



Highlights New AML/CFT Legislation

George Croes

**Senior Policy Advisor Integrity and
International Affairs**



Contents presentation



- I. FATF - General
- II. 40 + 9 FATF Recommendations
- III. Third FATF MER of Aruba with Key Findings
- IV. Current Main AML/CFT Legislation
- V. Main Deficiencies Noted in the MER on the SOIPS and SORUT
- VI. Introduction Highlights New AML/CFT Legislation
- VII. Highlights New AML/CFT State Ordinance
 - (i) Customer Due Diligence
 - (ii) Reporting of unusual transactions reports to the MOT
 - (iii) Record Keeping
 - (iv) Supervision and Enforcement
 - (v) Information Exchange with other FIUs and Supervisors
 - (vi) Other issues



I. FATF - General



- The Financial Action Task Force (FATF) is an inter-governmental body for the development and promotion of national and international policies to combat money laundering and terrorist financing.
- In order to meet this objective FATF has published 40 + 9 Recommendations which have become the global standard for the development and evaluation of AML/CFT systems.
- FATF monitors members' progress in implementing necessary measures (including legislative ones) through mutual evaluations, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally.
- Aruba is a member of the FATF through the Kingdom of the Netherlands and is assessed separately by the FATF on its compliance with the 40 + 9 Recommendations.
- Aruba is also a founding member of the CFATF



II. 40 + 9 FATF Recommendations



- In 1990 the original 40 FATF recommendations were issued in the area of prevention and combat of money laundering (AML).
- The FATF mandate and recommendations were extended in 2001 as a result of the September 11 terrorist attacks in the US.
- 8 later 9 Special Recommendations were issued in the area of the prevention and combat of Terrorist Financing (CFT).
- In 2003, the FATF updated the 40 + 9 Recommendations in order to extend the scope of the identification and reporting requirements for the financial institutions to FATF designated non-financial businesses and professions (DNFBPs).
- Also, more emphasis on effective, proportionate and dissuasive penal, civil and administrative sanctions in case of non-compliance with AML/CFT laws and regulations.



III. Third FATF MER of Aruba and Key Findings



- FATF assesses member compliance with the 40+9 Recommendations through periodical Mutual Evaluations which are carried out by expert assessors from FATF member countries supported by the FATF Secretariat;
- On October 14 2009 the FATF adopted the third Mutual Evaluation Report (MER) on Aruba's AML/CFT system after a lengthy assessment procedure. The report can be found on the FATF's website www.fatf-gafi.org. The key findings can be summarized as follows:



III. Third MER of Aruba with Key Findings (cont'd)



- In general, Aruba's system of AML/CFT preventive measures 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 (*Landsverordening identificatie bij dienstverlening*) and the SORUT (*Landsverordening meldplicht ongebruikelijke transacties*).
- The supervisory laws and regulations should be strengthened.



III. Third MER of Aruba with Key Findings (cont'd)



- Certain financial services providers are not regulated nor supervised for AML/CFT purposes, which creates significant risks for money laundering and terrorist financing (e.g. investment business, insurance brokers and electronic stock exchange).
- The sectoral AML/CFT Directives issued are incomplete and 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, OM and Police is inadequate.
- The training in the area of AML/CFT should be enhanced.



IV. Current Main AML/CFT Legislation



- A. The State Ordinance on Identification when Providing Services (*Landsverordening identificatie bij dienstverlening*), henceforth referred to as SOIPS, and its secondary legislation such as the State Decree for the Designation of Financial Services (*Landsbesluit aanwijzing financiële diensten*) and the Regulation Identification Requirements Legal Persons (*Regeling Identificatievereisten rechtspersonen*). Its main characteristics are:
- (i) in force since February 1, 1996;
 - (ii) contains CDD/KYC provisions based on the identification of customers prior to the provision of a requested financial service as defined in article 1 of the SOIPS;
 - (iii) scope expanded on February 5, 2009 to include DNFBPs (Designated Non-Financial Businesses and Professions; e.g. lawyers, civil notaries; accountants, real estate brokers, jewelers, car dealers);
 - (iv) Since February 5, 2009, also possible to impose administrative fines and penalty charge orders to a maximum of Afl. 250.000,- per infraction.



