CARIBBEAN FINANCIAL ACTION TASK FORCE

FINANCIAL ACTION TASK FORCE

Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

Aruba,
Kingdom of the Netherlands

16 October 2009

The Kingdom of the Netherlands is a member of the Financial Action Task Force (FATF) and the Caribbean Financial Action Task Force (CFATF). The evaluation of Aruba, Kingdom of the Netherlands, was conducted by the FATF and CFATF and was adopted as a 3rd mutual evaluation by the FATF Plenary on 16 October 2009.

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PREFACE

INFORMATION AND METHODOLOGY USED FOR THE EVALUATION OF ARUBA, KINGDOM OF THE NETHERLANDS

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Aruba was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004[1]. The evaluation was based on the laws, regulations and other materials supplied by Aruba, and information obtained by the evaluation team during its on-site visit to Aruba from 24 November to 5 December 2008, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant Aruba government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

2. This was a joint evaluation of the FATF and the CFATF. The evaluation was conducted by an assessment team, which consisted of members of the FATF Secretariat and FATF and CFATF experts in criminal law, law enforcement and regulatory issues: John Carlson and Stéphanie Talbot from the FATF Secretariat; Mellisa Seenacherry, legal expert from Suriname who participated as an expert from the CFATF; Patricia Steck, financial expert from Switzerland, Helen Hatton, financial expert from Jersey, Eduardo Apaez Davila, law enforcement expert from Mexico. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

3. This report provides a summary of the AML/CFT measures in place in Aruba as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Aruba levels of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

[1] As updated in October 2008.

EXECUTIVE SUMMARY

Background Information

1. This report provides a summary of the anti-money laundering (AML) and combating the financing of terrorism (CFT) measures in place in Aruba, the Kingdom of the Netherlands at December 2008 (the date of the on-site visit) and immediately thereafter. It describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Aruba's level of compliance with the Financial Action Task Force (FATF) *40+9 Recommendations* (see attached table *Ratings of Compliance with the FATF Recommendations*).

Key Findings

- The level of criminality in Aruba is generally not high, but has increased considerably over the last 10 years. Due to its geographical location and travel facilities, money laundering is primarily linked to drug trafficking and risks have been identified for cross border movement of cash, in the real estate and jewellery sectors and through misuse of exempt companies. Terrorist financing has not been seen as a major risk to date.

- Aruba's economic system is currently largely based on tourism and oil refining; but the island has actively sought to diversify its economy, in particular by developing its off-shore activities, through the licensing of offshore banks, though in a limited number, and the development of offshore companies. However, the measures in company and other laws to ensure the transparency and integrity of these vehicles are inadequate. The introduction in February 2009 of the State Ordinance Supervision Trust Company Services Providers is aimed at regulating trust and company service providers, and this will help. However, there is still a significant weakness, as TCSPs are still not subject to basic AML/CFT requirements. Aruban corporate vehicles represent a substantial risk for misuse by launderers and other criminals, and rapid and significant progress is required.

- Aruba enhanced its ML offence in 2006, and has since taken effective prosecution action against money launderers. However, Aruba has chosen not to criminalise terrorist financing as required by SR. II, considering that terrorist financing activity can be adequately dealt with through existing provisions of the Criminal Code such as the ancillary offences of preparation or participation or complicity in a terrorist attack, or being a member of a terrorist organisation. This argument is rejected by the assessment team, and Aruba is strongly urged to urgently criminalise TF as a separate and independent offence. Similarly urgent action is needed to implement UNSCR 1267 and 1373.

- In general, Aruba's system of AML/CFT preventive measures is incomplete and lacks coherence and effectiveness. Aruba should urgently review the structure of the regime, including the

legislation and dedicate more resources to the agencies in charge of AML/CFT. Aruba should also give clearly defined tasks and priorities to each of those agencies.

- There are many financial activities being performed by financial institutions that are neither regulated nor supervised. These financial institutions are not subject to AML/CFT requirements, which creates potential opportunities that could be misused by money launderers and other criminals.

- The basic preventive legislation for AML/CFT is set out in two state ordinances, one dealing with Customer Due Diligence requirements, and the other with the reporting obligations. However the legislative requirements have many gaps relative to the FATF standards, and this is exacerbated by a lack of clarity and consistency in the scope and the extent of the obligations. Aruba should rectify this, and should seriously consider preparing completely new and coherent legislation dealing with all the deficiencies and implement all the FATF requirements.

- The AML/CFT supervision of most of the FIs is currently handled by both the MOT (Aruban FIU) and the Central Bank of Aruba (CBA), which creates overlap and an inefficient use of already limited resources. The supervision should thus be reorganised and strengthened, including the introduction of a significantly more robust enforcement culture. It is logical that the CBA should supervise all types of financial institutions for all their AML/CFT obligations as this would result in a more consistent and better organised approach to supervision. The CBA should consult with the FIU on a regular basis.

- A basic system for international co-operation is in place, but Aruba should introduce a number of enhancements both at the judicial and administrative levels. Consideration should also be given to reviewing and updating the legislation.

Legal System and Related Institution Measures

2. The ML offence is defined by Articles 430b, c and d of the Criminal Code of Aruba. The definition of the physical and elements of the offence are closely in line with those set out in the Vienna and Palermo Conventions and the law was amended in 2006 so that there is no longer an obligation to prove that the proceeds are generated from a specific predicate offence. Regarding the predicate offences to ML, Aruba has opted for a threshold approach that includes all felonies. However, certain of the FATF "designated categories of offences" are not felonies in Aruba, such as counterfeiting and piracy of products, insider trading and market manipulation, and terrorist financing. In addition, there is an insufficient range of environmental crimes and fraud, which constitute predicates to ML. A broad range of ancillary offences attach to criminal offences in Aruba, including in most respects the ML offences, except for the ancillary offences of conspiracy or association to commit, which do not apply to ML. There is no specific provision dealing with foreign predicate offences, though it is arguable that the wording of the offence may be broad enough to cover such offences. Legal persons can be prosecuted for ML, but the level of sanctions seems rather low. No data is available on the number of convictions of legal persons, nor on the sanctions imposed on money launderers.

3. There is no separate and independent offence of terrorist financing as required by SR.II in Aruba, since Aruba considers that several parts of the TF offence as required by the UN Convention against Terrorist Financing (1999) can be covered by various existing provisions of the Criminal Code such as ancillary offences of preparation or participation or complicity in a terrorist attack, or being a member of a terrorist organisation. The assessment team is of the view that this is completely insufficient and that a separate and independent TF offence should be enacted.

4. The confiscation regime provides for the confiscation of laundered property, of proceeds from the commission of offenses, inclusion ML, and of instrumentalities used or intended for use in the commission of offenses. It also provides for ancillary measures, such as seizing and freezing. However, there is also only a limited ability to take action against property held by third parties, and the data available is insufficient to determine how effective the confiscation regime is.

5. Aruba has not implemented UNSCR 1267 and UNSCR 1373. Aruba has adopted a Sanctions State Ordinance in 2006 according to which the Government can issue a Sanctions State Decree to require financial institutions to freeze terrorist assets. Such a State Decree has not yet been adopted. In addition, the regime envisaged by Aruba would not meet the FATF requirements, since under the aforementioned system, Aruba would still not have a national system to freeze terrorist assets pursuant to UNSCR 1373 nor to require financial institutions and others to freeze the assets of terrorists listed pursuant UNSCR 1267. Aruba should therefore review the regime it plans to implement and ensure it will be fully in line with the FATF standards.

6. The financial intelligence unit (FIU) in Aruba is the *Meldpunt Ogebruikeliijke Transacties* (MOT), which is an "administrative" FIU. Created in 1995, it became a member of the Egmont Group in 1996. The MOT is organised as a governmental agency under the Ministry of Finance and Economic Affairs. According to the State Ordinance on the Reporting of Unusual Transactions (SORUT), which was amended in February 2009, MOT's missions are the collection, analysis and dissemination of STRs and unusual transactions, as well as the declaration of import or export of cash money. The MOT is also responsible for the supervision and inspection of all reporting entities under the SORUT. An Advisory Committee, composed of representatives of different relevant ministries and agencies and of representatives from reporting financial institutions and casinos, is consulted on matters related to the MOT's budget and staff, which raises some concerns regarding the autonomy of the MOT.

7. The MOT has direct or indirect access to a broad range of information to enhance its ability to analyse unusual transaction reports, including suspicious transaction reports. The MOT is also authorised to request additional information from reporting entities and has issued guidance on the use of the reporting criteria set up by Ministerial Regulations. It also provides feedback to reporting entities, but has delivered only limited typologies reports. The MOT faces important resource constraints that have become even more critical since February 2009 with the extension of the scope of reporting entities to certain DNFBPs, and this lack of resources inhibits it from performing its full range of functions at the appropriate level.

8. In Aruba, investigations of ML and terrorism related offenses are conducted by the Public Prosecutor's Office, the Police Force and the RST, which is an interregional unit tasked to investigate cross-border criminality between the Netherlands, Aruba and the Netherlands Antilles. Law enforcement authorities have a broad range of investigative powers and they have started to develop as appropriate financial investigations for each investigation on the underlying predicate offence and, for this purpose, they have increased their requests for information to the MOT. However, both the Public Prosecutor's Office and the Police face significant resources constraints that considerably undermine their ability to deal with the reports disclosed by the MOT. Budgetary constraints have also limited their opportunities to participate in AML/CFT training.

9. There is a declaration system in place for cross-border movements of cash above an AWG 20 000 (USD 11 000) threshold. However, this declaration system does not cover bearer negotiable instruments. The declaration forms are collected by the Customs services and sent to the MOT, which is charged with registering and recording them. Customs officers can also record cases of false or non-declaration and send the information to the MOT. In Aruba, the Customs service as such is not a law enforcement authority, and

customs officers can only seize funds in case of false or non-declaration, but not in case of suspicions of ML/TF. In this situation, customs officials inform the Public Prosecutor's Office which can launch an investigation.

Preventive Measures – Financial Institutions

10. Financial preventive measures have been implemented in Aruba through the State Ordinance on Identification when Providing Service (SOIPS), which was amended in February 2009, shortly after the on-site visit. However, the scope of the State Ordinance is limited to credit institutions, life insurance companies and brokers and money transfer companies. Therefore, a significant range of FATF designated financial activities are not subject to AML/CFT obligations, in particular to CDD requirements. This particularly concerns intermediaries operating on the stock exchange market of Aruba, which is neither regulated nor supervised; pension funds; the issuance and management of means of payment; trading in money market instruments; consumer credit and loans provided by financial institutions not recognised as credit institutions; money and currency exchange below the threshold of AWG 20 000 (USD 11 173).

11. The CDD measures set out in the SOIPS are limited to identification requirements for face-to-face business relationships. The CBA has issued three separate directives or guidelines, one each for banks, insurance companies and money transfer companies, which for the most part provide for more comprehensive CDD measures, although these texts are not considered as "other enforceable means" according to the definition in the FATF Methodology.

12. Financial institutions covered by the SOIPS are prohibited from establishing a business relationship or conducting transactions with a customer before establishing and verifying the customer's identity and the person on whose behalf a customer is acting. Anonymous accounts are therefore prohibited. However, the SOIPS does not require financial institutions to undertake CDD when they have doubt about the veracity or adequacy of previously obtained information and in situations where there is a suspicion of ML/TF. Regarding customers which are legal persons, financial institutions are not obliged to verify the identity of the directors of the legal persons, nor their ultimate beneficial owners, and they are not required to understand the control structure of these customers. Equally, there is no provision in the SOIPS to identify legal persons that are foreign trusts or other similar legal arrangements. More broadly, the SOIPS does not require financial institutions to obtain information on the purpose and the nature of the business relationship nor to conduct ongoing monitoring. In addition, the SOIPS does not contain any simplified or enhanced CDD measures.

13. Although there are significant weaknesses in the law, it should be noted that the CDD directive for banks and the AML/CFT directive for insurance companies adopted by the CBA do recommend that these types of financial institutions adopt additional CDD measures, such as conducting ongoing monitoring on the business relationships. However, these directives also seem to contradict the provisions of the SOIPS in various aspects, for example by allowing simplified CDD measures or non face-to-face business relationships. This situation therefore raises concerns regarding the clarity of the CDD measures in place for financial institutions.

14. There are no provisions in the SOIPS requiring financial institutions to implement enhanced CDD measures for politically exposed persons (PEPs), nor for cross-border correspondent banking and other similar relationships and no measures in place to prevent the misuse of technological developments for ML/TF purposes. However, some provisions on PEPs are contained in the directives for banks and insurance companies regarding new customers, but they do not extend to their beneficial owners and the definition of PEPs does not apply to PEPs' family members. In addition, the directives also contain measures to prevent the misuse of technological development, but they are limited to the risks of non face-

to-face business with higher risk customers. The directive for banks contains some provisions for cross-border correspondent banking but it does not provide that they should document the respective responsibilities of each institution and obtain the approval for senior management to establish this type of business relationship.

15. According to the SOIPS, reliance on third parties is prohibited, since financial institutions are required to perform by themselves their CDD and that they can only establish face-to-face business relationships. However, the CDD directive for banks acknowledges the possibility of introduced business from third parties and provides banks with procedures to apply in this respect. These procedures are quite broad but they do not require banks to verify that the third party is regulated and supervised effectively and there is no limitation with regard to which countries the introducer can be based in. There is also no provision for banks to take into account information available regarding whether the countries adequately apply the FATF requirements. Moreover, while insurance companies in practice do rely on insurance brokers, the AML/CFT directive for insurance does not contain any provisions on this issue.

16. Aruba has no banking secrecy laws though normal bank-customer confidentially exists. Nevertheless, there is some lack of clarity on the extent and effect of Article 286 of the Criminal Code, which punishes intentional disclosures of details regarding an enterprise of commerce or industry where a person is employed or was employed, in particular due to the fact that the safe harbour provision does not extend to this provision.

17. Aruba's record-keeping requirements are generally satisfactory. In relation to SR.VII, Aruba relies on the SOIPS that requires financial institutions to identify their customers when performing any payment in or outside Aruba and to keep this identification data recorded. However, money transfer companies and banks are not required to implement any of the other criteria set out in SR. VII, such as the inclusion of full originator information in the message or payment form accompanying the wire transfer.

18. There is no explicit requirement in law, regulation and other enforceable means to pay special attention to all complex and unusual large transactions that have no apparent economic or lawful purpose. Nevertheless, due to the reporting system of Aruba which is mostly based on unusual transactions, financial institutions are required to report to the MOT a number of unusual transactions taking into account various monetary thresholds or certain circumstances, defined by indicators issued by ministerial regulations. To this end, financial institutions are implicitly required to monitor accounts and to have systems to detect these types of unusual transactions with suspicious patterns. On the other hand there is no obligation to pay special attention to the business relationships and transactions with persons from countries which do not follow the FATF Recommendations.

19. The reporting obligation is set out in the SORUT, the scope of which was extended to some Designated Non Financial Businesses and Professions (DNFBPs) in February 2009. The scope of financial activities subject to reporting requirement defined by the SORUT is not clear, and it does not fully match with the SOIPS. As a result, financial service providers could be subject to an obligation to report unusual or suspicious transactions to the MOT without being required to identify their customers. Regarding reporting by financial institutions, the reporting system in Aruba is based on unusual transactions which are linked to indicators set in two ministerial regulations, one for banks and money transfer companies and the other one for life insurance companies and brokers. These indicators contain objective criteria based on monetary thresholds and subjective criteria based on specific subjective circumstances related to the client and the transaction and which correspond to the FATF suspicious transaction. Financial institutions are thus required to report any performed or intended suspicious transaction, regardless of any threshold and of whether tax matters may be involved. The SORUT criminalises tipping off and provides a "safe harbour"

for complying with reporting obligations. However, the scope of the safe harbour provision is too limited and it does not apply to employees of reporting entities.

20. Several factors indicate that there are still failings that indicate that the system is not fully effective. In practice, only commercial banks, money transfer companies, life insurance companies and brokers can report to the MOT, since no indicator exists for other financial institutions which could fall within the scope of the SORUT. Among these reporting entities, there is some inconsistency in the quantity and nature of the reports: basically, commercial banks report both unusual and suspicious transactions but off-shore banks have never reported any suspicious transactions based on the subjective indicators. The insurance sector reports are very few and brokers have never made any unusual nor suspicious transaction reports. Regarding money transfer companies, while some of them mostly report unusual transactions, others report essentially suspicious transactions. Existing guidelines to assist financial institutions to implement reporting obligation are helpful, but the MOT should strengthen its educational training to improve the reporting.

21. There are no provisions in law, regulation or other enforceable means to require financial institutions to have internal procedures and controls, although the different directives and guidelines issued by the CBA for banks, insurance companies and money transfer companies provide that they should have in place internal procedures and controls, as well as compliance management and audit functions.

22. There is no obligation in law, regulation or other enforceable means to prevent financial institutions from entering or continuing correspondent banking relationships with shell banks, although the CDD directive for banks provides that banks should not establish correspondent banking relationships with shell banks. There is no provision in Aruba to require financial institutions to satisfy themselves that a respondent financial institution in a foreign country does not permit its accounts to be used by shell banks. Indeed, in relation to the licensing of shell banks in Aruba, the legal framework and its implementation is not clear. This is a concern. Since January 2009, the CBA has adopted a new licensing policy for banks that provides that shell banks shall not be licensed in Aruba and that the mind and management of licensed credit institutions should always be located on the island. However, the status of this policy is unclear and it should be noted that two off-shore banks which form part of a large US financial group and as such are supervised on a consolidated basis by the US authorities, and of which the records, mind and management are located in Venezuela, have been licensed in Aruba for more than 10 years without having been supervised. In 2000-2001, the CBA started to supervise these off-shore banks, but so far no on-site inspection has been carried out, though recently an arrangement was entered into providing for such inspections through the use of external auditors. Overall, the lack of a clear framework that is being effectively implemented is a concern.

23. The supervision of the financial institutions covered by the SOIPS obligations is carried out by both the CBA and the MOT. The supervision of the financial institutions covered by the SORUT is solely carried out by the MOT. The CBA supervises banks, insurance companies and money transfer companies on the basis of sectoral State Ordinances and sectoral directives and guidelines. The MOT focuses its supervision functions on the SORUT obligations, but is also responsible for the financial institutions not regulated nor supervised by the CBA, such as life insurance brokers. These two supervisors have the power to conduct both off and on-site inspections. However, while the CBA is strengthening the AML/CFT aspects of its on-site inspection procedures for banks and MTCs, the procedures applicable for insurance companies are very poor. The MOT's procedures are also very light and there are concerns whether they are adequate to identify any deficiencies. The CBA has limited sanctions powers, which are not effective, proportionate and dissuasive, although amendments adopted in February 2009 have reinforced these sanctions, but still insufficiently *e.g.* there is no sanction available against directors and senior management of financial institutions. Equally, the MOT, which has conducted on-site inspections, has never applied any

sanctions, even if some financial institutions report very few transactions. In addition, the MOT faces resource constraints that prevent it from effectively performing its supervisory functions. A number of steps need to be taken to improve the situation, such as further enhancing and applying the sanctions regime, but for this to be fully effective, it is also strongly recommended that there be a single supervisor for all AML/CFT issues relating to financial institutions, which would logically be best carried out by the CBA, given that it is in the process of creating a new unit focussed on AML/CFT supervision. The CBA could then liaise as necessary with the MOT.

24. Credit institutions, insurance companies and MTCs are subject to licensing requirements, although there is no efficient provision in place to prevent criminals and their associates from holding or being beneficial owners or controlling credit institutions or insurance companies, since, the CBA relies on the information provided by license applicants, but it does not sufficiently check the validity of this information. In addition, the CBA does not apply fit and proper tests on an ongoing basis, only on market entry.

25. The Aruban authorities should urgently introduce a licensing requirement, regulate and supervise life insurance brokers and financial institutions other than banks, insurance companies and MTCs that perform FATF designated financial activities. In particular, the CBA should focus on investment or securities related activities and on the stock exchange market which is not regulated nor supervised. It should also upgrade its enforcement capability, exercising proportionate sanctions against entities found to be in breach of the regime in a timely and consistent manner.

Preventive measures – Designated Non-Financial Businesses and Professions

26. In February 2009, Aruba amended the SOIPS and SORUT to extend their scope to certain DNFBPs, since only casinos were previously subject to AML/CFT requirements, however with some (ongoing) scope limitations as to certain types of activities provided by casinos: the identification threshold of AWG 20 000 (USD 11 000) is too high and internet casinos and cruise ship based casinos are not subject to AML/CFT requirements. Regarding the other DNFBPs, the SOIPS and the SORUT now apply to the following: real estate agents, dealers in certain goods like vehicle, ships, airplanes, antiquities, objects of art, precious metal and precious stones, lawyers, civil notaries, tax advisors and accountants. Nevertheless, the scope of their activities subject to AML/CFT requirements still lacks clarity. In addition, trust and companies services providers, although henceforth supervised by the CBA, are not subject to AML/CFT requirements.

27. The main deficiencies in the AML/CFT preventive measures applicable to financial institutions also apply to DNFBPs. Therefore, they are only required to identify their customer and to report unusual transactions to the MOT, but there is no provision requiring them to obtain information on the nature and purpose of the business relationship, neither to apply simplified or enhanced CDD measures nor to conduct ongoing monitoring and to establish adequate procedures of internal control. Aruba should therefore urgently remedy all these deficiencies, along with the one applicable to financial institutions.

28. Considering the recent nature of the extended coverage of these businesses and professions and the weaknesses of the AML/CFT requirements, there are concerns in relation to the effectiveness of the measures in place. The MOT, which is charged with the supervision and oversight of DNFBPs as regards the provisions of the SOIPS and the SORUT, should urgently identify all DNFBPs and conduct outreach and training to allow them to start implementing their obligations and reporting suspicious transactions.

Legal Persons and Arrangements & Non-Profit Organisations

29. There are several types of legal persons in Aruba, characterised by their nature, functions and legal status. Traditionally, N.V companies have been used primarily as the corporate vehicle used by local businesses, although a limited percentage were also used for offshore business. Until January 1st 2006, A.V.V companies were aimed solely at the offshore market, and thereafter could be used domestically. In January 2009, a new type of limited liability company (V.B.A) was introduced which allows a lot of flexibility regarding its structure, but which has some improved transparency requirements, as compared to the other forms of companies. The measures in place to ensure adequate transparency concerning the beneficial ownership and control of legal persons in Aruba are inadequate, though it appears that the new VBA company and the recent introduction of supervision of TCSPs represents some progress.

30. As regards AVVs and NVs, there is no requirement to collect or make available information on their beneficial ownership and ultimate control and the system does not provide access to adequate, accurate and current information on beneficial ownership and ultimate control of the companies in a timely manner. Moreover, NVs and AVVs can issue bearer shares, while the measures to ensure transparency as to the shareholders of companies that have issued bearer share are inadequate. Although the new TCSP supervisory law provides that if a TCSP acts as a director or legal representative of a body with bearer shares, the TCSP must either be the custodian of the bearer shares or have knowledge of where the shares are kept, it is insufficient. No consideration has been given, or resources allocated, to dealing effectively with companies that have bearer shares held outside the jurisdiction and which do not choose to immobilise them, and bearer share companies will continue to lack transparency. Moreover Aruba still has to tackle the problem of the AVV companies that do not have TCSPs as legal representatives. The VBA company law appears to provide for additional information on ownership and control, though it does not extend as far as beneficial owners. The new TCSP supervisory law will enhance the controls to some degree however the measures do not fully meet the FATF requirements in relation to identifying the ultimate beneficial owner, and the failure to extend the normal set of CDD and other AML/CFT requirements to TCSPs is a significant lacuna.

31. The different legal forms in which non-profit organisations can operate in Aruba are: foundations, which can also conduct business, and associations. Their statutes are detailed in the State Ordinance on Foundations and the Civil Code of Aruba. Foundations and their directors must be registered in the Commercial Register kept by the Chamber of Commerce: there are currently 1 008 foundations incorporated, 65 of them being non-active. Associations are created by State Decree. In practice, information recorded in the Foundation Register is not kept up-to-date and the detail of the information available is limited. Aruban authorities have not carried out a review of its non-profit sector, in particular on TF risks and have not conducted any outreach on AML/CFT risks. There is no supervision or monitoring in place of the non-profit sector and foundations and associations cannot be revoked in case of ML/TF. In short, Aruba has not yet taken any AML/CFT measures regarding its non-profit sector.

National and International Co-operation

32. The development, co-ordination and implementation of AML/CFT policy in Aruba are carried out through the Aruba FATF Committee, which was established in 1995. This is a platform of government departments involved in AML/CFT. There are also a number of other various consultation and co-ordination mechanisms involving various operational agencies. Despite the existence of these structures, Aruba has not developed a national strategy to address at least in the medium term the vulnerabilities that exist and the risks it faces. Indeed, the adoption of entire new laws that henceforth extend to a broader set of financial institutions and DNFBPs have not addressed the basic deficiencies of the Aruban regime.

Aruba should therefore remedy these, and harmonise the scope of the two State Ordinances and ensure they cover the full range of FATF Recommendations.

33. As a semi-autonomous part of the Kingdom of the Netherlands, Aruba is not by itself able to enter into treaties, conventions and other international agreements with other countries. Treaties are entered by the Kingdom of the Netherlands, and during the ratification Aruba may indicate if it wants the treaty to be applied to it. Aruba is compliant with many elements of the Vienna and the Palermo Conventions. However, due to the absence of criminalisation of TF and the lack of a system to implement UNSCR 1267 and UNSCR 1373, Aruba has still many important steps to take to implement the requirements of the Terrorist Financing Convention.

34. Aruba, as part of the Kingdom of the Netherlands, is a party to a number of international conventions, which include provisions allowing for mutual legal assistance (MLA). Aruba has also entered into a limited number of bilateral MLA treaties. In addition, Aruba can also provide assistance based on the principle of reciprocity, as far as the request is considered "reasonable". Since dual criminality is required in most cases for MLA, the lack of a TF offence impacts on the extent and effectiveness of MLA provided by Aruba. Equally, the limitations regarding the scope of predicate offence for ML and the deficiencies identified regarding seizure and confiscation powers also limit Aruba's ability to provide MLA. In addition, due to the lack of available data and to the lack of resources of the Public Prosecutor's Office, it has not been demonstrated that Aruba can handle MLA request in a timely and effective manner.

35. Aruba is not primarily responsible for extradition, which is an issue for the Kingdom of the Netherlands. Aruba cannot therefore enact legislation or take other measures by itself. Aruba is party to a number of extradition treaties, such as the European Convention on Extradition. In addition, Aruba has entered into several bilateral extradition treaties through the Kingdom. ML would generally be an extraditable offence, unless it is relates to conduct that would not amount to a predicate offence in Aruba. The lack of TF offence would also thus affect Aruba's ability to extradite persons sought for this offence. The lack of statistics prevents the assessment of the effectiveness of the provisions.

36. The CBA has been given the possibility to exchange information with its foreign counterparts, but in practice this power is limited in particular by the narrow scope of financial institutions it supervises and by the fact that, with regard to banks and insurance companies, it can only exchange information that is already in its possession. Indeed, the CBA cannot conduct inquiries on behalf of a foreign counterpart. With respect to money transfer companies, the CBA can conduct inquiries on behalf of foreign counterparts. The MOT, as a supervisory body for all financial institutions and DNFBPs subject to AML/CFT obligations, cannot exchange information with foreign supervisors. Its capacities to exchange information are limited to its FIU functions, and only those with which it has a MOU. In this circumstance, it can only provide information already in its possession and it can only search open databases, but not other databases it has direct or indirect access. . Although exchange of information by law enforcement authorities is allowed by the CCrPA, Aruba did not provide detailed information on this issue, and it is therefore not possible to assess how adequate this is and whether it is effective in practice.

MUTUAL EVALUATION REPORT

1. GENERAL

1.1 General information on Aruba

37. Aruba is one of the three parts of the Kingdom of the Netherlands, the others being the Netherlands Antilles and the Netherlands. Its capital is Oranjestad. Before 1986 Aruba was part of the Netherlands Antilles. Aruba lies in the southern part of the Caribbean Sea, approximately 30 kilometers of the coast of Venezuela. It consists of a single island that is approximately 30 kilometers long and 10 kilometers wide. Aruba's inhabitants total approximately 105 000. The head of state is the Queen of the Netherlands who is represented in Aruba by the Governor of Aruba. The Governor is appointed by the Queen. Aruba has a market-based economy, which relies primarily on tourism. The second economic activity is oil refining. In 2007 the GDP was AWG 4 695 million or USD 2 623 million, leading to a GDP per capita of AWG 44 714 or USD 24 980. The contribution of international financial services to the GDP is estimated to be less than one percent, and Aruba's financial sector is small. Aruba's most important trading partner is the United States of America.

38. The relation between Aruba and the two other parts of the Kingdom of the Netherlands is governed by the so-called Statute for the Kingdom of the Netherlands. Based on this Aruba has full internal autonomy meaning that it is self-governing to a large degree. Defense, foreign relations, nationality and extradition are handled by the Kingdom which in practice means the Netherlands. For historical and practical reasons Aruba also cooperates with the Netherlands Antilles on various issues, of which justice and certain legislation are noteworthy in this respect. The legal basis for this cooperation is set forth in the Cooperation Agreement for the Netherlands Antilles and Aruba.

39. The legal system of Aruba is based on the Dutch legal system with some modifications due to local and/or regional circumstances and the substantially smaller scale of Aruba compared to the Netherlands. The basic rights of citizens, the institution and separation of the judiciary, legislative and executive branches, the organization of government and its tasks and obligations, along with related subjects are regulated in the Constitution of Aruba. Aruba has a parliamentary system with a unicameral parliament called Staten which consists of 21 members who are elected for a four-year term after which they can be re-elected. The electorate is made up by all residents of Dutch nationality of 18 years and older. The government consists of the Governor and a cabinet of ministers headed by a prime minister. The ministers are appointed and dismissed by the Governor but are solely accountable to the Staten whose confidence they must have at all times. Actual executive power therefore lies with the ministers. The authority to legislate is in the mutual hands of the government and the Staten which results in State Ordinances on various subjects, including AML/CFT. Proposals for State Ordinances can be made by either the Government or the Staten, although the former is usually the case. This is due to the fact that State Ordinances serve, among other things, as a basis and framework for policy and, related to this, as an instrument to regulate behavior. In a State Ordinance the authority to further regulate a subject can be delegated to the Government. Delegation instruments are the State Decree Containing General Measures and the Ministerial Regulation.

40. The judiciary is made up of independent judges who are appointed by the Queen upon recommendation of the Common Court of Justice of the Netherlands Antilles and Aruba (*Gemeenschappelijk Hof van Justitie van de Nederlandse Antillen en Aruba*). Cases are heard in first instance by the Court in First Instance. Appeal is possible at the Common Court of Justice of the Netherlands Antilles and Aruba. This court in second instance serves as an appellate court in which the case is reviewed in its entirety. It should be noted that the Common Court of Justice serves as an appellate court for both Aruba and the Netherlands Antilles. Further appeal is possible at the Supreme Court of the Netherlands, however only for civil and penal cases (and not for example for administrative or fiscal cases) and without a full review of the case: in this instance only the application of the law by the previous instance is the subject of the judgment.

41. Based on the aforementioned, the responsibility for the introduction and implementation of an effective AML/CFT framework along with the necessary preconditions through legislation and/or other means rests primarily with Aruba itself as a separate jurisdiction within the Kingdom of the Netherlands. Since the introduction of the original 40 Recommendations by the Financial Action Task Force (FATF), Aruba has undertaken steps to introduce, revise and strengthen its AML/CFT regime. The objective is to protect and preserve the integrity of the financial system and to detect and prosecute activities concerning money laundering and terrorist financing. Apart from being part of the FATF through the Kingdom of the Netherlands, Aruba is also a founding member of the Caribbean Financial Action Task Force (CFATF). Aruba has introduced many legislative measures to implement the original 40 FATF Recommendations. Most noteworthy are the criminalization of money laundering in 1992 (improved in 2006), the introduction of an identification obligation for financial services providers (extended later to casinos), the introduction of an obligation for financial services providers to report unusual transactions (also extended later to casinos) along with the introduction of a Financial Intelligence Unit (FIU) to process and evaluate the reported unusual transactions received, the introduction of a new and updated free zone regime, the introduction of AML/CFT-based supervision of money transfer companies, the criminalization of various aspects of terrorism and the introduction of specific terrorist financing provisions with regard to the reporting obligation. Next to this Aruba has organized and/or attended numerous workshops, seminars etc. for government, semi-government and non-government organizations to further promote and implement its AML/CFT system. Currently Aruba is implementing an extensive law maintenance program which is financed jointly by Aruba and the Netherlands and will include, *inter alia*, projects on upgrading of infrastructure, information technology systems and personnel training for various government departments involved with AML/CFT.

42. In 1995 a standing committee was formed by the Government, named FATF Committee Aruba, to evaluate and coordinate the implementation of the FATF Recommendations by Aruba. The Committee consists of members of Government departments and Government-related organizations most involved with AML/CFT. These are the FIU, the Central Bank of Aruba, the Public Prosecutor's Office, the Police, the Directorate of Foreign Relations, the Directorate of Legislation and Legal Affairs, the Aruba Financial Center, the Directorate of Taxes and the Free Zone Aruba Company. Currently the FATF Committee Aruba is chaired by the Head of the FIU. Since 1 January 2008 the Committee is assisted by a full time secretary. Aruba attends the plenary meetings of the FATF and CFATF.

1.2 General Situation of Money Laundering and Financing of Terrorism

Predicate Offences:

43. In October 2007, the Public Prosecutor's Office carried out a General Criminality Analysis. This document, which was conceived as an overview document, is based on interviews with all the agencies and

persons involved in the prevention and combat of crime. Accordingly, whilst opinion based rather than statistically based, it provides a useful commentary on the experience of the professionals engaged in this area in Aruba. According to this study, criminality in the island has increased considerably during the last ten years.

44. Property crime constitutes one of the most serious crime problems in Aruba. In recent years, with an increasing population, the number of property offences, notably aggravated theft, has strongly increased. During the period 2000-2006, the number of thefts increased more than 100%.

45. Drugs trafficking activity is also significant in Aruba. The General Criminality Analysis found that drug use is high among the population in Aruba and that drug consumption is increasing. While the use of marijuana is constant, the consumption of crack and cocaine increases. The importation of drugs and the distribution thereof at wholesale level in Aruba is believed to be in the hands of a limited number of criminal joint ventures. During the past years, many of these drug dealers were investigated by the Aruban authorities and several drug dealers are now believed to have relocated themselves and their trade to other countries.

46. Illegal arms trafficking has also developed in Aruba according to the General Criminal Analysis. An increasing number of illegal arms circulate on the island. It is believed this activity is served in particular from Venezuela and Colombia.

47. The General Criminal Analysis also mentions "stories and rumors all over Aruba about corruption and fraud by officials of the public services" and states that further investigations are desirable in this field and there have been a significant number of prosecutions for this. More globally, the analysis indicates that the confidence in government agencies and officials in Aruba is decreasing as many people have the suspicion that persons and institutions do not give concrete form to their tasks but create the impression only to serve their own interest instead of public interest. The Letter to the Lower House of the Dutch Parliament on the state of governance in Aruba written by the State Secretary for Dutch Antillean and Aruban Affairs in May 2009 also mentions the level of corruption in Aruba. It states that from the annual reports of the Public Prosecutor, it appears that the large number of corruption cases has a very heavy impact on the resources of the Public Prosecutor and that other criminal cases remain untouched.

Money laundering

48. Since Aruba gained autonomy in 1986 it has been mentioned frequently as a place for money laundering. In general, money laundering cases are primarily related to the illegal drugs trade, which is a consequence of Aruba's geographic location and travel facilities. Aruba happens to lie on one of the drug routes (air and sea) which run from South America (mainly Colombia and Venezuela) to Europe (mainly the Netherlands) and the United States of America. Subsequently the proceeds of the drugs trade move in the other direction, from Europe and the United States to South America using these same routes. It is not known how much of the proceeds remain on Aruba, as Aruba is in most of the cases not the final destination of the money. In addition, the General Criminality analysis mentions the occurrence of ML of tax crimes in Aruba and states that the "tax authorities are familiar with the presence of a lot of black money in various economic sectors, but still do not have any investigative capacity to tackle this problem. Furthermore, various population groups are active in this black money circuit in Aruba". Whilst acknowledging this risk the General Criminal Analysis found that providing current levels of laundering do not increase, Aruba should not be considered a major money laundering haven.

49. As for the actual level of money laundering in Aruba, it is firstly suspected that criminal proceeds circulate to some degree in the real estate sector (private properties, hotels and restaurant business) through

commercial transactions. Suspicions exist regarding enormous construction projects behind which there are large commercial transactions. Also money laundering activities have been detected in relation to the physical movement of cash through couriers and transactions in money transfer companies. Despite the presence of a cross-border reporting system for the import and export of cash, it is suspected that the amount of cash entering Aruba is larger than is being reported. The Government is working to improve the supervision on import and export of cash. Another point of concern is the jewelry sector, which has a relatively large presence in Aruba with over 40 outlets and is currently not supervised in relation to AML/CFT and the casino industry. However, since February 2009, this sector falls under the scope of the Aruban AML/CFT regime. Furthermore, several foreign criminal investigations have revealed the vulnerability of the Aruba exempt company for misuse by foreign companies or private persons for money laundering purposes. Aruba considers that these cases of misuse will decrease with the introduction in February 2009 of a license system connected to ongoing supervision by the CBA of company service providers – which requires, *inter alia*, knowledge in writing of the beneficial owners of Aruba exempt companies and other legal persons – and the diminished attractiveness of Aruba exempt companies due to the recent introduction of new statutory fiscal provisions on legal persons active as international financial services instruments. As for the free zone areas, measures have been taken to limit the inherent vulnerability of these areas for trade-based money laundering due to among other things, the large amount of cash. To that effect Aruba placed the management of the free zone areas in the hands of the government owned Free Zone Aruba N.V., which carries out prudential supervision on the companies operating in the free zones.

Terrorist financing

50. As for terrorist activities and terrorist financing, up to now, only one case has very recently been detected through the reporting system or has come to the attention of the competent authorities. But more generally, no data is available on the amount and size of terrorist activities and terrorist financing. This however does not mean that Aruba is exempt from terrorist risks or terrorist related activities such as terrorist financing. Because of Aruba's geographic position it is vulnerable for money laundering, especially by drug trafficking organizations. Links between drug trafficking organizations and terrorist organizations operating in South American countries exist, but no cases have been uncovered. Noteworthy in this respect is that the combat of terrorism is seen as a matter that regards the whole Kingdom of the Netherlands. Subsequently the Dutch National Coordinator for the combat of terrorism is conducting a terrorism risk assessment of Aruba and the Netherlands Antilles.

51. The following statistical data can be provided on the number of registered felonies over the last four years by infraction type. It should be noted that a person arrested as a felony suspect is immediately registered. If a felony suspect is not arrested, registration takes place at the moment that the final official report has been submitted to the Public Prosecutor's Office by the Police or another agency with investigative authority.

Table 1. Number of registered felonies

2004	2005	2006	2007
1 396	1 308	1 202	1 618

Table 2. Most common felonies
(based on the Top 10 felonies mentioned in the yearly reports of the Public Prosecutor's Office)

Registered felonies	2003-2006 (total)	2006	2007
Qualified burglary	1261	312	344
Hard drugs	870	162	230
Driving without a license	792	89	247
Driving under influence	224	140	136
Threat	373	103	98
Destruction of property	186	70	78
Bribery of a government official	Not apparent in Top 10	Not apparent in Top 10	92
Assault with a weapon	276	101	Not apparent in Top 10
Participation in the possession of a firearm	Not apparent in Top 10	Not apparent in Top 10	85
Soft drugs offence	Not apparent in Top 10	47	78
Public violence	142	51	60
Burglary with violence	Not apparent in Top 10	Not apparent in Top 10	83

Table 3. In the Top 10 for the period 2003-2006 the following felonies are also mentioned:

Registered felonies	2003-2006
Intentional fencing	260
Forgery	202

1.3 Overview of the Financial Sector and DNFBP

Banking sector

52. As at the time of the onsite visit and shortly thereafter, there were 10 credit institutions registered in Aruba: 4 are commercial banks, 2 offshore banks[2], 1 mortgage bank, 1 consumer finance company, 1 investment bank and 1 credit union. The credit institutions are subject to the stipulations laid down in the State Ordinance on the Supervision of the Credit System (SOSCS) which require all banks operating in or from Aruba to be licensed. The Central Bank of Aruba (CBA) is entrusted with the execution of this State

[2] In July 2009, Aruba licensed another offshore bank, which is affiliated to a Venezuelan bank that is owned by individuals. The activities of this offshore bank are restricted to the Venezuelan market.

Ordinance. As shown in table 4, the number of banking institutions supervised by the Bank declined to 10 in 2007.

Table 4. Number of supervised institutions within the banking sector
(End-of-period figures)

	2005	2006	2007
1. Commercial banks	4	4	4
2. Offshore banks	2	2	2
3. Bank-like institutions	3	3	3
a. Mortgage banks	1	1	1
b. Other specialized financial institutions	2	2	2
4. Credit unions	2	2	1
Total	**11**	**11**	**10**

Source: CBA.

53. Of the four commercial banks operating in Aruba, one is a branch of *Banco di Caribe N.V.*, while the other three banking institutions are subsidiaries of respectively *Maduro & Curiel's Bank N.V.*, Orco *Bank International N.V.* and *RBTT Bank N.V.* These (parent) banks are all established in Curaçao, Netherlands Antilles. Therefore, all four commercial banks operating in Aruba are also supervised on a consolidated basis by the *Bank van de Nederlandse Antillen* (the central bank of the Netherlands Antilles).

54. The aggregated balance sheet total of the commercial banks amounted to AWG 3 733 million at the end of 2007, equivalent to 79.4 percent of the estimated Gross Domestic Product (GDP) for 2007[3]. The banks' aggregated risk-weighted capital asset ratio decreased from 13.5 percent to 13.0 percent, but remained above the required minimum of 12 percent

55. Aruba's offshore banking sector is small, with only two institutions registered. These banks are solely engaged in banking activities with non-residents. Both are affiliated with Citibank N.A. and have offices in Caracas, Venezuela, with no physical presence in Aruba, and are on the process of consolidating as one institution. Both banks fall under the consolidated supervision of the US authorities. The aggregated balance sheet total decreased substantially from 2004 to 2005 due to internal reorganization but increased again to AWG 787.2 million at the end of 2007, which represents an increase of AWG 266.2 million or 51.1 percent compared to 2006. This notable increase was mainly the result of higher investments and loans.

56. The three bank-like institutions consist of institutions that are engaged predominantly in mortgage lending to individuals, financing of social housing projects, long-term project financing, and/or granting of personal loans for consumptive and home improvement purposes. These activities are financed predominantly by attracting funds from their parent company, other financial institutions, and/or institutional investors. These bank-like institutions had a combined loan portfolio amounting to AWG 474.4 million at year-end 2007, which represents an increase of AWG 54.4 million or 13 % compared to 2007.

[3] The GDP figure for 2006 is based on the Fitch Ratings estimate of June 2006.

57. The activities of the credit unions are restricted to the attraction of monies from members and lending of these monies to members. Part of the monies can be invested in time deposits or other investment products. Credit Unions are not allowed to attract deposits from the general public. The *Coöperatieve Spaar- en Kredietvereniging Douane Aruba* (CDA) is currently the only credit union active in Aruba. It was incorporated on 21 December 1981. The CDA has a membership of 306 persons as per 31 December 2008, consisting of the employees of the Customs Office and former members (or pensioners) or family members of the employees of the Customs Office. The CDA was established to cultivate a saving's behavior amongst its members and to provide advances to its members. The balance sheet total of the CDA amounted to approximately AWG 4.1 million at the end of 2007.

Insurance sector

58. On 31 December 2007 there were 25 licensed insurance companies and 11 company pension funds in Aruba. The number of supervised non-life and life insurance companies and company pension funds remained the same as in 2006.

Table 5. Number of supervised institutions within the insurance sector
(End-of-period figures)

	2005	2006	2007
1. Non-life insurance companies	13	13	13
2. Life insurance companies	8	8	7
3. Captive insurance companies	3	4	4
4. Company pension funds	11	11	11
Total	**35**	**36**	**35**

Source: CBA.

(i) Non-life insurance sector

59. At the end of December 2007, the aggregated balance sheet total of the thirteen non-life insurance companies amounted to AWG 205.0 million, an 8.9 percent increase compared to 2006.

60. In 2007, the main income sources of the non-life insurance companies were net premiums received from motor vehicle insurance (59.2 percent) and property insurance (23.5 percent).

(ii) Life insurance sector

61. At the end of 2007, the aggregated balance sheet total of the eight life insurance companies amounted to AWG 548.7 million, which represents a significant increase of AWG 56.5 million or 11.5 percent compared to 2006.

(iii) Company pension funds sector

62. The aggregated balance sheet total of the ten company pension funds (excluding the figures of Lago Annuity Foundation, whose obligations are covered by a guarantee from Exxon Mobil Corporation) amounted to AWG 254.7 million at the end of 2007, an 8.4 percent increase compared to 2006. On the asset side, investments increased by AWG 19.6 million to AWG 240.8 million. On the liability side,

technical provisions increased by 10.9 percent to AWG 216.4 million. Capital and reserves declined 3.2% to AWG 36.1 million, which was mainly the result of net losses applied to general reserves.

Money transfer companies sector

63. In 2007, approximately 277 000 outgoing transfers were executed by the four registered money transfer companies, comprising a total amount of AWG 116.7 million (2006: 276 000 outgoing transfers amounting to AWG 113.3 million). Also in 2007, Colombia remained the major destination of the funds transferred abroad via this sector, accounting for 54.7 % of all outgoing money transfers as illustrated in the table below. The significant flow of monies to Colombia is believed to derive from Aruban based Colombian hotel and construction workers who send money home to their families. Whilst a similar number of hotel workers are Venezuelan, it is noted that no similar volume of money is repatriated through the money transfer system to Venezuela. It is believed cash is couriered to Venezuela instead.

Table 6. Outgoing money transfers by countries of destination
(End-of-period figures in AWG thousands)

	2005	2006	2007
1- Colombia	60 191.3	64 659.1	63 896.3
2- Dominican Republic	11 812.0	13 983.9	17 377.6
3- Philippines	5 700.1	5 811.9	5 957.6
4- Peru	5 100.6	5 195.3	5 185.2
5- Haiti	3 378.5	3 989.4	4 335.6
6- Other	20 135.7	19 622.5	19 969.1
TOTAL	**106 318.2**	**113 262.1**	**116 721.4**

Source: CBA; money transfers companies.

64. In 2007, the money transfer companies processed approximately 16 000 incoming transfers comprising a total amount of 13.9 million AWG (2006: 15 000 incoming transfers processed reached a total amount of AWG 11.7 million). As in previous years, these incoming transfers originated mainly from the Netherlands and the United States of America.

Table 7. Incoming money transfers by countries of origin
(End-of-period figures in AWG thousands)

	2005	2006	2007
1- Netherlands	4 591.6	4 407.0	4 867,6
2- United States	3 685.1	3 170.1	3 743.3
3- Colombia	613.0	606.3	800.9
4- Netherlands Antilles	728.0	736.3	712.0
5- Spain	332.1	314.2	662.6
6- Other	2 346.9	2 458.0	3 091.1
TOTAL	**12 296.7**	**11 691.9**	**13 877.5**

Source: CBA; money transfers companies.

65. Set out below is a table of financial institutions that are regulated and supervised:

Table 8. Structure of financial sector
(audited figures as per year-end 2007)

	Number of institutions	Total assets (AWG Million)	Authorization/ Registration & Supervision	Supervision AML/CFT
Commercial banks	4	3 733.1	CBA	CBA/FIU
Offshore banks	2	787.2	CBA	CBA/FIU
Mortgage banks	1	365.0	CBA	CBA
Consumer Finance companies	1	73.3	CBA	CBA
Investment bank	1	199.7	CBA	CBA/FIU
Credit union	1	4.1	CBA	CBA
Life insurers	8	548.7	CBA	CBA/FIU
Non-life insurers	13	205.0	CBA	CBA
Captives	4	39.8	CBA	CBA
Company pension funds	11	254.7	CBA	N/A
Money transmitters	4	13.2	CBA	CBA/FIU
Insurance intermediaries	N/A	N/A	N/A	FIU

N/A: Not Applicable

66. The following table sets out the types of financial institutions that can engage in the financial activities that are within the definition of "financial institutions" in the FATF 40+9 Recommendations.

Table 9. Financial activity by type of financial institution

Type of financial activity (See the Glossary of the 40 Recommendations)	Type of financial institution that performs this activity	AML/CFT supervision
1. Acceptance of deposits and other repayable funds from the public (including private banking)	1. Commercial Banks 2. Financial institutions, which fall within the scope of the exemption of Article 48 SOSCS	1. CBA/FIU 2. No supervision
2. Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))	1. Commercial Banks 2. Bank-like financial institutions (mortgage lending) 3. Insurers 4. Financial institutions which fall within the scope of the	1. CBA/FIU 2. CBA 3. CBA/FIU 4. No AML/CFT supervision

Type of financial activity (See the Glossary of the 40 Recommendations)	Type of financial institution that performs this activity	AML/CFT supervision
	exemption of Article 48.3 SOSCS	
3. Financial leasing (other than financial leasing arrangements in relation to consumer products)	1. Commercial Banks	1. CBA/FIU
4. The transfer of money or value (including financial activity in both the formal or informal sector (*e.g.* alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds)	1. Commercial Banks 2. Money remitters	1. CBA/FIU 2. CBA/FIU
5. Issuing and managing means of payment (*e.g.* credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	1. Commercial Banks 2. Non regulated company issuing and managing means of payment	1. CBA/FIU 2. No supervision
6. Financial guarantees and commitments	1. Commercial Banks 2. Non regulated companies	1.CBA/FIU
7. Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading	1. Commercial Banks 2. Investment companies	1. CBA/FIU 2. No supervision
8. Participation in securities issues and the provision of financial services related to such issues	1. Commercial Banks 2. Investment companies	1. CBA/FIU 2. No supervision
9. Individual and collective portfolio management	1. Commercial Banks 2. Investment companies	1. CBA/FIU 2. No supervision
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	1. Commercial Banks	1. CBA/FIU
11. Otherwise investing, administering or managing funds or money on behalf of other persons	1. Commercial Banks 2. Investment companies 3. Pension Funds	1. CBA/FIU 2. No supervision 3. No AML/CFT supervision
12. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers))	1. Life insurance companies 2. Life insurance agents and brokers	1. CBA/FIU 2. FIU
13. Money and currency changing	1. Commercial Banks 2. Hotels	1. CBA/FIU 2. No supervision

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

67. As for legal persons two kinds of legal persons can be distinguished, namely the public legal person and the private legal person. Public legal persons are legal persons instituted as such by law with the purpose of performing a specific public task which requires a high degree of independence on an operational and financial level from the political decision making process, *i.e.* the Government itself. Public legal persons do not operate on a commercial basis or for a private aim. Their organisation, tasks and relationship with the Government are governed by their institutional law. An example of a public legal person in Aruba is the Central Bank of Aruba.

68. Private legal persons are legal persons provided by the commercial laws of Aruba to fulfil a private aim. The following legal persons exist in Aruba:

a) the limited liability company (*NV*);

b) the Aruba exempt company (*AVV*);

c) another type of limited liability company (*VBA*), introduced on 1 January 2009;

d) the foundation;

e) the association with legal personality.

69. These private legal persons will henceforth be simply referred to as legal persons. With the exception of the association with legal personality, all legal persons can only be established through a notarial deed which must contain the articles of incorporation. Limited liability companies and Aruba exempt companies must always be entered in the Commercial Register while the foundation and the association with legal personality must be only entered in the Commercial Register if they are conducting a business. The Commercial Register is a public register kept by the Chamber of Commerce and Industry. The Commercial Register is meant to give an overview of the directors of the entities (legal and non-legal persons) established and doing business in Aruba. Therefore it is a legal requirement for these entities to submit the names and addresses of the directors of the entity, the nature of the business carried out by the entity, as well as any change to this data. An exception is in place for the Aruba exempt company which is only required to submit an authenticated copy of its articles of incorporation for registration in the Commercial Register.

The limited liability company (NV)

70. The limited liability company is a corporation with an authorized capital divided into shares in which every partner participates with one or more shares. The partners, meaning the shareholders, are not personally liable for the actions carried out in the name or on behalf of the company as the company is a legal person. A limited liability company is incorporated by a notarial deed containing the articles of incorporation; it cannot commence before receiving a so-called declaration of no objection from the Minister of Justice. Such a declaration can only be refused in a case where the company goes against the public order of good morals, the deed does not comply with legal provisions or the shareholders are not participating in at least one-fifth of the authorized capital. Shares can be issued to name or to bearer. Bearer shares cannot be issued unless the full nominal value has been paid up. As long as the full amount of the issued shares has not been paid up the management is required to keep a register containing the names of the shareholders who have not paid up their shares in full yet. Otherwise the management or any other organ of the limited liability company is not required to keep a register of the shareholders of the company.

71. The shareholders meet at least once per year in the general shareholders meeting. The general shareholders meeting has, within the limits of the law, all authority not allotted to the management or others. A limited liability company has a management consisting of at least one person. The management is tasked with the management of the business of the company and the internal and external representation of the company. These tasks and the authority attached to this can be limited by the articles of incorporation. The appointment of the first management is done in the articles of incorporation while the appointment of subsequent management is done by the general shareholders meeting. The articles of incorporation may create a supervisory board consisting of one or more persons. This however is not mandatory. Members of the supervisory board are appointed and dismissed by the general shareholders meeting.

72. The management of a limited liability company is required to submit within 8 months after closing of the company's fiscal year a balance sheet and a profit and loss statement accompanied by an explanation to the general shareholders meeting for approval. An expert (usually an auditor) can or, in case the articles of incorporation so require, must be appointed by the general shareholders meeting to examine the books of the company and to report on the balance sheet and profit and loss statement as presented by the management.

73. Limited liability companies are used essentially for commercial purposes. Limited liability companies are subject to profit taxation in accordance with the State Ordinance on Profit Tax. The rate is 28%. Limited liability companies established in a free zone are subject to a profit tax rate of 2%.

Aruba exempt company (AVV)

74. The Aruba exempt company was introduced in 1988 as an international financial services instrument. As is the case with the limited liability company, the Aruba exempt company is a corporation with an authorized capital divided into shares. Shareholders are therefore not personally liable for the actions carried out in the name or on behalf of the company as the company is a legal person. It distinguishes itself from the limited liability company by being exempted from profit taxation, hence the "exempt" part of its name. However, since changes adopted in the State Ordinance on Profit Tax on 1 January 2006, AVVs have the possibility to opt for a fiscally transparent status and therefore be subject to the same profit tax regime as NVs. An Aruba exempt company must always have a legal representative established in Aruba, the articles of incorporation of which must allow for the legal representation of Aruba exempt companies. Such legal representation is provided by company service providers, which can only be limited liability companies incorporated and established in Aruba and supervised by the CBA pursuant to the State Ordinance Supervision Trust Company Services Providers since 1 January 2008. The Aruba exempt company may be used for financing, investment, trading or holding activities. Holding activities may be defined as managing foreign property or real estate or other assets outside Aruba. The Aruba exempt company was originally not intended for Aruban residents or for participation in the economy of Aruba, but as per 1 January 2006 the Code of Commerce was amended to prevent ring-fencing, meaning that Aruban residents are allowed to own AVVs which are also allowed to participate in the economy of Aruba An Aruba exempt company is not allowed to act as a credit institution.

75. An Aruba exempt company is incorporated by a notarial deed which must contain the articles of incorporation; it cannot commence before receiving a so-called declaration of no objection from the Minister of Justice. Such a declaration can only be refused if, in view of the intentions or antecedents of the persons who will determine or co-determine the company policies, there is a danger that the company will be used for illicit purposes, or if the deed is against public order, good morals or legal provisions. Shares can be issued to name or to bearer. The purchase of shares requires the payment in full or at least the

nominal value mentioned on the shares. No registration is required of the shareholders, beneficial owners or persons otherwise entitled to the shares.

76. As is the case with the limited liability company the Aruba exempt company has a general meeting of shareholders which has all the authority and power not allotted to the management or others. The management of the Aruba exempt company should be in the hands of a management consisting of at least one person. Except if determined otherwise by the articles of incorporation the management is required to submit within eight months after closing of the company's fiscal year a yearly account containing a balance sheet and a profit and loss statement accompanied by an explanation to the general shareholders meeting for approval. An expert (usually an auditor) can or, in case the articles of incorporation so require, must be appointed by the general shareholders meeting to examine the books of the company and to report on the balance sheet and profit and loss statement as presented by the management.

Aruba limited liability company (VBA)

77. The Aruba Limited liability company (VBA) was introduced on 1st January 2009. As is the case with the limited liability company (N.V.) and the Aruba exempt company (A.V.V.) the company has an authorized capital divided into shares. Shareholders are therefore not personally liable for the actions carried out in the name or in behalf of the company as the company is a legal person. But as the limited liability company is a hybrid entity, the company can also be constructed as a company in which the shareholders are personally liable for the debts of the company. The company in such a case is comparable to a limited partnership.

78. A VBA must have a legal representative which is a limited liability company incorporated and established in Aruba and whose purpose clause states that the company represents VBAs and/or AVVs. The legal representative must be in possession of a license issued by the CBA pursuant to the State Ordinance Supervision Trust and Company Service Providers. If the VBA has natural persons who are Aruban residents as its director(s) there is no obligation for a legal representative.

79. The VBA is incorporated by notarial deed which must contain the articles of incorporation. It cannot commence before receiving a declaration of no objection from the Minister of Justice. Such declaration can only be refused if, in view of the intentions or antecedents of the persons who will determine or co-determine the company policies, there is a danger that the company will be used for illicit purposes or that that its operations will lead to disadvantages for its creditors. The VBA is incorporated by one or more persons (legal or natural). The incorporator(s) do not have to participate in the capital of the company.

80. Shares can be issued with or without nominal value. Furthermore, shares can be issued with or without voting rights or with limited voting rights. Shares can also be issued with or without profit rights. Issuance of the shares is against the nominal value. Stipulated return actions are layed down in the act of incorporation and are due at the moment of issuance of the shares without nominal value.

81. The management of the VBA can be constructed according to the "one tier" or the "two tier" model. It is also possible to give the shareholders the supervisory role over a normal board of directors.

82. The management is required to submit within 8 months after closing of the company's fiscal year a yearly accounting containing a balance sheet and a profit and loss statement accompanied by an explanation to the general shareholders meeting for approval. An expert (usually an auditor) can or, in case the articles of incorporation so require, must be appointed by the general shareholders meeting or another

organ of the company, to examine the books of the company and to report on the balance sheet and profit and loss statement as presented by the management.

83. In principle the VBA is subject to the normal corporate income tax of 28%. However, the company can elect to be subject to each available fiscal regime on Aruba. A VBA can opt for the fiscal transparent status, imputation payment status or the exempt status. This is possible if the VBA only performs certain qualified activities: holding activities, financing of other companies (whether or not the financing is intercompany), investment activities (with exception of investing in real estate), the licensing of intellectual and industrial property rights and similar rights according to the laws of Aruba or the laws of other countries.

Foundations

84. A foundation is a legal person which has no members, shareholders or owners, and aims to achieve idealistic, social, charitable or other non-profit goals through a working capital given to it for that purpose. A foundation is created by one or more natural or legal persons through a notarial deed containing the articles of incorporation. These articles of incorporation should at least contain the name of the foundation (with the word "*stichting*" as part of that name), the aim of the foundation and the method and procedures for the appointment of the directors. The objective of a foundation cannot be to make payments to its founders or persons belonging to its organs, nor to others except if the payments to those others have an idealistic or social aim. A foundation that is contrary to public order is prohibited and as such is null and void. The voidance of such a foundation, however, cannot be held against third parties who were unaware of this. Foundations that are contrary to public order are those that have as an aim disobedience to or violation of legal provisions, assaulting or disturbing good morals or disturbance in the exercise by whomever of their rights.

85. All foundations must be registered in the special public register called the Foundations Register which is kept by the Chamber of Commerce and Industry. Registration must include the name, surnames, address or last known address of the founder or founders, as well as the names, surnames and addresses of the directors of the foundation. Changes to the directors and articles of incorporation must also be entered in the Foundations Register.

Associations with legal personality

86. The association with legal personality can be distinguished from other associations by it having legal personality which authorises it to act on its own behalf without its board or members being liable for these acts. As is the case with the foundation, an association with legal personality can only be created for idealistic, social, charitable or other non-profit reasons. In practice this legal form is mostly used by sport, service and social clubs. To be incorporated as an association with legal personality recognition as such is required. This recognition is granted by state decree and is given after screening of the articles of incorporation by the Directorate of Legislation and Legal Affairs. Recognition may only be refused on grounds related to the general interest. If an association deviates from its aim as set out in the articles of incorporation the Public Prosecutor's Office may request the judge to remove the legal personality. This leads subsequently leads to the dissolution of the association's assets under the supervision of the judge.

Partnerships

87. There are a number of types of partnerships:

a) the commercial partnership;

b) the limited partnership;

c) partnership.

