



AML/CFT

Real Estate Sector Supervision



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REAL ESTATE SECTOR



Services

The real estate companies in Aruba render amongst other the following services:

- Buying and selling of properties (land, houses and apartments);
- Rental of properties (houses and apartments);
- Consulting services on real estate;
- Marketing, and;
- Project development.



REAL ESTATE SECTOR



Definition real estate companies based on the State Ordinance for the Prevention and Combating of Money Laundering and Terrorist Financing (AB 2011 no. 28) (AML/CFT State Ordinance) :

“To act as an intermediary on a commercial or professional basis in the purchase and sale of immobile objects (article 1, paragraph 1 of the AML/CFT State Ordinance)”.



REAL ESTATE COMPLIANCE



State Ordinances

- AML/CFT State Ordinance
- Enactment State Ordinance
- Sanction Ordinance

Ministerial Regulations

Guidance

- Guidance notes for non-regulated and designated non-financial service providers including real estate



REAL ESTATE COMPLIANCE



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- Policies
- Procedures
- Measures

2

- MLCO
- MLRO

3

- Training

4

- Evaluation



REAL ESTATE COMPLIANCE



A system of policies, procedures & measures to ensure ongoing compliance with the AML/CFT State Ordinance.

- Must be written
- Risk based approach

Also a real estate company must have policies, procedures and measures in place to comply with the Sanction Ordinance.

- Policies
- Procedures
- Measures



CUSTOMER DUE DILIGENCE



Pursuant to article 3, paragraph 1 of the AML/CFT State Ordinance, service providers shall “perform customer due diligence, which comprises at least the following:

- a. Identification and verification of identity;
- b. Identification and verification of the ultimate beneficiary;
- c. Establishment of the purpose and intended nature of the business relationship;
- d. Exercise of ongoing monitoring of the business relationship and the transactions carried out during the course of the relationship (knowledge, risk profile, source of funds).



CUSTOMER DUE DILIGENCE



Pursuant to article 6, paragraph 3, of the AML/CFT State Ordinance a service provider shall tailor the customer due diligence to the :

- Risk-sensitiveness ML/TF;
- Business relationship;
- Product;
- Transaction.

To that effect establish a risk profile of the client and the ultimate beneficiary.

Pursuant to article 9, paragraph 1, of the AML/CFT State Ordinance a service provider is prohibited to enter into a business relationship or to carry out a transaction, if it has not performed customer due diligence or if it is not able to carry out the customer due diligence.



ENHANCED CUSTOMER DUE DILIGENCE (EDD)



Pursuant to article 11, paragraph 1, of the AML/CFT State Ordinance, service providers shall perform EDD, if and when a business relationship or a transaction by its nature entails a higher risk of ML/TF.

The EDD shall be carried out both prior to the business relation or the transaction, as during the business relationship, in any case in the following situations:

- a. Non-Resident;
- b. Client is not physically present for identification;
- c. Private banking;
- d. Legal persons, trusts and comparable entities that are intended as private assets holding vehicles.



ENHANCED CUSTOMER DUE DILIGENCE (EDD)



- e. Limited liability corporations and comparable entities that have bearer shares or the shares are kept by nominee shareholders;
- f. Natural persons, legal persons, trusts and comparable entities that originate from countries or jurisdictions which do not or insufficiently apply the internationally accepted standards for the prevention and combating of money laundering and terrorist financing;
- g. Politically exposed persons (PEP);
- h. Entering into correspondent bank relations;
- i. Situations to be determined by regulation of the Minister.



POLITICALLY EXPOSED PERSON (PEP)



- Pursuant to article 1 of the AML/CFT State Ordinance, a Politically Exposed Person (PEP) is a person who holds or held a prominent public position, as well as direct family members and direct associates of such a person;
- Pursuant to article 11, paragraph 1, of the AML/CFT State Ordinance, a service provider shall carry out an adequate policy and have risk-based procedures in order to establish whether a client, a potential client, or an ultimate beneficiary is a PEP. A service provider shall also have procedures to determine the source of wealth of clients and ultimate beneficiaries that are considered PEPs on the basis of the first sentence.



POLITICALLY EXPOSED PERSON (PEP)



Important requisites with regard to PEP's are:

- Approval Senior Management to enter a business relationship with a PEP (article 12, paragraph 2, section a);
- Exercise ongoing monitoring of the business relationship (article 12, paragraph 2, section b);
- Client including the direct family members and direct associates of such a person shall be considered a PEP up to five years after he/she has ceased to occupy the position (article 12, paragraph 4).



REAL ESTATE COMPLIANCE



MLCO

- Responsible for coordinating and monitoring day-to-day compliance;

MLRO

- Responsible for the unusual transaction reporting;

Qualified / Combined

- MLCO
- MLRO



REAL ESTATE COMPLIANCE



Who?

What?

When?

- Training



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REAL ESTATE COMPLIANCE



Party independent of the real estate company

- Qualified
- Frequency
- Incorporate high risks

• Evaluation



Regulation Authorities



AML/CFT
CBA

UTR
MOT

The Real
Estate
Sector



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Sanctions State Ordinance 2006



What are Sanctions?

- Sanctions are political instruments (e.g. UN / EU);
- They play a role in the fight against terrorism.

What is your role?

- Institutions must take adequate measures to ensure that they comply with the requirements set out in the sanction decrees.

How do you comply?

- Institutions must ascertain whether the entities listed in the sanction decrees do not form part of their customer base;
- In case of a “hit”, institutions must inform the MOT and the CBA immediately and freeze the assets (insofar applicable).



SUPERVISION



Supervision tools

- On-site examination
- Off-site examination
- www.cbaruba.org



“The application of each tool depends on the available market information at the time”



MEASURES

Examples:



Letter of findings

Formal Directive

Penalty Charge Order

Administrative Fine

Report to Public Prosecutor



THANK YOU



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QUESTIONS

