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# Primer Informe de Seguimiento

## Curazao

### 29 de Octubre, 2012

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## CURACAO: PRIMER INFORME DE SEGUIMIENTO

### I. Introducción

1. Este documento resume el análisis del informe de Curazao presentado a la Plenaria del GAFIC acerca de los avances logrados para superar las deficiencias identificadas en la tercera ronda del Informe de Evaluación Mutua (IEM). El Informe de Evaluación Mutua de Curazao de la tercera ronda fue aprobado por la Plenaria del GAFIC de mayo de 2012 en El Salvador. Al momento de la aprobación, la Plenaria determinó que Curazao debe presentar un informe a la Plenaria de noviembre, 2012<sup>1</sup> y luego un (1) año después (noviembre de 2013) bajo un seguimiento regular.
2. A Curazao se le otorgaron la calificación de PC en dieciséis (16) de las Recomendaciones Fundamentales y Principales como se indica a continuación:

Rec.	1	3	4	5	10	13	23	26	35	36	40	I	II	III	IV	V
Rating	MC	MC	PC	PC	MC	PC	MC	PC	PC	MC	MC	PC	PC	PC	PC	MC

3. Con respecto a las demás Recomendaciones que no son ni fundamentales ni principales, Curazao recibió la calificación de parcialmente cumplida o no cumplida como se indica a continuación

Parcialmente Cumplida (PC)	No Cumplida (NC)
R. 11 Mantenimiento de Récor ds	R. 12 (APNFD – R., 6,8-11)
R. 14 Protección y no “delación” (tipping-off)	R. 16 (APNFD -R. 13-15 &21)
R. 17 (Sanciones)	R. 24 (APNFD – regulación, supervisión y monitoreo)
R. 21 (Atención especial para los países de mayor riesgo)	RE. VIII (Organizaciones sin fines de lucro)
R. 25 (Pautas y Retroalimentación)	
R. 30 (Recursos)	
R. 31 Cooperación nacional	
R. 32 (Estadísticas)	
R. 33 Personas jurídicas – beneficiarios reales	
RE. VI (Requisitos ALD para MVTs)	
RE. IX (Revelación y Declaración Transfronteriza)	

4. La tabla siguiente pretende prestar asistencia en ofrecer una visión del nivel de riesgo en el sector financiero principal de Curazao

### Tamaño e integración del sector financiero de Curazao

<sup>1</sup> Todos los miembros tienen la obligación de hacer un FUR inicial en la primera sesión Plenaria tras la aprobación de su informe.

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		Bancos	Otras Instituciones de Crédito*	Valores	Seguros	TOTAL
<b>Número de instituciones</b>	Total #	8 locales y 33 Bancos Internacionales	25	12 locales y 8 extranjeras instituciones de inversión	62 <sup>2</sup>	
	US\$	Bancos locales 7,752,164.00 Bancos Internacionales 24,444,470.00	790,189.00	Instituciones de Inversión locales: aprox. 6,000,000,000 Instituciones de Inversión Internacionales: aprox. 900,000,000	7,311,800,000 <sup>3</sup>	
<b>Depósitos</b>	Total: US\$	Bancos locales 6,682,997.00 Bancos Internacionales 23,571,217.00	262,919.00	N/A	1,373,200,000 <sup>4</sup>	
	% No residentes	Bancos locales: 42% Bancos Internacionales 100%	0%	N/A	45% (4)	
<b>Enlaces Internacionales</b>	% de Propietarios Extranjeros	Bancos locales: 55% Bancos Internacionales: 15%	0%	100%	67% de Activos <sup>5</sup>	
	# Subsidiarias extranjeras	4 de Bancos locales 3 de Bancos Internacionales	0	0	6 <sup>6</sup>	

## II. RESUMEN DE PROGRESO POR PARTE DE CURAZAO <sup>7</sup>

<sup>2</sup> Este total incluye:

- Las compañías de seguros locales (vida y no vida)
- Las empresas internacionales de seguros (reaseguradoras y compañías de seguros cautivas)
- Los fondos de pensiones

<sup>3</sup> Montos reportados por las instituciones desde el cierre de 2010

<sup>4</sup> Representa las inversiones en (tiempo) Depósitos en bancos del exterior por las instituciones en porcentaje del total de inversiones en (tiempo) Depósitos

<sup>5</sup> Representa los Activos de las instituciones con los accionistas extranjeros en porcentaje del total de los Activos

<sup>6</sup> Representa el número de filiales en el exterior de las instituciones locales.

<sup>7</sup> El resumen proporciona información sobre las nuevas propuestas y la legislación, las enmiendas a la legislación y actualizaciones generales sobre las recomendaciones que fueron calificadas LC

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- Desde la Evaluación Mutua de Curazao, el nuevo Código Penal entró en vigor el 15 de noviembre de 2011. El Código Penal aborda las cuestiones relacionados con la tipificación del financiamiento del terrorismo, la provisión de una lista específica de delitos cometidos en el extranjero, pero que pueden ser procesados en Curazao. No obstante, la lista no aborda todos los delitos graves. El Código Penal también ha reducido las sanciones por el lavado de dinero. Las autoridades señalaron que la reconsideración de las sanciones constituirá una parte de la evaluación del Código Penal en los próximos cinco (5) años. Las autoridades también señalaron que la revisión de la Ordenanza del Opio (1960) ha sido presentada ante Parlamento en relación con la ratificación de la Convención de las Naciones Unidas contra el Tráfico Ilícito de Estupefacientes y Sustancias Psicotrópicas (1988 La Convención de Viena) y la Convención de las Naciones Unidas sobre Sustancias Psicotrópicas. Las autoridades de Curazao han notado que habrá una revisión de la Disposición y Directrices (P & G) para las Iniciaciones de Crédito, IC&IB y los MTC. La revisión afectará el cumplimiento con las R. 5, 7, 10, 12, 21 y RE. VII. También se anticipa una revisión de NOIS y NORUT la cual afectará el cumplimiento con la R. 10. Las Autoridades han facilitado una descripción detallada de la manera en que se realiza los exámenes temáticos en materia de LD / FT.

### Recomendaciones Fundamentales

#### Recomendación 5

- Con respecto a la recomendación de los Examinadores sobre la captura de los agentes de seguros en el marco ALD / CFT, las autoridades han indicado que las actividades de tanto los corredores como los agentes de seguros caen bajo NOIS y NORUT y que ambas partes median en la conclusión de un contrato de seguro de vida como se define en el Art. 1 (1) (b) en virtud de NOIS y Arte. 1 (1) (a) en virtud de 5 de NORUT. Además las Autoridades han observado que en P&G para el IC & IB se han añadido la palabra "corredores de seguros" La palabra en la forma de página t ya que este término es utilizado con más frecuencia dentro de la jurisdicción. Asimismo, afirman que "agentes de seguros caen bajo la definición de" intermediarios de seguros' y que de acuerdo con la nota a pie 16 en la página 15 de P&G para IC & IB se hace referencia al "corredor de seguros / agentes". Las autoridades también citan la Ordenanza Nacional sobre el Negocio de Corretaje de Seguros (NOIB) N.G. 2003, no 113)<sup>8</sup>. Las Autoridades también tomaron nota de que durante el período del 5 de septiembre al 12 de octubre 12, 2012, el Banco Central realizó quince (15) exámenes o visitas a los corredores de seguros bajo su supervisión. Las autoridades han reiterado que las actividades de tanto la correduría de seguros como el agente de seguros han sido incluidas en la NOIS y NORUT y ambos son considerados lo mismo dentro de nuestra jurisdicción.

Período: 5 de septiembre, 2011 – 12 de octubre, 2012	
Número de exámenes / visitas a los intermediarios de seguros	Reporte a la UIF
15	0

<sup>8</sup> El NOIB en la parte pertinente, establece explícitamente "que es deseable en términos de promoción del comercio ordenado y la protección de los intereses de los potenciales titulares de pólizas de seguros para establecer reglas para los corredores de seguros y sus agentes en relación con el ejercicio de la actividad de intermediación de seguros."

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4. Si bien los Examinadores son de la opinión de que sigue una falta de claridad con respecto a los corredores y agentes, aceptarán la opinión presentada por las Autoridades de Curazao. Por consiguiente, se ha cumplido con la recomendación.
5. Con respecto a la cuestión de la necesidad de claridad entre NORUT y NOIS en relación con las personas que realizan actividades de reporte y sus obligaciones de DDC, las Autoridades han acordado que existe una discrepancia entre NORUT y NOIS en este sentido. Se han decidido adaptar la posición en NORUT puesto que las Recomendaciones del GAFI no cubren los contratos de seguro no de vida
6. En cuanto a la claridad en el ejercicio del riesgo realizado por el Banco Central (BC), que dio lugar a la designación y la exención de las instituciones financieras de bajo riesgo, las Autoridades han explicado que el RBA que se ha adoptado para tratar con el sector de los seguros (Ver matriz adjunta) . El tema es una de las pruebas de la eficacia. Un programa de revisión esquemática no demuestra por sí solo un RBA efectivo. La jurisdicción tiene que hablar con claridad a perfiles basados en productos, geografía, clientes y canales de distribución, (según Las Directrices del GAFI sobre el RBA para combatir el LD y el FT junio de 2007) que apoyen las calificaciones asignadas a tipos de intuiciones y, a su vez justifican la frecuencia y el alcance de los exámenes. Con respecto a las otras recomendaciones de los Examinadores que se refieren a problemas con la ausencia de los requisitos pertinentes en P&Gs y NOIS, las Autoridades han indicado que se efectuarán las revisiones a las directrices pertinentes y la legislación para abordar las recomendaciones. Con base en lo anterior, las recomendaciones de los Examinadores con respecto a R. 5 permanecen sustancialmente no cumplidas.

### **Recomendación 13 y Recomendación Especial IV**

7. Hasta ahora las recomendaciones de los Examinadores no han sido abordadas. Las Autoridades han señalado que, con respecto a la lista prescriptiva de los indicadores, todas las organizaciones / instituciones en el sistema de reporte se discutirán los indicadores reales con el fin de evaluar su eficacia. Se realizará este proceso en colaboración con otros asociados pertinentes dentro del Reino Holandés.

### **Recomendación Especial II**

8. Con respecto a la penalización adecuada del delito del financiamiento del terrorismo, de conformidad con la Convención de Financiamiento del Terrorismo en lo que respecta al cumplimiento con ambos R. 35 y RE. II, las Autoridades han citado Artículo 2:55 del Código Penal. Una revisión de la sección citada demuestra que el delito ha sido tipificado más en consonancia con los requerimientos de la Convención. La definición de la intención terrorista en el Artículo 1:203 del Código Penal parece abarcar los elementos de un delito de terrorismo o actos terroristas que se refiere al ‘el objetivo de asustar al público o a un sector de la población de un país o forzar de manera ilegal un gobierno...’. "el Artículo 1:190 del Código Penal establece que ‘cuando se ha mencionado el delito en general o cualquier otro delito en particular, se entiende que incluye la complicidad, la intención y la preparación de ese delito, a menos que alguna de las disposiciones conduce a lo contrario. Basado en el tamaño del documento (es decir, el Código Penal), las autoridades no han proporcionado una traducción completa del documento y, por lo que mientras lo que se ha proporcionado parece cumplir con el requisito para la tipificación

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como delito del financiamiento del terrorismo, en este momento no se puede hacer una firma determinación y sigue el cumplimiento parcial con la recomendación. Por ejemplo, la definición de un delito de terrorismo se encuentra en casi treinta artículos distintos, los cuales no han sido proporcionados.