88. The commercial partnership and the limited partnership are regulated by the Code of Commerce of Aruba, while the partnership is regulated under the Civil Code of Aruba. Partnerships distinguish themselves primarily from legal person by not being able to act independently as a holder of its own rights and obligations as if it were a natural person. The partners (whether are they are natural or legal persons) are therefore liable for the obligations (for example debts) incurred by the partnerships. Contrary to most legal persons a notarial deed containing articles of incorporation is not required to set up a partnership. For setting up the above mentioned partnerships the only legal requirement is that the partnership must be signed on in the commercial register. In certain situations an official permit is required, depending on the nationality of the founders and the kind of commercial activities that will be conducted. Commercial partnerships and limited partnerships are required to register with the Commercial Register kept by the Chamber of Commerce and Industry, while partnerships must register in case they carry out a business. For that purpose the following data and information of these partnerships must be submitted:

- Personal data of the partners
- Business or brand name
- Start and ending of the partnership
- Address (place of residence) of the limited or commercial partnership
- Amount of invested capital
- Description of the commercial activities

Commercial partnerships

89. The commercial partnership is based on an agreement between the partners, resulting in a form of cooperative relationship in order to pursue commercial purposes. They are mostly used for small businesses. A commercial partnership may be established by natural persons but also by two or more companies with legal personality. The partnership is started up by one or more individuals, who have joint ownership of the enterprise under a common name. The working capital (equity) of the partnership remains separated from the private capital of the partners. As mentioned previously the partners have personal liability for incurred debts. Bankruptcy of the partnership will therefore also have consequences for the partners. On the other hand, the company capital and assets cannot be held liable for the personal debts of the partners. Private debts of the partners cannot in principle be recovered from the partnership.

Limited partnerships

90. The limited partnership is a particular form of partnership, in which two different types of partners can be distinguished. In the limited partnership a distinction is made between the managing partners, who act on behalf of the partnership, and the partners who only act as capital contributor. The latter are known as ‘silent’ or ‘dormant’ partners. Silent partners cannot perform managerial or administrative acts on behalf of the partnership, such as entering into financial commitments or obligations, or settling debts. Violation of this management injunction will result in the liability for all debts of the partnership.

Partnerships

91. A partnership is an agreement between two or more natural or legal persons in which these persons commit themselves to bring assets together in a community order to share the benefits and profits resulting from that community. Partnerships are used for example by law firms.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

92. The AML/CFT strategy of Aruba is aimed at the protection and preservation of the integrity of the financial system (prevention) and the detection and prosecution of activities concerning money laundering and terrorist financing (repression). The prevention component is primarily in the hands of specialized government agencies and semi-governmental entities such as the FIU and the CBA who are given a large degree of freedom to develop and implement their own policies in accordance with the relevant international standards as they appear and develop. The repression component is in the hands of the Public Prosecutor's Office, which has a large degree of autonomy to determine its prosecutorial policies. The prudential supervision of banks, insurance companies and money transfer companies aims at preventing financial institutions from taking risks that could harm the interests of depositors, policyholders, and other creditors and could endanger the soundness, stability, and integrity of the financial system. To that end, the CBA conducts off-site surveillance, as well as periodic on-site examinations. Furthermore, it holds on a regular basis bilateral meetings with the institutions concerned and with their representative organizations. The FIU pursues its AML/CFT objective by assuring compliance of the relevant institutions with their legal reporting obligation through on-site supervision and the subsequent supervision reports (directives and guidelines), as well as regular information sessions, by monitoring flows of money and by cooperating closely within the reporting chain and with other AML/CFT actors involved on regional and international level. Currently high priority is being given to the implementation of the Law Maintenance Program of which the FIU, the Public Prosecutor's Office and Police are important recipients, as it is aimed at the upgrading of their infrastructure and information technology systems, as well at providing personnel training.

93. A general measurement of the effectiveness of the policies and programmes has not been carried out as yet. However, the FIU, the CBA, the Public Prosecutor's Office and the FATF Committee Aruba have done some monitoring, and this has resulted, *inter alia*, in various amendments and proposals for amendments of the AML/CFT-related legislation.

94. The Government is currently working on the implementation of the Law Maintenance Program which will benefit the functioning of Government bodies involved with AML/CFT, such as the FIU, the Public Prosecutor's Office and the Police. The Government was also working on the implementation of various legislative measures, which were adopted in February 2009, such as the extension of the identification and reporting obligation to some DNFBPs, the introduction of administrative sanctions for non-compliance with the identification and reporting obligation and with the financial supervision State Ordinances. A State Ordinance on the supervision of trust and company service providers was also adopted in February 2009. Furthermore, the Government is finalising a Sanctions Decree based on the State Ordinance on Sanctions to effectively freeze funds and other assets as required by the United Nations resolutions S/RES/1267(1999) and S/RES/1373(2001). These legislative measures are hoped to be implemented in the coming year. Furthermore, the Government is working on a proposal for a State Ordinance on the supervision of casinos.

b. The institutional framework for combating money laundering and terrorist financing

Ministries and Inter-ministerial bodies and committees

95. Ministry of Justice: This Ministry is responsible for the maintenance of law and order, the peace and security of the population, the control at and guarding of the borders, the counseling of all ministries on administrative and legal matters, and the legislation for all the ministries. Pursuant to its responsibility for the maintenance of law and order, the Police Force Aruba resorts for criminal and operational matters under this Ministry, while it also bears responsibility for the proper execution by the Public Prosecutor's Office of its prosecutorial duties. For the same reason the Ministry of Justice bears general responsibility for the development and implementation of AML/CFT policies and policy instruments such as legislation, taking into account the specific roles of other governmental and semi-governmental parties involved such as the Ministry of Finance and Economic Affairs, the FIU and the CBA. The Ministry of Justice is also responsible for legislation on legal persons and arrangements, as well as for all gaming matters, including the licensing of gaming institutions such as casinos and lotteries.

96. Ministry of Finance and Economic Affairs: This Ministry is responsible for the general management of the funds of the Government of Aruba and the supervision on their expenditure, the monetary system, the FIU, the levying and collection of taxes, the promotion of a healthy development of the Aruban economy, the collection, processing and publication of statistical data and the cooperation on development. Pursuant to its responsibility for the monetary system and the FIU this Ministry bears particular responsibility for the promotion and protection of the integrity of the financial system of Aruba through legislation and cooperation with the CBA and other parties involved.

97. The FATF Committee Aruba: This standing committee (sometimes also referred to as the National FATF Committee) was instituted in 1992 by decree of the Ministers of Justice and of Finance and Economic Affairs to ensure coordination among the various AML (now also CFT) authorities, to increase awareness and exchange of information and to continuously monitor the implementation of the FATF Recommendations. The committee is currently chaired by the Head of the FIU and consists of representatives of the FIU, the CBA, the Free Zone Aruba N.V., the Directorate of Foreign Relations, the Public Prosecutor's Office, the Police, the Aruba Financial Centre, the Directorate of Legislation and Legal Affairs and the Directorate of Taxes. The FATF Committee Aruba meets once every two months and is assisted by a full time secretariat.

Criminal justice and operational agencies

98. The Financial Intelligence Unit (FIU): The FIU was created on 1 March 1996 under the name *Meldpunt Ongebruikelijke Transacties - MOT* (Reporting Centre for Unusual Transactions) when the State Ordinance on the Reporting of Unusual Transactions (SORUT) came into effect. The FIU is a specialized and separate government agency created to receive, analyze, and investigate reports of unusual transactions from the institutions subject to the reporting obligation (the reporters). It functions as a buffer between the reporters and the competent judicial authorities, specifically the Police and the Public Prosecutor's Office, by investigating the unusual transaction reports received and passing on to the Police and the Public Prosecutor's Office only those transactions determined to be suspicious. The FIU itself does not carry out criminal investigations. All reports received are kept in a secure database. Exchange of information with outside parties is possible under strict conditions set by law. The FIU supervises the compliance of financial and certain non-financial institutions subject to the reporting obligation. It also supervises the compliance of certain non-financial institutions with their legal obligation to identify their customers when providing financial services.

99. The Aruba Police Force: The Aruba Police Force or Police is the primary law enforcement and criminal investigation organisation of Aruba. The Police carry out criminal investigations under the leadership of a prosecutor. The Police are headed by the Chief Commissioner of Police. The Police have various specialized sections for the investigation of specific forms of criminality. As for AML/CFT special mention can be made of the Organised Crime Section and the Financial Investigations Bureau.

100. The Special Task Force Netherlands, Netherlands Antilles and Aruba: This cooperative detective force of the Netherlands, the Netherlands Antilles and Aruba (original name: *Recherche Samenwerkingsteam* or *RST*) is an autonomous interregional unit consisting of specially trained detectives who work with detectives of Aruba and the Netherlands Antilles to investigate and combat cross-border criminality. A number of detectives of this special task force dedicate themselves especially to money laundering and terrorist financing.

101. The Public Prosecutor's Office: The Public Prosecutor's Office has as primary tasks the prosecution of criminal offences and the execution of criminal judicial convictions. It is also the primary contact for international requests for legal assistance and cooperation. The Public Prosecutor's Office is headed by a Prosecutor-General who is appointed by the Queen of the Netherlands upon recommendation of the Common Court of the Netherlands Antilles and Aruba. The first line of the Public Prosecutor's Office consists of the prosecutors (currently four) who are headed by the chief prosecutor. The prosecutors are responsible for the initiation and progress of criminal investigations and subsequently give guidance and leadership to law enforcement officers actually conducting these investigations.

102. Customs Department: The Customs Department or Inspectorate for import duties and excises falls under the Directorate of Taxes and as such is part of the Tax and Customs Service. The Customs Department's primary role is the execution of the legislation regarding the import, export and transit of goods and the levying and collection in this respect of import duties owed to the government. The Customs Department is also tasked with the collection of excises on petroleum products, cigarettes and distilled beverages. As the Customs Department carries out these tasks at the various points of entry and departure of Aruba, it is also charged with the supervision on the implementation of the State Ordinance on Narcotic Substances and with the receipt of the reporting forms for the import and export of cash money pursuant to the State Ordinance on the Reporting of the Import and Export of Cash Money. The Customs Department is not a law enforcement agency; if in the course of its activities it comes across situations which may be indicative of money laundering and/or terrorist financing, the Police must be notified.

Financial sector bodies

103. Supervision of financial institutions and related institutions: The supervision of credit institutions (primarily banks), insurance companies (life and non-life), money transfer companies and company pension funds has been given by various State Ordinances to the Central Bank of Aruba (CBA). As for credit institutions and insurance companies a licensing system is used with the CBA as the sole licensing and supervisory authority. Money transfer companies are subject to a registration system with subsequent supervision by the CBA. Credit institutions, insurance companies and money transfer companies may only act as such after authorisation from the CBA via licensing or registration respectively. Company pension funds do not require prior authorisation of the CBA but are still subject to supervisory measures similar to those used for credit institutions, insurance companies and money transfer companies. The supervision by the CBA of other financial institutions – particularly investment firms and electronic stock exchanges – are currently being considered by the Government. The Minister of Finance and Economic Affairs has meanwhile approved the draft legislation prepared by the CBA with respect to the supervision of the electronic stock exchanges. This draft is now in the legislative process. Furthermore, the CBA strives to submit a proposal by the year end 2009, which will introduce the regulation of investment companies.

104. The Central Bank of Aruba (CBA): The CBA was instituted on January 1st 1986 as a public legal person with full legal, operational and financial independence of the Government. The CBA is responsible for safeguarding the financial stability in Aruba. Its principal policy objectives are to protect the internal and external purchasing power of the Aruban florin (AWG), to enhance the safety, efficiency, and reliability of the payment systems, and to promote the soundness and integrity of the financial sector institutions. In line with these policy objectives, the CBA performs the following tasks and related activities:

1. Issue bank notes, as well as coins on behalf of the Government.
2. Promote efficiency in settling domestic payments.
3. Act as the Government's banker.
4. Regulate the flow of international payments.
5. Manage Aruba's official reserves, consisting of gold and foreign exchange holdings.
6. Advise the Minister of Finance and Economic Affairs on financial matters.
7. Monitor economic and financial developments.
8. Conduct monetary policy.
9. Supervise the financial system.

105. The latter task, which is also potentially of relevance for AML/CFT, is done by performing risk-based supervision on financial institutions to protect the interests of depositors and policy holders and to contribute to maintaining the stability and integrity of the financial system.

DNFBPs and other matters

106. Company Service Providers were brought under a regulatory framework on 5 February 2009 by the enactment State Ordinance on the Supervision of Company Service Providers. In addition to giving the CBA authorisation and supervision responsibilities, the law provides existing businesses transitional provisions of one year in order that they may apply for a licence. The future supervision will be risk-based along the lines set previously for banks and insurance companies.

107. Casinos: There are currently 11 casinos active in Aruba. They are licensed by the Minister of Justice pursuant to the State Ordinance on Hazard Games which, measured by today's standards, is very rudimentary to conduct ongoing prudential supervision on casinos. In order to comply with FATF Recommendation 24 a proposal for a State Ordinance for the Supervision of Gaming has been drafted and is expected to be presented to parliament before the end of this year. Similar to the company service providers it will introduce a risk-based supervision supported by a licensing system for casinos (and possibly other gaming institutions). The licensing will formally remain with the Minister of Justice while the supervision will be in the hands of an independent body.

108. Legal and other professionals: Currently lawyers, civil notaries, accountants and tax advisors are not subject to ongoing AML/CFT supervision. Lawyers are admitted to practice by the Common Court of the Netherlands Antilles and Aruba. Lawyers are subject to disciplinary ruling which is administered on a

case-by-case basis by Council of Supervision and in second instance by Council of Appeal. A Bar Association (*Orde van Advocaten*) is present and active; however this entity does not have regulatory powers, nor is membership mandatory for lawyers. Civil notaries are appointed by the Government but do not have a self regulatory body which sets and enforces regulations on various subjects, including AML/CFT. Supervision is repressive and limits itself to disciplinary measures to be imposed on a case-by case basis by the Common Court of the Netherlands Antilles and Aruba. Accountants, in as far as they are they are registered with a foreign professional organisation of accountants, may be subject to disciplinary rulings of that organisation. The same applies to tax advisors. It should be noted that the Government plans to introduce legislation before the end of this year to extend the obligation to identify clients when providing financial services and to report designated unusual transactions, to lawyers, civil notaries, accountants and tax advisors. Supervision on the compliance with these new legal obligations will be carried out by the FIU.

109. Real Estate Agents: These professionals are not regulated in Aruba and their number remains uncertain. While there might be 6 active real estate agents operating on the islands, about 50 other are registered by the Chamber of Commerce and seem to be presently inactive. Real estate agents are generally not specialised and offer all types of business due to the small size of the market. A Land Registry is hold by the Ministry of Infrastructures, where all the sales are registered. Civil notaries are in charge of the deed of purchase, except when the purchaser is an AVV. Real estate agents are subject to AML/CFT requirements since February 2009.

110. Dealers in precious metals and precious stones: These professionals, who are not regulated, are subject to AML/CFT requirements since February 2009. Their number is unknown.

111. Registry for companies: All entities or persons established in Aruba, whether with legal personality or not, carrying out business in or from Aruba, are required by law to register in the Commercial Register. This register is kept by the Chamber of Commerce and Industry of Aruba.

c. Approach concerning risk

112. Aruba has not conducted an AML/CFT risk assessment other than the General Criminality Analysis carried out by the Public Prosecutor's Office in 2007. This analysis highlights that Aruba is mainly at risk with respect to the first and third phases of the laundering process, the placement and the integration, and that the main risky sectors are the banking sector, the real estate sector, the jewellery industry and the casino industry. In addition, the General Criminality Analysis considers that financial sectors that deal significantly in cash, such as money transfer companies, are also abused for money laundering purposes.

113. Until February 2009, casinos were the only DNFPBs subject to AML/CFT requirements despite the AML/CFT risks associated with the other DNFBP sectors.

114. Concerning financial institutions, although the Aruban State Ordinance on Identification Obligations (SOIPS) does not provide that financial institutions can implement a risk-based approach for the implementation of their AML/CFT obligations, the CBA has issued two AML/CFT directives for banks and insurance companies that allow them to implement a risk-based approach. For example, the CDD directive for banks recommends that banks conduct enhanced CDD for high risked customers such as Politically Exposed Persons or transactions like non face-to-face transactions, correspondent banking and private banking activities.

115. The AML/CFT directive for insurance companies recommends that insurers implement a risk-based approach and create a risk profile for each customer taking into account their background, their location, the nature of their activities or the source of funds or source of wealth. Insurers are also urged to implement enhanced CDD for customers who are PEPs or customers located in non-cooperative countries and territories and non face-to-face customers. In addition, the AML/CFT directive accepts that insurance companies can apply simplified CDD for those lower risk customers as set out by the FATF (financial institutions, public companies, government or administrations) and for certain insurance products.

d. Progress since the last mutual evaluation

116. Aruba underwent its second FATF mutual evaluation in 1999. In the mutual evaluation report it was concluded that since the first evaluation in 1995, Aruba had introduced legislation requiring financial service providers to identify their clients when providing financial services and to report unusual transactions to the FIU. Also changes were made in the CrCA, while a CBA Directive on AML was introduced. Overall, many significant advances had been made. Nevertheless recommendations were given to Aruba to further improve its AML-system. These recommendations can be summarised as follows:

a) In order to make criminal prosecution of money laundering more successful, the legal requirement of proving the underlying predicate offence, as well as the restriction of the definition of money laundering to money, securities and claims, had to be removed.

b) At the level of informal cooperation changes were required in order to make it easier for the FIU to exchange information with other FIUs without requiring a prior formal treaty.

c) Adequate technical and human resources were needed to ensure the proper functioning of the unusual transactions system, while the lack of qualified staff needed to be redressed.

d) The law enforcement and prosecutorial structure for enforcing the (then) new confiscation could be reviewed and consideration given to dedicated specialist functions, as the confiscation results to date were limited and steps needed to be taken to encourage investigating officers and prosecutors to actively pursue confiscation as an integral part of a criminal investigation.

e) Certain financial services, such as life insurance, money exchange of remittance and pension fund activities needed to be brought under the identification obligation, thereby removing an inconsistency with the reporting obligation.

f) The total lack of reports from institutions other than banks needed to be rectified promptly and the CBA needed to consider the circumstances under which it might report directly to the FIU.

g) Further improvement on the level of feedback provided by the FIU to reporting institutions was deemed desirable, including making the regular meetings with the compliance officers as informative as possible.

h) The adopted system with respect to the supervision of the two offshore banks needed to be reviewed as they have no physical presence in Aruba and do not file unusual transactions reports.

i) Measures were necessary to extend internal control requirements and supervision to insurance companies, check cashers and money exchange or remittance businesses.

j) Due to lack of resources at the FIU and to ensure an efficient use of resources and to achieve greater clarity and consistency, the whole task of supervision had to be left to the CBA or another appropriate supervisory agency.

k) The reports of the four Mixed Committees needed to be implemented as soon as possible, since they would considerably strengthen the AML regime.

l) After having implemented the reports of the Mixed Committees and the other current amendments completed, attention should be focused on the practical enforcement of the new laws and mechanisms in order to ensure that the AML system is effective and efficient.

117. Aruba has implemented the majority of these recommendations. As for the recommendations that require legislative action (a, b, e, i and k), Aruba amended its Criminal Code in 2006 to include 3 new specific money laundering provisions, while repealing the stand-alone AML State Ordinance in the process. These new provisions label money laundering as an independent offence and expand their scope beyond money, securities and claims to any goods or property rights (recommendation a). The SORUT was adapted in 2003 to enable the FIU to exchange information with foreign counterpart FIUs without the presence of a treaty. Exchange of information is now based on memoranda of understanding between the FIU and foreign counterpart FIUs, most of which are members of the Egmont Group (recommendation b). The reporting obligation as set out in the SORUT was extended in 1999 to money remittance companies (including the post office) and to life insurance companies and insurance brokers in 2002 (recommendations e and f). In 2001 comprehensive legislation was introduced to regulate the supervision of insurance companies (life and non-life) by the CBA, while in 2003 the same was done with respect to money remittance companies (recommendation i). As for the implementation of the reports of the four Mixed Committees (recommendation k), a State Ordinance was introduced in 2000 with new and comprehensive rules on the supervision of free zones through a government-owned limited liability company named Free Zone Aruba N.V.. Likewise, Aruba enacted in 2003 a State Ordinance regulating the reporting of the import and export of cash, thereby making it a legal requirement to report the import and export via the harbours, airport and the postal service of currency in excess of AWG 20 000 (USD 11 000) to the Customs Department. Aruba also adopted a State Ordinance in February 2009 that tasks the CBA with the licensing and the supervision of the trust and company service providers. The Government now expects to submit to the parliament a proposal of State Ordinance on the supervision of casinos before the end of 2009.

118. As regards the FIU, its functioning and the extent of the unusual transactions reporting system (recommendations c, g, h and j), since 1999 additional staff have been hired for supervision, policy and analysis purposes. FIU staff are given internal and external training. The FIU has increased the amount and quality of feedback to its reporters by regularly presenting information sessions with typologies and sanitised cases, by issuing a quarterly electronic newsletter and by presenting statistics in its annual reports. The FIU also informs reporters on the handling and conclusion of their reports as submitted, and gives specific feedback to each reporter in its supervision reports. As for the offshore banks it should be noted that these institutions presently file unusual transactions reports with the FIU. Because of the steadily improved functioning of the FIU, Aruba advised that several investigations have ultimately led to money laundering convictions and that the Government is convinced that the FIU has proven its worth as a separate institution tasked with the maintenance and supervision of the unusual transactions system as set out in the SORUT.

119. With respect to the review of the law enforcement and prosecutorial structure and consideration of specialised functions in order to encourage officers and prosecutors to actively pursue confiscation as an integral part of criminal investigation (recommendation d), it should be noted that the relevant law

enforcement sections have been upgraded while others have been instituted. The Organised Crime Section and the Financial Investigations Bureau (new) of the Police can be mentioned, together with the inter-regional Special Task Force Netherlands, Netherlands Antilles and Aruba. The Public Prosecutor's Office has assigned one prosecutor specifically for financial investigations, including money laundering (and terrorist financing). This prosecutor also acts as a liaison for the FIU.

120. Since the implementation of a number of the recommendations of the 1999 evaluation report, Aruba has effectively focused on the practical enforcement of the contemporary and new AML legislation. To this effect the AML instruments and the underlying legal system have been continuously monitored, while in line with international developments CFT legislation and other measures have also been introduced. Most recently, in February 2009, this resulted in the adoption of two new State Ordinances: one modifying the former State Ordinance on Identification obligations, the State Ordinance on Reporting Obligations, the three State Ordinances that regulate credit institutions, insurance companies and money transfer companies. The other State Ordinance adopted by the Parliament regulates and creates a supervisory regime for trust and company service providers. Furthermore, two ministerial regulations were also adopted to define criteria determining unusual transactions that must be reported to the FIU.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1 & 2)

2.1.1 Description and Analysis

121. The legal system of Aruba is based on the Dutch legal system with some modifications based on the local or regional circumstances. The responsibility to develop an AML/CFT framework primarily rest with the government of Aruba, whereas the judiciary is linked into the Kingdom of the Netherlands. The judiciary is in the hands of independent judges who are appointed by the Queen upon recommendation of the Common Court of Justice of the Netherlands Antilles and Aruba. Cases are heard in first instance by the Court in First Instance of Aruba, but appeals are made before the Common Court of Justice of the Netherlands Antilles and Aruba, which serves has an appeal court for both Aruba and the Netherlands Antilles. Further appeal is possible for penal and civil cases to the Supreme Court of the Netherlands. As a result, the Criminal Code of Aruba is very close to the one of the Netherlands Antilles and more generally to the Criminal Code of the Netherlands, and the jurisprudence based on Dutch penal cases also has a direct impact on the Aruban penal system.

Criminalisation of ML on the basis of the UN Conventions

122. The Vienna and Palermo conventions require countries to establish as a criminal offense the following intentional acts: conversion or transfer of proceeds for particular purposes; concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to proceeds; and the acquisition, possession or use of proceeds (Article 3(1)(b)(i)-(ii) of Vienna; Article 6(1)(a)(i)-(ii) of Palermo). This obligation is subject to the fundamental/constitutional principles and basic concepts of the country's legal system (Article 2(1), Vienna convention; Article 6(1), Palermo convention).

123. In Aruba, the money laundering offence, which is found in Articles 430b, 430c and 430d of the Criminal Code of Aruba (CrCA) is part of a regime designed to cover all obligations in the 1988 Vienna Convention and the 2000 Palermo Convention. The money laundering offence covers the act of hiding or concealing the true nature, the origin, the location, the alienation or the relocation of an object or the act of hiding or concealing who is the person entitled to an object or has the object in his possession. The offence also covers the acts of acquiring or possessing an object, the act of transferring or converting an object, or of making use of it. These acts cover the prescribed physical elements of the offence as set out in the Convention, and indeed go beyond as regards conversion or transfer, since there is no requirement to prove the act was done for one of the purposes set out in the Convention. These prohibited activities must be undertaken knowing or having reason to suspect that the object is directly or indirectly proceeds from a felony. Felonies consist of offences designated in the second book of the CrCA, and a limited number of specifically designated offences in other legislation. Felonies can be compared with misdemeanours, which are all other crimes. Under Aruban law, all felonies are predicate offences for money laundering.

124. Aruba distinguishes three types of ML offences:

- "Intentional ML", which is sanctioned under Article 430b and covers situation where the money launderer knew that the proceeds originated directly or indirectly from any felony.

- "Habitual ML", which is sanctioned under Article 430 c, is committed by anyone who habitually commits ML.

- "Culpable ML", which is sanctioned under Article 430d of CrCA covers situation where the money launderer had reason to suspect that the proceeds originated directly or indirectly from any felony.

125. The offence of ML extends to any objects which are defined as "all things and all property rights". Although this definition is quite vague, the Aruban officials advised the assessment team that this should be understood in the broadest sense as covering all tangible or intangible things. Therefore the offence of ML extends to all types of property that is laundered. There is no threshold for the value of the object, and thus the offence applies regardless of value.

126. Before 2006, money laundering was criminalised under the State Ordinance on the Criminalisation of Money Laundering, which explicitly required that the criminal proceeds were clearly procured from a predicate offence and that the money launderer defendant knew or should have known that the proceeds in question were obtained through a predicate offence. Judges then had the obligation to determine the specific predicate offence. In practice, this requirement led to major problems as it was difficult for the prosecutor to prove a specific predicate offence before the judge that led to the laundered proceeds, especially when taking into account the international aspects of money laundering.

127. In 2006, Aruba changed its definition of the ML offence to ensure it would be in line with the jurisprudence of the Supreme Court of the Netherlands. The ML offences therefore now place no burden on the prosecution to prove the commission of or conviction for any predicate offence. The prosecution must simply establish that the defendant "apparently" had knowledge or reason to suspect that the objects were directly or indirectly proceeding from any crime/felony (as opposed to a misdemeanour). This is supported by case law from the Supreme Court of the Netherlands (HR 27-09-2005, LJN: AT 4094). Although this case law is based on cases originating in the Netherlands and not Aruba, it is based on the same definition of the ML offence and is thus a ruling authority for Aruba, as the Supreme Court is a court that governs the Netherlands, the Netherlands Antilles and Aruba. It should also be noticed that it is based on this case law that Aruba changed its definition of the ML offence in order to bring it into alignment with the Dutch ML offence.

Predicate offences

128. As mentioned earlier, the ML offence covers all felonies, and these are mostly listed in the Second Book, CrCA. The principle in the Second Book is that each offence is a felony unless it expressly states otherwise. There are also some other felonies that are set out in other pieces of legislation, in which case they must be expressly stated to be a felony. There is thus no specific imprisonment period as a threshold that determines whether a crime is a felony or not. As set out below, the predicate offences in Aruba for money laundering cover a broad range of offences, but not a complete range for all designated predicate offences:

- Participation in an organised criminal group and racketeering: Articles 146 and 330 of CrCA.

- Terrorism, including terrorist financing: while terrorism is an offence under Article 85, terrorist financing is not criminalized as such in Aruba.

- Trafficking in human beings and migrants smuggling: Articles 203a, 286a, 287, 288, 289 and 290.

- Sexual exploitation, including sexual exploitation of children: 286a (procurement of sexual acts with persons under the age of 18 years and international networks of procurement of sexual acts).
- Illicit trafficking in narcotic drugs and psychotropic substances: Articles 3, 11, 11a, 11b, 11c, 11d of the State Ordinance on narcotic substances and Ministerial Regulations that list the narcotic substances.
- Illicit arms trafficking: Articles 1 to7 of the Fire Arms State Ordinance and Articles 2 to4 of the Fire Arms State decree.
- Illicit trafficking in stolen and other goods: Articles 431 and 432 of CrCA.
- Corruption and bribery: Articles 183, 183a, 184, 184a, 378, 379 and 380 of CrCA.
- Fraud: Article 339 of CrCA.
- Counterfeiting of currency: Articles 214, 215 and 220 of CrCA.
- Environmental crime: limited to Article 178 of CrCA (intentional pollution by bringing a substance in drinking water, air or surface water) and Articles 5,6 11, 12 and 13 of State Ordinance of the Protection of the Nature that implements the Convention on the International Trade of Endangered Species of Flora and Fauna.
- Murder, grievous bodily injury: Articles 302, 315 and 316 of CrCA.
- Kidnapping, illegal restraint and hostage-taking: Articles 295, 295a, 298 of CrCA.
- Robbery and theft: Articles 323, 324 and 325 of CrCA.
- Smuggling: Articles 233a, 233b, 233c of State Ordinance on the Import, Export and Transit of goods.
- Extortion: Articles 330 and 331 of CrCA.
- Forgery: Articles 230, 231, 231a, 232, 236, 237 and 239 of CrCA.

129. The predicate offences designated in the FATF Glossary are not fully covered in Aruba. Indeed, since terrorist financing is not criminalised as an independent offence in Aruba, it is not a predicate offence to money laundering, as defined under the FATF standards. Insider trading and market manipulation are also not adequately criminalised, and are thus not predicate offences to ML offences. The offence of fraud is narrowly defined and does not cover the full range of fraudulent activities.

130. As regards counterfeiting and piracy of products, the offence (Art. 350 CrCA) has a very limited scope relating to trademarks, which requires importation of products and there then several elements that need to be shown for the offence. In addition, copyright related offences are not criminalised in Aruba.

131. As far as environmental crimes are concerned, as Aruba does not have a general legislative framework for the management of the environment. Environmental offences are limited to a number of acts related to the protection of fauna and flora (endangered species) and pollution of drinking water and pollution of air, ground or surface water by intentionally polluting it with a substance. These offences

therefore cover a limited number of serious environmental crimes and do not take into account other potentially important crimes such as illegal transportation of hazardous waste or pollution of the sea surrounding Aruba (a potentially important consideration given the importance of the tourist industry and the existence of an oil refinery and related shipping).

Foreign predicate offences

132. The Aruban ML offence does not explicitly extend to conduct that occurred in another country which constitutes an offence in that country, and which would have constituted a predicate offence had it occurred domestically. Aruba relies on the wording of the offence, which refers to the proceeds of "any crime[4]", as meaning that the offence covers the laundering of any crime anywhere in the world. This language was part of amendments that were introduced in 2006 (see paragraph 89) to ensure that the prosecution does not have to prove the specific predicate offence. This element of the interpretation appears reasonable and logical. However the broader contention that use of the words "any crime" can be reasonably read as referring to any type of more serious crime that occurs in any jurisdiction is much more problematic and difficult to accept. The legislation does not specifically refer to conduct in another jurisdiction which would amount to a "crime"; crimes that occur in other jurisdictions may only amount to a misdemeanour in Aruba, or may not be any type of offence at all. There is nothing in the legislation about dual criminality, but the authorities suggested that this would probably be necessary. No case law has been provided to explain and justify the broad definition that has been given to the words, and at a minimum the language is unclear and leaves room for interpretation. This should be made much more explicit.

133. As regards foreign predicate offences, Art. 4, CrCA also extends the jurisdiction of Aruban penal law to cover Aruban residents that commit felonies abroad and that are also felonies in Aruba (nationality jurisdiction). However as regards non residents there are only a limited number of serious crimes (such as participation in a criminal group or forgery of debts or Aruban notes or certificates or kidnapping) that are punishable in Aruba when they occurred abroad and only if they were committed against a Dutch national, his family or goods. However Aruba advised that these jurisdictional provisions are only relevant to the predicate offences and not to money laundering.

Self laundering

134. In Aruba, an individual who launders his own proceeds of crime can be prosecuted for self-laundering. This is supported by case law (see HR 10-02-07, LJN: BA 7923 – a decision of the Supreme Court of the Netherlands stemming from a decision of the Court of Appeals of Amsterdam. Even if this case law is not based on an Aruban case, the decision applies in Aruba.

Ancillary offences

135. Pursuant to provision of general application of the Aruba Penal Code (CrCA); a broad range of ancillary offences attach to criminal offences in Aruba, including in most respects the money laundering offences. These ancillary offences are as follows:

- Conspiracy or association to commit: The Aruban authorities rely on Article 82 of CrCA, which defines conspiracy as an agreement reached between two or more persons to commit a felony. However this is only a definitional provision, and the ancillary offence of conspiracy has only

[4] The word "crime" is a literal translation of the Dutch term *"misdrijf"* and covers all offences that are more serious, and which are set out in Book 2 (as described in paragraph 92) or are otherwise specifically designated as "crimes".

limited application in the Criminal Code *e.g.* it is an offence for treason or trying to overthrow the government, or for aircraft piracy. It does not apply to money laundering. There is thus no ancillary offence of conspiracy or association to commit.

- Attempt: Article 47 provides that attempt to commit any felony is punishable if the author has revealed himself by beginning the execution of the offence. In such a case, the maximum amount of the main punishment set for the felony is reduced by a third.

- Preparatory acts: Article 48 sanctions those who commit preparatory acts even when the crime does not eventuate. This is the case if the perpetrator intentionally acquires, produces, imports, passes through, exports or possesses objects, materials, money or other payment methods, information carriers, or transportation objects apparently destined for the commission of that act. These preparatory acts can only be committed if the crime which was prepared had a maximum prison penalty of 8 years or more. In relation to ML, this only applies to habitual ML.

- Aiding and abetting: Article 49 of CrCA also sanctions as an author of a felony those persons who co-commit the act and those who through gifts, promises, abuse of power, violence, threat or deceit or by providing opportunity, means or information intentionally provoke the acts.

- Facilitating and counselling: Article 50 CrCA sanctions as accomplices those who intentionally help in the commission of any felony and those who intentionally provide the opportunity, means or information for the commission of any felony.

Additional element

136. Where the proceeds of crime are derived from conduct that occurred in another country which is not an offence in that country but which would have constituted a predicate offence had it occurred in Aruba, it can constitute a money laundering offence in a very limited number of cases, such as when the criminal offence occurred on board of a an Aruban aircraft or ship, when the felony has been committed by a Government official in his capacity of Government official or for limited designated felonies committed against a Dutch national, his family or goods.

Recommendation 2

Natural persons that knowingly engage in ML activities

137. The mental element required in Article 430b (intentional ML) and Article 430d (culpable ML) is knowledge or reason to suspect that the property in question is directly or indirectly proceeds from crime. Knowledge is a purely subjective threshold that requires proof that the defendant actually knew that the property represented the proceeds of crime. The threshold "reason to suspect" posits a test that is in partly objective and in partly subjective. The prosecution must prove that the defendant could reasonably have suspected based on the information known to him regarding on the origin of the property. This creates a relatively low threshold of criminal negligence.

Inference from objective factual circumstances

138. In Aruba, the intentional element of offence of ML can be inferred from objective factual circumstances. The assessment team was provided with examples based on cases, such as the low price asked for the property, the act of receiving a large amount of money or expensive goods while the person giving the money or goods has not enough income to generate or justify the origin of these amounts or goods, the non consultation of available research lists for stolen goods before selling them.

Criminal liability of legal persons

139. The ML offence applies to natural and legal persons. Indeed, Article 53 of CrCA states that punishable acts can be committed by both natural and legal persons. The liability of legal persons depends on three criteria:

- Can the legal person commit the crime? Certain crimes such as those that endanger life cannot be committed by a legal person.
- Can the crime that was carried out be attributed to a legal person?
- Can intent or guilt of the legal person be proven?

140. When determining whether the crime can be attributed to the legal person, the judge shall determine if the legal person had any say in the decision to commit the crime and if the legal person agreed or appeared to agree with the commission of the crime. The question of accountability also plays a role in proving intent. In order to determine if the intent of an individual person can be attributed to the legal person, the judge shall examine the internal organisation of the legal person and the tasks and responsibilities of the natural persons involved. The intent of an executive official will generally be attributed to the legal person. Thus, in case where a general manager knows that a subordinate is guilty of bribery benefiting the legal person, then this knowledge can also be attributed to the legal person. The proof of guilt (*culpa*) can also usually be sought directly with the legal person based on instructions or lack or insufficient supervision.

141. When it comes to exercising jurisdiction over crimes committed abroad (including money laundering), the rules applicable to legal persons are the same as those for natural persons. This implies that Aruban criminal legislation is applicable to Aruban legal persons guilty of money laundering committed abroad; in as far as money laundering is also punishable in the country of commission.

142. The Aruban legal system does not preclude the possibility of parallel proceedings. In particular civil proceedings can be brought in order to get damage compensations for damage suffered.

Sanctions

143. The maximum penalty for money laundering offence depends on the type of ML offence. Intentional ML (Article 430b CrCA) is punishable with a maximum prison term of six years or a maximum fine of AWG 100 000 (about USD 56 000), while culpable money laundering (Article 430d CrCA) is subject to a maximum prison term of four years or a maximum fine of AWG 100 000. Habitual money laundering (Article 430c CrCA) may be punished with imprisonment of maximal nine years or a maximum fine of AWG 100 000. In addition the deprivation of certain offices and rights can be imposed such as the right to exercise (certain) offices, the right to serve with an armed entity, the right to be a legal counsellor or administrator, or the right to exercise the profession in which the crime was committed.

144. Legal persons are subject to a maximum fine of AWG 100 000 (USD 56 000) as set out in Articles 430b, 430c and 430d of CrCA. However, pursuant to Article 28a of CrCA, the fine can be increased to AWG 1.000.000 if the maximum fine defined for the ML offence does not provide for appropriate punishment.

145. These penalties therefore effectively place ML in a more serious category of felonies by rendering it commensurate with more serious economic crimes such as forgery and corruption related offences.

Statistics (Recommendation 32)

146. The following table provides an overview of the number of ML cases registered by the Public Prosecutor's Office as well as the outcomes of trials. This table shows two phenomena: originally with the first ML offence the number of prosecutions was quite high, but the majority of cases ended in dismissals or acquittals. The Aruban authorities explained that this was due to the 2002 figure being for one case involving 32 defendants linked to one criminal organisation. Also, under the previous AML-regime this situation occurred because at that time the ML offence required proof of the underlying predicate offence that led to the laundered proceeds. The ML offence was amended in May 2006 and the first money laundering conviction was reached in May 2007. Since then, the number of cases, prosecutions and convictions has continued to increase.

Table 10. Money Laundering cases registered by the Public Prosecutor's Office

	Number of registered cases	Number of initiated prosecutions	Sentence in first instance	Sentence in appeal	Seizure or Confiscation initiated?
2002	32	22 dismissals, 4 conditional dismissals and 6 citations	5 convictions, 1 acquittal and 5 convictions for 2001 cases	8 appeals, all acquitted.	1 initiated, confirmed in appeal in 2007
2003	14	4 dismissals, 2 pending and 8 citations	8 acquittals	8 appeals and all acquitted	1 initiated and now at the Supreme Court
2004	4	4 dismissals	--	--	--
2005	2	2 citations	2 acquittals	--	--
2006	5	1 dismissal, 1 conditional dismissal and 3 citations	2 acquittals and 1 conviction (in 2007)	3 appealed, 2 acquittals and 1 confirmed	1 initiated and followed through (Confiscation of EUR 300 000)
2007	14	All cited	13 convictions, 1 pending	4 appeals, 2 confirmed, 2 pending	2 cases initiated and followed through, others announced
2008	35	18 cited, 3 dismissals, 14 pending	15 convictions 1 case administrative fine 2 pending	--	5 cases initiated

147. The assessment team was not provided with any other statistics on prosecution and conviction of ML offences. In particular, Aruba does not maintain statistics on the predicate offences to ML or on sanctions imposed for the ML offence.

2.1.2 Recommendations and Comments

148. The money laundering offences are broadly comprehensive and Aruba generally meets the requirements under Recommendations 1 and 2. The primary ML offence set forth in Article 430b of CrCA is broad in its scope. However, the assessors recommend that Aruba should revisit the scope of the predicate offence to ML in order to fully cover all the designated predicate offences listed in the FATF Glossary, in particular terrorist financing, and insider trading and market manipulation, but also a wider range of environmental crime, fraud and counterfeiting and piracy of products. Aruba should also apply the

ancillary offence of conspiracy to money laundering. It should be clearly and explicitly provided that the ML offence applies to foreign predicate offences.

149. The assessment team has concerns on whether prosecutions of ML offences have been effectively implemented, in particular with respect to legal persons and on the level of sanctions pronounced by the Court. In the context of the overall AML/CFT system, it is also recommended that the Aruban authorities consider devoting greater resources to the MOT to enhance the initial assessment of STRs and to the police to ensure they investigate the files disclosed by the MOT, so as to produce a larger number of cases referred to the Public Prosecutor's Office for investigations and consequently, for prosecution.

2.1.3 Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating
R.1	LC	• The ML offence does not adequately cover all designated categories of predicate offences (TF, counterfeiting and piracy of products, insider trading and market manipulation, environmental crime, fraud). • The full range of ancillary offences are not provided for as neither conspiracy nor association to commit are applicable to ML. • There is a lack of a clear, unequivocal provision pursuant to which Aruba can prosecute ML based on foreign predicate offences.
R.2	LC	• Due to the lack of data on ML sentencing, is not possible to assess whether natural and legal persons are subject to effective, proportionate and dissuasive sanctions for ML.

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and Analysis

150. Aruba has decided that it is not necessary to separately and independently criminalize the financing of terrorism. The reasons that Aruba has given for this decision are first, that several parts of the terrorist financing offence as required by the United Nations Convention against Terrorist Financing 1999 are covered by various existing provisions of the CrCA when read together. Thus, depending on the nature of the terrorist financing and of the terrorist attack, Aruba believes that the financing may constitute provocation of, or participation or complicity in an existing offence, being ancillary offences under Articles 47-50 CrCA. Secondly, it is suggested that a separate offence of terrorist financing may overlap with existing crimes. Aruba thus believes that the current provisions of the CrCA, will, in most cases, offer adequate grounds to act effectively against the financing of terrorism as defined in Article 2 of the Convention.

151. Despite this, Aruba took certain legislative action against terrorism in 2004, through the State Ordinance of 12 August 2004 (which took effect 31 August 2004). This State Ordinance amended the CrCA by adding an offence of participating in a terrorist organisation (Art.146a), and by increasing the punishments for certain existing offences if these were committed with a terrorist intent. Article 146a makes it a felony to participate in an organisation which has as its intent the commission of a terrorist felony. The punishment for this offence is imprisonment of up to 8 years, and/or a fine of up to AWG 100.000. Founders, leaders or managers of such organisations could be subject to imprisonment of up to 15 years.

152. For the purposes of the CrCA, the list of terrorist felonies is defined in Article 85 CrCA as the following felonies:

- Articles 97-102 (crimes against the security of the state and its dignitaries), 114, section 2 (premeditated attack on the life or liberty of the King or the Regent), 123, section 2 (premeditated attack on the life or liberty of a head of a befriended state), 124a, section 2 (premeditated attack on the life or liberty of an internationally protected person), 129 and 130 (crimes against the exercise by state organs of state duties and rights), 163, paragraph c, 167c, paragraph b, 174, paragraph b, 176, paragraph c, 180, section 2 (crimes against the general security of persons and goods) and 302 CrCA (premeditated murder), if committed with a terrorist intent.

- Those offences under Articles 122a, 128a, 182a, 317a or 430a CrCA which carry a prison term.

- Articles 146a (participation in a terrorist organisation), 295b (hostage taking with terrorist intent) and 298, section 3 (threatening with group violence with terrorist intent).

153. Terrorist intent is defined in Article 85 section 2 CrCA as the intent to strike severe fear into the population or part of the population, to unlawfully force a government or international organisation to do, not to do or to allow something, or to seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or international organisation.

154. Aruba thus argues that pursuant to the Articles 47 to 50 CrCA (in conjunction with Article 85 CrCA) terrorist financing could be a criminal offence in any of the following ways:

- As preparation to commit a terrorist felony (as defined in Article 85 CrCA), if the perpetrator intentionally acquires, produces, imports, passes through, exports or possesses objects, materials, money or other payment methods, information carriers, spaces or transportation objects apparently destined for the commission of that terrorist act.

- By perpetrating the commission or participating in the commission of and by provoking a terrorist felony (as defined in Article 85 CrCA) by means of gifts, promises, abuse of power, violence, threats, misleading or by providing opportunity, means or information.

- By being intentionally helpful with the commission and intentionally providing opportunity, means or information for the commission of a terrorist felony (as defined in Article 85 CrCA).

155. It is also suggested that the reference to terms such as “money or other payment methods”, “gifts” and “means” can encompass the legitimately or illegitimately acquired property as referred to in the definition of “funds” of the TF Convention and SR II.

156. Based on the above, Aruba suggests that the Article 146a offence, and/or the existing ancillary offence provisions of the CrCA combined with list of terrorist felonies is sufficient to combat the financing of terrorism. The assessors were further advised that Article 4, CrCA extends Aruban jurisdiction to a wide range of offences committed outside Aruba where the criminal act is aimed against a Dutch national. Similarly there is extended jurisdiction for a limited range of offences in cases where the crime is committed with the intent to prepare or facilitate a terrorist felony. Based on Supreme Court jurisprudence, a person can also be prosecuted in Aruba for preparatory acts committed outside Aruba if the criminal offence is committed in Aruba. Aruba also intends to extend the ancillary offences to cover preparatory acts and add certain new felonies.

157. The assessment team has carefully considered, but for a range of reasons does not accept, the arguments put forward by Aruba that either Article 146a or the combination of ancillary offences with the list of terrorist felonies adequately covers the criminal activity of terrorist financing, as required by SR II. The first point to note is that being a member of or participating in a terrorist organisation is generally not the same as financing such an organisation, and that Article 146a does not extend to cover the offence of terrorist financing. Though it is of course possible that there could be particular factual circumstances where a person that is a terrorist, is also financing terrorism. Secondly, the Methodology makes it clear in footnote 48 that criminalisation of terrorist financing solely on the basis of ancillary offences such as aiding and abetting, attempt or conspiracy does not comply with SR.II.

158. In addition to these two fundamental points, there are a significant number of other deficiencies. The ancillary offences are linked to "terrorist felonies" as defined, *i.e.* terrorist acts, or possibly to the Article146a offence of participation in a terrorist organisation. The Supreme Court decided that an organisation requires a structured and lasting co-operative relationship between two or more persons, and that participation in such an organisation requires two conditions: *(a)* one should belong to the organisation, and *(b)* the participant should have a share in supporting the behaviour leading to the commission of terrorist felonies. However, this essentially means that to be guilty of terrorist financing on this basis, one has to be a terrorist, and even if it is accepted that the ancillary offences may in some limited factual circumstances cover financing, there is no coverage of the financing of individual terrorists. Moreover the definition of terrorist intent is not sufficiently broadly worded to cover the terrorist acts as set out in the definition in the Methodology. The definition of "funds" as defined in the TF Convention and the Methodology is a very broad one that covers all types of property. The variety of terms used in the various ancillary offences - money or other payment methods", "gifts" and "means" – do not clearly extend to cover "funds" as defined.

159. The Methodology also provides that the terrorist financing should not require that the funds were actually used to carry out or attempt a terrorist act; or that the funds were linked to a specific terrorist act. As Aruba has no independent terrorist financing offence, proof of some of the ancillary offences requires a terrorist act to take place. It is also not possible to combine certain ancillary offences. Equally, if terrorist financing has not been properly and independently criminalised, it cannot adequately exist as a predicate offence for money laundering.

160. It is also a requirement that a terrorist financing offence should apply regardless of whether the person alleged to have committed the offence is in the same country or a different country from the one in which the terrorist / terrorist organisation is located or the terrorist act will occur. In Aruba, it appears that a person can only be prosecuted when the terrorist act has been committed abroad against Dutch nationals or where the suspect is in Aruba. But if the terrorist financing operation occurs in Aruba for a terrorist act or organisation located abroad, it is not clear if the offence of terrorist financing could be prosecuted in all cases *e.g.* if the terrorist act was not aimed at Dutch nationals.

161. Pursuant to Article 53 CrCA natural as well as legal persons may be prosecuted for terrorist financing related offences in the same matter as all other offences. As is the case with all felonies prosecution is also possible not only in case where the defendant has actual knowledge, but also where there is conditional intent. This means that a person who wilfully and knowingly exposes himself to the considerable chance that a certain criminal consequence will occur, and conditional intent can be construed on the basis of objective facts and circumstances. It is not clear however that there are effective, proportionate and dissuasive criminal, civil or administrative sanctions for TF, since the penalty for ancillary offences are linked to the penalty for the primary offences.

162. As regards effectiveness, the MOT has received only 1 STR related to TF in November 2008 and no terrorist financing activity has been discovered in Aruba. Consequently, there have been no investigations, prosecutions or convictions for any sort of crime related to TF activity. Given the population size of Aruba, and the fact that it is not a financial centre, it is not entirely surprising that there have been no TF cases. Given Aruba's geographic location, the assessment team did question the authorities closely about any possible links discovered with South American narco-terrorist groups, but were advised that no financial links had been discovered with such groups.

2.2.2 Recommendations and Comments

163. Aruba needs to take urgent action to create a separate and independent offence of terrorist financing to meet its international obligations. Reliance on ancillary offences to existing criminal offences committed with a "terrorist intent", as the only means to criminalise the financing of terrorism is not in line with the FATF standards, and will also not allow Aruba to cooperate effectively with other countries in the international combat of terrorist activities.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	NC	• No separate and independent offence of terrorist financing as required by SR.II, and reliance solely on ancillary offences to existing criminal offences committed with a "terrorist intent" as defined. • Existing offences inadequate due to insufficient coverage of the types of property(funds) to be provided, non-coverage of financing individual terrorists, the set of "terrorist felonies" to be covered is too narrow, and there is a need in some cases to prove that specific terrorist act actually took place. • It is not clear that all ancillary offences would be applicable given that certain combinations of ancillary offence are not possible. Additionally, neither conspiracy nor association would be available. • Terrorist financing is not an offence and thus is not adequately a predicate offence for money laundering. • It is not clear that in all cases persons in Aruba financing foreign terrorist groups will be committing an offence. • The penalties for having engaged in terrorist financing activity are not clearly effective, proportionate and dissuasive.

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1 Description and Analysis

Confiscation powers

164. The provisions for the seizing, freezing and confiscation of proceeds of crime are set out in various Articles of the CrCA and the Code of Criminal Procedure of Aruba (CCrPA). The law provides for the confiscation of laundered property, of proceeds from the commission of offenses, including ML offenses, and of instrumentalities used or intended for use in the commission of offenses, and also provides for ancillary measures such as seizing and freezing, as well as investigative powers, including special powers related to "criminal financial investigations" (see Articles 177a-g CCrPA).

165. The basic confiscation provision is Article 35, which provides that the court can order that a penalty (confiscation) be imposed as part of the sentencing following a criminal conviction for any felony, including money laundering, and can apply to the following types of property (sometimes referred to as "objects"):

a) Property of the defendant that was obtained, in greater part, by means of the offence.

b) Property in relation to which the offence was committed.

c) Property used to commit or prepare for the offence.

d) Property used to hamper the investigation of the offence.

e) Property intended for the commission of an offence.

f) Special purpose or personal rights established with regard to property mentioned under letters a-e.

166. Property is broadly defined to include all things and all proprietary rights, whether real or personal. Article 35(2) also allows for confiscation of the types of property referred to above when it is owned by a third party, though it is necessary to prove that the third party knew or had reasonable grounds to suspect that the property was obtained from, or used in or intended for use in, the offence. Furthermore, the same provision allows for confiscation if it cannot be established to whom the property belongs. Article 36 CrCA allows for a type of value confiscation in that property subject to confiscation, but which is not seized, must either be delivered by the defendant or a value will be attributed to the property and the defendant ordered to pay that amount. Article 35b is also noteworthy as it provides that the judge can order that the defendant or a third party be given a refund or compensation if the confiscation of the property would be disproportionately harmed or the amount to be realised from the property confiscated would exceed the amount fixed in the sentence.

167. In addition to the basic confiscation powers set out in Articles 35-36, which are used for straight-forward cases, there are also special confiscation powers in Articles 38a-38e CrCA. Article 38e, section1 allows the court to order that, provided the preconditions are met, a person convicted of an offence shall pay the state an amount equivalent to any illegally obtained profit or advantage. This procedure applies in cases where the defendant is convicted of an offence for which there is a maximum penalty of four years or more imprisonment, or if is shown that the offence capable of generating significant proceeds and a criminal financial investigation reveals a plausible case for other criminal activity from which the accused may have obtained illegally obtained profit or advantage (Article 38e, section 3).

168. An order for special confiscation applies not only to offences for which the perpetrator is convicted. The special confiscation provision of Article 38e CrCA contains a system which is based on the 'balance of probabilities'. In case of special confiscation, there is a shift of the burden of proof, rather than a reversal of the burden of proof. Special confiscation may be imposed for:

- Similar or serious offences in case of sufficient indications that the accused has committed any such offence (Article 38e section 2).

- Other offences in case it is *plausible,* based on a special financial criminal investigation, that these offences led *in any way* to illicit earnings (Article 38e section 3).

169. The amount to be confiscated is based on an *estimate* made by the court which, although it must be based on lawful evidence (Article 503e CCrPA), has more of the character of an estimate than that of a judicial finding of fact. The case law has shown three ways to assess the value of the illegal benefits obtained – (a) transaction based calculation (in case of a single criminal offence), (b) calculation based on cash statements (in case more than one offence has been committed), and (c) asset comparison. Expenditures made for by the suspect in gaining the proceeds can be taken into account by the court in estimating the amount of the criminal proceeds.

170. Special confiscation occurs in a separate proceeding that takes place after the criminal conviction has been obtained. The proceedings can be initiated within two years following a conviction, permitting time for a thorough investigation relating to the criminal proceeds, amounts and sources. However, often these investigations run parallel to the main criminal investigation and the procedure can take place directly following the criminal case.

171. Under the system set out in the CrCA confiscation is generally considered a discretionary measure. It is up to the Public Prosecutor's Office to decide if a confiscation demand or procedure must be initiated. Confiscation is a sanction, while special confiscation is a measure. Other sanctions cannot be taken into account by the judge applying confiscation or special confiscation. However, the court does have the authority to decide which goods will be confiscated and to moderate the sum of the special confiscation required by the public prosecutor (Article 38e section 4). Previously imposed special confiscation orders must be taken into account by the court (art. 38e section 7).

172. It is not possible to confiscate property of a third party if the third party did not know or could not have reasonably have known that the property was the proceeds of crime. If the third party knew or should have known that the property was the proceeds of crime, then the third party becomes a suspect confiscation is subsequently possible.

173. Victims of criminal offences can apply for a 'civil party' statute in the criminal proceedings in order to obtain satisfaction for damages. If their claim is admitted parallel to an ordered confiscation, the amount of their claim will be deducted from the amount confiscated (art. 38e section 6). Victims can also choose to initiate a civil law suit in order to claim their damages. In such cases, the public prosecutor can refrain from initiating a confiscation procedure, if the amount of the confiscation endangers the civil claim. However, in case a victim has already submitted a claim, either via a civil case or via an injured party demand procedure, the prosecutor may continue with the confiscation procedure, particularly in cases where the outcome of the civil procedure is not yet certain. The convicted person still has the option of following the procedure in Article 634 CCrPA, which grants the possibility to submit a request for mitigation of the confiscation. A case has occurred in Aruba in which confiscation was allowed while civil claims were still pending.

174. The legal provisions, and particularly the provisions relating to special confiscation, generally provide a solid legal basis for confiscation action, covering the confiscation of proceeds and instrumentalities, as well as allowing for equivalent value confiscation. The special confiscation provisions, which allow for the prosecution to deprive criminals, using a civil standard of proof, of the proceeds of not just the offence for which they are convicted but also for other similar offences of which there are reasonable indications is also very progressive. On the deficiency side, the lack of an FT offence, as well as the limitations concerning predicate offences for money laundering, is a weakness that flows through to the confiscation powers. The law also does not clearly provide that property derived indirectly from the proceeds of crime, such as income and other benefits, is also subject to confiscation, though the Aruban authorities advised that confiscation of any illegally obtained advantage or profit is possible. Finally, the inability to attack property held in the name of third parties under the special confiscation

powers is a clear weakness that needs to be rectified. The assessment team was advised that this would be changed in the new Criminal Code which would be introduced in 2009.

Provisional measures and investigation

175. Provisional measures allowing the freezing (attachment) and seizure of property that is the proceeds of crime or may be subject to confiscation is provided for in Articles 119 and 119a CCrPA. Both the criminal investigation (Article 119) and the provisional measures in order to ensure the execution of a future (value based) confiscation order or payment of a fine (Article 119a) can serve as grounds for seizure. Article 119a provides for the attachment of claims *e.g.* a bank account, or of immoveable property or to arrest a vessel or aircraft. Seizure of criminal proceeds and instrumentalities is possible (Article 119a CCrPA).

176. Where Article 119 is relied upon, all that is required for seizure is a suspicion of a criminal offence. In the case of Article 119a the seizure order may only be issued by an examining magistrate (Article 129a CCrPA), or in the case of a special financial criminal investigation already authorized by an examining magistrate, by the public prosecutor. The seizure order may cover goods (including all property and property rights) that may be subject to confiscation or special confiscation, if the criminal offence is punishable with a maximum penalty of four years imprisonment or more, or is related to a felony for which significant proceeds could be gained. Seizure of property will be initiated by the public prosecutor, sometimes after an authorization of the examining magistrate. The application is ex-parte, no prior notice is necessary.

177. The rights of third parties that have an interest in property are dealt with under Article 35, sections 2 and 3 CrCA which sets out the conditions under which third party property may be subject to confiscation. In reverse this also protects the rights of bona fide third parties, with the specific conditions under which third party goods may be seized, basically requiring knowledge or reasonable suspicion of the third party with regards to the criminal provenance, use or destination of the property. Third parties can challenge the seizure of their goods by using the procedure of Article 150 CCrPA. The same applies for creditors of these third parties.

178. The powers to identify and trace the proceeds of crime and to investigate the financial aspects of a criminal offence more generally can be pursued in two ways. Powers are available as part of the main criminal investigation, and the normal range of powers to search and seize, to compel production, to take statements etc are set out in the CCrPA. These powers are mainly used in major criminal investigations involving significant criminal proceeds, with a view to identifying and tracing the proceeds of crime. The powers give authority for the Public Prosecutor to search residential dwellings, offices and other places, and means of transportation, and to seize relevant documents and other items. In Aruba there are no specific Articles regarding sequestration of information from financial institutions, but Article 131 CCrPA may be used to request the examining magistrate to order the surrender of all information required by the public prosecutor. This can include the sequestering of incriminating information or other information held by financial institutions.

179. Additionally, the CCrPA provides special powers that allow the authorities to conduct a special financial criminal investigation to investigate criminal proceeds. This special investigation (Articles 177a-177g CCrPA) may be initiated by the public prosecutor, with an authorization of the examining magistrate, in cases where there is a suspicion of an offence with a maximum penalty of imprisonment of four years or more, or felony cases for which significant proceeds could be gained.

180. As regards the voiding contracts aimed at frustrating seizure, confiscation or confiscation orders, a contract that a person knows or should know will prejudice authorities in a recovery, is unenforceable under Aruban law. Article 3:40 CCA declares legal actions (such as contracts) performed in breach of a mandatory legal provision or public order to be null and void. This would apply, for example, if entering into the contract constituted a criminal offence or if the contract was concluded to hinder the ability of the state to recover a financial claim. In addition, pursuant to Article 119d, section 2, CCrPA the public prosecutor may declare null and void fraudulent conveyances, which include legal acts, performed by an accused or convicted person in the year preceding the commencement of an investigation of the person.

Additional elements

181. Article 146 of the Penal Code makes it an offence to participate in an organization which has as intent the commission of felonies, and the offence is punishable by a prison term of up to eight years and a fine of up to one hundred thousand florins. There is no specific provision that creates special confiscation powers in relation to criminal organisations, but as the property of both natural and legal persons can be confiscated, it would be possible to confiscate the proceeds of an offence under Article 146.

182. As regards civil forfeiture/confiscation, the general rule in Aruba is that confiscation without a prior criminal conviction is not possible. However, as noted above, the proceeds of offences other than the offence for which the person was convicted can be the subject of special confiscation when it is 'likely' that those offences have been committed. In addition, as long as there has been a criminal conviction for one offence, special confiscation is possible for other charges upon which there has been an acquittal or discharge from prosecution (Article 38e, section 1 and 3 CrCA). The introduction of a system of civil in-rem confiscation is not envisaged. Equally, while the special confiscation system under Article 38e CrCA is based on a 'balance of probabilities', there is no current intention to introduce a system that reverses the burden of proof.

Effectiveness

183. The registration system of the Public Prosecutor's Office currently does not contain a section in which data is kept on either seized or confiscated property. Moreover, the current registration system is incomplete and does not fit well with the Police system for recording the cases and value of property that has been seized and confiscated. A new registration system that provides a consistent and coherent set of data for the police, the prosecutors and the court secretariat is being contemplated under the Law Maintenance Program.

