

**The Handbook**

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**THE  
NEW  
AML  
REGIME**

**CBA  
OVERSIGHT**

**THE NEW  
HANDBOOK  
STANDARDS**

**S A T O R  
A R E P O  
T E N E T  
O P E R A  
R O T A S**

# Law and Regulation

- The State Ordinance on the Prevention and Combat of Money Laundering and Terrorist Financing (AML/CFT State Ordinance)
- Places obligations on service providers to do certain things, failure to comply with which are criminal offences
- 
- The Regulatory Laws (state Ordinances for Banking, Insurance, Money Transfer Companies and Trust Companies) include powers to issue Directives
- 
- The existing AML Directives will be replaced with a new AML/CFT Handbook.

# AML/CFT Handbook

- The AML/CFT Handbook is arranged into four sections
- Statutory (eg mandatory) requirements - breach = fine or prison
- Regulatory (eg mandatory) requirements – breach = regulatory punishment
- Guidance Notes (eg educational) – no breach
- Appendices – covering training material, sector specific notes, typologies, sanction or warning information, etc. Some appendices carry penalties if breached and these will be clearly marked.



# Handbook Objectives

- to outline the requirements of the various primary laws relevant to an institution's defences against money laundering and terrorist financing, including predicate offences, sanctions, etc which apply to all persons (natural or legal) in Aruba, all persons (natural or legal) operating from within the Island, and all persons incorporated or formed in Aruba conducting activities in any part of the world;
- to outline the requirements of the AML/CFT State Ordinance which supplements the above legislation by placing more detailed requirements on relevant persons;



# Handbook Objectives

to outline the requirements of the AML/CFT State Ordinance regarding those remitting or receiving wire transfers;

to set out the regulatory requirements under the Banking, Insurance, Money Transfer Company and Trust Company Business laws (together referred to as the “**regulatory laws**”)

to assist a relevant person to comply with the requirements of the legislation described above and the CBA’s requirements through practical interpretation



# Handbook Objectives

- to provide a base from which individual businesses can design and implement systems and controls and tailor their own policies and procedures for the prevention and detection of money laundering and the financing of terrorism;
- to ensure that Aruba matches international standards to prevent and detect money laundering and the financing of terrorism;
- to emphasise the responsibilities of the Board of a relevant person in preventing and detecting money laundering and the financing of terrorism;



# Handbook Objectives

- to promote the use of a proportionate, risk based approach to customer due diligence measures, which directs resources towards higher risk customers;
- to provide more practical guidance on identification and verification of identity;
- to emphasize the particular money laundering and financing terrorism risks of certain financial services and products; and
- to provide an information resource to be used in training and raising awareness of money laundering and the financing of terrorism.





# Handbook Consultation

The draft Handbook will be issued for consultation with industry during July.

You need to be ready and have senior resource available to take part in that consultation exercise and to prepare written submissions to be sent to the CBA

All requirements follow 40+9 Recommendations and therefore you can already start planning/introducing measures to ensure you meet the Handbook Standards in good time.

# Handbook Implementation

- After reviewing the consultation responses a final draft will be prepared
- The CBA will issue the Handbook to come into force from 1<sup>st</sup> January 2011
- Transitional arrangements will be offered for certain key areas to allow you extra time to upgrade certain standards with regard to existing business.
- Systems must be in place to ensure new business complies immediately from 1<sup>st</sup> January.

S A T O R  
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COFFEE

**A MORE  
DETAILED  
VIEW OF  
THE  
MEASURES  
NEEDED  
  
INCLUDING  
A RISK  
BASED  
APPROACH**

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# A NEW APPROACH

The new regime extends a great deal more flexibility to industry but demands more engagement

- There are fewer objective grounds on which to make reports and more emphasis will be made of an institutions ability to identify and report circumstances which may be related to the proceeds of crime (remember this includes proceeds of tax evasion or evasion of exchange control or duties)



# A NEW APPROACH

Rather than prescriptive “one size fits all” rules, institutions will be expected to adjust their controls to meet the framework of legislation, according to the risks in their business.