### **Recomendaciones Clave**

#### **Recomendación 4**

9. En lo que respecta a la presente Recomendación, los Examinadores recomendaron que se debería aclarar si la UIF (MOT) en sus funciones como autoridad supervisora puede revelar la información con sus homólogos de supervisión nacionales o internacionales. Curazao ha señalado que se está revisando NORUT y que se abordará la cuestión en esa revisión. En consecuencia, no se ha cumplido con la recomendación de los Examinadores. Los Examinadores recomendaron que se debe facilitar una vía clara de información en la Ordenanza para el intercambio del supervisor al supervisor por el BC al brazo supervisor de la UIF (MOT) y, en este sentido, las autoridades han indicado que la cuestión ya ha sido abordada en el proyecto de Armonización de las Ordenanzas de supervisión, que se encuentran actualmente en el proceso legislativo. La recomendación de los Examinadores sigue pendiente sujeta a la promulgación de las Ordenanzas. En la actualidad, no se han tomado medidas en relación con el intercambio de información por parte de IOCSA con los supervisores nacionales e internacionales y la facilidad del intercambio de información entre el BC y la Policía. Con base en lo anterior, no se han cumplido con las recomendaciones.

#### **Recomendación 26**

10. Con respecto a la recomendación de los Examinadores para R. 26, las Autoridades de Curazao han declarado que será abordada en la revisión de NORUT. En consecuencia, no se han cumplido las recomendaciones de los Examinadores.

#### **Recomendación Especial I**

11. Con respecto a esta Recomendación Especial, los Examinadores recomendaron que las leyes deben ser debidamente mejoradas para dar efecto al párrafo 4 (a) de la Resolución RCSNU 1267 (denegación de aviones para aterrizar o despegar o si es propiedad, arrendados u operados por o en nombre de los talibanes según lo señalado ...) y que deben implementar las medidas que permitirían la congelación de los activos sin demora lo que se refiere al terrorista designado bajo RCSNU 1373. Las Autoridades han señalado que la legislación pertinente y los documentos de política serán revisados y modificados cuando sea necesario. En consecuencia, no se han cumplido con ninguna de las recomendaciones de los Examinadores.

#### **Recomendación 35**

12. Los Examinadores recomendaron que Curazao deben implementar plenamente las disposiciones tanto de la Convención de Viena (Artículo 15) como de la Convención de Palermo (Artículos 18, 23 y 25-28), puesto que los Examinadores no habían observado estos artículos durante el proceso de evaluación. Con base en la documentación

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presentada posteriormente por las Autoridades de Curazao, se han cumplido con estas recomendaciones.

### **Recomendación Especial III**

13. Hasta ahora no se han abordado las recomendaciones de los Examinadores. Las Autoridades han señalado que la legislación pertinente y los documentos de política serán revisados y si es necesario modificados. Las recomendaciones pendientes se refieren a la implementación de RCSNU 1373.

### **Otras Recomendaciones**

#### **Recomendación 11**

14. Las Autoridades de Curazao han declarado que la recomendación de los Examinadores en lo que respecta al mantenimiento de los resultados de los exámenes sobre los antecedentes y el propósito de las pautas de transacciones complejas, inusuales, grandes e inusuales durante un mínimo de cinco (5) años y la formulación de dictámenes de este tipo disponibles a los auditores y las autoridades competentes, serán abordados en la revisión de P&Gs y NOIS. En consecuencia, no se han cumplido con las recomendaciones de los Examinadores.

#### **Recomendación 12**

15. Con respecto a la recomendación de los Examinadores que los abogados, notarios, contadores o profesión similar que llevan a cabo transacciones para clientes relacionados con la organización de las contribuciones para la creación, operación o administración de empresas y consorcios y proveedores de servicios de sociedades fiduciarias que realicen operaciones para los clientes que actúan como accionista nominal deben estar sujetos a las obligaciones ALD / CFT bajo NORUT y NOIS, las autoridades han declarado que TCSPs están sujetos a los sistemas ALD / CFT de las disposiciones NOIS y NORUT. También señalan que los servicios de accionista nominal se aborda explícitamente en P&G para los proveedores de servicios de sociedades fiduciarias. Sin embargo, sobre la base de una revisión, las secciones citadas no se refieren a los accionistas nominativos, que es el problema planteado por los Examinadores en lo que respecta a TCSPs. Ver. Informe MEVAL en el párrafo 1047 (iv) y la conclusión resultante en el párrafo 1049. No se ha abordado la cuestión con respecto a los abogados, notarios, etcétera y en consecuencia la recomendación de los Examinadores sobre estas cuestiones siguen pendientes.
16. Con respecto a los casinos de internet estén sujetas a las obligaciones ALD / CFT de NOIS y NORUT, las Autoridades han declarado que están sujetas a estas obligaciones. Sin embargo, existen deficiencias con estas obligaciones, como se indica en el párrafo 1059 del Informe MEVAL. Las Autoridades también señalaron que la legislación que creará una autoridad de supervisión para este sector se encuentra todavía en el proceso legislativo. En consecuencia, no se ha cumplido con esta recomendación. La cuestión en relación con el umbral de los requisitos de identificación de los casinos ha sido abordada en el proyecto de revisión de la Orden Ministerial de NOIS. Como resultado del proyecto de estatuto, la recomendación de los Examinadores sigue pendiente. Con respecto a la recomendación que las instituciones financieras deben ser obligadas de forma legislativa

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para realizar la DDC al realizar transferencias electrónicas ocasionales en circunstancias cubiertas por la RE. VII, las Autoridades han señalado que las APNFD no califican como instituciones financieras y por lo tanto no se les permite realizar las transferencias electrónicas como proveedor de servicios y que sólo pueden ser originadores. Se les pide a las Autoridades que tengan en cuenta que los requisitos de R. 5 son aplicables a todas las APNFD. Este requisito es una deficiencia en la R. 5 para las instituciones financieras y así por la aplicabilidad es también una deficiencia en la R. 12 para las APNFD. No se ha cumplido con la recomendación de los Examinadores.

17. Con respecto a las recomendaciones relativas a la realización de una diligencia debida por los proveedores de servicios sobre las relaciones comerciales, la modificación de los NOIS prever medidas reducidas o simplificadas de DDC para las entidades exentas, la modificación de P&G para los administradores y servicios de sociedades fiduciarias re la preparación de un UTR cuando no se cumplen con los requisitos de los CE 5.3 a 5.6 y las deficiencias identificadas en R. 10 y 11 que son aplicables a las APNFD, las Autoridades de Curacao han notado que se abordarán estas cuestiones en las revisiones de NOIS, NORUT y P&Gs. Con respecto a las recomendaciones de los Examinadores de la Junta de Control de Juegos (GCB), las Autoridades han presentado las medidas que se tomarán para implementar las recomendaciones. Estas medidas incluyen las auditorías periódicas del sector de los casinos sobre el cumplimiento con las regulaciones ALD / CFT y en ese sentido, el GCB ya ha auditado dos (2) nuevos casinos en el primer trimestre de 2012 sobre el cumplimiento ALD / CFT. Además, se someterán todos los casinos a su auditoría anual ALD / CFT (parte de la auditoría de cumplimiento MICS) en el último trimestre de 2012. El GCB también tiene la intención de realizar auditorías de los estados financieros de todos los casinos para que puedan obtener una visión de toda la operación de los casinos. En un esfuerzo por asegurar una vigilancia eficaz, se ha incrementado la capacidad de la división de auditoría con la contratación de un supervisor de auditoría y un auditor experimentado en el primer semestre de 2012. Las Autoridades esperan que para finales de 2012, se reclutarán a tres (3) auditores adicionales. El GCB también ha hecho obligatoria la certificación CAMS para todos sus auditores. También existen las medidas para garantizar que el incumplimiento será sancionado de manera efectiva, proporcionada y disuasoria. En consecuencia, un procedimiento que comienza con una carta gerencial dentro de los sesenta (60) días a partir de la auditoría, seguido de un período de tres a seis meses para rectificar las deficiencias; seguida de una nueva evaluación del cumplimiento después de la cual y según los resultados el GCB tomará una decisión en cuanto a si las sanciones son necesarias y el alcance de esas sanciones. Las autoridades esperan que las sanciones adopten la forma de una multa, que será proporcional a la violación con el cierre del casino como la solución definitiva. Cabe señalar que la falta de aplicabilidad de las disposiciones pertinentes en lo que respecta al GCB como la autoridad de supervisión para los casinos giraba en torno a la situación de falta de consideración de los P&Gs como OEM puesto que las sanciones no fueron consideradas ni amplias ni proporcionadas y no había ninguna implementación de sanciones. Así, mientras que la implementación de auditorías AML / CFT en los casinos es un paso positivo en la supervisión de casinos, el cumplimiento de las recomendaciones de los Examinadores debe centrarse en la cuestión de las sanciones que deben ser abordadas de una manera más definitiva.

### **Recomendación 14**

18. Se abordará las recomendaciones de los examinadores para R. 14 mediante una enmienda a NORUT para asegurar que existe una interpretación correcta de la ley en cuanto a



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garantizar que los directores de las personas jurídicas están protegidos de responsabilidad civil y penal en los casos de violación de la confidencialidad para informar en buena fe y para abordar la cuestión del delito de delación.

### **Recomendación 16**

19. Con respecto a las recomendaciones de los Examinadores, relacionadas con las deficiencias observadas en R. 13 y 14, la UIF (MOT) está en contacto con todas las entidades informantes, incluyendo las APNFD en relación con de los informes previstos en NORUT. Con base en las discusiones de las recomendaciones anteriores, no se ha cumplido con la recomendación de los Examinadores. Sin embargo, las deliberaciones de la UIF (MOT) con las entidades es una buena iniciativa. No se ha cumplido con la recomendación relativa a la R. 21 para las APNFD bajo el CB. Las autoridades señalan que, con respecto a las APNFD bajo la supervisión de la UIF (MOT) y el GCB, el plan arriba señalado re. el GCB es aplicable. Ver. Discusión anterior. El tema no ha sido abordado para las APNFD que son supervisadas por la UIF (MOT). No se ha cumplido con la recomendación.

### **Recomendación 17**

20. Las Autoridades han señalado que se abordará el cumplimiento con las recomendaciones de los Examinadores para R.17 en la Ley de Armonización, la cual se encuentra actualmente en el proceso legislativo. Se anticipa que la Ley abordará las cuestiones relativas a la revocación de las licencias, la facultad de imponer multas administrativas y referencia para la investigación o proceso penal por el CB. Si bien esta medida puede cumplir con la recomendación de los Examinadores para los bancos, hay una cuestión de si va a cubrir MTCs no bancarias como las personas exentas. Ver. Párrafos 920 y 921 del Informe MEVAL.

### **Recomendación 21**

21. Con respecto al examen y el mantenimiento de los resultados por escrito para las transacciones que no tengan un propósito económico aparente o lícito visible, para las Autoridades competentes, las Autoridades han observado que lo abordará en la revisión de los P&G. En consecuencia, no se ha cumplido con la recomendación. Hasta ahora no se ha abordado la recomendación con respecto a la eficacia que demuestra el uso de las instrucciones relativas a las contramedidas para las transacciones y relaciones comerciales con países que no implementan o implementan de manera inadecuada las Recomendaciones del GAFI.

### **Recomendación 24**

22. Con respecto a un régimen ALD / CFT para la supervisión y el cumplimiento por los casinos de Internet, las autoridades han indicado que la ley de supervisión relevante se encuentra en el proceso legislativo. Para la recomendación sobre la implementación de un régimen eficaz de supervisión de la UIF (MOT), la UIF (MOT) se está preparando para las auditorías periódicas de conformidad con NORUT y NOIS. En cuanto al tema de recursos adicionales para la UIF (MOT) para cumplir su función de supervisión del sector

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APNFD, las autoridades han señalado que la UIF (MOT) ha enviado una carta al Ministro de Hacienda solicitando los recursos humanos adicionales. La cuestión con respecto a la función de supervisión de la re CB: R. 29 en lo que respecta a las APNFD es reconciliar el ejercicio de las competencias y las preocupaciones con la eficacia del programa RBA como se mencionó anteriormente en R. 5.