184. Only the following data was provided, which provides information on the number and amount of special confiscations:

Table 11. Number of cases and amount of special confiscations
(Amounts in AWG)

Confiscation cases	2005	2007	2008	Related to ML?
2003	300 000			No
2005			29 160	No
2005			39 270	No
2007		69 270		No
2007		7 500		No
2007		15 700		No
2007			59 330	Yes
2007			59 330	Yes
2008				

185. Based on the limited data that has been provided, it is difficult to determine how effective the confiscation system in Aruba has been, either in relation to money laundering specifically or more generally with respect to all felonies. Given the special confiscation powers that exist, and having regard to the general amount of criminality and the trends the relatively limited number of cases, the small amounts that are eventually confiscated is a concern. It is less than might be expected, though the lack of statistics makes it difficult to be certain about the true picture. Overall it appears that the legislation is not being as effectively implemented as could reasonably be expected.

2.3.2 Recommendations and Comments

186. As mentioned above, the legal provisions, and particularly the provisions relating to special confiscation, provide a mostly solid legal basis for confiscation action. However, several changes should be made on the legislative side to strengthen the existing system to bring it line with the FATF standards. Equally, Aruba should look at the results that have been obtained so far to determine how more effective action could be taken in the future.

187. As mentioned in sections 2.1 and 2.2 of the MER, it is important that Aruba introduce a separate and independent FT offence as soon as possible, whilst also rectifying the deficiencies regarding the predicate offences for money laundering. The law could also provide more explicitly that property derived indirectly from the proceeds of crime, such as income and other benefits, should be subject to confiscation. Similarly, the inability to attack property held in the name of third parties under the special confiscation powers is a clear weakness that needs to be rectified, and according to the Aruban authorities, this will be done in the new Criminal Code that is to be introduced in 2009.

2.3.3 Compliance with Recommendations 3

	Rating	Summary of factors underlying rating
R.3	PC	• No power to confiscate or take provisional measures in relation to terrorist financing (unless the criminal activity also amounts to a terrorist offence) or several predicate offences for ML (see R.1). • No clear provision to allow the confiscation of property derived indirectly from the proceeds of crime, such as income and other benefits. • Inability to take action against property held in the name of third parties under the special confiscation powers. • Lack of evidence of effective implementation of the powers to confiscate and take provisional measures

2.4 Freezing of funds used for terrorist financing (SR.III)

2.4.1 Description and Analysis

General

188. Aruba does not currently have any law or measure in force and effect that implements the requirements of SR. III. It has however taken some steps in this direction. To implement among other UN Security Council Resolution 1267(1999) (S/RES/1267(1999)) relating to freezing the assets of persons and institutions connected with the Taliban, Al-Qaida and Osama Bin Laden and its successor resolutions and the UN Security Council Resolution 1373 (2001) (S/RES/1373(2001)) relating to freezing the assets of

persons who commit or attempt to commit terrorist acts, Aruba has adopted a State Ordinance on Sanctions in 2006 that came into effect on April 2007. This State Ordinance was slightly modified in February 2009 in order to extend its scope to "other institutions which by State Ordinance fall under the supervision of the CBA", thus, in total, to banks, insurance companies, money transfer companies and trust and companies service providers.

189. Pursuant to this Sanctions State Ordinance, the Government can issue a Sanctions State Decree containing general enactments in order to implement treaties and international agreements which impose obligations on the Kingdom of Netherlands with regards to the possibility of sanctions against natural and legal persons in connection with terrorism or decisions of an international organisation combating terrorism or of an international organisation preserving or restoring peace and safety or international rule of law. The rules laid down in this Sanction Decree may contain restrictions of the international movements of services, financial transactions, shipping traffic, aviation traffic and post and telephone communication from and to Aruba. These rules will be binding in so far as the identity of the natural or legal persons designated cannot be doubted. The Minister of General Affairs and the ministers charged with ensuring that the obligations included in a treaty or a decision of an international organisation are complied with the obligations laid down in a Sanction Decree may grant exemptions from the provisions of a Sanction Decree by Ministerial Decree. The reasons for such decision must be stated in order to limit as much as possible the effect of the resulting breach by Aruba on its international obligations. However, Article 4 of the State Ordinance provides that the rules laid down in a sanction decree which in any way intend to violate any of the basic rights referred to the Constitution of Aruba (*e.g.* the right to move freely, privacy right, property right) will only be binding in so far as the natural or legal persons, groups or entities are defined so clearly that their identity cannot be doubted. But the practice shows that it is sometimes difficult to clearly establish the identity of these persons or entities, which often use aliases. Therefore, Article 4 of the State Ordinance may prevent a strict implementation of the assets freezing mechanism.

190. In application of this State Ordinance, Aruba has prepared a draft Sanctions State Decree containing general measures pursuant to Article 2 of the State Ordinance for the implementation of the abovementioned UNSC Resolutions. As this State decree is not yet in force Aruba currently does not have measures in place to comply with SR.III. However, in order to assist Aruba, the report also sets out below some further analysis of the proposed system.

Freezing

191. Aruba being a small jurisdiction, it considers it does not have the capabilities to compile and keep by itself an updated list of persons, organisations and entities involved in terrorist financing and terrorism. For this reason, in its Draft State Decree, Aruba has chosen to apply directly:

- The list of the Specially Designated Nationals List kept by the Office of Foreign Assets Control of the United States Treasury Department.

- The consolidated list kept by the European Commission of persons, groups and entities which are subject to financial sanctions imposed by the European Union.

192. By referring to the EU and OFAC lists persons, organisations and entities mentioned or added to those lists will automatically fall under the scope of the Draft Sanctions Decree and the State Ordinance on Sanctions 2006 without any additional legislative action.

193. The OFAC list compiles the entities designated through Executive Order "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism" (EO

13224) issued by the U.S. President on 23 September 2001, by which the United States of America implements its obligations relating to financial sanctions under both the United Nations Security Council Resolution S/RES/1267(1999) and S/RES/1373(2001).

194. For its part, the European database kept by the European Commission contains all designees covered by all EU regulations on financial sanctions. Therefore, the list goes well beyond the freezing of terrorist assets and includes all the persons concerned by international or European financial sanctions. Moreover, concerning the implementation of S/RES/1373 (2001), this European database does not contain any European-based entities or European residents or European citizens as their assets cannot be frozen by European Regulation.

195. As Aruba does not have effective laws and procedures in place to freeze by itself terrorist funds or other assets, it does not consider the actions initiated under the freezing mechanisms of other jurisdictions to determine whether reasonable grounds or reasonable basis exists to initiate a freezing actions without delay. Aruba would entirely rely on US and European decisions.

Communication and guidance to financial institutions and other potential holders of assets

196. Pursuant to the Draft Sanctions State Decree, credit institutions, life insurance companies, money transfer companies, company service providers, lawyers, civil notaries, accountant, tax advisors, business or professional seller as well as the person mediating on a business or professional level at the sale of immobile objects or special or personal rights on objects, vehicles, ships, airplanes, object to art, antiquities, precious metals precious stones or jewels will be subject to the obligation to freeze the funds and other assets belonging wholly or partially to persons listed by OFAC or the European Commission.

197. Pursuant to the Draft Sanctions Decree financial service providers would be required to take necessary measures to keep themselves continuously informed of the contents of the EU and OFAC lists. The Minister of Finance may give directives to that effect if necessary. The Aruban authorities advised the assessment team that the MOT and the CBA could provide guidance in this respect and that financial institutions already in practice check the OFAC and the EU lists.

198. Furthermore, the Draft Sanctions State Decree would provide that a service provider shall report to the MOT every request for the provision of a service in which a targeted natural or legal person or entity is acting as the other party of the service or is involved in another way in the transaction. If the service provider is a financial institution, it would also be required to report to the CBA.

Procedures for delisting, unfreezing and obtaining access to frozen funds

199. Since Aruba would not adopt by itself lists of persons whom assets should be frozen but it would request service providers to freeze the assets of the persons designated under the Specially Designated Nationals list of OFAC list and the consolidated European list, delisting from these lists made by US or European authorities would lead to the end of the freezing measures in Aruba also. Aruba does not envisage having any procedure for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities.

200. Article 4 of the Sanctions State Ordinance provides that the rules laid down in a Sanction State Decree will only be binding in so far as the person or the entity is described or defined so clearly that their identity cannot be doubted. In a certain manner, this provision allows the Aruban authorities to ensure that the funds of an identified person or entity have not been inadvertently frozen by verifying as to whether the person or entity is the one listed under the OFAC list or under the European consolidated list. However, in practice, this mechanism cannot be considered as an effective and publicly-known procedure.

201. Although the Sanctions State Ordinance provides the possibility for the Minister of General Affairs to grant an exemption from provisions laid down in a Sanctions State Decree, the Aruban officials do not consider that this provision allows them to authorise access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses or payment of certain types of fees, expenses and service charges or for extraordinary expenses.

202. Finally, the Aruban officials consider that the mechanism chosen to freeze the assets of persons or entities pursuant to S/RES/1267(1999) and S/RES/1373(2001) will not allow person or entity whose funds or other assets have been frozen to challenge this measure with a view to having it reviewed by a court. Moreover, the Sanctions State Ordinance does not provide a procedure to challenge the provisions laid down in a Sanctions State Decree.

Freezing, Seizing and Confiscation in other circumstances

203. The seizing and confiscation mechanisms, as stated in section 2.3 of the report, do not apply to cases of terrorist financing and terrorist-related funds, unless the activity is also a terrorist offence.

204. Since terrorist financing is not independently and separately criminalized in Aruba, the terrorist-related funds cannot be seized pursuant the Code of Criminal Procedure. Moreover, in a case of suspicion of a criminal offence, since a terrorist offence is punishable by a prison term of maximum eight years and is not by itself a source of significant profits or advantages valuable in money, the terrorist-related funds cannot be seized under this procedure. In addition, the ancillary offences to terrorist crimes only cover forgery, theft and theft accompanied or followed by violence or the threat of violence against persons in order to prepare or to facilitate a terrorist felony.

Rights of bona fide third parties

205. As described above, the Sanctions State Ordinance and the Draft Sanctions State Decree do not have procedures in place for any person to make an application to be delisted or to have their property unfrozen.

Monitor compliance with the obligations under SR III and sanctions

206. Pursuant to Article 15 of the Sanctions State Ordinance, the civil servants or other persons designated by the Minister of General Affairs and the ministers charged with ensuring that the obligations included in a treaty or a decision of an international organisation are complied with the obligations laid down in the provisions of or set by virtue of the Sanctions State Ordinance, will be charged with the supervision of the compliance with the provisions laid down by or pursuant to the Sanctions State Ordinance. Additionally, pursuant to Article 16 of the Sanctions State Ordinance, the Minister of Finance may also request the President of the Central Bank of Aruba to designate the supervisors who will be charged with the supervision of the compliance of credits institutions, insurance companies, money transfer companies and trust and company service providers with the provisions laid down by or pursuant to the Sanctions State Ordinance.

207. The persons so designated will be authorised, solely in so far as this is reasonably necessary for the performance of their task, to: i) request all information; ii) inspect all business books, documents and other information carriers and to make copies of them and take them away in good time for that purpose; iii) to investigate and inspect goods and take them away in good time for that purpose; iv) to enter all areas, with the exception of dwellings, without the occupant's explicit permission, accompanied by persons designated by them.

208. A report on the implementation of a Sanction State Decree shall then be submitted to the Minister of Finance, either by the President of the CBA if he agrees to supervise the implementation by financial institutions of the provisions contained in the Sanctions State Decree, or by the persons the President of the CBA would then designate.

209. In case a service provider commits acts in contravention with the provisions laid down in a Sanctions State Decree, the State Ordinance only provides for penal sanctions when the provider:

- intentionally acts in contravention of the asset freezing obligation – this is punishable by imprisonment for a term not exceeding six years or with a fine not exceeding AWG. 250 000 (around 145 000 $). This act is considered as a felony.

- unintentionally acts in contravention of the asset freezing obligation – this is punishable by imprisonment for a term not exceeding one year or with a fine not exceeding AWG. 50 000 (around 29 000 $).

As the Sanctions State Ordinance has not yet been implemented, the effectiveness of these provisions remains untested.

Recommendation 32 (terrorist financing freezing data)

210. As Aruba has not yet adopted the Sanctions State Decree, the freezing regime has not yet been implemented, meaning there is no currently no data on TF freezing.

2.4.2 Recommendations and Comments

211. Aruba adopted in 2006 a new Sanctions State Ordinance that sets up a framework for the implementation of decisions of international organisations or international agreements aimed at preserving or restoring international peace and safety or the promotion or the restoration of the international legal order, or the combat of terrorism. This includes the freezing of assets of persons and entities designated pursuant the UNSCR 1267 and persons and entities that could be designated under the UNSCR 1373, although the State Ordinance does not refer to these UNSC resolutions, but only refers to regulations of an international organisation or agreements aiming at preserving or restoring peace and safety.

212. As for freezing measures the provisions of this State Ordinance, they will only enter into force once its State Decree determining the nature of the funds to be frozen, the list of persons or entities whose funds should be frozen and the mechanisms to freeze the assets will be adopted. Aruba is thus strongly urged to adopt this State Decree as soon as possible.

213. However, Aruba is encouraged to revise the Draft Sanctions Decree provided to the assessment team since it is not designed in a manner that meets the specific requirements of FATF Special Recommendation III. Although some elements are already present to some extent, the approach needs to be revisited as a whole.

214. Aruba envisages implementing S/RES/1267(1999) and its successor resolutions via a Sanctions State Decree that would request service providers to freeze the assets belonging wholly or partially to persons or entities mentioned on i) the consolidated list maintained by the European Commission of persons, groups and entities which are subject to financial sanctions imposed by the European Union or; ii) on the Specially Designated Nationals List kept by the Office of Foreign Assets Controls of the American Treasury Department. If it can be understood that, for matter of effectiveness, Aruba does not want to maintain by itself a list of designated persons and entities under S/RES/1267(1999) and its successor

resolutions, it would certainly be preferable to directly refer to the Consolidated List established and maintained by the 1267 Committee with respect to Al-Qaida, Usama bin Laden, and the Taliban and other individuals, groups, undertakings and entities associated with them. Indeed, the lists mentioned in the Draft Sanctions State Ordinance do not only designate persons and entities whose assets should be frozen in Aruba pursuant to an international agreement which impose obligations on the Kingdom of Netherlands. Therefore, by providing additional requirements to the State Ordinance, the Sanctions State Decree could be legally weakened.

215. Concerning S/RES/1373(2001), Aruba should reconsider the system provided by the Draft Sanctions State Decree in order to have a domestic mechanism to be able to designate terrorists at a national level. Aruba should also revise the State Ordinance in order to extend the freezing actions to funds controlled directly or indirectly by designated persons or entities as well as to funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities. The revision of the State Ordinance should also provide procedures:

- for evaluating de-listing requests;
- for releasing funds or other assets of persons or entities erroneously subject to the freezing;
- for authorising access to frozen resources pursuant to S/RES/1452(2002);
- for implementing a screening procedure and designated authority responsible for evaluating the foreign lists based request.

216. Moreover, Aruban authorities should also provide lists of designated persons and entities and guidance to financial institutions and DNFBPs.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	NC	• Overall, since the Draft Sanctions State Decree has not yet been adopted, Aruba does not have effective laws, regulations and procedures to give effect to freezing designations in the context of S/RES/1267 and S/RES/1373, and in effect has no measures in place to implement SR.III. • The State Ordinance does not provide for a national mechanism to designate persons in the context of S/RES/1373, nor a comprehensive mechanism in place to examine and give effect to actions initiated under the freezing mechanisms of other jurisdictions. • Aruba does not have effective laws and procedures to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions. • Aruba does not ensure that the confiscation of assets also apply to terrorist assets.

2.5 The Financial Intelligence Unit and its functions (R.26)

2.5.1 Description and Analysis

Establishment of FIU as National Centre

217. In 1995, Aruba enacted the State Ordinance on the Reporting of Unusual Transactions (SORUT) which expressly creates the Reporting Center Unusual Transactions, whose original name is *Meldpunt Ongebruikelijke Transacties* (MOT). In February 2009, Aruba enacted modifications to the SORUT. With a view to prevent and detect ML and TF, the MOT is tasked to:

- Collect, record, process and analyze the information it obtains, in order to ascertain whether that information may be of importance to the prevention and investigation of money laundering and financing of terrorism, as well as information that may result relevant to the prevention and investigation of criminal offenses.
- Provide information in conformity with the provisions laid down by or pursuant by the SORUT.
- Inform the person who made a report of an unusual transaction with a view of the correct compliance with the obligation to report as regards the processing of the reports.
- Conduct investigations on the developments in the field of money laundering and financing of terrorism and on the improvement of the methods to prevent and detect these offences.
- Make recommendations, for the relevant branches of the industry concerning the introduction of adequate procedures for internal control and communication and other measures to be taken to prevent the use of these branches of industry for money laundering purposes.
- Provide information concerning the forms in which money laundering and terrorist financing manifests itself, and the prevention of these offences.
- Report annually to the Minister of Finance and Economic Affairs on its activities and its intentions for the coming year, and notifying the Minister of Justice of this report.

218. In addition, the State Ordinance on the Reporting of Import and Export of Cash Money (SORIECM) adopted in 2003 establishes a legal requirement to report the import and export via harbour, airport and postal service of currency in excess of AWG 20 000 (approximately USD 11 000) to the Customs Department. Reports generated are afterwards forwarded to the FIU that is in charge of the management of this information and on its record keeping (See Special Recommendation IX).

219. According to Article 5 of the SORUT, the MOT can also consult the registers of the agencies and the officials charged with the investigation and prosecution of criminal offences or with the supervision of compliance with rules and regulations.

220. The FIU is a separate government agency within the Ministry of Finance and Economic Affairs and as such resorts under the Minister of Finance and Economic Affairs. The staff of the FIU consists of the management (1 person), an Investigation section (5 persons), a Supervision section (1 person) and sections for Strategic Analysis (1 person), Policy (1 person) and Administrative support (3 persons). However, investigators within the investigation section are also tasked to supervise reporting entities in collaboration with the person in charge of the supervision section. As the Head of the FIU is currently also the chairman of the FATF Aruba Committee, the FIU also houses the secretariat of the FATF Aruba Committee (1 staff).

Guidance for reporting entities

221. Pursuant to Article 11 of the SORUT, each and anyone providing a financial service in connection with his profession or business is obligated to promptly report to the MOT transactions that are deemed unusual based on indicators. These indicators are determined per branch by Ministerial Regulations after consultation of the Advisory Committee. At the time of the onsite visit, such indicators only existed for certain financial and non-financial institutions: banks and remitters, life insurers and brokers, and casinos. In February 2009, two additional Ministerial Regulations were adopted: one for lawyers, civil notaries, accountants and tax advisors, the other one for dealers in goods of high value.

222. These indicators are divided in two categories: objective indicators and subjective indicators. As a matter of example, there are in total 12 objective indicators for banks and money remitters and 6 subjective indicators, each of them containing several sub-indicators. In order to clarify the use of these indicators, the MOT has issued three guidelines for each branch that are useful tools. Each of them explains the aim of each indicator and highlights them by practical examples.

223. In addition, the MOT Aruba provides the reporting institutions with an electronic special reporting form ensuring reporters fulfill all necessary information to facilitate its analysis, along with a manual with guidance on the completion of the form.

224. The MOT has held information sessions once a year, and now intends to hold them on a quarterly basis and furthermore whenever deemed necessary for compliance officers of the main reporting institutions. These sessions focus on reporting methods, trends, typologies and present sanitised cases of money laundering schemes.

225. Finally, each quarter, the MOT also publishes information to the reporting entities through an electronic newsletter (MOT Alert). Issues covered were TF, Trade-based ML, stored value cards, FATF-typologies, the AML/CFT legislation of Aruba, wire transfers, real estate sector, risk-based approach to AML/CFT, PEPs, EURO-laundering and ML/FT risks at casino.

Analysis of unusual transactions

226. In 2008, the MOT received 7 492 unusual transaction reports, including 627 unusual transactions reports that were STRs based on subjective indicators.

227. The MOT requires banks to put their reports electronically on USB memory sticks. Thus each commercial bank has two USB memory sticks: one is used by the bank and filled, while the other one is at the MOT and downloaded. The banks also leave at the MOT a hard copy of the information contained in the USB sticks. The other reporting entities send the reports only as hard copies. The reports are left by messengers employed by the reporters or hired courier services at the MOT's office, which does not seem to be a major issue considering the small surface area of Aruba.

228. Pursuant to the Reporting Manual provided by the MOT, unusual transaction reports should contain the following information:

- Information on the unusual transaction, including the indicator(s) upon which the reporting entities decided to report to the MOT, the amount of the transaction and its currency, the circumstantial transaction details.

- All identification data of the customer: however, in cases where the customer is a legal person, its account number, its legal form, its registration number at the Chamber of Commerce or other foreign competent authority and its country of establishment are not compulsory.

229. Once received at the MOT, the information of each unusual transaction report is downloaded in the MOT database. One of the main operational priorities of the MOT is to avoid any backlog of reports to be registered. In the event of a backlog, all the analysts focus their efforts, suspending their current tasks and proceed to record the information in the system.

230. For analysis purposes the system is equipped with Analyst Notebook. At the time of the onsite visit, a new computer system with software was being acquired for the database of the FIU in 2009. The

objective of the installation of this new system is to provide the MOT with better tools to strengthen the analytical capacity of the FIU and enhance its ability to provide more strategic intelligence on ML and TF.

Access to information

231. For the purpose of the proper performance of its duties, Article 5 of the SORUT authorizes the MOT to consult the registers of the agencies and the officials in charge of the investigation and prosecution of criminal offences or with the supervision of compliance with rules and regulations". These agencies and officials are obligated to allow the MOT to consult their register. To ensure adequate consultation, the Head of the MOT may enter into consultation agreements with the agencies and officials. Those agreements require the prior approval of the Minister of Finance and the Minister under whose responsibility the agency or officials in question work.

232. Although the legal provision is not entirely clear, the MOT in practice has a direct access to the following registers (and other information databases):

- The Civil Population Register, held by the Bureau for Civil Status and Population Registration.
- The Immigration Database, held by the Department for Immigration and Admission of Foreigners and the Institute for Alarm and Security.
- The Companies Register held by the Chamber of Commerce and Industry.
- The Foundations Register held by the Chamber of Commerce and Industry.
- The Land Register, held by the Service for Land Surveying and Immobile Property Registration.
- The Public Registers for Mortgages and Ownership Transferal of Immobile Property held by the Service for Land Surveying and Immobile Property Registration.

233. In addition, the MOT has access upon request to the relevant authority for the following information:

- The Judicial Documentation Register, held by the Public Prosecutor's Office.
- The Police Database on Serious Crimes, held by the Criminal Information Division of the Police.
- Fiscal information databases held by the Tax and Customs Service.

Obtaining information from reporting entities

234. In accordance with the provisions under Article 12 of the SORUT, the MOT is authorized to request additional data or information from the person who made a report, as well as from the person who, due to the provision of a service, is involved in a transaction about which the MOT has gathered information. The reporting entities must provide this information in writing, or in urgent cases orally, in the timeline given by the MOT during its request.

235. In urgent cases the reporting institutions are allowed to report directly to the Police or to the Public Prosecutor's Office. These reports are limited to the case where the service provider already has a concrete suspicion of ML or TF and Aruba considers that in such cases, it is more expedient to report

directly to the law enforcement authorities. However, the reporting institutions are required to report also such a transaction to the MOT, since this information is still relevant for the performance by the MOT of its tasks.

Dissemination

236. Article 6 of the SORUT requires the MOT to provide, at its own initiative or on request, the agencies and officials charged with the investigation and prosecution of criminal offences with the following information:

- Data from which a reasonable suspicion flows that a person is guilty of ML or TF or both felonies.
- Data from which it can reasonably be deduced that they are of relevance for the detection of ML or TF.
- Data from which it can reasonably be deduced that they are of relevance for the prevention of ML or TF.
- Information from which it can be assumed that it is of importance for the prevention or detection of offences that, in view of their purpose or the context within which they are committed or can be committed, constitute a serious breach of the legal order.

237. Pursuant to Articles 3 and 6 of the SORUT, the MOT can disseminate information in relation to money laundering or underlying predicate offences and to TF.

238. During the period 2004-2007, the FIU disclosed to the Police and the Public Prosecutor a total of 139 reports based on received unusual transaction report. Only one of these reports was related to TF, while analysis carried out by the MOT on other received unusual transaction reports did not reveal TF-related transactions.

Independence and autonomy

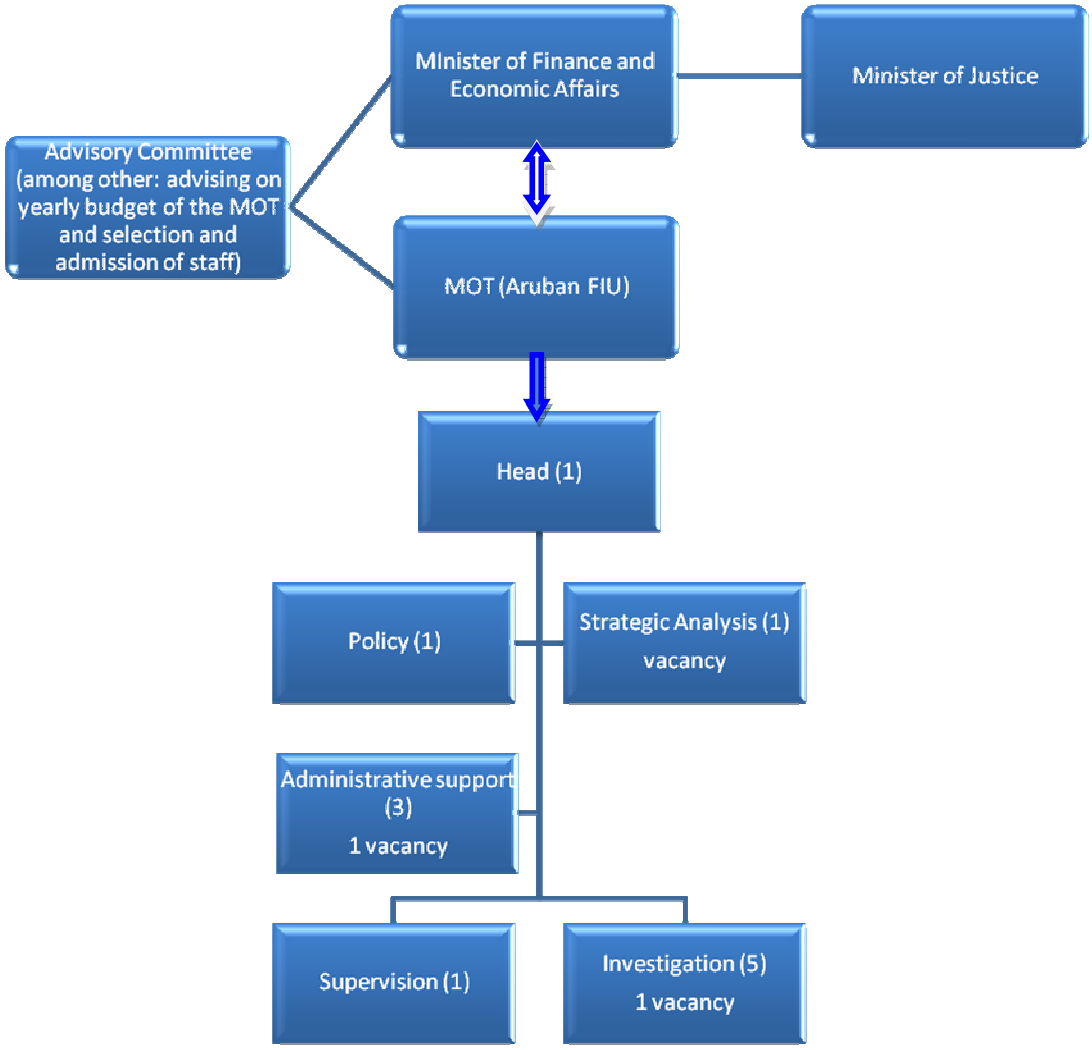
239. The FIU is a separate government agency within the Ministry of Finance and Economic Affairs and as such is directly under the Minister of Finance and Economic Affairs. This minister determines the staffing and yearly budget of the FIU in agreement with the Minister of Justice and after having consulted the Advisory Committee (Article 9 SORUT). The management of the FIU is in the hands of the Head who, along with the other personnel of the FIU, is appointed by state decree after a special appointment procedure has been observed (its entire staff falls under the special secrecy provision of Article 20 SORUT as well as under the general secrecy provisions for government employees as laid down in Articles 62 and 63 of the State Ordinance Regarding Government Employment). Chart 1 illustrates the external and internal relationships of the MOT.

240. The Minister of Finance and Economic Affairs determines the staffing and yearly budget of the FIU in agreement with the Minister of Justice and after having consulted the Advisory Committee (Article 9 SORUT). The FIU budget is presented by the Minister of Finance and Economic Affairs to parliament as part of the budget of the Ministry of Finance and Economic Affairs and approved as such.

241. The Advisory Committee (Article 16 of the SORUT) that is consulted by the Minister of Finance and Economic Affairs is composed of a maximum of twelve permanent members, and is currently composed as follows:

- A representative of the Minister of Finance and Economic Affairs (1).
- A representative of the Minister of Justice (1).
- Representatives of the branches of industry and professional groups subject to reporting obligations: currently 4 persons that represent the banking, insurance, MTC and casino sectors, but this number should increase with the addition of certain DNFBPs within the scope of the reporting obligations.
- Representatives from the supervisory authorities for the branches of industry and professional groups subject to reporting obligations (1).
- A representative from the Public Prosecutor's Office (1).
- A representative from the Police (1).

Chart 1. MOT



242. The representative of the Ministry of Finance and Economic Affairs acts as chairman of the Committee. It must be noticed that, by the time of the on-site visit, the chairman of the Committee was not a civil servant, but a member of the private sector.

243. The duties of this Advisory Committee are to advise the FIU on its functioning, to make its knowledge and expertise available to the FIU and to advise the Minister of Finance and the Minister of Justice on the way in which the FIU performs its duties, the determination of the indicator of unusual transaction and the effectiveness of the reporting obligation. The Advisory Committee is also consulted on the determination of the yearly budget of the MOT and on staff issues, such as the appointment, suspension and dismissal of the Head of the MOT that is made by State Decree of the Minister of Finance, having heard the opinion of the Minister of Justice and the Advisory Committee. The assessment team had concerns regarding the composition of the Advisory Committee, which is partially composed of representatives from the private sector, on decisions in relation to the MOT. It considers that this situation may impact the autonomy of the FIU. Whilst the consultation of representatives from the private sector is

of high relevance when determining indicators for unusual transactions, the assessment team is of the view that it becomes problematic regarding the ways the MOT performs its tasks, or regarding the determination of its budget or its recruitment policy.

Protection of information

244. The information received by the MOT Aruba must be kept in a Register, in accordance with Article 4 of the SORUT. The unusual transaction reports filed by banks are received in the MOT Aruba's facilities on USB memory sticks. After that, the USB memory sticks are returned to the messenger who carries them. Also, a hardcopy is provided along with the electronic information. For the rest of the reporting entities, the information is received by the MOT Aruba in hardcopy. The information that is received in hardcopy is inserted into the database by the MOT's staff.

245. Aruba does not have a general law on the collection, exchange and protection of information on persons and entities by among others the Government. Therefore Article I.16, section 1, of the Constitution of Aruba is applicable which states that everyone is entitled to the protection of his personal privacy, except in case of exceptions set forth in a law or a secondary law based on a law. In practice this means that every time a law is introduced which involves the collection and dissemination of information a provision regarding the secrecy and dissemination of that information must be included in it. In the case of the SORUT, Article 20 states that anyone, who by virtue of the application of the SORUT or regulations based on the SORUT, performs or has performed any task, is prohibited from using data or information provided or received in pursuance of the SORUT, any further or in any other way, or to disclose it further or in any other way, than is required for the performance of his task, or is required pursuant to a law.

246. In addition, Article 4 of the SORUT requires the FIU to have a Register in which legally acquired data necessary for the execution of the SORUT is kept. Article 3 of the State Decree Registry Regulation Reporting Centre Unusual Transactions (SDRRRCUT) appoints the Head of the MOT as the caretaker of the MOT-register. The SDRRRCUT also limits access to the MOT-register to the Head of the MOT and its personnel appointed in writing by the Head of the MOT for the exercise of their tasks. Dissemination of data from the MOT-register is possible only if this is necessary for the execution of the provisions of the Articles 6 (dissemination of data and information by the FIU to the Police and/or the Public Prosecutor's Office), 7 (dissemination of data and information to other FIUs), 19 (information request by the FIU Advisory Committee) and 22, section 1 (possibility of feedback to persons whose personal data has been recorded in the register) of the SORUT, or Article 4 of the State Ordinance on the Security Service Aruba (dissemination to the Security Service). In practice the data and information related to the register is stored in a database and in a hard copy archive. The server used by the FIU for this database is kept separate and well-secured in the server room. Finally, since the FIU is a government agency its entire staff falls under the general secrecy provisions for government employees as laid down in Articles 62 and 63 of the State Ordinance Regarding Government Employment.

Public Reports

247. Article 3 of the SORUT requires the MOT to report annually to the Minister of Finance and Economic Affairs its activities and its intentions for the coming year. The referred report must also be notified for information to the Minister of Justice. The annual report is made public in hard or soft copy by distribution to the Parliament, to the Ministers, to law enforcement and other relevant government agencies, other relations such as the CBA, to reporting entities and to the members of the Egmont Group through the Egmont Secure Web. The MOT advises that it is considering the introduction of its own website on which these reports could also be published.

248. Publication of the annual reports started in 1998. Besides providing information on the FIU's activities and the progress achieved during the last years, it also provides information on the FIU's organization, the reporting behavior of reporters, supervision, awareness and information exchange with counterpart-FIUs and with other national authorities. The reports also contain statistical data and other information relevant to the functions of the FIU in general. However, the amount and the quality of information provided by the MOT annual reports could be improved, including with respect to the need of the private sector. The annual report of the year 2000-2001 is the only one that contained typologies cases, in which an analysis of the money laundering typologies encountered in the daily investigative task of the MOT Aruba was presented. The MOT plans to develop new cases study in the future, but it is currently lacking resources to do it and indicated to the assessment team that the last study is still relevant. However, the lack of such reports being published is an issue that needs to be urgently remedied.

The MOT and the Egmont Group of FIUs

249. The MOT has been a member of the Egmont Group since 1996 and is a member of its Training Working Group since 2006.

250. The Egmont Statement of Purpose and its Principles for Information Exchange between FIUs in broad terms, requires, that international co-operation between FIUs should be encouraged and based upon a foundation of mutual trust. Aruba takes into account these two documents and conducts its relations with foreign counterparts based on reciprocity and mutual trust. The MOT Aruba is thus authorized to exchange information with its foreign counterparts, in accordance with Article 7 of the SORUT, on the basis of MOUs. At the date of the onsite visit, the MOT had signed MOUs with Albania, Belgium, Bermuda, Bosnia and Herzegovina, Bulgaria, Canada, Chile, Colombia, Croatia, Guatemala, Israel, Latvia, Macedonia, Mexico, Netherlands, Netherlands Antilles, Paraguay, Peru, St. Vincent and the Grenadines, Sweden, Switzerland, Taiwan and the United States of America, and it was about to conclude MOUs with Suriname.

Resources (FIU)

251. At the time of the onsite visit, the MOT comprised 11 persons and 3 vacancies on the workforce. The MOT managed to secure the hiring of a fulltime secretary of the FATF Committee in January 2008, thereby relieving the policy advisor from this work, while also a strategic analyst was hired in January 2009. The other vacancies (administration and investigation) have remained unfilled for several years now. Since Aruba extended in February 2009 the scope of reporting entities to DNFBPs and extended the tasks of the MOT to their supervision, this situation becomes even more critical. Meanwhile, the Aruban Government has frozen the recruitment of staff outside of Aruban civil servants. In its annual report for 2007, the MOT stated that this policy combined with the three vacancies places the MOT in a situation "where the composition of its staff is now such that it is completely to the detriment of the typical work of the FIU". The annual report for 2007 also states there is "sufficient reason to strongly emphasize, and strongly underline the concern of the FIU in this matter as regards the pressure of work and task performance".

252. This lack of resources and the difficulties met to fill vacancies is also reflected in the MOT's budget, which decreased between 2006 and 2007 in line with the reductions for all Government agencies. However, the Aruban officials consider the budget granted to the MOT (around AWG 1 600 000) has always been adequate for the FIU to fully and effectively carry out its tasks and relating activities.

Professional standards

253. The MOT personnel consist largely of personnel with a bachelor or academic degree who have skills in accountancy, audit, banking, police and legal issues. The recruitment of new personnel is done in accordance with the "Note Recruitment Procedure". This document has been established by the Advisory Committee and sets out the complete recruitment procedure for personnel of the FIU. As part of the procedure the Head of the FIU interviews applicants and nominates candidates for a subsequent interview with the Advisory Committee. The Advisory Committee interviews the candidates and nominates a candidate with the Minister of Finance and Economic Affairs for appointment at the FIU in accordance with Article 8 SORUT. The nomination is done on the basis of the interview, experience and personal history, competence, conduct and behaviour. Also new personnel are screened extensively by the National Security Service prior to their appointment in order to ascertain their integrity.

254. Furthermore, the staff of the MOT have to abide by the rules of confidentiality as stated in the Code of Conduct of the FIU and the secrecy provisions of the Articles 20 and 21 SORUT and 62 and 63 of the State Ordinance Regarding Government Employment. Finally, an assessment is carried out on a regular basis by the Head of the FIU to monitor the performance of the FIU personnel.

255. Thus, information held by the MOT appears to be securely protected electronically, has limitation on access and use by staff and is subject to security audit.

Staff training

256. Due to the small size of the MOT, the FIU mostly provides its staff with external AML/CFT training. However, since 2004 all FATF typologies are discussed internally. The external AML/CFT training includes regular attendance of trainings given by the Egmont Group and CFATF. In April 2004, three employees attended the Egmont AML/CFT Caribbean Region Training in Antigua and Barbuda. In September 2004, a computer-based PHARE Financial Analysis course was organized for the FIU personnel. In November 2006, June 2007 and September 2008, two employees of the FIU attended extensive seminars on forensic investigation given by the Special Task Force Netherlands, Netherlands Antilles and Aruba. In October 2007 four employees attended the Seminar for the FIUs in the Kingdom of the Netherlands in Curacao. In October 2007, one employee attended the Financial Integrity Network's FT seminar in Giesbach, Switzerland. More recently, in April 2008, two employees attended a CFATF Casino Training in the Bahamas. One employee has attended the "Conference on the Prevention of Money Laundering & Terrorist Financing at Casinos and Remote Gambling Venues" organized by the Caribbean Regional Technical Assistance Centre (CARTAC) in collaboration with the CFATF on 27-29 October 2008 in the Bahamas. Another one employee will attend the Financial Integrity Network's FT seminar in Davos, Switzerland in October 2008. Four employees attended a seminar on forensic investigation given by the Special Task Force Netherlands, Netherlands Antilles and Aruba in October 2008 in Curacao Currently, two staff members are attending the course on General Banking given by the Dutch Institute for Banking, Insurance and Investment Industry (NIBE-SVV). Moreover, at the time of the onsite visit, two employees were preparing for certification by the Association of Certified Anti-Money Laundering Specialist (ACAMS).

Recommendation 32 (Statistics and effectiveness) (FIU)

257. The MOT keeps a broad set of statistics, including statistics relating to the number and type of unusual transaction reports (objective / subjective) received by sector and by reporting entity. The MOT also maintains statistics on disclosures with the related amount involved in the cases.

Effectiveness

258. The following table shows by sector, the total unusual transaction reports submitted to the MOT for the period 2004-2008.

Table 12. Number of unusual transaction reports per sector

	2004	2005	2006	2007	2008
Banks	4 881	5 118	5 199	5 195	5 647
Money transfer companies	1 695	1 449	1 145	503	521
Casinos	4	2	10	10	26
Life Insurers	1	6	2	6	8
Offshore Banks	879	805	698	796	530
Importers and Exporters of Cash	670	988	723	823	760
Total	8130	8 368	7 777	7 333	7 492

259. Number of unusual transaction reports made by commercial banks, money remitters, life insurers and casinos based on objective or subjective indicators:

Table 13. Distribution of indicators used to report unusual transactions

	2005	2006	2007	2008
Objective indicators	5 038	4 935	4 857	5 575
Subjective indicators	1 537	1 421	857	627
Total	6 575	6 356	5 714	6 202

260. The number of investigations initiated and carried out by the MOT is as follows:

Table 14. Number of Investigations carried out by the MOT (2004-2008)

	2004	2005	2006	2007	2008
Investigations started	69	46	54	52	34
Investigations discarded	45	11	15	13	12
Investigations disseminated	27	38	28	46	24
Investigations in progress	15	12	23	16	14

261. The table below breaks down MOT's disclosures to the Police or the Public Prosecutor, as well as the characteristic of these cases.

Table 15. Number of Disclosures

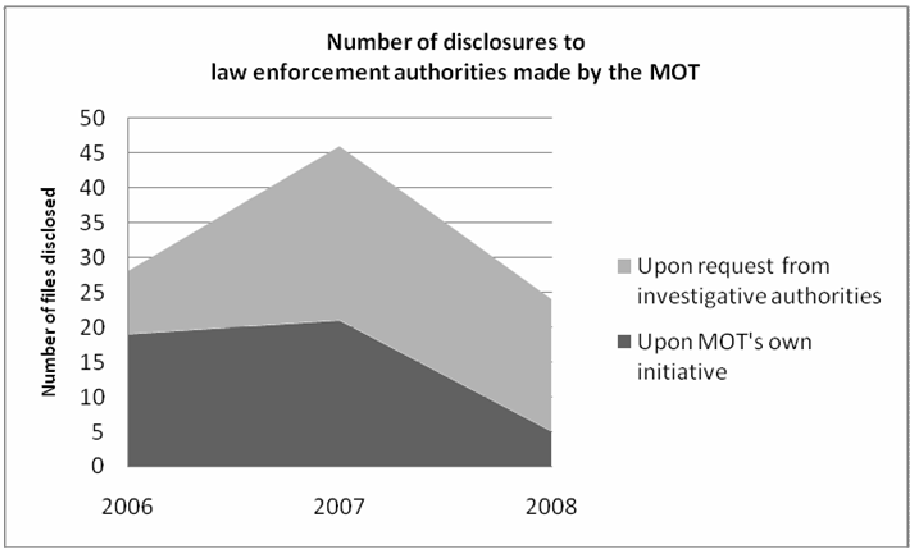
	2004	2005	2006	2007	2008
Investigations disseminated	27	38	28	46	24
Reports of transactions involved	804	351	149	629	139
Reports of natural persons or legal entities involved	860	425	229	470	203
Subjective indicators used	592	319	140	294	78
Objective indicators used	210	70	9	335	61
Import and Export of Cash	-	-	10	1	18

262. Number of disclosures made upon the MOT' own initiatives and upon request from the Investigative authorities:

Table 16. Number of Disclosures upon MOT own initiatives or law enforcement authorities' request

	2006	2007	2008
Upon own initiative	19	21	5
Upon request from the authorities	9	25	19

Chart 2. Number of disclosures to law enforcement authorities made by the MOT



263. Commercial and offshore banks, money transfer companies, life insurers and brokers and casinos are so far the only reporting entities in Aruba, due to the fact that unusual transaction indicators are only provided to these professionals. In February 2009, Aruba extended the scope of the reporting obligations to lawyers, notaries, accountants, tax advisors and dealers in goods of high value, but these professionals have not sent so far any reports. Most of the unusual transactions reports are thus made by banks (67 % in 2007), in particular by commercial banks. However, a slight increase of the number of unusual transaction

reports made by life insurers is to be noticed, whilst a decline can be observed in reports made by money transfer companies. The latter is mainly due to the fact that the money transfer companies are permitted by the MOT to cluster transactions based on subjective indicators which are interrelated in one report. It should be noted that pursuant to the CBA's Operational and AML Guidelines for money transfer companies, these entities are not allowed to conduct transactions exceeding AWG 5 000 or AWG 10 000 in the case of internationally operating money transfer companies subject to effective consolidated supervision, such as Western Union or MoneyGram. This has rendered it impossible for some of the money transfer companies to report unusual transactions based on the objective indicator B9901141 which contains a minimum monetary threshold of AWG 5000 and the MOT reported to the assessment team that no unusual transaction reports are made based on this criteria and that Some money transfer companies report unusual transactions only on the basis of subjective indicators. Ultimately, this clustering has led to a decline in the number of unusual transactions reports based on the subjective indicators. More generally, a decline of unusual transaction reports based on subjective criteria is to be noticed.

264. In 2007, compared with the 7 333 unusual transaction reports received by the MOT, the FIU has started 52 investigations, each based on several reports. The assessment team has observed the good quality of the investigations made by the MOT, as well as the high commitment of the analysts.

265. In 2007, the MOT disclosed 46 files to the Police services and the Public Prosecutor's Office, among which 21 upon its own initiative. In 2008, the number of files disclosed to the Police services and the Public Prosecutor's Office fell at 24, but only 5 upon its own initiative. Aruba advises that the co-operation between the MOT and the law enforcement agencies has improved and that the law enforcement agencies have been encouraged by the MOT to improve the number of their information requests in order to make better overall use of the reporting system. This has resulted in a higher number of information requests from the law enforcement agencies. However, on the other hand, the number of disclosures made by the MOT upon its own initiative has decreased considerably in 2008 compared with the past last two years. While it is a positive for a FIU to answer requests from law enforcement agencies, it should not replace the disclosures that a FIU can make upon its own initiative, based on its own analysis of information that it is the only agency to receive.

266. These investigations disclosed by the MOT mainly concerned cash flows from European countries to Aruba or investigations conducted upon requests for information from the Public Prosecutor. In 2007, the 46 investigations disclosed to the Police involved 629 transactions reported to the FIU either on the basis of objective indicators (335) or subjective indicators (294). Even if the reports made on the basis of subjective indicators are fewer than those made on the basis of objective indicators, the MOT analyses the reports made on the basis of subjective indicator in priority. However, the number of unusual transaction reports made by money remitters on the basis of subjective indicators has significantly decreased over the past two years. The assessment team was told that the MOT is handling this situation by liaising with these professionals.

267. The Police services as well as the Public Prosecutor's Office considered the information provided by the MOT as useful, which explains the considerable increase of information requests received by the MOT. The Police are mainly interested in information collected by the MOT on the basis of objective indicators.

268. In conclusion, considering its resources, the MOT is quite efficient as an FIU. Because of the nature of the unusual reporting system, the MOT deploys the larger part of its investigatory capacity on cash and wire transfer transactions. This notwithstanding, more complex ML/TF schemes and methods are also investigated and disseminated if necessary, although this is less common. However, the MOT has conducted so far only one case of TF, targeted as such by the reporting entity, and it has disclosed the case

to law enforcement agencies. However, this is insufficient to consider that the MOT has obtained sufficient expertise in TF allowing it detects and analyses such cases among the thousands of unusual transaction reports it receives.

2.5.2 Recommendations and Comments

269. The MOT is Aruba's centre for receiving and requesting, analysing and disseminating disclosures of unusual transaction reports. The MOT is a separate government agency within the Ministry of Finance and Economic Affairs and it has legal competence to properly conduct its duties. However, the role of the Advisory Committee, which is partially composed of representatives from private sector, is doubtful. If, on the one hand, consultation of the private sector on the elaboration of indicators for unusual transaction is valuable, on the other hand it is questionable when it comes to the yearly MOT's budget or the staff recruitment policy and process. Aruba should remedy this situation.

270. In addition, the MOT faces important resources constraints that have become even more critical following the modification that Aruba enacted to the SORUT, extending the reporting obligation to DNFBPs. Aruba is strongly recommended to take appropriate step to fill the current vacancies with professionals having appropriate skills and to increase the total staff of the MOT.

271. The FIU has access to financial, judicial, administrative, tax and customs information, directly and upon request.

272. The MOT Aruba only receives the unusual transaction reports electronically from the banking sector on USB sticks, and from the other sectors on hardcopy: The MOT should consider developing an on-line system for the reception for all the unusual transaction reports STRs and for all the sectors which are required to report to the MOT.

273. The FIU should consider developing a mechanism which would allow it to evaluate the effectiveness of the AML/ CFT regime, notably the added value of intelligence reports to investigations and prosecutions. As the investigations disclosed by the MOT upon its own initiative are not always opened or used by the Police, the MOT should consider establishing a permanent feedback mechanism which would allow it to evaluate the needs of the police but also which would force the police to justify their follow-up actions vis-a-vis information disclosed.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	PC	• The composition of the FIU Advisory Committee (presence of private sector members) gives the appearance of compromising the autonomy and independency of the MOT in terms of determination of its budget and staff policy. • Since its creation in 1999, the MOT Aruba has published only one report covering typologies. • The reporting entities are not required to give all the identification data of a legal person involved in an unusual transaction report, except when the MOT asks for further information. • The MOT faces resource constraints that impact its effectiveness, as shown by the recent decrease of reports made to the Public Prosecutor upon its own initiative. • The staff of the MOT are not sufficiently trained for receiving and analysing TF reports. • The MOT deploys the larger part if its investigatory capacity on cash and wire transfer transactions, and less on more complex ML/TF schemes and methods which impacts its overall effectiveness.

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R. 27 & 28)

2.6.1 Description and Analysis

Recommendation 27

Designated law enforcement authorities

274. Investigations of criminal offences are carried out by the Police, under the direction of the Public Prosecutor's Office. Because of the relatively small size of the Public Prosecutor's Office and of the Police, Aruba has not created a separate section exclusively dedicated to the combat of money laundering and terrorist financing. Instead the investigation of money laundering and terrorist financing is carried out through two sections of the Police: the Organised Crime Section and the Financial Investigations Bureau created in 2006.

275. In addition, the Special Task Force Netherlands, Netherlands Antilles and Aruba is an autonomous interregional unit tasked to investigate cross-border criminality between the Netherlands, the Netherlands Antilles and Aruba. This Task Force is a group of trained detectives located in each jurisdiction. At its creation, the Task Force mainly focussed on drug-trafficking. Since 2006, it has also started to investigate money-laundering cases and other crimes such as smuggling or trade-based money laundering. The Task Force is also competent to investigate terrorist financing, but it does not have access to intelligence information. To date, the Task Force has not conducted any investigation on terrorist financing.

276. The Special Task Force Netherlands, Netherlands Antilles and Aruba works on the basis of projects agreed by each jurisdiction and that generally comprise a financial aspect. On the contrary, the Police conduct most of their investigations after the occurrence of a crime.

277. For their part, the Customs do not have any AML/CFT investigative powers.

278. Finally, the Public Prosecutor's Office has one prosecutor who is specifically charged with the investigation and prosecution of money laundering and terrorist financing. However the other prosecutors are also authorised to prosecute such cases.

Ability to postpone/waive arrests and seizure of money

279. As a matter of policy, decisions relating to the timing of arrests of suspects in criminal investigations are subject to the operational control of the Police liaising with the Public Prosecutor. Arrest and other overt actions can be reasonably delayed for operational reasons since there is no legal requirement in Aruban law for arrests to be made on the crossing of evidential thresholds. Similarly, seizures of money or other financial instruments or assets believed to be the proceeds of crime may be delayed in order to gather more evidence and further investigate.

Additional Elements

280. The Aruban code of criminal procedure does not contain specific provisions concerning special investigative techniques for money laundering. For ML investigations, the law enforcement authorities may only use any and all legal investigative methods which are available for "ordinary" crimes.

281. Although as previously stated, the Aruban Code of Criminal Procedure does not contain specific provisions concerning special investigative techniques for ML, other methods are applied such as *inter alia* infiltration, pseudo-buying and information gatherings.

282. Until recently, the use of these investigative methods was not possible due to the lack of legal basis. However, in anticipation of the realization of a legal basis, the Prosecutors-General of Aruba and the Netherlands Antilles have issued a guideline (the Guideline Special Investigative Methods or *Richtlijn Bijzondere Opsporingsmethoden*) with rules and conditions for the application of these methods in anticipation of the upcoming legislation.

283. It will be up to the judge to draw the necessary conclusions on a criminal prosecutorial level on the use of such non-legal investigative methods. In a large drugs investigation in 2008 (which also involved money laundering) the use of the relevant extra-legal special investigative method was declared illegal, reason being (according to the judge) that the guideline had not been made public. With the publication of the Guideline Special Investigative Methods this publication requirement has been met. The basic principle for the application of these methods is that it must concern serious criminal behavior.

284. Also, Aruba has two permanent teams that deal with financial-economic crimes (including money laundering investigations). These teams occupy themselves with all aspects of investigation, as well as confiscation and conservatory seizures for the dispossession of illegally acquired gains. One team is the Financial Investigations Bureau, while the other is the Financial Detectives section of the RST. Both teams consist of 4 specially trained financial detectives.

285. In Aruba there are investigations regularly in which close cooperation takes place with the authorities of other countries. Besides many investigations taking place in cooperation with the National Detectives and various police regions in the Netherlands, investigations also take place in cooperation with countries from the region. These include Colombia, Venezuela, the Netherlands Antilles, USA (including Puerto Rico) and the Dominican Republic. Cooperation also exists with European countries, such as Italy, Spain, Belgium and Germany. Depending on the legislation of the country in question special investigation methods are applied. This usually concerns the interception of telecommunication and observation, including the use of technical aiding instruments.

286. No consultation mechanism exists solely for analysis of ML and FT methods, techniques and trends. On an operational level regular consultation takes place concerning the tackling of ML and FT or other forms of financial crimes between the Police and RST, between the RST and the Public Prosecutor's Office, the Public Prosecutor's Office and the Police, the Public Prosecutor's Office and the FIU/MOT, the Police and FIU/MOT and the RST and the FIU/MOT, during which possible trends and new techniques are discussed. From that operational level those on the executive level can be informed and have regular consultations on their own level.

Recommendation 28

Power to obtain records

287. According to Article 177a of the Code of criminal procedure, in case of suspicion of a criminal offence by which a profit or advantage of any monetary significance, a criminal financial investigation may be instituted by virtue of an authorisation of an Examining magistrate upon the demand of the Public Prosecutor. Then, competent authorities responsible for conducting investigations of money laundering or underlying predicate offences have the power to order each and any person upon its demand in order to obtain insight into the financial position of the person under investigation:

- To grant him the right to inspect or copy documents or data.
- To state what assets he has or had in custody that belong or belonged to the person under investigation and to seize written documents handed over in this way.

288. Although terrorist financing is not criminalised in a separate and independent way, a criminal financial investigation can be initiated for ancillary activities, which constitute a felony that merits criminal financial investigations. However, it is unclear as to whether these powers also apply in case of terrorist financing, as the offence does not lead to profits or advantages of any significance capable of being expressed in money. Certain persons such as family members, lawyers and notaries can invoke privilege of non-disclosure, however this privilege is not absolute as it can be set aside in case of suspicious acts by this persons themselves or in case of an important public interest. Finally, the Aruban legal framework does not provide that competent authorities responsible for conducting investigations can search persons or premises for.

289. Article 131 CCrPA grants the examining magistrate the authority to order (mostly upon request of the prosecutor) anyone who is reasonably suspected of keeping an object suitable for seizure to handed this over to him or the Court Clerk as seized. Everybody is required to comply, including a bank. If the bank is itself a suspect, then it is not required to cooperate and an order for seizure cannot be served. However, a search of the bank with the object of seizure can still take place. If it concerns written documents, then the documents must originate from the suspect, be destined for him or belong to him. Liable to seizure are all objects and requisitions which may serve to bring about the truth or to prove illegally acquired gains.

290. If a person to whom the order is directed has a right of non-disclosure the situation is somewhat different. However, financial institutions do not have a right of non-disclosure or the right of confidentiality, unlike lawyers and civil notaries who do have a privilege of non-disclosure or the right of confidentiality with regard to information that has come to them through the exercise of their profession. This means that letters or other written documents (which also include information carriers) that fall under the privilege of non-disclosure or the right of confidentiality cannot be seized, unless they give permission

to that effect or these documents are the object of the crime or have served for the commission of the crime.

291. The privilege of non-disclosure is not absolute. In some cases (determined casuistically) the interest of finding of the truth supersedes that of privilege of non-disclosure meaning that the privilege of non-disclosure can be set aside. The Dutch Supreme Court determined this in 2005 in a money laundering case.

292. Finally, next to the legal authority to order surrender, a house search for the purpose of seizure can be made in homes or other places.

Witness statements

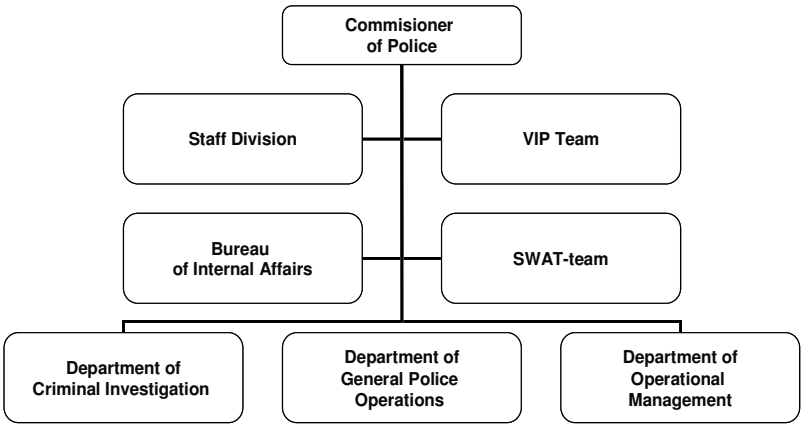
293. Article 177b of code of penal procedure provides that competent authorities responsible for conducting investigations on money laundering or underlying predicate offence have the powers to take witnesses' statements for use in investigations and prosecutions. Despite terrorist financing not being criminalized in a separate and independent way, law enforcement authorities would have the power to compel witnesses' statements in case where the terrorist financing activity also amounted to terrorism or another criminal offence.

Resources (law enforcement and Prosecution authorities only)

294. The Public Prosecutor's Office consists of a first line office of the prosecutors and the office of the Prosecutor-General. Both offices are housed in the same building and are organisationally integrated. The Prosecutor-General is the highest authority on matters of prosecution. This official is appointed by the Queen upon recommendation of the Common Court of the Netherlands Antilles and Aruba. Although the Public Prosecutor's Office should be composed by 6 prosecutors, there are currently only 4 prosecutors, assisted by 4 policy advisors. One prosecutor is specifically tasked with financial investigations, including money laundering investigations. This prosecutor is also a member of the FATF Committee Aruba. The Dutch State Secretary for Dutch Antillean and Aruban Affairs, in its letter to the Lower House of the Parliament on the state of governance in Aruba, stated in May 2009 that the Aruban Public Prosecutor's Office has insufficient staff.

295. At the time of the onsite visit, the Police of Aruba had a total of around 660 positions, however 70 were vacant. As for the Financial Investigations Bureau, it consisted of 2 persons, while the assessment team was told that the section would need to be staffed by 10 positions to properly accomplish its tasks. The Police Force of Aruba also lacks resources, as stated in May 2009 by the Dutch State Secretary for Dutch Antillean and Aruban Affairs, in its letter to the Lower House of the Parliament on the state of governance in Aruba.

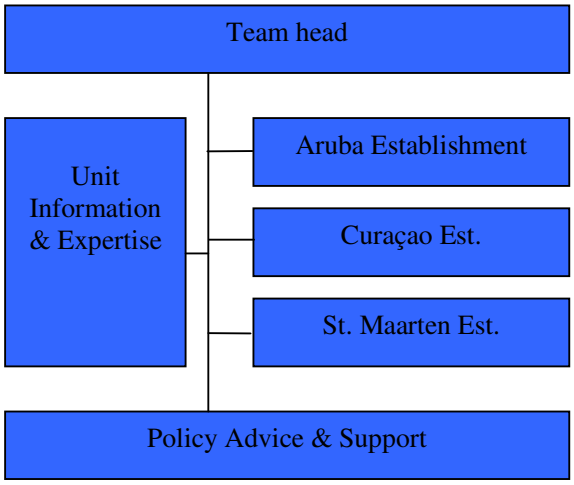
Chart 3. Police Force of Aruba



296. The RST, which is the Aruban section of the Special Task Force Netherlands, Netherlands Antilles and Aruba, comprises 18 police officers: 8 local police officers under contract of three or four years and 10 police officers coming from the Netherlands for a period of three to five years.

297. The RST has been formalised by protocol in 2001 and has a specific task and design. As a multi-island detective team, it dedicates itself primarily to the tackling of heavy, organised and cross-border crime, money laundering and terrorism. The team established in Aruba, Curacao and Saint Maarten. The RST consists of employees from the KPA, the Curacao Police Force, the Saint Maarten Police Force, various regional Dutch police forces and the Dutch Force National Police Services. The total formation of the RST is 116. All detectives sent from the Netherlands have been granted local investigative authority through appointment as exceptional police officer. The organisational chart of the RST is as follows:

Chart 4. *Recherche Samenwerkingsteam* (RST)



298. As for funding of the Public Prosecutor's Office and the Police, both organisations are funded entirely from the budget of the Minister of Justice yearly submitted to parliament. Aruba did not provide the assessment team with the detailed budget of these authorities, but it can be assumed as insufficient considering the number of vacancies both in the Public Prosecutor's Office and the Police.

