administrative authorities (FATF 26–29)	Enhance supervision of insurance and company and trust services providers for AML/CFT.
Administrative Cooperation – Exchange of general information (FATF 30–31)	None.
Administrative Cooperation – Exchange of information relating to suspicious transactions (FATF 32)	None.
Other forms of cooperation – Basis & means of cooperation in confiscation, mutual assistance, and extradition (FATF 33–35)	Designate by Orders those jurisdictions whose confiscation orders are recognized by Anguilla.
Other forms of cooperation – Focus of improved mutual assistance on money laundering issues (FATF 36–40)	<p>Consider amending the Criminal Justice (International Cooperation) Act relating to searches to remove the limitation on searches of the offenders’ premises.</p> <p>Allow under law for extradition for money laundering and terrorist financing.</p>
8 Special recommendations on terrorist financing	
I. Ratification and implementation of UN Instruments	Extend the International Convention for the Suppression of the Financing of Terrorism to Anguilla.

Reference FATF Recommendation	Recommended Action
II. Criminalizing the financing of terrorism and associated money laundering	None.
III. Freezing and confiscating terrorist assets	None.
IV. Reporting suspicious transactions related to terrorism	Introduce industry guidelines for the recognition and reporting of suspicious transactions relating to FT.
V. International Cooperation	In conjunction with the United Kingdom, introduce legislative mechanisms to allow for extradition for terrorist financing.
VI. Alternative remittance	Consider bringing money remittance firms under the supervision of the FSC or ECCB for CFT purposes, as appropriate.
VII. Wire transfers	Make the Directive on wire transfers legally binding and issue industry guidelines to assist with implementation.
VIII. Non-profit organizations	Not assessed.

Table 8. Other Recommended Actions

Reference	Recommended Action
<i>Law Enforcement</i>	<i>Create a structured multi-agency financial investigation unit for AML/CFT.</i>
	<i>Enhance training and awareness for Police, Customs and Prosecution officers on typologies and trends in ML and FT.</i>
	<i>Require law enforcement officers assigned and trained in AML/CFT to be retained in their positions for at least five years.</i>

Authorities' response

84. Anguilla agreed to be assessed under the new AML/CFT Methodology document, which was introduced shortly before the IMF assessment. As a result the IMF has made a number of AML/CFT recommendations, which are accepted. Anguilla was pleased to learn that the IMF considers Anguilla to have a relatively robust legal and institutional AML/CFT framework.

85. Anguilla's existing Proceeds of Crime legislation and Anti-Money Laundering Regulations and Guidance Notes on the Prevention of Money Laundering were largely drafted on similar UK legislation in place at the time. Since then, the UK has adopted a new Proceeds of Crime Act, and the proposed adoption by Anguilla of a number of new measures contained in that new Act, should go a long way to meeting the IMF's legal and institutional recommendations directed at Anguilla's current AML legislation. In addition the IMF recommends that a number of provisions already contained in the Guidance Notes for the Prevention of Money Laundering should be transferred into existing Regulations to give them more force of law. Anguilla has already identified these provisions and they are being transferred into Regulations accordingly. A number of other minor recommendations concerning Anguilla's AML Regulations are also being formalized.

86. The IMF also recommends that Anguilla's Money Laundering Reporting Authority should take on a more centralized structure. Arrangements and an extra resource person have already been put in place to ensure that this recommendation is met in line with other FIU-type requirements, which Anguilla would need to strengthen as a newly elected member of the Egmont Group.

D. Regulatory Arrangements in Relation to Other OFC Sectors

Oversight of company and trust services providers

87. Anguilla is actively promoting the development the offshore company industry. As at August 31, 2002, 4,642 companies and partnerships had been registered through its online registration system (ACORN). Twenty nine company managers have been licensed. Like other offshore jurisdictions, there is no requirement to register trusts in Anguilla and it is therefore not known how many trusts have been formed. At the time of the mission, 12 trust companies have been licensed to operate from within Anguilla. Both company managers and trust companies are supervised by the FSD, which is to be replaced by the FSC in September 2003 as an operationally autonomous supervisory body.

88. The Company Management Act, 2000 (CMA) and related Regulations govern the regulation and supervision of company management business. Company managers are licensed under this Act and are authorized to provide the following services:

- incorporation and formation of companies including international business companies (IBCs), Company Ordinance Companies, and Limited Liability Companies. It excludes the formation of partnerships;
- acting as director, manager or officer of companies, including foreign companies;
- acting as registered agent for companies;
- providing registered office for companies;
- preparation and filing of statutory documents on behalf of companies; and
- acting as nominee shareholder for companies, including foreign companies.

89. Trust companies are licensed under the Trust Companies and Offshore Banking Act, 2000 (TCOB) which defines trust business as the business of "acting as trustee of property." Section 3 of the Trusts Ordinance (1994) defines a trustee as a person who "holds or has vested in him, or is deemed to hold or have vested in him, property which does not form, or which has ceased to form, part of his own estate, for the benefit of any persons, purposes or both." This Ordinance allows for settlors of a trust relationship to also be a trustee, protector and beneficiary of the same trust. The Trusts Ordinance allows for the designation of corporate trustees and protectors who can be appointed to enforce trusts. Trust companies are also authorized to carry on company management business under a trust

license without the need for a company manager license. According to the authorities, the practice has been for trust companies to mainly engage in company services as opposed to trust administration.