### **Recomendación 25**

23. Los Examinadores recomendaron que las entidades de reporte deben recibir más realimentación general y de caso por caso, sobre los informes que se presentan a la UIF; que el Informe Anual la UIF (MOT) debe incluir más información sobre las tendencias y tipologías del LD y FT; que un marco inclusivo de P&G debe ser implementado por los servicios de factoring, que P&G debe ser desarrollado para los casinos de Internet y la UIF (MOT) debería proporcionar más realimentación del LD / FT para las APNFD supervisadas. Las Autoridades han indicado que, con respecto a los informes anuales, la UIF (MOT) está revisando sus informes anuales para las tendencias y tipologías más visibles. Con respecto a la implementación de un régimen de supervisión ALD / CFT para el factoring, las Autoridades han notado que esto será realizada por el BC. Las Autoridades no han proporcionado la información con respecto a las demás recomendaciones. No se han cumplido con las recomendaciones de los examinadores.

### **Recomendación 30**

24. Las Autoridades de Curazao han abordado sólo una de las recomendaciones de los Examinadores en lo que respecta a la recomendación sobre la necesidad de otorgar a la UIF (MOT) más recursos para cumplir con su función de supervisión. A este respecto, como se ha señalado anteriormente una carta ha sido enviada al Ministro de Hacienda mediante la cual se solicita más recursos humanos para la UIF (MOT). No se han cumplido con las recomendaciones de los examinadores.

### **Recomendación 31**

25. No se han abordado las recomendaciones de los Examinadores; sin embargo las Autoridades han señalado que se está considerando la estructura actual de la CIWG con la expectativa de una revisión de la estructura.

### **Recomendación 32**

26. Las Autoridades han señalado que, con respecto a la recomendación de los Examinadores sobre el mantenimiento de las estadísticas por parte de la Aduana u otra autoridad competente pertinente en materia de los instrumentos negociables transfronterizos, que la Aduana mantiene estadísticas sobre todo lo referente al transfronterizo, hasta la fecha no ha habido ningún caso de los instrumentos negociables transfronterizos. No se ha proporcionado ninguna información con respecto a las demás recomendaciones.

### **Recomendación 33**

27. Con respecto a la recomendación de los Examinadores que la ley o el reglamento debe establecer un requisito dirigido a todas las personas jurídicas para registrar la información

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sobre el beneficiario real (UBO) en el registro mercantil de la Cámara de Comercio, las Autoridades han señalado que, si bien el registro de información UBO constituye un requisito del GAFI, el GAFI deja la decisión al país en cuanto al mecanismo y que por razones de seguridad Curazao se contempla otras formas de lo recomendado por los Examinadores. Aunque existe un acuerdo con la posición adoptada por las Autoridades con respecto a la libertad de abordar el tema, la recomendación de los Examinadores se basa en el sistema de registro (es decir, en la Cámara de Comercio) observado en el momento de la evaluación. Independientemente del sistema determinado por Curazao, se debe demostrar que existe un proceso adecuado para registrar la información de UBO. La recomendación de los Examinadores sigue pendiente.

28. En lo que respecta al establecimiento de procedimientos para asegurar que toda la información en el Registro esté actualizada y precisa, las Autoridades han facilitado una descripción detallada sobre el sistema de inscripción en el Registro. Este sistema es el mismo que se describe en el sitio, pero como se explica en los párrafos 1179-1181 y 1183, los Examinadores son de la opinión de que existe un problema con la información completa y actualizada con respecto a la información contenida en el Registro. La recomendación de los Examinadores sigue pendiente. Las Autoridades no han abordado la cuestión de las facultades sancionadoras administrativas para la Cámara de Comercio, pero han vuelto a señalar el poder de la Corte para imponer sanciones. No se ha cumplido con esta recomendación. En cuanto a la recomendación relativa a la mejora de los procedimientos con respecto al intercambio de información en el Registro Mercantil, las Autoridades han señalado el carácter público del Registro y que todos los documentos están disponibles bajo petición, de conformidad con el Decreto de Registro de Comercio de 2009. Sin embargo, la preocupación de los Examinadores es que no había evidencia (estadísticas) en relación con el funcionamiento de este procedimiento, por lo que mientras se reconoce que se intercambia la información, no existe un proceso que determina la forma en que esto ocurre. Este último se vincula con la deficiencia en relación con la eficacia del sistema.
29. Con respecto a la cuestión de la inmovilización de las acciones al portador, las Autoridades han indicado que se está ejercitando la supervisión del cumplimiento con el decreto nacional pertinente. El *Decreto Nacional sobre la obligación de conservar los títulos al portador*, que entró en vigor el 15 de junio, 2010 pretende inmovilizar los títulos al portador. Este Decreto establece (artículo 3) que los títulos al portador que ya han sido emitidos en el momento de inicio del Decreto deben haber sido depositados para su depósito seguro con el Proveedor de Servicios Fiduciarios ("TSP") o con otro depositario, a más tardar seis (6 ) meses a partir del inicio de este Decreto (31 de diciembre 2010).
30. Durante las inspecciones in situ realizadas a los TSP que se llevó a cabo durante el año 2011 hasta la actualidad, los equipos de inspecciones in situ revisaron el cumplimiento de los TSP con este Decreto. El Banco Central dio a siete (7) de los veinticuatro (24) concesionarios visitados, las instrucciones para tomar las medidas correctivas dentro del plazo estipulado. De los siete (7) concesionarios visitados que estaban en violación de este Decreto, hasta la fecha la mayoría se han cumplido y han proporcionado al Banco Central un plan de acción relativo a la inmovilización de las acciones al portador. El resultado de esta recomendación está en curso y se anticipa su actualización consiguiente por las Autoridades en cuanto al nivel de cumplimiento por parte de las personas relevantes.

### **Recomendación Especial VI**

31. Con respecto a las recomendaciones de los Examinadores para la RE. VI, las Autoridades han indicado que se revisará los P&G para los MTC para así lograr el cumplimiento. Por lo tanto, no se han cumplido con las recomendaciones de los examinadores.

### **Recomendación Especial VIII**

32. Las autoridades no han facilitado ninguna información sobre las medidas para dar cumplimiento a las recomendaciones de los Examinadores. Las recomendaciones siguen pendientes.

### **Recomendación Especial IX**

33. En lo que respecta al cumplimiento de las recomendaciones de los Examinadores, las Autoridades han indicado que no ha habido consultas con las autoridades aeroportuarias y que se modificará la estructura de la zona de llegada para incorporar más señales y también para garantizar la visibilidad de las señales con el fin de abordar la recomendación sobre la necesidad de mejoras adicionales en relación con la manera en que los pasajeros sean notificados sobre su obligación en la zona de llegada en el aeropuerto. Sobre la base de la conclusión de las consultas y una indicación de los cambios finales decididos e se efectuará un análisis del cumplimiento con la recomendación. En lo atinente a la recomendación de que la Aduana sea obligada a mejor supervisar el origen, el destino o el propósito del movimiento de oro, metales y piedras preciosas, Curazao ha indicado que el proyecto de modificación a la Ordenanza Nacional sobre las Obligaciones a Reportar sobre el Transporte Transfronterizo de Dinero, que se encuentra todavía en el proceso legislativo se abordará la cuestión de los metales de oro, piedras preciosas y piedras. En consecuencia, la recomendación sigue pendiente. En cuanto al tema de la Aduana otorgada con el poder de detener o retener moneda cuando existe una sospecha de LD o FT, las Autoridades han señalado que en el Reglamento General, importación, exportación y tránsito, la Aduana tiene la autoridad para detener o retener la moneda cuando existe una sospecha del lavado de dinero, sin embargo el poder de detener y retener se indica explícitamente en el Reglamento General modificado. Sujeto a la modificación del Reglamento General, esta recomendación sigue pendiente.

## **III. Conclusión**

34. Desde la aprobación de su Informe de Evaluación Mutua, Curazao ha iniciado el proceso de revisión y determinación de los proyectos de ley que deben ser modificados para cumplir con las recomendaciones de los Examinadores. También han comenzado a presentar algunas de las leyes nuevas y modificadas en el proceso legislativo, que se espera dará lugar a la promulgación y implementación oportuna. (Por ejemplo, el proyecto de Ley de Armonización, las Obligaciones derivadas del Decreto Nacional para Reportar sobre el Transporte Transfronterizo de Dinero).

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35. Se recomienda la presentación de un informe por Curazao durante la Plenaria de noviembre 2013<sup>9</sup>, en el entendimiento de que habrá un cumplimiento sustancial con las recomendaciones de los Examinadores en ese momento.

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<sup>9</sup> Después de la presentación de del Informe de Evaluación Mutua Curaçao, la Plenaria decidió que Curaçao será colocado en el seguimiento regular y presentará un informe en noviembre de 2013. Sin embargo, es una practica habitual que cada país evaluado debe ofrecer una informe inicial durante la próxima a Plenaria tras la adopción de su Informe.

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	<b>Rat-ing</b>	<b>Summary of Factors for Rating</b>	<b>Recommended Actions</b>	<b>Actions Undertaken by Curaçao</b>
<b>Legal systems</b>				
1. ML offense	LC	<p>The possession of equipment or materials or substances listed in Table I and Table II of the Vienna Convention has not been criminalized.</p> <p>The Penal Code provides for a specific listing of offences occurring abroad which may be prosecuted in Curacao which may not cover all serious crimes.</p> <p>The ancillary offence of preparation would not apply to intentional or culpable money laundering offences</p>	<ul style="list-style-type: none"> <li>• Curaçao should criminalize the possession of equipment or materials or substances listed in the Vienna Convention.</li> <li>• The Authorities should move amendments to extend the powers of prosecution to all crimes committed abroad which would constitute crimes in Curaçao.</li> <li>• The law should provide for the widest range of ancillary offences for all money laundering offences. Currently, the ancillary offence of preparation would not apply to some money laundering offences.</li> </ul>	<p>A revision of the Opium Ordinance 1960 has been presented to Parliament (Statennr. 2321) in connection with the ratification /implementation of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the UN Convention on Psychotropic Substances.</p> <p>The new Penal Code (entered into force by November 15, 2011) also provides for a specific listing of offences occurring abroad, which may be prosecuted in Curacao but the listing doesn't cover all serious crimes. During the following 5 years we will be evaluating the new Penal Code and testing it to applicable Conventions.</p>
2. ML offense—mental element and corporate liability	LC	The effectiveness of the ML prosecution regime could not be properly assessed based on the statistical information provided.	<ul style="list-style-type: none"> <li>• The Authorities should reconsider a reduction in the penalties for money laundering.</li> </ul>	<p>1. Regarding the distinctness of statistical material it is proposed that this topic be handled at the institutional consultation between Prosecuting Attorney and the Police.</p> <p>2. Regarding the reconsideration of penalties for money laundering (as enacted in the new Penal Code): this is also to be part of the evaluation as aforementioned.</p>
3. Confiscation and provisional measures	LC	Examiners had difficulty in assessing the true effectiveness of Curacao's confiscation regime.	<ul style="list-style-type: none"> <li>• Whilst the prosecutor always retains the ultimate discretion as to whether cases should be proceeded with, the Examiners consider that it would be more transparent for the PPO to establish appropriate</li> </ul>	There are Guidelines governing the confiscation regime.

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			Guidelines to govern such cases to avoid the possibility or appearance of impropriety.	

