COMMENTS AND RESPONSES,

TRUST AND CORPORATE SERVICE PROVIDERS BILL

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
Part 1 ***Section 1 (1)***		
Auditor	The definition of "auditor" displays a possible lack of understanding of the profession. Just because someone is "in is in good standing as a member of an association of chartered or public accountants" does not mean that they can audit; they also need to be permitted by that body to audit, for example by issuance of a "practicing certificate". Otherwise people can be providing audit services in Anguilla, at the request of the FSC, which would not be allowed by their profession, and possibly done illegally. Amend the definition by adding, at the end, "and are permitted by such body or similar association to provide auditing services"	Noted. This section has been amended.
Capital Base	With respect to the "capital base" requirements, will there be any guidance issues by way of regulation of industry guidance on what the considerations will be to determine the level of regulatory capital that the	This will be addressed through Guidance.
Company Management	In the definition of "company management" will limited partnerships be included in addition to companies?	Noted. This section has been amended.
	The definition of "company management" at (d) ("preparing and filing statutory documents") could be a function of an auditor or other professional. Clarify the definition by making it clear that this does not apply to external professionals "preparing and filing statutory documents".	By 'statutory documents' the AFSC refers to the annual returns and any other documents the legislation stipulates should be filed. Auditors do not file statutory documents to the AFSC. Legislation stipulates that only the licensee file these documents.

COMMENTS AND RESPONSES,

TRUST AND CORPORATE SERVICE PROVIDERS BILL

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
Director	The definition of "director" includes "any person who occupies the position of director by whatever name called". This could be seen to be too arbitrary and unnecessarily expansive.	Noted. This section has been amended. Do note, however, that the phrase "*by whatever name called*" is used in the definition of "Director" in a number of jurisdictions (See Bermuda, BVI, Hong Kong, Jersey, Singapore and the UK).
Document	The definition of "documents" acknowledges that some may be recorded in otherwise than in legible form, but that they are to be produced in legible form. This could be problematic.	The intent of this is to include documents that may be too sensitive to be recorded in 'legible' form, e.g. encrypted information.
Family Office	The definition of "family office" refers to "ultra-high net worth", but "ultra high net worth" is not defined. Define or give guidance as to the definition of "ultra-high net worth".	This will be addressed through guidance.
Foreign Regulatory Authority	With respect to the definition of "foreign regulatory authority" will the AFSC publish a list of these?	AS PROVIDED IN THE FINANCIAL SERVICES COMMISSION ACT R.S.A. c. F28 ("FSC ACT")
Management Accounts	The definition of "management accounts" state that they are internal to the company and yet are required to be signed by "its directors". This is inappropriate – they would normally be prepared and presented to the directors.	Noted. However, we respectfully disagree and the definition remains. The intent is that the AFSC may confirm the authenticity of the document and its review by directors.

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
	The draft Bill uses the word "resident" as an adjective (eg resident director) and as a verb (eg who is resident in Anguilla). There is however no definition in section 1 of the important term "resident". The absence of a definition, it is respectfully submitted, may create uncertainty for a person and moreover an affected trust company.The factor of residence is important under the domestic law of most jurisdictions as well as international double tax agreements. The touch-stone is usually expressed as being whether the person in question was 'ordinarily resident' during the year of assessment. In the case of natural persons, residence implicitly embraces concepts of 'political allegiance', 'nationality' (which is usually understood as equivalent to citizenship), and 'residence', encompassing both 'ordinary residence' and 'domicile'. Thus, for natural persons, the tax jurisdiction is implicitly based primarily on a pre-dominant physical presence within that jurisdiction; however, a person can be 'resident' in a given tax year by virtue of being 'ordinarily resident' in the country (the latter expression having no statutory definition) without being physically present in the jurisdiction during that year.	Noted. This section has been reviewed and is still currently under review. There are immigration and other considerations underway as well. Further information will also be placed in guidance.
Resident	The draft Bill uses the word "resident" as an adjective (eg resident director) and as a verb (eg who is resident in Anguilla). There is however no definition in section 1 of the important term "resident". The absence of a definition, it is respectfully submitted, may create uncertainty for a person and moreover an affected trust company. The factor of residence is important under the domestic law of most jurisdictions as well as international double tax agreements. The touch-stone is usually expressed as being whether the person in question was 'ordinarily resident' during the year of assessment. In the case of natural persons, residence implicitly embraces concepts	This consideration will be placed in Guidance. The AFSC is actively working along with other departments in the creation of a niche for resident managers within the scope of the TCSP legislation.

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
	of 'political allegiance', 'nationality' (which is usually understood as equivalent to citizenship), and 'residence', encompassing both 'ordinary residence' and 'domicile'. Thus, for natural persons, the tax jurisdiction is implicitly based primarily on a pre-dominant physical presence within that jurisdiction; however, a person can be 'resident' in a given tax year by virtue of being 'ordinarily resident' in the country (the latter expression having no statutory definition) without being physically present in the jurisdiction during that year. In determining whether a natural person is a resident, therefore, the first test is the common law concept of being ordinarily resident in Anguilla. If the answer is affirmative, that is the end of the inquiry, and the person is thereby established to be a resident. If the answer is negative, a second inquiry takes place, based on a 'physical presence' test, in which statutory criteria are applied, involving a determination of the number of days in which the person was 'physically present in' or 'physically outside' Anguilla. It could be said that the adverb 'ordinarily' in the expression 'ordinarily resident' should be taken as the converse of 'extraordinarily'; not 'casual and uncertain' but in the ordinary course of the person's life. The term 'ordinarily resident' has no special or technical meaning. There is also no definition of the term 'ordinarily resident', the reason no doubt being that it is not possible to define satisfactorily the qualities that will determine whether or not a person is ordinarily resident in a specific country. It is an impossible task to formulate a definition that would furnish a universal test for determining whether or not a person is ordinarily resident in a specific country. The result is considerable uncertainty as to whether and if so when a person has commenced or ceased to be 'ordinarily resident' in a country; the uncertainty can be particularly acute in the case of a resident who emigrates to live in another	

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
	country without ever formally renouncing his resident status.	
Resident Manager	The definition of "resident manager" is someone who, "under the immediate authority of the board … is responsible for the conduct of the licensee's or regulated subsidiary company's fiduciary services business". This seems to contradict a basic tenet of corporate law and good governance because, while authority can be delegated, responsibility cannot. So the responsibility must remain with the board.	Noted, this section has been reviewed.
Shareholder Controller/Significant Shareholder	In the definition of "shareholder controller" / "significant shareholder" I note that 15% is used. Any particular reason for that? I would suggest that this dovetail with similar legislation in the other OTs.	Noted. This section has been reviewed.
	The definition of "shareholder controller" mentions a person who "holds, directly or indirectly, 15% or more of the issued share capital of the company;". Why the figure of 15%?	Noted. This section has been reviewed.
	Definition of shareholder controller/significant shareholder – our equivalent legislation provides for only 10% (rather than 15) as you'll know**.**	Noted. This section has been reviewed.
[Statutory Documents]	The term "statutory documents" is used in the legislation but the term isn't defined anywhere.	The term 'statutory documents' appears in other legislation (for eg paragraph d definition of "company management business", Company Management Act R. S. A. c. C75) and is not defined. This approach will be taken for the Bill herein.

