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State Ordinance for the regulation of Financial Services



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Why the need to regulate other financial services in Aruba?



FATF - Recommendation 5 – ‘Aruba is urged to submit all financial institutions conducting financial designated activities to AML/CFT requirements’

FATF - Recommendation 23 – ‘Aruba should review the supervisory competencies of the CBA and MOT in order that all FI activities designated by the FATF Glossary are properly supervised. In particular, Aruba is strongly urged to regulate and supervise its securities sector, including its electronic stock exchange market and all the professionals operating in this field as well as offshore banks and the life insurance companies and intermediaries’





What 'activities' will now be subject to regulatory supervision?

- Dealing in Investments
- Managing Investments
- Advising on Investments
- Arranging Investments
- Providing arrangements and safeguarding of Investments
- Operates Stock Exchange Activities
- Fund Services Business
- Collective Investment schemes

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What are 'investments'?

- Shares
- Debentures (including debenture stock, loan stock, bonds, certificates of deposit & other instruments that create or acknowledge indebtedness)
- Instruments entitling to shares or securities
- Certificates representing securities
- Units in a collective investment fund (mutual fund)
- Options
- Futures
- Contracts for differences
- Long Term insurance contracts
- Rights and interests in investments



Possible Exemptions

- Dealing as Principal
- Newspapers and information services
- Executors and Guardians
- Connected companies & joint enterprises
- Employees share schemes
- A Company issuing shares, debt instruments etc. for the purpose of raising capital
- Dealing or advising as Trustee



How will the new State Ordinance work?

Enabling Primary Law which will :-

- Define the activities caught
- Demand applications in prescribed format and accompanied by such information as the CBA may require
- Enable licences to be issued (with or without conditions) or revoked
- Enable Principal Persons to be approved, declined or banned
- Enable directions to be issued (industry wide or to firms or individuals)
- Enable Compliance oversight exercised by the regulator



- Permit the Regulator to conduct investigations as it requires or on request of an overseas regulator
- Enable independent inspectors or reporting professionals to be appointed to conduct reviews scoped by the regulator at its own behest or on behalf of another regulator and
- Enable the regulator to sanction and/or exercise interventionist powers in regard to authorised or unauthorised firms (and natural persons) by way of :-



- a) Revocation
- b) Licence Condition
- c) Direction
- d) Giving instructions with regards to dividends under certain circumstances
- e) Appointing an inspector
- f) Replace management
- g) Banning statement (preventing a person from working in the industry)
- h) Fining or
- i) Public Statement



The Law will also create offence such as those of :-

- Carrying on unauthorised activity
- Providing false and misleading information to the regulator
- Engaging in misleading practices or making false or misleading statements to customers
- Failing to cooperate with the regulator, and
- Failing to obtain certain approvals or to return certain information

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The Primary Law will also contain provisions for the CBA to issue Codes of Practice which will set out standards for sound business conduct and will enable subordinate legislation to be issued which will provide for :-

- The appointment of an auditor and production of audited accounts
- Maintenance of certain levels of liquidity and return of certain financial information
- Client Asset requirements
- Various other practical matters including appointment of a manager (administrator or silent receiver) in the event of failure
- Rules for Advertising
- Registration/Classes of business
- Payment of Licence Fees
- Certain exemptions including those for overseas persons wishing to market in Aruba etc.

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