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	<b>Rat-ing</b>	<b>Summary of Factors for Rating</b>	<b>Recommended Actions</b>	<b>Actions Undertaken by Curaçao</b>
<b>Preventive measures</b>				
4. Secrecy laws consistent with the Recommendations	PC	<p>The Central Bank cannot exchange information with the supervisory arm of the MOT; or GCB.</p> <p>The FIU (MOT), in the conduct of its supervisory function, is not allowed to disclose information with domestic supervisory counterparts.</p> <p>The GCB cannot disclose information to national and international supervisors.</p> <p>There are differences in views between the Police and Central Bank regarding the ready availability of information requests.</p>	<ul style="list-style-type: none"> <li>• It should be made clear whether the MOT, in its functions as a supervisory authority, is allowed to disclose information with domestic or international supervisory counterparts.</li> <li>• The IOCCS should make provision for sharing of information with national and international supervisors</li> <li>• Clear information gateways should be made in the Ordinance for supervisor-to-supervisor exchange by the Central Bank to the supervisory arm of the FIU (MOT).</li> <li>• The Police and Central Bank should resolve any differences in expectations as it relates to how readily information is forthcoming.</li> </ul>	<p>The Norut is being revised. This issue will be addressed in the revision of the Norut.</p> <p>This has already been addressed in the draft Harmonization supervision ordinances which is in the legislative process.</p>
5. Customer due diligence	PC	<p>No legislative requirements for CDD when carrying out occasional wire transfers in the circumstances covered by the Interpretative Note to SR VII</p> <p>No legislative requirement for service providers to conduct on-going due diligence on the business relationship.</p> <p>Clarity is needed on whether non-life activities that are reportable under the NORUT are to be subject to CDD under the NOIS.</p> <p>The NOIS allows for full exemption from CDD rather than reduced or simplified as provided for under the FATF Recommendations.</p> <p>The P&amp;G for CI does not limit simplified and reduced CDD to customers of countries that Curacao is satisfied are in compliance with and effectively implementing the FATF Recommendations.</p>	<ul style="list-style-type: none"> <li>• Insurance agents should be captured in the AML/CFT framework.</li> </ul>	<p>Activities of both brokers and insurance agents fall under the NOIS and the NORUT. They both mediate at concluding a life insurance contract as defined in article 1 paragraph 1 sub b under 5 of the NOIS and article 1 paragraph 1 sub a under 5 of the NORUT.</p> <p>In the P&amp;G for IC &amp; IB, we have added the word insurance brokers in brackets on the front page, since this word is most commonly used in our jurisdiction. For the sake of completeness "Insurance agents" fall under the definition of Insurance intermediaries. Furthermore, on page 15 of the P&amp;G, in foot nr 16, we also refer to insurance broker/agents.</p> <p>The explanatory notes of the National Ordinance on the Insurance Brokerage Business (N.G. 2003, no 113) state explicitly: "that it is desirable in terms of promoting</p>



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	<b>Rat-ing</b>	<b>Summary of Factors for Rating</b>	<b>Recommended Actions</b>	<b>Actions Undertaken by Curaçao</b>
		<p>The risk exercise undertaken to exempt certain financial institutions from CDD based on their designation as low risk, is unclear</p> <p>No explicit requirement in the P&amp;Gs requiring financial institutions to consider making a UTR, where the requirements of E.C. 5.3 to E.C. 5.6 are not met. In addition, no requirement in the P&amp;G for CI to conduct CDD on existing customers on the basis of materiality and risk, and to conduct due diligence on such existing relationships at appropriate times.</p> <p>The sector P&amp;Gs do not conform to the NOIS as it relates to the timing of verification of non-resident clients.</p> <p>No requirement in the P&amp;G for IC &amp; IB requiring financial institutions to undertake CDD when doubts arise about the veracity or adequacy of previously obtained customer identification data.</p>	<ul style="list-style-type: none"> <li>Clarity is needed on whether all persons conducting reportable activities under the NORUT are subject to CDD under the NOIS. Specifically, the NORUT establishes an objective indicator for non-life insurance policies; however, the NOIS only applies to Article 1a of the National Ordinance on the Supervision of the Insurance Industry, i.e. life insurance contracts.</li> <li>The P&amp;G for IC &amp; IB should require financial institutions to undertake CDD when doubts arise about the veracity or adequacy of previously obtained customer identification data.</li> <li>There should be a specific requirement in law or regulation for CDD to be undertaken when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII.</li> <li>The NOIS should clearly establish an obligation on the service provider to conduct on-going due diligence on the business relationship.</li> </ul> <p><b>RISK</b></p> <ul style="list-style-type: none"> <li>In keeping with the FATF rules of not applying or exempting some or all of the Forty Recommendations to some financial activities in strictly limited and justified circumstances, and based on a proven low risk of money laundering or terrorist</li> </ul>	<p>orderly commerce and protecting the interests of potential insurance policyholders to establish rules for insurance brokers <b>and their agents</b> with regard to the exercise of the insurance brokerage trade.</p> <p>Please refer to the attached copy of the NOIB.</p> <p>At present, there is indeed a discrepancy between the NORUT and the NOIS in this respect. However, since the FATF recommendations do not cover non-life insurance, our approach will be to adapt the NORUT.</p> <p>The P&amp;G will all be revised to implement the recommended actions.</p> <p>The P&amp;G will all be revised to implement the recommended actions.</p> <p>The NOIS is being revised. This will be addressed in the revision of the NOIS.</p> <p>The risk based approach of the Central Bank for credit institutions is primarily based on the nature of the institutions' business. A significant number of the credit institutions (in 2010: credit unions (15), specialized credit institutions (6), savings</p>

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	<b>Rat-ing</b>	<b>Summary of Factors for Rating</b>	<b>Recommended Actions</b>	<b>Actions Undertaken by Curaçao</b>
			<p>financing, clarity is needed on the risk exercise undertaken that resulted in the designation and exemption of low risk financial institutions.</p> <p>• Exemptions in the NOIS should allow for</p>	<p>and credit funds (7)) are regarded as low risk due to the nature of their business. Subsequent to eliminating these low risk institutions from the total licensed institutions, all high and medium risk credit institutions have been subjected to onsite reviews for verification of compliance with AML/CFT.’</p> <p>The risk based approach of the Central Bank for insurance sector is as follows: The types of life insurance contracts that are considered vulnerable as a vehicle for laundering money are investment related insurance. Examples of this type of insurance contract are; - unit linked or with profit single premium contracts; - purchase of annuities; - lump sum top-ups to an existing life insurance contract, and - lump sum contributions to personal pension contracts.</p> <p>The vulnerability depends on factors such as the complexity and terms of the contract, distribution, payment system and contract law.</p> <p>The life insurance industry in Curaçao characterizes itself amongst other as 1) selling of credit life insurance (risk insurance in relation to mortgage loans). These products do not have a cash value or investment features and as such do not lend themselves to money laundering activities. 2) Selling of life insurances of which premiums are being paid in monthly installments. 3) Purchase of annuity which are the result of life insurance which have matured.</p> <p>Of the 10 life insurance companies that the Central Bank had under its supervision as of December 31, 2010, the activities of 2 focused mainly on credit insurance.</p>

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	Rat-ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Curaçao
			<p>reduced or simplified CDD for low risk scenarios, rather than no CDD.</p> <ul style="list-style-type: none"> <li>The P&amp;G for CI should limit simplified and reduced CDD to customers of countries that Curaçao is satisfied are in compliance with and effectively implementing the FATF Recommendations.</li> </ul> <p><u>TIMING OF VERIFICATION</u></p> <ul style="list-style-type: none"> <li>The P&amp;G and the NOIS should be consistent in terms of timing of verification of the identity of non-resident clients.</li> </ul> <p><u>FAILURE TO SATISFACTORITY COMPLETE CDD</u></p> <ul style="list-style-type: none"> <li>The P&amp;Gs should explicitly require that a financial institution: considers submitting a UTR where the requirements at E.C 5.3 to 5.6 are not met. Further, the P&amp;G for CI should require the conduct of CDD on existing customers/retrospective CDD, on the basis of materiality and risk, and due diligence on such existing relationships at appropriate times.</li> </ul>	<p>The NOIS is being revised. This will be addressed in the revision of the NOIS.</p> <p>This will be addressed in the abovementioned revisions of the P&amp;G and the NOIS.</p> <p>This will be addressed in the abovementioned revisions of the P&amp;G.</p>

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	<b>Rat-ing</b>	<b>Summary of Factors for Rating</b>	<b>Recommended Actions</b>	<b>Actions Undertaken by Curaçao</b>
6. Politically exposed persons	LC	Effective supervision on factoring service providers cannot be determined in light of recent inclusion under the AML/CFT framework.	<ul style="list-style-type: none"> <li>There should be effective coverage of factoring which was recently included in the NOIS and the NORUT.</li> </ul>	The implementation of AML/CFT supervision on factoring service providers is being prepared by the Central Bank.
7. Correspondent banking	LC	Credit institutions are not required to assess the respondent's AML/CFT controls and ascertain that they are adequate and effective.	<ul style="list-style-type: none"> <li>The Guidelines for CI should <b>explicitly require</b> that credit institutions assess the respondent's AML/CFT controls and ascertain that they are adequate and effective as required under Recommendation 7.</li> </ul>	This will be addressed in the abovementioned revision of the P&G.
8. New technologies & non face-to-face business	C	This Recommendation has been fully observed.		
9. Third parties and introducers	C	This Recommendation has been fully observed.		
10. Record keeping	LC	<p>No explicit requirement in law or regulation for IC &amp; IB and MTCs to maintain business correspondence for at least five (5) years following termination of an account or business relationship (or longer if requested by a competent authority in specific cases upon proper authority. No mandatory provisions in the P&amp;G regarding the above.</p> <p>No explicit requirement in law or regulation requiring financial institutions to ensure that information (business correspondence) is available on a timely basis to the domestic competent authorities.</p>	<ul style="list-style-type: none"> <li>It should be explicitly stated in law or regulation that IC &amp; IB and MTC maintain business correspondence for third parties for at least five (5) years following termination of an account or business relationship (or longer if requested by a competent authority in specific cases upon proper authority. <b>The language in the P&amp;Gs should also reflect a mandatory requirement as it relates to this matter.</b></li> <li>Provision should be made in law or regulation requiring financial institutions to ensure that all information (business correspondence) is available on a timely basis to the domestic competent authorities.</li> </ul>	<p>This will be addressed in the abovementioned revisions of the P&amp;G and the NOIS.</p> <p>This will be addressed in the abovementioned revisions of the P&amp;G and the NORUT.</p>
11. Unusual transactions	PC	No requirement in the P&Gs for financial institutions to keep their findings of examinations on the background and purpose of complex, unusual large	<ul style="list-style-type: none"> <li>Financial institutions should be required to (1) keep the findings of examinations on the background and purpose of complex, unusual large and unusual patterns of</li> </ul>	This will be addressed in the abovementioned revisions of the P&G and the NOIS.

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		<p>transactions for at least five (5) years.</p> <p>No requirement in the P&amp;Gs for findings of examinations on the background and purpose of complex, unusually large or unusual patterns of transactions to be made available to the auditors and competent authorities.</p>	<p>transactions for at least five (5) years and (2) make such findings available to the auditors and competent authorities.</p>	

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	<b>Rat-ing</b>	<b>Summary of Factors for Rating</b>	<b>Recommended Actions</b>	<b>Actions Undertaken by Curaçao</b>
12. DNFBP–R.5, 6, 8-11	NC	<p>The provision of services dealing with the organisation of contributions for the creation, operation or management of companies and the provision of nominee services are not subject to the AML/CFT obligations of the NOIS and the NORUT.</p> <p>Internet casinos are not subject to the AML/CFT obligations of NOIS and NORUT.</p> <p>The threshold for identification requirements for casinos is too high.</p> <p>Deficiencies with regard to Rec. 5 applicable to all DNFBPs include:</p> <p style="padding-left: 40px;">No legislative requirements for CDD when carrying out occasional wire transfers in the circumstances covered by the Interpretative Note for SR. VII.</p> <p style="padding-left: 40px;">No legislative requirement for service providers to conduct on-going due diligence on the business relationship.</p> <p style="padding-left: 40px;">The NOIS allows for full exemption from CDD rather than reduced or simplified CDD as required under the FATF Recommendations.</p> <p>No requirement in the P&amp;Gs for administrators and company (trust) service providers obligating financial institutions to consider making a UTR when the requirements of E.C. 5.3 to E.C. 5.6 are not met.</p> <p>Criteria 5.5.2, 5.6 to 5.11, 5.16 and 5.17 of Rec. 5 are not enforceable on DNFBPs under the FIU (MOT) and the GCB.</p>	<ul style="list-style-type: none"> <li>• Lawyers, notaries, accountants or similar legal professions preparing for or carrying out transactions for clients dealing with the organisation of contributions for the creation, operation or management of companies and trust and company service providers carrying out transactions for clients dealing with acting as (or arranging for another person to act as) a nominee shareholder for another person should be subject to the AML/CFT obligations of the NOIS and NORUT.</li> <li>• Internet casinos should be subject to the AML/CFT obligation in the NOIS and NORUT.</li> <li>• The threshold for identification requirements for casinos in legislation should be revised in accordance with the FATF standard.</li> <li>• Financial institutions should be legislative required to perform CDD when carrying out occasional wire transfers in circumstances covered by SR. VII.</li> <li>• Service providers should be legislatively required to conduct on-going due diligence on business relationships.</li> <li>• The NOIS should be amended to allow for reduced or simplified CDD measures for exempted institutions or enterprises under</li> </ul>	<p>Trust and company service providers carrying out transactions for clients dealing with acting as (or arranging for another person to act as) a nominee shareholder for another person are subject to the AML/CFT obligations of the NOIS and of the NORUT. Aforementioned services are fiduciary services as referred to in Article 1, paragraph 1, under b, at 14° of the NOIS and in Article 1, paragraph 1, under a, at 14° of the NORUT. Furthermore, nominee shareholder service is explicitly addressed in the P&amp;G for company (trust) service providers on page 14: “All company (trust) service providers that provide nominee shareholder services and/or provide custody of bearer shares must know the true identity of the person/persons (resident or non-resident) for whom assets are held or are to be held, including the (ultimate) beneficial owner(s). The identity of these clients must be established in accordance with the identification procedures previously mentioned.”</p> <p>Internet casinos are at the moment subject to the AML/CFT obligations in the NOIS and NORUT. The legislation which institutes a supervisory authority for this sector is in the legislative process.</p> <p>This has been addressed in the draft revision of the Ministerial Decree of the NOIS.</p> <p><u>DNFBP do not qualify as financial institutions and therefore are not allowed to carry out wire transfers as a service provider. They can only act as an originator.</u></p> <p>This will be addressed in the abovementioned revisions of the NOIS.</p> <p>This will be addressed in the abovementioned revisions of the NOIS.</p>

