



CARIBBEAN
FINANCIAL ACTION
TASK FORCE

Follow-Up Update

Aruba

9 May, 2011

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ARUBA: FOLLOW-UP UPDATE

I. Introduction

1. This update is intended to provide the CFATF Plenary with the progress that has been made by Aruba since the presentation of its last FATF Follow-Up Report at the November 2010 Plenary in the Cayman Islands. The Mutual Evaluation of Aruba was conducted by the FATF and the MER was presented and accepted at the FATF's October 2009 Plenary. The MER was subsequently presented at the CFATF's November 2009 Plenary and Council Meeting. At present Aruba is in the FATF's follow-up process and is currently on expedited follow-up. As such Aruba's Follow-Up report will be presented at the next FATF Plenary meeting in Mexico in June 2011.
2. In its Third Round Mutual Evaluation, Aruba was found to be Partially Compliant (PC) with two Core Recommendations (R. 13 and SR.IV) and five Key Recommendations (Recs. 3, 26, 35, 36 and 40) and Non-Compliant (NC) two Core Recommendations (R. 5 and SR. II) and four Key Recommendations (R. 23, SRs. I, III and IV). In order to present this update, the Aruban Authorities have completed a Follow-Up Matrix which is attached and can be reviewed to obtain details on the information presented in this update report. The update will present factually what has been done by Aruba and will not provide an analysis as to whether or not the measures in fact meet the relevant requirements.

II. Summary of Progress

3. In an effort to comply with the Examiners' recommendations and strengthen its AML/CFT framework in keeping with the FATF Recommendations, Aruba has sought to incorporate elements in the new Penal Code which is currently at Parliament, regarding the following Recommendations:
 - Rec. 1 – expand the scope to the predicate offences by criminalizing counterfeiting and piracy of products, insider trading and market manipulation, environmental crime and fraud.
 - Rec. 2 - criminalize conspiracy to ML and provide clear provisions to for the prosecution of foreign based ML offences.
 - Rec. 28 – Law enforcement powers.
 - Rec. 35 – address the failings identified in the implementation of the Vienna and Palermo Conventions.
4. The Aruban Authorities have noted that the Committee that drafted the new Penal Code has begun reviewing the Penal Procedures Code. The review will focus inter alia on making proposals to clearly address the issues of confiscation of property and derived from the proceeds of crime and also of property held in the names of third parties. This will impact on Rec. 3.
5. Aruba has also drafted a new AML/CFT State Ordinance that will replace the current State Ordinance on the Identification when Providing Services (SOIPS) and State Ordinance on the Reporting of Unusual Transactions (SORUT) and the underlying secondary legislation. The AML/CFT State Ordinance will cover the requirements of

- Recs. 5-12, 13-18, 21, 23, 24, 26, 40, SR. IV, SR. V, and SR. VII. The Ordinance provides for new CDD requirements (identification, verification, the ultimate beneficial owner etc.) and the reporting of unusual transactions to the FIU. The scope of the AML/CFT State Ordinance will cover both financial institutions and DNFBPs. As a result of the AML/CFT State Ordinance, the existing AML/CFT directives that have been issued by the Central Bank of Aruba (CBA) to financial institutions will be revised thoroughly. At this point, an AML/CFT Handbook for the supervised financial institutions and TCSPs has been drafted by the Central Bank of Aruba for the implementation of the AML/CFT State Ordinance. This AML/CFT Handbook, which will also contain directives, has been sent to the relevant institutions for consultation, and the input received has been commented on by the Central Bank of Aruba in December 2010. The finalization of the AML/CFT Handbook will take place after the introduction of the AML/CFT State Ordinance. The AML/CFT State Ordinance will also provide for AML/CFT supervision to rest solely with the CBA so that the MOT will be able to focus on its core FIU functions. Trust and Company Service Providers will be also subject to the new CDD requirements under the AML/CFT State Ordinance, along with the already existing CDD-obligations under the sectoral law, and with regard to legal professionals, the Ordinance will deal with the appropriate level of secrecy.
6. With regard to Rec. 17, the maximum administrative and criminal sanctions have been increased in the AML/CFT State Ordinance by approximately US\$550,000 per infraction and the scope has been extended to directors and senior managers of FIs and DNFBPs. For Rec. 18, the AML/CFT State Ordinance will explicitly prohibit correspondent banking relationships with shell banks. Additionally, the licensing provisions of the State Ordinance on the Supervision of the Credit System (SOSCS) will be modified to prohibit the issuance of a license to shell banks and to allow for the withdrawal of a license granted to a credit institution that would become a shell bank. The Examiners' recommendations for Rec. 21 have also been addressed in the AML/CFT State Ordinance. With regard to Rec. 23 – regulation, supervision and monitoring, the AML/CFT State Ordinance will require all financial institution activities that are designated in the FATF glossary to be subject to AML/CFT supervision. Additionally, the CBA is preparing a proposal for a state ordinance that will address the regulation and supervision of investment businesses, stock exchanges and professionals working in this area. These enactment dates for this Ordinance is scheduled for June 1, 2011. The Authorities have noted that the licensing provisions of the SOSCS, State Ordinance on the Supervision of Insurance Businesses (SOSIB), State Ordinance on the Supervision of Money Transfer Companies (SOSMTC) and the SOSTCPS will also be modified to inter alia strengthen the fit and proper test provisions and improve the sanctions regime to the same level as the AML/CFT State Ordinance.
 7. Issues pertaining to international cooperation under SR. V will also be dealt with in the AML/CFT State Ordinance. This State Ordinance has been submitted to Parliament for approval and will most probably be approved and come into force in May or June 2011.
 8. The Aruban Authorities have also noted that there is a proposal for new state ordinance in Parliament for the adequate regulation of casinos. No enactment date has been set for this proposed ordinance.
 9. With regard to the MOT, which is Aruba's FIU, the MOT in conjunction with the CBA has held various information sessions for financial institutions and DNFBPs. Two of these sessions have occurred since the last Plenary in November 2010 and March 2011.

The MOT has also hired two additional staff members; one of whom is a senior policy advisor. The MOT expects to hire additional staff during 2011. In 2009, the MOT started a new IT system for the online reporting by financial institutions to the MOT. This project is expected to be completed during 2011. With regard to the operational independence of the MOT, the Advisory Committee under the draft AML/CFT State Ordinance will not have a say in MOT's budget and staff recruitment policy. In terms of UTRs pertaining to TF, the MOT has up to now received 10 such reports

10. The CBA's Integrity Supervision Department has become fully operational and is now an independent unit with six (6) staff members, including a Head and Deputy Head, since it will be tasked with AML/CFT supervision of DNFBPs. This development affects Rec. 30 issues. For 2011 the staff of this new department will be increased to eight (8) persons. With regard to Rec. 32, the Public Prosecutor's Office has specifically hired a person to deal with statistics in June of this year. The Authorities have noted the continued work on the introduction of the new Book 2 of the Civil Code of Aruba, which will regulate all legal persons in Aruba. The revised Book 2 will also take into consideration the recommendations made by the Examiners under Rec. 33. In anticipation of this, Aruba has drafted intermediary changes to its current legal person legislation to abolish bearer shares and to introduce mandatory shareholders registration and filing of yearly accounts with the Chamber of Commerce. Aruba has also noted its active participation in the Treaty of San Jose regarding jurisdiction on the open seas.
11. With regard to SR. VI compliance, a draft for the modification of the SOSMTC is being prepared to raise its contents to FATF standards. Aruba has also prepared a draft for a State Decree to regulate wire transfers in accordance with SR. VII. The Decree will be based on the AML/CFT State Ordinance. In order to deal with NPOs, a working group was tasked with assessing the weaknesses present in Aruba's NPO sector. Its findings are being assessed by the AML/CFT Strategy Group. The Tax and Customs Office is working on proposals that will address the Examiner's recommendation pertaining to SR. IX.

III. Conclusion

12. Based on the information provided by Aruba, it appears that the draft AML/CFT State Ordinance and the other proposed amendments and enactments will enable Aruba to comply significantly with its outstanding recommendations.

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
Aruba**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Aruba
Legal systems				
1. ML offense	LC	<p>The ML offence does not adequately cover all designated categories of predicate offences (TF, counterfeiting and piracy of products, insider trading and market manipulation, environmental crime, fraud).</p> <p>The full range of ancillary offences are not provided for as neither conspiracy nor association to commit are applicable to ML.</p> <p>There is a lack of a clear, unequivocal provision pursuant to which Aruba can prosecute ML based on foreign predicate offences.</p>	<ul style="list-style-type: none"> The authorities should revisit the scope of the predicate offence to ML in order to fully cover all the designated predicate offences listed in the FATF Glossary, in particular terrorist financing, and insider trading and market manipulation, but also a wider range of environmental crime, fraud and counterfeiting and piracy of products. Aruban authorities should consider devoting greater resources to the MOT to enhance the initial assessment of STRs and to the police to ensure they investigate the files disclosed by the MOT, so as to produce a larger number of cases referred to the Public Prosecutor's Office for investigations and consequently, for prosecution. 	<ul style="list-style-type: none"> Aruba is in the process of introducing a new Penal Code which will, amongst others, criminalize counterfeiting and piracy of products, insider trading and market manipulation, environmental crime, fraud, thereby expanding the scope of predicate offence for ML. As for TF, the current Penal Code has been amended to include TF as a separate and independent offense. The new Penal Code will also criminalize conspiracy and association to commit ML and will provide clear provisions for the prosecution of foreign-based ML offences. The proposal for the new Penal Code has been submitted to Parliament and was scheduled to enter into force on January 1st 2011. However, this date has passed by and a new enactment date has been set tentatively on January 1st 2012. The MOT has hired two additional staff members (one for policy development and one for analysis) while more will be hired in the course of this year. Also, the SORUT has been amended as per July 1st 2010 to provide for the transfer of supervision of the financial institutions regarding their compliance with the SORUT to the Central Bank of Aruba (CBA), thereby allowing the MOT to focus more on the investigation and dissemination of unusual transactions reports (UTRs)
2. ML offense— mental element and corporate liability	LC	Due to the lack of data on ML sentencing, is not possible to assess whether natural and legal persons are subject to effective, proportionate and dissuasive sanctions for ML.	<ul style="list-style-type: none"> Aruba should also apply the ancillary offence of conspiracy to money laundering. Aruba should clearly and explicitly provide that the ML offence applies to foreign predicate offences. 	<ul style="list-style-type: none"> The new Penal Code will criminalize conspiracy to ML and provide clear provisions for the prosecution of foreign-based ML offences. Originally enactment date was January 1st 2011, now set tentatively at January 1st 2012.
3. Confiscation and provisional measures	PC	No power to confiscate or take provisional measures in relation to terrorist financing (unless the criminal activity also amounts to a terrorist offence) or several	<ul style="list-style-type: none"> Aruba should introduce a separate and independent FT offence as soon as possible and ensure that TF is a predicate offence for 	<ul style="list-style-type: none"> Since March 6th 2010, TF is a separate and independent offence. Subsequently, TF is now a predicate offence for ML.