COMMENTS AND RESPONSES,

TRUST AND CORPORATE SERVICE PROVIDERS BILL

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
Transmitted	The definition of "transmitted" does not mention documents sent in the regular mail or by courier service.	This is in reference to electronic data transmission.
Trust Business	In the definition of "trust business" a separate definition should be carved out with respect to what is *trust property* rather than just saying "…as trustee of property."	Noted. This section has been reviewed.
Section 1 (3)	In section 1(3) since the effect of the section is a deeming provision, I would suggest deleting "carries" and replace it with "is deemed to carry".	Noted. This section has been reviewed.
Section 2(b)	there might need to be some clarification of what "administration services" mean.	Noted. This will be addressed in Guidance.
Section 2 (b) (ii)	principals" is used but this term isn't defined**.**	Noted. This will be addressed in Guidance.
Section 2- Meaning of "Fiduciary services business"	The services set out in sub-section (d) (i), (iii), (iv) and (v) are consistent with the day to day services provided by a Registered Agent and should not serve as a separate category, or extension, of licensing**.**	The Bill does this to permit licensing of specific kinds of services instead of one benig only able to license a 'group' of services.
	Definition of fiduciary services business – our equivalent definitions (such as company management business) includes not just the provisions of services but for a profit or reward (I note that TCSP requires the provision of the services only and so is slightly wider, although I also note that you have a number of exceptions to this definition at 3(1))**.**	Agreed.
	Regarding the meaning of "fiduciary services business". Some law firms on Anguilla provide the services listed in this section. Is itthe FSC's intention to license them or will there be a carve out in some way? If there is a carve out would not that, in effect, penalize the non-lawyers with extra costs that need to be passed on? Is this the	The nature of ''Trust Business'' by its definition in the Bill will require regulation. It is a financial service and is therefore covered by the Financial

COMMENTS AND RESPONSES,

TRUST AND CORPORATE SERVICE PROVIDERS BILL

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
	Commission's effective response to the issue of the supervision of lawyers?	Services Commission Act R.S.A. c. F28
Section 2 (c) and (d)	Sub-sections (c) and (d) should not be seen as mutually exclusive. After the final word in (c), add "and/or" after (C)**.**	Directorship services take a greater degree of risk than secretarial. It is on account of this consideration that distinguishing has been proffered.
Section 2(d)	The services set out in sub-section (d) (i), (iii), (iv) and (v) are consistent with the day to day services provided by a Registered Agent and should not serve as a separate category, or extension, of licensing **(see also 7(5) and 7(6)).**	The Bill does this to permit licensing of specific kinds of services instead of one being only able to license a 'group' of services.
Section 2 (i) and (k)	"The term "fiduciary services business" means …. the business of …acting as a trustee to trust structures established within or outside of Anguilla; [and] providing trust management and administration services, including -(i) the formation of trusts (ii) the provision of advice in relation to the formation, management or administration of trusts, (iii) the provision of services to manage and administer the affairs of a trust; (iv) acting as corporate or individual trustee or protector for trusts, and (v) the provision to trusts of corporate or individual trustees or protectors." This would seem to suggest that anyone acting in any of these capacities for their own private, family trust would need to be licensed**.**	We respectfully disagree with this comment. The Bill applies to those conducting 'trust business'.
Section 3(4)	25% is used. Any particular reason for that? I would suggest that this dovetail with similar legislation in the other OTs.	Noted. This section has been reviewed.

COMMENTS AND RESPONSES,

TRUST AND CORPORATE SERVICE PROVIDERS BILL

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
Section 4(1)(d)	"For the purposes of this Act "fit and proper", in relation to a person, means a determination by the commission taking into account ... the person's educational and professional qualifications, membership of professional or other relevant bodies and any evidence of the person's continuing professional education or development". How do we know what the benchmark would be for the regulator when it comes to educational and professional qualifications or CPE or CPD? Because someone has qualifications does not necessarily mean that they are fit and proper for a job.	Please be guided by the 'Fit and Proper Guidelines'.
Section 4(1)(e)	perhaps consider changing the word "legal" to "regulatory**.**	This was considered, however the it is determined that the wording will remain as is.
Section 5(a)(ii)	Presently reads "the same time, they are affiliated" It would be grammatically better to say "the same time that they are affiliated"**.**	We respectfully disagree. This will remain as is.
Part 2 **Regulation of Fiduciary Services Business (6-14)**		
Section 6	We have a provision in our equivalent legislation that confirms that a Virgin Islands company that carries on company management business outside the Virgin Islands is deemed to be carrying on company management business from within the Virgin Islands – I am not sure whether you would want something similar to capture any entities providing fiduciary services business from outside of Anguilla**.**	We respectfully disagree. This will remain as is
Section 6 (a)	Presently reads "A person other than a company shall not carry on … any fiduciary services business…" The effect of this would be to stop lawyers, attorneys etc. from providing company management services. Has the legal profession commented on this?	We respectfully advise that this comment be directed to the appropriate body.

COMMENTS AND RESPONSES,

TRUST AND CORPORATE SERVICE PROVIDERS BILL

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
Section 6(3)	Only carves out trust business but doesn't carve out company management business. Was that intentional?	Noted. This section has been reviewed.
Section 7 (1) (c)	It would seem that the average trust company would fall into Category A, Type Restricted (as provided in section 7(1)(*c*)). A question arising is whether the words in the Schedule: "In the case of a Category A licence, at least two individuals who are -- (a) resident in Anguilla;" apply to all Category A licences or, by way of random example, is a Category A, Type Restricted licence excluded from this requirement? There is a credible argument that the words "in the case of a Category A licence" must be narrowly interpreted, based on the presumption against elegant deviation. Where the legislature uses a different word or expression, the strong inference is that this has been done designedly to provide for a different result; or expressed somewhat differently, different words mean different things. It is accordingly submitted that the words 'Category A licence' must be given a narrow interpretation and do not include a Category A, Type Restricted licence. Support for this conclusion is based on the definition of "Category A licence" in section 1. It is there defined as "meaning a licence issued in the category mentioned [only] in section 7(1)(a)".	Noted. This section has been reviewed.
Section 7(7) and 7(8)	These refer to the sub-categories that can be applied for (directorship services, management/accounting services, shareholder services, protector for a trust, management, administration/accounting services for a trust, other value-added services. In the context of Economic Substance requirements, many CSPs and their clients are looking at outsourcing certain activities given the substance requirements, so it would seem that the sub-categories (being discrete sublicenses) are at odds with the flexibility of the meld required to satisfy enhanced client requirements. This provision seems at odds with the desire for certain CSPs to extend their offerings to develop their client relationships. It is	Subcategory licenses will have a cost. This is unavoidable.