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		<p>Deficiencies identified in section 3 for Recs. 10 and 11 are also applicable to DNFBPs under the Central Bank</p> <p>Requirements of Recs. 6, and 11 are not enforceable on DNFBPs under the supervision of MOT and the GCB.</p> <p>Requirements of Rec. 9 are not enforceable on DNFBPs under the supervision of the FIU (MOT).</p> <p>Deficiencies identified in section 3.5 for Rec.10 are also applicable to all DNFBPs. Additionally, the requirement to ensure that transaction records are sufficient to permit the reconstruction of individual transactions is not enforceable on DNFBPs under FIU/MOT and GCB.</p>	<p>Article 2, paragraph 4.</p> <ul style="list-style-type: none"> <li>• The P&amp;Gs for administrators and company (trust) service providers should be amended to require financial institutions to consider making a UTR when the requirements of E.C. 5.3 to E.C. 5.6 are not met.</li> <li>• Criteria 5.5.2, 5.6 to 5.11, 5.16 and 5.17 of Rec. 5 should be enforceable on DNFBPs under FIU/MOT and the GCB.</li> <li>• Deficiencies identified in section 3 for Recs 10 and 11 which are applicable to DNFBPs under the Central Bank should be remedied.</li> <li>• Obligations in Recs. 6, 8 and 11 should be enforceable on DNFBPs under the supervision of FIU/MOT and the GCB and company (trust) service providers.</li> <li>• Obligations in Recs. 9 should be enforceable on company (trust) service providers and DNFBPs under the supervision of the FIU (MOT).</li> <li>• The deficiencies in section 3.5 for Rec. 10 which are applicable to all DNFBPs should be remedied. Additionally, the requirement to ensure that transaction records are sufficient to permit the reconstruction of individual transactions should be enforceable on DNFBPs under the FIU (MOT) and the GCB.</li> </ul>	<p>This will be addressed in the abovementioned revisions of the P&amp;G and the NORUT.</p> <p>This will be addressed in the abovementioned revisions of the P&amp;G and the NOIS.</p> <p>In order to implement the CFATF-recommendations, the Gaming Control Board will effect the following.</p> <ol style="list-style-type: none"> <li>1. Planning to ensure that the casino sector will be audited regularly and consistently on their compliance with the AML/CFT regulations.</li> </ol> <p>Audits on AML/CFT-compliance. In the first quarter of 2012 the GCB has audited two new casinos that opened in August 2011 on AML/CFT-compliance. The management letters, containing the findings, will be sent to the casinos before August 15, 2012. In the last quarter of 2012 all casinos will again undergo their yearly AML/CFT-audit as part of their MICS compliance audit. The casinos are audited on a yearly basis. As of financial year 2012, the GCB will also perform the audits of the financial statements of all casinos, which will give the GCB more insight in the casino's overall operations.</p> <p><b>Capability of the GCB.</b> To ensure effective supervision of the casinos, the capacity of the audit division is being</p>

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				<p>increased. In the first half of 2012 the division was expanded with one audit supervisor and one audit senior. It is expected that before the end of 2012 three additional auditors will have been recruited.</p> <p>Furthermore, since June 2012 the GCB has made CAMS-certification mandatory for all GCB auditors.</p> <p>2. Planning to ensure that non-compliance will be sanctioned in an effective, proportional and dissuasive manner.</p> <p><b>Procedure.</b>                      Within 60 days after the AML/CFT audit of a casino, the casino will receive a management letter, outlining the findings of the audit and recommendations for correction.                      Depending on the nature of the repairs, the casino will have three to six months in which to implement the recommendations. After that time, the GCB will audit again to assess if the recommendations have been followed.                      Depending on the findings, the GCB will then decide if sanctions are called for and if so, to what extent.                      Most probable sanctions will be a fine, proportional to the violations, and the closing down of the casino (although an ultimum remedium).</p>



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	<b>Rat-ing</b>	<b>Summary of Factors for Rating</b>	<b>Recommended Actions</b>	<b>Actions Undertaken by Curaçao</b>
13. Suspicious transaction reporting	PC	<p>Effective implementation of reporting of suspicious reports is not demonstrated.</p> <p>Subjective indicators for the filing of UTRs are rules based, which hinders the reporting entity's autonomy to decide whether to file a UTR</p> <p>Heavy reliance by the reporting entities on the prescriptive list of indicators provided by the Ministerial Decree.</p> <p>Insufficient flexibility for reporting entities to identify suspicion of ML or FT.</p>	<ul style="list-style-type: none"> <li>The Authorities should ensure that entities from all sectors report UTRs.</li> <li>Mechanisms should be put in place that would require all reporting entities to focus on identifying and reporting on transactions for which they can identify a suspicion.</li> <li>Reporting entities should not rely only on the prescriptive list of indicators provided by the Ministerial Decree.</li> <li>The relevant procedures should be revised to allow developing more flexibility for reporting entities to identify suspicion of ML or FT.</li> </ul>	<p>The actual indicators are going to be discussed by all organizations/institutions within the reporting system in order to assess their effectiveness. This will also occur in conjunction with the other relevant partners within the Dutch Kingdom.</p>
14. Protection & no tipping-off	PC	<p>Directors of legal persons are not protected by law from civil and criminal liability for breach of confidentiality for reporting to the FIU (MOT) in good faith.</p> <p>Tipping-off offence only applicable to employees directly involved in the reporting of any unusual or suspicious transaction to the FIU (MOT).</p>	<ul style="list-style-type: none"> <li>Relevant amendments should be made to ensure that directors of legal persons are protected by law from both civil and criminal liability for breach of confidentiality when reporting to the FIU (MOT) in good faith.</li> <li>The tipping-off offence should cover all the directors, officers and employees of a financial institutions.</li> </ul>	<p>The language of the Norut will be adapted in order to ensure the correct interpretation of the legislation.</p>
15. Internal controls, compliance & audit	C	<p>This Recommendation has been fully observed.</p>		
16. DNFBP– R.13-15 & 21	NC	<p>Deficiencies identified for Rec. 13 and 14 in Section 3.7 are applicable to all DNFBPs.</p> <p>Ineffective reporting of unusual transactions by DNFBPs.</p> <p>Deficiencies identified for Rec. 21 in Section 3.6 of</p>	<ul style="list-style-type: none"> <li>The deficiencies identified for Recs. 13 and 14 in section 3.7 for all DNFBPs should be remedied.</li> <li>The deficiencies identified for Rec. 21 in sections 3.6 for DNFBPs under the Central Bank should be remedied.</li> </ul>	<p>The <b>FIU</b> is contacting all reporting entities, including the DNFBPs, with regard to their reporting obligations under the NORUT.</p>

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		<p>this report also applies to all DNFBPs under the Central Bank.</p> <p>Obligations in Rec. 15 and 21 are not enforceable on the DNFBPs under the FIU (MOT) and the GCB.</p>	<ul style="list-style-type: none"> <li>• Obligations in Rec. 15 and 21 should be made enforceable on the DNFBPs under MOT and GCB.</li> </ul>	<p>See actions of GCB under rec. 12.</p> <p>Stricter AML-, MICS- and financial supervision will lead casinos to comply with their reporting obligations.</p>

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	<b>Rat-ing</b>	<b>Summary of Factors for Rating</b>	<b>Recommended Actions</b>	<b>Actions Undertaken by Curaçao</b>
17. Sanctions	PC	<p>The range of administrative sanctions available to the Central Bank under the various Ordinances is uneven.</p> <p>The procedures under the RFETCSM to impose sanctions on non-bank MTCs are unclear and may prove ineffective.</p> <p>Effectiveness of the range of sanctions available for non-compliance with requirements cannot be determined given the limited employ of such.</p>	<ul style="list-style-type: none"> <li>• With respect to EC 17.1, the range of sanctions under the various Ordinances should be reviewed with a view to harmonising and ensuring effectiveness, dissuasiveness and proportionality as follows: <ul style="list-style-type: none"> <li>• The power to appoint a trustee/administrator should apply under the RFETCSM, NOSTSP, NOSII and NOIB</li> <li>• Revocation of the license or dispensation should be available under the NOSSE, NOSII and NOIB.</li> <li>• The power to impose administrative fines for AML/CFT violations should be available under the NOIB.</li> <li>• Referral for criminal investigation or prosecution by the Central Bank should be available under the NOIB, NOSII</li> </ul> </li> <li>• The application of conditions and application of sanctions under the RFETCSM to non-bank MTCs should be clarified.</li> </ul>	<p>The power to appoint a trustee/administrator has already been addressed in the Harmonization Law for the NOSTSP, NOSII and NOIB. The appointment of a trustee/administrator is not necessary under the RFETCSM as the aforementioned power will be possible under the abovementioned supervision laws for all institutions supervised by the Central Bank.</p> <p>The revocation of license has already been addressed in the Harmonization Law.</p> <p>The power to impose administrative fines has already been addressed in the Harmonization Law.</p> <p>For insurance companies and insurance brokers referral for criminal investigations or prosecutions is already possible based on article 10 of the NOIS and article 23 of the NORUT. Nevertheless, the referral for criminal prosecution is also being addressed in the Harmonization Law.</p> <p>The abovementioned Harmonization Law is in the legislative process.</p>

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				The application of conditions is based on article 17 paragraph 3 juncto article 21 paragraph 1 of the RFETCSM. Therefore, violations of these conditions will result in the application of the sanctions under the RFETCSM (such as an instruction (article 33 paragraph 1) or revocation of license/dispensation (article 22) or a referral for criminal investigation or prosecution (article 81 )) and the sanctions under the NOIS and the NORUT.
18. Shell banks	C	This Recommendation has been fully observed.		
19. Other forms of reporting	C	This Recommendation has been fully observed.		
20. Other NFBP & secure transaction techniques	C	This Recommendation has been fully observed.		
21. Special attention for higher risk countries	PC	<p>No requirement in the P&amp;Gs for IC &amp; IB and MTCs that for transactions that have no apparent economic or visible lawful purpose that their background and purpose should as far as possible, be examined, and written findings should be available to assist competent authorities and auditors.</p> <p>Insufficient instructions issued regarding countermeasures where countries continue not to or insufficiently apply the FATF Recommendations</p>	<ul style="list-style-type: none"> <li>The P&amp;Gs for IC &amp; IB and the MTCs should require that for transactions that have no apparent economic or visible lawful purpose, the background and purpose of such transactions should, as far as possible, be examined, and written findings should be available to assist competent authorities (e.g. supervisors, law enforcement agencies and the FIU (MOT)) and auditors.</li> <li>Authorities should effectively demonstrate employ of instructions regarding countermeasures for transactions and business relationships with countries that do not apply or insufficiently apply the FATF</li> </ul>	This will be addressed in the abovementioned revision of the P&G.