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		<p>predicate offences for ML (see R.1).</p> <p>No clear provision to allow the confiscation of property derived indirectly from the proceeds of crime, such as income and other benefits.</p> <p>Inability to take action against property held in the name of third parties under the special confiscation powers.</p> <p>Lack of evidence of effective implementation of the powers to confiscate and take provisional measures</p>	<p>money laundering.</p> <ul style="list-style-type: none"> Aruba should consider amending its law to clearly provide that property derived indirectly from the proceeds of crime, such as income and other benefits, are subject to confiscation. Aruba should amend its CCrPA to allow special confiscation of property held in the name of third parties 	<ul style="list-style-type: none"> The Joint Committee that drafted proposals for the new Penal Code has begun reviewing the Penal Procedures Code of Aruba in order to make proposals for changes in light of recent developments and experiences. In doing so, the issues of confiscation of property derived indirectly from the proceeds of crime and special confiscation of property held in the name of third parties will be addressed. A first proposal is expected in June 2011.

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Preventive measures				
4. Secrecy laws consistent with the Recommendations	LC	<p>It is unclear whether MTC's are able to exchange information according to the requirements of SR VII.</p> <p>Although financial institutions are allowed to share information with the CBA by State Ordinance, Article 286 of the Criminal Code criminalises the fact of revealing secret information.</p>	<ul style="list-style-type: none"> Aruba should clarify the legal situation so that it is clear that money transfer companies are allowed to share information in a SR.VII scenario with competent authorities. 	<ul style="list-style-type: none"> Within the context of the introduction of the AML/CFT State Ordinance (to be discussed below) the SOSMTC will also be amended in order to facilitate the implementation of the new AML/CFT State Ordinance and to bring the SOSMTC more in line with the FATF standards. This will include the sharing of information in a SR.VII scenario with competent authorities. As will be shown below, the necessary legislation proposals have been drafted and entered the legislative process.
5. Customer due diligence	NC	<p>The full scope of financial services is not covered by the CDD obligations:</p> <ul style="list-style-type: none"> Consumer credit and loans provided by financial institutions not falling under the definition of credit institutions Financial guarantees and commitments performed by non-credit institutions; Issuing and managing of means of payment Trading in money market instruments, foreign exchange transactions, exchange, interest rate and index instruments and commodity future trading Participation in securities issues and provision of financial services related to such issues Individual and collective portfolio management The investing, administering and managing of funds, money on behalf of other persons (including the companies pension funds) Foreign currency exchange transactions, except where conducted by credit institutions 	<p>General:</p> <ul style="list-style-type: none"> Aruba should ensure that all basic obligations as defined by the FATF are set out in the SOIPS. Aruba is urged to submit all financial institutions conducted financial designated activities are subject to AML/CFT requirements. <p><i>In relation to Recommendation 5:</i></p> <ul style="list-style-type: none"> Aruba should require financial institutions to identify and verify the identity of the ultimate beneficial owner of the business relationship or to understand the control structure of these customers; Aruba should also require financial institutions to identify beneficial owners of foreign trusts and similar legal arrangements, since they can operate on the territory; Aruba should not limit the obligation of identification of legal persons and verification of the identification data to the 	<ul style="list-style-type: none"> Aruba has drafted a new AML/CFT State Ordinance (<i>Landsverordening voorkoming en bestrijding witwassen en terrorismefinanciering</i>) that will replace the current SOIPS and the SORUT and the underlying secondary legislation. The AML/CFT State Ordinance contains new and comprehensive rules on the identification and verification of customers and the reporting of unusual transactions to the FIU. As for its scope, it will be directed to the same financial institutions and DNFBPs as defined in the FATF standards, thereby eliminating the scope issue. It will cover the requirements of R 5-12 as well as 13-16 and 26. As for CDD it will create <i>inter alia</i> explicit obligations for financial institutions as well as for DNFBPs regarding the identification and verification of the ultimate beneficiary owner, the proper documents required for the identification and verification of legal persons, the ongoing monitoring of business relationships and the nature and purpose of the business relationship, the application of enhanced or simplified CDD in appropriate cases, and the filing of an unusual transaction report to the MOT in case of

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		<p>Certain categories of financial service providers are not covered by the scope of the SOIPS:</p> <ul style="list-style-type: none"> ○ Intermediaries operating on the stock exchange market of Aruba, which is neither regulated or supervised ○ Life insurance agents ○ Currency exchange transactions performed by other entities than credit institutions <p>Money and currency change performed by banks is covered only below the threshold of AWG 20 000</p> <p>There is no clear obligation to identify customers in situations of occasional transactions covered by SRVII</p> <p>There are no obligations in law or regulation to identify the client when the financial institutions have doubts about the veracity or adequacy of previously obtained identification data</p> <p>Financial institutions are not required to identify the client in situation where there is a suspicion of ML or TF</p> <p>Identification of legal persons is based on potentially inaccurate documents and financial institutions are not obliged to verify the identity of the directors of legal persons</p> <p>There are no provisions on the identification of customers that are foreign trusts or other similar legal arrangements</p> <p>There is no obligation to identify legal person in circumstances when a legal person is acting on behalf of another person</p> <p>Financial institutions are neither required to understand the ownership and control structure of the legal person/legal arrangement customer nor obliged to</p>	<p>deed if incorporation or the extract from the Chamber of Commerce, but it should ensure that up-to-date record of ownerships and control are verified;</p> <ul style="list-style-type: none"> • Aruba is recommended to revise the SOIPS to clearly require FIs to undertake CDD measures when there is a suspicion of ML/TF, regardless of any exemptions or thresholds; • When FIs have doubt about the veracity and adequacy of previously obtained information, they should be required to undertake CDD measures; • Aruba should urgently require, by law or regulations, FIs to conduct ongoing monitoring on business relationships and to understand the nature and purpose of the business relationship, to apply enhanced or simplified CDD in appropriate cases; • Aruba should ensure that the different AML/CFT directives issued by the CBA for credit institutions, insurance companies and money transfers companies are consistent with the SOIPS and the SORUT; • Aruba should allow FIs to complete the verification the identity of their customers and beneficial owner following the establishment of the business relationship when it is essential not to interrupt the business relationship and provided appropriate safeguards. • When FIs fail to identify their customer and beneficial owner, Aruba should clearly state that they should consider making a suspicious transaction report. 	<p>failure to identify their customer and beneficial owner. Consequently, the existing AML/CFT Directives issued by the CBA to the supervised financial institutions will have to be revised significantly. Currently a large portion of the CDD framework is contained in these frameworks. With the new comprehensive state ordinance the basic requirements of R5-12 (including but not limited to the asterisked ones) will be set on the level of primary legislation (the new state ordinance), the directives will contain complementary secondary obligations and guidance. The AML/CFT State Ordinance has been submitted to parliament for approval and was first scheduled for enactment on January 1st 2011. Due to delays in the legislative process, the most probable date for approval and enactment will be in May or June of this year.</p>

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		<p>determine who are the beneficial owners (<i>i.e.</i> natural persons that ultimately own or control the customer)</p> <p>There are no requirements to obtain information on the purpose and nature of the business relationship</p> <p>There are no requirements to conduct ongoing monitoring on the business relationship and transactions</p> <p>There are no requirements to apply enhanced due diligence for high risk business relationships</p> <p>There are no requirements for financial institutions to consider making suspicious transaction report when they fail to identify and verify the identity of customer</p> <p>There is no obligation to apply CDD requirements to existing customers on the basis of materiality and risk The effective implementation of the requirements that exist is undermined by factors such as:</p> <p>The definition of financial services subject to AML/CFT obligations is vague, thus making it unclear for financial institutions if they are subject to AML/CFT requirements</p> <p>The SOIPS and the SORUT are inconsistent in terms of the scope of the services they cover.</p> <p>The SOIPS does not allow financial institutions to complete the verification of the identity of their customers and beneficial owners during the course of establishing a business relationship, while in practice some financial institutions have recourse to this practice.</p> <p>The provisions of the AML/CFT directive for the banking and insurance sectors to a certain extent contradictory with the provisions of the SOIPS.</p> <p>Although financial institutions are not permitted to</p>		

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		apply reduced or simplified CDD where there are lower risks, the directives, which are not enforceable means, allow it, thus leading to a lack of clarity and some implementation problems.		

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6. Politically exposed persons	NC	There are no requirements to apply any additional CDD requirements vis-a-vis PEPs.	<ul style="list-style-type: none"> Aruba should introduce in law, regulation or other enforceable means all FATF requirements in relation to PEPs. 	<ul style="list-style-type: none"> Being part of the basis requirements of R5-12 this issue will be addressed as a primary obligation of financial institutions and DNFBPs in the upcoming AML/CFT State Ordinance discussed above.
7. Correspondent banking	NC	There are no AML/CFT requirements vis-a-vis cross-border correspondent banking.	<ul style="list-style-type: none"> Aruba should introduce in law, regulation or other enforceable means all FATF requirements in relation to cross-border correspondent banking relationships or other similar relationships. 	<ul style="list-style-type: none"> Same as above.
8. New technologies & non face-to-face business	NC	There are no requirements to safeguard against misuse of technological developments.	<ul style="list-style-type: none"> Aruba should introduce in law, regulation or other enforceable means all FATF requirements to prevent the misuse of technological development in ML/TF and to manage non face-to-face customers. 	<ul style="list-style-type: none"> Same as above.
9. Third parties and introducers	NC	There are no provisions to make reliance on third parties subject to the requirements of Recommendation 9, even though reliance on third parties is applied in practice by financial institutions, including banks, based on provisions set out in the CDD directive for banks issued by the CBA.	<ul style="list-style-type: none"> Aruba is strongly recommended to harmonise the provisions of its State Ordinance and related regulation with those of the CBA's directive to avoid any contradictions between these texts and clarify which requirements financial institutions are subject to. Aruba should consider authorising in particular insurance companies to rely on other financial institutions to carry out CDD for them subject to the required safeguards. The provisions of the CDD directive for banks, which is not OEM, should be reinforced to limit the possibility to rely on third parties to those which are regulated and supervised and located in countries that adequately implement the FATF Recommendations. 	<ul style="list-style-type: none"> Same as above.
10. Record keeping	LC	<p>The full scope of financial services is not covered by records keeping requirements.</p> <p>No specific requirements for financial institutions to record transactions in a manner to permit reconstruction of individual transactions, in particular</p>	<ul style="list-style-type: none"> Aruba should revise SOIPS in order to explicitly provide that financial institutions should keep records of customer identification data and transaction information in a manner to permit reconstruction of individual transactions 	<ul style="list-style-type: none"> Same as above.