IV. Current Main AML/CFT Legislation (cont'd)



B. The State Ordinance on the Reporting Obligation Unusual Transactions (*Landsverordening meldplicht ongebruikelijke transacties*), henceforth referred to as SORUT, and its secondary legislation such as the Indicator Regulations for banks, MTCs, Life Insurance Companies and Casinos, and the State Decree Regulating the Register kept by the MOT. Its main characteristics are:

- (i) in force since February 1, 1996;
- (ii) contains reporting system for financial institutions and DNFBPs based on unusual transactions;
- (iii) institutes the MOT (Meldpunt Ongebruikelijke Transacties) as the Aruban center for the receipt, analysis and dissemination of unusual transactions;
- (iv) since July 1, 2010 compliance supervision with respect to financial institutions conducted by the CBA and with respect to DNFBPs by the MOT;
- (v) since February 5, 2009 same administrative sanctioning possibilities as with SOIPS.



V. Main Deficiencies Noted in the MER on the SOIPS and SORUT



- The scope of the SOIPS and SORUT is not harmonized as each state ordinance has its own, divergent definition of financial and non-financial services;
- Certain categories of financial services providers, such as investment businesses (including stock exchanges) and life insurance brokers are not covered by the SOIPS and SORUT;
- No or inadequate provisions in SOIPS regarding determining ultimate beneficial ownership, enhanced due diligence for high risk customers (such as PEPs), and ongoing monitoring of businesses and relations;
- As for SORUT, not all predicate offences covered by the reporting obligation;
- Lack of indicators for certain financial services, *de facto* excluding these from the reporting obligation;
- The role and composition of the Advisory Committee (*Begeleidingscommissie*) appears to compromise the autonomy of the MOT;
- Both SOIPS and SORUT: sanctions not proportionate, effective and dissuasive according to standards.



VI. Introduction Highlights New AML/CFT Legislation



- After the adoption of the MER, the Government of Aruba began working swiftly on improving the AML/CFT system of Aruba in accordance with the FATF 40 + 9 Recommendations.
- For effectiveness reasons and based on one of the MER's recommendations, it was decided to transfer the supervision on SORUT compliance by financial institutions from the MOT to the CBA. This transfer will take effect as per July 1 of this year.
- A new and comprehensive state ordinance will replace SOIPS and SORUT. This new state ordinance is scheduled to enter into force on January 1, 2011. The (tentative) name of this new state ordinance is *Landsverordening voorkoming en bestrijding witwassen en terrorismefinanciering* (State Ordinance Prevention and Combat of Money Laundering and Terrorist Financing), henceforth referred to as the AML/CFT State Ordinance.



VII. Highlights New AML/CFT State Ordinance



- The AML/CFT State Ordinance will address the following main issues:
 - (i) Customer Due Diligence
 - (ii) The reporting of unusual transactions to the MOT
 - (iii) Record Keeping
 - (iv) Supervision and Enforcement
 - (v) Information exchange with other FIUs and Supervisors
 - (vi) other issues
- In line with the FATF standards and the MER's recommendations, the AML/CFT State Ordinance contains substantial changes compared with the SOIPS and SORUT.
- In general, the scope of the AML/CFT State Ordinance will be considerably broader than that of the SOIPS and the SORUT. As for financial institutions, the FATF definition will be followed, thereby also including financial institutions currently not supervised by the CBA, such as investment business and life insurance brokers.
- The AML/CFT State Ordinance will be applicable on DNFBPs on the same level as financial institutions unless indicated otherwise.



(i) Customer Due Diligence



The new CDD measures will include the following:

- Identification of the customer and verification of the identity of that customer;
- Identification of the ultimate beneficial owner and the verification of that identity;
- Determining the purpose and commercial rationale of the business relation;
- Ongoing monitoring of the business relationship and of the transactions carried out during the course of the business relationship.

In general CDD must be performed before entering into the business relationship or executing the individual transaction, when executing an incidental money transfer order, when there are indications that the customer is involved in ML or TF, when there are doubts on the reliability of the acquired information or if the risk of the customer's involvement with ML or TF gives rise to such.



(i) Customer Due Diligence (cont'd)



Enhanced due diligence will be required for categories of customers, business relationships or transactions that pose a higher risk of ML and TF. Examples of these are:

- Non-resident customers;
- Private banking;
- Legal persons and arrangements such as trusts that are personal assets holding vehicles
- Companies that have nominee shareholders or shares in bearer form;
- Politically Exposed Persons (foreign and domestic);
- Persons and entities from jurisdictions with questionable reputations.

Service providers will also be required to pay attention to all complex and unusually large transactions and unusual patterns of transactions that have no apparent economic or lawful purpose.