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			Recommendations.	

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	<b>Rat-ing</b>	<b>Summary of Factors for Rating</b>	<b>Recommended Actions</b>	<b>Actions Undertaken by Curaçao</b>
22. Foreign branches & subsidiaries	C	This Recommendation has been fully observed.		
23. Regulation, supervision and monitoring	LC	Financial institutions engaged in factoring services were only recently subject to the NOIS and NORUTT and subject to supervision by the Central Bank.	<ul style="list-style-type: none"> <li>The new framework for prudential supervision of MTCs should be implemented as soon as possible.</li> </ul>	<b>The information in the columns ‘Summary of Factors for Rating’ and ‘Recommended Actions’ do not correlate.</b>
24. DNFBP - regulation, supervision and monitoring	NC	<p>No supervision of internet casinos for compliance with AML/CFT obligations</p> <p>The FIU (MOT) has not implemented an effective supervisory regime.</p> <p>The FIU (MOT) lacks resources to effectively supervise DNFBPs subject to AML/CFT obligations.</p> <p>Deficiencies identified in section 3.10 with regard to R. 17 and 29 are also applicable to DNFBPs under the Central Bank.</p>	<ul style="list-style-type: none"> <li>The Authorities should implement an AML/CFT regime for supervision of and compliance by Internet casinos.</li> <li>The FIU (MOT) should implement and effective supervisory regime as soon as possible.</li> <li>The FIU (MOT) should be given more resources to fulfil their supervisory role for the relevant DNFBP sector.</li> <li>The deficiency identified in section 3.10 (R. 29) with regard to the supervisory function of the Central Bank should be remedied.</li> </ul>	<p>The relevant supervision law is in the legislative process.</p> <p>The FIU is preparing regular audits pursuant to the NORUT and the NOIS.</p> <p>The FIU has also sent a letter to the Minister of Finance requesting additional human resources.</p> <p>Please refer to the response on R.29.</p>
25. Guidelines & Feedback	PC	<p>The FIU (MOT) annual reports do not include adequate information on trends and typologies.</p> <p>P&amp;G for providers of factoring services not in place to assist in implementing and complying with AML /CFT requirements.</p> <p>No P&amp;Gs for Internet Casinos.</p>	<ul style="list-style-type: none"> <li>Reporting entities should receive more general and case-by-case feedback on reports submitted to the FIU.</li> <li>The annual report (or other reports) of the FIU (MOT) should include more information on ML and FT trends and typologies.</li> <li>In light of the recent National Decree Designating Services, Data and Supervisors under the NOIS (when Providing Services), a framework, inclusive of a P&amp;G should be implemented.</li> <li>Provisions and Guidelines should be</li> </ul>	<p>The FIU is reviewing its annual reports to make the trends and typologies more visible.</p> <p>The implementation of AML/CFT supervision on factoring service providers is being prepared by the Central Bank.</p>

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	<b>Rat-ing</b>	<b>Summary of Factors for Rating</b>	<b>Recommended Actions</b>	<b>Actions Undertaken by Curaçao</b>
			<p>developed for Internet Casinos.</p> <ul style="list-style-type: none"> <li>The FIU (MOT) should provide the DNFBPs that it supervises with more ML/FT feedback.</li> </ul>	

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<b>Institutional and other measures</b>				
26. The FIU	PC	<p>Provisions of Articles 4, 16 and 22 of the NORUT present a risk to the proper protection of information.</p> <p>Articles 4, 16 and 22 of the NORUT contain provisions that risk the interference in the operation of the FIU (MOT):</p> <p style="padding-left: 40px;">Possibility of undue influence and interference by the Minister of Finance who can directly manage the FIU (MOT) database under the provisions of the NORUT (Articles 4 and 22).</p> <p style="padding-left: 40px;">Current composition of the Guidance Committee for the FIU (MOT) could lead to undue influence or interference. (Article 16).</p> <p>Insufficient trends and typologies in the FIU (MOT's) annual reports.</p> <p>Effectiveness issues:</p> <p style="padding-left: 40px;">Lack of sufficient human resources is limiting the FIU (MOT's) effectiveness.</p> <p style="padding-left: 40px;">Systems and procedures in place result in a low level of UTRs being analysed.</p> <p style="padding-left: 40px;">The approval process of the FIU (MOT) with regard to cases appears to be burdensome.</p> <p style="padding-left: 40px;">Important limitation to indirect access to law enforcement database (requirement of a letter on a case by case basis).</p>	<ul style="list-style-type: none"> <li>• The Authorities should consider revising the composition and mandate of the Guidance Committee (Article 16 of the NORUT) to avoid any possibility of undue influence or interference.</li> <li>• Article 22 of the NORUT should be revised in order to better protect the access to the database from individuals being the object of UTRs.</li> <li>• The process of having most cases presented by an analyst to the Head of the FIU should be revised with consideration being given to using the process in exceptional circumstances. In addition, other officials than the Head of FIU (MOT) should have the authority to approve the disclosure of cases on a regular basis.</li> <li>• The Curaçao Authorities should consider amending Articles 4, of the NORUT to remove provisions that could potentially lead to the risk of interference or undue interference.</li> <li>☐ The annual report (or other reports) of the FIU (MOT) should include more information on ML and FT trends and typologies.</li> </ul>	These recommendations will be addressed in the revision of the Norut.



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27. Law enforcement authorities	LC	<p>Effectiveness:</p> <p>The UFCB is facing important issues with regard to structure, resources and operations.</p> <p>BFO is also facing resources issues as there are six (6) vacant positions out of a total of fifteen (15) positions.</p> <p>Domestic recruitment of officers is an issue for law enforcement authorities in general. The level of experience and knowledge can limit the ability to undertake complex money laundering cases.</p> <p>Limited training on ML to law enforcement authority officers.</p> <p>No specific training is provided to law enforcement authority officers on terrorist financing.</p>	<ul style="list-style-type: none"> <li>The Curacao Authorities should review the functions and method of operation of the UFCB, and depending on the outcome of that review provides the Unit with adequate human and economic resources.</li> <li>The BFO is also facing recruitment challenges. Authorities should deploy efforts to find additional resources domestically that will be able to handle increasingly complex cases of ML and, potentially, FT.</li> </ul>	
28. Powers of competent authorities	LC	<p>Effectiveness: competent authorities can face challenges in obtaining warrants to search persons or premises or Court orders to compel production of documents or information held by reporting entities.</p>	<ul style="list-style-type: none"> <li>The process for obtaining a Court order to compel production of documents or information from reporting entities and warrant for the search of persons and premises should be amended so that it can be more easily available to law enforcement in the investigation of (ML and FT matters).</li> </ul>	
29. Supervisors	LC	<p>Limited number of AML onsite inspections do not definitively demonstrate adequacy of supervisory powers.</p>	<ul style="list-style-type: none"> <li>Albeit the risk-based approach, the onsite supervision programme should cover more licensed financial institutions and include a file review.</li> </ul>	<p>The Central Bank conducts thematic reviews in the area of ML/FT. These thematic reviews are not based on safety/soundness deficiencies identified at the supervised institutions. A bank may very well be selected for an AML/CFT review by the Central Bank if there are AML/CFT deficiencies, despite a low risk classification in the area of safety and soundness. For the international banking sector, for example,</p>

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				<p>the thematic reviews in the area of ML/FT conducted in 2010 comprised approximately 80% of the total assets of the international banking sector.</p> <p>Factors, such as AML/CFT deficiencies identified during previous examinations and in reporting documentation received and management letters, are also essential elements that are taken into consideration by the Central Bank in the execution of its AML/CFT risk assessment of the supervised institutions. Based on the Central Bank's overall risk assessment conducted in light of the qualitative factors and supervisory concerns, the Central Bank will determine the appropriate supervisory strategies and the intensity of the supervision and on-site examinations to be applied to a particular supervised institution.</p> <p>Although the ratio of the size of the staff of the various supervision departments of the Central Bank compared to the number of conducted on-site examinations is lower for certain sectors under supervision than others, the risk-based approach applied by the Central Bank allows the Central Bank to effectively monitor adherence to the AML/CFT requirements. The application of the risk-based approach allows the Central Bank to allocate and use its resources more efficiently and effectively among supervised institutions, while at the same time it allows the Central Bank to distinguish those institutions that pose a higher risk to the achievement of supervisory objectives. The monitoring of controls to combat ML and FT also forms an integral part of the supervisory risk-based regime applied by the Central Bank.</p> <p>The risk-based approach applied by the Central Bank allows the Central Bank to effectively monitor adherence to the AML/CFT requirements. The Central Bank has given</p>

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				<p>instructions for non-compliance with AML/CFT requirements.</p> <p>The onsite supervision program covers all financial institutions that are licensed by the Central Bank. In addition, the supervision program includes a file review, refer to table 8 of the MER: incomplete files regarding NOIS/P&amp;G, clearly provides an overview of the file reviews that were conducted during onsite examinations.</p> <p>The risk based approach of the Central Bank is primarily based on the nature of the institutions' business. A significant number of the credit institutions (in 2010: credit unions (15), specialized credit institutions (6), savings and credit funds (7)) are regarded as low risk due to the nature of their business. Subsequent to eliminating these low risk institutions from the total licensed institutions, all high and medium risk credit institutions have been subjected to onsite reviews for verification of compliance with AML/CFT.'</p> <table border="1" style="width: 100%; border-collapse: collapse; margin: 10px 0;"> <thead> <tr> <th></th> <th style="text-align: center;">2007</th> <th style="text-align: center;">2008</th> <th style="text-align: center;">2009</th> <th style="text-align: center;">2010</th> </tr> </thead> <tbody> <tr> <td>Examinations without AML/CFT components</td> <td style="text-align: center;">0</td> <td style="text-align: center;">0</td> <td style="text-align: center;">6</td> <td style="text-align: center;">4</td> </tr> <tr> <td>Examinations with AML/CFT components</td> <td style="text-align: center;">12</td> <td style="text-align: center;">7</td> <td style="text-align: center;">4</td> <td style="text-align: center;">22</td> </tr> <tr> <td><b>Total Examinations conducted</b></td> <td style="text-align: center;"><b>12</b></td> <td style="text-align: center;"><b>7</b></td> <td style="text-align: center;"><b>10</b></td> <td style="text-align: center;"><b>26</b></td> </tr> <tr> <td><b>Total licensed credit institutions</b></td> <td style="text-align: center;"><b>47</b></td> <td style="text-align: center;"><b>50</b></td> <td style="text-align: center;"><b>49</b></td> <td style="text-align: center;"><b>49</b></td> </tr> <tr> <td>  <b>Domestic commercial banks</b></td> <td style="text-align: center;"><b>11</b></td> <td style="text-align: center;"><b>12</b></td> <td style="text-align: center;"><b>13</b></td> <td style="text-align: center;"><b>13</b></td> </tr> <tr> <td>  <b>International banks</b></td> <td style="text-align: center;"><b>34</b></td> <td style="text-align: center;"><b>36</b></td> <td style="text-align: center;"><b>34</b></td> <td style="text-align: center;"><b>34</b></td> </tr> <tr> <td>  <b>Credit unions</b></td> <td style="text-align: center;"><b>1</b></td> <td style="text-align: center;"><b>1</b></td> <td style="text-align: center;"><b>1</b></td> <td style="text-align: center;"><b>1</b></td> </tr> <tr> <td>  <b>Specialized credit institutions</b></td> <td style="text-align: center;"><b>0</b></td> <td style="text-align: center;"><b>0</b></td> <td style="text-align: center;"><b>0</b></td> <td style="text-align: center;"><b>0</b></td> </tr> <tr> <td>  <b>Savings bank</b></td> <td style="text-align: center;"><b>1</b></td> <td style="text-align: center;"><b>1</b></td> <td style="text-align: center;"><b>1</b></td> <td style="text-align: center;"><b>1</b></td> </tr> <tr> <td>  <b>Savings and credit funds</b></td> <td style="text-align: center;"><b>0</b></td> <td style="text-align: center;"><b>0</b></td> <td style="text-align: center;"><b>0</b></td> <td style="text-align: center;"><b>0</b></td> </tr> </tbody> </table> <p>Based on the total examinations with AML/CFT components conducted during 2010 and the total high and medium risk licensed credit institutions as indicated above, these credit institutions have been examined approximately every 2 years by the Central Bank.</p>		2007	2008	2009	2010	Examinations without AML/CFT components	0	0	6	4	Examinations with AML/CFT components	12	7	4	22	<b>Total Examinations conducted</b>	<b>12</b>	<b>7</b>	<b>10</b>	<b>26</b>	<b>Total licensed credit institutions</b>	<b>47</b>	<b>50</b>	<b>49</b>	<b>49</b>	<b>Domestic commercial banks</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>13</b>	<b>International banks</b>	<b>34</b>	<b>36</b>	<b>34</b>	<b>34</b>	<b>Credit unions</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>Specialized credit institutions</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>Savings bank</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>Savings and credit funds</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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<b>Specialized credit institutions</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>																																																							
<b>Savings bank</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>																																																							
<b>Savings and credit funds</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>																																																							