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		for occasional customers. No requirement to make this information available on a timely basis to competent authorities.	and in order to clearly require financial institutions to make customer identification data and transaction information available to competent authorities on a timely basis	

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11. Unusual transactions	PC	<p>The full scope of financial services is not covered by requirements with respect to Recommendation 11.</p> <p>There is no specific requirement to monitor all complex, unusual large transactions unless they meet the indicators of unusual large transactions that must be reported to the FIU.</p> <p>There is no explicit requirement to examine the background and purpose of these unusual transactions and to set forth the findings in writing.</p> <p>There is no requirement to keep a record of financial institutions' findings in relation to complex, unusual large or unusual patterns of transactions.</p>	<ul style="list-style-type: none"> Aruba should revise its system so that financial institutions pay attention to all complex, unusual large transactions, examine their background and purpose and decide as to whether such transactions are suspicious and are to be reported to the MOT. Aruba should ensure that the findings of these researches are recorded and made available on request to the MOT. 	<ul style="list-style-type: none"> Same as above.
12. DNFBP–R.5, 6, 8-11	NC	<p><u>Casinos:</u></p> <ul style="list-style-type: none"> The threshold for the identification requirement is too high (AWG 20 000 or USD 11 000). Internet casinos are not prohibited but they are not subject to AML/CFT obligations. Cruise ship based casinos are not covered by CDD requirements. <p><u>Other DNFBPs:</u></p> <p>TCSPs – the definition of “trust company” is not fully in line with FATF requirements.</p> <p>AML/CFT requirements as set out in the SOIPS and SORUT do not apply to them, and the identification requirements in the new legislation are inadequate.</p> <p>Real estate agents are not required to perform CDD in relation to both the purchasers and the vendors of immobile properties.</p> <p>Deficiencies identified in Recommendation 5 also apply to DNFBPs.</p>	<ul style="list-style-type: none"> Aruba should clarify the scope of DNFBPs subject to the SOIPS, in particular each DNFBPs' activities falling into the scope of the State Ordinance and submit TCSPs to CDD requirements; Aruba should consider reducing the level of secrecy which legal professionals are submitted to in order to ensure that they are adequately subject to CDD requirements; Aruba is strongly recommended to refine the CDD requirements, particularly regarding Rec. 5, 6, 8 to 11 and to strengthen the obligations relating to the casinos, including to the internet casinos; Aruba should increase the awareness of the DNFBPs of their new AML/CFT obligations. 	<ul style="list-style-type: none"> The AML/CFT State Ordinance will provide new and comprehensive CDD rules on a primary level for DNFBPs as well. In that the FATF standards when defining the DNFBP's activities subject to the new CDD requirements will be followed. TCSPs will in this respect be subject to the new CDD requirements. Other issues to be addressed in accordance with FATF standards in the AML/CFT State Ordinance is the appropriate level of secrecy for legal professionals. As for casinos it should be noted that these are not allowed in Aruba. As for awareness of the DNFBPs with respect to their new AML/CFT obligations, the MOT has held various information sessions in April, August and September 2010 in cooperation with a.o. the Dutch Bureau for Financial Investigation. The Central Bank of Aruba will hold similar sessions in the course of 2011 with a view on the transfer of AML/CFT supervision as per the AML/CFT State Ordinance.

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		<p>Obligations in Recommendations 6, 8, 9 and 11 are not applied to DNFBPs.</p> <p>Deficiencies identified for Recommendation 10 also apply to DNFBPs.</p> <p>Lawyers and notaries are not subject to CDD requirements for their activities relating to the legal status of a client, his legal representation or defence, the giving of advice before, during and after a legal case or the giving of advice on the start or avoidance of a legal case.</p> <p>Professional secrecy rules should not be applied to create CDD and record keeping exemptions.</p> <p><u>Effectiveness:</u> Low level of effectiveness of the new provisions of the revised SOIPS as they have not been subject to proper consultation by the industry.</p>		

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13. Suspicious transaction reporting	PC	<p>The scope of the ML predicate offences for STR reporting does not satisfy all the FATF standards.</p> <p>The scope of SORUT is unclear, but the whole range of financial activities is not covered.</p> <p>The scope of the SORUT and the SOIPS are not harmonised, which would in some cases undermine the quality of the information reported.</p> <p>Lack of indicators to identify suspicious transactions for a number of financial services, which de facto exclude them from the reporting regime.</p> <p>Effectiveness: In general, there are some concerns about the effectiveness of the reporting system, in particular regarding TF related transactions, and also due to inconsistencies regarding the nature and the number of reports made by reporting entities.</p>	<ul style="list-style-type: none"> Aruba should revise the SORUT to ensure that all financial institutions that conduct one of the financial activities designated by the FATF Recommendations are subject to reporting obligations; Aruba should also ensure that the scope of the SOIPS is consistent with the scope of the SORUT; Aruba should review the scope of predicate offences for ML that impacts the scope of the reporting obligations. Aruba should strengthen the supervision of the compliance of the reporting entities with the reporting system; 	<ul style="list-style-type: none"> The AML/CFT State Ordinance will provide for a harmonized scope of financial and designated non-financial services subject to the identification/verification and unusual transactions reporting requirements. The new Penal Code currently at Parliament pending approval with its broader range of predicate offences for ML will extend the scope of the reporting obligations. In March 2010 Aruba modified the SORUT in order to allow for the transfer of the compliance supervision of the financial institutions for reasons of effectiveness from the MOT to the CBA. This transfer meanwhile took place on July 1st 2011.
14. Protection & no tipping-off	PC	<p>Protection of financial institutions from penal and civil liability for breach of rules of confidentiality is not sufficiently assured since Article 286 of CrCA is not included in the same harbour provision.</p> <p>The safe harbour provision does not apply when it is made plausible that the reporting entity should not have proceeded to making the report in reason – the threshold is higher than good faith.</p> <p>The civil safe harbour provision does not apply to employees of the reporting entity</p> <p>Public access to information provisions in SORUT can undermine the effectiveness of the prohibition on tipping-off.</p>	<ul style="list-style-type: none"> Aruba should extend the safe harbour provision to predicate offences for ML and terrorism related offences. Aruba should also revise its civil safe harbour provision to ensure it covers directors and employees of financial institutions. 	<ul style="list-style-type: none"> This issue will be addressed in the new AML/CFT State Ordinance currently at parliament for approval.
15. Internal controls, compliance & audit	NC	<p>The scope issues identified for Rec. 5 also apply.</p> <p>There are no provisions in law, regulation or other enforceable means that require financial institutions to establish and maintain internal procedures, policies and controls to prevent ML and TF;</p>	<ul style="list-style-type: none"> Aruba should explicitly require, through law, regulation or other enforceable means, all financial institutions to establish and maintain an AML/CFT internal control system, to designate a compliance officer at management level, with further guidance on 	<ul style="list-style-type: none"> Same as above.

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
Aruba**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Aruba
		<p>There are no provisions in law, regulation or other enforceable means that require financial institutions to develop appropriate compliance management, or at least to designate a compliance officer;</p> <p>There are no provision in law, regulation or other enforceable means that require financial institutions to maintain an adequately resourced and independent audit function;</p> <p>There are no provisions in law, regulation or other enforceable means that require financial institutions to establish an ongoing employee training programme and to put in place screening procedures to ensure high standards when hiring employees.</p>	<p>the role and responsibilities of the compliance officer, as well as to establish audit function in charge of ensuring the compliance with the procedures, policies and controls;</p> <ul style="list-style-type: none"> • Compliance officer should have timely access to CDD data and to all relevant information and Aruba should require financial institutions to develop AML/CFT staff training programmes as well as screening procedures to ensure high standard when hiring employees. 	

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FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Aruba
16. DNFBP–R.13-15 & 21	NC	<p>No AML/CFT measures apply to TCSPs.</p> <p>The scope of the predicate offences for STR reporting does not satisfy all the FATF standards.</p> <p>The effectiveness of the unusual transactions reporting regime is as yet untested, except for casinos where it is low.</p> <p>DNFBPs are not obliged to establish and maintain internal procedures, policies and controls to prevent ML and TF, to maintain an adequately resourced and independent audit function to test compliance, to establish ongoing employee training on ML and TF techniques and risks, nor to put in place screening procedures to ensure high standards when hiring employees.</p> <p>DNFBPs are not required to pay special attention to transactions with countries which do not or do not adequately implement the FATF Recommendations.</p> <p>The limitations in Recommendation 14 as applied to financial institutions also apply to DNFBPs.</p>	<ul style="list-style-type: none"> The reporting obligations of DNFBPs present the same deficiencies than for those of financial institutions and therefore the same recommendations apply; The Aruba authorities should give priority to extend the scope of the DNFBPs' obligations to Recommendations 15 and 21; The MOT should take urgent steps to raise the awareness of the relevant provisions of the State Ordinances as they apply to DNFBPs; Aruba should consider the provisions applicable for DNFBPs to ensure that they are relevant for these professionals and increase their level of engagement in AML/CFT 	<ul style="list-style-type: none"> Aruba will address the deficiencies of the reporting obligation of DNFBPs and the extension of the scope of this reporting obligation to Recommendations 15 and 21 in the AML/CFT State Ordinance which has been submitted to parliament. See above for the information sessions held by the MOT and the CBA for DNFBPs. The introduction of the AML/CFT State Ordinance will be accompanied by a revision of the ministerial indicator regulations for the reporting of UTRs. Consequently the provisions applicable for DNFBPs will be considered to ensure that they are relevant for these professionals. To that effect the MOT is analyzing the effectiveness of the current indicators.
17. Sanctions	NC	<p>The scope issues identified in the preamble of section 3 of this report also apply.</p> <p>The range of sanctions of the CBA and the MOT, although expanded under the new law, are not broad enough and are not effective, proportionate and dissuasive.</p> <p>There are no sanctions available against directors and senior managers of financial institutions.</p> <p>The level of fines, which may be issued, is low, in particular for credit institutions and insurance companies.</p> <p>There are no sanctions available for securities firms as</p>	<ul style="list-style-type: none"> Aruba should revise the range of levels of sanctions available to ensure that they are effective, proportionate and dissuasive and also applicable to directors and senior management of financial institutions. 	<ul style="list-style-type: none"> Aruba will address these issues in the new AML/CFT State Ordinance by increasing the maximum administrative and criminal fines to Afl. 1 million (appr. USD 550.000) per infraction and by extending the scope of sanctions to directors and senior management officials of FIs and DNFBPs.

