



MINISTRY OF FINANCE

Government of Anguilla

The EU has developed a screening process based on a wide set of good governance criteria which screens jurisdictions against criteria related to transparency and fair taxation. Part of this criteria is that jurisdictions should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction. Criterion 2.2 provides that jurisdictions should not facilitate offshore structures (companies), arrangements or **other undertakings** aimed at attracting profits which do not reflect real economic activity in the jurisdiction.

A jurisdiction must be able to evidence, and enforce, that legal entities formed in that jurisdiction, where they are earning income from certain ***“relevant activities” in respect of which there is a risk of profit-shifting***, have “real economic activity” and “substantial economic presence” in the jurisdiction to correspond with the tax advantages obtained from their presence in the jurisdiction. “Real economic activity” relates to the nature of the activity that benefits from the tax regime in the jurisdiction and “substantial economic presence” relates to the factual manifestation of the activity that benefits from the tax regime in the jurisdiction.

Economic substance requirements were implemented into law through amendments to the Companies Act, International Business Companies Act, the Limited Liability Company Act and the Limited Partnership Act (Formation Legislation) in response to the work conducted by the European Union Code of Conduct Group based on the framework established by the OECD Forum on Harmful Tax Practices. Substance requirements in Anguilla are applicable to entities registered in Anguilla, being companies, international business companies, limited liability companies and limited partnerships, unless they are exempt entities (hereinafter referred to as “relevant entities”). The substance requirements are applicable to all geographically mobile activities (hereafter referred to as “Relevant Activities”) in scope of the FHTP Standard.

The “relevant activities” within scope for purposes of the proposed legislative amendments are:

- a. Banking
- b. Insurance
- c. Fund management
- d. Financing and leasing
- e. Distribution and service centre
- f. Shipping
- g. Holding intellectual property as a principal asset
- h. Headquarters

- i. Holding company business

Partnerships

In Anguilla, we have two Acts, which govern partnerships. The Partnerships Act and Limited Partnerships Act. Limited Partnerships (hereinafter referred to as 'LPs') are registered under the Limited Partnerships Act. LPs fall in the scope of the substance legislation. Partnerships (General) in Anguilla are governed by the Partnerships Act. The Partnerships Act was not covered by the substance legislation.

- a) Under the Partnership Act, Partnership is defined in Section 3 as:

3. (1) Partnership is the relation that subsists between persons carrying on a business in common with a view to profit.

(2) Notwithstanding subsection (1), the relation between members of any company or association that is—

(a) incorporated, continued or registered as a company under the Companies Act or any other Act for the time being in force and relating to the incorporation of companies; or

(b) formed or incorporated by or in pursuance of any other Act, letters patent or Royal Charter

is not a partnership within the meaning of this Act.

These partnerships are neither incorporated nor registered under this Act, but are governed by this Act and the rules of equity and of common law. The persons carrying a business in common or partnership agreement buttresses the existence of the partnerships. Section 4 of the Partnership Act sets out the rules for determining whether a Partnership exists.

The TBOPL Act¹ applies to persons carrying on any trade, business, occupation or profession set out in the Schedule. Such persons are required to take out an annual licence in accordance with the provisions of the Act (Section 3).

EU Member States agreed in 2019 to explore the extent to which entities with the legal form of partnerships are relevant for and in scope of the domestic economic substance requirements introduced under criterion 2.2.

¹ As Banking and Insurance are licensed under separate legislation, these relevant activities are not treated with under the draft amendment Bill.

Member States recalled that, according to the Terms of Reference for criterion 2.2 jurisdictions should require companies and **any other undertaking** that can carry out a relevant activity to have a substantial economic presence. It is the COCG position that as in Anguilla General Partnerships can carry out a relevant activity and have non-resident GPs then they fall within the scope of the requirements under criterion 2.2. Concerning Anguilla, it was concluded by the member states that therefore the domestic legislation does not cover all the appropriate categories of partnerships. In particular, it was their concern and determination that **Anguilla should amend its existing economic substance legislation and framework to include General Partnerships in the scope of economic substance requirements.**

Proposed Amendments to Trades, Businesses, Occupations and Professions Licensing (TBOPL) Act

To address the EU concerns around General Partnerships, legislative amendments are required.

The distinction between the Partnership Act and the company formation legislation means the former does not lend to the transposition of the substance requirements.

It is proposed that Business Licensing framework be amended to prohibit issuance of licences to do business in Anguilla to unregistered/incorporated partnerships. This provision will require persons (whether Anguillian or non-Anguillian) to be a registered company or limited partnership to be issued a licence to conduct relevant activities as outlined above (in respect of activities which are licensed under this Act) where two or more persons are conducting business in common.

These amendments will have to be in place by end of June 2021.

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