



# **Presentation with respect to the FATF Mutual Evaluation Report Aruba**

**Prakash Mungra**  
**GM Supervisory Issues**



# Contents presentation



- I. 40 + 9 FATF Recommendations
- II. FATF evaluation of 24 November - 5 December 2008
- III. Key findings and recommendations
- IV. The 16 FATF key- and core recommendations
- V. FATF follow-up procedures
- VI. Follow-up action financial sector:
  - a) General
  - b) Designating CBA as sole supervisor of AML/CFT legislation
  - c) Review and expansion SORUT, SOIPS, and supervisory laws
  - d) Strengthening AML/CFT oversight
  - e) AML/CFT training financial sector
- VIII. Concluding remarks



## II. 40 + 9 FATF Recommendations



- In 1990 the 40 FATF recommendations were issued in the area of AML.
- In 2001, the FATF mandate and recommendations were extended as a result of the terrorist attacks in the US; 8 later 9 special recommendations were issued in the TF area.
- In 2003, the FATF updated the 40 recommendations. The identification and reporting requirements for financial institutions also became applicable to designated non-financial businesses and professions.
- More emphasis on effective, proportionate and dissuasive penal, civil and administrative sanctions in case of non-compliance with AML/CFT laws and regulations.



### III. FATF evaluation 24 Nov. – 5 Dec. 2008



- Last FATF evaluation of Aruba dates from 1999.
- From 24 November till 5 December 2008 Aruba was subjected to a third round FATF evaluation based on a very detailed methodology to assess compliance with the 40 + 9 FATF Recommendations.
- Discussion and adoption of the MER Aruba in the FATF Plenary Meeting of October 14, 2009 in Paris.



## IV. Key findings and recommendations



- Aruba's system of AML/CFT preventive measures is incomplete, lacks coherence and is ineffective.
- There is no separate and independent offence for terrorist financing in the Penal Code of Aruba.
- Aruba has not implemented UN-resolutions 1267 and 1373.
- Inadequate requirements to collect or make available information on the beneficial ownership and ultimate control of legal persons (in particular the AVV).
- There are inconsistencies between the SOIPS and the SORUT.
- The supervisory laws and regulations should be strengthened.



## IV. Key findings and recommendation (cont'd)



- Supervision should be extended to other not-regulated sectors (e.g. investment business and insurance brokers).
- The not-regulated electronic stock exchange market forms a huge risk for ML/TF.
- The sectoral AML/CFT Directives issued are incomplete and also conflict in certain areas with the provisions of the SOIPS and the SORUT.
- The AML/CFT oversight should be strengthened, especially with regard to the offshore banks and insurance companies.
- The staffing of the MOT, CBA, Public Prosecutor's Office and Police is inadequate.
- The training in the area of AML/CFT, also to increase level of awareness, should be enhanced.



## V. FATF key and core recommendations



Rec.	Definition	Rating
R 1	Criminalization of money laundering	LC
R 3	Confiscation and provisional measures	PC
R 4	Secrecy laws consistent with the FATF Recommendations	LC
R 5	Customer due diligence	NC
R 10	Record keeping	LC
R 13	Suspicious transaction reporting	PC
R 23	Regulation, supervision and monitoring	NC
R 26	The Financial Intelligence Unit	PC
R 35	Implementation UN Conventions	PC
R 36	Mutual Legal Assistance	PC
R 40	Other forms of co-operation	PC



## V. FATF key and core recommendations (cont'd)



Special Rec.	Definition	Rating
SR I	Implementation UN instruments	NC
SR II	Criminalizing terrorist financing	NC
SR III	Freezing and confiscating terrorist assets	NC
SR IV	Reporting suspicious transactions related to terrorism	PC
SR V	International co-operation related to terrorist financing	NC





## VI. FATF Follow-up procedures



In the event that a jurisdiction has 10 or more NC or PC ratings with respect to the 16 key and core recommendations, the jurisdiction is referred to the **ICRG (International Co-operation Review Group)**. Aruba has NC/PC ratings for 13 of the 16 key and core recommendations.

The task of the ICRG is to identify and examine jurisdictions that fail to implement effective AML/CFT systems, and recommend countermeasures where necessary.