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		<p>they do not fall under the scope of the AML/CFT obligations.</p> <p>No procedures in place as yet to impose sanctions.</p> <p>Effectiveness of sanctions regime still to be tested.</p>		

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18. Shell banks	NC	<p>The facts show that there has been no effective implementation of the Policy rule.</p> <p>There is no explicit requirement to withdraw a licence granted to a credit institution that would later become a shell-bank.</p> <p>There is no prohibition in law, regulation or other enforceable means on financial institutions from entering into or continuing correspondent banking relationships with shell banks</p> <p>There is no obligation to require financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.</p> <p>Effectiveness: Despite there being 2 licensed banks with mind and management and records outside of Aruba, no real supervisory action has been taken for more than 10 years.</p>	<ul style="list-style-type: none"> Aruba is urged to clarify the implementation of its Policy rule on the licensing of credit institutions and to expand its scope to the two off-shore banks already licensed, by requiring them to maintain their records in Aruba. Aruba should also take steps to effectively supervise, in particular for AML/CFT purposes, these two off-shore banks based in Venezuela; Aruba is called to modify its SOSCS to allow the CBA to withdraw a license granted to a credit institution that would become a shell bank; Aruba should explicitly prohibit by law, regulation or other enforceable means financial institutions to establish or maintain correspondent banking relationships with a shell bank and with a financial institutions in a foreign country that permits its accounts to be used by shell banks. 	<ul style="list-style-type: none"> As a consequence of the AML/CFT State Ordinance, the AML/CFT Directives for financial institutions and the Policy rule on the licensing of credit institutions will be modified significantly. Proposals are being considered at the CBA. It should be noted that currently there is only one off-shore bank active in Venezuela. The CBA is discussing with representatives of this bank the transferal of its mind and management to Aruba. Parallel with the introduction of the AML/CFT State Ordinance the licensing provisions of the SOSCS will be modified to <i>inter alia</i> allow for the withdrawal of a license granted to a credit institution that would become a shell bank. This issue is addressed in the AML/CFT State Ordinance.
19. Other forms of reporting	C	The criteria are fully met.		
20. Other NFBP & secure transaction techniques	LC	Although Aruba has been taking steps to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering, its economy is still cash based and authorities encourage customers to use both the Aruban Florin and the US dollar, which potentially increases ML/TF risks.	<ul style="list-style-type: none"> Aruba should extend the measures it is taking to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML/TF. 	<ul style="list-style-type: none"> The CBA is considering this recommendation.
21. Special attention for higher risk countries	NC	<p>The scope issues identified for Rec.5 also apply to R. 21.</p> <p>There is no requirement in law, regulation or other enforceable means for financial institutions to pay special attention to business relationship and transactions with jurisdictions, which either do not or insufficiently apply the FATF Recommendations.</p>	<ul style="list-style-type: none"> Aruba should urgently introduce in law, regulation or other enforceable means provisions to require financial institutions to pay special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations. If these transactions have no apparent or visible lawful purpose, 	<ul style="list-style-type: none"> These issues are addressed in the AML/CFT State Ordinance. In doing so Aruba will follow the standards set out in Recommendation 21 and the Methodology.

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		<p>In case where transactions with such jurisdictions have no apparent or visible lawful purpose, financial institutions are not required to examine them and set forth their findings in writing.</p> <p>Financial institutions are not required to implement any specific counter-measures to mitigate the increased risk of transactions with such jurisdictions.</p> <p>Aruba has no mechanism to implement counter-measures against countries that continue not to apply or insufficiently apply the FATF Recommendations.</p>	<p>Aruba should ensure that they are examined and that the findings are kept written and made available to competent authorities;</p> <ul style="list-style-type: none"> • Aruba is also urged to develop a set of counter-measures against countries that continue not to apply or insufficiently apply the FATF Recommendations. 	

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22. Foreign branches & subsidiaries	NA	The Recommendation is not applicable since Aruban financial institutions have no branches or subsidiaries abroad.		
23. Regulation, supervision and monitoring	NC	<p>The scope issues identified in section 3.2 also apply.</p> <p>Securities and investment sector is not licenced, regulated nor supervised.</p> <p>Absence of licensing or registration requirements for insurance intermediaries.</p> <p>Absence of licensing or registration requirements for persons that carry on currency exchange activities.</p> <p>There are no provisions in place to prevent criminals or their associates from holding or being beneficial owners of a significant or controlling interest or holding a management function in a credit institution or an insurance company.</p> <p>The fit and proper tests are performed on the basis of information provided by the licence applicants, but the CBA does not sufficiently check this information.</p> <p>Lack of ongoing checks of the fitness and properness of credit institutions, insurance companies and money transfer companies.</p> <p>Lack of effectiveness with regard to the supervision of the MOT.</p> <p><u>Effectiveness:</u></p> <p>The division of the scope of the supervision powers of the CBA and the MOT is not appropriate and undermines the overall effectiveness of the supervision of financial institutions.</p> <p>The communication between the 2 supervisory bodies that supervise the same financial institutions for AML/CFT purpose needs to be strengthened.</p>	<ul style="list-style-type: none"> Aruba should review the supervisory competences of the CBA and the MOT in order to ensure that all financial institutions activities designated by the FATF Glossary are properly regulated and supervised. In particular, Aruba is strongly urged to regulate and supervise its securities sector, including its electronic stock exchange market established in 2006 and all the professionals operating in this field, as well as the offshore banks and the life insurance companies and intermediaries. Aruba should review the AML/CFT supervisory powers of the CBA in order to strengthen the quality of the fit and proper tests. Aruba should have procedures in place to apply ongoing fit and proper test to managing directors and to be able to conduct independent check on the quality of the information provided by the licence applicants. The CBA should have procedures in place to prevent criminals and their associates from becoming beneficial owners of credit institutions and insurance companies; 	<ul style="list-style-type: none"> Pursuant to the AML/CFT State Ordinance all financial institutions activities designated by the FATF Glossary will be subject to AML/CFT supervision. Furthermore, the CBA is preparing a proposal for a state ordinance for the regulation and the supervision of investment business and all forms of stock exchanges and of the professionals operating in this field. The enactment date is scheduled for July 1st 2011. Parallel with the introduction of AML/CFT State Ordinance, the licensing provisions of the SOSCS, SOSIB, SOSMTC and SOSTCPS will be modified in order to strengthen the quality of the fit and proper tests and to provide for procedures to apply ongoing fit and proper tests to managing directors, as well as independent check on the quality of the information provided by the license applicants. These modifications will also include procedures in place to prevent criminals and their associates from becoming beneficial owners of credit institutions and insurance companies. In the same manner the scope of the SOSCS, SOSIB, SOSMTC and SOSTCPS will be expanded to include certain financial businesses, insurance brokers, currency exchange businesses and TCPS operating on the local market. Enactment has been set for the third quarter of this year. As for training of staff of the CBA and the MOT, various courses and training sessions have been held, a.o. by the ASBA/FED and the external consultant of the CBA on AML/CFT matters, while training seminars have been held in November 2010 and March 2011.

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		The resources and training of staff of the CBA and the MOT are not adequate.		

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24. DNFBP - regulation, supervision and monitoring	NC	<p>Aruba has not taken any measures vis-à-vis Internet casinos.</p> <p>Trust and company service providers are not regulated or supervised for AML/CFT purpose.</p> <p>Although most DNFBPs are now included within the scope of the SOIPS and the SORUT, no effective supervision, except for casinos, is currently taking place.</p> <p>The range of sanctions available against casinos and other DNFBPs is not effective, proportionate and dissuasive.</p> <p>There are no effective measures in place to prevent criminals or their associates taking control of a casino.</p> <p>Lawyers, civil notaries, tax advisors and accountants can refuse to cooperate with the MOT as a supervisory body, if there is a legal or otherwise established secrecy obligation, even if it concerns a service they perform that falls within the scope of the identification and reporting obligations.</p> <p>The MOT lacks resources to effectively monitor DNFBPs subject to AML/CFT requirements.</p>	<ul style="list-style-type: none"> The MOT should urgently start to supervise DNFBPs subject to SOIPS and SORUT; Aruba is strongly recommended to significantly develop the MOT in terms of staffing numbers, skills, support services and budget, as well as the legal framework which underpins its activity; 	<ul style="list-style-type: none"> TCSPs are already been supervised pursuant to the State Ordinance on the Supervision of Trust and Company Services Providers (SOSTCP) which came into force on February 5th 2009. The provisions of the AML/CFT State Ordinance will also apply to TCSPs. Pursuant to the proposed amendments discussed above, the scope of the SOSTCP will be expanded to TCSPs working for the local market. The proposal for the new state ordinance for the supervision of casinos, which is already at parliament, contains measures to prevent criminals or their associates taking control of a casinos. No enactment date has yet been set. With the introduction of the new AML/CFT State Ordinance the AML/CFT supervision will rest with the CBA alone, allowing the MOT to concentrate more on its core FIU activities.
25. Guidelines & Feedback	PC	<p>MOT (as a FIU):</p> <p>The FIU does not issue feedback on ML/TF methods and trends nor sanitised cases.</p> <ul style="list-style-type: none"> Of the range of DNFBPs, only casinos have been given any feedback or guidance; The guidance issued to casinos is limited to quarterly newsletters, compliance officers sessions and <i>liaison</i>. <p>MOT (as a supervisor)</p>	<ul style="list-style-type: none"> The MOT or other competent authorities, such as the DAC for casinos, should provide guidance and feedback to DNFBPs subject to AML/CFT requirements. Competent authorities should provide more comprehensive guidance and more feedback to financial institutions to improve the effectiveness of the reporting regime by educating them; 	<ul style="list-style-type: none"> The MOT and CBA have held various information sessions for financial institutions and DNFBPs in June, September and November 2010.

