



Supervision of the CBA on the Real Estate Sector

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CBA's supervisory tasks and approach



Supervision



- Preventive
- Asses institutions compliance with laws and regulations
- Design, existence en validation of procedures and measures
- If necessary re-direct

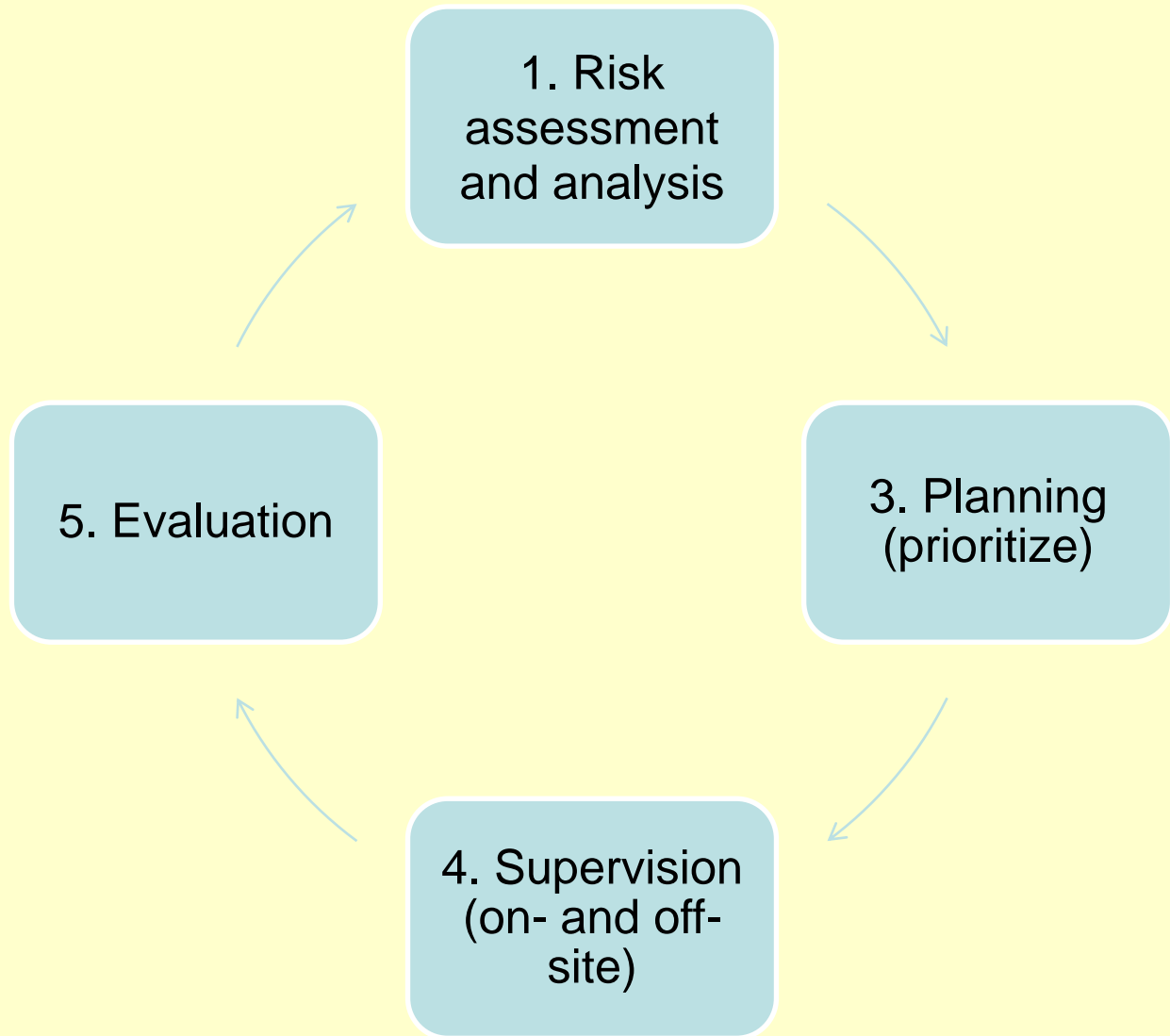


Supervision by virtue of:

- Supervisory State Ordinances
- Sanctions State Ordinance, and
- AML/CFT State Ordinance



Supervision cycle





AML/CFT State Ordinance



AML/CFT State Ordinance



- Risk based approach
- Customer due diligence (prior to rendering services)
- Reporting to the MOT
- Document retention (10 Years)
- MLCO/MLRO
- Policies, procedures and measures



Customer Due Diligence (CDD)





Customer Due Diligence

CDD plays a crucial role in achieving the objective of the AML/CFT state ordinance, i.e. to prevent and combat money laundering and terrorist financing.