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
	possible that the sub-category regime has a desirable effect. Would it be possible to have the sub-category licenses granted at no cost but to ensure in some way that these licensees have the appropriate abilities to enable them to provide such services as defined (supplement skills assessment?).	
Section 8 (2)(b)	will the forms be published under separate guidance?.	This will indeed be noted in the regulations
Section 8 (3)(a)	"statement" should be replaced with "business plan" to make it clear what is required and regulations should address what are the elements to be included in the business plan that the AFSC will examine.	Noted. This section has been reviewed.
Section 8 (3)(b)	On page 19 section 8(3)(b) it states that every CSP must appoint an attorney-at-law…I think that this is a new stipulation within the Act (albeit it is in the current Regs)…Is there any particular reason for this? From a overall point of view, why would the FSC require that CSPs have a named and appointed attorney?	It is important that licensees be informed. This is a common requirement in a number of other jurisdictions.
Section 8(5)	Presently reads "… the Commission may by written notice require the applicant…" Amend by inserting commas after the words "may" and "notice" to create a subordinate clause.	Noted. This section has been reviewed..
Section 10	Section 10 seems to oust the court's jurisdiction; this could be the subject of a JR for a review of the legislation. States that a decision by the FSC shall not be subject to appeal or judicial review. Is the Commission reserving a position for itself which would override an decision of the court? Has the legal profession commented on this? ***also applicable to 20(3),	Noted. This section has been reviewed. Noted. This section has been reviewed. Please address queries regarding the comments of specific bodies/entities to the

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
		bodies/entities themselves.
Section 11(1)	"The Commission may, when issuing a licence or at any time thereafter, impose such conditions in respect of the licence as it thinks fit." It could be argued that this reserves too much discretionary power to the Commission	We respectfully disagree. The AFSC will require this authority to effectively fulfil its duties.
Section 11(4)	There are 9 areas where the Commission can impose conditions on a licence (e.g. require the licensee tonot take a certain course of action, or to restrict its business, or to impose limitations on accepting or carrying on business, or soliciting business, entering into transactions, to cause the removal of any director, etc. etc.) It could be argued that this reserves too much discretionary power to the Commission**.**	We respectfully disagree. The AFSC will require this authority to effectively fulfil its duties..
Section 11- Conditions of Licence - (4)(i)	The power to impose the condition that ANY licensee must obtain professional indemnity insurance should be considered against the context of the availability and feasibility of such insurance for locally owned licensees. This would serve to increase the cost of doing business in Anguilla compared with the cost of doing business elsewhere. Has GoA been consulted on this outcome?	The nature of 'trust business' as defined by the Bill makes this a requirement.
Section 12 (2)	will this be done by Gazetted Notice?	Noted. This is being addressed and will likely be included in the Regulations.
Part 3 **Obligations of Licensees and Regulated Subsidiary Companies (15-25)**		
Section 15 (1)	"A licensee and a regulated subsidiary company shall - (a) have a principal office in Anguilla;" It would be helpful to have a definition of "principal office". What would be	Noted. This has been reviewed.

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
	the "principal office" of a licensee currently operating in Taiwan?	
Section 15(1)(b) & (c)	The requirement for every licensee to appoint (b) an individual as "resident manager" AND (c) two (2) "recognized agents" each of whom shall be appointed as a senior manager of the licensee (and be resident in Anguilla) is excessive and cost prohibitive Licensees are managed by directors pre-approved by the Commission Section 15 in general would serve to increase the cost of doing business in Anguilla compared with the cost of doing business elsewhere. Has GoA been consulted on this outcome?	Noted. This section has been reviewed. However, this is neither viewed as excessive nor prohibitive. instead, it would likely encourage growth in the area in the local industry. The resident manager can be someone who is already employed by the licensee.
	In case the bill would be approved in the current format, this would mean that we cannot maintain our business in the current format. As a consequence, Anguilla would lose even more of its competitive advantage. Again, we strongly support the Government of Anguilla´s effort to modernize the legislation, but the above-mentioned appointments we do not support and we would love to see alternatives or have this part of the bill excluded from future legislation as it doesn´t englobe improvements in our opinion.	See above..
Section 15(3)	Both mention the word "forthwith", which could be somewhat vague in application or meaning. Can there be a more specific choice of word? ***also applicable to 15(7).**	Noted. This section has been reviewed.
Section 16	Does the approval require a once-off application and does it require an annual renewal? It would appear not**.**	Noted. Agreed. This section has been further reviewed for clarity.

COMMENTS AND RESPONSES,

TRUST AND CORPORATE SERVICE PROVIDERS BILL

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
Section 16(1)	"A licensee and a regulated subsidiary company shall not operate a branch, agency or office outside Anguilla without the prior written approval of the Commission." Is this any change of policy? At present the Commission approves or disapproves. Is it now going to be slanted against non-resident service providers?.	The AFSC is a statutory, regulatory authority. The authority granted by this section of the Bill is well within the norm for such supervisory matters. The Bill is non-discriminatory.
Section 17- Maintenance of Capital	A paid up and unencumbered share capital of 12% may be oppressive for mid-range licensees e.g. a licensee with US$ 2m net assets would be required to maintain an unencumbered share capital of US$ 240, 000 It is noted that "net assets" equals "total assets" (not just "current assets") less liabilities (long- and short term) – in other words, equity. Furthermore, there is a hole in the calculations: 12% of US$400K is US$48K, whereas the minimum unencumbered capital would be US$25K. In other words, someone with an unencumbered capital of $400K requires US$48K whereas someone with an unencumbered capital of $399K requires US$25. The $25K conversion point would be (US$25K divided by 12% =) US$208,333.	The AFSC respectfully disagrees. Nonetheless, same has been reviewed.
Section 18- Insurance	This provision empowers the Commission to impose, by notice, the requirement for professional liability insurance on ANY licensee and essentially mirrors (and expands on) section 22 of the Company Management Act - and is prima facie unobjectionable… Section 18 would serve to increase the cost of doing business in Anguilla compared with the cost of doing business elsewhere. Has GoA been consulted on this outcome?	The AFSC respectfully disagrees. The section is not mandatory.
Section 18(2)	will there be any fee associated with this?	No fees will be associated here.
Section 18 (3)	a longer time should be catered for as logistically it will take time to effect the appointments.	Noted. This section has been reviewed.