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		<p>The MOT has not issued any guidelines to assist FIs or DNFBPs to comply with their respective AML/CFT requirements.</p> <p>CBA</p> <p>The AML/CFT directives for banks and insurance companies, although very useful, are limited to CDD requirements and do not establish links with reporting obligations.</p> <p>The scope of the Operational and AML/CFT guidelines for money transfer companies is too narrow and does not really address AML/CFT provisions.</p> <p>The scope of this guidance does not clarify the scope of financial activities subject to AML/CFT requirements.</p>	<ul style="list-style-type: none"> The MOT should improve the awareness of financial institutions regarding their reporting obligations and should work to enhance their capability to identify TF related transactions; 	

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Institutional and other measures				
26. The FIU	PC	<p>The composition of the FIU Advisory Committee (presence of private sector members) gives the appearance of compromising the autonomy and independency of the MOT in terms of determination of its budget and staff policy.</p> <p>Since its creation in 1999, the MOT Aruba has published only one report covering typologies.</p> <p>The reporting entities are not required to give all the identification data of a legal person involved in an unusual transaction report, except when the MOT asks for further information.</p> <p>The MOT faces resource constraints that impact its effectiveness, as shown by the recent decrease of reports made to the Public Prosecutor upon its own initiative.</p> <p>The staff of the MOT are not sufficiently trained for receiving and analysing TF reports.</p> <p>The MOT deploys the larger part of its investigative capacity on cash and wire transfer transactions, and less on more complex ML/TF schemes and methods which impacts its overall effectiveness.</p>	<ul style="list-style-type: none"> Aruba should consider revisiting the composition of the Advisory Committee of the MOT in order to ensure the total independence of the FIU concerning its budget and its staff recruitment policy. The MOT should be provided with additional staff resources and is strongly recommended to take appropriate step to fill the actual vacancies with professionals having appropriate skills and to increase the total staff of the MOT. The MOT should consider developing an on-line system for the reception for all the unusual transaction reports STRs and for all the sectors which are required to report to the MOT. The MOT should consider developing a mechanism which would allow it to evaluate the effectiveness of the AML/ CFT regime, notably the added value of intelligence reports to investigations and prosecutions. The MOT should consider establishing a permanent feedback mechanism which would allow it to evaluate the needs of the police but also which would force the police to justify their follow-up actions vis- a-vis information disclosed. 	<ul style="list-style-type: none"> The issue of the composition of the Advisory Committee will be addressed in the AML/CFT State Ordinance upcoming state ordinance that will replace the SOIPS and SORUT. It is proposed that the Advisory Committee be retained, though with no say over the MOT's budget and staff recruitment policy; The MOT has hired one senior policy advisor and one analyst. Additional staff members are expected to be hired in 2011. In the course of 2009 the MOT began with the introduction of a new IT system that will enable online reporting by financial institutions to the MOT. The project is expected to be finalized in the course of 2011.
27. Law enforcement authorities	PC	<p>No authority to investigate TF (as TF is not an offence), unless the activity is otherwise criminalised.</p> <p>Low level of effectiveness in investigating ML, caused by lack of sufficient resources in both police services and prosecution, lack of sufficient training, little use of</p>	<ul style="list-style-type: none"> Aruba is strongly recommended to remedy the lack of resources of law enforcement and prosecution authorities which they need to properly face to their workload. Aruba should develop training sessions on 	<ul style="list-style-type: none"> The Public Prosecutor's Office is now up to full strength as far as prosecutors are concerned, while specialists are being hired for the Police's Financial Investigations Bureau. The Police, Public Prosecutors and MOT

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		disseminated reports from the MOT.	<p>AML/CFT investigative techniques for law enforcement officers involved in ML/TF investigations.</p> <ul style="list-style-type: none"> Aruba should consider exploring the possibility to establish new mechanisms and techniques in order to initiate investigations from the proactive reports made upon the financial analysis carried on by the MOT. 	attended the yearly RST training session on investigative techniques regarding ML and TF held last November in Curacao.

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28. Powers of competent authorities	LC	Law enforcement competent authorities have no power with respect to TF as it is not an offence, unless the activity is otherwise criminalised.	<ul style="list-style-type: none"> Aruba should ensure that law enforcement authorities have power to compel productions of and search persons or premises for and seize and obtain transaction records, identification data, files and business correspondence and other records held or maintained by financial institutions and DNFBPs and to take witness' statements when they conduct TF investigations. 	Law enforcement powers are addressed in the Penal Procedures Code. As mentioned above, a committee of experts will formulate proposals for revision of this code, taking into account also the recommendations made in the FATF MER.
29. Supervisors	NC	<p>Supervisors have no power of enforcement and sanction against directors and senior management of financial institutions.</p> <p>The level of requirements of the off-site inspections carried out by the MOT is very low.</p> <p>The scope of the on-site inspections carried out by the CBA for banks and money transfer companies needs to be strengthened, across a wider range of regulated institutions and in more details.</p> <p>The State Decree on the standardisation of regulatory powers could undermine the authorisation of supervisors to obtain all the information needed.</p> <p>Effectiveness:</p> <p>The CBA has not exercised its power to supervise off-shore banks.</p> <p>The MOT has not exercised its powers to supervise life insurance companies and intermediaries and off-shore banks.</p>	<ul style="list-style-type: none"> Considering the important resource constraints of the MOT that prevent it from effectively performing its supervisory functions, Aruba should consider designated the CBA as the only AML/CFT supervisor for all financial institutions; 	As of July 1 st 2010 the CBA is the only authority in charge of AML/CFT supervision of financial institutions.
30. Resources, integrity and training	NC	<p><u>In relation to the FIU:</u></p> <p>The composition of the MOT Advisory Committee (presence of private sector members) gives the appearance of compromising the autonomy and independency of the MOT in terms of determination of its budget and staff policy.</p>	<p><i>In relation to the FIU:</i></p> <ul style="list-style-type: none"> Aruba is strongly recommended to take appropriate step to fill the current vacancies of the MOT with professionals having appropriate skills and to increase the total staff of the MOT; Aruba should revisit the composition of the MOT's Advisory Committee in order to 	<ul style="list-style-type: none"> The MOT has hired 2 additional staff members while more will be hired in the course of this year. The Advisory Committee will continue in the AML/CFT State Ordinance without it having a say in the MOT's budget and staff recruitment policy; The Public Prosecutor's Office is now up to

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		<p>The MOT faces resources constraints that impact its effectiveness.</p> <p>The MOT has not conducted any analysis on terrorist financing and its staff have not been trained in analysing such reports.</p> <p><u>In relation to the law enforcement authorities and prosecution authorities:</u></p> <p>Low level of effectiveness in investigating ML, caused by lack of resources in both police services and prosecution.</p> <p>Budgetary constraints affecting all government services have limited the possibilities of the relevant personnel of the Public Prosecutor's Office and the Police to participate in AML/CFT training courses and programs.</p> <p><u>In relation to the supervisory authorities:</u></p> <p>The resources and training of staff of the CBA is not adequate.</p> <p>The MOT's supervisory unit is not sufficiently staffed and resourced, particularly since February 2009 as the same staff are also responsible for the supervision of all the DNFBPs and all other non-financial businesses and professions.</p> <p>The MOT does not provide training to its staff in relation to supervisory functions and methods.</p>	<p>ensure that representatives from the private sector are not consulted on the yearly budget of the MOT or on the MOT's staff recruitment policy and process;</p> <p><i>In relation to the law enforcement and prosecutions authorities:</i></p> <ul style="list-style-type: none"> Aruba is strongly recommended to remedy the resource constraints faced by the law enforcement and prosecution authorities to allow them to properly face their workload; Aruba should develop, as foreseen, training sessions on AML/CFT investigative techniques for law enforcement officers involved in ML/TF investigations; <p><i>In relation to the supervisory authorities:</i></p> <ul style="list-style-type: none"> Aruba should enhance the resources and the trainings of the staff in charge of AML/CFT supervision in both the CBA and the MOT. <p><i>In relation to the review of the effectiveness of the AML/CFT regime:</i></p> <ul style="list-style-type: none"> Aruba should move to efficiently use its existing mechanisms to develop forward looking strategy that will, at least in the medium term, address the vulnerabilities that exist and the risks it faces. 	<p>full strength as far as the number of prosecutors is concerned.</p> <ul style="list-style-type: none"> Two training sessions for law enforcement authorities and the MOT have been held, amongst others with sister organizations from the Netherlands Antilles and the Netherlands; As of January 1st 2011 the CBA's Integrity Supervision Department has become fully operational as an independent unit with 6 staff members, including a Head and a Deputy Head. In 2011 additional staff will be hired in view of the transfer of the AML/CFT-oversight of DNFBPs to the CBA. Furthermore the Supervision Departments of the CBA have attended various seminars and courses in September, November 2010 and March 2011 (FED/ASBA)