90. The CMA authorizes the Inspector of company managers to issue directions for purposes of filing regulatory returns and to examine the books and records of licensees during onsite inspections. Similar powers are contained in the TCOB with respect to trust companies. In addition, the proposed FSC Act will contain enhanced authority for the conduct of compliance inspections without restriction on access to information. The new Act will also provide more effective enforcement and disciplinary powers to the FSC, including the imposition of financial penalties for noncompliance with legal and other regulatory requirements, including for AML/CFT. Under the CMA and the TCOB, the Governor's authority to take enforcement action against CSPs is mainly restricted to the suspension and revocation of licenses.

91. Governor and the Inspector are not restricted under the law to access information on the operations of CSPs. With regards to sharing of information, Section 17 of the CMA prohibits the regulator from disclosing information obtained during the course of an examination of a licensee regarding a company managed by the licensee, or in the exercise of its functions under the CMA, except as required by a Court in Anguilla or where a disclosure is made to the Governor. The Court will authorize disclosure only where there is *prima facie* evidence of illegality and where the information may be useful for the investigation of illicit activity. Information, except for details of companies under management, can be provided under Section 23 of the CMA to foreign regulators for regulatory purposes subject to restrictions on further disclosure by the recipient.

92. Section 31 of the TCOB imposes similar restrictions on the disclosure of information acquired by the regulator in respect of the name and title of a settlor of a trust. Section 35 of the TCOB makes provisions for disclosure to a foreign regulator on the same basis as under Section 23 of the CMA above.

93. Section 21 of the draft FSC Bill will enable the FSC unrestricted access to information on CSPs in the performance of its duties under the CMA and TCOB or any other law. The FSC will also be able to share such information with foreign regulators under Section 24 of the FSC Bill for regulatory purposes only. Such information will be provided on the basis of reciprocity and subject to restrictions on further disclosure. Information may not be provided if it will be used in criminal proceedings against the person furnishing it. Under the proposed law, the FSC will be able to require that a foreign regulator contributes towards the costs associated with the provision of information.

94. Plans are underway for the FSD/FSC to undertake onsite inspections of CSPs. The current structure of the CSP industry, where a number of licensees do not have a physical presence (cubicle agents) and where business is introduced by overseas sub-agents of CSPs, poses a not too insignificant challenge to the implementation of onsite inspections. The FSD has indicated that strengthening staffing resources for the FSC will be a primary objective of

the authorities. However, its ability to conduct periodic inspections will depend on securing sufficient funding for its operations. It may also require entering into cooperation arrangements with foreign regulators from jurisdictions where CSPs and their sub-agents operate.

Recommended plan of action for the company and trust services sector

Table 9. Recommended Plan of Action for the Company and Trust Services Sector

Issue Code of Practice under the Company Management Act and the Trust Companies and Offshore Banking Act that meet international best practices. Consultation with the Anguillian Financial Services Association (AFSA) is important to avoid potential conflict with the Code issued by the AFSA.
Implement the proposed program of onsite inspections of CSPs, including cubicle agents, in accordance with the proposed schedule prepared by the FSD. Inspections should focus particularly on compliance with the applicable AML/CFT laws, guidelines and Codes.
Review the adequacy of arrangements for reliance by CSPs on customer due diligence requirements conducted by eligible introducers/sub-agents.
Review and implement a process by which the FSD/FSC will have timely and easy access to the records of CSPs that do not have a physical presence in Anguilla, particularly where such records are maintained by introducers/sub-agents overseas. Access to such records should be made a condition to CSP licenses.
Implement the requirement under the Company Management Act for external auditors to issue “certificates of compliance”, particularly for AML/CFT. Copies of auditors’ management letters and compliance certificates should be sent to the FSD/FSC along with the annual audit reports. The authorities should also consider reducing the period for filing of audited accounts to less than six months.
Consider implementing a requirement for indemnity insurance for CSPs, as appropriate, particularly where cubicle licensees and sub-agents are involved.

Authorities’ response

95. The IMF also reviewed Anguilla’s oversight of company and trust service providers (CSPs), for which the IMF recognizes that there are no codes or standards set but only best practices. A main recommendation by the IMF is the need to implement a proposed program of onsite inspections of CSPs. At the time of the IMF visit, an on-site program had been established but had not yet commenced. By September 2003, the majority of CSPs had undergone on-site inspection by the regulatory body and had been asked to correct a number of deficiencies in their practices. The other four recommendations cover minor amendments to the existing Code of Practice for CSPs, clarifying issues concerning introduced business and an enhanced role for external auditors for AML/CFT compliance. These recommendations are being reviewed and amended directives are to be put in place accordingly.