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
Section 19	will there be any fee associated with this?	Noted. This section will be reviewed.
Section 20 (1)(c)	Requires the licensee to notify the Commission of any issuance, transfer, or disposal of shares to an existing shareholder that does not result in a change in the licensee's ownership greater than 15%. As with section 1(1) and the definition of "shareholder controller", why is the figure of 15% chosen? We should also consider the implications. If a 15% change of ownership pushes someone previously having 1% to 16%, it would be different to someone moving from 36% to 51% As it relates to section 20(3) while this section seems to suggest that approval is not required, the way it operates suggests otherwise because the proposed transaction cannot occur until the 14-day period for the Commission to object has elapsed. We might as well call the space a spade. ***also applicable to section 20 (3) 21(1)(b) and 21(2)(a)(ii).	Noted. Further information will be issued in Guidance. However, this will assist the AFSC in efficiently managing resources.
Section 21	refers to 15% Any particular reason for that? I would suggest that this dovetail with similar legislation in the other OTs.	See above.
Section 22(2)(b)	The Commission is to receive disclosure of any matter that might reasonably be expected to have a significant regulatory impact, including "any matter that could result in significant financial consequences to other licensees". Fair enough – but where's the mischief here, and how do we define "reasonably expected"?	These matter are typically addressed on a case by case basis. The AFSC will follow suit.
Section 25	Since the proposed legislation allows the regulated activities to be done "in or from within Anguilla" and allows an Anguillan company to operate outside of Anguilla, how will section 25 be enforced?	Public records. These should not be too difficult to ascertain.

COMMENTS AND RESPONSES,

TRUST AND CORPORATE SERVICE PROVIDERS BILL

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
Part 4 **Managed Trust Relationships (26-34)**		
Section 26	I am having difficulty in differentiating a "managed trust company" from a "managing trust company". Does this affect the Trusts Act?**.**	Managing trust companies manage managed trust companies. Both are licensees, however the class of license is different. Specific resources will be provided on this area for persons interested.
Section 27(2)(a)	refers to a management plan, this should be changed to "business plan" in line with the earlier recommendation.	The AFSC respectfully disagrees. The 'management plan' outlines the manner in which the business will be managed and is to be distinguished from the 'business plan'.
Section 28(1)(b)	The Commission authorizing an applicant to act as a managing trust company if the Commission is satisfied "that, for the previous 3 years, the applicant - (i) has been in compliance with such relevant financial services enactments, and codes, as may be applicable, (ii) has been supervised by a foreign regulatory authority approved by the Commission, or (iii) has so complied and has been so supervised, in the aggregate;" Could this be seen as being subjective or arbitrary? Is this also saying that the company must have been in existence for at least 3 years to be so licensed?	The AFSC respectfully disagrees with this. The time period gives the AFSC the opportunity to monitor the applicant's compliance culture. This in turn enables informed decision making in the exercise of the AFSC's discretion.

COMMENTS AND RESPONSES,

TRUST AND CORPORATE SERVICE PROVIDERS BILL

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
Section 28 (1)(c)	The Commission is satisfied that "the applicant will carry out its substantial functions in Anguilla" and "that the proposed fiduciary services business will be carried on substantially in Anguilla". Similar comments to 15(1) and 16(1) ***also applicable to 28(1)(d).	The AFSC's intent is to help encourage growth of the industry, local workforce and practice. The substantial activity should be from within Anguilla.
Section 28 (2)	"The Commission shall not issue an authorisation to an applicant if the proposed managed trust company has previously operated as a non-managed trust company." Why? What is the mischief that is being aimed at?	That is, a company that was not managed before and operated on its own.
Section 29	seems to oust the court's jurisdiction, this could be the subject of a JR for a review of the legislation.	Noted. This section has been reviewed.
Section 30	delete the "shall" appearing before (a) to (c) and inert "shall" after company in the preamble.	Noted. This section has been reviewed.
Section 30(1)	"A managed trust company shall name a director who is not also a director of the managing trust company, who shall be a liaison to the Commission;" Why? What is the mischief that is being aimed at?**.**	The managed trust company's independence must be verified. This helps ensure that the company is ably placed to give independent representation to the AFSC.

COMMENTS AND RESPONSES,

TRUST AND CORPORATE SERVICE PROVIDERS BILL

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
Section 31	"A managing trust company shall, within 12 months of obtaining its authorisation, submit a report that sets out a medium-term assessment of the operation of the managed trust company, setting out -(a) details of the scope of fiduciary services business undertaken; (b) a review of the operation of the managed trust company; (c) the progress made against written strategic objectives; (d) forward-looking evaluations and readjustments to the managed trust company's future business outlook; and (e) a review of resourcing and any issues to be adjusted or otherwise subject to further review of the managed trust agreement concerned."It would be interesting to get responses from prospective licensees regarding this requirement**.**	The AFSC welcomes constructive comments from all licensees. it is with this in mind that the consulting process has been so designed to help encourage feedback from the industry.
Section 32(2)(b)	will there be any fees associated with this?	These are placed in Regulations.
Section 34(3)	"The Commission may, having regard to the nature, scale, complexity and diversity of the business of a managed trust company require the managed trust company to - (a) increase the number of its resident managers; (b) increase the number of its directors that are resident in Anguilla; (c) have one or more resident managers that are employed by the managed trust company under a contract of service; and (d) increase the human, physical and other resources available to it." This could be seen as over-reaching.	The AFSC respectfully disagrees with this. The discretion required helps the regulator successfully carry out its function.

COMMENTS AND RESPONSES,

TRUST AND CORPORATE SERVICE PROVIDERS BILL

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
Part 5 **Regulation of Outsourcing (35-37)**		
Section 35(1)	"The Commission shall specify those functions of a licensee that shall not be outsourced, with a view to ensuring that a licensee does not delegate so many of its functions as would leave an inadequate presence in Anguilla." Besides being possibly seen as overreaching, the concern is the use of the word "shall" rather than "may".	The AFSC respectfully disagrees. The impact of outsourcing functions on a licensee and the regulator's ability to supervise impress the importance of the power being an imperative instead of discretionary.
Section 35(2)	"contractual requirement for the provider of the outsourcing services to give to the Commission the right to direct access to material" The words "right to direct access" would be better phrased as "right of direct access" or "right to have direct access.	Noted. This section has been reviewed.
Section 35(4)(c)	It is feasible that the entity doing the outsourcing is not located in Anguilla. Accordingly, it might be appropriate to add, after "the Commission", the words "or an overseas regulatory body deemed by the Commission to enforce regulatory powers at least equivalent to, those applicable in Anguilla".	There are powers under the FSC Act that enable interaction with overseas governing bodies by the AFSC. These powers already enable the same outcome.