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	<b>Rat-ing</b>	<b>Summary of Factors for Rating</b>	<b>Recommended Actions</b>	<b>Actions Undertaken by Curaçao</b>
				$\frac{49}{22} = 2.2$ <p>In light of the risk based approach of the Central Bank, there are high and medium risk licensed credit institutions that have been visited on more than 1 occasion during this time frame.</p> <p>Despite our risk-based approach, all life insurance companies under the supervision of the Central Bank were submitted to an AML/CFT examination. As was indicated before, a file review forms part of the examination program.</p>

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	<b>Rat-ing</b>	<b>Summary of Factors for Rating</b>	<b>Recommended Actions</b>	<b>Actions Undertaken by Curaçao</b>
30. Resources, integrity and training	PC	<p>Lack of adequate resources has resulted in a lower percentage of analysed UTRs.</p> <p>High number of vacant positions in the FIU (MOT) reduces its capacity to analyse and supervise.</p> <p>Insufficient human resources at the BFO.</p> <p>Insufficient lawyers at the Public Prosecutor's Office (PPO).</p> <p>Need to strengthen domestic capacity with regard to specialist prosecutors and judiciary.</p> <p>Insufficient amount of officers in the PPO that are assigned to handle mutual legal assistance requests.</p> <p>Potential challenges with resources available for AML/CFT supervision and regulation of the financial institutions.</p>	<ul style="list-style-type: none"> <li>• The human resources of the BFO should be enhanced significantly so that they can properly handle increasingly complex cases of ML.</li> <li>• The Curaçao Authorities should give consideration to assigning more lawyers to deal with mutual legal assistance requests.</li> <li>• The PPO should continue to build up its specialist prosecutorial resources and the Authorities should continue their efforts to attract more local legal professionals into the prosecutorial and judicial services.</li> <li>• The FIU (MOT) should be given more resources to fulfil their supervisory role of the relevant DNFBP sector.</li> <li>• The Authorities should review and strengthen as necessary, the resources available to supervise financial institutions.</li> </ul>	<p>A letter has been send to the Minister of Finance requesting more human resources for the FIU.</p>
31. National cooperation	PC	<p>The national committee on AML/CFT measures (CIWG) lacks structure and organization.</p> <p>Important concerns with frequency of meetings of the CIWG.</p> <p>Operational competent authorities are not represented on the CIWG</p> <p>No national committee or working group for competent authorities only.</p>	<ul style="list-style-type: none"> <li>• There should be a clear structure, governance and terms of reference in place that would assist with the organization of the CIWG.</li> <li>• The composition of the CIWG should include more operational competent authorities such as FIU (MOT), the PPO and other law enforcement authorities.</li> <li>• Consideration should be given to having a forum where only competent authorities can work together on policy and legislative changes that will contribute to improve the national AML/CFT regime.</li> <li>• An assessment of the adequacy of resources</li> </ul>	<p>The actual structure is being thought through to advice on a revision of the same.</p>

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			assigned to competent authorities should be undertaken to ensure that they keep pace with a dynamic financial sector.	

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	<b>Rat-ing</b>	<b>Summary of Factors for Rating</b>	<b>Recommended Actions</b>	<b>Actions Undertaken by Curaçao</b>
32. Statistics	PC	<p>No statistics being kept on the exchange of information between law enforcement Authorities other than those related to mutual legal assistance.</p> <p>No segregation of the PPO database with regard to its different activities</p> <p>No statistics on reports filed for cross border bearer negotiable instruments.</p> <p>No statistics kept on the type of legal assistance that was requested and the time required to respond to the request in accordance with E.C.32.2 (c).</p>	<ul style="list-style-type: none"> <li>The PPO must segregate its database with regard to its different activities.</li> <li>Statistics for the exchange of information (other than the mutual legal assistance process) between law enforcement authorities should be kept.</li> <li>Customs or other relevant competent authority should maintain statistics with regard to cross border bearer negotiable instruments.</li> <li>The Curaçao Authorities should keep statistics with regard to the nature of the request made and the time required to respond to mutual legal assistance requests.</li> </ul>	<p>Customs keeps statics of everything regarding cross border. Up till now there was no case of cross border negotiable instruments.</p>
33. Legal persons–beneficial owners	PC	<p>There is no system in place to register the information about the ultimate beneficial owner.</p> <p>The Chamber of Commerce has no administrative sanctioning power against legal persons who fail to provide accurate and up to date information.</p> <p>There is no certainty that the information at the Commercial Register is current or updated on a regular basis.</p> <p>There is no procedure in place to have the UBO available and in a timely manner to all competent authorities.</p> <p>There are still some bearer shares in circulation.</p> <p>Effectiveness has not been demonstrated.</p> <ul style="list-style-type: none"> <li></li> </ul>	<ul style="list-style-type: none"> <li>Law or regulation should establish a requirement for all legal persons to register the information on the UBO at the Commercial Register of the Chamber of Commerce.</li> <li>The Chamber of Commerce should establish procedures to ensure that all the information at the Commercial Register is up to date and periodically reviewed and that the information is complete and accurate.</li> </ul>	<p>Registration of UBO information is a FATF requirement. However registration of such at the Chamber of Commerce is not. FATF leaves it to the country to decide on the mechanism to be used for this purpose. For security reasons other ways to comply with this recommended action are being contemplated by Curaçao.</p> <p>The procedure for filing information with the registry is concise, as required by law (in detail described in the Trade Registry Decree 2009), and is limited to what is necessary for the surety required for participation of businesses in the legal and economic processes in Curaçao. Crucial in this participation is the objective identification of the business and its officials representing it in accordance with its legal goals (and thus boundaries), which since 1945 is done satisfactorily through the public registry of the Chamber of Commerce.</p> <p>The system of this public registry is a so called positive system, meaning that if a required information is not registered or not correctly registered, the civil law sanction is that the third party consulting the registry</p>

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				<p>can rely on the facts that are registered with the registry (a tort), unless he is not acting in good faith, which should be proven in a court of law. This system offers the Chamber the possibility to make sure that the one filing information is the one whom is required to do so by law. Besides that the Chamber is legally allowed to passively check if the information offered for filing is in accordance with the facts or incomplete, while the Chamber is allowed by law to require proof if in that process there is any doubt that the information may not be correct and/or complete, in which latter case the Chamber refuses the registration. If notwithstanding the opinion of the Chamber the specific filing is insisted upon, the Chamber is required to accept the filing and has the possibility to request the Court in First Instance to instruct the company official involved to file the information in accordance with the facts.</p> <p>Moreover, not filing the required information, or willfully file information that is not correct, is punishable under the laws of the registry. (i.a. up to ANG. 50.000,= for intentionally filing incorrect information, up to ANG. 20,000 for not filing a required information, ANG. 50,000 for not filing the business. The first and the latter are considered felonies, while the second a misdemeanor).</p> <p>In view of this system it is stated that the information provided by the Chamber is 100% accurate as registered with the Registry; all records are public records. The information on the website is an excerpt!. The website is a service of the Chamber to its clients and to promote the usage of formal documents through ready availability. The database of the website is the exact same database which is currently being used internally to produce excerpts. Excerpts are issued daily: 23,822 in 2011, while 29,085 updates were filed and processed with the registry (see attachment). Each and every filing is sequentially numbered, dated and certified before processing and filed with the physical dossier of the entities.</p>



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			<ul style="list-style-type: none"> <li>• The Authorities should provide the Chamber of Commerce with administrative sanctioning power against natural and legal persons who fail to provide accurate and up-to-date information.</li> <li>• There should be better procedures with regard to the exchange of information in the Commercial Register.</li> <li>• The Authorities must ensure the immobilization of bearer shares.</li> </ul>	<p>The register held by the Chamber is a public register; the register is accessible to everyone, local and foreign. All filings are available upon request, copied electronically or physically. The provision of information is regulated in the Trade Registry Decree 2009).</p> <p>Supervision on the compliance of the relevant national decree is being exercised.</p>

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34. Legal arrangements – beneficial owners	LC	<ul style="list-style-type: none"> <li>Not all competent authorities have information on UBOs in a timely fashion.</li> </ul>	<ul style="list-style-type: none"> <li>There should be better procedures to access the information on UBOs in a timely fashion.</li> </ul>	
<b>International Cooperation</b>				
35. Conventions	PC	Terrorism Financing not criminalized in accordance with the TF Convention.	<ul style="list-style-type: none"> <li>The offence of terrorism financing should be criminalized in accordance with the Terrorist Financing Convention.</li> <li>The Vienna Convention should be fully implemented in Curacao law with regard to Article 15 of that Convention, as no measures regarding the Article were seen by the Examiners.</li> </ul>	<p>Article 2:55 of the Penal Code criminalizes the offence of terrorism financing according to article 2 of the Terrorism Financing Convention, while the punishment takes into account the gravity of the offence (see attachment).</p> <p>To improve the security situation in the Netherlands Antilles and to limit the influx of drug traffickers in the Netherlands on flights from the Netherlands Antilles, the Netherlands Antilles and the Netherlands decided in January 2005 to establish a so called common border control teams (GGCT). The cooperation was made within the framework of the Netherlands Antilles Security Plan (PVNA) and was further based on the Joint Declaration of 22 December 2004 and the Feasibility Study. The GGCT has been operational since mid-July 2005.</p> <p>The GGCT were placed at the international airports of the Netherlands Antilles and consist of staff of the Antillean Police and Customs supplemented by staff from the Royal Netherlands Military Police and Customs.</p> <p>The GGCT had two goals. 1. They are aimed at an effective control of goods, passengers and luggage (particularly drugs and related offenses) at least the direct flights from the Netherlands Antilles to the Netherlands. 2. The exchange of expertise between the two countries to ensure that even after termination of the cooperation, an effective and efficient implementation of the control will continue. For the execution of the work on each of the international airports, a special team has been established that had to report to the Task Force: The Flamingo team on Bonaire, on Curaçao, the Hato team</p>

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			<ul style="list-style-type: none"> <li>The Palermo Convention should also be fully implemented in Curacao law with regard to Articles 18, 23 and 25-28 of that Convention as no measures regarding those Articles were seen by the Examiners.</li> </ul>	<p>and the team Juliana on St Maarten. At the moment the Hato team still exists consisting only of Customs officers. In April this year an officer of the Management team of Customs together with the team leader of Hato Team went to Holland to strengthen the cooperation between Curaçao and Holland and to discuss new issues. It is the intention that a new MOU will be signed.</p> <p>The Palermo Convention is fully implemented in Curacao. Article 18: Vide art. 555-565 Code of Criminal Procedure on mutual legal assistance. Article 18, paragraph 9-29, of the Palermo Convention however is applicable when no treaty on mutual legal assistance exists between parties. This is important. Thus Parties to the Palermo Convention are bound to grant requests for mutual legal assistance solely on the basis of this article 18 (It is incorrect to state that a Party to the Convention shall take measures to implement article 18). The procedure described in paragraph 10-12, is not common practice in Curaçao. Curaçao makes use of a Rogatory Commission to interview a suspect or witness detained abroad.</p> <p>Article 23: The acts described in article 23 of the Palermo Convention are penalized as crimes according to article 2:132, 2:133 and 2:254 of the Penal Code.</p> <p>Article 25: Article 261, Code of Criminal Procedure, contains measures to protect a witness in criminal proceedings. Articles 374-380, Code of Criminal Procedure, provides access to compensation and restitution to victims. Article 1:78, Penal Code, entitles the government to advance the payment by the criminal in order to ease</p>