Sound CDD measures are vital because they:

- help to protect the real estate company and the integrity of the sector in which it operates by reducing the likelihood of becoming a vehicle for, or a victim of, financial crime; and
- assist law enforcement, by providing available information on customers or activities and transactions being investigated – following an unusual transaction report to the MOT.



CDD (cont'd)



The real estate company or other related financial or non-financial service provider should tailor the customer due diligence to the risk sensitiveness to money laundering or terrorist financing.

Each customers can be categorized in to:

- Low risk
- Medium risk or
- High risk





CDD measures

The AML/CFT State Ordinance requires the application of:

- Basic CDD measures;
- Enhanced CDD measures; and
- Simplified CDD measures.





Basic CDD measures

The basic CDD measures involve:

- Identifying the customer and verifying the customer's identity.
- Identifying the UBO and taking reasonable measures to verify the identity of the UBO.
- Identify any third parties on whose behalf the customer is acting.
- Determining the purpose and intended nature of the business relationship.
- Keeping the above information up to date, and monitoring the business relationship.



Enhanced CDD measures

Enhanced CDD involves:

- Requiring more verification documents
- Requesting additional information, from independent sources etc.

CDD Measure	Timing
Enhanced	<ul style="list-style-type: none">- Customer is not a resident of Aruba- Customer is not physically present for identification- Customer is a legal person, trusts and comparable entities that are intended as private assets holding vehicles- Customer is a PEP- Customer is a natural person, legal person, trusts and comparable entities that originate from countries or jurisdictions which do not or insufficiently apply the internationally accepted AML/CFT standards



Simplified CDD measures

Simplified CDD involves:

- Requesting less verification documents.

CDD Measure	Timing
Simplified	<ul style="list-style-type: none">- Customer is a regulated entity- Customer is a public limited company of which all shares are held by the State of Aruba- Customer is The country of Aruba- Customer is a Public legal person- established and active in other parts of the Kingdom of the Netherland



CDD (cont'd)

When to apply CDD measures??

Pursuant to article 8 of the AML/CFT State Ordinance, a real estate must apply CDD measures BEFORE entering into a business relationship or BEFORE carrying out an occasional transaction.



The CDD process in 7 steps

1. Applicability of CDD requirements
2. Identification
3. Verification
4. Ultimate Beneficial Owner (UBO)
5. Politically Exposed Person (PEP)
6. Relationship information and risk assessment
7. Monitoring and review



The 7 steps of CDD



Step 1

When are the CDD measures required?

- **For all Service Providers:**
 - I). If the business relationship is established in or from Aruba.
 - II). If there are indications that the customer is involved in money laundering or terrorist financing.
 - III). If the service provider has doubts on the soundness or reliability of data obtained from the customer previously.
 - IV). If the risk of involvement of an existing customer in money laundering or terrorist financing gives reason to do so.



The 7 steps of CDD



- **For all Real estate companies:**
At the purchase and sale in or from Aruba of register objects, as well as the rights to which these objects can be subjected (no threshold applicable).





Step 2 Identification

Collect relevant identification information on a customer:

- Natural person: the surname, given names, date and place of birth, and address.
- Legal person: the legal form, name under the Articles of Association, trade name, address, and, if the legal person is listed with the Chamber of Commerce, the registration number, and of the persons acting on behalf of the legal person the surname, given names, and date of birth.
- Record and retain the information collected.





Step 3 Verification

To verify the customer's identity reliable documents, data or information from a reliable and independent source should be used, for example:

- Resident natural person: passport, driver's license or identity card.
- Non-resident natural person: passport.
- Domestic legal person: company registry extract.
- Foreign legal person: documents, data, or information that is reliable and internationally accepted or recognized by law in the state of origin of the customer as a valid means of identification.





Step 4

Ultimate Beneficial Owner (UBO)

Is the customer a legal person???

Then the UBO must be identified and his identity must be verified.