COMMENTS AND RESPONSES,

TRUST AND CORPORATE SERVICE PROVIDERS BILL

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
Section 37	Needs a definition for what "persona data" is. Consider the GDPR guidance. Who will be data controllers, data processors? If there is data protection legislation already, maybe. These sections speak to data security and data protection. What is their status (e.g. their effect or are they in conflict) regarding data protection legislation elsewhere (e.g. GDPR)? There should be a comprehensive review of legislation elsewhere which could conflict with these provisions.	Noted. This has been reviewed. The AFSC respectfully disagrees. No conflict is anticipated since clause 36(c) requires a licensee to take steps to ensure compliance with any statutory requirements that apply to the licensee.
Section 37- Data protection- 1(e)	Restriction of maintaining personal data for no more than 5 years may conflict with record keeping obligations under the AML/CFT regulations**.**	The AFSC respectfully disagrees with this. AML/CFT requirements supersedes what may be stated in other legislation. Notwithstanding, this section has been reviewed.
Section 37- Data protection- 2(a)	There is no definition of "data" in the Bill and, accordingly, a wide interpretation of the term may include such incidental matters as email communication. It is impractical to require licensees to ensure compliance with section 37 (2) (a) during numerous and miscellaneous email communications incl. cc'd emails to diverse recipients.	Noted. This section has been reviewed.

COMMENTS AND RESPONSES,

TRUST AND CORPORATE SERVICE PROVIDERS BILL

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
Part 6 **Directs (38-43)**		
38- Approval of resident managers, directors and senior officers- (1)(b)(i)	It appears unclear why the appointment of a proposed director of a licensee that is resident in Anguilla would require approval in, presumably, contra distinction to a non-resident director.	Directors must comply with the 'Fit and Proper Guidelines' pertaining to their functions.
Section 38 (2)	the Commission may, in determining whether to grant its approval …, have regard to such requirements as may be prescribed." It is unclear what is meant by "as may be prescribed**.**	Noted. This is being reviewed and may be included in Regulations.
Section 38 (4)	"Where the Commission refuses an application for approval … the Commission shall give the person who was proposed to be appointed an explanation for the refusal." Is there a right of appeal?	Noted. This has been reviewed.
Section 40	These sections talk of a "director of a company". Hitherto we have been talking about a licensed company, but it could be argued that these provisions apply to all companies, licensed or not**. 40 to 43 Inclusive**	The AFSC respectfully disagrees. Please consider within the context stated.
Section 41	This speaks to the standard of care to be exercised by a director and the reliance of the director on records. This would effectively cause the end of nominee functions, but it also calls into question whether a non-nominee director would take instructions from, or be influenced by an "indirect controller" (see the definition of this in Section 1(1)). In any event, this might give cause to regulatory arbitrage and a diminution of the financial services industry in Anguilla. 42 Inclusive	The AFSC respectfully disagrees with this. Directors have a fiduciary duty of care to the entities they oversee.

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
Part 7 **Administration (44-52)**		
Section 44, especially 44(1)	This states that once a licensee is to be no longer licensed, "the Commission may … give the licensee …such directions as appear reasonable to the Commission to be desirable in the interests of clients". I can see this as being a fall-back position, if clients were to be exposed, but is there an alternative mechanism?	Noted. However, the regulator may not be the best entity to seek guidance on this matter. Do be reminded, nonetheless, that the exercise of these powers is discretionary and only arise in instances in where a license is being surrendered or has expired.
Section 45(1)	"The Commission may, by notice published in the *Gazette*". Not everyone reads the Gazette. So also add other areas in which notification can be given**.**	It is unlikely that this will be amended. The Gazette is the chosen forum for such publications by the Government of Anguilla as is the case in most jurisdictions.
Section 52(1)	"Where the Commission has reasonable grounds for suspecting that a person has committed an offence under this Act, the Commission may by written notice require that person or any other person…" The concern here is that this applies to "any other person"**.**	The AFSC respectfully disagrees as this authority is required for effective regulatory supervision.
Part 8 **Audit (53-60)**		

COMMENTS AND RESPONSES,

TRUST AND CORPORATE SERVICE PROVIDERS BILL

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
54-Annual accounts-(1)	The obligation to prepare annual accounts in accordance with GAAP within three (3) months of the end of the financial year is unnecessary in light of the fact that sub-section 54(4) requires the submission of audited accounts to be submitted to the Commission within six (6) months of the end of the financial year	Noted. The AFSC, respectfully disagrees, with this view.
Section 55(1)	This speaks to the auditor reporting to the Commission if there is a "material event". However, if there were a "material event", the audit report, to be received by the Commission, would be qualified. It could therefore be argued that this requirement is unnecessary.	The AFSC respectfully disagrees with this. Auditors, in these instances, need to engage with the regulator (the well-publicised issues involving '*Wirecard*' are reminders of this).
Section 56(1)	If section 55 were to be removed, the references to it in this section would be removed, Section 56(1)(b) would be removed and Section 56(1)(a) would be merged with Section 56(1)	See response above.
Section 57	This effectively states that under the circumstances given, an auditor is not to disclose any information relative to the client's business to the client. Is this consistent with the legislation or professional practice requirements?	The AFSC is unclear on the query being made.

COMMENTS AND RESPONSES,

TRUST AND CORPORATE SERVICE PROVIDERS BILL

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
Section 58	"The Commission may impose all or any of the following duties on an auditor of a licensee or regulated subsidiary company -(a) a duty to submit to the Commission such additional information in relation to the audit as the Commission considers necessary; (b) a duty to enlarge or extend the scope of the audit of the business and affairs of the licensee or regulated subsidiary company; (c) a duty to carry out any other examination or establish any procedure in any particular case; and (d) a duty to submit a report to the Commission on any of the matters referred to in paragraphs (b) and (c), and the auditor shall carry out such additional duty or duties." This infringes on auditor independence.	The AFSC respectfully disagrees. Independence would not be removed (see IAS1).
Section 59	"A licensee…shall … maintain and keep within Anguilla such books and records as accurately reflect the business of the licensee…" Not only can the word "accurately" be subjective, but presumably this means that overseas-based licensees would always need to keep their books and records in Anguilla?	The AFSC respectfully disagrees. Please see Record Retention Guidelines for further information.
Section 60 (1)	"The Commission may … from time to time inspect, under conditions of secrecy, the books and records in the possession, custody or control of a licensee or regulated subsidiary company and of any branch, agency or office outside Anguilla opened by a licensee or regulated subsidiary company that is incorporated in Anguilla." Why the secrecy and why the extrajurisdictional aspect. Over-reach?.	The AFSC respectfully disagrees as this authority is required for standard, effective regulatory supervision.
Section 60 (2)	This speaks to the production of records etc. by the licensee to the Commission who may make copies of them or to retain possession of them. How does this fit in with data protection legislation etc. elsewhere (actual) and in Anguilla (possible / contemplated)?	This has been considered and information collected will continue to be maintained confidentially as stipulated by the FSC Act.