## VI. FATF Follow-up procedures (cont'd)



Jurisdictions who are referred to the ICRG will first be subjected to a “prima facie” review. In this phase a general review will be conducted on the AML/CFT system of the jurisdiction concerned. If the ICRG finds there is a need for a comprehensive review, it will recommend to the FATF Plenary to follow-up with the jurisdiction and to report back with a more detailed report.

Based on the outcome of the comprehensive review, the FATF Plenary will decide if countermeasures should be taken against said jurisdiction.

Aforementioned measures are usually in the form of public statements whereby jurisdictions are urged to advise their financial institutions to conduct enhanced due diligence in case of any transaction with the jurisdiction concerned.



## VI. FATF Follow-up procedures (cont'd)



In the second week of February 2010 Aruba will present a detailed and prioritized action plan to the FATF Plenary to be held in Abu Dhabi (United Arab Emirates).

It is important to be able to demonstrate substantial progress in addressing the most serious shortcomings in a short period of time, at the most 18 months.

Aruba must avoid to be placed on the FATF list of high risk jurisdictions. The G-20 has called upon the FATF to issue and publish such list by February 2010.



## VII. Follow –up action General



- Preparing of an AML/CFT risk strategy report and a detailed and prioritized action plan.
- CBA has taken the initiative in this regard and has hired Sator Regulatory Consulting Limited to assist Aruba with the preparation of aforementioned documents.



## b) Designating CBA as sole supervisory AML/CFT



- The FATF report recommends that the AML/CFT supervision with regard to the financial sector is placed completely in the hands of the CBA.
- In the current situation the MOT is responsible for monitoring compliance with the SORUT, while the CBA oversees compliance with the AML/CFT guidelines with regard to the financial institutions under its supervision. The MOT and CBA have a shared responsibility with respect to the SOIPS insofar it concerns the supervised institutions.
- The CBA needs to obtain a mandate to oversee compliance with the financial institutions under its supervision with the SORUT at the supervised institutions.



## c) Revision and expansion SOIPS, SORUT and supervisory laws



- The SOIPS and SORUT needs to be emerged into one law.
- The SOIPS and SORUT should be expanded to include specific FATF requirements in relation to UBO's and PEP's.
- The reporting and identification requirements should be expanded to include trust and company service providers and investment business activities.
- Expansion and revision of the supervisory legislation.
- Prohibition of the operation of electronic stock exchanges in or from Aruba in view of the significant money laundering risks and reputational risks.
- AML/CFT directives for banks, insurance companies and money transfer companies should be revised.



## d) Strengthening AML/CFT supervision



- The CBA has set up an Integrity Unit within the Supervision Department that will primarily be in charge of the on-site AML/CFT supervision and the ongoing fit and proper testing of managers and shareholders. Currently, the CBA is working on the staffing of the Integrity Unit.
- The absence of access to judicial information is rightly referred to in the MER as a serious impediment for the performance of the “fit and proper tests” by the CBA. In this regard a Ministerial Decree has been drafted that will give the Attorney General the authority to pass on judicial information to the CBA.



## d) Strengthening AML/CFT supervision (cont'd)



- The strengthening of the AML/CFT oversight on the offshore banks and insurance companies has already started.
- A sanction policy applicable to non-compliant institutions with the supervisory laws and regulations has been drafted.





## e) AML/CFT trainings for the financial sector



- The AML/CFT awareness must be strengthened. In this regard the CBA together with the recently established Training Institute Aruba, will facilitate trainings in the AML/CFT area.



## VIII. Concluding remarks



In addition to the aforementioned actions there are also other measures necessary to meet the 40 + 9 FATF Recommendations. In this regard it is noteworthy to mention the expansion of the supervision to the non-regulated sectors and professions and a significant strengthening of the corporate law and the totally inadequate company register and filing requirements.

Phasing out of the AVV and the prohibition of the issuance of bearer shares.



## VIII. Concluding remarks (cont'd)



In view of the massive operation to be undertaken, it is highly recommendable to establish a formal platform chaired by the Prime Minister and further comprising of the ministers of Finance and Justice and the executives of amongst others the Public Prosecutor's Office, the MOT, Customs and the CBA.

Also the co-operation from Parliament is needed to pass the different laws in the area of AML/CFT with the highest possible priority. The international reputation of Aruba is at stake!





**Thank you for your attention**