(i) Customer Due Diligence (cont'd)



Reduced CDD will be allowed under certain circumstances, such as:

- Public companies that are subject to regulatory disclosure requirements, in effect companies that are listed on a stock exchange or similar situation;
- Government-owned companies;
- The Government of Aruba (*Land Aruba*) and public entities instituted by law and established in Aruba;
- The Governments of Curacao, Saint Maarten, the Netherlands and public entities instituted by law and established in those parts of the Kingdom;
- Life insurance policies where the annual premium does not exceed Afl. 1500,- or the single premium does not exceed Afl. 4000,-;
- A pension scheme or similar arrangement that provides retirement benefits to employees, where the contribution is made through deduction from wages and the scheme does not permit assignment of a participant's interest.



(i) Customer Due Diligence (cont'd)



- Financial institutions will be permitted to rely on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business, provided certain criteria are met. These include the adequate collection of information from the third party concerning certain elements of the CDD process and on the regulation and supervision of the third party.
- When engaging in cross-border correspondent banking relationships, banks should gather sufficient information on the correspondent bank such as its activities, the nature and quality of supervision and the AML/CFT procedures in place.
- Correspondent relationships with shell banks will be prohibited explicitly.



(i) Customer Due Diligence (cont'd)



In principle DNFBPs will be subject to the same CDD requirements in the following circumstances:

- Casinos, when their customers engage in financial transactions equal to or above Afl. 5000,-
- Real estate agents, when involved in transactions for a client concerning the buying and selling of real estate
- Dealers in precious metals and dealers in precious stones, when they engage in any cash transaction with a customer equal to or above Afl. 25.000,-
- Lawyers, notaries, other legal professionals, and accountants, when they prepare for or carry transactions for a client in relation to the following activities (*inter alia*):
 - (i) buying and selling of real estate;
 - (ii) managing client money, securities or other assets;
 - (iii) organizing contributions for the creation, operation and management of companies;
 - (iv) creation, operation and management of entities and buying and selling of business entities;
- TCSPs (*trustkantoren*), for almost all of their activities



(ii) The reporting of unusual transactions to the MOT



The present system of unusual transactions reporting will be kept with certain modifications.

- The MOT will focus on its core activities which are the receipt, analysis and dissemination of unusual transactions;
- The Advisory Committee (*Begeleidingscommissie*) will focus on assisting the MOT with expertise and advise;
- More emphasis will be placed on the reporting of unusual transactions using subjective indicators;
- The MOT will be able to exchange information with foreign FIUs without a prior MOU;
- The CBA will be able to issue directives to reporters on the subject of internal procedures regarding the reporting of unusual transactions;
- Authorities in charge with regulation and oversight of financial institutions and DNFBPs, as well as tax authorities, will be required to report to the MOT facts discovered during the execution of their duties which might indicate ML or TF.



(III) Record Keeping



- Record keeping will focus on necessity to permit reconstruction of individual transactions so as to provide, if necessary, evidence for law enforcement authorities.
- Records will include identification data, account files and business correspondence.
- CDD records must be kept for at least 10 years following the termination of a business relationship or the execution of the individual transaction.
- UTR records must be kept for at least 10 years after the date of the filing of the report.
- The CBA may set longer record keeping terms for individual cases.



(IV) Supervision and Enforcement



- The CBA will supervise compliance by the service providers (including DNFBPs) with the provisions of the AML/CFT State Ordinance.
- The AML/CFT State Ordinance will continue the sanctions regimes of the SOIPS and the SORUT (the penalty charge order and administrative fine), albeit with some modifications:
 - (i) the CBA will be the sole authority in charge of imposing administrative sanctions;
 - (ii) the maximum amounts of the penalty charge order and the administrative fine will be increased substantially;
 - (iii) senior management officials will also be liable for administrative sanctioning;
 - (iv) criminal sanctions will also be increased substantially.



(V) Information exchange with other FIUs and Supervisors



- The MOT will be able to exchange FIU-related information with other FIUs without a prior MOU.
- The CBA in its capacity of supervisor will be able to exchange information with other supervisors on CDD and UTR/STR matters.



(VI) Other Issues



- The AML/CFT State Ordinance will require the presence of a Money Laundering Reporting Officer (MLRO) and Money Laundering Compliance Officer (MLCO) with each service provider.
- The AML/CFT State Ordinance will require the regular training of staff on AML/CFT issues.
- The AML/CFT State Ordinance will require regular business risk assessments by service providers.
- The introduction of the AML/CFT State Ordinance will be accompanied by a separate state ordinance that will bring other existing state ordinances (such as the supervisory state ordinances) in line with the content and purpose of the AML/CFT State Ordinance and will contain transitional provisions for the existing service providers.





Thank you



CENTRALE BANK VAN ARUBA

June 30 2010

23