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
Part 9 **Offences and Penalties (61-65)**		
Section 62(1)(c)	"A person who … in circumstances in which the person … could reasonably be expected to know, that the statement, information or document provided by the person would or might be used by the Commission". This is vague and/or has some subjective aspects to it**.**	The AFSC does not share this view. The threshold is in keeping with the legal threshold of 'reasonability'.
Section 62 (2)	"A licensee or regulated subsidiary company that fails to provide the Commission with any information in its possession knowing or having reasonable cause to believe" "Reasonable cause to believe" could be seen to be subjective**.**	See response above.
Part 10 **Micellaneous (66-78)**		
Section 67(3)(a)	"Where a licensee or regulated subsidiary company holds or receives moneys on behalf of a client, the licensee or regulated subsidiary company shall disclose to the client, the terms upon which the moneys are so held or received, and shall not use the moneys for the settlement of its fees or disbursements;" I can see the point, but this seems to be restrictive. Suppose the client is OK with it, or the licensee isn't going to get paid in any other way?	The AFSC respectfully disagrees with this. This is fundamental to the conduct of prudent fiduciary service business.

COMMENTS AND RESPONSES,

TRUST AND CORPORATE SERVICE PROVIDERS BILL

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
Section 73	Section 73 refers to a code of practice that may be issued by the Commission. The provision is silent as to: a. Where the code of practice will be published; and b. Whether there is a duty on the Commission to notify the licensees when it has issued such a code of practice?	The AFSC will likely publish a code of practice that will accompany the legislation. The AFSC is required to notify licensees when new guidance is published as per Section 61 of the FSC Act.
Section 74 (1)(d)	Section 74 states that the Governor in Council may make regulations … specifically (d) controlling the form of advertising and (g) the manner of operation of licensees. This could be seen to be overreaching. ***also applicable to section 74(1)(g).**	The AFSC respectfully disagrees as this authority is required for standard, effective regulatory supervision.
Section 74(h)	This would prevent licensees etc. from carrying on fiduciary services business. This would appear to negate the whole purpose of a large section of the proposed legislation, unless it is qualified with the words "if …." And then a list of things which would cause this to happen**.**	The AFSC respectfully disagrees with this as misrepresentation is a real threat and cannot be tolerated in this area.
Section 74 (j)	This regulation would require licensees to employ persons of specified descriptions, equipped with specific resources and to specify their powers and duties. This could be seen to be over-reaching**.**	The AFSC respectfully disagrees with this. These refer to standard 'Fit and Proper' requirements.
Section 74 (m)	This regulation would require "specified information to be given in the form and manner and at the time specified by or under the regulations -(i) to the Commission, (ii) to the public, or (iii) to any prescribed class or description of persons". Some of this disclosure (e.g. "to the public") could be seen to be over reaching and undesirable. Also consider the previous comments regarding data protection rights and obligations.	The AFSC respectfully disagrees with this. Please see previous responses on the subject.

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
Section 74(q)	This regulation would require "the public disclosure by licensees and regulated subsidiary companies ofinformation of such class or description, at such times and intervals and in such form and manner as the regulations may specify, including - (i) information on the financial position and financial performance of licensees and regulated subsidiary companies, (ii) information on the basis, methods and assumptions on which any information is prepared (iii) information on risk exposures and the management thereof, and (iv) information on management and corporate governance;" Some of this disclosure (e.g. "to the public") could be seen to be overreaching and undesirable. Also consider the previous comments regarding data protection rights and obligations	Noted. This has been further reviewed.
Section 77	will the AFSC look to re-classifying licences as well-either up or down?	Compliance with the Bill will be approached on a case by case basis by the AFSC with each current licensee.
Schedule (section 3)	A Category A licence requires 2 directors, resident in Anguilla, of appropriate standing and experience who are sufficiently independent of each other. We'll approach this from two perspectives – from those CSPs on Anguilla and those whose main office is outside of Anguilla. The vast majority (95%?) of CSPs on Anguilla are either one-man bands or who only have related party directors (no sufficiently independent directors). Therefore the need for two resident individuals for a Category A licence is a concern. Many of our CSPs provide services that are beyond the basics (Category B) (providing other fiduciary services so that they can satisfy client requirements). The majority would currently require a Category A license (US$6-10k) or obtain a Category B or Category C license, and apply for a sub-category license at the cost of $2000 per category.	The AFSC respectfully disagrees with this. The design of the categories is to allow Anguillan businesses a gateway for growth and increase. in other words, one has the opportunity to start from a less demanding area and eventually evolve to a Category 'A' license area.

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
	This would hugely increase their annual licensing costs up to $15K which would make many businesses unprofitable (or at least negate the desire to offer additional services to a percentage of their clientele). So the options that they will be faced with are: 1. to go for Category A (which would cost US$6-10k). Most can't do that anyway because of the requirement for a number of independent directors, or 2. to go for Category B or Category C with various addons which would cost them significantly more than at present. From the perspective of Overseas Company Managers, we have a strong impression that they would have to go for Category B or Category C with addons which would in turn make Anguilla less attractive as a jurisdiction. As an aside for example: If a HK service provider provided accounting services from HK for his AXA incorporated client would they need a sub-category license? They could go for a Category A but would then need staff here on Anguilla… and for those individuals to be directors of the local entity (or to occupy the position of Director by whatever name called) …so we can't see that working, with the inherent costs and the numbers of companies under management that they have. Is it the FSC's intention to drive these Overseas Company Managers to have locally manned offices? In summary, these requirements could be seen as being excessive, unattainable (due to a lack of skill sets) and costlly	
Schedule (section 4)	The Section 4 requirement mandating a Board consisting of both executive and non-executive directors is more applicable to Category A licensees given the more complex nature of services provided by such licensees The section also refers to "as the Commission considers appropriate" - this could be seen as being subjective, arbitrary and over-reaching.	The AFSC respectfully disagrees as this authority is required for standard, effective regulatory supervision.