299. The RST is funded by the Dutch Ministry of Internal Affairs and Kingdom Relations. The expenditures plan for the Aruban unit is as follows:

Table 17. Expenditure plan of the RST

Budget 2009			***Amounts in EUR 1 000***
	Salaries & Social liabilities		678
	Allowances		402
Subtotal salary costs			1 080
	Training & education		32
	Additional personnel costs		380
Subtotal other personnel costs			412
Subtotal own personnel costs			1 492
	Personnel of third parties		200
Total personnel			**1 692**
	Housing		171
	Vehicles		149
	Communications & automatisation		178
	Violence control materials & equipment		3
	Operational activities		75
	Management/ other		145
Total Material / Executive costs			**720**
Total Personnel + Materials			**2 412**

300. The budget for the Information and Expertise is not included in the chart above. These sections of the RST provides in depth-expertise on the area of financial and digital investigations and the use of special investigation methods upon request of the RST Aruba or the KPA. The costs of this do not need to be covered from the budget of the RST Aruba or the KPA. However, costs of travelling and lodging are mostly covered at the expense of the budget of the RST Aruba. These costs are financed from the Operational activities line item. In very special cases external financing is also possible by means of purpose payments or personnel or material assistance from the Netherlands.

301. The data below have been from the Institution and Formation plan 2008. In formation data relevant to RST Aruba have been shaded in the table below. The staff of the RST is composed as follows:

Table 18. Staff of the RST

Function name RST	Station	total functional time unit	division by Kingdom part		
			NL	NA	AUA
Team Head					
Team head RST #	Curacao	1	**1**		
Management and executive support					
Establishment Netherlands		4	4		
Establishment Curacao		6	6		
Establishment Saint Martin		0			
Establishment Aruba		0			
Subtotal	**11**		**11**		
Establishment Curacao					
Subtotal	**30**		**18**	**12**	
Establishment St. Maarten					
Subtotal	**18**		**12**	**6**	
Establishment Aruba					
Establishment head #	Aruba	1	1		
Detective tactics coordinator (project leader)	Aruba	2	1		1
Specialist tactics (financial)	Aruba	4	2		2
(senior) Detective tactics	Aruba	10	5		5
Detective assistant information processing	Aruba	2	2		
Administrative employee (Secretarial Administration)	Aruba	1	1		
Subtotal	**20**		**12**		**8**
Information and expertise					
Establishment Curacao		25	22	3	
Establishment Saint Martin		6	4	2	
Aruba, including:		6	4		2
Operational analyst		1	1		
CIE detective		1	1		
Senior Detective information processing (infodesk functionality)		3	2	1	
Subtotal		**37**	**30**	**5**	**2**
Total		**116**	**83**	**23**	**10**

Professional standards, ethical and professional requirements

302. When applying for a position in the Police or the RST, police officers are screened by the Aruba Security Agency. The police officers are then subject to the general rules applicable to Government employees, including confidentiality rules, stated in the State Ordinance Regarding Government Employment.

303. With regard to their behavior and actions the KPA and RST officers are required to comply with the rules set out in the CCrPA, as well as the State Ordinance on Government Employment and the Civil Servants Regulation of the Netherlands respectively, and other guidelines. The KPA and RST try to guarantee their integrity and professionalism by following these legal requirements and guidelines. A police officer is trained during the basis and additional courses in these regulations, while the monitoring of the compliance of these regulations is one the tasks of middle and higher management level.

304. All employees of the RST are also required to comply with a Code on Behavior. This Code contains the set of rules with which the RST employees must comply. Next to this, the RST has a system of Development Directed Personnel Policy in which through yearly individual talks and development talks the performance and development of the employees are monitored. The OPB has as aim to insure that the employees (and therefore the organization) have the correct the competences in order to carry out their tasks. Next to this the OPB serves to stimulate the development of an as high as possible job satisfaction and lasting job market perspective for the employee.

Training of staff

305. Budgetary constraints affecting all government services have limited the possibilities of the relevant personnel of the Public Prosecutor's Office and the Police to participate in AML/CFT training courses and programs. However, a so-called Law Maintenance Program is being finalised. This notwithstanding, recently a course on financial investigation has been given in two sections, the first in November 2008 and the second in April 2009. This course was financed out of the Law Maintenance Program. This program is aimed at supporting and strengthening the maintenance of the law in Aruba in the broadest possible sense, including financial investigations trainings for the Public Prosecutor's Office and the Police. Its implementation will be jointly financed by Aruba and the Netherlands. Aruban officials advise that this program in the meantime has started in 2009.

306. Furthermore, special attention is being dedicated to financial investigations and money laundering by the Special task Force Netherlands, Netherlands Antilles and Aruba. Since 2006, this interregional law enforcement unit has been organising twice every year a conference about financial investigation that all parties involved in AML/CFT investigations in Aruba attend. However, a regular conference cannot be considered by itself as a sufficient staff training effort.

307. In addition, the KPA and RST regularly give trainings on a local level, while personnel are also sent abroad to follow specialist trainings. Besides knowledge advancement of the personnel (human resources) attention is also dedicated to equipment (technical resources). The KPA and RST buy or lease equipment in accordance with the determined long term plans for the execution of their tasks, the priorities and the financial possibilities of their approved budgets.

Additional Element

308. At the time of the onsite visit, the staffs of the Public Prosecutor's Office has not been provided by training or educational programmes concerning AML/CFT offences and the seizure, freezing or confiscation of properties that is the proceeds of crime or is to be used to finance terrorism. However, Aruban officials advised such training was provided shortly after the on-site visit, within the framework of the Law Maintenance Program courses.

Statistics and effectiveness

309. Statistics provided by Aruba on the law enforcement authorities demonstrate that the Police Force and the RST face significant resources constraints that considerably undermine their capacities to deal with the reports disclosed by the MOT. For its part, the assessment team was told that the bureau of financial investigation within the police does not have the capacity to analyse and process the disclosed reports received from the FIU, and thus mainly concentrates on financial aspects of other regular investigations for which the police may require information from the MOT. Therefore, the effectiveness of the overall AML/CFT regime in Aruba is compromised by the lack of investigation and prosecution based on the analysis made by the FIU.

310. As for the RST, it primarily works on projects previously defined at the Task Force's level. Therefore, it uses the information disclosed by the MOT principally when this information has a value within its current investigations. However, as necessary, the information disclosed by the MOT can also assist the RST to determine its next projects, but this situation prevent it from conducting diligent actions.

2.6.2 Recommendations and Comments

311. The Aruban law enforcement authorities have started to develop as appropriate financial investigations for each investigation on underlying predicate offences and for this purpose they have increased their requests of information to the MOT. However, the law enforcement authorities and the Public Prosecutor's office face resources constraints that prevent them to make a full use of information disclosed by the MOT upon its own initiative. Therefore, Aruba is strongly recommended to remedy this situation and to give the law enforcement and prosecution authorities the resources they need to properly face to their workload. Equally, Aruba should develop as foreseen training sessions on AML/CFT investigative techniques for law enforcement officers involved in ML/TF investigations.

312. It is also recommended that Aruba explores the possibility to establish new mechanisms and techniques in order to initiate investigations from the proactive reports made upon the financial analysis carried on by the MOT.

313. Moreover, Aruba should ensure that law enforcement authorities have power to compel productions of and search persons or premises for and seize and obtain transaction records, identification data, files and business correspondence and other records held or maintained by financial institutions and DNFBPs and to take witness' statements when they conduct TF investigations.

2.6.3 Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	PC	• No authority to investigate TF (as TF is not an offence), unless the activity is otherwise criminalised. • Low level of effectiveness in investigating ML, caused by lack of sufficient resources in both police services and prosecution, lack of sufficient training, little use of disseminated reports from the MOT.
R.28	LC	• Law enforcement competent authorities have no power with respect to TF as it is not an offence, unless the activity is otherwise criminalised.

2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and Analysis

314. In 2003, Aruba enacted the State Ordinance on the Reporting of the Import and Export of Cash Money (SORIECM) and a related State Decree Import and Export Cash Money (SDIECM) that provide that anyone who imports or exports money of more than AWG 20 000 (around USD 11 000) at all places were persons may enter or leave Aruba shall report it to Aruban officials. However, in practice, these provisions do not appear to be effectively implemented to the import or export of cash via shipping cargos. The reporting requirement also applies to professional couriers, in particular to post offices. SORIECM defines money as local and foreign bank notes and securities issued to bearer as designated by State decree. However, the State Decree related to SORIEMC does not designate securities issued to bearer. Therefore, this declaration requirement only applies to bank notes, but not to securities issued to bearer and not at all

to other bearer negotiable instruments like traveler's cheques. In addition, Article 1 of SORIEMC provides that this requirement is not applicable for import of cash with the sole purpose of direct transit.

315. According to the SDIECM, the reporting must be made at all places where persons may enter and leave Aruba, at all post offices, and at all other places where goods from abroad may be imported or exported. This declaration is made through the fulfillment of a form that persons shall fulfill when entering or leaving Aruba. This form details in different languages that "*if you import or export Aruban or foreign money in cash, including via mail, with a value in excess of AWG 20 000 (USD 11 000), you must report this to the authorities present upon arrival, departure or mailing. Reporting forms are available upon request at these authorities. Failure to comply will be punished with confiscation, a maximum prison term of 4 years and a maximum fine if one hundred thousand florins*".

316. Pursuant to Article 4 SDIECM the reporting form shall contain the following data:

- The name, address of residence, date of birth, profession, nationality, country of origin, the duration of the stay in Aruba of the person importing or exporting the money and having the money imported or exported.
- The name, address, date of incorporation, the prevailing company activities, and the country of residence of the company that is the money imported or exported.
- The number, place and date of issuance or the expiry date of the identification instrument presented for the purpose of the import or export.
- The amount of the cash money that is being imported or exported, the currency and the denomination.
- In case of import, if the money is destined for vacation, casino activities, business or other purposes.
- In case of export, if the money was acquired in Aruba and if so, because of casino activities, business or other activities.
- Regarding business activities, the name and address of the parties involved as well as the nature of the business.

317. All customs officials are designated to receive the declaration forms. This includes the customs officials stationed at the post office of Aruba and at cargo section of the airport where professional cash couriers pass. Once a report is made, officials are required to keep a numbered registration of all received forms and the reporter is given an authenticated copy with its registration number.

Powers of competent authorities upon discovery of a false declaration or failure to declare

318. In a case of a false declaration or non-declaration, customs officials or police officials can request all information, in so far as it is reasonably necessary for the execution of their duties. The SDIECM also authorises them to enter in all places except homes without the express consent of the inhabitant and to investigate mooring and landing vessels, stationary aircraft and vehicles and cargos.

319. In 2008, Aruban Customs Department only had one case of failure to declare. An official report was prepared by the customs officer involved and sent to the Public Prosecutor's Office who is in charge of follow up on sanctioning. No feedback was given as to what measures were taken.

320. The State Ordinance also authorises government officials to conduct searches on the body and clothing of the persons moving to or from vessels and aircrafts in case they have received written authorisation to do so from the inspector of import duties and excises or, in case of police officials, from the Chief of the Aruba Police Force.

321. Concerning the power to stop and restrain money for a reasonable period of time, competent authorities are only allowed, after express written authorisation of the examining magistrate, to hold up the delivery of a letter in case of a reasonable suspicion that cash money is being delivered in these letters. They can also submit goods to viewing and investigation and bring them out temporarily from circulation. However, these powers only apply in cases of false declaration or failure to declare, but not in cases of suspicion of money laundering or terrorist financing. Moreover it only applies vis-a-vis letters or goods, but not vis-a-vis money or bearer negotiable instruments.

322. As a result, the Aruban authorities have large powers to request and obtain further information in cases of false declaration or a failure to declare money imported or exported for an amount above AWG 20 000. However, the authorities responsible for conducting such searches are not always clearly defined. Despite the fact that the State Ordinance seems to give investigative powers to customs and police officers, the assessment team was told that in case of false declaration or failure to declare, customs officers just takes statements (*proces-verbaal*) and send them to Public Prosecutor's Office for further investigations. Moreover, the procedure necessary to obtain such further information seems to be quite lengthy and bureaucratic and the competent authorities do not have any urgent investigative powers at their disposal. Finally, such investigative powers can only be applied in case of false declaration or failure to declare, but not based on the suspicion of money laundering and terrorist financing.

Information collected, retained and shared

323. The competent officials (generally customs officials at airport and harbours) collect all the reporting forms and give them a registration number. All these forms are afterwards regularly sent to the MOT, which uploads them in its own reporting database, along with the other unusual transactions reported by financial institutions and DNFBPs. The MOT's database holds all the information submitted on the declaration forms (identification, address, duration of stay, amount and, in case of import, the money's destination or, in case of export, how the money was acquired). This information is then subject to the same confidentiality provisions as the other information kept by the MOT.

324. The Customs keeps numbered record of all declaration forms, but not copies of the forms with their details, since this is not allowed by Article 5, fourth section of the SDIECM. All declaration forms must be sent to the MOT and kept recorded in its register. As for the customs services that generally collect the declaration forms, they do not maintain or keep records of the form once they are sent to the MOT. In case of false declaration or failure to declare, relevant information is sent to the Public Prosecutor's Office, but there is no requirement to share this information with the MOT.

Co-ordination among domestic competent authorities

325. There are no domestic co-ordination mechanisms among customs, immigration and other related authorities on issues related to Special Recommendation IX. The Customs services are involved only in collecting declaration forms but they do not have any other AML/CFT competence. In addition, Article 6 of the SORIECM prohibits custom officials from sharing the information obtained with other authorities than the MOT.

International co-operation and assistance

326. International co-operation concerning information obtained on cross-border cash couriers is only possible through the MOT with its foreign counterparts with which the MOT has signed MOUs since the MOT is the only authority that keeps records of the information contained in declaration forms. International co-operation is thus not possible with foreign customs services, while foreign customs authorities are often the more appropriate competent authority to deal with requirements set out under Special Recommendation IX.

Sanctions

327. Penal sanctions are available to deal with false declaration or failure to declare import or export of money above the amount of AWG 20 000. Pursuant to Article 7 SORIECM the intentional wrongful reporting or refusal to report are punished with a maximum prison term of 4 years and a maximum fine of AWG 100 000. Moreover, unintentional wrongful reporting or negligence to report is punished with a maximum prison term of 1 year and a maximum fine of AWG 25 000. The SORIECM does not contain administrative sanctions; therefore customs officials have no competence to impose sanctions and must transmit the cases to the police or to the Public Prosecutor's Office.

328. In addition, Article 10 SORIECM provides that prosecution of false or non declaration "expires by voluntarily complying with the conditions set by the authorised official of the Public Prosecutor's Office to avoid prosecution". Aruba considers that by making possible afterwards compliance, information that might be useful for AML/CFT purposes can still be collected and it advises that the Public Prosecutor sets out conditions. However, the assessment team is of the opinion that this undermines the effective and dissuasive role of sanctions.

329. In the event of discovery by a customs official of cash that should have been reported, that customs official is required by Article 9 SDIECM to involve another official at the control in order to seize the money and write an official report (*proces-verbaal*) of the seizure. A copy of the official report must be sent to the Public Prosecutor who subsequently may request the judge for confiscation of the funds.

Assets freezing

330. Since Aruba does not have any measures in place to freeze the assets of persons and entities designated pursuant to S/RES/1267(1999) or in the context of S/RES/1373(2001), assets freezing measures do not apply in relation to persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments that are related to terrorist financing.

Precious metals and stones

331. In case of discovery of an unusual cross-border movement of gold, precious metals or precious stones, Aruba has a procedure or mechanism in place to notify this to Customs Service or other competent authority of the country from which these items originated and/or to which they are destined. Aruba could co-operate with a view toward establishing the source, destination, and purpose of the movement of such items.

Safeguarding information

332. Pursuant to SORIEMC, the Aruban officials in charge of collecting the declaration forms must keep this information secret. Violation of this secrecy rule is sanctioned with a prison term of maximal one year and a fine of maximal AWG 10 000. The only exemption to this secrecy rule consists in sending the

declaration forms to the MOT that enters information in its database and that is afterwards in charge of managing the information following the same rules as the one applicable for unusual transaction reports (see Recommendation 26). Finally it should be noted that customs officials fall under the same general secrecy requirements of Article 62 and 63 of the State Ordinance Regarding Government Employment set for all civil servants.

Resources and professional standard

333. The Inspectorate of duties and excises is a part of the Tax and Customs department which resorts under the Ministry of Finance and Economic Affairs. The main task of the Customs Department is to control import, export and transit of goods. The Customs Department does not have law enforcement powers to investigate and prosecute offences under the Criminal Code Aruba and the aforementioned State Ordinances related to this issue, although certain of its officials have law enforcement authorities to investigate criminal infractions of the customs legislation. Therefore, the Customs Department coordinates closely with the Police and the Public Prosecutor's Office on such matters. Customs and tax authorities may participate in special case related task forces if a case involves a major violation of customs or tax legislation.

334. The Customs Department currently has 212 persons working for its organization, of which 172 persons are customs officers. Of the latter, 92 persons are in charge of the implementation of SR IX (being stationed at the harbor, airport and post office).

335. 53% of Aruba's customs officers are stationed at the harbours, the airport and post office. These customs officers work different shifts at the harbours and the airport. The post office is only open during normal office hours and therefore does not require staffing through shifts.

336. The daily management of the Customs Department is in the hands of the Head of Customs. As is the case with all government personnel, the Head of Customs and all other customs officials are appointed by state decree.

337. The yearly budget of the Customs Department is approved by the parliament upon proposal by the Minister of Finance and Economic Affairs as part of the total budget of the Ministry of Finance and Economic Affairs. The annual budget of the Customs Department from 2005 to 2008 has been established as follows:

Table 19. Annual Budget Customs Department

Year	Budget in AWG
2005	18 355 100
2006	19 606 200
2007	18 144 222
2008	20 218 700

Integrity of Competent Authorities

338. The staff have to abide by the rules of confidentiality as stated in their job description, and in Articles 62 and 63 of the State Ordinance Regarding Government Employment.

Training for Competent Authorities

339. The MOT Aruba has provided information to the Customs officials to familiarize them with the reporting obligation. In collaboration with the MOT and the Public Prosecutor's Office, working instructions were made up and given to each customs officer working at the harbour, airport and post office regarding the implementation of the SORIECM.

340. The MOT and the Public Prosecutor's Office also gave the customs officers involved different lectures on the interpretation of the different Articles of the SORIECM and how to put these into practice when encountering a case of false declaration or of failure to declare.

Statistics (applying R.32 to Customs Department):

341. The following statistics can be provided with regard to the reports filed and received by the FIU pursuant to the SORIECM:

Table 20. Reports filed and received by the FIU pursuant to the SORIECM

	2004	2005	2006	2007	2008*
Reports of Declaration	670	988	723	823	793

*621 of these forms were collected at the airport and 172 at the harbor.

2.7.2 *Recommendations and Comments*

342. Overall, the evaluation team does not regard the current system for detecting and preventing cross-border movements of currency to be comprehensive or effective in the fight against ML and TF. Considering that, according to the authorities, popular money laundering methods in Aruba involve the movement of cash to and from Aruba; the evaluation team urges the authorities to implement all elements of an effective system to deter illegal cross-border movements of currency.

343. Concerning the scope of the declaration requirements, Aruba should thus rapidly remedy its main deficiencies and extend its declaration system beyond currencies and include all bearer negotiable instruments as well as other means of payment, *e.g.* high value coinage. It should also consider extending the system to import of cash with the sole purpose of transit through Aruba.

344. Aruba should consider giving its Customs Services law enforcement powers to ensure that the Customs Services, which are the competent authority to collect the declaration forms, can also request and obtain further information from the carrier with regard to the origin of the currency or bearer negotiable instruments and their intended use.

345. Aruba is also strongly recommended to change its legislation in order to make it clear that the system is used for AML/CFT purposes. It should thus ensure that competent authorities should be able to stop or restraint currency or bearer negotiable instruments where there is a suspicion of ML or TF and even in the absence of false declaration or failure to declare.

346. In terms of organisation, Aruba should set out mechanisms to ensure domestic co-ordination among Customs service, the MOT, the police, the immigration department and other relevant departments. Furthermore, as in most countries physical cross-border transportation of currency and bearer negotiable instruments are under the control of Customs Service, Aruba should change its legislation to ensure that its

Customs Department can answer to international co-operation requests and have the possibility to conclude co-operation arrangements with foreign counterparts.

347. As for sanctions, the only sanctions currently available to deal with false declaration or failure to declare are penal sanctions with a maximum prison term of 4 years and a maximum fine of AWG 100 000. These sanctions can only be imposed by court decision but prosecution expires if the defendant voluntarily complies with the conditions set by an official designated by the Public Prosecutor in order to avoid prosecution. This system undermines the effectiveness of the sanction regime. Aruba should thus consider reviewing it.

348. Lastly, Aruba is recommended to increase the resources of the authority in charge with the implementation of the requirements set out in Special Recommendation IX. In particular, Aruba should ensure they are adequately staffed and trained and conscious that these requirements have for purpose to fight against money laundering and terrorist financing.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	NC	• The Declaration system is limited to bank notes above a threshold of AWG 20 000, but does not apply to other means of payments nor to bearer negotiable instruments. • The declaration requirements do not apply to import of cash with the sole purpose of direct transit. • The competent authorities cannot stop or restrain currency or bearer negotiable instruments where there is a suspicion of ML or TF. • Absence of adequate co-ordination among customs, immigration and other relevant authorities on issues related to the implementation of SRIX. • International co-operation and assistance is limited to co-operation between FIUs which the MOT has concluded MOUs with – No possibility to co-operate or exchange information between customs services. • In practice, the Customs Department does not have law enforcement powers to investigate false declaration or failure to declare. • Procedures used by Police to investigate a case of false declaration or failure to declare seem to be bureaucratic and slow. • Regarding false declarations offence, the right of prosecution expires by voluntarily complying with the condition set by the authorized official of the Public Prosecutor's Office. • Absence of assets freezing measures applicable to currency or bearer negotiable instruments that are related to terrorist financing. • Lack of effectiveness of the declaration system: o Lack of effectiveness of the declaration system for import and export of cash via shipping cargos. o Lack of training of Customs officials. o Insufficient number of dedicated AML/CFT staff at the borders. o Customs checks are made on an arbitrarily basis, which undermines their effectiveness.

3. PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

Scope Issue:

349. The scope of financial activities subject to AML/CFT requirements is very unclear and the amendments to the SOIPS and the SORUT adopted in February 2009 did not improve the clarity or readability of the system. The table provided by the authorities to the assessment team did not clearly and correctly set out which financial activities were covered by AML/CFT regime and under which legal provisions.

350. The State Ordinance on identification when providing service (SOIPS) requires designated service providers to identify their customers when providing a list of designated financial activities. Article 1 of the SOIPS designates the following financial service providers[5]: credit institutions (as defined by the SOSCS), life insurance companies and brokers and money transfer companies (as defined by the SOSIB and SOSMTC). It is important to note this dual requirement for the legislation to apply, namely it applies only to the three defined categories of "service provider" and only when they engage in one of the defined financial activities (see the paragraph below "service").

Financial service providers

351. As regards credit institutions, it is worth noting that the State Ordinance on the supervision of credit institutions (SOSCS) defines credit institutions as an "enterprise or institution whose business is to receive funds repayable on demand or subject to notice being given and to grant credits or investments for its account". The Aruban authorities explained that the definition of a credit institution contained in the SOSCS is based on the European Union definition, but that this does not cover non-banks. In addition, there are two financial institutions that would fall under the definition of credit institutions but which have obtained an exemption as meant in Article 48.3 of the SOSCS to grant consumer loans. Therefore, they are not considered as credit institutions and are not subject to AML/CFT requirements. One of these financial institutions is a company granting loans out of its equity, while the other one was established by State Ordinance. Moreover, according to Article 48.1 of the SOSCS, a natural person or legal entity who approaches the public in order to attract funds in the course of his or its occupation or business which funds in total or for each case of separate attraction, respectively, are below an amount of AWG 100 000 (USD 55 800)[6] or in order to grant credits in the course of his or its occupation or business, or in order to act as an intermediary in any way, falls outside of the scope of the credit institutions and is not subject to AML/CFT requirements. The State Ordinance of 5th February 2009 revising the SOIPS extended the scope of the definition of a service provider to include institutions created by State Ordinance that perform activities corresponding to those of a credit institution. However, no State Ordinance referred to in the SOIPS has been brought to the knowledge of the assessment team during the two months period following the onsite visit which does not allow the assessment team to know which institutions are covered by this new provision; hence this provision is not enforceable and has no value in the present assessment.

352. The SOIPS does not cover all the institutions that are providing the full range of financial activities listed by the FATF Glossary. In some cases this is because that type of financial service is not being provided in Aruba, however in relation to a significant number of types of financial activity, the activity does exist but the AML/CFT legislation, and in particular the SOIPS and regulatory requirements and oversight, do not apply or exist. The sectors that exist and appear to be operating but which are not or are not fully covered by the SOIPS are:

[5] There are other service providers listed but they are DNFBPs or other businesses.

[6] This threshold has now been increased to AWG 1 000 000 (USD 558 600).

- Financial guarantees and commitments: since the modification of the SOIPS, credit institutions are subject to AML/CFT requirements when they provide "loans, letters of credit or guarantees". Following the on-visit, assessors found that one company providing factoring services without recourse is operating on Aruba through a subsidiary of a foreign licensed financial institution. The assessors were informed by the CBA that factoring on a non-recourse basis does not fall under the scope of Article 48 SOSCS, nor under any AML/CFT requirements. The assessment team has been unable to measure the extent of this situation beyond this individual example.

- Trading in securities and other investment instruments – A capital market has been established in Aruba in May 2006 with the launch of the Aruba Stock Exchange. This sector, whether the listed companies, the investment intermediaries or those trading in the stock exchange market, is not regulated in Aruba nor supervised, nor subject to AML/CFT obligations. Although the 2000 State Decree provides that "conducting securities transactions" is a "service" as defined, since the obligations only apply to service providers providing the service, the SOIPS has no application. The website of the Stock Exchange website (www.aesx.com) states that it operates as a self regulatory body abiding by a rule book entitled "the Blue Book". The Blue Book however is unfortunately not publicly available information, therefore not available to assessors, so its contents remain unknown.

  The Aruba Stock Exchange appears to be an umbrella term for seven micro exchanges. The website states "Arubax offers a state of the art fully automated internet based trading system" "the platform provides a fully automated computerised trading environment in a range of instruments for securities trading only". This platform leads the investors to seven micro-exchanges, three of which appear to be currently real time trading. The seven micro exchanges are:

  – PPDAQ: This private placement exchange appears to be trading and states "Invest with us" "We are an electronic market that brings together the demand for equity of listed companies and the demand for investment opportunities".

  – MFDAQ: The Microfinance Capital Market exchange appears to be trading.

  – MXEX: The Micro Electronic Stock Exchange appears to be trading.

  – DCEX: The Dutch Caribbean Stock Exchange does not appear to be operational currently.

  – Carribond: This Caribbean bond exchange states that it is "an intra-institution secondary exchange market for regionally based holders of Caribbean Bonds" and does not appear to be trading.

  – UKDX: This exchange states it is a UK Development Exchange but does not appear to be trading.

  The listed companies on these various exchanges represent a wide range of activity, ranging from West African enterprises to those from the US, particularly Florida, and South America. Services offered by AESX include exchange control, monetary nominee holdings, share registration control, dematerialised nominee holdings and closed network communications.

- Financial institutions which participate in securities issues and provision of financial services related to such issues: following the onsite visit, assessors found that at least one financial

institution licensed and supervised in Curacao operates in Aruba through a non-bank subsidiary, offering investment services. Entities which invest, administrate or manage funds or money on behalf of other persons: they are 11 company pension funds licensed in Aruba and none of them are subject to the SOIPS or the SORUT. The CBA advises that it considers the activities of these pension funds are not high risk for ML/TF, since these funds do not attract third-party funds. However, Aruba has not conducted any ML/TF risk assessment as required by the FATF.

- Entities which issue or manage means of payment are not covered. Although the assessment team was told that this type of entity does not operate in the island, it was found that companies such as Diner Club have offices and appear to be doing business in Aruba.

- Entities that perform currency exchange transactions, except where they are performed by credit institutions or casinos. However, currency exchange services appeared to be provided by a wide range of non-banks including hotels, where substantial casino operations are conducted.

Services

353. According to the SOIPS, credit institutions, life insurance companies and brokers and money transfer companies are subject to CDD obligations when they provide any of the following list of designated financial services:

- Safekeeping of stock, banknotes, coins, currency notes, bearer negotiable instruments and other assets.

- Opening of an account.

- Renting out of a safety deposit box.

- Execution of payment concerning an account of the cashing of coupons or similar documents of bonds or similar securities.

- Crediting and debiting, or having credited or debited, an account.

- Issuing of loans and of letters of credit or guarantee.

- Providing a service concerning a transaction or apparently interrelated transaction having an equivalent or combined equivalent, equal to or exceeding an amount to be determined by Ministerial regulation. This Ministerial regulation established this amount to AWG 20 000.

- The conducting of securities transactions.

- The conducting of transaction in which payments are effected in or outside Aruba.

- The issuing or cashing of money order or similar intrinsic negotiable instruments.

- The currency exchange activities for an amount exceeding AWG 20 000 (around USD 11 000).

354. Again, the clarity and readability of this list of financial services is difficult. As a result, it appears that the following list of financial activities performed by credit institutions are not subject to the requirements of the SOIPS: financial leasing, the issuing and managing of means of payment, the trading

in money market instruments, foreign exchange, exchange, interest rate and index instruments and commodity future trading, the participation in securities issues and the provision of financial services related to such issues, the individual and collective portfolio management, the investing, administering and managing of funds or money on behalf of other persons.

355. According to the modified SOIPS, life insurance companies and brokers are subject to CDD requirements set out by the SOIPS when they take out a life insurance contract and when they provide brokerage to that effect, against a premium exceeding an amount to be determined by Ministerial regulation. The SOIPS limits the scope of life insurance intermediaries to brokers and excludes agents, and so far, this ministerial regulation mentioned in the SOIPS has not been adopted. However, the provisions of the State Decree defining additional financial services are contradictory with the range of financial activities subject to CDD under the SOIPS, as it provides that the entering into and the conducting of payment under an insurance contract with a pension clause, as well as the provision of intermediary services in this respect and the pledging and surrendering of life insurance contract or an insurance contract with a pension clause as well as the provision of intermediary services in this respect also fall within the scope of financial activities subject to the SOIPS. Therefore, it is unclear whether only life insurance brokers or also agents are subject to the provisions of the SOIPS. In addition, while the SOIPS limits the scope of insurance contract to the one exceeding an amount to be determined by Ministerial regulation, the State Decree does not state such a limitation. The scope of the obligations is thus quite unclear, and the industry certainly does not have a clear view of its obligations.

356. Lastly, according to the SOIPS and its related State Decree, money transfer companies are subject to CDD requirements when they conduct transactions in which payments are effected in or outside Aruba, without any threshold. On a literal reading this is so broad as to apply to all types of transactions anywhere which could not possibly be intended to be covered by the legislation *e.g.* the money transfer company buys a product in another jurisdiction for its business. Covering any transaction anywhere there is a payment has no useful or real meaning.

SORUT

357. The scope of the SORUT, which defines the unusual reporting obligations, is designed in a different manner than the one of the SOIPS. Thus, the reporting obligations do not fall on the financial service providers that perform a list of designated financial services, but on each and every person providing a designated financial service. Therefore, the scope of the SORUT is not limited to credit institutions, life insurance companies and brokers and money transfer companies, but extents to any natural or legal person even those that are not regulated. The scope of persons subject to a reporting obligation is thus much broader than the scope of service providers subject to CDD requirements, but the reduced CDD scope would certainly undermine the effectiveness of the reporting system.

358. It is also of concern that the lists of financial activities designated by the SOIPS on one side and by the SORUT on the other side are different. While the SOIPS includes the provision of services concerning a transaction or apparently interrelated transactions exceeding an amount to be determined by Ministerial regulation, the SORUT does not (though again, this "service" is worded so broadly as to be almost meaningless). Moreover, while the SOIPS limits the scope of life insurance products to a threshold, the SORUT does not. Equally, money and currency changing services are subject to a threshold in the SOIPS but not in the SORUT.

359. To conclude, the scope of the SOIPS that defines the CDD requirements remains unclear even after the modifications adopted in February 2009. The scope of the SOIPS is clearly insufficient relative to the list of financial activities designated by the FATF Glossary. There are the categories of activities that

exist but are not covered by the SORUT, and there are the difficulties with the "services" that are referred to, and the inconsistency between services as defined in the SOIPS and in the SORUT services. The scope of the SORUT may be broader as it is not limited to certain types of financial institutions, but the services listed are not formulated more clearly, and it is difficult to determine the meaning of some of them. These inconsistencies also raise the question of how the SORUT might interact with the SOIPS in practice.

360. In addition, and as a result of and linked to these scope issues, combined with issues related to inconsistencies of language, format and scope of the "directives" and "guidance" provided by the CBA, assessors believe that the private sector has considerable uncertainty regarding their AML/CFT obligations, the extent of these requirements, and the circumstances in which they are required to take particular measures.

Law, regulations and other enforceable means

361. The primary legislation requires the identification of the customer and the record keeping of this information, as well as the obligation to report unusual transactions to the MOT, but is entirely silent on the wider responsibilities of financial institutions in respect of customer due diligence. These issues are also not addressed in secondary legislation or other instruments that might constitute regulation. The CBA has published the CDD Directive for banks, the AML/CFT directive for insurance companies and Guidelines on the Conduct of Business by and the Administrative Organisation of Money Transfer Companies, accompanied with Operational and AML Guidelines for MTCs.

362. In order to determine whether these guidelines represent "other enforceable means" (OEM) in line with the FATF definition, a number of specific questions have been considered for each directive as follows:

CDD directive for Banks

Do the regulators have the statutory authority to issue such instruments, and for what purpose?

363. On 5 February 2009, Aruba modified the SOSCS, which sets out the regulatory and supervisory competence of the CBA over credit institutions. The new Article 19a of the SOSCS explicitly authorises the CBA to issue directives for credit institutions in the AML/CFT field. Before this modification in the legislation, the CBA had issued a CDD Directive for banks on the basis of Article 15 of SOSCS that allows the CBA to issue directives regarding the administrative organisation and management control of credit institutions. . The new SOSCS provides that this directive may regard the implementation of the provisions of other state ordinances. This directive is given or modified only after consultation of the representative organisation of credit institutions". However, Article IX of the Modification State Ordinance of 5 February 2009 that modified the SOSCS provides that the CDD Directive for banks as well as the directive for the issuance of Multi-purpose prepaid cards are still in force. As a result, the CBA has henceforth the statutory authority to issue AML/CFT directives or guidelines.

Does the CDD directive for banks address the FATF standard in specific terms and is the language "mandatory"?

364. It is worth noting that the CBA has issued this directive directly in English, because not all members of the senior management of the financial institutions are Dutch-speaking, leading to English being the primary business language among banks. Therefore the quality of the translation cannot be an issue. The language of the CDD Directive for Banks is strongly inspired by the General Guide to Account Opening and Customer Identification issued by the Basel Committee's Working Group on Cross Border

Banking. The directive contains both mandatory language and advisory and encouraging language. While in some areas, for the basic requirements such as customer identification, more mandatory language is used "banks need to" or "banks are not allowed to", the directive mostly has provisions containing more advisory language using the term "should". For example, it provides that "banks should develop clear customer acceptance policies".

365. Aruba has not demonstrated that the language "should" is meant to be mandatory. Although the representatives of the banks met by the assessment team said they regarded the directive as de facto mandatory, it was not clear that they were in fact implementing what is set out in the directive, and in the CBA's files reviewed by the assessment team, it appeared that certain banks did not implement the remediation plans issued by the CBA following the identification of shortfalls made by the banks. Therefore, even if the language was said to be "mandatory" by the banks, in practice it appears that some banks do not fully implement what is in the directive, and the supervisory weaknesses detailed below does not lead to the banks being encouraged to effectively implement the provisions of the directive. In addition, there are very few references made in the directive to the provision of the SOIPS, which would certainly strengthen the mandatory aspects of the directive's provisions.

Are there clear links between non-compliance with specific provisions of the CDD directive for banks and resulting effective, proportionate and dissuasive sanctions?

366. According to Article 10, the CBA may give a direction to a bank if it does not comply with the provisions set out by or though Article 19a, that is to say the CDD Directive for Banks. In this case, the bank must pursue the prescribed course of action within the period determined by the CBA. Article 11 of the new SOSCS also indicates that the CBA may withdraw a licence if the credit institution does not meet the provisions set out under Article 19a. However, in practice it appears that the CBA has limited its actions against credit institutions, which failed to comply with CDD directive for banks, to the sending of letters describing of findings of the onsite inspections and asking them to remedy these deficiencies. The Aruban authorities have not provided the assessment team with any further examples of sanctions, while the SOSCS authorises the CBA to take further steps.

367. Since the modification of the SOSCS on February 2009, the CBA has been given by Article 35a of the new SOSCS the authority to impose a penalty charge order for infringement of the provisions set by or though the SOSCS as well as administrative fines. The administrative fine is the financial penalty that can be imposed by the CBA to punish the offender, while the penalty charge order is a direction with a financial penalty charge attached if the direction is not complied with within a certain period. The same Article provides that further rules can be set out by State Decree, containing general measures, to determine the correct application of the authority to impose administrative sanctions, that is to say to determine how the CBA can impose these administrative sanctions. However, this State Decree has not been issued yet, and the authorities do not consider it essential.

368. The new SOSCS provides that the CBA has the authority to "bring to the notice of the public the fact for which the penalty charge order or the administrative fine was imposed". For this purpose, the Minister may adopt regulation concerning the exercise of the authority to publish the adoption of administrative sanctions. The Aruban officials also considered this ministerial regulation was not so far necessary, even if the provisions set out in the new SOSCS lack clarity on the decision making process and on the person subject to the administrative sanctions.

369. Lastly, according to Article 53 of the new SOSCS, acting intentionally in violation of the provisions set in or pursuant to Article 19a shall be liable either to imprisonment not exceeding 4 years or a fine not exceeded AWG 500 000, or to both.

370. As a result, the CBA has henceforth legally a number of powers to apply sanctions against banks which do not comply with a provision of the CDD Directive for banks. However, except for the authority to issue a direction to a bank, the decision making process to adopt other administrative sanctions (*e.g.* the administrative fine and the publication of the decision) has not been laid down. The sanctions process is not stepped. The explanation given to the assessment team on the CBA's sanction decision making process did not appear very relevant to the issues set our above. In addition, regarding the set of sanctions the CBA had at its disposal before February 2009, the CBA has not taken further actions than information letters against banks that fail to comply with the provisions of the CDD directive for banks than information letters, even where the on-site examination demonstrates the existence of major failures. Therefore, the assessment team had serious doubts as to the effectiveness of the system.

371. Moreover, the sanctions that the CBA can apply do not appear to be effective, proportionate and dissuasive and do not cover the range of sanctions described in the Methodology. All the sanctions are directed against the financial institution itself, and there are no sanctions against its directors, management or employees. In addition, the level of the maximum administrative fine (AWG 250 000 or around USD 140 000) is too low to be properly dissuasive for a bank, particularly in respect of the two offshore banks that belong to an international banking group.

372. To conclude, taking into account the accumulation of the weaknesses described above the assessment team is of the view that the CDD directive for banks, as well as the directive for Multipurpose Prepaid cards cannot be considered as other enforceable means.

AML/CFT directive for insurance companies

Do the regulators have the statutory authority to issue such instruments, and for what purpose?

373. Like the banking sector, the CBA previously issued its AML/CFT directive for insurance companies on the basis of Article 10 of the SOSIB relating to the management controls and administrative organisation, including the financial accounting system and the internal control. Since February 2009, the AML/CFT directive for insurance companies is based on the new Article 10 SOSIB relating to "the measures that must be taken to prevent ML/TF". Therefore, the CBA has the statutory authority to issue its AML/CFT directive for insurance companies. The same Article 10 adds that the CBA may issue instructions to an insurance company with regard to the way the AML/CFT directive should be implemented. The State Ordinance also foresees that the previous AML/CFT directive for insurance companies adopted by the CBA and updated in January 2009 is still in force.

Does the AML/CFT directive for insurance companies address the FATF standard in specific terms and is the language "mandatory"?

374. As indicated on its front page, this AML/CFT directive is largely based on the AML/CFT Guidance Paper adopted by the International Association of Insurance Supervisors (IAIS) in October 2004. While the SOIPS and the SORUT do not submit non-life insurance companies to AML/CFT requirements, the AML/CFT directive of the CBA also apply to them.

375. The directive mostly uses the term "should" or other forms of advisory or encouraging language, such as "insurers should realise" "should consider" and indirect requirements, like "FATF Recommendation requires". The assessment team was of the view that this language is not considered as a mandatory language in the Aruban context, but as an advisory or encouraging language. This conclusion is supported by the fact that the insurance companies' representatives that the assessment team met with were of the clear view that the AML/CFT directive is a guideline, rather than a mandatory requirement. This

view is also supported by the fact that the AML/CFT directive also extends to non-life insurance companies even though they are not legally subject to AML/CFT obligations under the Aruban law.

Are there clear links between non-compliance with specific provisions of the AML/CFT directive for insurance companies and any resulting effective, proportionate and dissuasive sanctions?

376. The CBA has at its disposal a range of sanctions available against an insurance company that fails to implement AML/CFT provisions. According to Article 15 SOSIB, the CBA can give the insurer a direction to comply with the AML/CFT directive. If within two weeks after the date of issuance of the direction, the CBA has not received a satisfactory answer from the insurer or if the CBA is of the opinion that the direction has not or not adequately been complied with, the CBA may notify the insurer that it will publish the direction in the Gazette or that it replaces the management of the insurance company. Finally, pursuant to Article 8, the CBA can revoke the licence of the insurance company if it fails to comply with the direction issued by the CBA. However, the assessment team has not been provided with any examples for sanctions against a life-insurance company.

377. Since February 2009, the CBA also has the power to impose administrative sanctions which are, (as for the banks), a penalty charge order and administrative fines of maximum AWG 250 000 (USD 140 000), as well as the publication of these sanctions. The amended SOSIB also provides that further rules may be defined by State Decree, containing general measures, to determine the conditions under which the CBA can impose these sanctions, but the Aruban authorities do not consider this as a pre-requisite.

378. As a result, there is no clear link between the identification of deficiencies of an insurance company and the authority to impose administrative sanctions, while this link clearly exists between deficiencies to comply with the provisions of the AML/CFT directive and the issuance of a direction by the CBA as well as the publication of this direction, the replacement of the management and the revocation of the licence. The administrative sanctions are not effective.

379. The assessment team is of the view that the range of sanctions available for the CBA, mainly the issuance of a direction and its publication, the replacement of the management and the revocation of the licence, is not effective, proportionate and dissuasive. In addition, so far, the CBA has not issued any direction for failure to comply with the AML/CFT directive nor any other sanction, while the insurance sector does not regard the AML/CFT obligations in the directive as a mandatory enforceable requirement.

380. To conclude, taking into account, the fact that (a) the insurance companies do not consider the directive as a mandatory enforceable requirement, (b) the AML/CFT directive for insurance sector also applies to non-life insurance companies which are legally not subject to AML/CFT State Ordinances in Aruba, (c) the sanctions are not effective, dissuasive and proportionate, (d) no sanctions have been applied in practice and (e) the decision making process to impose sanctions has not been laid down, the assessment team is of the view that the AML/CFT directive for insurance companies does not amount to other enforceable means.

Operational and anti-money laundering Guidelines for money transfer companies

Do the regulators have the statutory authority to issue such instruments, and for what purpose?

381. The CBA has pursuant to Article 6 the statutory authority to issue the AML/CFT directive as well as instructions to a money transfer company with regard to the way the directive should be implemented. Article XI of the Modification State Ordinance of 5 February that modified the SOSMTC

provides that the Operational and anti-money laundering guidelines for money transfer companies issued in 2005 are still in force and should be considered as the AML/CFT directive issued under Article 6 of the new SOSMTC.

Does the Operational and anti-money laundering guidelines for money transfer companies address the FATF standard in specific terms and is the language "mandatory"?

382. The Operational and anti-money laundering Guidelines are a very short text that address organisational and liquidity problems, as well as AML/CFT matters. This text states *inter alia* that money transfer companies should have a compliance officer responsible for the internal procedures of the company and for the training. The guidelines address the FATF standards both in mandatory and advisory language. For example, while each company should appoint a compliance officer, they are required to conduct enhanced due diligence on their correspondents (which is not a FATF requirement). In any event, these Guidelines are very general and only address the FATF standards very partially and incompletely.

Are there clear links between non-compliance with specific provisions of the Operational and AML Guidelines for MTCs and any resulting effective, proportionate and dissuasive sanctions?

383. Pursuant to Article 16 of SOSMTC, the CBA may give the company an instruction to follow a certain course of action in order to ensure that the deficiencies identified by the CBA are remedied. The company shall then comply with the instructions of the CBA within a reasonable term determined by the CBA. However, unlike the SOSIB for insurance companies, the SOSMTC does not detail the additional measures that the CBA could take if the company continues not to comply with its instruction. The Aruban authorities advised that the omission with respect to the SOSIB would be remedied soon. Nevertheless, it should be noted that article 29.3 of SOSMTC provides penal sanctions in case of failure to comply with the CBA's AML Guidelines for MTC.

384. Since February 2009, the CBA has the power to impose administrative sanctions which are, as for banks and insurance companies, a penalty charge order and administrative fines (AWG 250 000), as well as the publication of these sanctions. As for the previous State Ordinances described above, the State Decree to determine the conditions under which such sanctions can be imposed has not been created as the Aruban authorities consider it as optional. Therefore and since Aruba did not provide any sanction cases, the assessment team was unable to determine whether the CBA needs to issue an instruction to a money transfer company that fails to comply with AML/CFT measures prior to imposition of any administrative sanctions. More globally, the assessment team has not established a clear link between the identification of deficiencies and the authority to impose administrative sanctions. In addition, as for the range of sanctions available, the assessment team is of the view that they are not adequate, nor effective and proportionate. In practice, it appears that the CBA has limited its actions against MTCs, which seriously failed to comply with the provisions of the Operational and AML Guidelines for MTCs, to the sending of letters describing the findings of its onsite inspections. The Aruban authorities have not provided the assessment team with any further examples of sanctions, while the SOSMTC authorises the CBA to take further steps.

385. To conclude, taking into account, the fact that the Operational and AML Guidelines for money transfer companies does not really address the FATF standards and that there is no clear link between deficiencies to comply with the AML/CFT operational guidelines and the possibility to impose sanctions, which are themselves ineffective and inadequate, the assessment team is of the view that the Operational and anti-money laundering Guidelines does not meet the criteria for other enforceable means.

386. The set of directives or guidelines issued by the CBA do not constitute other enforceable means as defined by the FATF. However, the assessment team is of the view that the CBA has entered into a time

of transition with the introduction of new sanctions powers in February 2009, that should lead it to move forward to a more robust and effective supervisory regime. Nevertheless, Aruba has still lots of progress to make.

3.1 Risk of money laundering or terrorist financing

387. The authorities of Aruba have not carried out a comprehensive threat assessment. Reflecting this situation, the legislative and regulatory process has not set priorities based on an understanding of the risks. As a result, Aruba does not yet apply a risk-based approach in developing its AML/CFT standards. It is noted for example that AML/CFT preventive measures set out in the different applicable State ordinances do not include any provisions on reduced CDD measures. On the other hand, different sections of directives (CDD directives for banks and insurance) include a reference to a risk-based approach in relation to the customer due diligence process and it seems that financial institutions apply a risk-based approach to AML/CFT in practice. The lack of an overall risk assessment and reference to the risk-based approach in the legislation demonstrate that the scope limitations of the different AML/CFT State ordinances (*cf.* 3.2 i.) cannot be accounted for by choices made according to a risk-based approach.

388. It should be stated that the FATF Committee, as the coordinator of the implementation of the FATF Recommendations in Aruba, plans to carry out such a threat assessment in the future. In addition, the MOT is in charge of developing its own typologies on AML/CFT risk disseminated through regular newsletters to other governmental agencies and the private sector.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and Analysis

389. The following AML/CFT laws and regulations that should specifically be mentioned in this regard are:

- State Ordinance on the Identification for the Provision of Services (SOIPS).
- State Ordinance on the Reporting of Unusual Transactions (SORUT).
- Directive on Customer Due Diligence for banks (issued in December 2005 by the CBA).
- Directive for insurance companies on anti-money laundering and the combating of terrorism (issued in July 2003 and revised on 1 February 2009 by the CBA).
- Operational and anti-money laundering guidelines for Money Transfer Companies (issued in February 2005 by the CBA).

390. As explained above, the Directives and guidelines issued by the CBA are not considered as other enforceable means.

Recommendation 5

Anonymous and numerous accounts

391. There is no direct prohibition on opening anonymous accounts or accounts in fictitious names, but pursuant to the SOIPS financial institutions must identify their clients when providing designated financial services, including opening an account and exchanging currencies in excess of certain amounts. In addition, Article 4 SOIPS requires financial institutions to obtain proof of identity from (potential) customers before providing a financial service.

392. The existence of anonymous accounts is also prohibited due to the customer identification requirements contained in the CBA's Customer Due Diligence Directive for banks, however this does not have the status of other enforceable mean. Paragraph 14 of the CDD Directive for banks states that banks are not allowed opening anonymous or numbered accounts for their clients.

When CDD is required

393. According to Article 2 section 1 SOIPS, designated financial service providers must establish the identity of the client before entering into a relationship or rendering any of the designated financial services for a client in the following circumstances:

- When safekeeping of stock, when performing related to banknotes, coins, currency notes, precious metal and other assets.
- When opening an account in which an amount in money, stock, precious metals and other assets can be held.
- When renting out a safety deposit box.
- When making a payment on account of the cashing of coupons or similar documents of bonds, or similar securities.
- Crediting or debiting, or having credited or debited an account in which an amount in money, stock, precious metals and other assets can be held.
- The provision of loans, and of letters of guarantee or credit.
- When providing a service, not mentioned earlier, concerning a transaction or apparently interrelated transactions , equivalent or in total equivalent, equal to, or exceeding the amount of AWG 20 000 (Article 1 of the Ministerial Regulation pursuant to Article 1, paragraph b, sub 5 SOIPS) or when the amount of such transaction is not known.
- When conducting any transactions in which payments are effected in or outside Aruba.
- When conducting securities transactions.
- When issuing or cashing of money orders or similar intrinsic negotiable instruments.

- When exchanging Aruban florins and foreign currencies for an amount less than AWG 20 000 or the equivalent in foreign currency (Article 1 paragraph a State decree 1996 (SDFIR) pursuant to Article 1, paragraph b, sub 6 SOIPS), which is not in line with the FATF standard.

- The cashing of one or more checks for a total amount exceeding AWG 20,000 per transaction or the equivalent of this amount in foreign currencies (Article 1, paragraph b SDFIRS pursuant to Article 1, paragraph b, sub 6 SOIPS).

- When entering into or effecting payment under a life insurance contract.

- When pledging and surrendering a life insurance contract or an insurance contract with a pension clause, as well as when providing intermediary services in this respect.

- When providing a service concerning a transaction or apparently interrelated transactions which falls into the indicators issued under the SORUT by giving cause to presume that they might be connected to money laundering or can in any way be related to or may be used for the financing of presumable terrorism activities or organizations (Article 2, section 2, SOIPS).

394. Therefore, the SOIPS and its related State Decrees satisfactorily covers the obligation to identify the customer where financial institutions establish a business relationship or carry out occasional transactions above the applicable designated threshold of AWG 20 000 (*i.e.* USD 11 000). The State decree containing general enactments (2000) in implementation of the SOIPS also seems, if read literally, to encompass the situation of carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII. However, the Aruban AM/CFT regime does not cover properly other financial activities or circumstances where financial service providers should apply customer due diligence:

- The SOIPS provides that conducting any transactions in which payments are effected in or outside Aruba requires a financial service provider to establish the identity of a client. However, if understood in this way, this definition is extraordinarily broad and would seem to imply that every financial transactions and even certain service that are non financial in nature are covered even when they take place outside Aruba.

- The SOIPS does not cover the extent of the obligation to identify the client in situations where there is a suspicion of money laundering or terrorist financing.

- The SOIPS falls short of setting the obligation to identify the client in situations where the financial institutions have doubts about the veracity or adequacy of previously obtained identification data.

Identification and verification

395. According to the SOIPS, identification of the customer, either natural or legal persons, shall be based on official identification documents, a deed of incorporation or extract from the Chamber of Commerce or other competent authority.

396. According to Articles 2 and 3 SOIPS, financial service providers must establish the identity of their clients that are natural persons by means of one of the following documents:

- A valid driver's license.

- A valid Dutch passport.
- A valid identity card as issued by the Aruban Government.
- In the case of third country citizens, a valid passport of the country of origin of the client.

397. According to the SDFIR, these documents shall contain the following personal details of the bearer: surname, first names, date of birth, place of birth and gender. The document shall also contain a photograph and bear the signature of the bearer. The document shall state the country of issue, the authority that issued the document, the date and place of issue, the end of the period of validity of the document and its territorial validity.

398. Concerning customers that are legal persons, the SOIPS makes a clear distinction between legal persons established within the Kingdom of the Netherlands and legal persons established outside the Kingdom.

399. According to Article 3, section 2 SOIPS if the client is legally incorporated in the Kingdom of the Netherlands, the identity should be established by means of a certified extract of the register of a chamber of commerce within the Kingdom of the Netherlands or a deed of incorporation delivered by a notary established in the Kingdom of the Netherlands.

400. The data that should be included in the certified extract or the notarial deed is set out in a Ministerial Regulation pursuant to section 4 of Article 3 SOIPS, the Regulation Identification Requirements Legal Persons (RIRLP). According to the RIRLP the notarial deed should include at least the following information for legal persons incorporated in the Kingdom of the Netherlands:

- The legal form of the legal person (paragraph 1 a).
- The name of the legal person (as stated in the articles of incorporation) and the business name (paragraph 1 b).
- The actual place of domicile as well as the place of domicile given in the articles of incorporation (paragraph 1 c).
- The address or, if only a post office box number is used, this post box office, as well as the address and place of domicile of the contact person.
- The authority to represent the natural person who on behalf of the legal person is in contact with the financial service provider.

401. According to Article 3, section 3 SOIPS, if the client is a legal person domiciled outside the Kingdom of the Netherlands, the identity must be established by means of an authentic instrument drawn up by a competent authority of the country in which the legal person is domiciled, (deed of incorporation by a notary) or an extract from the register of the Chamber of Commerce in that country. This document should include at least the following information:

- The form of the legal person.
- The name of the legal person (as stated in the articles of incorporation) and the business name.

- The actual place of domicile and the place of domicile according to the articles of incorporation.
- The date of issuing of the articles of incorporation.
- The nature, information as well as the registration number of the document with which the representative of the legal person identified himself with before the competent authority issued the deed.
- The name, address and place of business, country as well as the capacity of the authority that issued the deed.
- The legal basis on which the authority based its competence to issue the deed.
- The names of the directors, the persons authorised to represent the legal entity, the supervisory directors and any authorised persons.
- The purpose of the legal person.

402. However, the RIRLP provides that if the information required to identify a legal person domiciled outside the Kingdom of Netherlands is not fully available in the extract of the foreign Clamber of Commerce or other competent authority, the following information shall at least be gathered:

- The date of the deed of incorporation.
- The names of the directors, persons authorised to represent the legal person, the supervisory directors and any authorised persons.
- The purpose of the legal person.
- The date of issuing of the extract.
- The address, place of domiciliation, and the country of issuance of the extract.

403. In this last case, the financial service providers do not have to gather information to verify the name of the legal person, its legal form, the nature and registration number of the document with which the legal person proves its identity before its Chamber of Commerce or other competent authority and the legal basis based on which the foreign Chamber of Commerce or other competent authority has issued the extract.

404. To conclude, the overall requirements to identify and verify the identity of a legal person do not seem satisfactory, as they only rely on the information contained in the deed of incorporation or the extract of the Chamber of Commerce. Therefore, financial service providers are not required to verify the identity of the directors and other authorised persons based on their personal identification documents, but just to collect their names. Equally, financial service providers shall identify the names of persons who are authorised to represent the legal persons and any other authorised persons. First, it was unclear to the assessment team who these authorised persons are. Second, the deed of incorporation, which is a static document, or the extract from the Chamber of Commerce which in practice is not kept updated, do not necessarily contain accurate and current information and do not constitute a document regulating the power to bind the legal person. Lastly, the Aruban legal framework does not contain any requirement in the case where the customer is a trust or other similar legal arrangement.

Customer acting on behalf of others

405. According to Article 2 SOIPS, if the client is a natural person who is legally incompetent to perform the legal acts related to the financial service, financial service providers shall determine the identity of the person who acts as the legal representative of the client. Despite the fact that the SOIPS does not detail how the person who acts on the behalf of another natural person shall be identified, it can be assumed that it is based on the same identification documents as for the client itself.

406. In addition, according to Article 4 SOIPS, the financial service provider shall ascertain whether the natural person appearing before him acts for himself or for a third party. In the event that the natural person acts for a third party, the financial service provider shall establish the identity of that third party by means of driver's licence, identification card or passport. Furthermore, if the financial service provider knows or should reasonably suspect that the natural person appearing before him acts for a third party, he shall take reasonable measures in order to find out the identity of this third party. Therefore, the Aruban legal framework requires the financial service provider to determine whether the natural person appearing before him is acting on behalf of another person. However, this requirement does not extend to cases where the customer is a legal person acting on behalf of another person.

Identification of beneficial ownership

407. For a customer that is a legal person, there is no requirement in the SOIPS or in its related State Decrees to identify and verify the identity of the natural person(s) who ultimately owns or controls the customer, and this information is not contained in the deed of incorporation or the extract of the Chamber of Commerce that the financial service provider is required to obtain to identify a customer that is a legal person. The lack of beneficial ownership requirements in the SOIPS is a serious deficiency.

408. However, the AML/CFT Directives of the CBA, which are not other enforceable means, advise the designated financial service providers with regard to legal persons to make every reasonable effort to determine the ownership or control structure of such a legal person. This includes those persons who exercise ultimate effective control over a legal person or arrangement.

409. According to the CDD Directive for banks, a bank should understand the structure of the company; determine the source of funds and identity of the beneficial owners and those who have control over the funds. Also, special care should be exercised in initiating business transactions with companies that have nominee shareholders or shares in bearer form. Satisfactory evidence of the identity of beneficial owners of all such companies needs to be obtained (paragraph 2.2.2 of said directive).

410. Pursuant to the AML/CFT Directive for insurance companies and with regard to legal persons and arrangements, insurers should take reasonable measures to understand the ownership and control structure of the customer (paragraph 3.2.1 of said directive).

411. The Operational and anti-money laundering guidelines for money transfer companies do not address the issue of the identification of the beneficial ownership and the control of a customer that is a legal person.

Purpose and nature of the business relationship

412. There is no requirement in the SOIPS and its related State Decrees for financial service providers to obtain information on the nature and the purpose of the business relationship.

413. However, according to the CDD Directive for banks, which is not other enforceable means, these institutions should obtain all information to establish to their full satisfaction the identity of each new

customer and the purpose and intended nature of the business relationship. The extent and nature of the information depends on the type of applicant (personal, corporate, etc.) and the expected size of the account. According to the AML/CFT directive for insurance companies, insurers should take customers due diligence measures that should include amongst others, obtaining information on the purpose and intended nature of the business relationship and other relevant factors in order to create or maintain a risk profile (paragraph 3.2.1 of the AML/CFT Directive for insurance companies). The Operational and AML/CFT Guidelines for MTCs do not contain any provision.

Ongoing due diligence

414. Financial institutions are not obliged by the SOIPS and its related State Decree to conduct ongoing due diligence on the business relationship.

415. However, the CBA's directives, which are not other enforceable means, contain some provisions. The CBA's CDD Directive for banks recommends banks to undertake ongoing monitoring to understand the normal and reasonable activity of their customers so that they have a means of identifying transactions which fall outside the regular pattern of an account's activity. The extent of this ongoing monitoring should be risk-based. The CDD directive for banks indicates that for all accounts, banks should have systems in place to detect unusual transactions patterns. This can be done by establishing limits for a particular class or category of accounts, and particular attention should be paid to transactions that exceed these limits. Furthermore, banks should intensify their ongoing monitoring for higher risk accounts, taking note of the background of the customer, its country of origin, the source of funds and the type of transaction involved.

416. The AML/CFT directive for insurance companies states that the companies should conduct ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the insurer's knowledge of the customer, their business and risk profile, including where necessary the source of funds. The extent of this ongoing monitoring is risk-based depending on the customer, the business relationship and the transactions.

417. Concerning the accuracy of the identification information collected at the entrance of the business relationship, Article 5 SOIPS requires financial service provider to verify the correctness of the data concerning the identity of a client or a third party if there is reason to do so. The verification shall then be recorded. Moreover, financial service providers shall oblige a client to promptly notify them of any changes in the documents or data through which the identity of this client or the third party he represents has been established. However, it was unclear how a financial service provider can oblige its client to notify it of any modification of its identification data. Furthermore, no obligations exist in law, regulation or other enforceable means with regard to undertaking reviews of existing records particularly for higher risk categories of customers or business relationships.

418. However, paragraphs 2.9 and 3.33 of the CDD Directive for banks and paragraph 3.3.1 the AML/CFT directive for insurance companies do address these issues. The CDD Directive for banks advises these institutions to undertake regular reviews of existing records to ensure that records maintain up-to-date and relevant (paragraph II under point 9 of said Directive). The banks are also asked to have intensified monitoring for higher risk accounts (paragraph 33 of said Directive). According to the AML/CFT Directive for insurance companies, insurers should ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of clients or business relationships (paragraph 3.3.1 of said Directive). The Operational and AML/CFT guidelines for MTCs do not contain provision with respect to on-going monitoring.