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31. National cooperation	PC	<p>No proactive and coordinated AML/CFT policy making at a jurisdictional level.</p> <p>Lack of operational level coordination between MOT and the CBA, and also with other agencies.</p> <p>Lack of effective implementation in the mechanisms used for AML/CFT coordination and cooperation in Aruba.</p>	<ul style="list-style-type: none"> Aruba should move to efficiently use its existing mechanisms to develop forward looking strategy that will, at least in the medium term, address the vulnerabilities that exist and the risks it faces; The FATF Committee could be the body that drives the development of such a strategy provided that the Committee is able to more proactively to address all relevant issues in a holistic manner. Aruba should therefore examine the various coordination and cooperation mechanisms that exist, and determine how enhancements might be made in areas such as with respect to AML/CFT supervision of FIs and DNFBPs. 	<ul style="list-style-type: none"> The AML/CFT Strategy Group Aruba has met 5 times now. As of this year the AML/CFT Strategy Group will be assisted by a technical committee consisting of the secretariat of the AML/CFT Strategy Group, the secretariat of the Council of Ministers and a senior advisor to the Minister of Finance.
32. Statistics	NC	<p><u>Review of the effectiveness of the AML/CFT system:</u></p> <p>There is no information to suggest that Aruba has conducted comprehensive reviews which were intended to result in an enhancement of the AML/CFT system.</p> <p><u>Collection of statistics:</u></p> <p>In relation to mutual legal assistance: no statistics on requests, their nature and on whether they were granted or refused and the time to respond.</p> <p>In relation to extradition: no statistics available.</p> <p>In relation to administrative co-operation: no statistics available for the law enforcement and the CBA. The statistics made available by the FIU do not detail the number of requests granted or refused, nor the time to respond.</p>	<ul style="list-style-type: none"> Aruba should introduce a system to ensure that proper data and statistics regarding ML/TF investigations, prosecutions and convictions, property frozen, seized or confiscated, MLA requests (made and received); extradition. 	<ul style="list-style-type: none"> The Public Prosecutor's Office will hire a person specifically for this task in the course of June of this year.
33. Legal persons–beneficial owners	NC	<p>There are inadequate requirements to collect or make available information on beneficial ownership and ultimate control of legal persons;</p>	<ul style="list-style-type: none"> Taking into account the lack of transparency concerning the beneficial ownership and control of legal persons, in particular of A.V.V, Aruba is suggested that 	<ul style="list-style-type: none"> In general, work continued on the introduction of the new Book 2 of the Civil Code of Aruba which will regulate all legal persons in Aruba, taking also into account

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		<p>The system in place does not provide access to adequate, accurate and current information on beneficial ownership and ultimate control in a timely manner;</p> <p>The measures to ensure transparency as to the shareholders of companies that have issued bearer shares are inadequate.</p>	<p>it would be best to completely abolish or phase out the A.V.V companies;</p> <ul style="list-style-type: none"> As regards N.V companies, basic measures such as maintaining an up to date register of shareholders, are urgently required and bearer shares should be abolished; The system for corporate vehicle should be carefully reviewed, while the enforcement and sanctions system for failure to file an annual return or to otherwise not comply with the law should be considerably enhanced; Aruba should also work to create a computerised and modern registration system for all legal persons, which provides appropriate transparency; There should be easier gateways for competent authorities to access in a timely fashion to adequate, accurate and current information on beneficial ownership and control records. 	<p>the recommendations of the FATF MER. The enactment date is now set tentatively at January 1st 2012. In anticipation of this general revision, a proposal for intermediate changes of the Code of Commerce was sent to the Advisory Council for review. The proposal entails the banning of bearer shares, shareholders and the mandatory registration of shareholders and filing of annual statements with the Chamber of Commerce. The original enactment date was set on January 1st 2011, but has now been rescheduled for the first half of this year.</p>

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34. Legal arrangements – beneficial owners	NA	Trusts are not recognised under Aruban law. There are no other legal arrangements similar to trusts that exist in Aruba.		
International Cooperation				
35. Conventions	PC	<p>Lack of implementation of the Terrorist Financing Convention in relation to terrorist financing.</p> <p>No implementation of UNSCR 1267 and 1373.</p> <p>Several failings regarding implementation of the Vienna and Palermo Conventions.</p>		<ul style="list-style-type: none"> Aruba has implemented the Terrorist Financing Convention in relation to terrorist financing by introducing a separate and independent TF offence in its Penal Code as per March 6 2010 (See SR II). Aruba has implemented UNSCR 1267 and 1373 through introduction on June 25, 2010 of the State Decree Combat Terrorism and Terrorist Financing (see SR III). The failings regarding implementation of the Vienna and Palermo Conventions will be addressed in the new Penal Code discussed above.
36. Mutual legal assistance (MLA)	PC	<p>Aruba is party to only 5 bilateral MLA agreements, only one with a country in the region. This limits Aruba's capacity to effectively and efficiently provide the widest range of MLA.</p> <p>As dual criminality is required for mutual legal assistance, the lack of a TF offence impacts on the extent and effectiveness of mutual legal assistance provided by Aruba in TF matters.</p> <p>The limitations regarding the predicate offences for money laundering also limit the ability to assist in relation to ML based on such predicates.</p> <p>The requirement that non-treaty based requests must be "reasonable" (undefined), combined with a discretion, which is unclear, as to when such requests will be actioned, is an unreasonable and disproportionate condition on providing MLA.</p> <p>The deficiencies that exist in relation to assistance for seizure and confiscation of illegal proceeds (see R.38)</p>	<ul style="list-style-type: none"> Aruba (as part of the Kingdom of the Netherlands) should work to expand the range of mutual legal assistance agreement it has, particularly with other countries in the region, but also with countries which it has more regularly had to cooperate in the past. A more extensive network of agreement will allow it to more effectively provide a broader range of cooperation. Broader MLA cooperation will also be possible when the deficiencies regarding the predicate offences for ML and the lack of a separate and independent TF offence are rectified; As regards international cooperation and MLA in general, Aruba should give serious consideration to enacting a comprehensive and up-to-date State Ordinance dealing with MLA; 	<ul style="list-style-type: none"> MLA issues will be addressed with the revision of the Penal Procedures Code of Aruba for which work has meanwhile commenced. Aruba is participating actively in the implementation of the Treat of San Jose regarding the jurisdiction on the open seas.

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FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Aruba
		<p>also impact on R.36.</p> <p>The lack of data on the MLA requests means that it is has not been demonstrated that Aruba can handle MLA requests in a timely and effective manner.</p>	<ul style="list-style-type: none"> • Considerations should be given to extending the actions that can be taken on the basis of reciprocity and the conditions on which requests of that nature can be dealt with; • A system to ensure that proper data and statistics regarding MLA requests (made and received) should be introduced; 	

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FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Aruba
37. Dual criminality	C	Criteria are fully met.		
38. MLA on confiscation and freezing	PC	<p>As dual criminality is required for mutual legal assistance, the lack of a TF offence impacts on the extent and effectiveness of mutual legal assistance provided by Aruba in TF matters.</p> <p>The limitations regarding the predicate offences for money laundering also limit the ability to assist in relation to ML based on such predicates.</p> <p>The seizure assistance that can be provided does not extend to all proceeds, nor to instrumentalities or intended instrumentalities, nor is it clear that it applies in relation to property of corresponding value.</p> <p>There is a lack of clarity in the provisions that provide the Aruban authorities or judiciary with the ability to register, recognise or enforce a foreign confiscation order.</p> <p>Assistance cannot be provided concerning property held in the name of third parties.</p> <p>Aruba should consider arrangements for co-ordinating seizure and confiscation actions with other countries.</p>	<ul style="list-style-type: none"> Aruba should take actions to rectify its inability to take action against property held in the name of third parties; Aruba should rectify its deficiencies regarding seizure assistance; and it should also consider what arrangements it should have regarding coordinated action in seizure and confiscation cases. 	Same as above.
39. Extradition	LC	<p>Aruba is party to only 4 bilateral extradition agreements, only one with a country in the region. This limits Aruba's capacity to effectively and efficiently provide extradition to likely partner jurisdictions.</p> <p>The limitations regarding the predicate offences for money laundering also limit the ability to extradite in relation to ML based on such predicates.</p>	<ul style="list-style-type: none"> Aruba should work to broaden the range of agreements that it has in place for extradition; By rectifying predicate offences for ML, Aruba should have a greater capacity to assist foreign countries so that Aruba could extradite individuals for the full range of ML offences; 	<ul style="list-style-type: none"> No action has yet planned for broadening of the extradition agreements; The new Penal Code will expand the range of predicate offences enabling Aruba to extradite individuals for the full range of ML offences;
40. Other forms of co-operation	PC	<p><u>Law enforcement authorities:</u></p> <p>There are no statistics available to suggest that exchange of information with foreign law enforcement authorities is effective.</p>	<ul style="list-style-type: none"> The powers of the CBA and the MOT to exchange information with foreign counterparts are limited by a number of factors such as the scope issue, the deficiencies identified regarding the preventive measures, the architecture of the 	The recommended actions mentioned here will be carried out in the AML/CFT State Ordinance.

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FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Aruba
		<p><u>CBA:</u> the capacities of the CBA to co-operate and exchange information with foreign counterparts are limited by:</p> <ul style="list-style-type: none"> • the scope issue; • the fact that the CBA only supervises the compliance with the CDD requirements; • the deficiencies identified in relation to the preventive measures; • the broadly defined safeguards and controls; <p>Regarding the banking and insurance sectors, the CBA can only exchange information that is already in its possession, but it cannot conduct inquiries on behalf of foreign counterparts.</p> <p>Regarding the TCSPs, since they are not subject to AML/CFT requirements, the CBA cannot exchange information related to ML, TF or predicate offences.</p> <p><u>The MOT as a supervisory body:</u></p> <p>The MOT as a supervisory body, cannot co-operate and exchange information with its foreign counterparts.</p> <p><u>The MOT as a FIU:</u></p> <p>The capacities of the MOT to exchange information are limited by the fact that Aruba has signed MOUs with a limited set of jurisdictions.</p> <p>The MOT can only provide information that is already in its possession but it cannot conduct inquiries on behalf of foreign counterparts.</p> <p>The MOT cannot search other databases to which it have direct or indirect access to answer to the request of a foreign FIU.</p> <p><u>Effectiveness:</u></p>	<p>supervisory responsibilities between the CBA and the MOT, which Aruba is strongly recommended to remedy;</p> <ul style="list-style-type: none"> • Aruba should ensure that the CBA can also conduct enquiries on behalf of a foreign counterparts, • Aruba should allow the MOT, as a supervisory body, to co-operate with other foreign supervisory bodies; • The MOT, as a FIU, should not be limited to exchanging information already in its possession and it should also be allowed to search other databases on behalf of a foreign FIU. • The SORUT should also be amended to allow the MOT to co-operate with other Egmont Group Members on the basis of this Group's Principles without a MOU. If this is not possible, the head of the MOT should enter into MOUs with as many countries as possible among the ones that have been identified as meeting the criteria set out in the State Decree; • Aruba should ensure that clear and effective gateways, mechanisms or channels in order to facilitate and allow for prompt and constructive exchanges of information directly between counterparts. 	