COMMENTS AND RESPONSES,

TRUST AND CORPORATE SERVICE PROVIDERS BILL

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
Schedule (section 4)	The Section 4 requirement mandating a Board consisting of both executive and non-executive directors is more applicable to Category A licensees given the more complex nature of services provided by such licensees	The AFSC respectfully disagrees as this authority is required for standard, effective regulatory supervision. This discretionary power only comes into play where more strategic oversight proves necessary.
Schedule (section 5 (2)(a)(ii))	Section 5(2)(a)(ii) mandates EVERY licensee to maintain "insurance cover", which is inconsistent with the Commission's case specific power to impose such requirements as set out elsewhere in the Bill	Noted. This section has been reviewed.
Schedule (section 5 (4)(b)(i))	Section 5(4)(b) refers to "liquid assets" which appears not to be defined in the legislation. (It would be cash or anything convertible into cash, quickly, without affecting its value.) Section 5(4)(b)(ii) talks of the Commission taking into account the assets of the person. In this case, "assets" should be replaced with "liquid assets", and the latter defined in section 1(1)	Noted. This section has been reviewed.

COMMENTS AND RESPONSES,

TRUST AND CORPORATE SERVICE PROVIDERS BILL

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
The Schedule vs section 15	Paragraph 3 of the "Schedule -- Minimum criteria for licensing", under the heading "Business to be directed by at least two individuals", requires 2 (two) individuals to be resident in Anguilla as minimum criteria. The Schedule forms part of the Bill. But this requirement would appear to be contrary to the provisions of section 15 (Obligations of licensees and regulated subsidiary companies), which requires any licensee to appoint a resident manager *plus* 2 (two) recognised resident agents. Presumably the intention of the authorities is that the term "Business to be directed …" must be construed as signifying something different to "Obligations of licensees …". In order to avoid confusion, it is our view that a clear distinction should be to make clear what is required for each category or an explanation should be given as to why the Schedule applies only to Category A (which is less onerous as it appears that a Resident Manager is not required in terms of the Schedule).	Noted. This section has been reviewed.
	Our fines are higher in most circumstances, for example sections 6(5) and 12(4) – our fines are $50,000 in our equivalent provisions (or imprisonment for a term not exceeding two years, the same as the TCSP Bill);	Noted. This section has been reviewed.
	Apologies if something similar is included in the TCSP Bill and I have missed it but it may be worth including a period of time from which an entity carrying out financial services business needs to comply with the act (our equivalent legislation provides for 3 months).	Noted. This approach is being reviewed.

GENERAL COMMENTS AND RESPONSES,

Trust and Corporate Services Providers Draft legislation

QUERY	COMMENTS/RECOMMENDATIONS	RESPONSES
1.	On page 12 2(h) it states that anyone doing any sort of accounting (book-keeping/payroll etc upwards) needs to be licensed….and pay for such license… and well as being able to show financial stability and resources, and be in line with other FSC stipulations.	THE BILL DOES NOT SUPPORT THIS VIEW. SECTION 2(h) AND THE BILL IN GENERAL SPEAKS TO FINANCIAL SERVICES ACCOUNTING OFFICERS AS IT RELATES TO TRUST BUSINESS.
2.	Repealing the Company Management Act 2014 and therby setting more compliance requirements for non-financial company managers (similar to those justified for Trust Managers who handle funds or assets from third parties) may reduce the number of licensed agents promoting Anguilla Business Companies abroad-an activity deemed as category A under the TCSP Bill. This in turn may reduce the number of coompanies each year paying the regulator for supervision fees which will end up being paid at higher rates by a diminishing base of licensees.	FROM A GLOBAL PERSPECTIVE, THE CATEGORY A LICENSES ARE COMPETITIVE. ANGUILLA IS IN NEED OF 'QUALITY LICENSEES' AS WELL
3.	This will have an effect on many organisations in Anguilla who perform this service currently. It appears that nobody can put together any set of management accounts for any external organization without being licensed.	THE BILL DOES NOT SUPPORT THIS VIEW. THE BILL SPEAKS TO FINANCIAL SERVICES AS IT RELATES TO TRUST BUSINESS.
4.	Anguilla should remain vigilant to reduce the risk of foreign owners fo licensed resident agents incorporating their business companies for their risky clients under Anguilla regulated entities. If higher number of requirements will be imposed on trust managers, then at least they should be made to train	THE AFSC IS NOT BEST PLACED TO RESPOND TO THIS QUERY.

QUERY	COMMENTS/RECOMMENDATIONS	RESPONSES
	local Anguilla students in relevant corporate and trust management tasks.	
5.	This may also possibly apply, I believe, to individuals who provide this service free of charge to voluntary organizations.	THE BILL DOES NOT SUPPORT THIS VIEW. THE BILL IN GENERAL SPEAKS TO FINANCIAL SERVICES ACCOUNTING OFFICERS AS IT RELATES TO TRUST BUSINESS..
6.	The standard makes no reference as to employment targets for Anguillian youth by trust management companies, focusing soleyly on measures on anti-money laundering and combating the financing of far-away terrorism. Company management and incorporation in the U.S is generally carried out by registered agents which are required solely to be available in the state of incorporation to be serviced of process.	COMPANY MANAGERS IN THE US ARE NOT REGULATED.
7.	It appears that to be an accountant/bookkeeper (who creates MAs etc) one would need to either apply for a Cat A license at 10k pa… or obtain a Cat B license (at 5k) and then apply for a Sub-Cat M license (at 2K)… This I suspect would be a severe and unfair financial imposition and give rise to more AXA entities going abroad for their outsourced accounting services to the detriment of those who are Anguilla-based. I'm sure that is not your intention. .	THE BILL DOES NOT SUPPORT THIS VIEW. PLEASE SEE FIRST RESPONSE ABOVE.