Enhanced due diligence

419. Although there is no risk-based approach in law, regulation or other enforceable means in Aruba, the CBA's CDD Directive for banks explicitly recommends that institutions develop clear customer acceptance policies and procedures, including a description of the types of customer that are likely to pose a higher than average risk to a bank. Furthermore, banks should perform enhanced due diligence for higher risk categories of customers, business relationship or transactions, in particular trust, nominee and fiduciary accounts, private banking, corporate vehicles, introduced business, professional intermediaries, politically exposed persons, non-face-to-face customers and correspondent banking. (paragraphs 2.2.1 to and 2.2.7 and paragraph 5 of the CDD Directive for Banks).

420. The AML/CFT Directive for insurance companies also urges institutions to perform enhanced due diligence for higher risk categories (paragraph 3.2.1 of said Directive). The risk profile of their customer depends on the type and background of customers and / or beneficial owner, their geographical base, the geographical sphere of the activities of the customer or the beneficial owner, the nature of activities, the means of payment, the source of funds, the source of wealth, the frequency and scale of activity, and the type and complexity of the business relationship.

421. With regard to enhanced due diligence, insurers are recommended to consider taking the following measures (paragraph 3.2.5 of said Directive):

- Certification by appropriate authorities and professionals of documents presented.
- Requisition of additional documents to complement those which are otherwise required.
- Performance of due diligence on the identity and background of the customers and/or beneficial owner, including the structure in the event of a corporate customer.
- Performance of due diligence on source of funds and wealth.
- Obtaining senior management approval for establishing the business relationship.
- Conducting enhanced ongoing monitoring of the business relationship.

422. The Operational and AML/CFT Guidelines for MTCs do not contain provisions recommending institutions to conduct enhanced due-diligence vis-à-vis their customers.

Reduced/simplified CDD

423. Aruba has not conducted an overall risk assessment and the SOIPS and its related State Decrees do not contain provisions on the basis of which financial service providers can apply reduced or simplified CDD measures. Likewise the CDD Directive for banks, the Operational and AML guidelines for money transfer companies do not contain provisions on the basis of which these financial institutions can apply reduced or simplified CDD measures.

424. On the contrary, the AML/CFT Directive for insurance companies, which is not enforceable means, states that in general insurers should apply the full range of CDD measures to a business relationship (paragraph 3.2.6 of said Directive). However, if the risk of money laundering or the financing of terrorism is lower based on the insurer's own assessment, and if information on the identity of the customer and the beneficial owner is publicly available, or adequate checks and controls exist elsewhere in

the system it could be reasonable for insurers to apply simplified or reduced CDD measures when identifying and verifying the identity of the customer, the beneficial owner and other parties to the business relationship. Furthermore, this directive gives examples, which are derived from the FATF-list of examples of customers where simplified or reduced measures could apply, namely:

- Financial institutions where they are subject to requirements to combat money laundering and the financing of terrorism consistent with the FATF Recommendations, and are supervised for compliance with those controls.

- Public companies that are subject to regulatory disclosure requirements.

- Government, administrations or enterprises. This last example could also apply to those foreign customers that are located in countries that do not effectively implement the FATF Recommendations.

425. The AML/CFT directive for insurance companies also accepts the implementation of simplified CDD or reduced measures for various types of products or transactions such as for example:

- Life insurance policies where the annual premium is no more than USD/EUR 1 000 or a single premium of no more than USD/EUR 2 500.

- Insurance policies for pension schemes if there is no surrender clause and the policy cannot be used as collateral.

- A pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme.

426. Nevertheless, when the insurance companies consider that there is a suspicion of ML or TF or when there is a presence of high risk scenario, the AML/CFT directive provides that the full range of CDD measures to a business relationship should then be applied.

427. However the AML/CFT directive for insurance companies is applicable to insurance companies but not to brokers, this does lead to a lack of clarity for the insurance sector itself. Moreover, this lack of clarity is reinforced by the fact that:

- The AML/CFT directive issued by the CBA directly is not consistent with the provisions of the SOIPS as the legislation does not contain provisions on the basis of which financial service providers can be partially or wholly released from their identification requirements.

- When the CBA supervises during its regular on-site examinations, it checks that insurance companies follow a risk based CDD approach that is in compliance with the CBA's AML/CFT Directive, but not with the SOIPS.

Timing of verification

428. Article 2, section 1 SOIPS requires financial service providers to establish the identity of the client prior to rendering one of the designated financial services, set out in Article 1 SOIPS. Article 8 of SOIPS prohibits a financial service provider from providing a financial service if the client's identity has not been established properly.

429. Therefore the Aruban legal framework theoretically prohibits financial service providers from completing the verification of the identity of the customer and the beneficial owner following the establishment of the business relationship. However, in practice, certain financial service providers such as life insurers cannot always complete the verification of the beneficial owner or the beneficiary of a life insurance policy at the commencement of the business relationship and therefore complete it afterwards. The Aruban authorities do not address this issue in the revised SOIPS of 5 February 2009 and continue to leave the private sector in a situation of uncertainty thus compromising the effectiveness of the overall system.

Failure to satisfactory complete CDD

430. Article 8 SOIPS prohibits financial service providers from providing a financial service if the client's identity has not been established in the manner as set forth in this State Ordinance. According to Article 1 SOIPS a financial service is defined as, among other things, the opening of an account and the provision of a service concerning a transaction.

431. According to the CDD Directive for banks, these institutions are recommended to establish a systematic procedure for identification of customers and should not establish a banking relationship until the identity of a new customer is satisfactorily verified (paragraph 7 of said Directive).

432. The AML/CFT Directive for insurance companies specifically states that in the event of failure to complete verification of any verification subject or to obtain information on the purpose and intended nature of the business relationship, the insurer should not conclude the insurance contract or perform the transaction, or the insurer must terminate the business relationship. Furthermore, the insurer should consider filing a suspicious transaction report to the FIU (the end of paragraph 3.2.1 of said Directive). However, the obligation to consider filing a suspicious transaction report to the FIU is not directly foreseen by the State Ordinance on reporting obligation (SORUT) that limits the obligations to report unusual transaction when the financial service providers meet identification problems to at least additional criteria of unusual transactions (*e.g.* unusual offer of terms, the account is being opened for and on the instructions of a non-resident of Aruba…).

433. Moreover, the Aruban AML/CFT regime does not foresee the possibility whereby a financial institution has already commenced the business relationship, but is subsequently unable to complete the verification of the identity of the customer or of the beneficial owner, as this situation should theoretically never happen since Article 8 SOIPS prohibits financial service providers from providing a financial service if the client's identity has not been properly established. However, in practice, financial service providers meet this situation but nevertheless are not required to terminate the relationship or to consider making an unusual transaction report, unless another criterion of suspicion appears.

434. When a financial institution has already commenced the business relationship, but subsequently has doubts about the veracity and adequacy of previously obtained information, Article 5 SOIPS requires the financial institution to verify the correctness of its data. Financial service providers are thus not required to terminate the relationship or to consider making an unusual transactions report, unless another criteria of suspicion appears.

Existing customers

435. The SOIPS does not contain any provision concerning the existing customers, except the fact that financial service providers shall verify the correctness of their data concerning the identity of their customers if there is reason to do so.

436. However, the CBA's CDD directive for banks and AML/CFT directive for insurance companies, which are not other enforceable means, advise banks and insurance companies to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships.

437. Pursuant to the CDD Directive for banks, these financial institutions should undertake regular reviews of existing records to ensure they remain up-to-date and relevant. The CDD directive for banks specifies that an appropriate time to do so is when a transaction of significance takes place or when there is a material change in the way the account is operated. However, if a bank becomes aware at any time that it lacks sufficient information about an existing customer, it should take steps to ensure that all relevant information is obtained as quickly as possible (paragraph 2 under point 9 of said Directive).

438. According to the AML/CFT Directive for insurance companies, insurers should apply the requirements for customer due diligence to all new customers as well as – on the basis of materiality and risk – to existing customers and/or beneficial owners. As to the latter, insurers should conduct due diligence at appropriate time. The directive directly refers to the examples given by the FATF AML/CFT Methodology 2004 and specifies that for the insurance sector, the trigger events occur in case of claims notification, surrender request and policy alteration, including change in beneficiaries (see paragraph 3.2.1 of said Directive). Furthermore, insurers should assess if the change/transaction does not fit the profile of the customer and/or beneficial owner or is for some other reason unusual or suspicious. The CDD program should also be established in such a way that insurers are able to adequately gather and analyze information. Examples of transactions or trigger events after establishment of the contract that should conduct insurers to apply CDD are:

- A change in beneficiaries (for instance, to include non-family members, or a request for payments to be made to persons other than beneficiaries).
- A change/increase of insured capital and/or of the premium payment (for instance, which appear unusual in the light of the policyholder's income or where there are several overpayments of policy premiums after which the policyholder requests that reimbursement is paid to a third party).
- Use of cash and/or payment of large single premiums.
- Payment/surrender by a wire transfer from/to foreign parties.
- Payment by banking instruments which allow anonymity of the transaction.
- Change of address and/or place of residence of the policyholder, in particular, tax residence.
- Lump sum top-ups to an existing life insurance contract.
- Lump sum contributions to personal pension contracts.
- Requests for prepayment of benefits.
- Use of the policy as collateral/security (for instance, unusual use of the policy as collateral unless it is clear that it is required for financing of a mortgage by a reputable financial institution.

- Change of the type of benefit (for instance, change of type of payment from an annuity to a lump sum payment).

- Early surrender of the policy or change of the duration (where this causes penalties or loss of tax relief).

- Request for payment of benefits at the maturity date.

439. It should be noted that the abovementioned list is not exhaustive; insurance companies should also consider other types of transactions or trigger events that are appropriate to their type of business (see paragraph 3.2.3 of the AML/CFT Directive for insurance companies).

Recommendation 6

Risk management systems

440. There is no provision in law, regulation or other enforceable means in Aruba with regard to politically exposed persons (PEPs).

441. However, the CDD Directive for banks and the AML/CFT Directive for insurance companies, which are not other enforceable means, identify PEPs as higher risk customers. The Operational and anti-money laundering guidelines for money transfer companies does not address the PEPs issue.

442. The CDD Directive for banks defines the PEPs as individuals who are or have been entrusted with prominent public functions, including heads of States or of Governments, senior politicians, senior government, judicial or military officials, senior executives of publicly owned corporations and important political officials. This directive focuses on – but is not explicitly limited to – countries where corruption is widespread. The CDD directive for banks adds that banks should also be careful in their relationships with persons or companies clearly related to the PEPs- which can be understood to cover close associates -, but does not explicitly mention family members. The directive recommends banks gather sufficient information from a new customer and to check publicly available information, in order to establish whether or not the customer is a PEP. Moreover, banks should develop clear policy to identify existing customers that become PEPs. In practice, one of the main Aruban commercial banks indicated using commercial electronic database with regard to its new customers.

443. Paragraph 3.2.5 of the AML/CFT Directive for insurance companies recommends insurers apply additional due diligence measures in relations to PEPs as defined by the FATF Glossary. The directive specifies that insurance companies should have appropriate risk management systems to determine whether a customer is a PEP. This directive does not specify the measures that insurers should undertake to seek relevant information from the customer and does not advise them to refer to publicly available information or to commercial electronic databases of PEPs.

444. Both AML/CFT directives for banks and insurance companies issued by the CBA only address the case where the customer or a relative is a PEP, but do not cover the case where the beneficial owner of a business relationship is a PEP. Moreover, even if the CDD directive for banks only recommends banks to pay attention to new customers, the AML/CFT directive for insurance companies does not specify if it applies to new or existing customers who are subsequently found to be or subsequently become a PEP.

Senior management approval

445. When a customer has been identified as a PEP, the CDD Directive for banks and the AML/CFT Directive for insurance companies recommend these financial institutions to obtain the approval of senior management for establishing business relationship with PEPs (paragraph 24 of the CDD Directive for banks and paragraph 3.2.5 of the AML/CFT Directive for insurance companies). However, these two directives do not foresee the case where an existing customer would be a PEP and thus does not recommend senior management approval for continuing the business relationship.

Source of funds and source of wealth

446. Pursuant to the CDD Directive for banks, these financial institutions should only investigate the source of funds before accepting a PEP as a customer (paragraph 24 of said Directive), while the AML/CFT Directive for insurance companies recommends insurers to take reasonable measures to establish the source of wealth and source of funds. The MTC guidelines do not contain a similar obligation. It should be noted that these measures only apply to new customers and not to the beneficial owner.

Ongoing monitoring

447. Overall, there is no provision in law, regulation or other enforceable means in Aruba requiring financial institutions to conduct ongoing monitoring. Therefore, there is no provision related to the conduct of ongoing monitoring of PEPs' accounts.

448. However, the CDD Directive for banks requires banks to develop clear policies and internal guidelines, procedures and controls, and to remain especially vigilant with regard to business relationships with PEPs, and with high profile individuals or with persons and companies that are clearly related to or associated with them. Furthermore, as all PEPs may not be identified initially and since existing customers may subsequently acquire PEP status, banks should undertake regular reviews of at least the more important customers (paragraph 33 of said Directive).But, as previously explained, this would not conduct to ask for the approval of senior management to continue the relationship with a customer that has become a PEP. The AML/CFT Directive for insurance companies recommends insurers conduct enhanced ongoing monitoring of the business relationship with customers identified as PEPs (paragraph 3.2.5 of said Directive). However, the directive does not specify if the ongoing monitoring should also detect existing customers becoming PEPs.

Additional elements

449. The definition of PEP in the insurance directive only covers foreign PEP, and the CDD directive for banks focuses on countries where corruption is widespread. Therefore, domestic PEPs are not covered by the directives issued by the CBA.

450. Aruba being part of the Kingdom of Netherlands, the UN Convention against Corruption came into force in October 2006. Thus corruption and bribery are criminalised in the CrCA. Additional legislation is being prepared to regulate the civil and personnel aspects of corruption as required by this convention.

Recommendation 7

451. The SOIPS and its related regulations do not cover the issue of cross-border correspondent banking and other similar relationship. However, the CDD directive for banks, which is not enforceable means, contains provisions to assist banks to apply appropriate additional CDD in these situations.

452. Pursuant to paragraph 29 of the CDD Directive for banks, banks should gather sufficient information about their respondent banks to fully understand the nature of the respondent's business. Factors to consider include information about the respondent bank's management, its major business activities and its locations, its money laundering prevention and detection efforts, the purpose of the account, the identity of any third party entities that will use the correspondent banking services, and the condition of bank regulation and supervision in the respondent's country. Banks should only establish correspondent relationship with foreign banks that are effectively supervised by the relevant authorities.

453. Respondent banks should have effective customer acceptance and KYC policies and controls in place, but the obligation to assess the respondent bank is limited to the extent that banks do not have to ascertain that these controls are adequate and effective.

454. Banks should also refuse to enter into or to continue a correspondent relationship with a respondent bank incorporated in a jurisdiction in which it has no physical presence and which is unaffiliated with a regulated financial group (shell banks). Furthermore, banks should pay particular attention when continuing a relationship with correspondent banks located in jurisdictions that have poor KYC standards or have been identified as being "non-cooperative" in the fight against anti-money laundering (paragraph 30 of said Directive). This last provision softens the impact of the Directive's recommendations.

455. There is no specific provision in the CDD directive for banks to obtain approval from senior management before establishing new correspondent relationship, nor for documenting the respective AML/CFT responsibilities of the correspondent and respondent banks.

456. With respect to "payable through" accounts the CDD Directive for banks states that these arrangements give rise to most of the same considerations applicable to introduced business. It was not clear to the assessment team whether Aruban banks in practice enter onto arrangements involving "payable through accounts". Banks should thus use the following criteria to determine whether the *respondent bank in this case* can be relied upon:

- It must comply with the minimum customer due diligence practices identified in the CDD directive (which are not in compliance with the obligations set out in the FATF Recommendation 5).

- The customer due diligence procedures of the *respondent bank* should be as rigorous as those which the bank would have conducted itself for the customer.

- The bank must satisfy itself as to the reliability of the systems put in place by the *respondent bank* to verify the identity of the customer.

- The bank must reach agreement with the *respondent bank* that it will be permitted to verify the due diligence undertaken by the *respondent bank* at any stage.

- All relevant identification data and other documentation pertaining to the customer's identity should be immediately submitted by the *respondent bank* to the bank, who must carefully review the documentation provided.

457. In addition, banks are required to conduct periodic reviews to ensure that a *respondent bank* which it relies on will continue to conform to the criteria set out above.

458. The due diligence that banks should then apply seems very broad and cause doubts about their effective implementation. Indeed, it does not seem reasonable for a bank that maintains "payable-through account" to obtain all relevant and other documents pertaining to the customers' identity and to carefully review this documentation provided. However, the CBA advises that in practice payable trough accounts are not maintained by banks in Aruba so far as the authorities are aware.

Recommendation 8

459. The SOIPS does not contain specific provisions to prevent the misuse of technological developments in money laundering or terrorist financing scheme, including with regard to non-face to face business relationships or activities, as this State Ordinance is meant to regulate face to face financial service provision. In other words, if read literally, Articles 4 and 8 SOIPS, which prohibits the provision of a financial service when the identity of a client cannot be determined as prescribed by the SOIPS, prohibits non-face to face relationships at the beginning of the business relationship.

Banking sector

460. However, the CDD directive for banks, which is not enforceable means, recognises the possibility of non-face-to-face relationships, such as the conduct of electronic banking via the Internet or similar technology. In these situations, banks should proactively assess various risks posed by emerging technologies and design customer identification procedures with regard to such risks. The directive sets out that in accepting business from non-face-to-face customers, banks should apply equally effective customer identification procedures for non-face-to-face customers as for those available for interview and there should apply specific and adequate measures to mitigate the higher risks, including by:

- Asking certification of documents presented.
- Requiring additional documents to complement those which are required for face-to-face customers.
- Developing independent contact with the customer.
- Requiring the first payment to be carried out through an account in the customer's name with another bank subject to similar customer due diligence standards.

461. However, the CDD directive for banks only focuses on the higher risked non-face-to-face relationships, but it does not stipulate that all non face-to-face relationships are high risk. Furthermore, the ongoing monitoring of non-face-to-face relationships and transactions is not addressed by the directive.

Insurance sector

462. The AML/CFT directive for insurance companies, which is not enforceable means, states that new technologies can be used to market insurance products, *e.g.* for sales purpose. Although a non-face-to-face customer can produce the same documentation as a face-to-face customer, the directive acknowledges that it is more difficult to verify their identity. Therefore, in accepting business from a non-face-to-face customer, an insurer should use equally effective identification procedures as those available for face-to-face customer acceptance, supplemented with specific and adequate measures to mitigate higher risk. The AML/CFT directive for insurance companies does not specify the nature of these measures and only refers to the higher risk non face-to-face customer. Moreover, the directive does not provide that insurers should also conduct specific ongoing due diligence on these relationships or transactions.

Prepaid cards

463. The CBA introduced a new Directive on the issuing of multipurpose money cards, which became effective September 1, 2007. This Directive is not other enforceable means. The purpose of this directive is to elaborate on the characteristics and potential money laundering and terrorist financing risks of prepaid cards and to outline the CBA's policy stance with respect to the issuing of multipurpose prepaid cards by commercial banks in Aruba. The directive provides the minimum conditions that commercial banks are required to adhere to when issuing personalized and non-personalized (bearer) multipurpose prepaid money cards (MPC). These conditions are the following:

- Identification: Proper identification procedures have to be in place with regard to personalized/bearer cards; additionally with regard to bearer cards, in case a person wishes to purchase more than one card, the reasons thereof have to be disclosed by this person in writing. The bank in question has to review whether the reasons given are plausible and, if not, file an unusual transaction report with the FIU. However, the Ministerial Regulations defining criteria for unusual transactions that should be reported to the FIU does not cover this case and therefore banks would not benefit from the safe harbor provision.

- Value limits: With regard to personalized cards, the maximum value held in the card account is set at AWG 1 800 (USD 1 000). With regard to bearer cards, the maximum value held in the card account is set at AWG 900 (USD 500).

- Methods of funding: Reloading personalized cards is allowed at the issuing commercial bank, but needs to be monitored strictly. Reloading of bearer cards is not permitted.

- Geographical limits: With regard to personalized and bearer cards, the usage of MPC's outside the Kingdom of the Netherlands is only allowed for cards that feature a MasterCard, Visa or other logo from a well-established international credit card company.

- Usage limits: With regard to personalized cards the usage is restricted to point-of-sale (POS), secured internet purchases and Automatic Teller Machine (ATM) networks. A card/account block feature is required. With regard to bearer cards, direct cash access via ATM is not permitted. A card/account block feature is required.

- Customer Due Diligence Directive: Furthermore, the requirements laid down in the Bank's Customer Due Diligence Directive for banks, insofar applicable, have to be observed.

3.2.2 Recommendations and Comments

464. The current State Ordinance providing rules concerning the identification in providing services (SOIPS) does not sufficiently define the scope of financial services subject to AML/CFT requirements, or the scope of financial service providers subject to SOIPS. Aruba should urgently identify all the financial services designated by the FATF that are provided within its territory as well as all the financial services providers and integrate them within the revised State Ordinance. Equally, Aruba should urgently harmonise and clarify the scope of the State Ordinance concerning identification in providing services (SOIPS) and the scope of the State Ordinance concerning the obligation to report unusual transactions (SORUT) when providing services.

Recommendation 5:

465. The current SOIPS requires customer identification explicitly. However, the requirements concerning legal persons are limited, since the SOIPS does not set out requirements to identify and verify the identity of the ultimate beneficial owner of the business relationship or to understand the control structure of these customers. As Aruba accepts foreign trusts or similar legal arrangements that operate within its territories, the SOIPS should also contain rules to identify these arrangements. Moreover, it is recommended that Aruba does not limit the obligation of identification of legal persons and verification of the identification data of financial institutions to the deed of incorporation or the extract from the Chamber of Commerce, but should ensure that up-to-date record of ownerships and control are verified.

466. Financial service providers are only required to identify their customer when providing a certain number of financial services. It is recommended that the revised State Ordinance to be adopted by Aruba clearly requires financial service providers to undertake CDD measures when there is a suspicion of ML and TF, regardless of any exemptions or thresholds and when financial institutions have doubts about the veracity or adequacy of previously obtained CDD.

467. Globally the SOIPS merely addresses the issue of the identification of customers, but does not set out provision on the other aspects of customer due diligence. For example, there is no requirement to conduct ongoing due diligence on the business relationship for AML/CFT purposes, nor to understand the nature and purpose of the business relationship, or to apply enhanced or simplified CDD. Aruba should urgently remedy to these deficiencies and should also revise the AML/CFT directives issued by the CBA to ensure that they are consistent with the requirements set out in the SOIPS and its related Decrees.

468. The rules concerning the timing of verification of identification information are very strict as financial service providers are prohibited from providing services if the client's identity has not been established properly, *i.e.* if the verification of identification documents has not been performed. However, there are situations where it may be essential not to interrupt the normal business relationship. In these cases, financial service providers currently do not fully respect the requirements set out in the State Ordinance. Aruba should remedy this situation and clearly detail the rules that financial service providers should follow in this respect. Equally, when financial service providers fail to identify their customer, Aruba should clearly state that they should consider making a suspicious transaction report.

Recommendation 6:

469. There are no requirements in the SOIPS or its related regulations in relation to PEPs. The AML/CFT directives for banks and insurance companies issued by the CBA contain measures on PEPs but cannot be considered as other enforceable means. Moreover, the scopes of these directives are limited to banks and insurance companies and no requirements are enforceable for other financial service providers, for example life insurance intermediaries or money transfer companies. Furthermore, the measures provided by CBA's directives need to be strengthened. The obligation to determine whether a customer is a PEP should not only cover new customers but should also be extended to their beneficial owners as well as existing customers. The definition of PEPs should also apply to PEPs' family members. In addition, procedures to be undertaken by obliged parties in relation to PEPs should comprise senior management approval for accepting or maintaining such relationship and enhanced ongoing monitoring of the business relationship. There are no obligations for MTC with regard to PEPs.

Recommendation 7:

470. There are no requirements in the SOIPS and its related regulations in relation to cross-border correspondent banking and other similar relationships. The CDD directive for banks issued by the CBA contains some provisions on cross-border correspondent banking but it cannot be considered as other enforceable means. The CBA's directive allows banks to deal with cross-border correspondent banking, but it should be updated and reinforced to clearly require banks to assess their respondent institution's AML/CFT controls and ascertain that they are adequate and effective. Banks should also be required to document the respective responsibilities of each institution and obtain the approval of senior management before establishing such business relationship. Moreover, as a matter of effectiveness concerning the "payable-through accounts", the CBA directive should not recommend banks to obtain and carefully review all the relevant identification data of each customer, but should be recommended to focus on the most risky. It is strongly recommended that Aruba implement Recommendation 7.

Recommendation 8:

471. There are no requirements in Aruban State Ordinances and their related regulations to prevent the misuse of technological developments in ML and TF. On the contrary, while the State Ordinance *de facto* prohibits relationships with non face-to-face customers, the AML/CFT directives for banks and insurance companies issued by the CBA acknowledge the possibility of such relationships and provide these financial institutions with requirements. However, these guidelines are not enforceable and limited to banks and insurers. They only cover higher risk non face-to-face customers and they do not address the monitoring of such relationships or transactions. Aruba is strongly recommended to avoid contradictions between requirements of different levels and should enforce procedures in relation to new technology developments.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	NC	• The full scope of financial services is not covered by the CDD obligations: o Consumer credit and loans provided by financial institutions not falling under the definition of credit institutions o Financial guarantees and commitments performed by non-credit institutions; o Issuing and managing of means of payment o Trading in money market instruments, foreign exchange transactions, exchange, interest rate and index instruments and commodity future trading o Participation in securities issues and provision of financial services related to such issues o Individual and collective portfolio management o The investing, administering and managing of funds, money on behalf of other persons (including the companies pension funds) o Foreign currency exchange transactions, except where conducted by credit institutions • Certain categories of financial service providers are not covered by the scope of the SOIPS: o Intermediaries operating on the stock exchange market of Aruba, which is

	Rating	Summary of factors underlying rating
		neither regulated or supervised ○ Life insurance agents ○ Currency exchange transactions performed by other entities than credit institutions • Money and currency change performed by banks is covered only below the threshold of AWG 20 000 • There is no clear obligation to identify customers in situations of occasional transactions covered by SRVII • There are no obligations in law or regulation to identify the client when the financial institutions have doubts about the veracity or adequacy of previously obtained identification data • Financial institutions are not required to identify the client in situation where there is a suspicion of ML or TF • Identification of legal persons is based on potentially inaccurate documents and financial institutions are not obliged to verify the identity of the directors of legal persons • There are no provisions on the identification of customers that are foreign trusts or other similar legal arrangements • There is no obligation to identify legal person in circumstances when a legal person is acting on behalf of another person • Financial institutions are neither required to understand the ownership and control structure of the legal person/legal arrangement customer nor obliged to determine who are the beneficial owners (*i.e.* natural persons that ultimately own or control the customer) • There are no requirements to obtain information on the purpose and nature of the business relationship • There are no requirements to conduct ongoing monitoring on the business relationship and transactions • There are no requirements to apply enhanced due diligence for high risk business relationships • There are no requirements for financial institutions to consider making suspicious transaction report when they fail to identify and verify the identity of customer • There is no obligation to apply CDD requirements to existing customers on the basis of materiality and risk The effective implementation of the requirements that exist is undermined by factors such as: • The definition of financial services subject to AML/CFT obligations is vague, thus making it unclear for financial institutions if they are subject to AML/CFT requirements • The SOIPS and the SORUT are inconsistent in terms of the scope of the services they cover • The SOIPS does not allow financial institutions to complete the verification of the identity of their customers and beneficial owners during the course of establishing a business relationship, while in practice some financial institutions have recourse to this practice • The provisions of the AML/CFT directive for the banking and insurance sectors to a certain extent contradictory with the provisions of the SOIPS • Although financial institutions are not permitted to apply reduced or simplified CDD where

	Rating	Summary of factors underlying rating
		there are lower risks, the directives, which are not enforceable means, allow it, thus leading to a lack of clarity and some implementation problems.
R.6	NC	• There are no requirements to apply any additional CDD requirements vis-a-vis PEPs.
R.7	NC	• There are no AML/CFT requirements vis-a-vis cross-border correspondent banking.
R.8	NC	• There are no requirements to safeguard against misuse of technological developments.

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

472. There are no requirements in law, regulation or other enforceable means in relation to introduced business. On the contrary, financial services providers are required to perform by themselves their due diligence as Article 8 of SOIPS provides that they are prohibited from providing financial services if the client's identity has not been established in the manner as set forth in the SOIPS which focuses on face-to-face relationships.

473. However, the CBA's CDD Directive for banks acknowledges the possibility of introduced business by third parties and provides banks with procedures, even though the CDD Directive for banks is not considered to be other enforceable means (cf. 3).In that context, banks should carefully assess whether the intermediaries and third parties are 'fit and proper". The CDD directive for banks states that an introducer can be relied upon when:

- It complies with the minimum customer due diligence identified in the directive.
- Its CDD procedures are as rigorous as those which the bank would have conducted itself for the customer.
- The bank is satisfied as to the reliability of the introducer's system put in place to verify the identity of the customer.
- It immediately submits to the bank all relevant identification data and other documentation pertaining to the customer's identity.

474. The bank should then reach an agreement with the introducer that it will be permitted to verify the due diligence undertaken by the introducer at any stage and should also carefully review all relevant identification data submitted by the introducer as the directive specifies that the ultimate responsibility for knowing customers always lies with the banks. In addition, banks should conduct periodic reviews to ensure that an introducer which it relies on continues to conform to the criteria set out above.

475. As set out above, the CDD directive for banks issued by the CBA contradicts the provisions of the State Ordinance, which inevitably impacts the effectiveness of the overall regime, in particular by undermining the private sector's understanding of its obligations.

476. Moreover, the CDD directive for banks does not require banks to verify that the third party is regulated and supervised effectively and no limitation is foreseen with regard to which countries the

introducer can be based in. There are also no provisions for banks to take into account information available regarding whether the countries adequately apply the FATF requirements.

477. The AML/CFT directive for insurance companies issued by the CBA does not provide the insurer with any guidance in relation to introduced business while the assessment team was told that in practice insurance companies do frequently obtain customers introduced by brokers and that they rely on the brokers.

478. The CBA directive for money transfer companies does not address the issue of third party introduced business.

3.3.2 Recommendations and Comments

479. Aruba is strongly recommended to harmonise the provisions of its State Ordinance and related regulation with those of the CBA's directive to avoid any contradictions between these texts and clarify which requirements financial institutions are subject to. In addition, Aruba should consider authorising in particular insurance companies to rely on other financial institutions to carry out CDD for them subject to the required safeguards. With regard to banks, some important elements implementing R. 9 are contained in the CDD directive for banks, which however does not qualify as other enforceable means and should thus urgently be upgraded to this status (cf. 3 "Law, regulation and other enforceable means"). Moreover, the provisions of the CDD directive should be reinforce to limit the possibility to rely on third parties to those which are regulated and supervised and located in countries that adequately implement the FATF Recommendations.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	NC	• There are no provisions to make reliance on third parties subject to the requirements of Recommendation 9, even though reliance on third parties is applied in practice by financial institutions, including banks, based on provisions set out in the CDD directive for banks issued by the CBA.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

480. Aruba has normal bank-customer confidentiality. The sharing of information by the CBA with other financial supervisors is allowed under the different supervisory State Ordinances, (specifically Articles 34 SOSCS, 24 SOSIB and 20 SOSMTC), provided that certain conditions are met, inter alia:

- Furnishing hereof, in reason, is not or could not be contrary to the interests which the State Ordinances in question seek to serve.
- The CBA ascertains itself of the purpose for which the data or information shall be used.
- Sufficient safeguards are in place to ensure that the data or information will not be used for a purpose other than that for which they have been furnished, unless permission has been obtained from the CBA in advance for that particular use of the data or information.

- The secrecy of the data or information is sufficiently safeguarded by the receiving agency.

- Data and information can be exchanged on a basis of reciprocity.

481. There is some lack of clarity on the extent and effect of Article 286 of the Criminal Code, which criminalises the fact of revealing secret details regarding an enterprise of commerce or industry where a person is employed or was employed. This article is particularly relevant for employees of financial institutions and this provision is not part of the same harbour measures instituted by the SORUT (cf. section 3.7 of this report). In effect this operates as a financial institution secrecy law. In relation to the banking sector, customer contracts with banks include a clause to exchange information, which covers the scope of information that needs to be exchanged according to SR VII. However, it is unclear whether this situation also applies to money transfer companies. Although, the Aruban authorities are of the view that such an information exchange may be possible, the assessment team is not convinced that money transfer companies are able to exchange information in accordance with SR. VII.

482. Noteworthy is also that in December 2005 a memorandum of understanding was signed between the CBA and the FIU on the exchange of information on money laundering and terrorist financing.

3.4.2 Recommendations and Comments

483. Aruba should clarify the legal situation so that it is clear that money transfer companies are allowed to share information in a SR.VII scenario with competent authorities.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	LC	• It is unclear whether MTC's are able to exchange information according to the requirements of SR VII. • Although financial institutions are allowed to share information with the CBA by State Ordinance, Article 286 of the Criminal Code criminal criminalises the fact of revealing secret information.

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and Analysis

Recommendation 10

484. Pursuant to Article 7 SOIPS, financial service providers are required to keep in an accessible way, for five years, the following data as set out in Article 6:

- The name, the address and the place of residence, or registered office of the client and of the person in whose name the account or the deposit is registered, or of the person who will have access to the safety deposit box, or of the person in whose name a payment is made or a transaction is effected, as well as their representatives.

- The nature, the number, if possible, and the date and place of issue of the document by means of which the identification was established, except when Article 5 is applicable.

- The nature of the financial service.
- The identification data of the person a customer is acting on behalf of.
- In case of taking assets into custody, the assets, the value represented by these assets at the moment of taking them into custody, or, in the event that the value represented by these assets cannot be determined in reason, an accurate description of these assets and the account number in question.
- In case of opening an account or a deposit: a clear description of the type of account or deposit, and the number given to this account or this deposit.
- In case of renting out a safety deposit box: the number or another distinguishing indication of the safety deposit box in question.
- In case of making payments on account of cashing coupons or similar documents of bonds or similar securities: the amount involved in the transaction, and the account number in question.
- In case of a financial service concerning a transaction or interrelated transactions exceeded an amount of AWG 20 000: the amount involved in the transaction, and the account number in question.
- In case of other financial services defined in SDDFS, such as such as money and currency changing and transfer of money or value: the data related to this service.
- All transactions, as well as all correspondence related to transactions.

485. The starting point of this five year period is the moment when (1) the business relationship is finished or (2) when the transaction is performed. The CDD Directives for banks, insurers and money transfer companies also contain measures on record keeping.

486. However, the record keeping obligation contained in the law seems limited to keeping copies of identification documents and amount of transactions. There is no obligation to keep record of the transactions in a way to permit reconstruction of individual transactions, in particular in case of occasional transactions.

487. According to the CDD Directive for banks, these institutions are required to develop clear standards on what records must be kept on customer identification an individual transactions and their retention period. The CDD Directive explicitly states that such a practice is essential to permit a bank to monitor its relationship with the customer, to understand the customer's on-going business and, if necessary to provide evidence in the event of disputes, legal action, or a financial investigations that could lead to criminal proceedings (paragraph 11 of said Directive). As the starting point and natural follow-up of the identification process, banks should obtain customer identification papers and retain copies of them for at least 10 years after an account is closed. They should also retain all financial transaction records for at least 10 years after the transaction has taken place.

488. The AML/CFT Directive for insurance companies asks insurers to keep records of the risk profile of each customer and/or beneficial owner and of the data obtained through the CDD process (*e.g.* the name, address, the nature and date if the transactions, the type and identifying number of any account involved in the transaction), official identification documents and the account files and business

correspondence , for at least 10 years after the end of the business relationship (paragraph 3.3.1 of said Directive).

489. According to the Operational and AML guidelines for money transfer companies, these companies should save details of the transactions for at least 10 years (paragraph 9 of said guidelines).

490. As regard the availability of all CDD and transaction information for domestic authorities, the SOIPS only provides that information must be kept in an accessible way. However, the SOIPS does not specify that this information should be made available to competent authorities on a timely basis

Special Recommendation VII:

Originator information

491. The SOIPS and its related regulations do not contain specific requirements in relation to cross-border and domestic wire transfers between financial institutions. However, even if the SOIPS and the SDDFS are unclear, transactions in which payments are effected in or outside Aruba are subject to identification requirements in accordance with Articles 3 and 4 of the SOIPS. As previously noted this requirement is a broad reaching but valid requirement, financial service providers are required to identify their client when conducting domestic or cross-border wire transfers, regardless of the amount.

492. In these circumstances, banks or money transfer companies are required to identify and verify the identity of their customers who are natural persons by means of a valid driver's license, a valid identity card or a valid travel document (see Section 3). If the customer who appears before the financial institution is acting on behalf of a third person, the financial institution must also identify the third person following the same process. Financial institutions are also required to identify and verify the identity of their customers who are legal persons, as described in section 3.

493. Although the SOIPS's articles related to customer identification do not require financial institutions to obtain the customer's address, Article 6 SOIPS requires them to record the following data in such a way that it is accessible:

- The name, the address and the place of residence, or registered office of the person in whose name a payment is made or a transaction is effected, as well as their representatives.
- The nature, the number, if possible, and the date and place of issue of the document by means of which the identification was established.
- In the event that the natural person acts for a third party, the identification data of this third party.

494. Therefore, Aruba requires financial institutions that conduct any cross-border or domestic wire transfers to obtain and maintain the name of the originator and its address. However, the SOIPS does not require the originator account number or a unique reference number if no account number exists.

Full originator information in the message or payment form accompanying the wire transfer

495. There are no requirements for financial institutions to include full originator information in the message or payment form accompanying wire transfer.

Domestic wire transfers

496. There are no requirements for financial institutions to include in the message or payment form accompanying domestic wire transfers information on the originator.

Transmission of originator information by intermediaries and beneficiary institutions

497. There are no requirements for each intermediary or beneficiary financial institution in the payment chain to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer.

Risk-based procedures in beneficiary institutions

498. Aruba has not established any requirements for financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.

Monitoring compliance

499. The CBA monitors compliance with commercial banks and money transfer companies, generally including though regular on-site inspections by the Supervision Department of the CBA (see section 3.10 of this report). However, as there are effectively no obligations in place with respect to SR.VII, these compliance checks are not relevant.

Sanctions

500. The identified shortages regarding sanctions under Recommendation 17 equally apply in the context of the obligations pertaining to wire transfers. However, as there are effectively no SR.VII obligations, no sanctions are applicable.

Additional elements

501. Aruba does not require that all incoming cross-border wire transfers contain full and accurate originator information.

3.5.2 Recommendations and Comments

502. *Recommendation 10*: Aruba should revise SOIPS in order to explicitly provide that financial institutions should keep records of customer identification data and transaction information in a manner to permit reconstruction of individual transactions. Moreover, the SOIPS should clearly require financial institutions to make customer identification data and transaction information available to competent authorities on a timely basis.

503. Special Recommendation VII: Except for the obligation to identify the originator of cross-border and domestic wire transfers, there are no requirements in Aruba in relation to SRVII. Therefore Aruba should fully implement SRVII, in particular in order to ensure that full originator information accompanies wire transfers and that financial institutions adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.

3.5.3 *Compliance with Recommendation 10 and Special Recommendation VII*

	Rating	Summary of factors underlying rating
R.10	LC	• The full scope of financial services is not covered by records keeping requirements. • No specific requirements for financial institutions to record transactions in a manner to permit reconstruction of individual transactions, in particular for occasional customers. • No requirement to make this information available on a timely basis to competent authorities.
SR.VII	NC	• There is no explicit requirement to obtain and maintain address and account number or unique reference number of the customer. • There are no requirements to accompany the wire transfer with full originator information. • There are no requirements to include in the message or payment form accompanying domestic wire transfers information on the originator. • There are no requirements for each intermediary or beneficiary financial institution in the payment chain to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer. • There are no requirements for financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. • The identified shortages regarding sanctions under Recommendation 17 equally apply in the context of the obligations pertaining to wire transfers.

Unusual and Suspicious Transactions

3.6 *Monitoring of transactions and relationships (R.11 & 21)*

3.6.1 *Description and Analysis*

Recommendation 11

504. The Aruban unusual transaction reporting system is based on the reporting of transactions that meet the indicators set out by Ministerial Regulations for banks, money transfer companies, life insurance companies and intermediaries (see Section 3.7). Financial institutions are therefore required to report to the MOT a number of unusual cash transactions based on objective indicators taking into account various threshold from AWG 5 000 to AWG 1 million depending on the type of transactions, as well as transactions based on subjective indicators with a monetary threshold of AWG 20.000 that meet two or more indicators such as unusual offer of terms, atypical transactions for the client, transactions in unusual currency for the client, transactions with no understandable legal purpose or no visible connection with the activities of the client. Therefore, to a certain extent, the definition of indicators of unusual transactions matches with the provision of FATF Recommendation 11.

505. To this end, even if there are no explicit requirements in law regulation or other enforceable means, financial institutions are implicitly required to undertake monitoring to identify unusual transactions. In addition, the AML/CFT directive for banks recommends that banks monitor accounts on a risk sensitive basis and to have systems to detect unusual or suspicious patterns of activities. The AML/CFT directive for insurance companies recommends they pay special attention to all complex, unusually large transactions and to all unusual patterns of transactions which have no apparent economic or

visible legal purposes. The Operational and anti-money laundering Guidelines for money transfer companies does not contain any provision as regards complex and unusual large transactions.

506. There are no provisions in law, regulation or other enforceable means, nor in the AML/CFT directives to require financial institutions to examine as far as possible the background and purpose of such transactions and to set forth their findings in writing, nor to keep such findings available for competent authorities and auditors for at least 5 years.

Recommendation 21

507. There are no provisions in law, regulations or other enforceable means to require financial institutions to give special attention to business relationships with persons or entities from or in a country which does not or insufficiently applies the FATF Recommendations. The CDD directive for banks as well as the Operational and AML/CFT Guidelines for money transfer companies do not mention these types of riskier business relationships. The AML/CFT directive for insurance only mentions that jurisdictions, which do not sufficiently apply the FATF Recommendations, could be listed as Non Cooperative Countries and Territories and that in these circumstances jurisdictions may be asked to impose countermeasures. In this case, insurers should give special attention, especially in underwriting and claims settlement, to business originating from these NCCTs. Therefore, the scope of the provisions of the AML/CFT directive for insurers is limited to NCCTs, which insufficiently addresses Recommendation 21, and to business relationships with persons in these countries, but does not extend to business relationships or transactions with persons from these countries.

508. Although the CBA regularly circulates the FATF Statements and Warnings to financial institutions, it has no authority to require them to pay special attention to the business relationships with the countries identified by the FATF as not applying or insufficiently applying the FATF Recommendations. In the letter that accompanies these warnings, the CBA only reminds the institutions of FATF Recommendation 21, but no reference is made to any Aruban provision.

509. There are also no provisions in the Aruban AML/CFT regime that require financial institutions to examine those transactions that have no apparent economic and visible lawful purpose, their background and purpose and to require them to make their written findings available to competent authorities.

510. Lastly, where a country continues not to apply or insufficiently applies the FATF Recommendations, there are no provisions in Aruba to require reporting entities to apply appropriate counter-measures.

3.6.2 Recommendations and Comments

511. The current SOIPS and SORUT do not specifically require financial institutions to conduct ongoing monitoring on their activities, even less with respect to complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. However, these transactions must be reported to the FIU when they meet two or more of the indicators of unusual transactions that must be reported to the FIU. As a result, it is the FIU that has limited resources which must distinguish among these thousands of reports the complex and unusually large transactions from the regular transactions, without having all the necessary information on the customer. Aruba should therefore revise its system so that financial institutions pay attention to all complex and unusual large transactions, examine their background and purpose and decide as to whether such transactions are suspicious and are to be reported to the MOT. The findings of these researches should be recorded and made available on request to the MOT.

512. Aruban authorities should urgently introduce in law, regulation or other enforceable means provisions to require financial institutions to pay special attention to business relationships and transactions with persons (including legal persons and financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations. If these transactions have no apparent or visible lawful purpose, they should be examined and written findings should be available to competent authorities. Aruba is also urged to develop a set of counter-measures against countries that continue not to apply or insufficiently apply the FATF Recommendations.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	PC	• The full scope of financial services is not covered by requirements with respect to Recommendation 11. • There is no specific requirement to monitor all complex, unusual large transactions unless they meet the indicators of unusual large transactions that must be reported to the FIU. • There is no explicit requirement to examine the background and purpose of these unusual transactions and to set forth the findings in writing. • There is no requirement to keep a record of financial institutions' findings in relation to complex, unusual large or unusual patterns of transactions.
R.21	NC	• The scope issues identified for Rec.5 also apply to R. 21. • There is no requirement in law, regulation or other enforceable means for financial institutions to pay special attention to business relationship and transactions with jurisdictions, which either do not or insufficiently apply the FATF Recommendations. • In case where transactions with such jurisdictions have no apparent or visible lawful purpose, financial institutions are not required to examine them and set forth their findings in writing. • Financial institutions are not required to implement any specific counter-measures to mitigate the increased risk of transactions with such jurisdictions. • Aruba has no mechanism to implement counter-measures against countries that continue not to apply or insufficiently apply the FATF Recommendations.

3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

3.7.1 Description and Analysis

Recommendations 13 and SR IV

513. As described previously, the Aruban legal framework on AML/CFT is principally based on two separate State Ordinances, one providing for rules concerning the identification in providing services (SOIPS), the other one concerning the obligation to report unusual transactions when providing financial services (SORUT). Each State Ordinance has its own scope determined by Article 1 of each State Ordinance.

514. According to SORUT, each and anyone providing on a business or professional basis, a financial service listed in Article 1 of SORUT or in the State Decree of October 19, 1999 containing enactments in

implementation of SOIPS and SORUT (SDDFS), shall promptly report to the FIU any performed or intended transaction relating to that financial service which is considered unusual based on indicators listed by Ministerial Regulations. However, as for the SOIPS, the scope of financial institutions and financial services covered by the SORUT lacks clarity and does not cover all the FATF designated financial activities.

Reporting obligation

515. The reporting obligation for financial service providers and other institutions is set out in Article 11, section 1, SORUT. It states that each and anyone providing a designated financial service is obliged to promptly report to the FIU performed or intended transactions deemed unusual based on the indicators. It should be noted that under the Aruban reporting system as set forth in the SORUT, reports are made on unusual transactions. The indicators are set out by Ministerial Regulations, if necessary per branch of industry and professional group or category of transactions. So far, Aruba has chosen to establish these criteria for unusual transactions per branch of industry and has not adopted general criteria valuable for all types of financial services covered by SORUT. However, there are currently indicators set out by Ministerial regulations for only four types of financial service providers:

- The RISFP (effective since June 1st 1999) contains indicators for banks and money transfer companies.

- The RIIS (effective since February 19th 2002) lists criteria for unusual transaction applicable to life insurance companies and brokers.

516. This implies that even if some financial services are theoretically covered by the reporting obligation by the State Ordinance, they are effectively excluded from the reporting obligation due to the provision of the Ministerial regulations, unless those services are performed by banks, money remitters, life insurers or brokers.

517. All indicators in the Ministerial Regulations contain objective and subjective indicators. An objective indicator is applicable when a certain threshold is reached, in which case the transaction must always be disclosed to the FIU. The reporting institution is not allowed to judge the nature of the transaction. The number of objective indicators is greater than the subjective indicators and varies between the 3 sets of Ministerial Regulations. For example, for banks and money remitters, there are 5 types of objective indicators:

- Transactions reported to the Police or the judicial authorities in connection with possible money laundering or financing of terrorism shall also be sent to the FIU.

- Transactions done by, on behalf of, or in connection with an organization, entity; company, person, or group of persons including communities that are listed on one of the lists of designated entities established by the European Commission and the OFAC.

- Cash transactions exceeding a determined threshold: in general, the different threshold are AWG 20 000 (around USD 11 000).

- Money transfers exceeding AWG 5 000 (around USD 2 800) whereby the bank or the money remitter makes this amount available in Aruba or abroad for payment in cash or by check to a non-account holder.

- Cross-border funds transfers exceeding AWG 1 000 000 (around USD 560 000), excluding interbank transactions.

518. A subjective indicator is applicable when the reporting institution is of the opinion that one of the following situations is applicable:

- The transaction gives cause to presume that it might be connected to money laundering.

- The transaction can, in any way, be related to or may be used for the financing of presumable terrorism activities or organizations.

- The transactions above AWG 20 000 or domestic funds transfers above AWG 1 000 000 or accounts meet two or more listed criteria, *e.g.*: identification problem, unusual offer of terms, untypical transactions, not visible economic purpose.

- Transactions relating to smurfing activity.

519. Both the objective and the subjective indicators contain transactions that could be related to money laundering and the financing of terrorism.

520. Although it is not explicit, the assessment team was of the view that the subjective indicator related to money laundering refers to the offence of money laundering as defined and penalized in the Penal Code (CrCA). However, as TF, counterfeiting and piracy of products, insider trading and market manipulation, environmental crime and fraud are not completely captured by the predicate offences for money laundering, this in turn limits the scope of the unusual transactions reporting obligation for money laundering.

521. Whilst the indicators provide a useful baseline approach, not all activity and circumstances seem to be addressed. For example, although the indicators for banks and money remitters apply to a list of services wider than normal banking or money remittance, (*e.g.* safekeeping, providing safe-deposit boxes or securities business) objective indicators related to those services are not included, leaving therefore only the subjective indicator option to trigger a report and this, appears to be made only when sufficient information is known to meet the test of "presumed" to be connected with money laundering or terrorist financing. Whilst it is not 100 % clear, it appears that this test is similar in practice to a "reasonable ground to suspect" test.

STR reporting should occur regardless of the amount of the transaction

522. Aruba's reporting obligations require financial institutions to report suspicions of ML and TF, based on subjective criteria, irrespective of the amount involved. The subjective criteria requires them to report "transactions, which give cause to presume that they might be connected to money laundering" and "transaction that in any way can be related to or may be used for the financing of presumable terrorism activities or organisations".

STR reporting should apply regardless of whether tax matters may be involved

523. Although tax matters are not predicate offences for ML in Aruba, there are no provisions in law, regulation or other enforceable means that would prevent financial institutions from reporting unusual transactions also involving tax issues.

Special Recommendation IV

524. When introduced in 1996 the SORUT was focused solely on combating money laundering. Even though there was no explicit reference made to TF in the SORUT, financial institutions were effectively required in 2005 to report transactions related to the terrorist financing, as the Ministerial regulations that define the indicators of unusual transactions were amended that year to refer to TF. As a result, ministerial regulations contain two criteria relating to TF. This amendment was the result of an amendment to the SORUT itself adopted in 2003 to allow for the receipt, analysis and dissemination by the MOT of TF-related unusual transaction reports. Additionally, in February 2009, the SORUT was further amended to include inter alia a definition of the term "financing of terrorism" and to include among the objectives of the MOT the combat of TF. As a result, ministerial regulations contain two criteria relating to TF:

- One objective criteria requiring banks, money remitters and insurance companies and brokers to report transactions done by, on behalf of, or in connection with an organisation, entity, company, person or group of persons including communities, that are listed by the OFAC or the European Union. This criterion refers to transactions that should be frozen in the United States or the European Union.

- One subjective criteria requiring banks, money remitters and insurance companies and brokers to report a "transaction that in any way can be related to or may be used for the financing of presumable terrorism activities or organisations".

525. In February 2009, the Aruban Parliament amended the SORUT to include *inter alia* a definition of the terms "financing of terrorism", the fight against TF amongst the MOT's objectives and to explicitly extend the reporting obligations to TF related transactions.

526. Although terrorist financing is not criminalised in Aruba as a separate and independent offence, the assessment team was of the view that this does not prevent financial institutions from reporting transactions related to TF, as the indicator does not itself refer to the penal code and as terrorist activities and organisations are criminalised. However, the scope of the reporting requirement does not cover the financing of individual terrorists.

527. The obligation to report transactions related to the financing of terrorist organisations and activities applies regardless of the amount of the transactions or regardless of whether it involves tax matters. The reporting of TF suspicious transactions also applies to performed or intended transactions, except in the case of the objective indicator requiring FIs to report performed transactions involving persons or entities designated by the European Union or the OFAC.

528. So far, the MOT has received one unusual transactions report relating to TF, which meanwhile has been investigated and disseminated to the law enforcement authorities, whilst TF risks in Aruba certainly exist due to its geographical situation. Aruba has conducted an analysis on the terrorist risks on the island, but this report has not been made available to the assessment team.

Statistics

Table 21. Number of unusual financial transactions reported to the FIU (2006-2008).

Number of reports	Commercial banks			Off-Shore Banks			Money Remitters			Life Insurers			Life Insurance Brokers		
Year	2006	2007	2008	2006	2007	2008	2006	2007	2008	2006	2007	2008	2006	2007	2008
Objective criteria (CTR)	4 909	4 843	5 551	698	796	530	4 923	0	2	2	6	5	0	0	0
Subjective criteria (STR)	290	352	96*	0	0	0	1 421	503	519	0	0	3	0	0	0
Total	5 199	5 195	5 647	698	796	530	6 344	503	521	2	6	8	0	0	0

* including 1 related to TF

Table 22. Number of unusual transactions reported by the different commercial banks in 2007

Commercial Banks	1	2	3	4	Total
Objective criteria (CTR)	779	3139	765	160	**4843**
Subjective criteria (STR)	11	51	48	242	**352**
Total	**790**	**3190**	**813**	**402**	**5195**

529. The tables indicate an important heterogeneousness between the different types of financial services providers. While commercial banks are the most important reporters, the reports received from life insurers are very few and there has been no report from life insurance brokers. In addition, the unusual transactions reported are generally based on objective criteria (90.7% in 2008) and some financial institutions like off-shore banks or life insurance brokers have never reported unusual transactions based on subjective criteria (STR) in the period 2006-2008. This suggests that some financial institutions are only focused on the obligation to automatically report unusual transactions based on entirely objective indicators, which is undermining their implementation of the obligation to detect and report subjective suspicious transactions. Even among the four commercial banks, some that report lots of transactions based on objective criteria report few transactions based on subjective criteria. Based on further statistics made available to the assessment team, among money remitters or life insurers, only one or two companies actually report unusual transactions to the FIU and that among the considerable list of objective criteria, unusual transactions are generally reported based on only two or three criteria, which indicate that they might not all be relevant. In November 2008, the MOT received its first TF-related report, based on the subjective TF indicator.

Recommendation 14

Protection for liability where reporting suspicions in good faith

530. Article 14 SORUT provides protection from criminal prosecution with respect to data and information provided under compliance with the provisions of the SORUT, whereas Article 15 SORUT

provides protection from civil liability for the same reasons. Articles 20 and 21 SORUT contain the secrecy provisions necessary for the implementation of the objectives of the SORUT.

531. Pursuant to Article 14, sections 1 and 2, SORUT data or information provided in accordance with Articles 11 or 12, second paragraph, of the SORUT cannot serve as basis for, or for the benefit of, a criminal investigation or prosecution on account of suspicion of, or as evidence in connection with a charge on account of money laundering and terrorist financing or violation of Article 285 of the CrCA relating to the revelation of any professional secrecy, by the person who provided these data or this information. The article also clearly states that this shall apply by analogy to the person who is employed by the person who provided data or information and who cooperated therein.

532. Although these are useful provisions, it should be noted that the safe harbour provisions in the SORUT refers to the offence provided by Article 285 of the CrCA, which is relevant for DNFBPs, but not to Article 286, which criminalises the fact to reveal secret details regarding an enterprise of commerce or industry where a person is employed or was employed and which is particularly relevant for employees of financial institutions. The scope of the safe harbour is thus unclear.

533. Article 15 SORUT also protects the reporting entities from civil liability in cases where a third party suffered from an unusual transaction report or from the communication of additional information requested by the MOT, unless it is "made plausible" that the reporting entity should not have proceeded to "making report in reason". Before the adoption of the new SORUT, this safe harbor provision also applied for directors, officers and employees of the reporting entities, but the adoption of the new SORUT has canceled this provision. Moreover, assessors noted that Article 15 appears to limit the safe harbor provision more narrowly than the international standard, which requires the protection to be provided in all circumstances where the reporter has made a report in good faith. The article appears to introduce a reasonable grounds test which is higher than a good faith test.

Prohibition from tipping-off

534. Tipping off is prohibited by Article 21 SORUT which states that the person (this includes legal persons) who reports pursuant to Article 11 SORUT, or who provides further information or data pursuant to Article 12 SORUT, section 2, is obliged to keep this secret, except when disclosure is required in view of the objectives of the SORUT. Article 21 SORUT also requires secrecy from any person who, pursuant to Article 3, paragraph d, SORUT, has received notice from the FIU on the handling and conclusion of a report submitted by that person. However, it was not clear how these provisions interact with the provisions of Article 22 which states that "any person shall be informed, upon his request, by or on behalf of the keeper of the register of the Reporting Centre, whether, and if so, what personal data concerning this person have been entered in the register."

535. Whilst Article 21 does appear to prevent the reporter from disclosing a report has been made, Article 22 appears to provide a route by which an individual can establish whether a report has been made about him. Taking this provision into account together with the safe harbour provisions, assessors were concerned that reporters may in some cases be dissuaded from making proper reports, particularly on the basis of subjective tests. The possibility for the subject of a report to ask and be told about possible STR with respect to him certainly undermines the effectiveness of the prohibition or institutions disclosing this information. On this, the MOT advises that the information that can be disclosed only concern the personal data of the requester and that the nature of the report and the indicators used for the unusual transaction report cannot be disclosed. Therefore, since the unusual transaction reporting system involves transactions above a monetary threshold, legitimate transactions are also reported to the MOT. Aruba is therefore of the

view that Article 22 SORUT does not pose difficulty and that the head of the MOT has the discretionary authority to refuse a request made upon Article 22.

Additional elements

536. The FIU is required to keep confidential the names and personal details of staff or financial institutions that make reports by virtue of Article 20 SORUT which prohibits anyone who performs or has performed any task arising from the application of the SORUT, from using data or information provided or received in execution of the SORUT, any further or in any way, to disclose it further or in any way than is required for the performance of his task or is required by a State Ordinance. Secondly, since the FIU is a government agency its staff fall under the general secrecy provisions for government employees as laid down in the Articles 62 and 63 of the State Ordinance Regarding Government Employment.

537. However, the SORUT, Article 22, contains provisions which allow the person to find out what personal data is held about him by the FIU. Important interests of third parties can be protected but it is not clear what degree of personal information can be accessed or what comprises "important" interests. Therefore there is doubt as to whether confidentiality on the FIU's or institutions' staff is fully ensured.

Recommendation 25 (only feedback and guidance related to STRs)

538. As previously described, the SORUT is the key piece of legislation determining the functions of the FIU. Article 3, first section, paragraph c requires the FIU to confirm to the reporting entity that they have met their reporting obligations. The MOT sends an acknowledgment of receipt to the reporting entity and a standard note of disclosure informing them that the case has been disclosed to the law enforcement authorities. Furthermore, feedback on the nature and the quality of unusual transaction reports is given by the FIU's investigators when they liaise with reporting entities of their portfolio. The reporting entities also receive a note from the FIU investigator indicating when mistakes have been made in their reports.

539. In addition to specific feedback, the FIU has issued three guidelines to assist, the banks and money transfer companies, life insurers and brokers and casinos in the fulfilment of their obligations to report. These guidelines actually elucidate the list of objective and subjective indicators by means of practical examples. These guidelines also provide advice on the completion of the reporting form by stating that in the event several indicators are applicable to a transaction, the reporting entity must indicate all indicators in order of importance and suggests the subjective indicators should be of higher value than the objective indicators.

540. Moreover, the FIU has issued general feedback to financial institutions through its annual report containing information such as statistics. However, the annual report lacks information on methods and trends, and in particular typology cases. The FIU also takes part in training sessions with industry, and issues a regular newsletter.

Recommendation 19

541. Aruba has implemented a system where reporting entities institutions report certain transactions in cash above a fixed threshold varying from AWG 5 000 to AWG 1 000 000 to the FIU based on objective criteria stated in Ministerial Regulations. The various types of large cash transaction that must be reported are described below:

- Pursuant to the RIFSP, banks and money transfer companies must report the following intended or performed transactions:
  - a cash withdrawal of more than AWG 100 000 from an account;

- a cash deposit of more than AWG 100 000 on an account;
- a cash transaction involving more than AWG 20 000 in which:
  - an exchange takes place into larger denominations;
  - an exchange takes place into another currency;
  - cheques and similar payment instruments are bought or redeemed, except cheques which have been redeemed by or for the benefit of an account holder to a maximum of AWG 100 000;
  - savings instruments in the form of certificates or other written instruments are bought or redeemed; this excludes transactions involving withdrawals or deposits on a savings account or a deposit account;
  - stocks, securities and precious metals are bought or sold;
  - money is being transferred to abroad and the account of the beneficiary is being credited;
- a transaction worth more than AWG 5 000 in which the bank or money transfer company makes the amount available in cash or by cheque in Aruba or abroad to a non-account holder; and
- a transfer of more than AWG 1 million to or from abroad, excluding inter-bank transactions.

- Pursuant to the RIIS, life insurers and brokers are required to report the following intended or performed transactions:
  - a premium arising out of a life insurance or pension agreement worth more than AWG 5 000 per month;
  - a premium purchase deposit of more than AWG 25 000;
  - the surrendering of a policy or loaning on a policy for an amount in excess of AWG 100 000;
  - the payment of more than AWG 50 000 within five years after the closing of the insurance agreement, except if it concerns a payment on a insurance of which the premiums were paid by the government or semi-government institutions;
  - the payment of more than AWG 100 000 on an insurance.