**This demands careful thought on what risks your business faces and how you might monitor and mitigate those risks**

# RISK BASED APPROACH

The Handbook adopts a risk based approach. It:-

- recognises that the money laundering and financing of terrorism threat to a business varies across customers, jurisdictions, products and delivery channels;
- allows a business to differentiate between customers in a way that matches risk in a particular business;
- while establishing minimum standards, allows a business to apply its own approach to systems and controls, and arrangements in particular circumstances; and
- helps to produce a more cost effective system.

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# RISK BASED APPROACH

Whilst systems and controls will not detect and prevent all money laundering or the financing of terrorism, a risk based approach will serve to balance the cost burden placed on individual businesses and on their customers with a realistic assessment of the threat of a business being used in connection with money laundering or the financing of terrorism by focusing effort where it is needed and has most impact.



# BOARD RESPONSIBILITY

The Executive Board must conduct and document a business risk assessment.

- In particular, the Board must consider, on an ongoing basis, the extent of its exposure to risks by reference to its organisational structure, its customers, the jurisdictions with which its customers are connected, its products and services, and how it delivers those products and services. The Board's assessment must be kept up to date.

# RISK ASSESSMENT

- On the basis of its business risk assessment, the Executive Board must establish a formal strategy to counter money laundering and financing of terrorism. For an Aruba business forming part of a group operating outside the Island, that strategy must protect both its global reputation and its Aruba business.
- Taking into account the conclusions of the business risk assessment and strategy, the Executive Board must organise and control its affairs effectively and be able to demonstrate the existence of adequate systems and controls (including policies and procedures) to counter money laundering and financing of terrorism.



# SYSTEMS & CONTROLS

- The Executive Board must document its systems and controls (including policies and procedures) and clearly apportion responsibilities for countering money laundering and financing of terrorism, and, in particular, responsibilities of the MLCO and MLRO
- The Executive Board must assess both the effectiveness of, and compliance with, systems and controls and take prompt action necessary to address any deficiencies.



# DISCLOSURE

The Executive Board must notify the CBA immediately in writing of any material failures to comply with the requirements of the AML/CFT State Ordinance or of the Handbook. Refer to Part 3 of the Handbook for further information.



# AML/CFT BARRIERS

The Executive Board must consider what barriers (including cultural barriers) exist to prevent the operation of effective systems and controls to counter money laundering and the financing of terrorism, and must take effective measures to address them

# HANDBOOK GUIDANCE

- The Executive Board may demonstrate that it has considered the business' exposure to money laundering and financing of terrorism risk by:
- Involving all members of the Board in determining the risks posed by money laundering and financing of terrorism within those areas for which they have responsibility.
- Considering organisational factors that may increase the level of exposure to the risk of money laundering and financing of terrorism, e.g. outsourced aspects of regulated activities or compliance functions.

# MORE GUIDANCE

- Considering the nature, scale and complexity of its business, the diversity of its operations (including geographical diversity), the volume and size of its transactions, and the degree of risk associated with each area of its operation.
- Considering who its customers are and what they do.
- Considering whether any additional risks are posed by the jurisdictions with which its customers (including intermediaries and introducers) are connected. Factors such as high levels of organised crime, increased vulnerabilities to corruption and inadequate frameworks to prevent and detect money laundering and the financing of terrorism will impact the risk posed by relationships connected with such jurisdictions.



# MORE GUIDANCE

- Considering the characteristics of the products and services that it offers and assessing the associated vulnerabilities posed by each product and service, including delivery channels. For example:
  - a. The use of third parties such as group entities, introducers and intermediaries to conduct elements of the customer due diligence process.
  - b. Pooled relationships with intermediaries will tend to be more vulnerable - because of the anonymity provided by the co-mingling of assets or funds belonging to several customers by the intermediary.



# MORE GUIDANCE

- c. Products such as standard current accounts are more vulnerable because they allow payments to be made to and from third parties, including cash transactions.
- d. Conversely, those products that do not permit third party transfers or where redemption is permitted only to an account from which the investment is funded will be less vulnerable.