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FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Aruba
		There are no statistics to suggest that cooperation between supervisors and their counterparts in AML matters is effective and is provided in line with the FATF standards.		

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FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Aruba
9 Special Recommendations				
SR.I Implement UN instruments	NC	<p>Lack of implementation of the Terrorist Financing Convention in relation to terrorist financing.</p> <p>No implementation of UNSCR 1267 and 1373.</p>	<ul style="list-style-type: none"> Aruba must urgently take action to rectify the shortcomings in the TF offences and the freezing of terrorist assets. A comprehensive package of measures to implement the requirements of the Terrorist Financing Convention, S/RES/1267(1999) and S/RES/1373(2001) should be enacted expeditiously and comprehensively and effectively implemented immediately thereafter; Action must be taken also to rectify the deficiencies noted with respect to ML offence. 	<ul style="list-style-type: none"> Aruba has implemented the Terrorist Financing Convention in relation to terrorist financing by introducing a separate and independent TF offence in its Penal Code as per March 6 2010 (See SR II). Aruba has implemented UNSCR 1267 and 1373 through introduction on June 25, 2010 of the State Decree Combat Terrorism and Terrorist Financing (see SR.III). The new Penal Code will expand the range of predicate offences to the full range of ML offences;
SR.II Criminalize terrorist financing	NC	<p>No separate and independent offence of terrorist financing as required by SR.II, and reliance solely on ancillary offences to existing criminal offences committed with a “terrorist intent” as defined.</p> <p>Existing offences inadequate due to insufficient coverage of the types of property(funds) to be provided, non-coverage of financing individual terrorists, the set of “terrorist felonies” to be covered is too narrow, and there is a need in some cases to prove that specific terrorist act actually took place.</p> <p>It is not clear that all ancillary offences would be applicable given that certain combinations of ancillary offence are not possible. Additionally, neither conspiracy nor association would be available.</p> <p>Terrorist financing is not an offence and thus is not adequately a predicate offence for money laundering.</p> <p>It is not clear that in all cases persons in Aruba financing foreign terrorist groups will be committing an offence.</p>	<ul style="list-style-type: none"> Aruba is urged to take urgent action to create a separate and independent offence of terrorist financing to meet its international obligations. 	<p>Since March 6th 2010 TF is a separate and independent offence because of the introduction of Article 140a in the Penal Code. Its text reads as follows:</p> <p style="text-align: center;">Article 140a</p> <p>1. Any person that willfully:</p> <p>a. directly or indirectly collects funds for himself or for another for the commission of a terrorist offense or for the support of persons or organizations that commit or intend to commit terrorist offenses, or an offense to prepare or facilitate a terrorist offense or to support persons or organizations that commit or intend to commit terrorist offenses,</p> <p>b. directly or indirectly collects funds for himself or for another, in the knowledge that these funds are to be used, in full or in part, for the commission of a terrorist offense or for the support of persons or organizations that commit or intend to commit terrorist offenses, or an offense to prepare or facilitate a terrorist offense or to support persons or organizations that commit or intend to commit terrorist offenses,</p>

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		The penalties for having engaged in terrorist financing activity are not clearly effective, proportionate and dissuasive.		<p>c. directly or indirectly provides or makes available funds to another for the commission of a terrorist offense or for the support of persons or organizations that commit or intend to commit terrorist offenses, or an offense to prepare or facilitate a terrorist offense or to support persons or organizations that commit or intend to commit terrorist offenses,</p> <p>d. directly or indirectly provides or makes available funds to another, in the knowledge that these funds are to be used, in full or in part, for the commission of a terrorist offense or for the support of persons or organizations that commit or intend to commit terrorist offenses, or an offense to prepare or facilitate a terrorist offense or to support persons or organizations that commit or intend to commit terrorist offenses,</p> <p>shall be liable to a prison sentence not exceeding eight years or a fine not exceeding one hundred thousand florins for being guilty of terrorist financing.</p> <p>2. For the purposes of the first paragraph, another shall be taken to mean natural persons, legal entities, groups of natural persons or legal entities, and organizations; funds shall be taken to mean money, as well as all objects and all property rights, however acquired, and the documents and data carriers, in any form or capacity, evidencing title to, or interest in the money, the objects, or property rights, including, but not limited to, bank credits, travelers' checks, bank checks, money orders, shares, securities, bonds, drafts, and letters of credit.</p>

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FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Aruba
SR.III Freeze and confiscate terrorist assets	NC	<p>Overall, since the Draft Sanctions State Decree has not yet been adopted, Aruba does not have effective laws, regulations and procedures to give effect to freezing designations in the context of S/RES/1267 and S/RES/1373, and in effect has no measures in place to implement SR.III.</p> <p>The State Ordinance does not provide for a national mechanism to designate persons in the context of S/RES/1373, nor a comprehensive mechanism in place to examine and give effect to actions initiated under the freezing mechanisms of other jurisdictions.</p> <p>Aruba does not have effective laws and procedures to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions.</p> <p>Aruba does not ensure that the confiscation of assets also apply to terrorist assets.</p>	<ul style="list-style-type: none"> Aruba is encouraged to revise the Draft Sanctions State Decree provided to the assessment team since it is not designed in a manner that meets the specific requirements of FATF Special Recommendation III; As for resolution UNSCR 1267, this draft Decree should refer directly refer to the Consolidated List established and maintained by the 1267 Committee with respect to Al-Qaida, Usama bin Laden, and the Taliban and other individuals, groups, undertakings and entities associated with them. As for UNSCR 1373, Aruba should reconsider the system provided by the Draft Sanctions State Decree in order to have a domestic mechanism to be able to designate terrorists at a national level. Aruba should also revise the State Ordinance in order to extend the freezing actions to funds controlled directly or indirectly by designated persons or entities as well as to funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities. Aruba should also consider revisiting its Sanctions State Ordinance in order to provide procedures: <ul style="list-style-type: none"> for evaluating de-listing requests; for releasing funds or other assets of persons or entities erroneously subject to the freezing; for authorising access to frozen resources pursuant to S/RES/1452(2002); for implementing a screening procedure and designated authority 	<p>Aruba implemented these actions through the introduction on June 25th 2010 of the Sanctions State Decree Combat Terrorism and Terrorist Financing (the State Decree). The highlights of this State Decree are as follows:</p> <p>Its core is formed by the so-called freezing lists of persons and organizations of whom/which it was established that they are engaged in terrorism and the financing of terrorism. Being mentioned on a freezing list leads to it that funds or other assets of these persons or entities present in Aruba will be frozen. Freezing is understood to be a prohibition to transfer, convert, move or make available these funds and assets. Persons or institutions active in Aruba must see to it that they do not carry out activities or render services that lead to it that the funds and assets are transferred, converted, moved or made available to, or for the benefit of Designated Persons. This may concern both funds and assets that are in the hands of a service provider or are held through the care of a service provider (for example a credit balance in a bank account or valuably objects in a bank vault), and assets in the hands of a designated person himself (for example a house or office building). In last-mentioned case service providers should refrain from rendering service as regards these funds and assets that lead or could lead to it that they are transferred, converted, moved or made available to, or for the benefit of the designated Persons. Freezing in fact means that the owner loses the authority to dispose (but not the ownership) of his funds or other assets. Therefore, no legal acts can be performed as regards frozen credit balances and assets in consequence of which they are excluded from legal transactions.</p> <p>There are two freezing lists. The first one is the Consolidated List of persons and entities that are associated with the terror organization Al Qaeda and the Taliban pursuant to UNSCR 1267. This list was drawn up by the Sanction Committee, which also takes care of adjusting this list in as far as necessary. From an efficiency point of view, the State Decree opts for a direct reference to this already existing and</p>

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			<p>responsible for evaluating the foreign lists based request.</p> <ul style="list-style-type: none"> Aruba should also provide lists of designated persons and entities and guidance to financial institutions and DNFBPs. 	<p>continuously updated list, which, in addition to this, is followed by the vast majority of UN member states. The other list is a list of persons and entities drawn up by the Minister charged with judicial matters (to be named the Minister hereinafter) not being those that are already designated by virtue of the UN resolution 1267 (1999) and the resolutions building on it, of which either in this country, or outside this country, it was established that they are engaged in terrorist activities or financing of terrorism. This list is based on the UN resolution 1373 (2001) and will consist of:</p> <ol style="list-style-type: none"> natural persons that are involved in the commission of one or more terrorist offenses or in offenses for the preparation or facilitation of one or more terrorist offense; legal entities and other entities that directly or indirectly belong to, or are controlled by persons as meant under letter a; natural persons, legal entities and other entities that act on behalf or on instructions of the persons, legal entities and other entities meant under the letters a and b. <p>Letter a also relates to natural persons who endeavored to commit one or more terrorist offenses or offenses for the preparation or facilitation of one or more terrorist offenses. Aruba is in the process of establishing a mechanism for listing and de-listing as the framework for this second list.</p> <p>The CBA will publish the freezing lists as well as all changes to these lists. Because of their large size, they will be placed on the CBA's website.</p> <p>The State Decree also contains provisions with respect to:</p> <ul style="list-style-type: none"> for evaluating de-listing requests; for releasing funds or other assets of persons or entities erroneously subject to the freezing; for authorising access to frozen resources pursuant to S/RES/1452(2002); for implementing a screening procedure and designated authority

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				responsible for evaluating the foreign lists based request.