542. Pursuant to the RIC, casinos are requested to report to the FIU the following intended or performed transactions: the payment of cash, checks, and other instruments of payment exceeding an amount of AWG 20 000 at the cashier's desk or into an account of the casino by which withdrawal by check or by funds transfer takes place or by which withdrawal takes place in large denominations; the exchange of currency for an amount exceeding AWG 20 000, or the equivalent thereof in foreign currency; the purchase or exchange by a player of tokens exceeding AWG 20 000 per gaming day, by which withdrawal of foreign exchange by check or by funds transfer takes place. The reports on large cash transactions represent 87 % of the reports received by the FIU.

543. Whilst these are reasonably comprehensive provisions for those activities covered, it should be recalled that not all financial institution activities required to generate reporting obligations are currently covered by the existing definition of financial institution, nor do the indicators provide scenarios for all activities which are included in the definition.

544. All transactions mentioned above must be reported promptly to the FIU. The FIU keeps all transactions data and information in its secure computerized database (see section 2.6 of this report).

Additional elements

545. As mentioned above, all data and information received pursuant to the SORUT is kept by the FIU in its secure computerized database and is available to competent authorities for AML/CFT purposes. Articles 4 and 6 SORUT and the SDRRRCUT regulate the FIU-register and the dissemination of information of data and information from this register to the Police and Public Prosecutor's Office for, among other, AML/CFT purposes.

546. Assessors noted that other competent authorities do not have direct access to the records of the FIU and further, the FIU has reduced the number of spontaneous reports it sends to the police for investigation. However, the FIU can respond to requests from other authorities. Commonly accessed systems may improve the free-flow of information to counter money laundering and terrorist financing risks.

547. Article 20 SORUT applies safeguards to ensure proper use of the information and data that is recorded. As previously explained, Article 20 prohibits anyone who performs or has performed any task arising from the application of the SORUT, from using data or information provided or received in execution of the SORUT, any further or in any way, to disclose it further or in any way than is required for the performance of his task or is required by a State Ordinance. Additionally, since the FIU is a government agency its staff fall under the general secrecy provisions for government employees as laid down in the Articles 62 and 63 of the State Ordinance Regarding Government Employment.

3.7.2 Recommendations and Comments

548. The scope of the entities subject to the unusual transactions reporting requirements is limited to banks, money transfer companies, and insurance companies and brokers. Aruba should therefore revise this in order to ensure that all institutions that conduct one of the financial activities designated by the FATF Recommendations are subject to reporting obligation. At the same time, Aruba should ensure that the scope of the SOIPS, which focuses on CDD requirements, is consistent with the SORUT.

549. Aruba should also review the scope of predicate offences for ML that impacts the scope of the reporting obligation for ML. Regarding TF, Aruba is strongly urged to criminalise TF and to extent the scope of TF reporting system in accordance with the FATF Recommendations, particularly in relation to the financing of individual terrorists.

550. Overall, while the reporting system in Aruba contains some important and valuable aspects, it is generally lacking effectiveness. First, the current reporting regime operates substantially as a prescriptive unusual transactions report system, based on the objective criteria set out by Ministerial Regulations. Therefore, even if two subjective criteria require financial institutions to report suspicious transactions for ML and TF, some of them (like the two off-shore banks) only focus on objective criteria. This results in a very large number of reports, the majority of which are of relatively little value in respect of ML investigations. Secondly, the assessment team has some concerns about the low number of made by institutions (other than banks and money transfer companies) using the subjective indicators. Aruba should

thus strengthen the supervision of the compliance of reporting entities with the reporting system, and competent authorities should provide more comprehensive guidance and more feedback to financial institutions to improve the effectiveness of the reporting regime by educating financial institutions.

551. Equally, even if Aruba has established a requirement to report suspicious TF transactions based on objective and subjective criteria, the system does not seem to be implemented in its full effect, as the MOT has received only recently its first TF-related report. The MOT should thus improve the awareness of financial institutions regarding their reporting obligations and should work to enhance their capability to identify TF related transactions.

552. Regarding the safe harbour provision, Aruba should extent it to predicate offences for ML and terrorism related offences. In addition, Aruba should revise its civil safe harbour provision to ensure it covers directors and employees of reporting entities, as it was before the modification of the SORUT adopted in February 2009.

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	PC	• The scope of the ML predicate offences for STR reporting does not satisfy all the FATF standards. • The scope of SORUT is unclear, but the whole range of financial activities is not covered. • The scope of the SORUT and the SOIPS are not harmonised, which would in some cases undermine the quality of the information reported. • Lack of indicators to identify suspicious transactions for a number of financial services, which de facto exclude them from the reporting regime. • Effectiveness: In general, there are some concerns about the effectiveness of the reporting system, in particular regarding TF related transactions and also due to inconsistencies regarding the nature and the number of reports made by reporting entities.
R.14	PC	• Protection of financial institutions from penal and civil liability for breach of rules of confidentiality is not sufficiently assured since Article 286 of CrCA is not included in the same harbour provision. • The safe harbour provision does not apply when it is made plausible that the reporting entity should not have proceeded to making the report in reason – the threshold is higher than good faith. • The civil safe harbour provision does not apply to employees of the reporting entity • Public access to information provisions in SORUT can undermine the effectiveness of the prohibition on tipping-off.
R.19	C	• The criteria are fully met.
R.25	PC	• The FIU does not issue feedback on ML/TF methods and trends nor sanitised cases.
SR.IV	PC	• The scope of SORUT is unclear, but the whole range of financial activities is not covered. • The scope of the SORUT and the SOIPS are not harmonised, which would in some cases undermine the quality of the information reported. • The scope of the reporting obligation does not cover the financing of individual terrorist. • Lack of effectiveness: only one transaction related to TF has been reported to the MOT.

3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)

3.8.1 Description and Analysis

Recommendation 15

Procedures, policies and controls

553. There are no provisions in law, regulation or other enforceable means that require financial institutions to establish and maintain internal procedures, policies and controls to prevent ML and TF and to communicate these to their employees.

554. However, the CDD directive for banks states that senior management should be fully committed to an effective KYC programme by establishing procedures and ensuring their effectiveness. The CDD directive for banks provides that these procedures should embrace routine for proper management oversight, systems and controls, segregation of duties, training and other related policies. The CDD directive for banks however does not explicitly state that these procedures should cover CDD requirements, record requirements, detection of unusual and suspicious transactions and reporting obligations. This programme should be valuably reviewed by internal audit systems, which would periodically evaluate the effectiveness of the compliance of the bank with the KYC policies and procedures.

555. The AML/CFT directive for insurance companies also recommends insurers to have programmes and systems adapted to the group's structure, the organisational structure and the market conditions in order to prevent ML and TF. These programmes, which should be communicated to employees, should include policies, procedures and controls that cover customer due diligence, the detection and reporting of unusual transactions and the record keeping arrangements.

556. The Operation and AML Guidelines for money transfer companies provides that these companies "should have in place an effective system of procedures and control to combat ML and TF". These procedures should be laid down in a separate manual. However, the Guidelines do not further detail the content of these procedures and do not recommend that money transfer companies to communicate them to their employees.

Compliance management

557. There are no provisions in law, regulation or other enforceable mean to require financial institutions to develop appropriate compliance management arrangements and to designate at a minimum an AML/CFT compliance officer at the management level.

558. The AML/CFT directive for insurance companies provides that companies should have compliance management arrangements that should include the appointment of a compliance officer at management level. The Guidelines for money transfer companies provides that each registered money transfer company should appoint a compliance officer at (sub-) management level, who functions independently from management and shareholders and who is responsible for overseeing compliance with the internal procedures established. The CDD directive for banks mentions that "banks compliance functions have important responsibilities in evaluating and ensuring adherence to KYC policies and procedures" and that "the compliance function should provide an independent function of the bank's own policies and procedures, including legal and regulatory requirements". However, it does not state that the compliance function should be placed at the management level. In practice, it appears that even if these

directives and guidelines are not mandatory, banks and money transfer companies have implemented the necessary measures.

Independent audit function

559. There are no provisions in law, regulations or other enforceable means to require financial institutions to maintain an adequately resourced and independent audit function to test compliance with procedures, policies and controls.

560. The CDD directive for banks requires that the internal audit function should be staffed adequately with employees who are versed in such policies and procedures. However, while the directive states that this function provides an independent evaluation of the bank's own policies and procedures, the directive does not detail the nature of this function that should be performed through testing compliance, including sample testing. The AML/CFT directive for insurance companies asks companies to have an independent audit function and also raise the importance for auditors to have a direct access and to report directly to the management and the board of the companies. Nevertheless, the directive does not detail further the nature of this audit function. Finally, the Operational and AML/CFT guidelines for money transfer companies recommends that internal auditor or external auditor in case the compliance officer is also entrusted with the internal audit should review on a yearly basis that the compliance activities performed are in accordance with the compliance program and report its findings and recommendations in writing to the management of the company.

Employee training and employee screening

561. There are no provisions in law, regulation or other enforceable means to require financial institutions to establish ongoing employee training to ensure that employees are kept informed of new developments, ML/TF methods and trends and to raise their knowledge of AML/CFT law and obligations. There are also no provisions requiring financial institutions to put in place screening procedures to ensure high standards when hiring employees.

562. The CDD directive for banks states that all banks must have an ongoing employee-training programme so that bank staff is adequately trained in KYC procedures. It also provides that the timing and the content of training will need to be adapted by the bank for its own needs and that training sessions should have a different focus depending on the functions of the staff. The AML/CFT directive for insurance companies also recommends companies to put in place an ongoing employee training program, although it does not provide any further detail, and to have an adequate screening procedures to ensure high standards when hiring employees. The Operational and AML/CFT guidelines for money transfer companies provide that the compliance officer of each company should be responsible for the overall staff training.

Effectiveness

563. In practice, even if these directives and guidelines are not OEM, the assessment team was satisfied with the fact that banks and money transfer companies have AML/CFT policies, procedures and controls in place, as well as a compliance function. The assessment team did not have the possibility to assess the nature of these procedures nor the effectiveness of the audit function. As regards insurance companies, it did not appear that these companies effectively implement the directive of the CBA and they were not well informed of their AML/CFT obligations.

Recommendation 22

564. There are no provisions in law, regulation and other enforceable means requiring financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with those of Aruba and to require them to inform the CBA. More generally, Recommendation 22 is not addressed at all in Aruba, but so far, assessors were satisfied that there are no overseas branches or subsidiaries of Aruban financial entities. Indeed, article 16.1 (b) and (g) of SOSCS prohibits credit institutions to establish a subsidiary or a branch without having obtained prior authorisation from the CBA. So far, the CBA has not granted such an authorisation.

3.8.2 Recommendations and Comments

565. It is recommended that Aruba explicitly requires through law, regulation or other enforceable means that all financial institutions establish and maintain an AML/CFT internal control system, to designate a compliance officer at management level, with further guidance on the roles and responsibilities of the compliance officer, as well as to establish audit function in charge of ensuring the compliance with the procedures, policies and controls.

566. The compliance officer should have timely access to CDD data and to all relevant information and Aruba should require financial institutions to develop AML/CFT staff training programmes as well as screening procedures to ensure high standard when hiring employees.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	NC	• The scope issues identified for Rec. 5 also apply. • There are no provisions in law, regulation or other enforceable means that require financial institutions to establish and maintain internal procedures, polices and controls to prevent ML and TF; • There are no provisions in law, regulation or other enforceable means that require financial institutions to develop appropriate compliance management, or at least to designate a compliance officer; • There are no provision in law, regulation or other enforceable means that require financial institutions to maintain an adequately resourced and independent audit function; • There are no provisions in law, regulation or other enforceable means that require financial institutions to establish an ongoing employee training programme and to put in place screening procedures to ensure high standards when hiring employees.
R.22	NA	• The Recommendation is not applicable since Aruban financial institutions have no branches or subsidiaries abroad.

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

567. A shell bank is defined in the FATF glossary as a bank that has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated with a regulated financial service group that is subject to effective consolidated supervision.

568. According to Article 24 of the SOSCS, no credit institution established in a foreign country shall pursue the business of a credit institution through a branch in Aruba, unless it has obtained authorisation from the CBA. The CBA advised the assessment team that based on Article 6(1)(g) of the SOSCS, it can reject a licence application if it is of the opinion that this "would or could lead to an undesirable development of the credit system". At the time of the onsite visit, this concept of "undesirable development of the credit system" was not further defined and the assessment team was of the opinion that the CBA would only refuse or withdraw a licence previously granted if the company does not possess a licence in the country where it is primarily established, and therefore the CBA could not refuse a licence when the credit institution established and licensed in a foreign country has no physical presence in that country and if it is not regulated and subject to an effective consolidated supervision. As a result, at the time of the onsite visit, the CBA had no explicit means to prevent a foreign bank meeting the criteria of a shell bank being granted a licence in Aruba. So far, no shell bank has applied to the CBA for a licence, but the CBA has granted a licence to two branches of a foreign credit institution, which have no physical presence on Aruba but that are affiliated to a financial group subject to consolidated supervision by the US authorities.

569. Following the onsite visit, the CBA has, as a positive development, issued on 30 December 2008 a new Policy Rule on Banking Licence Requirements and Admission Requirements for Credit Institutions Operating in and from Aruba. This policy provides that when assessing whether the granting of a licence would or could lead to an undesirable development of the credit system, the CBA will consider, the effect the granting of licence has or could have on the financial solidity and integrity of the credit system, the adequate functioning of the financial markets, the interest of creditors, account holders, savers, deposit holders and other interested parties, the sound and stable financial sector and the financial reputation and integrity of Aruba. The Policy Rule also provides that the CBA "will reject license applications of shell banks. Shell banks are banks that have no physical presence (i.e. meaningful mind and management) in the country where they are incorporated and licensed, and are not affiliated to any financial services group that is subject to effective consolidated supervision". In addition, the new Policy Rule also provides that "the mind and management of the licensed credit institution must be in Aruba" (See section 3.1. 8). Nevertheless, the CBA has no explicit power to withdraw the license granted to a credit institution that later became a shell-bank.

570. It should be noted that Aruba has granted licenses to two banks, which have no physical presence on Aruba (neither meaningful mind nor management) other than *via* a TCSP, since these two banks operate from Venezuela. Although subject to consolidated supervision by the US authorities, these two banks have never been subject to on-site inspections by the US authorities as highlighted in the IMF Detailed Assessment of Compliance with the Basel Core Principles for Effective Banking Supervision (September 2008), nor by the CBA or the MOT (at the time of the onsite visit). During the onsite visit, the assessment team was also informed that these two off-shore banks maintain their records in Venezuela, which would undermine the effectiveness of the Aruban supervision, if it existed. The CBA advised the assessment team that the new Policy it has issued to prevent the licensing of shell-banks does not apply to these two off-shore banks already licensed, since they benefit from a grandfathering clause. The CBA also advised that it started in 2000-2001 an outsourcing on-site inspection, but decided to end it up quickly due to the

insufficient quality of the information then gathered. Two years ago, the CBA entered into contact with these two banks to consider entering into an arrangement for an on-site inspection using an external auditor. However, so far, such an inspection has not yet taken place, although the CBA has strengthened the regularity of its meetings with the senior management of the banks and it has increased the reporting frequency from quarterly to monthly. Taking into consideration all these factors and the fact that the records of the two offshore banks are not kept in Aruba, the assessment team still had significant concerns regarding the effectiveness of the new CBA's Policy and on the willingness of the Aruban authorities to remedy this situation[7].

571. There are no provisions in law, regulation or other enforceable means to prohibit financial institutions from entering into or to continuing correspondent banking relationships with a shell bank. However, paragraph 30 of the CDD directive for banks, which does not meet the criteria of other enforceable means and does not address all financial institutions, recommends banks refuse correspondent banking relationships with a bank incorporated in a jurisdiction in which it has no physical presence and which is unaffiliated with a regulated financial institution. However, paragraph 30 does not provide that the regulated financial institution should be subject to effective consolidated supervision. While paragraph 29 of the CDD directive for banks addresses the fact that banks should only establish correspondent relationships with foreign banks that are effectively supervised by relevant authorities, this provision does not directly address the issue of shell banks.

572. There is also no provision in law, regulation or other enforceable means or in the AML/CFT directive for banks that obliges Aruban banks to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.2 Recommendations and Comments

573. Although the CBA has clarify its position vis-à-vis the licensing of shell banks with the adoption on 30 December 2008 of its Policy rule, the implementation of this policy is questionable, since it provides *e.g.* that "the mind and management of a licensed credit institution must be in Aruba" while the two off-shore licensed in Aruba have no physical presence on the island. Aruba is therefore urged to clarify this situation and to expand the scope of this Policy to the two offshore banks already licensed, by requiring them to maintain their records in Aruba. Aruba should also take step to effectively supervise, in particular for AML/CFT purposes, these two off-shore banks. In addition, Aruba is called to modify its SOSCS to allow the CBA to withdraw a license granted to a credit institution that would become a shell bank.

574. Aruba is also recommended to explicitly prohibit in law, regulation or other enforceable means financial institutions to establish or maintain correspondent banking relationships with a shell bank and with a respondent financial institution in a foreign country that permits its accounts to be used by shell banks.

[7] Moreover, the assessment team was advised in July 2009 that Aruba had granted an offshore banking license to an offshore bank which is affiliated to a Venezuelan bank owned by individuals, although the new Admission Policy for Credit Institutions specifically states that the CBA would only grant license to branch or subsidiary of banks owned by holding company or financial conglomerate, but not by individuals. This situation questions the effective implementation of the new Policy rule. Aruba advised that this license application was submitted and reviewed under the previous admission policy that allowed for individual ownership of banks.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	NC	• The facts show that there has been no effective implementation of the Policy rule. • There is no explicit requirement to withdraw a licence granted to a credit institution that would later become a shell-bank. • There is no prohibition in law, regulation or other enforceable means on financial institutions from entering into or continuing correspondent banking relationships with shell banks • There is no obligation to require financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. • Effectiveness: Despite there being 2 licensed banks with mind and management and records outside of Aruba, no real supervisory action has been taken for more than 10 years.

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)

3.10.1 Description and Analysis

575. Supervisory and oversight systems are in place for AML/CFT matters in the banking, insurance and money service business sectors. While the CBA supervises the compliance of financial institutions with the obligations set out by the SOIPS (identification requirements), the Aruban FIU (MOT) supervises the compliance of the same financial institutions with the provisions set out in the SORUT (reporting obligations). These arrangements are described throughout this section. Such systems are however not in place for life insurance brokers that are only supervised by the MOT since brokers are not regulated by the CBA, nor are they in place for offshore (Venezuela based) banks since the CBA relies on the consolidated supervision of the US authorities. It is also worth noting that the CBA also supervises non-life insurance companies for AML/CFT purpose, although they are not legally subject to AML/CFT obligations. Finally, the electronic stock exchange market, which is not regulated, is not supervised by either the CBA or the MOT. Likewise, the activities related to investment performed in Aruba by a specific Dutch Antilles Bank are not supervised by the CBA or the MOT, since they are even not subject to AML/CFT requirements.

576. The following table generally summarizes the list of existing regulators per financial institutions as transmitted by Aruba:

Table 23. Existing regulators per financial institutions

	Number of institutions	Total assets (AWG Million in 2007)	Authorization/ Registration & Supervision	Supervision AML/CFT
Commercial banks	4	3 730	CBA	CBA/FIU
Offshore banks	2	782.6	CBA	CBA/FIU
Mortgage banks	1	379.2	CBA	CBA/FIU
Finance companies	1	73.4	CBA	CBA/FIU
Investment bank	1	198.3	CBA	CBA/FIU
Credit union	1	4.1	CBA	CBA/FIU
Life insurers	8	492.2*	CBA	CBA/FIU
Company pension funds	11	235*	CBA	-
Money transmitters	4	13.2	CBA	CBA/FIU
Insurance intermediaries	Not regulated	Unknown	-	FIU

* as per year-end 2006

577. However, financial institutions which are not subject to AML/CFT requirements (see Section 3.2 of this report) are not subject to any supervision.

Authorities' Roles and Duties and Structure and Resources: Recommendations 23 and 30

AML/CFT regulation and supervision of financial institutions

578. Supervision by the CBA: The CBA as the prudential regulator is primarily concerned with ensuring safety and soundness, which are key elements in its supervisory interventions in the AML/CFT area. For this purpose, the CBA follows the rules set out in sectoral State Ordinances: the SOSCS for credit institutions, the SOSIB for insurance companies and the SOSMTC for money transfer companies. According to these sectoral State Ordinances, the CBA may issue directives, after consultation with the private sector, with regard to the measures that must be taken of the ML/TF prevention. These directives may regard the implementation of the provisions of other State Ordinances, in particular the SOIPS.

579. In addition, Articles 9 of the SOIPS states that officials or persons employed by the State or the Central Bank of Aruba shall be charged with the supervision of the compliance with the provisions laid down in the State Ordinance. In practice, the CBA supervises the compliance of financial institutions that it already supervises with the provisions of the SOIPS and with the AML/CFT Directives issued, while the MOT focuses on compliance with the SORUT and the SOIPS.

580. *Credit institutions:* Pursuant to the SOSCS, the CBA must ensure that credit institutions function with integrity, prudence and an appropriate degree of professional competence and in a manner which is not (or likely not) detrimental to the interests of depositors. The CBA therefore is charged with the solvency, liquidity, organisational, structural, integrity supervision which comprises AML/CFT supervision of credit institutions. In relation to AML/CFT, the CBA has issued a CDD directive for banks that details the measures that banks should apply to conduct customer due diligence as well as the nature of internal control that should be implemented. The CBA monitors compliance of banks with its CDD directive as part of its supervision of banks. This supervision is then conducted through on-site inspections and off-site reviews.

581. However, as mentioned in the preamble of section 3 of this report, the CBA does not supervised for AML/CFT purpose the financial institutions that benefit from the exemption of Article 48.3 of the

SOSCS, nor the financial institution that fall outside of the scope of Article 48.1 SOSCS since they are not considered as credit institutions.

582. *Insurance companies:* While the SOIPS submits life insurance companies and brokers to AML/CFT requirements, the CBA supervises the compliance of life and non-life insurance companies to AML/CFT measures but it does not supervise insurance brokers, as they are not regulated and supervised in Aruba. Aruba advises the assessment team that it plan to bring insurance brokers under the supervision of the CBA. Pursuant to the SOSIB, the CBA is charged with licensing, prudential and integrity supervision. Pursuant to Article 10 of the SOSIB (amended in February 2009), the CBA may issue directives to insurance companies with regard to the measures that must be taken to prevent ML and TF. The CBA has issued an AML/CFT directive for insurance companies that details the actions that insurance companies should undertake to conduct their CDD as well as the nature of internal controls that should be put in place. As with the banks, the CBA monitors compliance of insurance companies with its AML/CFT directive as part of its supervision of insurance companies. This supervision is then conducted through on-site inspections.

583. *Money transfers companies:* Pursuant to the SOSMTC, money transfer companies are required to be registered in the Register of Money Transfer Companies held by the CBA. As at 1st January 2009, there were 4 money transfer companies registered in Aruba. According to Article 6 of the SOSMTC, the CBA may issue directives to the registered money transfer companies on measures which must be taken to prevent ML and TF and the CBA has issued the Operational and AML/CFT Guidelines.

584. Supervision by the MOT*:* The MOT, the Aruban FIU, is in charge of the supervision of the compliance of all reporting entities, including all the financial institutions that are also supervised by the CBA (banks, insurance companies and money transfer companies) with the provisions set out in the SORUT and SOIPS. To avoid overlaps, the CBA and the MOT signed in 2005 a MOU to synchronise on-site visits and to foresee their mutual consultation and exchange of views at least twice a year.

Resources (Supervisors)

Structure, funding, staffing and resourced

585. CBA*:* The CBA was established on January 1st 1986 as a public legal person by the Central Bank State Ordinance (CBO).

586. The structure of the CBA consists of a Supervisory Board consisting of at least three and at the most five members. The role of the Supervisory Board is to supervise the operations and oversee the management of the CBA property and funds entrusted to it. The Board shall meet at least once per quarter and may request the president of the CBA to report on the general economic and financial development of Aruba and on the policy pursued, and administration and management conducted by the CBA.

587. The Chairman of the Board is appointed and dismissed by the Governor of the CBA and is designated as the "Government Commissioner" (CBO, Article 23). His role is to supervise the activities of the CBA on behalf of the country and in doing so the Chairman of the Board will act in accordance with general or specific instructions given by the Minister. (CBO, Article 27). Article 27, paragraph 3 provides that the President of the CBA and the executive directors must "provide the Government Commissioner on request with all information and, in doing so, hand over the books and records, which the latter considers necessary for the proper discharge of his duties." Also, the Chairman of the Board can attend executive management meetings and have an advisory role in those meetings.

588. The CBA sets its own budget and is actually mainly a self-funding body. It hires the staff it requires to perform its supervisory functions. The Supervision Department of the CBA falls under the responsibility of the executive director for supervision and consists of ten staff members, supported by one secretary. The Supervision Department is responsible for the supervision of credit institutions (mainly banks), insurance companies, money transfer companies and company pension funds and its annual budget is of about AWG 1.3 million (the total budget of the CBA being of AWG 17 millions). Aruba advises that since January 2009, an Integrity Unit has been established within the Supervision Department, which will focus on AML/CFT issues (onsite and off-site inspection). This unit should start functioning by the end of 2009.

589. The supervisors conduct their supervision of financial institutions following the rules set out in their work program, depending on the nature of the financial institutions. However, this work program covers all the supervisory controls that should be conducted generally and does not really detail the nature of the controls that should be undertaken for AML/CFT purposes. It only requires supervisors to "determine whether the AML/CFT procedures are in accordance with" the provisions set out in different CBA AML/CFT directives.

590. As a result, it is difficult to assess whether the CBA is adequately staffed and has sufficient technical and other resources, including expertise on AML/CFT policies and measures, to fully perform its AML/CFT functions. In its Planning supervision for 2009 for financial institutions, the CBA noted that the number of supervisory personal should be expanded, in particular due to the fact that the CBA is henceforth in charge of the supervision of TCSPs.

591. The MOT*:* The structure and resources of the MOT as already been described in section 2.5 of the report. Concerning its specific task of supervisor, it is worth noting that currently only 1 staff member, who is the head of the supervision section, is in charge of the supervision of all reporting entities with regard to the provisions set out in the SORUT and to the supervision of DNFBPs and certain financial institutions not controlled by the CBA with regard to the SOIPS, which appears to be far from sufficient. This person is supported in his duties by the investigators of the FIU. Investigators and supervisors do not have the same tasks. Even if the feedback of an investigator can be valuable for a supervisor to quicker identify the deficiencies of particular reporting entities, the functions of a supervisor and of an investigator cannot be merged and the skills and experience required are not the same. Therefore, the MOT's supervisory unit does not appear to be sufficiently staffed and resourced, even more taking into account that, since February 2009 the same group of person is also responsible of the supervision of all the DNFBPs and all other non-financial businesses and professions brought under the scope of the legislation (see section 5.4 of this report).

Professional standards of staff of competent authorities

592. CBA: Article 29 of the CBO provides that anyone who is employed by the CBA shall be obligated to secrecy with regard to data or information provided or received from an outside body, or data or information obtained in the examination of books of financial institutions, other documents or other information carriers, and shall be prohibited to make further or other use, or to disclose further or in another way the data, other than required for the performance of one's duties. Concerning the professional standards and skills of the CBA's staff, the CBA considers that its employee-hiring procedure ensures that only persons of high integrity and with sufficient skills are hired. However, as the assessment team was not provided with this procedure or any other internal procedure requiring a minimum level of skills or standards other than a list of job descriptions, it is difficult to verify this statement.

593. MOT: Concerning confidentiality, professional standards and skills, the rules for the supervisory staff are the same as those for the rest of the MOT's staff as described in section 2.5. The MOT's personnel consist largely of personnel with a bachelor or academic degree who have skills in accountancy, audit, banking, police and legal issues. The recruitment of new personnel is done in accordance with the "Note Recruitment Procedure". This document has been established by the Advisory Committee and sets out the complete recruitment procedure for personnel of the FIU. As part of the procedure the Head of the FIU interviews applicants and nominates candidates for a subsequent interview with the Advisory Committee. The Advisory Committee interviews the candidates and nominates a candidate with the Minister of Finance and Economic Affairs for appointment at the FIU in accordance with Article 8 SORUT. The nomination is done on the basis of the interview, experience and personal history, competence, conduct and behaviour. New personnel are also screened extensively by the National Security Service prior to their appointment in order to ascertain their integrity. Furthermore, the staff of the MOT has to abide by the rules of confidentiality as stated in the Code of Conduct of the FIU and the secrecy provisions of the Articles 20 and 21 SORUT and 62 and 63 of the State Ordinance Regarding Government Employment. Finally, an assessment is carried out on a regular basis by the Head of the FIU to monitor the performance of the FIU personnel.

Training of staff of competent authorities

594. CBA: The supervisory staff of the CBA, which is polyvalent, regularly attends workshops and conferences on integrity of financial institutions and the fight against AML/CFT. These training sessions are mainly organised by regional bodies, such as the CFATF, foreign countries like the USA, or private organisation, such as ACAMS.

595. MOT: The staff of the MOT participate in regular training sessions as described in section 2.5 of the report, but the training sessions provided during the last year to the MOT's staff, in particular its supervisory staff, do not focus sufficiently on supervisory matters, which would certainly be of high value for investigators who collaborate from time to time with the person responsible for the supervision of the reporting entities. However a training meeting on casino supervision was attended in April 2008 by two staff members charged with supervisory powers pursuant to Article 23 SORUT.

Authorities Powers and Sanctions – R. 29 and 17

Powers to monitor compliance

596. CBA: Whilst the SOIPS provides that officials and persons employed by the State or the CBA shall be charged with the supervision of compliance without determining which institution in practice will supervise financial institutions, the SORUT states that only persons employed by the MOT shall supervise all reporting entities, including financial institutions. Thus in this context, the CBA supervises the compliance of financial institutions with the provisions of the SOIPS, as well as with the provisions of the AML/CFT directives for banks and insurance companies and the Operational and AML/CFT Guidelines for money transfer companies, while it cannot not supervise their compliance with the reporting obligations (SORUT). This is a very significant deficiency. One additional difficulty remains in the fact that some provisions of the AML/CFT directives issued by the CBA, relating to the conditions of customer identification, contradict the provisions of the SOIPS. Moreover, although it is not legally required, the CBA and the MOT, in case of general on-site inspections, usually discuss 2 weeks prior the start of the inspection, the date and duration of the on-site inspection with financial institutions and other reporting entities, in order to agree on logistical and organisational issues so as to facilitate the on-site inspection. This practice undermines the effectiveness of the supervision, in particular regarding reporting obligations.

597. The State Decree containing general enactments for the standardisation of the regulatory powers enacted in 1998 regulates the supervisory powers of the CBA and the MOT and also regulates the exercise of these powers. For instance, the supervisory authorities can exercise their supervisory powers only if the intended purpose of this power "cannot be achieved in another more effective or less drastic manner" and a supervisory power will only be exercised in so far as this is reasonably necessary for the supervisor to perform its duties. According to Article 52 of the SOSCS, Article 25 of SOSIB and Article 13 of the SOSMTC, the employees of the CBA who are in charge of supervision are authorised to request all information, to demand inspection of all books, records and other data carriers and to make copies hereof or to take them temporarily, and to enter in financial institutions. The State Ordinances also provide that financial institutions shall cooperate with the CBA. Therefore, the CBA can both conduct off-site and on-site inspections of financial institutions.

598. The periodic on-site inspections of the CBA are generally conducted by a team of two or three examiners, under direct supervision of a senior financial examiner and the Head of the Supervision Department. The frequency of such on-site inspections depends to a large extent on the risk profile of each institution, which is based on its nature and the size of its activities, its legal structure, the analysis of the findings of off-site examination, outcomes from discussions with the management, previous on-site findings and professional judgment. Depending on the scope of the onsite inspection, this may take one to three weeks to complete. The examination of various work programs of the CBA was not very helpful for the assessment team. In particular, the work program for insurance companies only provides that inspectors should "determine whether the AML/CFT procedures of financial institutions are in accordance with the AML/CFT directives for banks and insurance companies". Therefore, the work program for insurance companies does not explicitly require inspectors to review AML/CFT policies and procedures, books and record and to practice sample testing. In addition, assessors did not identify that this procedure was usually practiced. As for the work programs for banks and MTCs, they have been refined recently and seem to be more robust. As to powers to compel production of or to obtain access to all records, documents or information relevant to monitoring financial institution's compliance, there is no legal prohibition or limitation in the law, so that the CBA should theoretically be able to obtain all the information it needs. However, Article 11 of the State Decree containing general enactments for the standardisation of the regulatory powers enacted in 1998 requires the CBA to only gather the information that is relevant to its supervision. Therefore, it is unclear whether the CBA can obtain and use information such as those related to specific accounts or transactions.

599. The assessors were given the following data on on-site inspections carried out by the CBA since 2005:

Table 24. On-site inspections carried out by the CBA

	2005	2006	2007	2008
Commercial Banks	1	2	1	4
Life insurers	3	1	3	1
Non-life insurers	2	2	2	1
Captives	0	0	1	0
Money transfer companies	3	3	2	4
Total	**9**	**8**	**9**	**10**

600. MOT: The MOT is in charge of the supervision of all reporting entities, including financial institutions, with the SORUT. The nature of the supervision process undertaken by the MOT is also regulated by the provisions stated by the State Decree containing general enactments for the standardisation of the regulatory powers detailed above. The MOT performs its duties under the same conditions as the CBA. Indeed, Article 23 of the SORUT provides that MOT's employees can request all information, demand inspection of all business books, documents and other information carriers and enter in the places of reporting entities. In practice, the MOT conducts both off-site and on-site inspections of reporting entities and focuses amongst other on the analysis made by financial institutions to detect unusual transactions as well as on statistics of the unusual transactions reports made by the compliance officer of banks, insurance companies or money transfer companies to the FIU.

601. In practice, the MOT practices two types of supervision: quick-scan and on-site inspections. The quick-scan mostly consists in checking the compliance of financial institutions with their internal policies and the designation of a compliance officer. During on-site inspections, the MOT verifies the quality of the procedures and policies in place, it interviews staff and consults the list of transactions to check if unusual transactions should have been reported. During the on-site visit, the staff of the MOT admitted that the timetable of the inspections was negotiated with reporting entities themselves. The selection of financial entities is deemed to be risk-based, but whilst only 1 life insurer in 8 report unusual transactions to the MOT, it had only conducted a quick scan supervision on the sector and no on-site inspection of any life insurance companies.

602. The assessors were given the following data on on-site inspections carried out by the MOT since 2005:

Table 25. On-site inspections carried out by the MOT

	2005	2006	2007	2008
Banks	3	2	3	4
Money transfer companies	0	4	3	3
Life Insurance companies	0	0	0	1
Life insurance intermediaries	0	0	0	0
Offshore Banks	0	0	0	0
Total on-site inspections per year	**3**	**6**	**6**	**8**

603. According to the MOU concluded between the CBA and the MOT in December 2005, both institutions should meet twice a year to exchange information concerning among other things the reporting and identification behaviour per sector and the program of their on-site inspection. However, in practice, the MOT admitted to the assessment team that it does not receive such information from the CBA. It appears that both institutions do not effectively coordinate their actions, despite the fact that this would seem appropriate and necessary in a country where the supervision is risk-based at least in theory.

604. Finally, as a general result of these provisions, financial institutions that do not fall in the scope of AML/CFT obligations as described in section 3.1 are not supervised and life insurer brokers are not effectively supervised (see table above). In addition, regarding off-shore banks, they are only subject to off-site supervision at the time of the onsite visit, although the MOT advised the assessment team that it carried out an on-site inspection in 1998. The assessment team was not provided with any further detail on this inspection. However, the CBA advises that it has recently strengthened its supervision on these two off-shore banks via an outsourcing agreement with an external independent audit firm and that it increased the reporting frequency from quarterly to monthly and that it holds more frequent meetings with senior management of the two offshore banks.

Recommendation 17

605. In February 2009, Aruba adopted changes in the SOIPS, SORUT, SOSCS, SOSIB and SOSMTC in order to introduce the possibility for the CBA and the MOT to impose administrative sanctions in cases of failure to comply with AML/CFT obligations.

606. CBA: According to the SOSCS, the SOSIB and the SOSMTC, the CBA may impose sanctions where a financial institution it supervises fails to comply with the provisions set out in the AML/CFT directives for banks and insurance companies and the Operational and AML/CFT Guidelines for money transfer companies. The sanctions available under the new State Ordinances are as follows:

607. **Banks**: Since the amendment of the SOSCS, according to Article 10, the CBA may give a direction to a bank if it does not comply with the provisions set out by or though Article 19a, that is to say the AML/CFT directive for banks. In this case, the bank must pursue the prescribed course of action within the period determined by the CBA. Article 11 of the amended SOSCS also indicates that the CBA may withdraw a licence if the credit institution does not meet the provisions set out under Article 19a.

608. The CBA has also been given by Article 35a of the amended SOSCS the authority to impose a penalty charge order for infringement of the provisions set by or though the SOSCS as well as administrative fines. The same article provides that further rules can be set out by State Decree to determine the correct application of the authority to impose administrative sanctions, that is to say to determine how the CBA can impose these administrative sanctions. However, this State Decree has not been issued yet, and the authorities do not consider it as a pre-requisite.

609. In addition, the amended SOSCS provides that the CBA has the authority to "bring to the notice of the public the fact for which the penalty charge order or the administrative fine was imposed". For this purpose, the Minister may adopt regulation concerning the exercise of the authority to publish the adoption of administrative sanctions. The Aruban officials also considered this ministerial regulation was not so far necessary, even if the provisions set out in the new SOSCS lack clarity on the decision making process and on the person subject to the administrative sanctions. The Aruban authorities consider that the fact that in case of financial institution attack a CBA's decision, the administrative court can make a decision on whether the decision making process of the CBA is lawful regarding its impartiality and its due process is sufficient.

610. Lastly, according to Article 53 of the amended SOSCS, a person acting intentionally in violation of the provisions set in or pursuant to Article 19a shall be liable either to imprisonment not exceeding 4 years or a fine not exceeded AWG 500 000, or both.

611. As a result, the CBA has a number of legal powers to apply sanctions against banks which do not comply with a provision of the AML/CFT directive for banks. However, except for the authority to issue a direction to a bank, the decision making process to adopt other administrative sanctions (*e.g.* the administrative fine and the publication of the decision) has not been laid down. The sanctions process is not stepped. Since the CBA has been given these administrative sanctions powers only in February 2009, the CBA was unable to demonstrate the effectiveness of the process and the explanation given to the assessment team on its sanctions decision making process did not appear very relevant to the issues set out above. Therefore, the assessment team had serious doubts as to the effectiveness of the system. No effective sanctions have been applied in practice.

612. Moreover, the sanctions that the CBA can apply do not appear to be effective, proportionate and dissuasive and do not cover the range of sanctions described in the Methodology. All the sanctions are directed against the financial institution itself, and there are no sanctions against its directors, management or employees. In addition, the level of the maximum administrative fine (AWG 250 000 or around USD 140 000) is too low to be properly dissuasive for a bank, particularly in respect of the two offshore banks that belong to an international banking group.

613. **Insurance companies**: Since the adoption of the amended SOSIB, the CBA has a range of sanctions available against an insurance company that fails to implement AML/CFT provisions. According to Article 15 SOSIB, the CBA can give the insurer a direction to comply with the AML/CFT directive. If within two weeks after the date of issuance of the direction, the CBA has not received a satisfactory answer from the insurer or if the CBA is of the opinion that the direction has not or not adequately been complied with, the CBA may notify the insurer that it will publish the direction in the Gazette or that it replaces the management of the insurance company. Finally, pursuant to Article 8, the CBA can revoke the licence of the insurance company if it fails to comply with the direction issued by the CBA.

614. Since February 2009, the CBA also has the power to impose administrative sanctions which are, (as for the banks), a penalty charge order and administrative fines, as well as the publication of these sanctions. The amended SOSIB also provides that further rules may be defined by State Decree to determine the conditions under which the CBA can impose these sanctions, but the Aruban authorities do not consider this as a pre-requisite.

615. As a result, there is no clear link between the identification of deficiencies of an insurance company and the authority to impose administrative sanctions, while this link clearly exists between deficiencies to comply with the provisions of the AML/CFT directive and the issuance of a direction by the CBA as well as the publication of this direction, the replacement of the management and the revocation of the licence. The administrative sanctions are not effective.

616. The assessment team is of the view that the range of sanctions available for the CBA, mainly the issuance of a direction and its publication, the replacement of the management and the revocation of the licence, is not effective, proportionate and dissuasive. In addition, so far, the CBA has not issued any direction for failure to comply with the AML/CFT directive nor any other sanction, while the insurance sector does not regard the AML/CFT obligations in the directive as a mandatory enforceable requirement.

617. **Money Transfer companies**: Pursuant to Article 16 of SOSMTC, the CBA may give the company an instruction to follow a certain course of action in order to ensure that the deficiencies

identified by the CBA are remedied. The company shall then comply with the instructions of the CBA within a reasonable term determined by the CBA. However, unlike the SOSIB for insurance companies, the SOSMTC does not detail the additional measures that the CBA could take if the company continues not to comply with its instruction. Nevertheless, article 29.3 of SOSMTC provides for penal sanctions in case of failure to comply with the AML Guidelines.

618. Since February 2009, the CBA has the power to impose administrative sanctions which are, as for banks and insurance companies, a penalty charge order and administrative fines (AWG 250 000), as well as the publication of these sanctions. As for the previous State Ordinances described above, the State Decree to determine the conditions under which such sanctions can be imposed has not been created as the Aruban authorities do not consider it as a pre-requisite. Therefore and since Aruba did not provide any cases showing fining sanction being used, the assessment team was unable to determine whether the CBA needs to issue an instruction to a money transfer company that fails to comply with AML/CFT measures prior to imposition of any administrative sanctions.

619. In addition, the amended SOSMTC provides that the registration of a money transfer company may be withdrawn by the CBA if it has a reasonable suspicion that the money transfer company has committed or will commit money laundering or terrorist financing or is involved with ML/TF or in the event that the company does not fulfil its statutory obligations, including the ones provided by the Operational and AML/CFT Guidelines. However, as for the range of sanctions available, the assessment team is of the view that they are not adequate, nor effective, proportionate and dissuasive.

620. The MOT: Before the modifications of the SORUT adopted in February 2009, the MOT could only send to the Public Prosecutor cases of failures to comply with the obligation to both report unusual transactions to the MOT (Article 11 SORUT) and to communicate information to the MOT upon request to the Public Prosecutor (Article 12 SORUT). Indeed, penal sanctions were the only sanctions available, in the sole context of these two circumstances. Since February 2009, these sanctions are not available anymore when a reporting entity intentionally fails to report unusual transaction or refuse to communicate information to the MOT. The new SORUT limits the scope of penal sanctions to non-compliance with a direction given by the MOT (Article 13 SORUT), violation of the secrecy obligation (Article 20 SORUT), infringement of the prohibition against tipping-off (Article 21 SORUT) and refusal to cooperate with supervisory authorities (23, fifth section, SORUT). The reason for this is that Aruba believes that administrative sanctioning offers a more efficient and effective alternative to deal with non or insufficient compliance with the reporting obligation. Therefore, the SORUT as amended provides that the MOT, on behalf of the Minister of Finance, has the authority to impose a set of administrative sanctions for failure to comply with the provisions of the State Ordinance. These administrative sanctions are as follows:

- A penalty charge order or an administrative fine to an amount not exceeding AWG 250 000 (around USD 140 000).
- The publication of the sanction decision.

621. However, as for the CBA, while the amended SORUT states that the conditions under which the MOT can impose these sanctions can be determined by State Decree, such a State Decree has not been adopted so far.

622. More globally, as for the CBA, the sanctions that the MOT can apply do not appear to be effective, proportionate and dissuasive and do not cover the range of sanctions described in the Methodology. All the sanctions are directed against the reporting entities themselves, and there are no sanctions against their directors, management or employees. In addition, the level of the maximum

administrative fine (AWG 250 000 or around USD 140 000) is too low to be properly dissuasive for a larger financial institution. In addition, in practice, although the analysis of the reporting system per sector and per financial institution show clear deficiencies in reporting unusual transactions, the MOT has never taken any action against a reporting entity and rather prefer to communicate with the management to help it to remedy to the deficiencies.

Market entry – Recommendation 23

623. The controls for market entry and participation in the ownership of financial institutions in Aruba are undertaken by the CBA. These controls apply to credit institutions, insurance companies and money transfer companies. Therefore, life insurance intermediaries are not covered, nor is the securities sector even though an electronic stock exchanges market was established in 2006 and investment companies operates on the island. In addition, persons who carry on currency exchange transactions and that are not credit institutions are not subject to licensing / registration requirements.

624. According to the SOSCS, credit institutions operating on Aruba should be granted a licence by the CBA. A credit institution is defined as an enterprise or institution, whose business is to receive funds repayable on demand or subject to notice being given and that grant credit or investments for its own account. This definition is very narrow**,** limited largely to traditional deposit taking. This results in a licence regime that does not cover the full range of Core Principles financial institutions, with the exception of insurance companies. As many activities conducted by banks are broader than deposit taking, because such activities are outside the regulatory scope, supervisory staff may well not be aware of them and the risks they introduce to the jurisdiction or entity.

625. In addition, Article 48 of the SOSCS provides an exemption from the licensing regime. Indeed, while any natural or legal person is prohibited from approaching the public in order to attract funds in the course of his/its occupation or business which funds in total or for each case of separate attraction are below AWG 100 000 (around USD 56 000) or in order to grant credits, the CBA may grant dispensation from this prohibition under the conditions described below, without granting them a licence.

Banks and other credit institutions:

626. The procedure for the granting of authorisation to a bank or other credit institution as defined above is laid down in the SOSCS (Article 4 to 8) and further explained in the Policy Rule Banking Licence Requirements and Admission Requirements for Credits Institutions Operating in or from Aruba issued by the CBA in December 2008 and revised in January 2009.

627. It is a condition that the CBA must be notified of the number, names and the past history of the persons who determine the day-to-day policy of the institution and of the members of the supervisory board as well as the name of the persons who have directly or indirectly more than 5% of the shares of the credit institution, or the ability to exercise either directly or indirectly more than 5% of the voting rights or the persons who have a comparable influence on the institution. Then the CBA shall grant the licence unless, in particular, it judges that:

- The expertise of the persons who determine the policy of the credit institution is insufficient.
- Based on the grounds of intentions or the past history of the persons who determine the day-to-day policy, the interests of the creditors or future creditors of the institution could be jeopardized.

- The sound banking policy of the credit institution could be subject to an undesirable influence considering the impact of the qualifying holding on the solvency and liquidity of the institution.

- Granting a licence would lead to an undesirable development of the Aruban credit system.

628. As a result of relying on information provided by the entity, the CBA does not conduct any independent fit and proper test. As for the beneficial owners of a credit institution, it seems that the CBA does not have procedure in place to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest in a credit institution.

629. The nature of the fit and proper test performed by the CBA consists in asking the persons who conduct the day-to-day policy and the members of the supervisory board to provide the CBA with a certificate of good standing demonstrating he has no criminal record, though this document is not formally required by the CBA's Policy Rule for banking market entry. The CBA has no direct access to local or overseas police records or intelligence information. More globally, the CBA does not conduct independent checks on the information obtained from the applicant, in particular regarding the qualification and expertise of the persons who conduct the day-to-day policy of the institution and the members of its supervisory board and their possible past bankruptcy experience or concerns about the solvency of credit institutions previously managed. Whilst Article 9 of SOSCS states that credit institutions shall not appoint persons who determine the day-to-day policy of the institution or shareholder without having requested permission from the CBA, the CBA does not conduct fit and proper test regarding these persons to grant its authorization. Therefore, the fit and proper tests are performed by the CBA before the granting of a licence, but not thereafter on an ongoing basis.

630. Finally, in order to assess whether granting a licence to a credit institution would lead to an undesirable development in the Aruban credit system, the CBA focuses its attention on the financial solidity and integrity of the credit system, the functioning of financial markets, the interest of the creditors, account holders, savers, deposit holders and other interested parties, the soundness and stability of the financial sector and the financial reputation and integrity of Aruba. In addition, the SOSCS and the CBA's policy rule for banking market entrance requires the applicant to provide the CBA among other documents with its business plan for a five-year period, an opening balance sheet, the article of incorporation, the annual reports over the last three fiscal years of the parent company, a list of correspondent banks, the list of the prospective beneficial owner(s) of the credit institution who have more than 5% of the shares.

631. Pursuant to Article 11 of SOSCS, the CBA may withdraw the licence previously granted if the conditions under which the credit institution were granted licence have changed or in particular if the credit institution does not comply with the provisions set out in the AML/CFT directive for banks.

Insurance companies

632. The procedure for the granting of authorisation to an insurance company is laid down in the SOSIB (Article 5 to 9) and further explained in the Policy Rule Banking Licence Requirements for Insurance Companies Operating in or from Aruba issued by the CBA in 2006.

633. The applicant must address to the CBA the following information:

- The number, the identity and the antecedents of the persons who determine the day-to-day policy and of the members of the supervisory board.

- The identity of the persons who have a qualified holding, which is defined as a direct or indirect holding of more than 5% of the issued share capitals of an insurance company or the ability to exercise directly or indirectly more than 5% of the voting rights in the company or the ability to exercise directly or indirectly a comparable degree of control.

- Annual financial statements or an opening balance sheet.

- A program of activities which the applicant intends to conduct.

- The envisaged management controls and administrative organisation.

- The applicant's deed of incorporation.

634. Based on this information, the CBA grant a licence to an applicant if it complies with in particular the following conditions:

- The applicant's day-to-day management is determined by at least one natural person.

- The expertise of this person(s) is sufficient.

- The intentions or antecedents of this person(s) would not endanger he interests of the insurants, the insured and other entitled to payments.

635. This procedure for granting a licence is therefore very close to the one for credit institutions and contains the above-noted deficiencies, the lack of an independent check performed by the CBA on the fit and properness of the applicant, the absence of ongoing fit and proper test and the lack of procedure for preventing criminals to take controls of the insurance company. However, this procedure for insurance companies differs in that, while Article 17 of SOSIB does require the CBA to give prior approval to director's appointments, failing to obtain such approval does not comprise a breach of rules that is subject to the penal provisions set out in Article 26, but is subject to administrative sanctions set forth in Article 16 SOSIB and revocation of the licence

636. In addition, in accordance with Article 8 of SOSIB, the CBA may withdraw the licence if, in particular, the company no longer meet the conditions for obtaining a licence, or failed to comply with an instruction from the CBA to address deficiencies.

Money transfer companies

637. The procedure for granting registration to a money transfer company is laid down in the SOSMTC (Article 2 to 5). To that effect, an applicant for registration shall provide the CBA with in particular the following documents:

- The identity, the antecedents and certificates of good conduct of the managing directors, the persons who determine the day-to-day management of the company and the persons authorised directly or indirectly to appoint or discharge these persons.

- The name and address of the company and those of the branch's offices.

- The conduct of the intended business, including the measures aimed at the promotion and maintenance of an integer management and administration organisation.

- The registration number of the Chamber of Commerce.

- The identity of the persons who have a direct or indirect interest exceeding 5% of the placed share capital of the company

638. Based on this information provided by the registration applicant, the licence is granted by the CBA unless it is of opinion that the integrity of the financial system will be affected, or it has a reasonable suspicion that the company, its directors, the persons who determine its day-to-day management and the persons authorised directly or indirectly to appoint or discharge these persons commit, will commit or are involved with money laundering or terrorist financing, or lastly that the management or the administrative organisation of the company is insufficient to promote and maintain a proper conduct of business or to fulfil the obligations resting on the company.

639. Pursuant to Article 7 of SOSMTC, the CBA may revoke the registration, in particular if the conditions of the licence have changed, if the money transfer company or the natural person conducting business is declared bankrupt, or if the company or its director or members to the supervisory board commit, will commit or are involved with ML/TF.

640. The scope of the fit and proper test is thus broader than for credit institutions and insurance companies as it also covers the range of managing directors. However, as for the other financial institutions, the CBA has no procedure in place to prevent criminals from being beneficial owners of money transfer companies. Moreover, the quality of the fit and proper tests performed by the CBA appear to be quite low, as the CBA does not have access to intelligence information and does not independently check the information transmitted by the applicants. In addition, concerning the ML/TF risk, the SOSMTC allows the CBA to refuse or to withdraw a licence if the company or its management or its ultimate beneficiaries commit, will commit or are involved in ML/TF activities. This requirement seems quite high and would deserve the case to be investigated and, as necessary, to be prosecuted rather than to be sanctioned by the withdrawal of the licence by the CBA.

Guidance for financial institutions (other than on STRs) – Recommendation 25

641. The CBA actively works to enhance the AML/CFT awareness and knowledge of financial institutions. The CBA has thus issued the CDD Directive for banks and the AML/CFT directive insurance companies and the Operational and AML/CFT Guidelines and Guidelines on the conduct of business by and the administrative organization for money transfer companies for money transfer companies. This guidance has been extensively described throughout this report. The CDD Directive and the AML/CFT directives focus on customer identification, ongoing monitoring of business relationships, the implementation of enhanced due diligence for higher risks such as PEP or non face-to-face customers, and AML/CFT procedures, policies and controls that banks and insurance companies should implement. However, because the AML/CFT directive does not establish any link between CDD requirements and reporting obligations, it does not explain and assist financial institution in conducting their ongoing monitoring to ensure that they identify and report unusual or suspicious transactions. The scope of Operational and AML/CFT guidelines for money transfer companies is narrower and mainly focuses on the need to designate a compliance officer and to have procedures and policies in place.

642. Although this guidance valuably complements the provisions of the law, in particular of the SOIPS, and are certainly a good help for financial institutions, the CBA should consider revising them in order to ensure that they are fully consistent with revised SOIPS and SORUT and to clarify the scope of the financial activities subject to AML/CFT obligations.

3.10.2 Recommendations and Comments

643. Aruba should review the supervisory competences of the CBA and the MOT in order to ensure that all financial activities designated by the FATF Glossary are properly regulated and supervised. In particular, Aruba is strongly urged to regulate and supervise its securities sector, including the electronic stock exchange market established in 2006 and all the professionals operating in this field as well as the off-shore banks and the life insurance companies and intermediaries. In addition to extending the scope of financial institutions subject to AML/CFT requirement, Aruba should ensure that the full range of these financial institutions is also subject to a proper and effective supervision. Considering the important resources constraints of the MOT that prevent it from effectively performing its supervisory functions, Aruba should consider designating the CBA as the only AML/CFT supervisor for all financial institutions.

644. Aruba should review the AML/CFT supervisory powers of the CBA in order to strengthen the quality of the fit and proper tests. In particular, the CBA should have procedures in place to apply ongoing fit and proper test to managing directors and to be able to conduct independent check on the quality of the information provided by the licence applicants. The CBA should also have procedures in place to prevent criminals and their associates from becoming beneficial owner of credit institutions and insurance companies.

645. Aruba should also revise the range of levels of the sanctions available to ensure that they are effective, proportionate and dissuasive and also applicable to directors and senior management of financial institutions.

646. The supervisory powers on financial institutions are currently divided between the CBA, which supervises the compliance regarding the SOIPS, and the MOT, which supervises the compliance of financial institutions with the SORUT. This division not being effective, in particular due to the lack of exchange of information between the two supervisory bodies and the lack of link between the CDD requirements and the reporting obligations, Aruba should thus consider reviewing it so that the same supervisor would supervise the compliance of a financial institution regarding the full range of its AML/CFT obligations. In this regard, it would thus be logical for the CBA to take the full responsibilities for financial institutions.

3.10.3 Compliance with Recommendation 17, Recommendation 23, Recommendation 25 and Recommendation 29

	Rating	Summary of factors relevant to s.2.10 underlying overall rating
R.17	NC	• The scope issues identified in the preamble of section 3 of this report also apply. • The range of sanctions of the CBA and the MOT, although expanded under the new law, are not broad enough and are not effective, proportionate and dissuasive. • There are no sanctions available against directors and senior managers of financial institutions. • The level of fines, which may be issued, is low, in particular for credit institutions and insurance companies. • There are no sanctions available for securities firms as they do not fall under the scope of the AML/CFT obligations. • No procedures in place as yet to impose sanctions. • Effectiveness of sanctions regime still to be tested.
R.23	NC	• The scope issues identified in section 3.2 also apply. • Securities and investment sector is not licensed, regulated nor supervised. • Absence of licensing or registration requirements for insurance intermediaries.

	Rating	Summary of factors relevant to s.2.10 underlying overall rating
		• Absence of licensing or registration requirements for persons that carry on currency exchange activities. • There are no provisions in place to prevent criminals or their associates from holding or being beneficial owners of a significant or controlling interest or holding a management function in a credit institution or an insurance company. • The fit and proper tests are performed on the basis of information provided by the licence applicants, but the CBA does not sufficiently check this information. • Lack of ongoing checks of the fitness and properness of credit institutions, insurance companies and money transfer companies. • Lack of effectiveness with regard to the supervision of the MOT. Effectiveness: • The division of the scope of the supervision powers of the CBA and the MOT is not appropriate and undermines the overall effectiveness of the supervision of financial institutions. • The communication between the 2 supervisory bodies that supervise the same financial institutions for AML/CFT purpose needs to be strengthened. • The resources and training of staff of the CBA and the MOT are not adequate.
R.25	PC	The MOT (as a supervisor) • The MOT has not issued any guidelines to assist FIs or DNFBPs to comply with their respective AML/CFT requirements. The CBA (as a supervisor) • The AML/CFT directives for banks and insurance companies, although very useful, are limited to CDD requirements and do not establish links with reporting obligations. • The scope of the Operational and AML/CFT guidelines for money transfer companies is to narrow and does not really address AML/CFT provisions. • The scope of this guidance does not clarify the scope of financial activities subject to AML/CFT requirements.
R.29	NC	• Supervisors have no power of enforcement and sanction against directors and senior management of financial institutions. • The level of requirements of the off-site inspections carried out by the MOT is very low. • The scope of the on-site inspections carried out by the CBA for banks and money transfer companies needs to be strengthened, across a wider range of regulated institutions and in more details. • The State Decree on the standardisation of regulatory powers could undermine the authorisation of supervisors to obtain all the information needed. Effectiveness: • The CBA has not exercised its power to supervise off-shore banks. • The MOT has not exercised its powers to supervise life insurance companies and intermediaries and off-shore banks.

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis

Registration/licensing authorities

647. Before 2003, the remittance sector in Aruba was broad, as there were dozens of informal remitters operating on the island. Remittance services are primarily used by immigrant workers in the

tourist sector. In 2003, Aruba adopted the State Ordinance on the Supervision of Money Transfer Companies (SOSMTC) that organises the regulation and supervision of money transfer companies in order to comply with the FATF SR.VI.

648. The SOSMTC created a registration regime for money transfer companies (MTC's). This register is kept by the CBA who is tasked with the registration and supervision of money transfer companies. According to Article 2 of SOSMTC, acting as a money transfer company without being registered is prohibited and is subject to penalties. This general prohibition does not apply to the CBA, the credit institutions licensed pursuant to the SOSCS and the State of Aruba.

649. The registration of natural or legal persons that conduct money or value transfer as a profession are set out in Articles 3 to 5 of the SOSMTC.

650. Even if the system in place in Aruba is called a registration system, it is actually similar to and has the characteristics of a licensing system since the CBA has the authority to refuse to register a MTC if it does not meet the requirements.

651. Although no explicit reference is made for the CBA to maintain a current list of the names and the addresses of registered MTC's, MTC's are required to report any update of information to the CBA and the CBA does keep a list of MTCs which is published on its website.

652. The Aruban system for registering, monitoring MTCs and sanctions available to the CBA and the MOT as supervisors are described in section 3.10 of the report.

Subject to the 40 + 9 Recommendations

653. The obligations imposed on MTCs under the SOIPS and the SORUT are limited to basic customer identification and verification procedures, record-keeping and the reporting of unusual transactions to the MOT. In addition, the CBA has issued Operational and AML/CFT guidelines for MTCs pursuant to Article 6 of the SOSMTC revised on 5 February 2009. These guidelines require money transfer companies to have an effective system of procedures and controls in place to combat money laundering and the financing of terrorism. However, the former guidelines are insufficient to comprehensively meet the FATF standards especially regarding preventive measures as the provisions outlined in the guidelines merely foresee the following general and succinct AML/CFT obligations:

- Each client should fill in a Source of Funds Declaration form for the transactions exceeding AWG 2 500 or its equivalent in foreign currency or in case the transaction pattern of a client gives reason hereto.
- The details of the transaction should be saved for at least ten years.
- MTC's should have an effective system of procedures and control to combat money laundering and financing of terrorism. These procedures and controls should be laid down in a separate manual.
- A Compliance Officer should be appointed and be responsible for overseeing compliance with the internal procedures established to ensure compliance with the SOSTMC and the applicable anti-money laundering laws and regulations to combat money laundering and financing of terrorism.

- The compliance officer should undergo extensive and period training in the area of AML/CFT and is responsible for the overall training of the personnel.

654. It is worth noting that the scope of art. 1 (b) of the 2000 State decree implementing art. 1 (b) (6) of the SOIPS grounding the activities of MTC's seems extraordinarily broad thereby undermining the legal underpinning of the SOIPS containing further CDD obligations. Further, the guidelines cannot be considered to qualify as other enforceable means.

Monitoring compliance and sanctions

655. The supervision of the registered money transfer companies is undertaken by the CBA regarding the compliance of the MTCs with CDD requirements of the SOIPS and by the MOT regarding their compliance with the reporting obligations set out in the SORUT. The supervisory competences and procedures of these two bodies are described in section 3.10 of the report, under Recommendation 23 and 29.