Considering how it establishes and delivers products and services to its customers. For example, risks are likely to be greater whether relationships may be established remotely (non-face to face), or may be controlled remotely by the customer (straight-through processing of transactions).



# MORE GUIDANCE

The Board must record and retain its business risk assessment. An annual, formal reassessment might be appropriate for a dynamic, growing business, but too often in some other cases, e.g. an established business with stable products and services.



# CBA OVERSIGHT

- Through this example, you can see that the revision of the SOIPS/SORUT (the new AML/CFT State Ordinance) sets standards and the Handbook offers explanation of how regulated financial services business should meet that standard – offering interpretation and examples of what the CBA will look for during on site examinations.
- The Handbook offers practical guidance on how you should comply.

# CBA OVERSIGHT

Where the Handbook uses the word “may” the firm has some leeway – but be warned!

If you choose not to follow the guidance offered by the Central Bank you need either to have met the standard through another means or to have a reason as to why the guidance was not relevant for your business – document the reason.

**MAKING**

**A PLAN**

**BOARD**

**RESPONS-  
IBILITY**

**TRANSIT-  
IONAL**

**PROVISIONS**

**MAKING**

**A START**

**S A T O R  
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# MAKING A PLAN

- There is urgent imperative.
- The FATF Plenary in Paris in October needs to be shown clear and significant progress.
- A finalized draft new primary law and finalized draft Handbook will be strong contributors to evidencing that progress.

# EARLY ACTIONS

- Put issue – New AML/CFT Standards - on Board agenda
- Form a Project Team
- Review draft handbook and submit comments to CBA
- Identify issues in handbook that require early action
- **Ensure Board understands the changes necessary**
- Review organization chart/procedures manuals
- Appoint MLRO (get him trained!)
- Draft Business Risk Assessment
- Formulate and adopt a policy which risk rates customers
- Develop (and start implementing) training plan
- Consider how Staff Vetting will be accomplished
- Formulate new CDD procedures



# TRANSITIONAL PROVISIONS

The AML/CFT State Ordinance will include transitional provisions to give your firm time to comply with the new requirements

The law will come into force on 1<sup>st</sup> January 2011 and new business must comply with the new customer take on standards immediately, however, there will be some additional time to adjust on other matters

Transitional provisions give you a little longer to comply with certain areas. You will be asked to confirm that the tasks are concluded within the time frames – you can of course implement them sooner!





# TRANSITIONAL PROVISIONS

The exact time frames and areas to which t/p will be extended will depend on the FATF response, the consultation and parliamentary opinions.

However, the proposals as currently drafted provide the following areas and time periods:-

+3 months

Areas likely to offer extra three months:-

Formulate and adopt a policy and associated procedures relating to accepting business from introducers

Commence reviewing existing introducers in a manner consistent with that policy (all to be completed within 6 months)



**+6 months**

Areas likely to offer extra six months:-

Carry out and complete full CDD on existing customers rated as High Risk

Conclude introducer due diligence



**+12 months**

Areas likely to offer extra 12 months:-

Carry out and complete full CDD on medium risk customers



**+24 months**

Areas likely to offer extra 24 months:-

Carry out and complete necessary CDD on  
low risk customers



# CONCLUSIONS

- This is a major change.
- The new regime requires far greater intellectual input from businesses
- It is no longer sufficient to follow flat rules, you have to evidence understanding of the risks your business faces and the risks that your clients introduce and show you have a strategy which addresses and monitors those risks
- It's a dynamic process
- The board is responsible.
- The penalties in the law arise from omission and commission.

# CONCLUSIONS

- All is not gloom, doom and yet more regulation!
- The process will drive you to learn more about your own business, learn more about your clients and manage all your business risks more effectively
- The Crown Dependencies (Jersey, Guernsey and the Isle of Man) have all grown dramatically since July 1999 when this regime was introduced. These procedures are not a barrier to business and in fact provide a more solid platform from which your business can grow.



# QUESTIONS

Thank you!!

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