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				<p>the burden of the victim. The victim is entitled to bring his case in Civil Court. The Bureau of Assistance to Victims provides necessary guidance and intermediation to victims of crimes.</p> <p>Article 26: Taking into account the discretionary powers of the prosecution it is possible to provide for the encouragement as described in article 26 of the Palermo Convention. Prosecution has the power to abstain from further prosecution (articles 272-283 Code of Criminal Procedure); Prosecution has the power to adapt its demand for punishment according to the contribution of the suspect. The government is considering regulation of a procedure regarding main witness in criminal cases.</p> <p>Article 27: This article in itself can be a basis for cooperation. No additional compliance measure is necessary.</p> <p>Article 28: The implementation of this article is safeguarded by Bureau Interpol Curacao (also the RST and the UFCB collect necessary information).</p>
36. Mutual legal assistance (MLA)	LC	Terrorism Financing not criminalized in accordance with the TF Convention.		
37. Dual criminality	LC	Terrorism Financing not criminalized in accordance with the TF Convention.		
38. MLA on confiscation and freezing	C	This Recommendation has been fully observed		

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39. Extradition	LC	No requirement to commence prosecution against a national of Curacao (who is immune to extradition) where there is request from a foreign state	<ul style="list-style-type: none"> <li>There is no requirement to commence prosecution against a national of Curacao (who is immune to extradition) where there is request from a foreign state.</li> </ul>	
40. Other forms of co-operation	LC	<p>No clear mechanism in place for law enforcement authorities to exchange information with foreign counterparts.</p> <p>No authority for the FIU (MOT) to exchange information with supervisory authorities from other jurisdictions.</p> <p>Inability for the GCB to share information with foreign counterparts.</p> <p>No explicit provision authorizing the Central Bank, supervisory arm of the FIU (MOT) and GCB to conduct enquiries on behalf of foreign counterparts.</p>	<ul style="list-style-type: none"> <li>The Authorities should establish clear mechanisms for the exchange of information between law enforcement and their foreign counterparts.</li> <li>The FIU (MOT) should be given the legal authority to exchange information with supervisory authorities from other jurisdictions.</li> <li>The IOCCS should make provision for the sharing of information with foreign counterparts.</li> <li>Mechanism needed to facilitate all competent authorities (Central Bank, supervisory arm of the FIU (MOT) and GCB) undertaking enquiries on behalf of foreign counterparts.</li> </ul>	
<b>9 Special Recommendations</b>				
SR.I Implement UN instruments	PC	<p>No provisions in law to deal with the requirements of paragraph 4(a) of UNSCR 1267.</p> <p>Freezing of the assets of locally designated terrorists cannot occur without delay as required by UNSCR 1373.</p>	<ul style="list-style-type: none"> <li>The laws should be properly amended to give effect to paragraph 4(a) of UNSCR 1267.</li> <li>Measures should be put in place that would allow for the freezing of assets without delay as they pertain to locally designated terrorists under UNSCR 1373.</li> </ul>	The relevant legislations and policy documents will be reviewed and where necessary revised.
SR.II Criminalize	PC	Offences for participation and financing of terrorism do not meet the requirements of the Terrorist Financing	<ul style="list-style-type: none"> <li>The offences of participation (which would include the financing offences) should be criminalized in keeping with the requirements</li> </ul>	Complied with (see above)

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terrorist financing		Convention. The Examiners could not evaluate effectiveness of the FT sanctions.	of the Terrorism Financing Convention	
SR.III Freeze and confiscate terrorist assets	PC	Freezing of assets of locally designated terrorist cannot occur or be maintained without delay as required by UNSCR 1373.  Procedures for de-listing and unfreezing not publicly known.  Lack of guidance to non-financial entities and individuals.  No structure for monitoring compliance outside of the financial sector  No clear criteria for the exercise of the Minister's discretion to protect of third party rights.	<ul style="list-style-type: none"> <li>• Measures should be put in place that allow freezing without delay, and the maintenance of such freezes, as required by UNSCR 1373.</li> <li>• Curaçao should make the procedures for de-listing publicly known.</li> <li>• Curaçao should have a mechanism for the issuance of Guidance to non-financial entities or individuals who may find themselves in possession of property or assets that may belong to terrorist or terrorist entities.</li> <li>• Clear criteria for the exercise of the Minister's discretion with regard to the protection of third party rights should be developed.</li> <li>• A structure should be put in place for monitoring compliance outside of the financial sector.</li> </ul>	The relevant legislations and policy docs will be reviewed and where necessary revised.
SR.IV Suspicious transaction reporting	PC	Effective implementation of reporting of suspicious reports is not demonstrated. <ul style="list-style-type: none"> <li>➢ Subjective indicators for the filing of UTRs are rules based, which hinders the reporting entity's autonomy to decide whether to file a UTR</li> <li>➢ Heavy reliance by the reporting entities on the prescriptive list of indicators provided by the Ministerial Decree.</li> </ul>	<ul style="list-style-type: none"> <li>• The Authorities should ensure that reporting entities from all sectors report UTRs.</li> <li>• Mechanisms should be put in place that would require all reporting entities to focus on identifying and reporting on transactions for which they can identify a suspicion.</li> <li>• Reporting entities should not rely only on the prescriptive list of indicators provided by the Ministerial Decree.</li> <li>• The relevant procedures should be revised to allow developing more flexibility for</li> </ul>	See above under R. 13.

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		<ul style="list-style-type: none"> <li>➤ Insufficient flexibility for reporting entities to identify suspicion of ML or FT.</li> </ul>	reporting entities to identify suspicion of ML or FT.	

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SR.V International cooperation	LC	<p>No requirement to commence prosecution against a national of Curacao (who is immune to extradition) where there is request from a foreign state as it pertains to FT matters.</p> <p>No clear mechanism in place for law enforcement authorities to exchange information as it pertains to FT.</p>	<ul style="list-style-type: none"> <li>• The Curacao Authorities should have measures in place to ensure the early commencement of prosecution for FT offences against a national of Curacao (who is immune from extradition) where there is a request from a foreign state.</li> <li>• The Curacao Authorities should have measures in place to ensure the early commencement of prosecution for FT offences against a national of Curacao (who is immune from extradition) where there is a request from a foreign state.</li> <li>• There should be clear mechanisms in place for law enforcement authorities to exchange information as it pertains to FT.</li> </ul>	
SR.VI AML requirements for money and value transfer services	PC	<p>No legislative requirements for CDD when carrying out occasional wire transfers in the circumstances covered by the Interpretative Note to SR VII.</p> <p>No legislative requirements for service providers to conduct on-going due diligence on the business relationship.</p> <p>No explicit requirement in the P&amp;G for MTCs requiring financial institutions to consider making a UTR where the requirements at E.C 5.3 to 5.6 are not met.</p> <p>See factors in sections 3.1 – 3.10 which apply to MTCs.</p> <p>A subjective indicator for identification problems is not specified for MTCs under the NORUT.</p> <p>The sector P&amp;Gs do not conform to the NOIS as it relates to the timing of verification of non-resident clients.</p> <p>The P&amp;G for MTCs should include an explicit requirement for MTCs to maintain a current list of</p>	<ul style="list-style-type: none"> <li>• The P&amp;G for MTCs should explicitly require that a financial institution consider making a UTR/STR where the requirements at E.C 5.3 to 5.6 are not met.</li> <li>• The Authorities should create or indicate a subjective indicator for identification problems as it relates to MTCs under the NORUT.</li> <li>• There should be an explicit requirement for MTCs to maintain a current list of agents.</li> </ul>	The P&G for MTCs will be revised to comply herewith.



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		agents.		

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SR.VII Wire transfer rules	LC	No explicit mandatory provisions in the P&Gs regarding requirements on beneficiary institutions to apply risk based procedures when identifying and handling wire transfers that are not accompanied by complete originator information. In addition, lack of complete originator information is not included as a subjective indicator in the NORUT in assessing whether a wire transfer or related transaction is suspicious and should be reported to the FIU (MOT).	<ul style="list-style-type: none"> <li>The P&amp;Gs should make it mandatory for beneficiary institutions to apply risk based procedures when identifying and handling wire transfers that are not accompanied by complete originator information. In addition, lack of complete originator information should be included as a subjective indicator to the NORUT in assessing whether a wire transfer or related transaction is suspicious and should be reported to the FIU (MOT).</li> <li>Curaçao should consider disclosing the requirements for cross-border wire transfers in a composite P&amp;G document.</li> </ul>	The P&G will be revised to comply herewith.
SR.VIII Nonprofit organizations	NC	<p>There has been no recent review of the NPO sector and no current identification of its vulnerabilities for FT.</p> <p>There is no supervision or monitoring specifically for the NPO sector.</p> <p>No supervisory programme in place to ensure NPO sector compliance with AML/CFT legal framework</p> <p>No outreach programmes in place.</p> <p>No training in place to the NPO sector or to the financial institutions with regard the risks of the NPO sector.</p> <p>There is no obligation for NPOs to keep financial information on transactions or to submit financial statements to the Chamber of Commerce or any other relevant authority.</p>	<ul style="list-style-type: none"> <li>The Authorities should enact legislation to deal with the AML/CFT responsibilities of NPOs.</li> <li>Curaçao should consider designating a supervisory authority for the NPO sector.</li> <li>Curaçao authorities should conduct a new assessment on the risk with regard to the NPO sector.</li> <li>The authorities of Curaçao should undertake outreach programmes to the NPO sector with a view to protecting the sector from FT abuse.</li> <li>Ensure that training programs are in place for the NPO sector and supervised institutions with regard to the risks of the NPO sector.</li> <li>There should be a requirement for NPOs to keep records of transactions for at least five years and Curaçao Authorities should consider requiring the NPOs to submit that information to a designated competent</li> </ul>	

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			authority periodically.	

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SR.IX Cash Couriers	PC	<p>Ad hoc cross-border declaration system. Unexpected change from declaration system (declaration card) to disclosure system. As a result, the requirement to make a truthful disclosure is not clearly identified at the border.</p> <p>No process in place to identify the source, destination and purpose of movement of gold or other precious metal and stones.</p> <p>No power to stop or restrain currency where there is a suspicion of ML or FT.</p> <p>No indication that authorities are monitoring entities or individuals associated with terrorist activities listed by the United Nations.</p>	<ul style="list-style-type: none"> <li>• Authorities should further improve the way they inform travellers of their obligation in the arrival zone or revert to a declaration system by putting back a question on transportation of currency on the card distributed to all passengers.</li> <li>• Customs should be obligated to better monitor the source, the destination or purpose of the movement of gold or precious metal and stones.</li> </ul> <p>Curaçao Customs should have the power to stop or restrain currency where there is a suspicion of ML or TF.</p>	<p>There have been consultations with the authorities of the airport. The structure of the arrival area will be modified. As a result thereof more signs will be placed in this area while taking into account an improved visibility of these signs.</p> <p>Customs keeps all the information regarding the source and the destination. In the draft amended National Ordinance Obligation to Report Cross Border Money Transportation gold, precious metal and stone are included. This draft is in the legislative process.</p> <p>In the General Regulation, import, export and transit, it is mentioned that Customs do have the authority and power to stop or restrain currency where there is a suspicion of ML. However, the power to stop or restrain currency will be explicitly stated in the amended General Regulation.</p>

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Other Measures				

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