656. Globally, the MTCs are considered as being a higher ML/TF risk financial sector and as such, both the CBA and the MOT have conducted more on-site inspections on these companies than for the rest of the financial sector.

657. In a case of failure to comply with AML/CFT obligations, the range of sanctions available for the CBA and the MOT is described in section 3.10 of the report, under Recommendation 17. So far, no sanction has been imposed for AML/CFT purpose against a MTC. This might be due to the fact that the level of AML/CFT requirements for MTCs is globally low and limited to the identification of customers, who generally are natural persons. In addition, the assessment team noted that MTCs generally have a good knowledge of their obligations under the Aruban law and that some of them apply stricter AML/CFT procedures and policies established by the international network which they belong to.

658. The creation of the MTCs register pursuant to the introduction of the SOSMTC in 2003 has significantly reduced the number of then operational MTCs. However, the assessment team was told that informal remittance system and operators are still operating in Aruba. Despite the fact that operating money or value transfer without being registered is punishable by a 4 year prison term and a fine of AWG 250 000, so far the police of Aruba have not undertaken investigations against this phenomenon.

List of agents

659. The SOSMTC does not require registered MTC to maintain a current list of its agents which must be made available to the designated competent authority. According to the information provided by the Aruban authorities during the onsite visit, the SOSMTC does not permit the operation of money transfer business via agents. However, this prohibition does not seem to apply to institutions which are being given an exemption pursuant to Article 10, paragraph 1 SOSMTC. For example, the Aruban authorities advised the assessment team that Moneygram and Western Union have been granted an exemption on the basis that their activities are supervised via the registered MTC's pursuant to Article 10, paragraph 1 SOSMTC. Intertransfer and the Post Union act as agents for Moneygram and Western Union respectively.

3.11.2 Recommendations and Comments

660. The authorities should be commended for having actively engaged the industry in an outreach program during the process of regulating the MTC's prior to regulation of this sector and for having applied screening measures that resulted in a sharp reduction of the number of players within this industry (4-5 out of 50 remaining following the regulation of this sector). The assessors confirm the benefits of this outreach

recording the high level of awareness of the industry during the onsite visit with regards to the sanctions related to breaches of the AML/CFT requirements applying to this industry. However, assessors were not able to identify whether the CBA had conducted any outreach activities to ensure it had identified all businesses carrying out money transfers that were not already registered under the mainstream supervisory system (cf. 29.2). With regards to preventive measures, the existing MTC guidelines on AML/CFT are insufficient to meet the FATF standards in content and nature. It should also be noted that the CDD requirements applied to MTC's rely on a very broad definition of money transfer services. It was also noted earlier in this report (cf. R. 17) that the ongoing supervision responsibilities foreseen for the MTC sector are narrower than those of other sectors. As for the range of sanctions available, the assessment team is of the view that there are not effective, dissuasive and proportionate and that they should also apply to the directors and senior management of the MTCs. Finally, other systems and controls have been judged non compliant (cf. R. 13-15).

661. It is therefore recommended that Aruba:

- Upgrades the AML/CFT guidelines applicable to MTC's in content and nature to meet the FATF standards. The definition of money transfer services found in the law on CDD measures applied to MTC's should be further detailed.

- Reviews the sanction regime and implement a comprehensive, proportionate and effective regime, which is sufficiently enforced by the CBA.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	NC	• The deficiencies regarding the fit and proper test described in section 3.10 of this report also apply: there are no measures in place to prevent criminals and their associates to be beneficial owner of a money transfer company and the CBA does not undertake an independent check on the information provided by the registration applicants. • The requirements and their implementation for Recommendations 5, 6, 7, 8, 9, 10, 13, 15, and 22 in the MTCs sector suffers from the same deficiencies than those that apply to other financial institutions and which are described in section 3 of this report. • The range of sanctions available is not sufficiently effective and proportionate and does not apply to MTC's directors and senior management. • The assessment team had serious concern regarding the existence of remaining informal remitters.

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1 Customer due diligence and record-keeping (R.12)

(applying R.5, 6, and 8 to 11)

4.1.1 Description and Analysis

Recommendation 12

Definition and scope

662. All categories of DNFBPs as defined by the Methodology are found in Aruba. Except for the casinos (11 of them), lawyers (102) and the civil notaries (4), the authorities do not have an exact view of how many other DNFBPs (TCSP, dealers in goods of high value, accountants and tax advisors) operate, because these professions are not regulated under Aruban law, the Register of the Chamber of Commerce is not up to date, or these professionals are not part of a professional representative body. For example, the assessment team was told by real estate agents representatives that there may be 6 active real estate agents on the island, but that 50 others are registered by the Chamber of Commerce and that they were either less active or inactive.

663. Until the revision of the SOIPS and SORUT that occurred in February 2009, casinos were the only DNFPB subject to customer identification and unusual transaction reporting requirements.

664. The State Ordinance for the modification of the State Ordinance on identification obligation when providing financial services, adopted on 5 February 2009, has extended the scope of DNFBPs subject to the customer identification requirements. Henceforth, the following DNFBPs fall into its scope:

- Casinos.
- Dealers of immobile object or special personal rights on those objects, vehicles, ships, airplanes, object of art, antiquities, precious metals and precious stones, jewels, or other objects of high value to be designated by State Decree if necessary. Despite its lack of clarity, this category of professionals aims to cover both Real estate agents and dealers in goods of high value.
- Lawyers.
- Civil notaries.
- Tax advisors.
- Accountants.
- Other natural or legal persons belonging to a category of professions, businesses or institutions to be designated by state decree containing general measures. However, such a state decree that could include TCSPs in the future, has not been adopted.

665. The amended SOIPS and SORUT thus do not cover trust and company service providers although Aruba has just adopted a State Ordinance that regulates and organises the supervision of trust and companies services providers. It would thus have been relevant to submit this profession to AML/CFT obligations. However, Aruba adopted in February 2009 a State Ordinance providing for rules concerning the supervision of trust companies (SOSTC) that requires TCSPs to identify their customer and the beneficial owners of the legal company, partnership and natural person to which they provides services. But this SOSTC also contains some substantial deficiencies regarding its scope and the identification requirements. First, the definition of TCSPs is not in line with the FATF definition of TCSPs. They are indeed subject to the SOSTC only when a TCSP provide the following services:

- When the TCSP acts as the management or partner of a partnership.
- When the TCSP makes available to legal entities or partnerships their address or mailing address, if one of the following additional activities are carried out for the benefit of this legal entity or partnership:
  - Giving advice or providing assistance in the field of private law.
  - Giving tax advice or taking care of the tax returns and activities relating hereto.
  - Carrying out activities in connection with the compilation, assessing or auditing financial statements, or keeping the accounting records.
  - Acting as legal representative of an AVV.
- Selling legal entities.
- Being a trustee in the sense of the Convention in the law applicable to trusts.
- Other services to be designated by State Decree containing general administrative measures.

666. Therefore, TCSPs are not subject to the SOSTC when they perform the following activities:

- Acting as a formation agent of legal persons.
- Acting or arranging for another person to act as a director or secretary of a company or in similar position in relation to other legal persons, since this service is either limited to partnership or to AVV when the TCSPs also provide for an address.
- Providing a registered office, a business address or accommodation, correspondence or administrative address for a company, a partnership or any legal person or arrangement, since the scope of the SOSTC is limited to providing an address when other services are also provided.
- Arranging for another person to act as a trustee.
- Acting or arranging for another person to act as a nominee shareholder for another person.

667. Second, regarding the identification requirements of TCSPs, according to Article 8 SOSTC, a trust company shall have at its disposal at all time data and information concerning the identity, the capital and the background of the ultimate beneficial owners for the benefit of which/whom the trust company carries out activities. However, the identification requirements are limited to the persons, whether natural

or legal persons, who holds at least 10% of the capital of a legal entity or 10 % of the beneficiaries of a trust. TCSPs are therefore not required to identify the ultimate beneficial owners of their customers.

Applying Recommendation 5

668. Casinos: According to the SOIPS and its related State Decree, casinos are subject to customer identification requirements (in so far as relevant)when they: i) exchange more than AWG 20 000 or the equivalent amount in another currency (about USD 11 000) into gambling chips and vice versa; ii) issue profit statements, iii) open an account in which an amount in money etc, can be kept, iv) conduct transactions in which payments are made in or outside Aruba; and (v) exchange Aruban florins and foreign currency for an amount of more than AWG 20.000, or for the equivalent value in foreign currency.

669. The threshold of AWG 20 000 (about USD 11 000) is much too high compared with the FATF threshold of USD 3 000. As a result, casinos representatives estimated that the conditions set out in the SOIPS and its related State Decree result in them identifying around 1% of their customers. Some of them however have stricter internal policies.

670. Concerning the nature of the measures required to identify their customers, casinos identify their customers who are natural person on the basis of a valid driver's license, a valid identity card or a travel document. In practice, it appeared that some casinos do not always identify their customer on the basis of such documents because they already have the information if the customer is staying in the hotels where the casino is located.

671. At the time of the onsite visit, no other CDD requirements other than those in the law (subject to a limited scope) existed. The "tightened policy as regards the operation of casinos" (hereafter "the policy") issued by the Ministry of Justice/Department of Casino Affairs, which entered into force on 1 August 2008 does not add any specific CDD requirements. The policy however announces the upcoming introduction of a new regulation for the operation of casinos in which, according to Aruban officials, the recommendation on casinos made by the FATF would be taken into account.

672. In addition, while the authorities informed assessors that no internet casinos existed in Aruba, there is no formal prohibition in the law regarding the operations and/or use of internet casinos. The Aruban authorities informed the assessment team that an explicit provision in this regard would be included in the new gaming board ordinance currently at the Aruban Parliament. Moreover, the SOIPS does not extend to casinos which are cruise ship based registered in Aruba.

Dealers in goods of high value:

673. The new SOIPS provides that professional sellers, as well as intermediaries, of precious metals and stones are required to identify their customer when they sell precious stones and metals for an amount to be determined by ministerial regulation. However, such a ministerial regulation has not been enacted and this provision is therefore not yet applicable. In addition, the SOIPS has extended these requirements to the professional sellers and intermediaries of immobile objects or special or personal rights on these objects, vehicles, ships, airplanes, objects of art, antiquities and jewels. Overall, dealers in goods of high value are therefore still not subject to customer identification requirements.

Real Estate Agents:

674. The new SOIPS requires "persons mediating on a business or professional level at the sale of immobile objects to special or personal rights on these object" to identify their customers when they "mediate in the acquisition or sale of immobile property or of franchise or personal rights on such property". Although this provision lacks clarity, it is aimed at covering the activities of Real estate agents.

However, the SOIPS does not specify that the CDD requirements should apply both to the purchasers and the vendors of the property.

Lawyers, civil notaries, accountants, tax advisors:

675. The new SOIPS requires these professionals to identify their customers when they perform designated activities. However, the new SOIPS is unclear on the scope of these activities and these uncertainties have not been clarified by the Aruban authorities. Likewise, during the onsite visit, two months before the adoption of the new SOIPS, the assessment team was told by various representatives of legal professionals that they had not been consulted on the new law and that they were not aware of AML/CFT standards. The new SOIPS would cover these professionals when they give advice or assistance to their customers:

- For the acquisition or sale of immobile property, or of franchise or personal rights on such property.

- For the incorporation, operation or management of legal persons, partnerships, purpose of entities, realisation of capital for benefit of the incorporation of legal persons, partnerships, purpose entities, or for the acquisition of sale or take-over of companies.

676. In addition, the SOIPS is not applicable to the activities of a lawyer or a civil notary which are related to the legal status of a client, his legal representation or defence, the giving of advice before, during and after a legal case or the giving of advice on the start or avoidance of a legal case. In that context, it appears that lawyers and notaries are not subject to customer identification requirements when they give advice or assist their clients for the incorporation, operation or management of legal persons operation or management of legal persons, partnerships, purpose of entities, realisation of capital for benefit of the incorporation of legal persons, partnerships, purpose entities, or for the acquisition of sale or take-over of companies. Moreover, legal professionals are subject to customer identification requirements only when they assist or give advices to their customers, but not when they carry out for a client these activities. Finally, legal professionals are not subject to AML/CFT requirements when they prepare for or carry out transactions for a client in relation to managing its money, securities or other assets and to the management of bank, savings or securities accounts. These limitations seriously undermine the submission of lawyers and notaries to AML/CFT obligations.

677. The nature of the customer identification requirements set out by the SOIPS is the same for legal professionals as it is for financial institutions. Professionals are required to identify legal and natural persons on the basis of the same documents and prior to the starting of the business relationship. However, there is no obligation in the law to identify the client in situations where there is a ML/FT suspicion or when the legal professionals have doubts about the veracity or adequacy of previously obtained identification data. In addition, the identification of legal persons is based partially on potentially inaccurate documents and legal professionals are not obliged to verify the identity of the directors of legal persons. There are no provisions in the SOIPS on the identification of customers that are foreign trusts or other similar legal arrangements and on identification of the legal person acting on behalf of another person. Moreover, legal professionals are neither required to understand the ownership and control structure of the customer nor obliged to determine who the natural persons that ultimately own or control the customer are. The SOIPS does not contain requirement to obtain information on the purpose and nature of the business relationship and to conduct ongoing monitoring on the business relationship. Likewise, legal professionals are not required to apply enhanced CDD for high risk business relationship, nor simplified CDD for lower risk. In addition, there is no requirement for legal professionals to consider making suspicious transaction report when they fail to identify and verify the identity of customer and to apply CDD requirements to existing customers on the basis of materiality and risk. In terms of

effectiveness, as legal professionals had not been consulted prior to the adoption of the new SOIPS that include them within the scope of professionals subject to AML/CFT obligations, assessment team has important doubt in regard with their awareness of their legal obligations.

Applying Recommendation 6

678. There are no provisions in the SOIPS to require DNFBPs to conduct enhanced CDD vis-à-vis Politically Exposed Persons.

Applying Recommendation 8

679. There are no provisions in the SOIPS to require DNFBPs to have policies in place or take measures to prevent the misuse of technological developments in money laundering or terrorist financing schemes.

Applying Recommendation 9

680. There are no provisions in the SOIPS to permit DNFBPs to rely on intermediaries or other third parties to perform some of the CDD process or to introduce business when specific conditions are met.

Applying Recommendation 10

681. The amended SOIPS provides since February 2009 that DNFBPs that fall within its scope shall keep a record of the following data:

- The name, the address and the place of residence, or registered office of the client.
- The nature, the number, if possible, and the date and place of issuance if the identification document.
- The nature of the service.
- In the event that the natural person acts for a third party, the identification data relating to the identity of this third party.

682. In addition, casinos should record of the statements of profit they issue, as well as the information relating to the changing of an amount of AWG 20 000 into chips (or vice versa).

683. The DNFBPs shall keep a record of this data in an accessible way during 5 years after the termination of the business relationship. However, as for financial institutions, there are no requirements in the SOIPS that records should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. In addition, there is no explicit requirement in law or regulation to maintain records of account files.

Applying Recommendation 11

684. There are no provisions in the SOIPS to require legal professionals to pay special attention to all complex, unusual large transactions or unusual pattern of transactions that have no apparent or visible economic or lawful purpose. Lawyers, notaries, accountants, tax advisors, dealers in goods of high value and real estate agents are subject to the unusual transactions reporting requirements. These DNFBPs are thus required to report to the MOT a number of cash transactions over AWG 20 000. However, unlike financial institutions, which are also required to report transactions with no understandable legal purpose or

no visible connection with the activities of the client, the unusual transactions reporting requirements is not sufficient to consider DNFBPs apply, even partially, Recommendation 11.

Effectiveness

685. Due to the fact that the revisions of the SOIPS extending the scope to certain DNFBP's has only recently come into force, except for casinos, the effectiveness of the new measures is difficult to evaluate at the outset. However, the assessment team has serious doubts concerning the effectiveness of the extension of the AML/CFT obligations to DNFBPs. At the time of the onsite visit, the assessment team noted that very limited information and consultation had been conducted with DNFBP's about the extension of the SOIPS to these sectors. Some professions (*i.e.* real estate agents, notaries, accountants) were not informed about the upcoming introduction of the AML/CFT requirements for their respective sectors. While the Aruban Bar Association had been informed of the process to include legal professionals under the scope of the AML/CFT CDD and unusual transaction reporting obligations, the content of those obligations were not known to the legal professions. Under these circumstances, it seems highly likely that the new measures under the revised SOIPS, while having come into force, will not be effectively implemented for some time.

4.1.2 Recommendations and Comments

686. Although Aruba had extended the scope of its SOIPS to a certain number of DNFBPs, this scope still remains unclear. Aruba should clarify the extended scope of the SOIPS to better define each DNFBPs' activities that are subject to CDD requirements. It should also extend the scope of services performed by lawyers, notaries, accountants and tax advisors in order not only to cover the preparation for a set of activities but also the transactions which are carried out in relation to these activities. In addition, Aruba should consider reducing the level of secrecy these professions are submitted to in order to ensure that they are adequately submitted to CDD requirements. Furthermore, Aruba is strongly recommended on the one hand to refine the scope of these requirements and on the other hand to strengthened the obligations relating to the casinos, including to the internet casino.

687. In addition, the requirements do not address adequately the demands of Recommendations 5, 6, and 8 to 11. This situation should be remedied.

688. The assessment team has serious doubts concerning the effectiveness of the extension of the AML/CFT obligations to DNFBPs. It is worth noting that during the onsite visit, the assessment team met DNFBPs' representatives who appeared not to be aware of the FATF standards, nor that the Parliament Government was about to extend the scope of the SOIPS to their professions. They had neither been consulted on the draft State Ordinance by the Aruban Government

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	NC	Casinos: • The threshold for the identification requirement is too high (AWG 20 000 or USD 11 000). • Internet casinos are not prohibited but they are not subject to AML/CFT obligations. • Cruise ship based casinos are not covered by CDD requirements. Other DNFBPs: • TCSPs – the definition of "trust company" is not fully in line with FATF requirements. • AML/CFT requirements as set out in the SOIPS and SORUT do not apply to them, and the identification requirements in the new legislation are inadequate. • Real estate agents are not required to perform CDD in relation to both the purchasers and the vendors of immobile properties. • Deficiencies identified in Recommendation 5 also apply to DNFBPs. • Obligations in Recommendations 6, 8, 9 and 11 are not applied to DNFBPs. • Deficiencies identified for Recommendation 10 also apply to DNFBPs. • Lawyers and notaries are not subject to CDD requirements for their activities relating to the legal status of a client, his legal representation or defence, the giving of advice before, during and after a legal case or the giving of advice on the start or avoidance of a legal case. • Professional secrecy rules should not be applied to create CDD and record keeping exemptions. Effectiveness: • Low level of effectiveness of the new provisions of the revised SOIPS as they have not been subject to proper consultation by the industry.

4.2 Suspicious transaction reporting (R.16)

(Applying R.13 to 15 & 21)

4.2.1 Description and Analysis

Applying Recommendation 13

689. Before Aruba changed the SORUT in February 2009 to extend its scope to certain DNFBPs, casinos were the only DNFBPs subject to suspicious transactions reporting requirements. Since February 2009, DNFBPs who provide the services listed above in connection with their profession or business also fall within the scope of the SORUT:

- Mediating in the acquisition or sale of immobile property, or of franchise or personal rights on such property.

- Selling of vehicles, ships, aircrafts, objects of art, antiquities, precious stones and metals, jewels.

- Giving advice or assistance for the acquisition or sale of immobile property, or of franchise or personal rights on such property, the management of money, stock, coins, banknotes, precious metals and stones or other assets, the incorporation, operation or management of legal persons, partnerships, purpose entities or similar entities, the realisation of capital for the benefit of the incorporation of legal persons, partnerships, purpose entities or similar entities, or the acquisition or sale or take-over of companies.

690. In addition, the amended SORUT specifically designates lawyers, notaries, tax advisors and accountants as being subject to its requirements. As has already been stated for Recommendation 12, the scope of the DNFBPs subject to AML/CFT requirements is unclear, mostly when it is considered in respect with the activities covered by the SORUT. TCSPs are currently not subject to the SORUT requirements.

691. Article 1 of the amended SORUT provides that lawyers and civil notaries are not subject to reporting obligations when they perform activities relating to the legal status of a client, his legal representation or defence, the giving of advice before, during or after a legal case or the giving of advice on the start or avoidance of a legal case.

692. According to Article 11 of the new SORUT, each and anyone providing a service in connection with his profession is required to promptly report to the MOT any performed or intended transactions which is deemed unusual according to the criteria listed by Ministerial Regulation. Until February 2009, ministerial regulations only existed for casinos. Simultaneously with the extension of the scope of the SORUT, Aruba also adopted two additional ministerial regulations to define criteria for unusual transactions.

Casinos:

693. The Ministerial regulation (RIC) classifies the criteria for unusual transactions between objective and subjective criteria, among which are the following:

- Objective criteria

  - Deposits at the cashier or on a casino account of cash money, cheques and other payable means of an amount exceeding AWG 20 000 (USD 11 000):

    - (i) in which a withdrawal takes place by cheque or transfer.

    - (ii) in small denominations, in which repayment takes place in larger denominations.

  - Purchase or exchange by a player of gambling chips for more than AWG 20 000 (USD 11 000) per playing day:

    - (i) in which a withdrawal of currency via cheque or transfer takes place.

    - (ii) in which the purchase in small and exchange in large denominations takes place.

    - (iii) if relating to this a profit statement is requested.

    - (iv) if relating to this an exchange into another currency takes place.

- A transfer worth more than AWG 20 000 (USD 11 000) takes place to one or more other accounts which are different than those from which the money was transferred to the casino.
- The issuance of profit statement.
- The exchange of currency to an amount exceeding AWG 20 000 (USD 11 000) or the counter-value in another currency.
- A transaction which has been reported to the judiciary authorities because of possible violation of the AML articles of the Penal Code.
- A transaction by, for the benefit of or related to an organisation, institution, company, person, or a group of persons (including ethnic groups), which is mentioned on one of the lists kept by the European Commission or the US Department of Treasury on electronic addresses identified by the head of the FIU.

- Subjective criteria:
  - Transaction for which there is reason to assume that it can be related to a violation of the AML article of the Penal Code.
  - A transaction that can in any way be related to or used for the financing of probable terrorist activities or organisations.

694. It should be noted throughout the references to the regime for casinos that the thresholds in Aruba relating to identification requirements or unusual transactions subject to the objective test, are set at USD 11 000 whereas the international standard at which identification requirements should apply is USD 3 000.

Other DNFBPs:

695. Aruba adopted in February 2009 two new ministerial regulations to define criteria of unusual transactions. One of these regulations is addressed to lawyers, civil notaries, accountants and tax advisors, while the other is addressed to traders in goods of high value, including real estate agents. Therefore, TCSPs are not subject to reporting obligations.

696. The reading of these ministerial regulations raise doubts concerning the knowledge that the Aruban authorities have concerning the activities performed by DNFBPs. Indeed, for example, the ministerial regulation for lawyers, notaries, tax advisors and accountants requires them to report unusual transactions when they issue letters of credit, which is an activity performed by a financial institution.

697. Globally, these two new ministerial regulations require these DNFBPs to report to the MOT:

- Transactions that have been reported to the police or the judicial authorities in relation with possible ML or TF offence.
- Transactions in which payments made entirely or partially by cash for more than AWG 20 000.
- Transactions that the professional is of the opinion that there is reason to assume that the transaction can be related to ML/TF.

698. As for the other professions, the reporting obligations are mostly focused on cash transactions.

699. The DNFBPs send their reports directly to the MOT.

Statistics:

700. The only statistics available so far concern the casinos, as the other DNFBPs have been subject to unusual transaction reporting obligations only since February 2009. The following table indicates the number of unusual transactions reports by DNFBPs:

Table 26. Number of unusual transactions reports by DNFBPs

	2004	2005	2006	2007	2008
Casinos	4	2	10	10	26

Applying Recommendation 14

701. There is no distinction in the Aruban law between the measures relating to Recommendation 14 applicable to financial institutions and the one applicable to DNFBPs. Therefore, the deficiencies identified for Recommendation 14 also apply to Recommendation 16.

Applying Recommendation 15

702. There are no provisions in Aruban law, regulation or other enforceable means to require DNFBPs to establish and maintain internal procedures, policies and controls to prevent ML and TF, to maintain an adequately resourced and independent audit function to test compliance, to establish ongoing employee training on ML and TF techniques and risks, nor to put in place screening procedures to ensure high standards when hiring employees.

Applying Recommendation 21

703. There are no provisions in Aruban AML/CFT regime to require DNFBPs to give special attention to business relationships and transactions with persons from or in country which do not or insufficiently apply the FATF Recommendations. More globally, there are no provisions for DNFBPs relating to Recommendation 21.

4.2.2 Recommendations and Comments

704. DNFBPs that are subject to AML/CFT obligations are subject to the same obligations for reporting unusual transactions as financial institutions. These obligations suffer however from the incomplete coverage of the several predicate offences as identified in section 2 of the MER.

705. The authorities should give priority to extend the scope of the DNFBPs' obligations to Recommendation 15 and 21. In addition, the MOT should take urgent steps to raise awareness of the relevant provisions of the State Ordinances as they apply to the DNFBPs. Aruba should also reconsider the provisions applicable for DNFBPs to ensure that they are relevant for these professionals and increase their level of engagement in AML/CFT.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	NC	• No AML/CFT measures apply to TCSPs. • The scope of the predicate offences for STR reporting does not satisfy all the FATF standards. • The effectiveness of the unusual transactions reporting regime is as yet untested, except for casinos where it is low. • DNFBPs are not obliged to establish and maintain internal procedures, policies and controls to prevent ML and TF, to maintain an adequately resourced and independent audit function to test compliance, to establish ongoing employee training on ML and TF techniques and risks, nor to put in place screening procedures to ensure high standards when hiring employees. • DNFBPs are not required to pay special attention to transactions with countries which do not or do not adequately implement the FATF Recommendations. • The limitations in Recommendation 14 as applied to financial institutions also apply to DNFBPs.

4.3 Regulation, supervision and monitoring (R.24-25)

4.3.1 Description and Analysis

Recommendation 24

Casinos

706. The relevant laws applying to the supervision of casinos are the State Ordinance for Hazard Games, the SORUT and the SOIFPS. The latter two have been explained earlier in this report.

707. The State Ordinance for Hazard Games enacted in 1948 simply states that the Minister of Justice is authorised to grant licences, under conditions and guarantees to be set by him, for the operation of hazard games in specifically designated and equipped hotels. Although there is no definition of what a hazard game comprises, Aruba advised that the games in question are described in the licences and entail classic Las Vegas-style casino games, such as blackjack, baccarat, American roulette, poker and slot machines. With the view to the upcoming State Ordinance on the Supervision of Casinos, the Minister of Justice issued in 2008 a "Tightened Policy as regards the Operations of Casinos" that defines the conditions under which casinos should be granted license. Aruba advises that a Draft State Ordinance on the Supervision of Casinos is currently in progress.

708. This "Tightened Policy" was sent in August 2008 to all casinos accompanied with a letter explaining that all casinos will have to re-apply for their licences and needed to submit information by September 2008 regarding owners and shareholders, controllers, directors and members of the supervisory board. In addition the letter explained that a member of staff from Department of Casinos Affairs (DAC) of the Ministry of Justice will be present at the casino for the opening and counting of all takings (drop, soft and slot counts) and will supervise admission to the casino.

709. A casino's application for license may be rejected by the Minister if the applicant is considered likely to:-

- Act against good morals and public order.
- Be unable to meet its supervisory or financial obligations.
- Lack adequate competency or suitable experience.
- Carry on activity that differs from that for which consent was requested.
- Have an organisation or structure which renders internal supervision of the casinos activities ineffective.

710. A licence may be withdrawn by the Minister for a number of reasons, including: (i) in the event of discovery that information provided at the time of the application was untrue and that had the truth been known the licence would not have been issued; (ii) if one or more of the directors violates any statutory provision, public order or good morals; (iii) if one or more of the directors are convicted of money laundering, fiscal offenses or economic offenses.

711. In addition, this Policy provides that appointment of all casino staff is subject to prior authorization from the DAC, as well as the appointment of any directors or shareholders. These are sensible powers and do move some way reducing the risk of criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, or holding a management function in or being an operator of a casino.

712. However, the DAC does not carry out effective independent checks into applicants':

- Employment history, qualifications and professional membership.
- Credit ratings and solvency/bankruptcy history.
- Regulatory track record.
- Criminal record (local or overseas).

713. In the same vein, the DAC does not appear to have direct or indirect access to Police intelligence regarding the applicant or his associates. However, the DAC cooperates with the Security Service on this matter. The DAC neither belongs to any international forums for Gaming Commissions or casino regulators, nor has access to commercial or closed user intelligence databases. As a result, assessors had concerns regarding the effective capacity of the current licensing regime to prevent criminals and their associates from holding or being beneficial owners of a significant controlling interest, holding management functions in, or being operators of a casino Aruba advises that it intends to remedy these situations with the introduction of the new State Ordinance on the Supervision of Casinos which will replace the current State Ordinance for Hazard Games.

714. In addition, the State Ordinance for Hazard Games provides for limited sanctions against licensed casinos that do not comply with the license conditions and guarantees. Article 3 of the State Ordinance indicates that such a casino would be considered to be acting without a license. Furthermore, Article 4 of the State Ordinance Hazard Games grants the Minister of Justice the authority to declare at any moment a

license to be expired if he considers that the conditions and guarantees have not been complied with. Once without a license a casino would fall under the scope of Article 266 of the CrCA which criminalises the provision of hazard games without being licensed.

715. The responsibility for the AML/CFT oversight of casinos is split between the MOT and the DAC. The MOT is responsible for testing compliance with the reporting obligations set out in the SORUT, and the identification requirements set out in the SOIPS. The FIU has carried out a number of onsite examinations at casinos over the last three years and has issued guidance to casinos on the interpretation of their reporting obligations in the form of examples designed to assist in interpreting the indicators for unusual transactions. Moreover, the FIU has a MOT Alert dedicated to the ML/FT vulnerabilities in casinos

716. The range of sanctions available to the MOT and DAC does not seem to be adequate. The DAC has only the capacity to make recommendations to the Minister in cases where there is a conviction for money laundering, but not in a case of failure to comply with AML/CFT obligations. Until the amendment of the SORUT and SOIPS, the MOT had no power to impose sanctions. If a casino failed to comply with the obligations set out in the SOIPS or SORUT, the MOT could only send its report to the prosecutor for consideration and action. Such an action has never been taken. Since the amendment of the SOIPS and SORUT in February 2009, the MOT has the power to impose administrative sanctions. Indeed, Articles 10 of SOIPS and 24 of SORUT provide that a penalty charge order can be imposed by or on behalf of the Minister to an amount of up to AWG 250 000 (USD 140 000). In addition, an administrative fine can also be imposed in the same way for an amount of up to AWG 250 000. However, SOIPS and SORUT provide that a State Decree containing general measures can define further rules with a view on a correct application of the authority to impose administrative sanctions. So far, such a State Decree has not been adopted. Therefore, the assessment team considers this power to impose administrative sanctions to casinos is not yet enforceable. Moreover, based on the past experience of the supervision of casinos that sent unusual transaction reports, the MOT appeared to be approaching the matter on the basis of persuasion and encouragement by simply doing quick-scan supervision rather than on the basis of taking steps to ensure that casinos adequately comply with their AML/CFT obligations. In addition, the MOT informs the supervised entity that it intends to control it and the timetable of the inspection can even be negotiated, which undermines the quality of the supervision.

717. The following table indicates the number of on-site visit conducted by the MOT in casinos (2005-2008):

Table 27. On-site visits conducted by the MOT in casinos (2005-2008)

	2005	2006	2007	2008
Casinos	0	5	8	3

Other DNFBPs

718. The MOT is in charge of the supervision of the DNFBPs' compliance with both the SOIPS and the SORUT. According to Article 9 of the SOIPS and Article 23 of SORUT, officials from the MOT are authorised exclusively in so far as this is reasonably necessary for the performance of their duties: i) to request all information, ii) to demand inspection of all business books, documents and other information carriers and to make copies thereof or to take them temporarily with them for this purpose; iii) to enter in all places, with the exception of the dwelling houses. The DNFBPs are obligated to cooperate with the MOT's officials. However, lawyers, civil notaries, tax advisors and accountants may refuse to cooperate

with the MOT by disclosing a legal or otherwise established secrecy obligation if it concerns a situation regarding the legal position of the client, his representation and defence in a legal case, the provision of advice before, during and after a legal case, or the provision of advice on the commencement or avoidance of a legal case, as these activities are excluded from the scope of the SORUT. This does not apply for services they perform that fall within the scope of the identification and reporting obligations. This last provision can considerably undermine the effectiveness of the supervision by the MOT.

719. The sanction regime applicable by the MOT for DNFBPs is the same as for the casinos and the same deficiencies applies.

720. The assessment team was unable to assess the effectiveness of the oversight regime of DNFBPs as the measures were introduced by the Parliament only in February 2009. However, during the onsite visit, the MOT admitted that it did not have a clear idea on the number of DNFBPs operating on the island due to the lack of adequate information from the Commercial Register and the lack of representative organisations for various categories of DNFBPs. For their side, certain representatives of the DNFBPs which the assessment team met with were not informed at that time of the extension of the scope of AML/CFT State Ordinances. Therefore, even if Article 15a of the amended SORUT provides that reporting entities other than the ones supervised by the CBA should register themselves with the MOT in order to ensure that the MOT identifies all the entities under its supervision, the assessment team has some concerns due to the lack of awareness by DNFBPs of their obligations.

Resources of the MOT as an oversight authority

721. The MOT lacks resources to effectively supervise the compliance of DNFBPs subject to the SOIPS and the SORUT. Indeed, the supervisory unit of the MOT only consists of one staff, which is also responsible of the supervision of all financial institutions regarding the SORUT. Although this staff can get support from investigators of the MOT, the body is definitely not able to effectively monitor DNFBPs.

Recommendation 25 (Guidance for DNFBPs other than Guidance on STRs)

722. No guidelines have been issued yet for the benefit of DNFBPs to provide a description of ML/TF techniques and methods relevant for each sector and describing any additional measures that DNFBPs could take to ensure that their AML/CFT measures are effective. However, Article 3, paragraph e, SORUT enables the head of the FIU to issue guidelines and recommendations to the financial institutions (after consultation with the CBA) and DNFBPs with regard to the introduction of fitting procedures for their internal control and communication and other necessary measures for the prevention of money laundering.

723. Concerning the feedback that competent authorities, and particularly the FIU, should provide to DNFBPs, the MOT provides general feedback to casinos as follows:

- Through the statistics as mentioned in the annual reports of the FIU.
- During information sessions in which typologies are presented.
- In the quarterly electronic newsletter MOT Alert.

724. Examples of sanitized cases of actual money laundering are given during the information sessions.

725. Article 3, paragraph c, SORUT charges the FIU with the responsibility of informing a reporting entity on the handling and conclusion of its submitted report. The FIU also gives specific feedback to each reporting entity in the supervision reports.

726. So far, only limited feedback has been provided to casinos, and none yet to other DNFBPs.

4.3.2 Recommendations and Comments

727. Aruba has extended the scope of the SOIPS and the SORUT to include most DNFBPs, but it should also ensure that the supervisory body, the MOT, commences supervision as a matter of urgency. To this end, Aruba is strongly recommended to significantly develop the MOT in terms of staffing numbers, skills, support services and budget, as well as the legal framework which underpins its activity.

728. The FIU or other competent authorities, such as the DAC for casinos, should provide guidance and feedback to DNFBPs to ensure that they are aware of their obligations.

4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	NC	• Aruba has not taken any measures vis-à-vis Internet casinos. • Trust and company service providers are not regulated or supervised for AML/CFT purpose. • Although most DNFBPs are now included within the scope of the SOIPS and the SORUT, no effective supervision, except for casinos, is currently taking place. • The range of sanctions available against casinos and other DNFBPs is not effective, proportionate and dissuasive. • There are no effective measures in place to prevent criminals or their associates taking control of a casino. • Lawyers, civil notaries, tax advisors and accountants can refuse to cooperate with the MOT as a supervisory body, if there is a legal or otherwise established secrecy obligation, even if it concerns a service they perform that falls within the scope of the identification and reporting obligations. • The MOT lacks resources to effectively monitor DNFBPs subject to AML/CFT requirements.
R.25	PC	• Of the range of DNFBPs, only casinos have been given any feedback or guidance. • The guidance issued to casinos is limited to quarterly newsletters, compliance officers sessions and liaison.

4.4 Other non-financial businesses and professions

Modern secure transaction techniques (R.20)

4.4.1 Description and Analysis

Other non financial businesses and professions

729. In February 2009, Aruba modified its SOIPS and its SORUT and expanded the scope of professionals subject to AML/CFT obligations to certain non financial businesses and professions (other than DNFBPs) that were considered as being at risk of being misused for ML and TF. Henceforth, business or professional sellers, as well as intermediaries, of vehicles, ships, airplanes, object of art and antiquities are subject to customer identification requirement and to suspicious/unusual transactions reporting obligations. However, as for the financial institutions and the DNFBPs, these non financial businesses and professions are only subject to customer identification requirements and unusual transaction reporting obligations, but not to enhanced CDD regarding high risk customers and transactions addressed by FATF Recommendations 6 and, 8 to 11. Moreover, whilst these non financial businesses and professions are legally subject to the FIU supervision, assessors have doubts about the effectiveness of these measures considering the very limited resources of the FIU in terms of supervision. More globally, the assessment team was unable to assess the effectiveness of the customer identification and the suspicious/unusual transaction reporting to the MOT taking into account the fact that these measures were adopted very tardily during the course of the mutual evaluation process.

Modern and secure techniques for conducting financial transactions

730. Aruba has been taking steps to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering and terrorist financing. In particular, pin credit card has been introduced by banks to reduce credit card fraud, large bank notes (in particular AWG 500 (USD 280) are not widely circulated and electronic payment methods such as direct debit or electronic funds transfers are used for a large number of payment types. Moreover, the public service and commerce in general have adopted technical innovations aimed at the wider use of electronic payment mechanisms in many areas. However, it is worth noting that, despite these efforts, the Aruban economy is cash based to a fairly large extent. For practical reasons, in designated tourist areas the USD is allowed to be accepted as a means of payment. In practice however the USD is widely accepted next to the Aruban Florin as a means of payment.

4.4.2 Recommendations and Comments

731. Aruba should extend the measures it is taking to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering and terrorist financing.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	LC	• Although Aruba has been taking steps to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering, its economy is still cash based and authorities encourage customers to use both the Aruban Florin and the US dollar, which potentially increases ML/TF risks.

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and Analysis

732. In Aruba, there are two types of legal persons - public legal persons and private legal persons. Public legal persons are legal persons instituted by law to carry out specific public tasks which require a high degree of independence on an operational and financial level from the political decision making process *e.g.* the CBA. They are not relevant for the purposes of R.33, and will be disregarded.

733. The various types of private legal persons allowed by the Aruban legal system are regulated in various State Ordinances. The legal persons and their corresponding legal basis are as follows:

- A limited liability company (*NV*): Articles 33-155 of the Code of Commerce of Aruba.
- Another type of limited liability company (*VBA*): the State Ordinance Company with Limited Liability. This form of company was introduced on 1 January 2009.
- The Aruba exempt company (*AVV*): Articles 155a-155tt of the Code of Commerce of Aruba.
- The foundation: State Ordinance on Foundations.
- The association with legal personality: Articles 1665 up to and including 1684 CCA.
- Other forms of association with legal personality - the cooperative association (State Ordinance on cooperative associations), and the mutual insurance association (Article 352a Code of Commerce of Aruba).

734. Aruba has been an actively participant in the offshore market over the last 20 years has structured its company laws with this in mind. Traditionally, NV companies have been used primarily as the corporate vehicle used by local businesses, although a limited percentage were also used for offshore business. In 1988 the Aruba vrijgestelde vennootschap (A.V.V.) was introduced. AVV companies were aimed solely at the offshore market. As a result of various international initiatives and after Aruba's commitment to the OECD, Aruba advises that its tax laws were adapted in such a way that starting from 2003 ring-fencing was reduced and is now completed removed. This means that all types of Aruban legal persons may serve as international financial services vehicles. This is also the case with the VBA which is allowed a lot of flexibility as hybrid type of company. The number of NVs and AVVs is set out below. No data is available as yet for VBA companies due to their very recent creation.

Table 28. Number of NVs and AVVs in 2008

	Active companies	Non-active companies (deregistered but not liquidated)
Onshore NV	4934	10431
Offshore NV	405	1433
AVV	1819	6809

Companies

735. All three types of companies have certain characteristics in common. Each of them is created by a Deed of Incorporation, which must be prepared by or executed before a civil law notary, and the draft Deed is submitted to the Ministry of Justice for a declaration of no objection. Once the declaration is granted and the Deed executed by the notary then the company exists, and the notary is required to deposit an authenticated copy of the Deed of Incorporation with the Commercial Register at the Chamber of Commerce. All companies must have a minimum of one shareholder and one director, which can be either natural or legal persons. It is also possible that such persons can be acting as nominees for others. Except for AVVs, an annual meeting must be held and an annual financial statement must be prepared, and in some cases filed, though the information is not necessarily available to the public.

736. In other respects the characteristics of the different types of companies does vary (see below):

Table 29. Characteristics of NV, AVV and VBA

	NV	AVV	VBA
Minimum capital required	USD 30 000	USD 6 000	0
Directors			
- Corporate directors	Yes	Yes	Yes
- Locally resident director	No	No	No
Shareholding			
- Bearer shares	Yes	Yes	No
- Shareholder register	Kept by NV, but only required for shares that are not fully paid up	No	Kept by VBA and legal rep.
Annual meeting	Yes, in Aruba	Optional - can take place anywhere in world	Yes
Annual return	Yes	Optional	Yes
File annual return with Commercial Register	Yes, in limited cases	Optional	Yes but not public
Auditor	Optional	Optional	Optional
Legal representative	No	Yes	Yes (if no Aruban resident as a director)

737. The process for incorporating any of the Aruban company forms is relatively straight-forward, and involve limited checks. The Aruban Financial Centre (AFC) has been delegated different functions, such as the promotion of Aruba as an offshore financial services center (including through the use of corporate structures), as well as the granting of the declaration of no-objection on behalf of the Minister of Justice.

738. The AFC is of the opinion that its work regarding the development of Aruba as an international financial services center through the development of corporate and structured products and general promotion, does not impair its judgement on declarations of no objections in individual cases. However, the assessment team remains concerned that its general promotional responsibilities creates an inherent potential conflict of interest with the objective of ensuring that companies are not formed which could be used for illegal purposes. In practice, the AFC receives the draft Deed of Incorporation, checks the purpose clauses, and grants the declaration if the document has been prepared in accordance with the law and

appears to be in order. The assessors were advised that over the last years, there have been no routine checks conducted on the shareholders or directors, though the Aruban Financial Center advises this would be possible if there is a suspicion that the company may be used for illegal purposes, *e.g.* if the articles of association indicate some illegal activity. Such a check would be done by the Secret Service Aruba (VDA). Very recently, following the introduction of the VBA the Aruba Financial Center has advised that it has begun checking the persons who determine or co-determine the policy of the VBA and AVV at the moment of incorporation (based on powers contained in Article 12, fourth section, of the State Ordinance VBA and Article 155d, second section, of the Code of Commerce. Persons who have control or influence over policy could be, for example, incorporators, shareholders, directors and supervisory board members.

739. In addition, all NV's and their directors, cooperative associations and all other entities carrying out business in Aruba are required to have a business license pursuant to the State Ordinance on the Establishment of Businesses. This does not apply to companies exempted by state ordinance (*i.e.* credit institutions and TCSPs because of their own specific regulations) or other agencies having been given a role pursuant a ministerial decree (the High Commissioner of the Aruba Financial Center). The director of the Department of Economic Affairs Commerce and Industry (DEACI) has the mandate to issue business and directors licenses on behalf of the Minister of Economic Affairs. DEACI has established Guidelines that stipulate that with a request for a business license, the following documents must be submitted (in as far as applicable): a copy of the passport and/ or ID card of shareholder(s) and managing director(s); a certificate of good conduct of shareholder(s) and managing director(s) (to be applied for at the Public Prosecutor's Office) and a statement concerning payment record regarding taxes of shareholder(s) and managing director(s) (to be applied for at the Customs and Tax Department). However the guidelines are not applicable in a number of circumstances, such as for AVV companies not participating in Aruban trade, free zone companies etc. Petitions for business licenses are provided to the Security Service VDA which may screen the person if it so decides. The DEACI can request the VDA to screen a specific petitioner, and this is taken into consideration when processing the petition. The Guidelines further stipulate that when applying for a director's license for non-locals, the following documents must be submitted (in as far as applicable): a copy of the passport and/or ID card of the managing director(s), a certificate of good conduct of the managing director(s) (to be applied for at the Public Prosecutor's Office) a statement concerning the payment record regarding taxes of managing director(s) (to be applied for at the Customs and Tax Department) and a copy of the share-register of the legal entity that acts as a managing director of a corporation. Furthermore, company shares must be registered shares entered in a registry in the custody of the Board of Managing Directors. The registry must be open to inspection by the Minister of Economic Affairs and/or one or more civil servants designated by him for this purpose. Despite all the procedures set out above, the assessment team was advised that the licence is relatively easy to obtain. The DEACI is also empowered to conduct checks to ensure that the business activity of the company is consistent with the activities stated in its articles of incorporation and the business licence as granted, though it is not clear how effective this is in practice.

740. Although these Guidelines were written for NV companies before the introduction of the VBA and of the changes in legislation that made it a requirement for an AVV to have a business license, the Guidelines are also used when issuing licenses to or in relation with VBA's and AVV's. The High Commissioner of the Aruba Financial Center has also been mandated with the issuance of business licenses for a certain category of companies (in short companies deemed to be used in international financial planning/ structuring) though none have been issued yet. Like the AFC, the Department has a limited ability to check the shareholders or directors for possible criminal links, nor does it have the capacity to monitor whether the license conditions are being complied with.

741. Under the Aruban company law system, it appears that there is very limited information available on the ownership and control of companies, beyond the information in the initial Deed of Incorporation,

which in some cases involve shelf AVV companies formed by TCSPs, and these would often contain only the initial nominee directors and shareholders. The introduction in February of the State Ordinance Supervision TCSPs requires TCSPs to keep a record of the ownership and control of companies, at least as regards the first level of ownership. An AVV must have a licensed TCSP appointed as a legal representative (Article 155d section 6 Code of Commerce). As for each VBA that does not have at least one natural person who is a resident of Aruba (indirectly) as a managing director, must have a licensed TCSP as a legal representative. This means that some additional information will be available, but it is still limited, and there are deficiencies with the new legislation as outlined in section 4.

742. As regards shareholding, not only does the Commercial Register not have shareholder information, but there is no legal obligation for NVs and AVVs to maintain a shareholders register, and keep information concerning the company's ownership and control available at their offices. The only exception is when NVs have issued shares which have not been paid up in full, and this information must then be updated and be available for inspection by everyone at the NV's office. The DEACI Guidelines state that there should be a registry of shares held by the Board and that the registry must be open to inspection by the Minister of Economic Affairs, but this is not a legal requirement.

743. Both NVs and AVVs are allowed to issue bearer shares. VBAs may only issue registered shares. For NVs there are no specific legal measures in place to combat the misuse of bearer shares for criminal purposes, with transfer of such shares taking place by transfer of the physical share certificate. As regards AVV companies and their bearer shares, all AVVs are required to have a licensed TCSP as a legal representative, and that TCSP are now required comply with the restrictions on bearer shares as recently stipulated in the State Ordinance on Supervision of TCSPs, whereby the shares must either be held by the TCSP or by a financial institution custodian. Currently, there is limited information retained regarding shareholders, let alone the underlying beneficial owners, though this should improve to some degree in the future. In addition, the State Ordinance on Supervision of TCSPs has only just been enacted and come into force and has not been fully and effectively implemented as yet. The requirements in this respect are set out in section 4.

744. In relation to directors and the persons that control a company, the Commercial Registry Ordinance requires that each director and supervisory board member of an NV must be recorded in the Register, and that the company is also required to notify any changes in the directors or the board member, at the latest one week after the changes (Article 4, s. 2; Article 8, s. 1; and Article 13, s.1, of the Commercial Registry Ordinance). These requirements also apply to VBA companies. The assessment team was advised that in practice the lawyers and/or TCSPs that are linked to such law firms, and which act as agents or representatives do not update information, and indeed will often just cease to act if there is a problem with the company, but leave the company on the register and take no further action in relation to it. This may be because the maximum fine that can be imposed for a failure to report, whether changes of directors or failing to file an annual report, is only AWG 1 000. It is hoped that this may improve with new powers which allow the Chamber of Commerce to apply to a judge to dissolve any type of company if the Chamber could not contact its directors for at least a year. In the future, this may force company representatives to stay in contact with the Chamber.

745. The position regarding AVV companies is weaker. Under the Code of Commerce, in general there are no shareholder records, even if shares are theoretically registered, no registered office, no obligation for an annual general meeting or annual return or auditors, directors can be natural or legal persons and from any country, and any records that are created can be kept anywhere in the world. The Chamber of Commerce advised that in practice, the TCSPs that are the legal representatives of the AVVs provide them with no information on these companies. Though should be noted that the State Ordinance on

the Supervision of TCSPs does now require TCSPs to have information on the identity of the shareholders and the ultimate beneficiary owners (as defined).

746. The limited information requirements for AVVs is also exacerbated by the fact that apart from the application under the new law referred to in paragraph 703, the only circumstances in which AVVs can be removed from the Registry is if they don't pay their annual fees (on average about USD 300), they cancel their directors and legal representatives or the legal representative ceases to act. Even if struck off the register, under Aruban law the company still exists, until the company is wound up by order of the judge upon request of the Public Prosecutor. More than 4 000 AVVs have been deregistered but not liquidated because of concerns over who should liquidate and the possible future consequences. No information is available on these companies and whether they still operate somewhere, and Aruba advised that no action has yet been taken to resolve this situation.

747. The VBA company was introduced on 1 January 2009 as a new kind of limited liability company. It has a very flexible structure and could be formed either a traditional company with share capital or as a partnership with legal persona. There is no minimum capital and shareholders can have full, partial or limited liability. The appointment and removal of directors is also flexible. More positively, bearer shares are not allowed, and there is a requirement to file an annual report, with increased powers to sanction companies that don't do this. The VBA can elect to be subject to any of the available fiscal regimes in Aruba: the fiscal transparent status (disregarded entity status), imputation payment status and the exempt status. The normal corporate tax rate of 28% would apply unless the VBA opts for "exempt status", which could allow it an exemption from profit tax or dividend withholding tax for qualifying activities such as acting as a holding company, financing other companies, investment activity (other than real estate) and licensing of intellectual property rights. If "disregarded status" is adopted, this means that the company is not taxable because the shareholders are subject to tax. A VBA must keep a register of shareholders and must notify the Chamber of Commerce about changes in directors.

748. Where a business belongs to a foreign person or to a legal person that was not incorporated in Aruba or in accordance with the laws of the Netherlands or the Netherlands Antilles, the business must be registered in accordance with the above mentioned provisions.

749. Overall, it can be seen that the system of company law in Aruba, which has been significantly designed with a view to attracting offshore business, is intransparent and limited information is available on legal ownership and control let alone beneficial ownership. Unlike most jurisdictions, there is no obligation for NV or AVV companies to maintain a register of shareholders; moreover the companies can issue bearer shares with no controls existing to prevent their misuse (except as provided for under the new Ordinance regulating TCSPs). For NVs, information on directors should be provided to the registry but there is no clear obligation on when it must be updated, except perhaps when the annual return is filed, in any event the director can be another company, and failure to file an annual return appears to have little or no consequence in practice. For AVVs, the lack of transparency is even more evident, with no local directors required, only a local legal representative, which in practice appear to have limited responsibility or liability, no information has to be provided to the registry, corporate directors are allowed, an annual return need not be filed, and any company records that exist can be kept anywhere in the world. The VBA company law appears to provide for additional information on ownership and control, though it does not extend as far as beneficial owners. Additionally, there are risks associated with this sector, as the assessment team was advised about several cases where Aruban companies had been involved in cases of drug trafficking and fraud. When the new TCSP law and the VBA are effectively implemented, combined with action being taken to dissolve companies that are effectively dormant, it could be expected that the situation should improve, but Aruba still needs to resolve many of the underlying problems regarding lack of transparency.

Foundations and other legal persons

750. As described in section 1.4 above, foundations, and several types of associations with legal personality exist in Aruba. The objectives of a foundation cannot be to make payments to its founders or associated persons nor to other persons except where the payments have an idealistic or social aim – foundations therefore generally have charitable, religious, educational or other similar aims. All foundations must be registered in the special public register called the Foundations Register (*Stichtingenregister*) which is kept by the Chamber of Commerce and Industry. Registration must include the name and address of the founders and the directors of the foundation, and changes to the directors or the articles of incorporation must also be entered in the Foundations Register. Directors can be Aruban or foreign and can be a natural or legal person. There is no obligation to file annual accounts.

751. In practice it appears that there is a relatively small number of foundations, most of which are created with small sums of money. The Chamber of Commerce did not have much information on who ran the foundations or the amounts of money administered, since they are not notified about sums endowed to a foundation once it has been created, and no annual accounts are filed.

752. As with foundations, an association with legal personality can only be created for idealistic, social, charitable or other non-profit reasons. In practice this legal form is mostly used by sport, service and social clubs. Recognition of an association's legal status is granted by state decree and is given after screening of the articles of incorporation by the Directorate of Legislation and Legal Affairs. Recognition may only be refused on grounds related to the general interest.

Obligations on trust and company service providers

753. As noted in section 4 above, a legal framework was recently brought in to regulate TCSPs (*trustkantoren*) through the State Ordinance on the Supervision of Trust Offices. The CBA has been entrusted with the supervision of TCSPs on a similar basis to its role vis-a-vis financial institutions. Under Article 8 of the Ordinance there is an obligation on the TCSPs to at all times have information and data on the identity, the assets and the background of the "ultimate beneficial owners" for whom the company services provider carry out their activities. The Ordinance defines the "ultimate beneficiary" as "a natural person holding a participation of ten percent of more in the capital of the legal person, the body or terminal funding capital the trust company conducts the management of, or is beneficiary of ten percent or more of the capital of a trust as meant in the Convention applicable to trusts and concerning the recognition of trusts of which the trust company conducts the management".

754. The State Ordinance provides that the information and data must include:

- Knowledge about the origin and destination of the monies of the ultimate beneficiary owner of the special-purpose fund or of the assets of the used corporate vehicle.
- Knowledge about the relevant parts of the structure of the group to which the corporate vehicle belongs.
- Knowledge about the aim of the structure mentioned above.
- If the company services provider has rendered services related to tax matters or auditing activities, the identity of the buyer and the holder of qualified interest in the buyer if the company service.

- If applicable, the identity of the settlor of a trust as referred to in the Hague Convention on the recognition of trusts.

755. The identity of the ultimate beneficial owner, both for natural and legal persons, is then to be recorded in accordance of the provisions of the SOIPS. Article 9 also provides that where a TCSP is a director or legal representative of a company with bearer shares, either the shares must be in its custody or the custody of a supervised financial institution. This will help to strengthen the controls over bearer shares of companies for which the TCSP is providing directorship or legal representative services.

756. While the new State Ordinance goes some way to strengthen the obligations concerning identification and verification of the beneficial owners of legal persons and arrangements, and in the future to provide better access for government authorities to more up to date information on beneficial owners, it still seems to have some significant failings. The definition of beneficial owner is not in line with the FATF requirements as it is restricted to natural persons holding 10% or more of the shares of a company or being a beneficiary to 10% or more of the capital of a trust. It is not clear what is intended by this since Article 8 also refers to legal entities that are ultimate beneficial owners, which is not in line with the FATF standards. In either case though it does not appear to go beyond the first layer of share ownership, to get to the natural person who ultimately owns or controls a legal person. As regards the beneficial owner of a trust, there are no obligations with respect to the trustee, and for many trusts the trust deed will not state that particular beneficiaries have defined entitlements to a particular share of the trust capital, and thus it is unlikely that it will be possible to meet this requirement in practice.

5.1.2 Recommendations and Comments

757. Despite the recent legislative improvements, the measures and the current system in practice in Aruba to ensure adequate transparency concerning the beneficial ownership and control of all legal persons are completely inadequate, though it appears that the new VBA and TCSP law requirements are moving in the right direction. AVV companies appear to be deliberately constructed to be as intransparent as possible, with none of the normal requirements that one would see in company law, not just with respect to ownership and control but also with respect to basic accounting and other controls. While some of the shortcomings may have been addressed in the recent legal changes, it is still suggested that it would be best to completely abolish or phase out the AVV companies.

758. As regards NV companies it is important that basic measures such as maintaining an up to date register of shareholders are urgently required, and that bearer shares should be abolished. The system of corporate directorships should be carefully reviewed, while the enforcement and sanctions system for failure to file an annual return or to otherwise not comply with the law should be considerably enhanced. In addition to revising the laws, Aruba should work to create a computerised and modern registration system for all legal persons, which provides appropriate transparency.

759. Despite the new laws, competent authorities do not have access in a timely fashion to adequate, accurate and current information on beneficial ownership and control. There should be easier gateways to access ultimate beneficial ownership and control records by the competent authorities, in a timely manner.

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	NC	• There are inadequate requirements to collect or make available information on beneficial ownership and ultimate control of legal persons; • The system in place does not provide access to adequate, accurate and current information on beneficial ownership and ultimate control in a timely manner; • The measures to ensure transparency as to the shareholders of companies that have issued bearer shares are inadequate.

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

760. Trusts cannot be set up under Aruban law, and Aruban law does not recognise or give legal effect to a foreign trust. However, there are no obstacles for an Aruban citizen to be trustee of a foreign trust. In such a case the settlers and beneficiaries will therefore necessarily be governed by the law of a jurisdiction which recognises the concept. The applicable law is the foreign law chosen by the parties or, if none has been chosen, that with which the trust shows the closest connection. It should be noted that although the Kingdom of the Netherlands has signed and ratified the Hague Convention on the law applicable to trusts and their recognition, it has only done so for the Kingdom in Europe and has not extended the treaty to cover Aruba. There are no other legal arrangements similar to trusts that exist in Aruba.

5.2.2 Recommendations and Comments

761. Not applicable.

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	NA	Trusts are not recognised under Aruban law. There are no other legal arrangements similar to trusts that exist in Aruba.

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and Analysis

Scope of the sector

762. Under the Aruban legal system, two types of legal persons are used for the purpose of incorporating non-profit organisations (NPO), that is to say, for the pursuit of non-profit related aims but not for the purpose of producing profit for their respective founders and members. These are the Foundations and the Associations with legal personality.

763. Foundations are regulated by the State Ordinance on Foundations, the associations are regulated by the Articles 1665 up to and including 1684 of the Civil Code.

Review of the domestic non-profit sector

764. Aruba has not reviewed the adequacy of domestic laws that relate to NPOs for the purpose of identifying the features and types of NPOs that are at risk of being misused for terrorist financing by virtue of their activities or characteristics. Nevertheless, the Aruban officials consider that the current legal framework – especially that for foundations - can be deemed sufficient to act in a manner that is consistent with the purpose of SR VIII, as foundations must be registered in the Foundations Register kept by the Chamber of Commerce and Industry. However, as described in section 5.1 of the report, the registers of the Chamber of Commerce and Industry are not kept up-to-date and do not contain information on the size and other relevant information of the NPO sector in order to identify the NPOs that are at risk of being misused for terrorist financing purposes.

765. In spite of this, the National Security Aruba has conducted researches on the terrorist risks related to the Aruban NPO sector. It has thus asked its foreign counterparts to evaluate the risk of Aruban foundations. While the National Security Aruba has concluded that Aruban NPOs are at low risk for being directly misused for terrorist financing purposes, they agree that indirect risks exist as regard with foundations that receive funds from abroad. Direct misuses have not been proved, but these foundations are under survey.

Protecting the NPO sector from terrorist outreach and effective oversight

766. Aruba has not yet undertaken outreach to the NPO sector with a view to protecting the sector from terrorist financing abuse, for example through raising awareness in the NPO sector about the FT risks. There is not adequate awareness regarding the international activities of Aruban foundations.

Purpose, objectives and control of NPOs

Foundations:

767. The foundations are regulated in the State Ordinance on Foundations. A foundation is a legal person, founded by a notarial deed that has no members and aims to realize a certain objective through the capital allotted to it. The objective of a foundation cannot be to make payments to its founders or persons belonging to its organs, nor to others except if the payments to those others have an idealistic or social aim. A foundation that is contrary to public order is prohibited and, as such, is null and non-existent. The forbidden nature of a foundation, however, cannot be held against third parties who were unaware of this. Foundations that are contrary to public order are those that have as an aim: i) disobedience to or violation of legal provisions; ii) assaulting or disturbing good morals; or iii) disturbance in the exercise of rights by whomever.

768. A foundation must be founded under the living by a notarial deed and after death by public last will. The notarial deed by which the foundation is founded shall contain the articles of incorporation with the following information:

- The name of the foundation, with the word “stichting” as part of the name.
- The aim of the foundation.
- The manner of appointment of directors.

769. All foundations must be registered by their directors in the Foundations Register kept by the Chamber of Commerce and Industry. This register must include the name, surnames, address or last known address of the founder or founders, as well as the names, surnames and addresses of the directors of the

foundation. Mutations in the directors and articles of incorporation must also be entered in the Foundations Register. However, it is not clear as to whether the Chamber of Commerce and Industry verify the accuracy of this information and the assessment team was told by the representatives of the Chamber of Commerce and Industry that they usually do not have the name of the director(s) of the foundations.