UBO = a natural person:

- a. Who holds an interest of more than 25% of the capital interest or can exercise more than 25% of the voting rights in the shareholders meeting of a customer, or can in another way exercise actual control over such a customer;
- b. Who is beneficiary of 25% or more of the assets of a legal arrangement, including a foundation and a trust, or can exercise actual control over such a legal arrangement





Step 5

Politically Exposed Person (PEP)

PEP = a person who holds or held a prominent public position, as well as direct family members and direct associates of such a person

Is a customer or a UBO a PEP???

- Check internet, reliable (inter)national PEP-lists or other reliable information sources.
- Senior management approval is required to enter into the business relationship or perform the transaction.



Step 6

Relationship information and risk assessment

Higher risk customers trigger more sophisticated CDD measures, including more far-reaching verification methods.

To establish an adequate customer risk profile, the real estate company should assess:

- The purpose and intended nature of the business relationship.
- The nature of the transaction.
- The source and destination of the funds or other assets involved in the business relationship or transaction.

The 7 steps of CDD (cont'd)



Step 7

Monitoring and review

Ongoing attention should be paid to the risk profile of a customer and monitored whether the transactions are consistent with the expected business activity and transactions.

If this is not the case, updating of the customer risk profile may be required.





Customer risk assessment and risk rating





Risk assessment

Determining the potential money laundering or terrorist financing risks posed by a customer, or category of customers, is critical to the development and implementation of an overall risk-based framework. Based on its own criteria, the real estate company should determine whether a particular customer poses a higher risk and the potential impact of any mitigating factors on that assessment.

For example customers that are associated with higher risk countries, as a result of their citizenship, country of business, country of residence, etc. require enhanced CDD measures, depending upon their overall risk profile taking into account all other relevant factors.



Risk rating(cont'd)



- **Customer risk**
- **Product/ Service risk**
- **Country risk**



Customer risk

- **Nature and scope of business activities generating the funds/assets.**
 - A customer conducting activities which are prohibited if carried on with certain countries;
 - Or a customer engaged in a business which involves significant amounts of cash, may also indicate higher risk.



Risk rating(cont'd)



- **Transparency of customer.**
Unwillingness or reluctance to provide information.
- **Behavior of a customer.**
 - Where there is no commercial rationale for a customer buying the products that he seeks, where a customer requests undue levels of secrecy, where a customer appears to be structuring a transaction in various smaller transactions below the designated thresholds in an attempt to avoid the filing of an unusual transaction report (also known as smurfing);
 - Or where it appears that an “audit trail” has been deliberately broken or unnecessarily layered, a customer may indicate higher risk.





Product or service risk

- **Speed of the transaction.**
Transactions that are expedited without a reasonable explanation, may be higher risk.
- **Successive transactions.**
Especially of same property in short period of time with unexplained changes in value.
- **Property value does not match with the profile of the customer.**





Country risk

Residence in or connection with higher risk jurisdictions

The following jurisdictions present a higher risk:

- those that are generally considered to be un-cooperative in the fight against money laundering or terrorist financing;
- those that have inadequate AML/CFT safeguards in place;
- those that have high levels of organized crime;
- those that have strong links (such as funding or other support) with terrorist activities;
- those that are vulnerable to corruption; and
- those that are the subject of UN or EU sanctions measures or prescribed persons or organizations listed by the OFAC.

Red flags



Red flags



Red flags



Red Flags

There are an number of common characteristics that, when detected individually or in combination might indicate potential misuse of the real estate sector for ML/TF purposes.



Red flags

Scenario 1

Transactions which are begun in one individual's name and finally completed in another's without a logic explanation for the name change.

Required information

- ✓ The identity of the other person
- ✓ The relation with first individual
- ✓ The reason for the change



Red flags

Scenario 2

Transactions in which any of the payments are made by a third party, other than the parties involved.

Required information

- ✓ The identity of the third party
- ✓ The relation with the third party
- ✓ The reason for involvement of the third party
- ✓ Origin or source of the funds used for payment



Red flags

Scenario 3

Transactions in which unusual or unnecessarily complex legal structures are used without any economic logic.

Required information

- ✓ Good understanding of the structure used and the reason for using that specific construction.



Red Flags

Scenario 4

Transactions entered into at a value significantly different (much higher or lower) from the real value of the property of differing markedly from market value.

Required information

- ✓ Relationship between the parties involved
- ✓ CDD on both seller and buyer
- ✓ Reason from the client why the difference in value
- ✓ Information regarding how the property was financed initially (mortgage/ personal funding).



The Real Estate



Questions???





Thank you

