

Government of Anguilla

Ministry of Finance Economic Development, Investment, Commerce, Tourism
Lands and Physical Planning (MFEDICTLP)



Public Consultation Paper

Enhancing Transparency of Anguillian Companies- Abolition of Bearer Share Warrants

September 2016

CONSULTATION PROCESS

The Ministry of Finance Economic Development, Investment, Commerce, Tourism, Lands and Physical Planning (MFEDICTLP) is considering **the abolition of Bearer Share Warrants in Anguilla and the conversion of issued bearer shares to ordinary registered shares**. Accordingly, this Consultation Paper is issued to garner the opinions of members of the public and in particular stakeholders in the financial services industry and AML/CFT field on the issue posed.

Closing date for submissions: 30th, September 2016

Opinions may be submitted in written form by post, fax or email (Word or PDF format) as follows:

Addressed to:

Ministry of Finance, Economic Development, Investment, Commerce and Tourism (FEDICTLP)
C/O Compliance Manager
Government of Anguilla, The Secretariat
P O Box 60, The Valley
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All opinions should give due regard to the responsibility of Anguilla, as an international finance centre, to support international standards whilst enhancing the jurisdiction's attractiveness as a destination for financial services business. Please also ensure to include in your submissions, where possible, the reasoning behind your stance/opinion accompanied by supporting evidence.

It will be preferable if each submission clearly indicates whether it is being submitted on behalf of an individual or an organisation.

Please note that information contained in your submission may be publicly disseminated. If you want this information, including personal data that you provide, to be treated as confidential please provide an account as to why the information should be treated confidentially. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Government of Anguilla.

A report on the outcome of the consultation will be disseminated after the responses have been collated and analysed.

Discussion: Bearer Share Warrants

Anguilla's Regime

Anguilla's Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Regulations and Code contain comprehensive provisions regarding Customer Due Diligence (CDD) measures, including requirements for all service providers to obtain full information in relation to the source of funds, nominee arrangements, beneficial owners and directors involved in any business relationship or occasional transaction with a service provider. The AML/CFT Regulations and Code also set out explicitly the details of the identification information that must be retained.

Anguilla's AML/CFT regime has been scrutinised by the Caribbean Financial Action Task Force ("CFATF") for compliance with the FATF 40+9. Although some deficiencies were noted, the FATF Mutual Evaluation Report, published July 2010, noted 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."

In Anguilla, International Business Companies (IBCs) can issue bearer shares pursuant to the IBC ACT (R. S. A. CI20). The IBC Regulations on the Custody of Bearer Shares requires that Bearer Shares issued be subject to custodian services. A bearer share is considered disabled for any period for which it is held by any person other than the custodian.

The regulations obligate the custodian to identify the beneficial owner of the shares being held and to maintain a register containing the name and address of the beneficial owner of the share. Where a custodian other than the registered agent transfers possession of a bearer share in a company to another custodian, it is obligated within 14 days of the transfer to send a written notice of transfer to the registered agent of the company. A transfer of the beneficial ownership of, or an interest in, a bearer share held by a custodian is only effective when notice is received by the registered agent of the company. Extra-territorial custodians are only allowed if the person to be custodian is regulated under a similar regulatory regime to that of Anguilla consistent with FATF recommendations.

The Issue

The legal owners of a company are recorded on the company's register. However, in cases of a company being able to issue bearer shares the owners of that company are who hold the physical share warrant. Bearer shares are legitimately used by individuals preferring to maintain privacy and anonymity but they also have the potential to be misused by persons wishing to conceal their identities for the purposes of tax evasion and other criminal activities due to the opacity of Bearer Shares. The Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) and FATF have both identified bearer shares as potential vehicles for misuse. The Global Forum commented that "Anguilla did not have sufficiently clear legal and practical mechanisms to provide information related to bearer shares."¹

Resultantly, the Government of Anguilla is considering the prohibiting the issuance of bearer share warrants and requiring holders of existing bearer shares to convert their bearer shares to ordinary

¹ Global forum on transparency and exchange of information for tax purposes peer reviews. Phase 2, Implementation of the standard in practice: Anguilla

registered shares. This approach would enhance transparency of ownership of Anguillian companies and reduce the potential for illicit activities. This approach has been adopted in other jurisdictions; including recently in the Cayman Islands. We anticipate there will be some one-off administration costs encountered during the conversion of bearer shares to ordinary registered shares. We would need to ensure there is sufficient time for the conversion process to ensure holders of bearer shares are not unjustly disenfranchised.

Considering the foregoing, we invite opinions on:

1. Prohibiting the issuance of new bearer share warrants
2. Requiring the conversion of existing bearer shares to ordinary shares, and if so, what timeframe.
3. The potential costs and benefits that may result from this proposed policy change
4. Any additional measures that may be taken to improve the transparency of Anguillian corporate structures.

This consultation process is intended to assist the Government of Anguilla in formulating appropriate policies with regard to the use of Bearer Share Warrants by Anguillian Corporate Structures. All opinions received will be properly considered in advance of a policy decision being taken.