

DIRECTIVE FOR THE TRUST PROVIDERS REGARDING THE AUDIT FUNCTION

I. INTRODUCTION

1. In accordance with article 46, paragraph 3, of the State Ordinance for the Prevention and Combating of Money Laundering and Terrorist Financing (AB 2011 no. 28) (AML/CFT State Ordinance), Service Providers falling under the scope of the AML/CFT State Ordinance must carry out periodic evaluations in order to assess if and to what extent they are vulnerable to Money Laundering (ML) and Terrorist Financing (TF) because of their activities and operations. According to article 46, paragraph 4, of the AML/CFT State Ordinance, the findings of these periodic evaluations must be recorded in writing.
2. In accordance with article 48, paragraph 1, of the AML/CFT State Ordinance, the Centrale Bank van Aruba (CBA) may issue directives and shall provide information regarding the application of chapters 2, 3, 4, and 6 of the AML/CFT State Ordinance. A directive may also pertain to the application of other legal provisions, in so far this is necessary for the realization of the objectives of this state ordinance¹.
3. Section 2.7 of the Handbook for the prevention and detection of money laundering and combating the financing of terrorism for financial and trust services providers, issued by the CBA (AML/CFT Handbook), contains provisions regarding the application of article 46, paragraph 3, of the AML/CFT State Ordinance. A Trust Service Provider must conduct independent assessments of the effectiveness of its policies, procedures, and measures periodically (AML/CFT Handbook, paragraph 2.7, point 32); the periodic assessment of the effectiveness of the Service Provider's policies, procedures, and measures must be conducted by a dedicated, independent, and adequately resourced audit function. The frequency and scope of such an assessment must be determined by the regulated entity's business risk assessment (AML/CFT Handbook, paragraph 2.7, point 33); management² and board³ must form an opinion as to the effectiveness of the policies, procedures, and measures and is responsible for an adequate follow-up (AML/CFT Handbook, paragraph 2.7, point 34); Larger Service Providers must establish a dedicated audit function to assist in the assessment of effectiveness (AML/CFT Handbook, paragraph 2.7, point 35).
4. To provide further direction on the subject matter, the CBA has issued this directive containing minimum requirements regarding the mandatory periodic evaluation of policies, procedures, and measures in the AML/CFT area.

¹ In this context, it is important to note that Trust Service Providers must perform customer due diligence (CDD) on their customers and document the CDD performed. This in accordance with articles 8, 9 and 10 of the State Ordinance on the Supervision of Trust Service Providers (AB. 2009 no. 13) (SOSTSP).

² Managing Board

³ Supervisory Board

II. DEFINITIONS

1. In this Directive the following terms are defined as stated below:
 - a. Trust Service Provider: in accordance with article 1 of the State Ordinance on the Supervision of Trust Service Providers (SOSTSP), a trust service provider is an enterprise or institution that performs one or more of the following activities on a commercial basis: a. to act as the founder, manager, or liquidator of legal entities or bodies; b. to act as a local representative, director, or legal representative of legal entities or bodies; c. to make available natural persons living in Aruba or legal entities domiciled in Aruba as local representative, director, or legal representative; d. to be the trustee of a trust; e. to liquidate or arrange for third parties to liquidate legal entities or bodies; f. to sell or act as an intermediary in the sale of legal entities or bodies; g. other activities to be designated by State Decree containing General Administrative Orders.
 - b. Business risk assessment: in accordance with article 46, paragraph 3, of the AML/CFT State Ordinance, a regulated entity must carry out periodic evaluations in order to assess if and to what extent they are vulnerable to money laundering and financing of terrorism because of their activities and operations.
 - c. Control: any action taken by management, the board and other parties to manage risk and increase the likelihood that established objectives and goals will be achieved.
 - d. Control process: policies, procedures (both manual and automated) and activities that are part of a control framework, designed and operated to ensure that risks are contained within the level that an organization is willing to accept.
 - e. Audit function: provides independent assurance to management on the quality and effectiveness of an organization's internal control, risk management and governance systems and processes.

III. Audit

Scope of activity

1. The scope of audit activities must include an evaluation of the effectiveness of the AML/CFT controls of the Trust Service Provider.
2. In accordance with article 46, paragraph 3, of the AML/CFT State Ordinance, the scope of the audit activities must entail the evaluation if and to what extent the Trust Service Provider is vulnerable to ML and TF because of its activities and operations.

3. The audit function should independently evaluate the:
 - Effectiveness of the AML/CFT policy, procedures, and measures in the context of the business risk assessment;
 - Reliability, effectiveness, and integrity of the AML/CFT management information systems and processes (including relevance, accuracy, completeness, availability, confidentiality and comprehensiveness of data);
 - Compliance with the AML/CFT State Ordinance, the AML/CFT Handbook and the Sanction State Ordinance.

Audit function

4. Each Trust Service Provider must have the availability of an audit function to periodically evaluate the effectiveness of its AML/CFT policies, procedures, and measures. These measures include providing the appropriate resources and staffing to the audit with due regard of the size of the activities.
5. It is allowed to outsource the audit function within the group (intra-group outsourcing) or to a third party. Both types of outsourcing must be conducted in accordance with the regulatory requirements set forth in section 2.8 of the AML/CFT Handbook.

Independence and objectivity

6. The audit function of the Trust Service Provider must be independent of the activities audited. This means that the audit function must be given an appropriate standing within the Trust Service Provider and performs its AML/CFT audits with objectivity and impartiality.
7. The audit function must perform its activities, based on the AML/CFT audit plan established by the head of the audit function. The annual audit plan can be part of a multi-year plan. The audit plan must be based on the Trust Service Providers' most recent business risk assessment.
8. The audit function should not be involved in designing, selecting, implementing or operating specific internal control measures. However, the independence of the audit function should not prevent management from requesting input from the audit function on matters related to risk and internal controls.
9. The audit function must have the authority to communicate directly to the managing board or, if applicable, the supervisory board.

Professional competence

10. Professional competence depends on the capacity of each auditor to collect and understand information, to examine and evaluate audit evidence and to communicate with the stakeholders of the audit function. The audit function must be conducted under the responsibility of an experienced auditor with at least 5 years of relevant experience.

Ethics

11. The person that fulfils the compliance function must have an excellent reputation and demonstrate high ethics when performing its tasks.

Audit charter

12. Each Trust Service Provider must have an audit charter that at least establishes the following:
 - The audit function's authority and independence, its responsibilities and tasks;
 - The purpose and scope of the audits;
 - Reporting lines;
 - The terms and conditions according to which the audit function can be called upon to provide consulting services or to carry out other special tasks.
13. In the charter, the Trust Service Provider must also give the internal auditor the right of initiative and authorizes it to have direct access to and communicate with any member of staff, to examine any activity or entity of the Trust Service Provider, as well as to access any records, files or data of the organization, including management information and the minutes of all consultative and decision-making bodies, whenever relevant to the performance of the related assignments.

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