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FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Aruba
SR.IV Suspicious transaction reporting	PC	<p>The scope of SORUT is unclear, but the whole range of financial activities is not covered.</p> <p>The scope of the SORUT and the SOIPS are not harmonised, which would in some cases undermine the quality of the information reported.</p> <p>The scope of the reporting obligation does not cover the financing of individual terrorist.</p> <p>Lack of effectiveness: only one transaction related to TF has been reported to the MOT.</p>	<ul style="list-style-type: none"> Aruba is strongly demanded to criminalise TF and to extend the scope of the TF reporting system in accordance with the FATF Recommendations, particularly in relation to the financing of individual terrorists; 	<p>The issues mentioned here will be addressed in the upcoming AML/CFT State Ordinance discussed above.. Meanwhile the MOT has received a total of 10 TF-related UTRs. Furthermore, because of the new TF provision (article 140a) in the Penal Code, the financing of individual terrorists is now also covered by the reporting obligation.</p>
SR.V International cooperation	NC	<p>Terrorist financing is not an offence, and as dual criminality is a requirement for MLA, this means that assistance cannot be provided.</p> <p>The other limitations that are set out in Recommendations 36-38 apply equally to terrorist financing activity.</p> <p>As dual criminality is required for extradition, the lack of a TF offence means that, in effect terrorist financing is not an extraditable offence.</p> <p><u>Law enforcement authorities:</u></p> <p>It is unclear if the law enforcement authorities can cooperate with their foreign counterparts since TF is not an offence.</p> <p>No statistics available to suggest that exchange of information with foreign law enforcement authorities is effective.</p> <p><u>CBA:</u></p> <p>The capacities of the CBA to co-operate and exchange information with foreign counterparts are limited by:</p> <ul style="list-style-type: none"> the scope issue; the limited number of MOUs it has entered into; the fact that the CBA only supervises the 	<ul style="list-style-type: none"> Aruba should urgently introduce a separate and independent TF offence, so that it can provide full extradition assistance of such a request was to be made. 	<ul style="list-style-type: none"> As TF is now a separate and independent offence, Aruba's possibilities to provide MLA, to consider extradition requests and for law enforcement authorities to cooperate with foreign counterparts in case of TF have been expanded. The other issues mentioned here will be dealt with in AML/CFT State Ordinance and in the revision of the various state ordinances for the supervision of the financial institutions.

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		<p>compliance with the CDD requirements;</p> <ul style="list-style-type: none"> the deficiencies identified in relation to the preventive measures; the broadly defined safeguards and controls. <p>Regarding the banking and insurance sectors, the CBA can only exchange information that is already in its possession, but it cannot conduct inquiries on behalf of foreign counterparts.</p> <p>Regarding the TCSPs, since they are not subject to AML/CFT requirements, the CBA cannot exchange information related to ML, TF or predicate offences.</p> <p><u>The MOT as a supervisory body:</u></p> <p>The MOT as a supervisory body cannot co-operate and exchange information with its foreign counterparts.</p> <p><u>The MOT as a FIU:</u></p> <p>The capacities of the MOT to exchange information are limited by the fact that Aruba has signed MOUs with a limited set of jurisdictions.</p> <p>The MOT can only provide information that is already in its possession but it cannot conduct inquiries on behalf of foreign counterparts.</p> <p>The MOT cannot search other databases to which it have direct or indirect access to answer to the request of a foreign FIU.</p> <p><u>Effectiveness:</u></p> <p>There are no statistics to suggest that cooperation between supervisors and their counterparts in FT matters is effective and is provided in line with the FATF standards.</p>		

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FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Aruba
SR.VI AML requirements for money and value transfer services	NC	<p>The deficiencies regarding the fit and proper test described in section 3.10 of this report also apply: there are no measures in place to prevent criminals and their associates to be beneficial owner of a money transfer company and the CBA does not undertake an independent check on the information provided by the registration applicants.</p> <p>The requirements and their implementation for Recommendations 5, 6, 7, 8, 9, 10, 13, 15, and 22 in the MTCs sector suffers from the same deficiencies than those that apply to other financial institutions and which are described in section 3 of this report.</p> <p>The range of sanctions available is not sufficiently effective and proportionate and does not apply to MTC's directors and senior management.</p> <p>The assessment team had serious concern regarding the existence of remaining informal remitters.</p>	<ul style="list-style-type: none"> Aruba should upgrade the AML/CFT guidelines applicable to MTCs in content and nature to meet the FATF standard. The definition of money transfer services should be further detailed; Aruba should review the sanction regime and implement a comprehensive, proportionate and effective regime, which is sufficiently enforced by the CBA. 	<ul style="list-style-type: none"> A draft for the modification of the SOSMTC is being prepared to bring it up to FATF standards. See also the strengthening of the fit and proper testing at Recommendation 23. See also the sanctions regime mentioned in connection with AML/CFT State Ordinance
SR.VII Wire transfer rules	NC	<p>There is no explicit requirement to obtain and maintain address and account number or unique reference number of the customer.</p> <p>There are no requirements to accompany the wire transfer with full originator information;</p> <p>There are no requirements to include in the message or payment form accompanying domestic wire transfers information on the originator;</p> <p>There are no requirements for each intermediary or beneficiary financial institution in the payment chain to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer;</p> <ul style="list-style-type: none"> There are no requirements for financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information; 	<ul style="list-style-type: none"> Aruba should fully implement SR.VII, in particular in order to ensure that full originator information accompanies wire transfers and that financial institutions adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. 	Aruba has prepared a draft for a State Decree to regulate wire transfers in accordance with SR VII. This State Decree will be based on the AML/CFT State Ordinance. It has been sent to the Advisory Council for legislative review and is expected to enter into force on the same date as the AML/CFT State Ordinance.

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		The identified shortages regarding sanctions under Recommendation 17 equally apply in the context of the obligations pertaining to wire transfers.		

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FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Aruba
SR.VIII Nonprofit organizations	NC	<p>There has been no review of the NPO sector and no identification of its vulnerabilities for terrorist financing.</p> <p>Authorities do not conduct outreach or provide guidance on terrorist financing to the NPO sector.</p> <p>The Foundation register is not kept to-to-date and the information on the association with legal personality, in particular on the persons who control the association are not kept registered.</p> <p>Foundations can control wholly or partially other legal person, without any registration obligation.</p> <p>There is no supervision or monitoring of the non-profit sector.</p> <p>Foundations and associations with legal personality cannot be revoked in case of ML or TF.</p> <p>There is no effective domestic co-operation or coordination amongst authorities that would eventually have information on NPOs.</p> <p>The system for obtaining information on NPOs, in particular in case of international request, is weakened by the overall lack of accuracy of information maintained in the Foundations Register and the lack of information on the beneficial ownership of association with legal personality.</p> <p>It is not clear as to whether Aruba can exchange information with foreign counterpart regarding particular NPOs that are suspected of TF.</p>	<ul style="list-style-type: none"> • Aruba should ensure that the Foundations Register is kept up-to-date and contains all information on the identity of the legal persons they own and control; • The information on the persons who own, control or direct the activities of the associations with legal personality should be kept up to date and should be immediately available to the Aruban authorities; • Aruba should also ensure that the domestic and international transactions of all NPOs are registered for a period of at least 5 years and made available to appropriate authorities to allow them to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation; • Aruba should conduct as soon as possible a review of its non-profit sector, including a review on the TF risks. It should start a program of outreach and awareness-raising with the NPOs in order to strengthen their resistance to TF abuse; • Aruba should also review its legislation to ensure an effective supervision or monitoring of its non-profit sector. • It should develop and implement mechanisms for the prompt sharing of information among all relevant competent authorities that have information on NPOs to take preventive or investigative actions; • Aruba should also designate a point of contact and should develop procedures to respond to international request for information regarding particular NPOs that are suspected 	<p>A working group was tasked with assessing the weaknesses present in the Aruba non-profit sector and to report its findings and recommendations to the Government and the AML/CFT Strategy Group. Its report is currently being reviewed.</p>

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FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Aruba
SR.IX Cash Couriers	NC	<p>The Declaration system is limited to bank notes above a threshold of AWG 20 000, but does not apply to other means of payments nor to bearer negotiable instruments.</p> <p>The declaration requirements do not apply to import of cash with the sole purpose of direct transit.</p> <p>The competent authorities cannot stop or restrain currency or bearer negotiable instruments where there is a suspicion of ML or TF.</p> <p>Absence of adequate co-ordination among customs, immigration and other relevant authorities on issues related to the implementation of SR.IX.</p> <p>International co-operation and assistance is limited to co-operation between FIUs which the MOT has concluded MOUs with – No possibility to co-operate or exchange information between customs services.</p> <p>In practice, the Customs Department does not have law enforcement powers to investigate false declaration or failure to declare.</p> <p>Procedures used by Police to investigate a case of false declaration or failure to declare seem to be bureaucratic and slow.</p> <p>Regarding false declarations offence, the right of prosecution expires by voluntarily complying with the condition set by the authorized official of the Public Prosecutor's Office.</p> <p>Absence of assets freezing measures applicable to currency or bearer negotiable instruments that are related to terrorist financing.</p> <p>Lack of effectiveness of the declaration system:</p> <ul style="list-style-type: none"> • Lack of effectiveness of the declaration system for import and export of cash via 	<p>of TF or other forms of terrorist support.</p> <ul style="list-style-type: none"> • Aruba should extend its declaration system beyond currencies and include all bearer negotiable instruments as well as other means of payment, e.g. high value coinage. • Aruba should also consider extending the system to import of cash with the sole purpose of transit through Aruba. • Aruba should consider giving its Customs Services law enforcement powers to ensure that the Customs Services, which are the competent authority to collect the declaration forms, can also request and obtain further information from the carrier with regard to the origin of the currency or bearer negotiable instruments and their intended use. • Aruba should ensure that competent authorities are able to stop or restraint currency or bearer negotiable instruments where there is a suspicion of ML or TF and even in the absence of false declaration or failure to declare. • Aruba should set out mechanisms to ensure domestic co-ordination among Customs service, the MOT, the police, the immigration department and other relevant departments. • Aruba should change its legislation to ensure that its Customs Department can answer to international co-operation requests and have the possibility to conclude co-operation arrangements with foreign counterparts. • Aruba should revisit its sanctions regime in order to ensure that prosecution does not 	<ul style="list-style-type: none"> • As of July 1st 2010 the import and export of all bearer instruments also need to be declared at the customs at the border. • The Tax and Customs Office is working on proposals for implementation through legislative changes of the other Recommended Actions.

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Aruba**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Aruba
		<p>shipping cargos.</p> <ul style="list-style-type: none"> • Lack of training of Customs officials. • Insufficient number of dedicated AML/CFT staff at the borders. <p>Customs checks are made on an arbitrarily basis, which undermines their effectiveness.</p>	<p>expire if the defendant voluntarily complies with the conditions set by an official designated by the Public Prosecutor in order to avoid prosecution.</p> <ul style="list-style-type: none"> • Aruba should also increase the resources of the Customs Services with staff adequately trained. 	