GENERAL COMMENTS AND RESPONSES,

Trust and Corporate Services Providers Draft legislation

QUERY	COMMENTS/RECOMMENDATIONS	RESPONSES
8.	Could you confirm that an SXM accountant could do the management accounts for an AXA company without a license…. an AXA accountant can do the accounts for an SXM company but they will need a license… and also an AXA accountant needs a license to do the accounts for an AXA company (as stated above)…This seems to regulate unfairly.	THE BILL DOES NOT SUPPORT THIS VIEW. THE BILL IN GENERAL SPEAKS TO FINANCIAL SERVICES ACCOUNTING OFFICERS AS IT RELATES TO TRUST BUSINESS.
9.	I see nowhere in our legislation that forces any organization to use an AXA accountant and that is the basis for my concern here… Too many of our entities don't use our local accounting services and go somewhere cheaper and less professional. We should support growth in this area.	THE BILL DOES NOT SUPPORT THIS VIEW. THE BILL IN GENERAL SPEAKS TO FINANCIAL SERVICES ACCOUNTING OFFICERS AS IT RELATES TO TRUST BUSINESS.
10.	I think that the same problem may apply to AXA Property Management firms who prepare villa staff payroll and collect payments.	THE BILL DOES NOT SUPPORT THIS VIEW. THE BILL IN GENERAL SPEAKS TO FINANCIAL SERVICES ACCOUNTING OFFICERS AS IT RELATES TO TRUST BUSINESS.
11. On-Island Company Management	The vast majority (95%?) of CSPs on Anguilla are either one-man bands or who only have related party directors (no sufficiently independent directors)… On Page 61…. 3.…The need for two resident individuals for Cat A is a concern therefore.	THE REQUIREMENT IS A REASONABLE ONE AND REFLECTS PRUDENT MANAGEMENT AND GOVERNANCE. THE STANDARD IS NOT ONLY ATTAINABLE BUT STANDARD IN MANY JURISDICTIONS.
12. Overseas Company Management	Many of our CSPs provide services that are beyond the basics (Cat B) (providing other fiduciary services so that they can satisfy client requirements). I suspect	THE AFSC DOES NOT AGREE WITH THIS VIEW, RESPECTFULLY.

QUERY	COMMENTS/RECOMMENDATIONS	RESPONSES
	that the majority would require a Cat A license (6-10k)…or obtain a Cat B/C license, and apply for a sub-category license at the cost of $2000 per category). This would hugely increase their annual licensing costs up to $15k.. which would make many businesses unprofitable (or at least negate the desire to offer additional services to a percentage of their clientele). This ascertion does not prove true based on existing licensees. It is anticipated that existing licensees will seek a licence appropriate for their activities. In addition, some licence types are cheaper than current fees. Given that this is a business decision material to each licensee's specific circumstances, and prior discussions with an existing licensee on these points, these appear to be unfounded assumptions. So the options that they will be faced with are: 1. to go for Cat A (which would cost 6-10k). Most can't do that anyway because of the requirement for a number of independent directors, or 2. to go for Cat B or C with various add-ons which would cost them significantly more than at present. The FSC obviously knows the exact corporate structures of our CSPs and the services currently provided so I would defer to your knowledge and views on the potential effect. Again I have not sufficient statistical proof of the services that our Overseas Company Managers provide but (looking at their websites) I have a strong impression that they would have to go for Cat B or C with add-ons which would in turn make Anguilla less attractive. As an aside for example: If a HK service provider provided accounting services from HK for his AXA incorporated client would they need a sub-category license??	

GENERAL COMMENTS AND RESPONSES,

Trust and Corporate Services Providers Draft legislation

QUERY	COMMENTS/RECOMMENDATIONS	RESPONSES
13.	They could go for Cat A but would then need staff here on Anguilla… and for those individuals to be directors of the local entity *(or to occupy the position of Director by whatever name called)* …so I can't see that working, with the inherent costs and the numbers of companies under management that they have.	RESPECTFULLY, THE AFSC DOES NOT AGREE WITH THIS VIEW. FROM A GLOBAL PERSPECTIVE THE REQUIREMENT IS A REASONABLE ONE FOR THE INDUSTRY AND ENCOURAGES GROWTH IN THE LOCAL INDUSTRY WHILE ENCOURAGING OPPORTUNITIES FOR YOUNG ANGUILLANS.
14.	Is it the FSC's intention to drive these CSPs to have manned offices? Whilst desirable I would prefer a carrot rather than a stick.	THE AFSC INTENDS TO ENCOURAGE GROWTH IN THE INDUSTRY WITHIN ANGUILLA. THE STANDARD REQUIRED IS REASONABLE FOR THIS INDUSTRY
15. Lawyer	Many of our law firms on Anguilla do provide services listed as 'Fiduciary Services' in Section 2 . Is it the FSC's intention to license them or will there be a carve out in some way? If there is a carve out would not that, in effect, penalize the non-lawyers with extra costs that need to be passed on?	IT IS A STANDARDISED AND INTERNATIONAL REQUIREMENT THAT ALL FINANCIAL SERVICES BUSINESS REGARDING TRUST BUSINESS BE REGULATED.

GENERAL COMMENTS AND RESPONSES,

Trust and Corporate Services Providers Draft legislation

QUERY	COMMENTS/RECOMMENDATIONS	RESPONSES
16. Substance Requirements	As many CSPs and their clients are looking at outsourcing certain activities given the substance requirements, it would seem that the sub-categories (being discrete sub-licenses) are at odds with the flexibility of the meld required to satisfy enhanced client requirements. This provision seems at odds with the desire for certain CSPs to extend their offerings to develop their client relationships… which would be good for Anguilla one would think. Outsourcing is not specifically prohibited for certain activities. However, in line with international best practices, the onus for all operational necessities of the licensee's business remain with the licensee. The sub-categories available to a licensee would allow for the segregation of operational risks as well as retain value-added business within the auspicies of the licensee's aggregate operations. It therefore appears that there is a misunderstanding of the concept of sub-categories (which would be established as wholly owned subsidiaries of the licensee). In essence, I'm not sure that the sub-category regime has the effect that we all desire. Instead would it be possible to have the sub-category licenses granted at no cost but to ensure in some way that these licensees have the appropriate abilities to enable them to provide such services as defined (supplement skills assessment?) ?	THE INTENT IS TO ASSIST IN THE GROWTH OF THE LOCAL INDUSTRY BY PROVIDING AN AVENUE FOR GROWTH OF CURRENT BUSINESS THAT MAY NOT BE ABLE TO ACHEIVE CATEGORY A IMMEDIATELY.

COMMENTS AND RESPONSES,

Trust and Corporate Services Providers (Fees) Regulations, 2020

SECTIONS	COMMENTS/RECOMMENDATIONS	RESPONSES
	The fee for Category B licensees represents a 250% increase over the current Company Management Fees. Additionally, a further US$ 2, 000 is chargeable for additional services a licensee may wish to provide, which additional services a licensee may offer without incurring additional fees under the current regime.	FOR OVER TWENTY YEARS THERE HAVE BEEN NO FEE INCREASES IN THIS AREA. THERE IS A PROPOSED INCREASE NOW, HOWEVER, THERE ARE MORE SERVICES BEING OFFERED THAT WARRANTS THE FEES FOR THIS CATEGORY.