770. Foundations can also conduct business. In that case, they must also be registered in the Commercial Register kept by the Chamber of Commerce. Foundations can also acquire all sorts of properties destined by the incorporation deed for the objectives of the foundation. These properties can also include other legal persons or shares of legal entities.

Table 30. Number of Foundations incorporated in Aruba in 2008

	Number of Foundations that conduct business	Number of Foundations that do not conduct business	Total
Active	2	941	943
Non active	27	38	65
Total	29	979	1 008

771. As it can be noted in this table, a number of foundations are considered as non active by the Chamber of Commerce and Industry (c.f. section 5.1 of the report on the Commercial Register of the Chamber of Commerce and Industry).

Association with legal personality:

772. The association with legal personality is regulated in the Articles 1665 to 1684 of the CCA. It is instituted by State Decree after a screening by the Government Department of Legislation and Legal Affairs of the article of incorporation of the association that shall contain the objective, the sphere of activity and other rules of the association. The recognition of the status of association with legal personality is then published in the Government Paper for Official Announcements. However, the recognition may also be refused on grounds related to general interest.

773. The directors of an association with legal personality are entitled to act in the name of the entity. However, it is not clear as to whether the name of director(s) or Board members are registered or made available to appropriate authorities.

Control of NPOs:

774. In general, it is not demonstrated that Aruba has taken adequate measures to promote effective supervision or monitoring of those NPOs which account for: (i) a significant portion of the financial resources under control of the sector; and (ii) a substantial share of the sector's international activities. Moreover, Aruba agreed that there are no specific AML/CFT provisions in place regarding the incorporation, the functioning and the external monitoring of foundations and associations with legal personality. The existing conditions that can lead a judge to dissolve a foundation are indeed the following ones:

- If the foundation has an objective, which leads it to make payments to its founders or persons belonging to its organs for an non-idealistic or non-social aim.
- If the foundation has members.

- If the capital of the foundation is insufficient for the fulfilment of its objective.
- If the objective of the foundation has been reached or can no longer be reached.
- If the management does something or fails to do something in violation with the provisions of the article of incorporation of the foundation or makes itself guilty of mismanagement.

775. For associations with legal personality, it is only in case of a deviation of the article of incorporation based on which the association was recognized that the Public Prosecutor is authorized to formally demand from the civil judge the removal of the association capacity as legal person.

Record keeping

776. Pursuant to Article 3.15a of the Civil Code, anyone operating a business or independently exercising a profession shall maintain books, documents and other information carriers in such a way that their activities can be known at all times. This information is required to be recorded for ten years. Therefore, the foundations that conduct business are subject to this records keeping obligation, which is not the case for the other foundations, that are much many, as well as for associations with legal personality.

777. However, the record keeping obligation as provided by the Civil Code is not accompanied by the explicit obligation to make available to appropriate authorities records of domestic and international transactions in order to check that funds have been spent in a manner consistent with the purpose and objective of the foundation.

Targeting and attacking terrorist abuse of NPO through effective information gathering, investigation

778. In Aruba, NPOs fall under the general provisions on information gathering and investigation regarding AML/CFT. It has not been demonstrated that the authorities that hold relevant information on NPOs were clearly identified. Therefore, it can hardly be considered that there are measures in place in Aruba to ensure an effective domestic co-operation and co-ordination among all levels of appropriate authorities in order to effectively gather information and investigate potential terrorist financing concerns.

779. In addition, Aruba has not developed specific mechanisms to ensure prompt sharing of information among all relevant competent authorities in order to take preventive or investigative actions when there are suspicions or reasonable ground to suspect that a particular NPO is being exploiting for terrorist financing purposes or is a front organisation for terrorist fundraising. However, in that case, it can be assumed that the National Security Aruba, the national intelligence service, would investigate and liaise as necessary with the Police. In that case, the NPO would be subject to the general regulations regarding the sharing of information among all relevant competent authorities. The same would apply to the investigative expertise and capability to examine those NPOs.

780. In case of an investigation, access to information on the administration and the management of a particular NPO may be obtained following the same rules than for other legal person, that is to say under a Court Order. The difficulty is that this information, particularly the identification of the management and the financial and programmatic information, is not required to be maintained and registered.

Responding to international requests for information about an NPO of concern

781. There are no specific provisions in Aruba regarding points of contact and procedures to respond to international requests for information on particular NPOs that are suspected of terrorist financing or other forms of terrorist support. The general provisions regarding international requests are applicable, but as explained above, the information requested would probably not be available.

5.3.2 Recommendations and Comments

782. Aruba should ensure that the Foundations Register is kept up-to-date and contains all information on the identity of the persons who own, control or direct the activities of the foundations, as well as the information on the legal persons they own or control. Equally, the information on the persons who own, control or direct the activities of the associations with legal personality should be kept up-to-date and should be made immediately available to the Aruban authorities. Aruba should also ensure that the domestic and international transactions of the all NPOs are registered for a period of at least five years and made available to appropriate authorities to allow them to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation.

783. Aruba should also conduct as soon as possible a review of its non-profit sector, including a review on the TF risks. It should also start a program of outreach and awareness-raising with the NPOs in order to strengthen their resistance to terrorist financing abuse.

784. Aruba should also review its legislation to ensure an effective supervision or monitoring of its non-profit sector. It should equally develop and implement mechanisms for the prompt sharing of information among all relevant competent authorities that have information on NPOs to take preventive or investigative actions. In addition, Aruba should designate a point of contact and should develop procedures to respond to international requests for information regarding particular NPOs that are suspected of TF or other forms of terrorist support.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	NC	• There has been no review of the NPO sector and no identification of its vulnerabilities for terrorist financing. • Authorities do not conduct outreach or provide guidance on terrorist financing to the NPO sector. • The Foundation register is not kept to-to-date and the information on the association with legal personality, in particular on the persons who control the association are not kept registered. • Foundations can control wholly or partially other legal person, without any registration obligation. • There is no supervision or monitoring of the non-profit sector. • Foundations and associations with legal personality cannot be revoked in case of ML or TF. • There is no effective domestic co-operation or coordination amongst authorities that would eventually have information on NPOs. • The system for obtaining information on NPOs, in particular in case of international request, is weakened by the overall lack of accuracy of information maintained in the Foundations Register and the lack of information on the beneficial ownership of association with legal personality. • It is not clear as to whether Aruba can exchange information with foreign counterpart regarding particular NPOs that are suspected of TF.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and coordination (R.31 & 32)

6.1.1 Description and Analysis

785. The principal body that provides policy level coordination within Aruba is the FATF Committee Aruba, which was established in 1995 by a ministerial decree of the Ministers of Finance and of Justice. This committee is a platform for government departments involved in AML/CFT. It is currently chaired by the head of the FIU and comprises of representatives of the FIU, CBA, the Free Zone Aruba N.V., the Directorate of Taxes, Public Prosecutor's Office, the High Commissioner Aruba Financial Centre, the Directorate of Legislation and Legal Affairs, the Directorate of Foreign Affairs and a Liaison Officer of the permanent representative of Aruba in the Netherlands. It is tasked with reviewing policy matters, considering the effectiveness of current AML/CFT initiatives and recommending changes for new policy initiatives or improvements in existing AML/CFT mechanisms.

786. There are also various consultation and coordination mechanisms in place involving various operational agencies, and these mechanisms or meetings take place on a regular basis, with a view to improving the maintenance of law and order in Aruba, and to combat organised crime:

- FIU meets with the Prosecutor for financial investigations: every two months;
- Prosecutor for financial investigations meets with the Police: every six weeks.
- Senior level a Judicial Policy Meeting: once per month.
- The Public Prosecutor's Office with the Criminal Intelligence Service of the Police: once per month.

787. The FIU also cooperates, on an informal and ad hoc basis, with other government agencies such as the Directorate of Taxes with its subordinate tax and customs offices, the CBA and the National Security Service.

788. The cooperation that has taken place between operational bodies has resulted in several working agreements regarding inquiries at the FIU, the methods of information supply by the FIU to the prosecutor and the Police, and the methods of cooperation between the Financial Investigations Bureau and the Special Task Force Netherlands, Netherlands Antilles and Aruba.

789. There is also an MOU between the MOT and the CBA, entered into in 2005, which requires the two agencies to meet twice a year to discuss issues of mutual interest, such as the statistics available on the identification and reporting, the planning for on-site visits to financial institutions etc. However, as the MOT only had one staff member that performed any role in relation to supervision, much of which was in the nature of a quick scan, and as they did not always receive timely information relating to the future on-site activities of the CBA, it seems that the degree of coordination and cooperation between the two bodies in practice was much more limited.

Recommendation 32

790. The AML/CFT system in Aruba was last reviewed by non-Aruban experts in 2002 when as assessment of its effectiveness took place through a so-called "Expert Meeting" consisting of experts of the Dutch Ministry of Finance. Aruba also advised that the FATF Committee Aruba conducted a review the AML/CFT system prior to the third mutual evaluation of Aruba by the FATF. However, there is no information to suggest that these were comprehensive reviews which were independently intended to result in an enhancement of the AML/CFT system.

791. No comprehensive assessment has been undertaken of the AML/CFT risks for Aruba, although the General Crime Analysis is useful. After reviewing the recent changes that have been made to Aruban legislation, and the processes that have occurred, as well as past changes to the system, it is also apparent that AML/CFT policy making in Aruba is more reactive than proactive. There is no medium or longer term AML/CFT strategy, nor any body or committee that is responsible for such. The lead in relation to policy-making is left in practice to the MOT and the one person secretariat of the FATF Committee (who is also called upon to draft legislation or take up other tasks as necessary), and there also appears to be some support from other agencies. This effectively prevents Aruba from proactively reviewing its AML/CFT regime, and implementing a longer term strategy that will both bring it more closely in line with the FATF standards but also enhance the level of effectiveness of the system.

792. The assessment team met several Ministers, including the Prime Minister and received assurances of support for the Aruban agencies involved in AML/CFT work. However whilst such statements of support are good, is it is also important that the necessary legislative changes are enacted and effectively implemented in important areas such as the terrorist financing offence and freezing of terrorist assets. It is a concern that these kinds of changes have not been pushed through, and it is important that the stated political support for an effective AML/CFT regime results in the necessary legislative change and also a policy initiative to create a forward looking strategy with enhanced coordination and cooperation.

6.1.2 Recommendations and Comments

793. Following this evaluation, Aruba should move to efficiently use its existing mechanisms to develop a forward looking strategy that will, at least in the medium term, address the vulnerabilities that exist and the risks it faces. The FATF Committee could be the body that drives the development of such a strategy provided that the Committee is able to move proactively to address all relevant issues in a holistic manner. A necessary component of this will be to examine the various coordination and cooperation mechanisms that exist, and determine how enhancements might be made in areas such as with respect to AML/CFT supervision of financial institutions and DNFBPs.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	PC	• No proactive and coordinated AML/CFT policy making at a jurisdictional level. • Lack of operational level coordination between MOT and the CBA, and also with other agencies. • Lack of effective implementation in the mechanisms used for AML/CFT coordination and cooperation in Aruba

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

Recommendation 35 & SR I

794. As a semi-autonomous part of the Kingdom of the Netherlands, Aruba is not by itself able to enter into treaties, conventions and other international agreements with other countries. Treaties are entered by the Kingdom of the Netherlands, and during the ratification process Aruba may indicate if it wants the treaty to be applied to it. In the case of the Vienna Convention, the Palermo Convention and the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism (the Terrorist Financing Convention), Aruba indicated its willingness to have them applied. Subsequently the Conventions were applied to Aruba as follows:

- The Vienna Convention – 8 September 1993.
- The Terrorist Financing Convention – 23 March 2005.
- The Palermo Convention – 18 January 2007.

The Vienna Convention

795. Aruba is compliant with many elements of the *Vienna Convention* due to its legislation dealing with drug-related crimes and money laundering, investigative powers, powers to restrain and confiscate the proceeds of crime and mutual legal assistance/extradition provisions. As noted above, however, there are deficiencies in the money laundering offence relating to ancillary offences and a lack of clarity regarding foreign predicates.

The Palermo Convention

796. Again, due to fairly comprehensive money laundering provisions, restraint and confiscation laws and mutual legal assistance/extradition provisions – Aruba is mostly compliant with the elements of the Convention relevant to this evaluation, though as with the Vienna Convention there are deficiencies in the money laundering offence.

The Terrorist Financing Convention, S/RES/1267(1999) and S/RES/1373(2001)

797. As noted in Section 2 of this report there are significant deficiencies with Aruba's compliance with Special Recommendations I, II and III. On the criminalisation front, deficiencies noted with respect to the requirements of the *TF Convention*:

- No separate and independent offence of terrorist financing and reliance solely on ancillary offences to existing criminal offences committed with a "terrorist intent" as defined.
- Insufficient coverage of the types of property (funds) to be provided.
- The set of "terrorist felonies" to be covered is too narrow.
- The need to prove that a specific terrorist act actually took place, unless it is a preparatory act.

- No clear offence of attempted terrorist financing.
- Financing foreign terrorist groups from Aruba may not be an offence in some situations.
- The penalties for having engaged in terrorist financing activity are not clearly effective, proportionate and dissuasive.

798. On the freezing and confiscation front, contrary to the requirements of S/RES/1267(1999) and S/RES/1373(2001), Aruba has yet to take effective action to freeze terrorist property. In order to comply with international decisions and agreements (including the UN Security Council Resolutions relating to the prevention and suppression of FT), Aruba has introduced a new State Ordinance on Sanctions which, when taken together with other measures, will in the future provide a basis to freeze assets. However, a State Decree is necessary to determine the persons, organisations which assets would be frozen in accordance with the UN Security Council Resolutions and the conditions under which their assets would be frozen. However, although a draft State Decree was provided to the assessment team on-site, the State Decree was not passed, leaving significant deficiencies such as:

- Aruba does not implement the requirements under S/RES/1267.
- No national mechanism to designate persons in the context of S/RES/1373, nor a comprehensive mechanism in place to examine and give effect to actions initiated under the freezing mechanisms of other jurisdictions.
- The scope of the funds that shall be frozen does not cover funds controlled directly or indirectly by designated persons or entities as well as to funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities
- There are no procedures for evaluating de-listing requests, for releasing funds or other assets of persons or entities erroneously subject to the freezing and for authorising access to frozen resources when deemed necessary for basic expenses, the payment of certain types of fees, etc pursuant to S/RES/1452(2002).

799. Overall therefore, Aruba still has many important steps to take to implement the requirements of the *Terrorist Financing Convention*, S/RES/1267(1999) & S/RES/1373(2001).

800. The 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime was extended to Aruba in April 1999, though a reservation was entered that Aruba retained the right not to apply the requirement to confiscate the proceeds of offences under taxation or customs legislation, thus no confiscation in relation to smuggling offences. It appears that the Convention has in large part been implemented, though as noted above some lacunas remain.

6.2.2 Recommendations and Comments

801. Aruba must urgently take action to rectify the shortcomings in the terrorist financing offence and the freezing of terrorist assets. A comprehensive package of measures to implement the requirements of the *Terrorist Financing Convention*, S/RES/1267(1999) & S/RES/1373(2001) should be enacted expeditiously and comprehensively and effectively implemented immediately thereafter. Action must also be taken to rectify the deficiencies noted with respect to the money laundering offence.

6.2.3 *Compliance with Recommendation 35 and Special Recommendation I*

	Rating	Summary of factors underlying rating
R.35	PC	• Lack of implementation of the Terrorist Financing Convention in relation to terrorist financing. • No implementation of UNSCR 1267 and 1373. • Several failings regarding implementation of the Vienna and Palermo Conventions.
SR.I	NC	• Lack of implementation of the Terrorist Financing Convention in relation to terrorist financing. • No implementation of UNSCR 1267 and 1373.

6.3 Mutual Legal Assistance (R.36-38, SR.V)

6.3.1 *Description and Analysis*

802. The laws in Aruba concerning mutual legal assistance in AML/CFT investigations, prosecutions and related proceedings are primarily set out in the Articles 555 to 567 CCrPA, though Article 579a-f are also relevant. As noted above, Aruba as part of the Kingdom of the Netherlands is a party to a number of international Conventions which include provisions allowing for mutual legal assistance. In addition to the Vienna, Strasbourg, Palermo and Terrorist Financing Conventions referred to above, Aruba is also a party to the European Conventions on Mutual Legal Assistance (1959). In the same fashion Aruba has also entered into a number of bilateral mutual legal assistance treaties, which are in force with: Surinam, Canada, the United States, Australia and Hong Kong.

803. If a request is based on a bilateral or multilateral treaty, it must be complied with as much as possible. In the absence of a Convention or a bilateral agreement, Aruba is able to, and has provided assistance based on the principle of reciprocity. Indeed, Article 558 provides that a non-Convention based reasonable request shall be complied with unless this is contrary to statute or to an instruction from the Minister of Justice.

Provide the widest possible range of mutual legal assistance

804. Article 555 section 1 allows for mutual legal assistance to be provided in relation to requests made in connection with criminal proceedings. Such requests can relate to:

a) Performing certain investigatory acts or to cooperating with such acts.

b) Forwarding documents, dossiers or documents of evidence.

c) Providing information.

d) Serving or presenting documents or to give notice or participations to third parties.

805. These categories include the production, and if necessary, search and seizure of documents or evidence as well as the provision of documents, and the taking of evidence or statements from persons.

806. If a request concerns an investigation into offences of a political nature, the request can only be granted with authorisation from the Minister of Justice. Such an authorisation can only be given for requests based on a treaty and after consultation with the Minister of General Affairs (*i.e.* the Prime Minister). The decision on the request is communicated through diplomatic channels to the requesting party (Article 560, section 1, CCrPA). Equally, similar authorisation requirements and conditions exist for requests concerning an investigation into tax or customs matters, which could result in action being required of or relate to information held by the Tax Service or the CBO.

807. Under Article 561, a request from a foreign judicial authority which meets the conditions for assistance and is based on a treaty must be passed on to the examining magistrate in cases:

- That requires the hearing or examination of persons who are not willing to appear voluntarily and make a statement as requested.
- Where a sworn statement is expressly requested.
- Where it is necessary to enter places other than public places without the express consent of the person entitled to such a place, in order to seize documents of evidence.
- Where a wiretap of telecommunications traffic is needed.

808. However in cases where these circumstances are not met, *e.g.* where the request is not treaty based or relates to another type of assistance, then the prosecutor has an option as to whether the request is submitted to an examining magistrate. In all cases that are granted, the consequence is that the judge and the prosecutor have the same powers as if it was a preliminary judicial investigation for an Aruban offence. Articles 555 and 561 regulate two situations, and in general terms it appears that most of the normal types of assistance that would be provided are referred to in one article or the other. The two articles vary in whether they are describing powers, procedures or requirements. For instance, in the case of a house search or a wire tap, Aruban law requires an authorisation from the examining magistrate. The local law approach is also applied when executing a MLA, meaning that a house search or wire-tap upon request of a foreign state will always require an authorisation from the examining magistrate. These situations are covered by Article 561. Article 555 relates to the forms of MLA which the police can carry out under the responsibility of the prosecutor and in which an authorisation from an examining magistrate is not required. In addition, it should also be mentioned that there are also powers for Aruba to provide assistance regarding the identification, investigation, seizure or confiscation of property or proceeds derived from money laundering, and these will be discussed in more detail under Recommendation 38 below.

Conditions applied

809. Dual criminality is required for most mutual legal assistance requests. For straight-forward, non-coercive assistance, such as forwarding or serving documents or providing public information, neither a treaty nor dual criminality is required. If evidence is to be taken from a witness under oath, then this requires a treaty and the treaty decides whether dual criminality is necessary. In other cases of coercive assistance, such as search warrants, seizing documents or property, confiscation, wiretaps etc, a treaty is required and dual criminality is mandatory. Although the legislative requirements lacked clarity on this point, the legal situation as explained by Aruba appears normal in this regard.

810. The Aruban authorities advised that dual criminality is given a broad interpretation, with duality not being limited to the precise description of the offence. Rather the authorities will consider all the facts of the case in determining whether the underlying conduct would amount to a criminal offence if it had

been committed in Aruba. Additionally, it would have to be possible for the request to be complied with if the underlying criminal conduct had occurred in Aruba.

Grounds for refusal of MLA requests

811. Article 559 CCrPA sets out the conditions under which mutual legal assistance requests must be refused. These are:

a) If, based on the rules of international law, the requesting state lacks jurisdiction over the suspect in question.

b) If the suspect was brought or enticed to or arrested on the territory of the requesting state in violation of international law or in another illegitimate way.

c) If there is reason to suspect that the request is related to an investigation aimed at prosecuting or punishing the suspect because of his religious or political beliefs, nationality, race or ethnicity.

d) If granting of the request would lead to cooperation in a prosecution that is a violation of the principle of double jeopardy as set out in Articles 70 CrCA and 282, section 2, CCrPA.

e) If it is related to an investigation into facts for which the suspect is already being prosecuted in Aruba.

812. Article 559 CCrPA does not provide grounds for the refusal of mutual legal assistance on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBPs. The Aruban authorities advised that as there is nothing in the legislation that allows for refusal on these grounds, secrecy or confidentiality would not constitute a ground for refusal. As noted above, there are special procedures that allow for assistance in fiscal matters, but these do not constitute a ground for refusal in a request related to a money laundering or a predicate offence just because the case might also involve a fiscal element.

Execution of mutual legal assistance requests

813. Requests for mutual legal assistance from outside the Kingdom of the Netherlands are sent to the Prosecutor General, while similar requests from within the Kingdom are sent directly to the chief prosecutor. After determining whether there are any legal impediments, the request is handed over to a prosecutor who will determine the further course of action and act accordingly under the responsibility of the chief prosecutor. The prosecutor who has received the request must decide immediately on the follow up to that request (Article 557 CCrPA). No information was available as to how long in practice it takes to action MLA requests.

814. Under Article 558 CCrPA, if a request is based on a treaty, it is complied with as much as possible. If it concerns a "reasonable request" which is not based on a treaty, or if the relevant treaty does not mandate compliance, the request is complied with, except if such compliance would constitute a violation of a legal provision or a directive from the Minister of Justice. The grounds for refusal of mutual legal assistance are set out in Article 559 CCrPA and are mentioned above. Although there is no definition of what is a "reasonable" request, Aruba has advised that an example of an unreasonable request would be a request that in form (content/documentation) and/or the desired assistance deviates significantly from what is usual with treaty-based requests *e.g.* an indictment by the examining magistrate or investigating judge. However, this still seems to leave considerable discretion on what is "usual".

815. Pursuant to Article 562, section 1, paragraph a, CCrPA the examining magistrate, when auctioning a request (pursuant to the conditions set out in Article 561), has the same legal powers as when carrying out an internal judicial investigation. Such an investigation is regulated under Articles 221-283 CCrPA. The authorities also have a discretion regarding cases that could be tried in more than one venue. Based on the opportunity principle the Public Prosecutor's Office may decide for reasons of efficiency or otherwise to enter into an agreement with the prosecutorial authorities of another State regarding the venue for prosecution of a person, who could also be prosecuted in Aruba.

Recommendation 37

Description and analyses

816. As noted above, it is a basic requirement of the Aruban system that dual criminality is required for most MLA requests, though there is some lack of clarity in the legislation as to when dual criminality is required. When considering dual criminality it is the underlying conduct and not the legal title of the conduct that is taken into account, and that having categorised the offence in a different way will not impede Aruba's capacity to provide assistance. Although the legislation is not entirely clear, it appears that MLA can be provided in the absence of dual criminality for less intrusive, non-compulsory measures. No legal or practical impediments exist in order to render assistance for extradition and those forms of mutual legal assistance where dual legal assistance is required due to categorisation or denomination of the offences.

Recommendation 38

Description and analyses

817. Provisions dealing with assistance regarding the identification, seizure or confiscation of "profits or advantages illegally obtained" are set out in Articles 579a-f CCrPA. This appears to partially cover the requirements of R.38, though the reference to profits or advantages is not the same as proceeds, since profits implies that any expenses in obtaining the criminal proceeds could be deducted. Seizure is also possible of objects that represent the value of the calculated advantage based on Article 579b, first section, paragraph b. The article also does not clearly cover instrumentalities or intended instrumentalities, though Aruba advises that the reference to seizing objects that can be used to prove the illegally obtained advantage is sufficient. There is also a limitation in the domestic confiscation legislation concerning property that is held in the name of third parties, and the position regarding an MLA request would not give any greater powers than exist in a domestic case, which is itself limited.

818. Article 579a CCrPA allows for assistance to be provided in relation to identification or investigation concerning illegally obtained profits or advantages, thorough the use of a so-called criminal financial investigation. A criminal financial investigation can be opened provided that the request is based on a treaty, and that there is dual criminality and requires the permission of the examining magistrate, which must be requested by the prosecutor. Where such an investigation is opened the Police can collect information, demand information from financial institutions, and seize property which it is reasonably expected to be the subject of a request for confiscation by the foreign state.

819. Under Article 579b, where there is a treaty, the Aruban authorities may seize property that could be confiscated in the requesting jurisdiction or where it is to safeguard a foreign jurisdiction's right to recourse concerning an order that a sum of money be paid for the purpose of confiscating illegal profits and advantages. In addition to the treaty pre-condition, there is also a dual criminality requirement, a "dual seizure" requirement *i.e.* that the requesting state could seize the property if the property had been located

in that state, and a requirement that the reasonable grounds to expect that there will be a request to enforce an order for confiscation or a sanction. It is to be noted that Aruba has the discretion to take action ("may") and that the conditions that need to be met are quite extensive.

820. Article 579c also gives a discretionary power of seizure where a foreign confiscation order has been made, and where it reasonably expected that the order will be enforced "at short notice". While the meaning of this provision is not entirely clear, it appears to make it easier to seize property where the confiscation order has already been made. Article 579c can only be applied on the basis of a treaty, in which case the treaty must contain provisions on dual criminality.

821. Aruba advised that pursuant to Articles 581-591a, as well as other provisions of the CCrPA (copies of which were not provided to the assessment team), the prosecutor-general may request the court to enforce a foreign confiscation order. Based on the information provided to the assessment team it appears that some powers to enforce are available, in particular Article 591a, however, there still appear to be some restrictions and the language of the articles is not clear. In the absence of clear legal provisions, it is not possible to determine the conditions under which Aruba can register and enforce a foreign confiscation order, including an equivalent value order.

822. It also appears that foreign orders may not be accepted on a full faith and credit basis in certain cases. Article 579e provides that where a foreign court has made an order (though it is not clear what type of order), the court will not normally institute a new investigation into the rights of the persons concerned, but it can do so in certain cases:

a) Where the property concerns rights regarding real estate situated in Aruba or vessels and aircraft registered in Aruba.

b) The decision concerns the validity, nullity, or dissolution of legal entities domiciled in Aruba or the resolutions of their bodies.

c) This decision was made without officially notifying the person concerned, who was declared to be in default, of the proceedings in advance, in such a timely fashion as was required in reason with regard to his defense.

d) This judgment is contrary to any court decision previously rendered in connection therewith in Aruba.

e) Acknowledgment of this decision would be contrary to Aruban public order.

823. If the case is one as set out above, an inquiry takes place into the rights of the parties involved and commences with an introductory written complain by an affected party. The hearing of such cases, and the treatment of such a written complaint is limited to one instance, namely the Common Court of the Netherlands Antilles and Aruba. The possibility that a case would be reinvestigated causes concern, particularly for the types of situations described in paragraphs (a) and (b) which could be relatively common place. Where this occurs it would certainly impede the effective provision of mutual legal assistance.

824. Aruba advised that arrangements for co-ordinating seizure and confiscation actions with other countries are currently made on an ad hoc basis and on the basis of mutual legal assistance. No specific examples were provided of cases in which such arrangements have been made, nor were any agreements or arrangements provided to the assessment team. Given the lack of material it is not possible to determine that Aruba has such arrangements.

825. In 1995, a special fund, the Narcotics Combat Fund was created by law. Its purpose is to finance the heightening of the efficiency and effectiveness of the supervision on the compliance of the laws concerning narcotics. The funding is received comes from proceeds received pursuant to international agreements regarding the sharing of the proceeds confiscated by another state and resulting from criminal investigations. Recently an amount of AWG 25 000 coming from the confiscation of monies held in a bank account, and based on the request of the Netherlands was deposited into this fund. Pursuant to an asset sharing agreement Aruba was allowed to keep this money.

826. Even without a coordinated law enforcement actions, asset sharing is done as much as possible on the basis of a treaty (for example between Aruba and the US) or on the basis of reciprocity.

6.3.2 Recommendations and Comments

827. Aruba (as part of the Kingdom of the Netherlands) should work to expand the range of mutual legal assistance agreements it has, particularly with other countries in the region, but also with countries which it has more regularly had to cooperate in the past. A more extensive network of agreements will allow it to more effectively provide a broader range of cooperation. Broader MLA cooperation will also be possible when the deficiencies regarding the predicate offences for money laundering and the lack of a separate and independent terrorist financing offence are rectified.

828. As regards international cooperation and mutual legal assistance in general, Aruba should give serious consideration to enacting a comprehensive and up-to-date State Ordinance dealing with MLA. The current provisions in the CCrPA provide a patchwork of measures, which do not seem to comprehensively and fully deal with all the needs of a modern MLA system. At the same time, consideration should be given to extending the actions that can be taken on the basis of reciprocity, and the conditions on which requests of that nature can be dealt with. The current wording, which states that such requests must be "reasonable", and which leaves an open discretion on whether a request will be auctioned, is too broad and lacks certainty. In addition to these legislative weaknesses, a system to ensure that proper data and statistics regarding MLA requests (made and received) should be introduced. The lack of information of this nature undermines the effectiveness of the system and means that the jurisdiction is unaware of potential delays that may be occurring.

829. This is exacerbated by the inability to take action against property held in the name of third parties. Since the objective of money laundering is to indeed conceal and disguise the illegal proceeds, usually by placing the property in the name of a third party, this is another important weakness that needs to be rectified both domestically and internationally. The deficiencies that exist regarding seizure assistance – cannot assist regarding instrumentalities, non-coverage of profit or interest, and potentially the inability to seize property of corresponding value also need to be rectified. In addition the conditions and requirements set out in Art.579b are extensive and restrict Aruba's ability to provide effective and timely cooperation in the area, and need to be changed. Aruba should also consider what arrangements it should have regarding coordinated action in seizure and confiscation cases.

6.3.3 *Compliance with Recommendations 36 to 38 and Special Recommendation V*

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	PC	• Aruba is party to only 5 bilateral MLA agreements, only one with a country in the region. This limits Aruba's capacity to effectively and efficiently provide the widest range of MLA. • As dual criminality is required for mutual legal assistance, the lack of a TF offence impacts on the extent and effectiveness of mutual legal assistance provided by Aruba in TF matters. • The limitations regarding the predicate offences for money laundering also limit the ability to assist in relation to ML based on such predicates. • The requirement that non-treaty based requests must be "reasonable" (undefined), combined with a discretion, which is unclear, as to when such requests will be actioned, is an unreasonable and disproportionate condition on providing MLA. • The deficiencies that exist in relation to assistance for seizure and confiscation of illegal proceeds (see R.38) also impact on R.36. • The lack of data on the MLA requests means that it is has not been demonstrated that Aruba can handle MLA requests in a timely and effective manner.
R.37	C	• The criteria are fully met.
R.38	PC	• As dual criminality is required for mutual legal assistance, the lack of a TF offence impacts on the extent and effectiveness of mutual legal assistance provided by Aruba in TF matters. • The limitations regarding the predicate offences for money laundering also limit the ability to assist in relation to ML based on such predicates. • The seizure assistance that can be provided does not extend to all proceeds, nor to instrumentalities or intended instrumentalities, nor is it clear that it applies in relation to property of corresponding value. • There is a lack of clarity in the provisions that provide the Aruban authorities or judiciary with the ability to register, recognise or enforce a foreign confiscation order. • Assistance cannot be provided concerning property held in the name of third parties. • Aruba should consider arrangements for co-ordinating seizure and confiscation actions with other countries.
SR.V	NC	• Terrorist financing is not an offence, and as dual criminality is a requirement for MLA, this means that assistance cannot be provided. • The other limitations that are set out in Recommendations 36-38 apply equally to terrorist financing activity.

6.4 Extradition (R.37, 39, SR.V):

6.4.1 *Description and Analysis*

Recommendation 39 and SR V

830. Aruba is not primarily responsible for extradition. According to Article 3, section 1, paragraph h, of the Statute for the Kingdom of the Netherlands, extradition is an issue for the Kingdom of the Netherlands, and not for Aruba. Aruba cannot therefore enact legislation or take other measures with

regard to extradition in its own right, the necessary action must be taken by the Kingdom. The issue is regulated through a combination of treaties and the applicable law.

831. As regards treaties, Aruba is a party to a number of extradition treaties. The European Convention on Extradition 1959 has been ratified for Aruba, and has been in effect since 1993. In addition Aruba, through the Kingdom, has entered into several bilateral extradition treaties: with the United States, Canada, Australia and Suriname.

832. The applicable law is contained in the Netherlands Antilles Extradition Decree and the Cassation Regulation regarding extradition affairs for the Netherlands Antilles. These measures were passed before Aruba split from the Netherlands Antilles, but under the relevant constitutional law, the pre-existing laws still apply unless they have been expressly repealed. The Decree and the Regulation contain general measures on extradition pursuant to Article 3, section 1, paragraph h, of the Statute for the Kingdom of the Netherlands.

833. Under these laws, and pursuant to the treaties, the conditions for extradition are:

- There must be dual criminality.
- The offence must be criminalized at the time of the request and also at the time of decision of extradition.
- The offence must carry a minimum prison term of one year.
- The right to prosecute must remain extant both in Aruba as well as in the requesting state.

834. The requirements regarding the limitation period within which an offence must be prosecuted is set out in Article 72 CrCA for all criminal offences, including money laundering. The right to prosecute:

- All misdemeanours lapses after two years.
- Felonies carrying three years imprisonment or less lapses after six years.
- Felonies carrying more than three years lapses after 12 years.
- Felonies carrying life sentences lapses after 18 years;

835. In addition, the principle of *ne bis in idem* must be respected, *i.e.* extradition is not possible if the requested person has already been prosecuted, judged or acquitted regarding the offence for which extradition is been sought. However, in cases of discontinuation of prosecution by the requesting state extradition is possible.

836. On the basis of the above conditions, money laundering would generally be an extraditable offence, since it has an imprisonment penalty of more than one year. The only exceptions could be where one of the other conditions referred to above exists, but these appear to be normal conditions and limitations in relation to extradition, or where the offence relates to one of the predicate offences that does not apply to the Aruban money laundering offence, as set out in section 2.1 of the MER. The requirement for dual criminality and the limitation regarding the set of predicate offences, thus impacts Aruba's capacity to extradite in such cases.

837. Aruba extradites its own subjects (meaning residents of Aruba with Dutch nationality) in principle only in cases of prosecutorial extradition and under the condition that the resulting sentence can be carried out in Aruba or elsewhere in the Kingdom of the Netherlands. Aruba therefore does not extradite its subjects for the purpose of execution of sentences. Whenever extradition is not possible, Aruba may, if the requesting state so desires, take over the prosecution. This is possible under Article 5 CrCA for offences committed outside Aruba by Aruban residents, and no treaty is required by Aruban law for such a take over of the prosecution. The prosecutor in charge will evaluate the case file and follow the regular procedures set for local criminal cases. After receiving the case file and evidentiary material from the requesting state the prosecutor in charge will evaluate the case file and follow the regular procedures set for local criminal cases.

838. As regards the procedures for extradition requests and related proceedings concerning money laundering, these are the same as for mutual legal assistance requests. Pursuant to Article 8 of the Netherlands Antilles Extradition Decree requests for extradition must take place via diplomatic channels. The prosecutor-general is authorized, after having heard the detainee, to issue an order for his temporary arrest against him, which must be served on him as soon as possible. The formal request for extradition with the necessary documentation must then be presented within the period set out in the treaty but which cannot be longer than two months after the signing date of the detention order. The request for extradition must be accompanied by the original or a certified copy of a conviction verdict, or the document charging or initiating the criminal case against the person along with an order for detention.

839. The prosecutor-general gives his advice on whether or not the extradition is admissible, the defendant is also heard by the Court, and within fourteen days after the interrogation the Court shall send its advice and its decision, along with the relevant documents to the Governor for his decision regarding the extradition.

840. In relation to simplified procedures, this depends on the treaty. An example is the treaty with the United States, under which a request for detention of the requested person can be done through diplomatic channels or through direct communication between the United States Department of Justice and the Ministry of Justice in Aruba. Usually in Aruba such a request is received by the Public Prosecutor's Office and is addressed to the Prosecutor General, and must be accompanied by the indictment and/or the warrant for arrest. If the requested person does not object to extradition the shortened procedure is followed, the examining magistrate and the court are not involved, and a date is set for the requesting state to pick up to the person. If the requested person objects to his extradition the court must determine if the conditions for extradition are met and then advises the Governor accordingly. The Governor decides if the requested person can be extradited or not. The requested person may begin a cassation appeal procedure at the Supreme Court pursuant to the Cassation Regulation regarding extradition affairs for the Netherlands Antilles and Aruba.

SR.V - Terrorist Financing

841. As set out in s.2.2 MER, terrorist financing is a not a separate criminal offence in Aruba, and thus is not an extraditable offence.

6.4.2 Recommendations and Comments

842. As with mutual legal assistance, Aruba should work to broaden the range of agreements that it has in place for extradition. This is currently limited to 4 other jurisdictions, which limits Aruba's ability to assist in this area. There would also be a greater capacity to assist if the issues regarding the predicate offences for money laundering are rectified, so that Aruba can extradite individuals for the full range of

money laundering offences. Similarly, Aruba should urgently introduce a separate and independent terrorist financing offence; so that it can provide full extradition assistance if such a request was to be made.

6.4.3 Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	LC	• Aruba is party to only 4 bilateral extradition agreements, only one with a country in the region. This limits Aruba's capacity to effectively and efficiently provide extradition to likely partner jurisdictions. • The limitations regarding the predicate offences for money laundering also limit the ability to extradite in relation to ML based on such predicates.
R.37	C	• The criteria are fully met.
SR.V	NC	• As dual criminality is required for extradition, the lack of a TF offence means that, in effect terrorist financing is not an extraditable offence.

6.5 Other Forms of International Co-operation (R.40 & SR.V)

6.5.1 Description and Analysis

Police Force and the RST:

843. The Police Force and the RST can exchange information with their foreign counterparts on the basis of Articles 555 and following of CCrPA. According to Article 556 CCrPA, the request of information can be sent directly to the Police Force or the RST, as long as no investigative acts is required to obtain this information. In this later case and in the cases determined by the Minister of Justice on which the assessment team was not provided with any further information, the request shall be forwarded to the Public Prosecutor. Exchange of information can also be based on a MOU, as it is the case between the Kingdom of the Netherlands and Surinam.

844. The Police Force and the RST generally exchange information through Interpol channels and with a network of overseas Dutch liaison officers. The Police Force, the RST and the Public Prosecutor's Office can meet under a steering team, which can assign priority to certain cases.

845. The assessment team was not provided with any statistics, but the lack of resources of the Police Force, the RST and the Public Prosecutor's Office may affect the effectiveness of the system.

846. As the assessment team was not provided with any information concerning the exchange of information between the Police Force or the RST and foreign counterparts, they are not in a position to further describe and analyse these aspects. Aruba is thus asked to provide additional information detailing the 11 criteria of Recommendation 40 and the 9 criteria of SR IV on this issue; otherwise the assessment team would consider that the Police Force and the RST cannot exchange information with their counterpart, which would negatively impact the ratings of R. 40 and SR.V.

The CBA:

847. The CBA, which is the supervisory body that controls the compliance of credit institutions, insurance companies and TSCPs with the provisions of the SOIPS related to the CDD requirements, has

powers to co-operate and to exchange information with its foreign counterparts. However, four elements limit the capacity of the CBA to provide a full and effective range of co-operation. Firstly, the scope issue outlined throughout this report also impacts the issue of exchange of information. Therefore, co-operation cannot be provided for those types of financial institutions which are not currently subject to supervisory oversight (including investment businesses, asset managers, stock brokers, insurance intermediaries, the stock exchange, etc…), because the CBA has no power to obtain or access the information required. Secondly, the deficiencies identified on the implementation of the preventive measures also limit the capacities of the CBA to exchange information. Thirdly, the nature of the information that can be exchanged is limited to CDD information, since the CBA does not supervise the compliance of financial institutions it supervises with the requirements to report unusual transactions. Fourthly, the law limits the possibility of the CBA to exchange information as described below. The SOSCS, SOSIB and SOSMTC allow the CBA to exchange information with any foreign counterparts as long as criteria such as reciprocity or protection of the information are met. The assessment team also noted that the CBA had only concluded MOUs with the Central Bank of the Netherlands and the Central Bank of the Dutch Antilles and another one with the Regional Regulatory Authorities.

848. Banking sector: Article 34 of the SOSCS states that "the [CBA] shall be authorised to furnish data or information obtained during the performance of the task imposed upon it pursuant to this State Ordinance, to a foreign supervisory agency or an institution which has been charged in any country by or under law with the supervision of other financial markets, provided that:

- Furnishing hereof, in reason, is not or could not be contrary to the interest which this State Ordinance seeks to serve.
- The CBA ascertains itself the purpose for which the data or information shall be used.
- Sufficient safeguards are in place to ensure that the data or information will not be used for a purpose other than that particular use of the data or information.
- The secrecy of the data or information is sufficiently safeguarded.
- Data and information can be exchanged on the basis of reciprocity".

849. Insurance companies: In much the same pattern as the banking law, Article 24 of the SOSIB states that the CBA shall be authorised to furnish data or information obtained in the performance of its duties entrusted to it in pursuance of this State Ordinance, to a supervisory authority or a body to which in any country by or by virtue of a law the supervision of insurers and institutions and the natural persons employed in the insurance business, has been charged or an umbrella organisation of supervisory authorities or bodies as aforementioned provided that:

- Furnishing hereof is not or could not become contrary in reason to the interests this State Ordinance seeks to protect.
- The CBA has ascertained itself of the purpose for which the data or information shall be used.
- It is sufficiently guaranteed that the data or information shall not be used for another purpose than for which they are furnished, unless the CBA's prior permission has been obtained for that use.
- The secrecy of the data or information to be furnished is guaranteed sufficiently.

- Data and information can be exchanged on a basis of reciprocity.

850. The capacities of the CBA to co-operate and exchange information with foreign counterparts are the same regarding the banking and the insurance sectors and present the same deficiencies. The CBA can only exchange information that is already in its possession and therefore it cannot undertake new inquiries on behalf of foreign counterparts. In addition, it cannot co-operate for investigating type requests made by a foreign supervisor. Although, the State Ordinances do not explicitly mention that the information that can be exchanged is linked to ML and the underlying predicate offences. However, it can be implicitly deduced since the CBA also supervises the compliance of insurance companies with the provisions of the SOIPS. Moreover, the controls and safeguards, such as the fact that the information that is provided is not or could not become contrary to the interests of the States Ordinances, are broadly defined and, depending on how they are interpreted, could limit the capacities of the CBA to co-operate with foreign counterparts.

851. Money transfer companies: Articles 20 to 22 of the SOSMTC provide broader co-operation and exchange powers than either the banking (SOSCS) or insurance (SOSIB) State Ordinances, although it specifically reserves to the Minister of Justice the power to authorise such co-operation and exchange of information in some circumstances. The SOSMTC states that "the [CBA] is authorised to furnish data or information obtained in the fulfilment of the duties imposed on it in pursuance of this State Ordinance, to bodies in Aruba or abroad designated by the authorities, which are charged with the supervision of financial markets or of natural persons, legal entities and companies active in these markets, unless:

- The purpose for which the data or information will be used is insufficiently specified.
- The intended use of the data or information does not fit the framework of the supervision of financial markets or of natural persons, legal entities and companies active in these markets.
- The supply of the data or information would not be compatible with Aruban law or public order.
- The secrecy of the data or the information is not adequately guaranteed.
- The supply of the data or information is or may in reason come into conflict with the interests this State Ordinance seeks to protect.
- It is not sufficiently guaranteed that the data or information will not be used for a purpose other than for which it is supplied.

852. Article 20 adds that if a foreign body requests the person who supplied the data or information in pursuance of that section, to be allowed to use the data or the information for a purpose other than for which it was supplied, the Bank shall only grant such request:

- As far as the conditions described above are met.
- As far as this foreign body would be able to obtain this data or this information from Aruba for that other purpose in another way than provided for in this State Ordinance, with due observance of the relevant prevailing procedures. However, if the request made by the foreign body is related to an investigation into offences, the exchange of information shall only be granted with the permission of the Minister of Justice.

853. In addition, Article 21 of the SOSMTC provides that the CBA "is authorized, for the implementation of Treaties/Conventions on the exchange of data or information, or for the implementation

of binding resolutions of international organizations concerning the supervision of financial markets or of natural persons, legal entities and companies active in these markets, for the benefit of a body active in a State that together with Aruba is party to a Treaty/Convention, or that together with Aruba falls under the same binding resolution of an international organization, and that is charged in that State with the implementation of statutory regulations concerning the supervision of the credit system or Money Transfer Companies, to request information from or conduct an investigation, or cause an investigation to be conducted, at any registered Money Transfer Company that falls under its supervision pursuant to this State Ordinance, or from any person of whom it may be suspected in reason that he disposes of data or information that may be of importance to the implementation of the statutory regulations as meant above. The MTC who was asked to provide data or information shall supply these data or this information within a reasonable term to be determined by the CBA. The MTC at whom an investigation is conducted shall give the CBA any assistance required for a proper conduct of that investigation, on the understanding that the person at whom the investigation is conducted may only be required to grant inspection of books, documents and other data carriers. Although the wording of this article is unclear, the assessment team believes it is related to information concerning assets freezing measures.

854. Article 22 of the SOSTMC states that the CBA "may permit that an official of a foreign body as meant in Article 21 participates in carrying out a request".

855. As a result, the SOSMTC gives the CBA a wider range of power to exchange information with its foreign counterparts. In particular, it allows the CBA to conduct inquiries on behalf of foreign counterparts, possibly with the presence of officials of the foreign supervisory authority. However, the obligation for the CBA to get the authorisation of the Minister of Justice to exchange information for investigative type requests may affect the effectiveness of the CBA's power. In addition, it is unclear to what extent the limitations posed by the law limit the capabilities of the CBA to exchange information and to co-operate with its counterparts, since these limitations are broadly formulated.

856. TCSPs: In February 2009, Aruba adopted its State Ordinance on the Supervision of Trust and Company Service Providers (SOSTSP). The State Ordinance designates the CBA as the supervisory body for TCSPs. The new law contains some provisions for co-operation and exchange of information, which are very similar to those provided for the MTC sector. However, the capability of the CBA to exchange information is limited by the fact that the definition of TCSPs is narrowly limited to those providing services to partnerships and by the fact that TCSPs are not subject to AML/CFT requirements. Therefore, the CBA cannot exchange information with foreign counterparts in relation to ML and TF and the predicate offences for ML. Aruba does have neither any clear and effective gateways, mechanisms or channels that would facilitate and allow for prompt and constructive exchange of information.

857. Overall, none of these four State Ordinances provide clear and effective gateways, mechanisms or channels to facilitate and allow for prompt and constructive exchanges of information directly to a foreign counterpart. These gateways are provided though the MOUs, but the CBA has only signed MOUs with the Netherlands and the Dutch Antilles as well as another MOU between Regional Regulatory Authorities which signatories have not been identified by the assessment team. In addition, the CBA is not allowed to conduct enquiries on behalf of foreign counterparts, except for the MTCs and TCSPs sectors.

858. The different State Ordinances do not contain any provision that would require the CBA to refuse to co-operate on the sole ground that the request is also considered to involve fiscal matters.

859. The CBA has provided the assessment team with very limited statistics. The assessment team has just been informed that the CBA received 5 requests of exchange of information between 2005- March 2009, mainly on issues related to fit and proper tests. The assessment team has not been informed of the

number of answers given by the CBA, the average delay, or the number of requests of exchange of information made by the CBA itself to its foreign counterparts. The assessment team therefore has concerns about the effectiveness of this regime and about the capacity of the CBA to promptly co-operate.

The MOT (as a supervisory body)

860. As described in section 3.10 and 4.3 of this report, the MOT supervises the compliance of banks, life insurance companies, MTCs, life insurance intermediaries and DNFBPs with the provisions of both SOIPS and SORUT. However, the SORUT that organises the functions of the MOT, which is primarily the Aruban FIU, does not contain any provisions allowing the MOT acting as a supervisory body to exchange information or cooperate with foreign counterparts. Similarly, there are no such provisions in the SOIPS.

The MOT (as a FIU)

861. Article 7 of the SORUT provides the MOT can exchange information with foreign FIUs, with which the MOT signed an agreement. The information, which can be exchanged, is the one that is kept recorded in the MOT's Register pursuant to Articles 5, 6 and 6a of the SDRRRCUT. These data are related to the following persons:

- Persons as regards whom a report has been made in connection with an unusual transaction or an intended unusual transaction.
- Other persons who are involved in any way in a transaction reported to the MOT.
- Persons as regards whom information has been provided to the MOT by a foreign counterpart.
- Persons who provide or receive information in connection with an unusual transaction reported to the MOT.

The information kept in the register is the personal data of the persons mentioned above and all the information related to the transaction reported. In addition, information which came to the knowledge of the MOT in the course of its supervisory functions and that are related to ML/TF are also kept registered.

862. Therefore, the MOT can only provide information already available and it is authorized to search on behalf of foreign counterparts other public databases and administrative databases to which it may have direct or indirect access, including law enforcement databases, public databases and administrative databases.

863. The SORUT states that a State Decree will define the conditions under which such exchanges of information are allowed. According to Article 9 of the State Decree Register Regulations Reporting Centre Unusual Transactions (SDRRRCUT) states that exchange of information shall only take place:

- For the purpose of analysing or investigating unusual transactions as long as the MOT has not disclosed this information to Aruban agencies charged with the investigation and prosecution of criminal offences.
- If the information is used for the purpose for which it has been provided and if the protection of privacy is sufficiently guaranteed. The appreciation of these two conditions is left at the discretion of the head of the MOT.

864. The disclosure of information shall only take place under the general conditions, to be judged by the Head, that the data shall be used exclusively for the purpose for which they are disclosed, and that the privacy is sufficiently guaranteed. The following conditions must always be set when disclosing information:

- The disclosed information shall not be disclosed further without prior written permission of the Head.
- Decisions to prosecute based on the disclosed data shall be reported to the Head.
- tax data shall not be used for tax investigations or purposes.

Furthermore, each disclosure of information must be authorised by the head of the FIU who must also authorise any further disclosures to foreign authorities.

865. Concerning fiscal information, the State Decree also provides that such information shall not be used for fiscal investigations or purposes and that the exchange of such information shall always take place in writing.

866. A State Decree was issued on December 6th 2004 (and adopted on September 9th 2005) with a list of countries and territories that are eligible to sign a MOU with the Aruban FIU. This list currently contains 104 countries and territories and basically equals the membership list of the Egmont Group. Currently the FIU has signed 23 MOUs (Albania, Belgium, Bermuda, Bosnia and Herzegovina, Bulgaria, Canada, Chile, Colombia, Croatia, Guatemala, Israel, Latvia, Macedonia, Mexico, Netherlands, Netherlands Antilles, Paraguay, Peru, St. Vincent and the Grenadines, Sweden, Switzerland, Taiwan and the United States of America).

867. In practice, the exchange of information by the MOT with counterpart FIUs takes place through the Egmont Secure Web and FIU-net with the Netherlands.

Effectiveness:

868. The following statistics have been provided by the FIU:

Table 31. Incoming and outgoing requests from and to counterpart FIUs

	2004	2005	2006	2007	2008
Incoming	17	23	23	20	22
Outgoing	0	3	4	6	2

6.5.2 Recommendations and Comments

869. The supervisors of the CBA and the FIU have been given some powers to exchange information with their foreign counterparts. However, these powers are limited by a number of factors such as the scope issue, the deficiencies identified regarding the preventive measures, the architecture of the supervisory responsibilities between the CBA and the MOT, which Aruba is recommended to remedy. In addition, Aruba is strongly urged to remedy the deficiencies in relation to its powers to co-operate and exchange information. It should thus revise the SOSCS and the SOSIB in order to ensure that the CBA can

also conduct enquiries on behalf of a foreign counterpart. Aruba should also allow the MOT as a supervisory body to co-operate with foreign counterparts. Equally, the MOT acting as a FIU should not be limited to exchanging information already in its possession and it should also be allowed to search other databases on behalf of a foreign FIU. It should also amend the SORUT to allow the MOT to co-operate with other Egmont Group Members on the basis of that Group's Principles without a MOU. If this is not possible, the Head of the MOT should enter into MOUs with as many countries as possible among the ones that have been identified as meeting the criteria set out in the State Decree.

870. More globally, Aruba should ensure that clear and effective gateways, mechanisms or channels in order to facilitate and allow for prompt and constructive exchanges of information directly between counterparts.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	PC	Law enforcement authorities: • There are no statistics available to suggest that exchange of information with foreign law enforcement authorities is effective. CBA: • the capacities of the CBA to co-operate and exchange information with foreign counterparts are limited by: o the scope issue; o the fact that the CBA only supervises the compliance with the CDD requirements; o the deficiencies identified in relation to the preventive measures; o the broadly defined safeguards and controls; • Regarding the banking and insurance sectors, the CBA can only exchange information that is already in its possession, but it cannot conduct inquiries on behalf of foreign counterparts. • Regarding the TCSPs, since they are not subject to AML/CFT requirements, the CBA cannot exchange information related to ML, TF or predicate offences. The MOT as a supervisory body: • The MOT as a supervisory body, cannot co-operate and exchange information with its foreign counterparts. The MOT as a FIU: • The capacities of the MOT to exchange information are limited by the fact that Aruba has signed MOUs with a limited set of jurisdictions. • The MOT can only provide information that is already in its possession but it cannot conduct inquiries on behalf of foreign counterparts. • The MOT cannot search other databases to which it have direct or indirect access to answer to the request of a foreign FIU. Effectiveness: • There are no statistics to suggest that cooperation between supervisors and their counterparts in AML matters is effective and is provided in line with the FATF standards.

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
SR.V	NC	Law enforcement authorities: • It is unclear if the law enforcement authorities can cooperate with their foreign counterparts since TF is not an offence. • No statistics available to suggest that exchange of information with foreign law enforcement authorities is effective. CBA: • The capacities of the CBA to co-operate and exchange information with foreign counterparts are limited by: o the scope issue; o the limited number of MOUs it has entered into; o the fact that the CBA only supervises the compliance with the CDD requirements; o the deficiencies identified in relation to the preventive measures; o the broadly defined safeguards and controls; • Regarding the banking and insurance sectors, the CBA can only exchange information that is already in its possession, but it cannot conduct inquiries on behalf of foreign counterparts; • Regarding the TCSPs, since they are not subject to AML/CFT requirements, the CBA cannot exchange information related to ML, TF or predicate offences The MOT as a supervisory body: • The MOT as a supervisory body cannot co-operate and exchange information with its foreign counterparts The MOT as a FIU: • The capacities of the MOT to exchange information are limited by the fact that Aruba has signed MOUs with a limited set of jurisdictions. • The MOT can only provide information that is already in its possession but it cannot conduct inquiries on behalf of foreign counterparts; • The MOT cannot search other databases to which it have direct or indirect access to answer to the request of a foreign FIU; Effectiveness: • There are no statistics to suggest that cooperation between supervisors and their counterparts in FT matters is effective and is provided in line with the FATF standards.

7. OTHER ISSUES

7.1 Resources and statistics

871. Assessors should use this section as follows. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report *i.e.* all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report will contain only the box showing the rating and the factors underlying the rating, and the factors should clearly state the nature of the deficiency, and should cross refer to the relevant section and paragraph in the report where this is described.

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
R.30	NC	<u>In relation to the FIU:</u> • The composition of the MOT Advisory Committee (presence of private sector members) gives the appearance of compromising the autonomy and independency of the MOT in terms of determination of its budget and staff policy. • The MOT faces resources constraints that impact its effectiveness. • The MOT has not conducted any analysis on terrorist financing and its staff have not been trained in analysing such reports. <u>In relation to the law enforcement authorities and prosecution authorities:</u> • Low level of effectiveness in investigating ML, caused by lack of resources in both police services and prosecution. • Budgetary constraints affecting all government services have limited the possibilities of the relevant personnel of the Public Prosecutor's Office and the Police to participate in AML/CFT training courses and programs. <u>In relation to the supervisory authorities:</u> • The resources and training of staff of the CBA is not adequate. • The MOT's supervisory unit is not sufficiently staffed and resourced, particularly since February 2009 as the same staff are also responsible for the supervision of all the DNFBPs and all other non-financial businesses and professions. • The MOT does not provide training to its staff in relation to supervisory functions and methods.
R.32	NC	<u>Review of the effectiveness of the AML/CFT system:</u> • There is no information to suggest that Aruba has conducted comprehensive reviews which were intended to result in an enhancement of the AML/CFT system. <u>Collection of statistics:</u> • In relation to mutual legal assistance: no statistics on requests, their nature and on whether they were granted or refused and the time to respond. • In relation to extradition: no statistics available. • In relation to administrative co-operation: no statistics available for the law enforcement and the CBA. The statistics made available by the FIU do not detail the number of requests granted or refused, nor the time to respond.

7.2 Other relevant AML/CFT measures or issues

872. There are no other relevant issues.

7.3 General framework for AML/CFT system (see also section 1.1)

873. There are no other elements of the general framework that significantly impair or inhibit the effectiveness of the AML/CFT system.

TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system
Table 3: Authorities' Response to the Evaluation (if necessary)

Table 1: Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (na).

Forty Recommendations	Rating	Summary of factors underlying rating
Legal system		
1. ML offence	LC	• The ML offence does not adequately cover all designated categories of predicate offences (TF, counterfeiting and piracy of products, insider trading and market manipulation, environmental crime, fraud). • The full range of ancillary offences are not provided for as neither conspiracy nor association to commit are applicable to ML. • There is a lack of a clear, unequivocal provision pursuant to which Aruba can prosecute ML based on foreign predicate offences.
2. ML offence – mental element and corporate liability	LC	• Due to the lack of data on ML sentencing, is not possible to assess whether natural and legal persons are subject to effective, proportionate and dissuasive sanctions for ML.
3. Confiscation and provisional measures	PC	• No power to confiscate or take provisional measures in relation to terrorist financing (unless the criminal activity also amounts to a terrorist offence) or several predicate offences for ML (see R.1). • No clear provision to allow the confiscation of property derived indirectly from the proceeds of crime, such as income and other benefits. • Inability to take action against property held in the name of third parties under the special confiscation powers. • Lack of evidence of effective implementation of the powers to confiscate and take provisional measures
Preventive measures		
4. Secrecy laws consistent with the Recommendations	LC	• It is unclear whether MTC's are able to exchange information according to the requirements of SR VII. • Although financial institutions are allowed to share information with the CBA by State Ordinance, Article 286 of the Criminal Code

Forty Recommendations	Rating	Summary of factors underlying rating
		criminal criminalises the fact of revealing secret information.
5. Customer due diligence	NC	• The full scope of financial services is not covered by the CDD obligations: ○ Consumer credit and loans provided by financial institutions not falling under the definition of credit institutions ○ Financial guarantees and commitments performed by non-credit institutions; ○ Issuing and managing of means of payment ○ Trading in money market instruments, foreign exchange transactions, exchange, interest rate and index instruments and commodity future trading ○ Participation in securities issues and provision of financial services related to such issues ○ Individual and collective portfolio management ○ The investing, administering and managing of funds, money on behalf of other persons (including the companies pension funds) ○ Foreign currency exchange transactions, except where conducted by credit institutions • Certain categories of financial service providers are not covered by the scope of the SOIPS: ○ Intermediaries operating on the stock exchange market of Aruba, which is neither regulated or supervised ○ Life insurance agents ○ Currency exchange transactions performed by other entities than credit institutions • Money and currency change performed by banks is covered only below the threshold of AWG 20 000 • There is no clear obligation to identify customers in situations of occasional transactions covered by SRVII • There are no obligations in law or regulation to identify the client when the financial institutions have doubts about the veracity or adequacy of previously obtained identification data • Financial institutions are not required to identify the client in situation where there is a suspicion of ML or TF • Identification of legal persons is based on potentially inaccurate documents and financial institutions are not obliged to verify the identity of the directors of legal persons • There are no provisions on the identification of

Forty Recommendations	Rating	Summary of factors underlying rating
		customers that are foreign trusts or other similar legal arrangements • There is no obligation to identify legal person in circumstances when a legal person is acting on behalf of another person • Financial institutions are neither required to understand the ownership and control structure of the legal person/legal arrangement customer nor obliged to determine who are the beneficial owners (*i.e.* natural persons that ultimately own or control the customer) • There are no requirements to obtain information on the purpose and nature of the business relationship • There are no requirements to conduct ongoing monitoring on the business relationship and transactions • There are no requirements to apply enhanced due diligence for high risk business relationships • There are no requirements for financial institutions to consider making suspicious transaction report when they fail to identify and verify the identity of customer • There is no obligation to apply CDD requirements to existing customers on the basis of materiality and risk The effective implementation of the requirements that exist is undermined by factors such as: • The definition of financial services subject to AML/CFT obligations is vague, thus making it unclear for financial institutions if they are subject to AML/CFT requirements • The SOIPS and the SORUT are inconsistent in terms of the scope of the services they cover • The SOIPS does not allow financial institutions to complete the verification of the identity of their customers and beneficial owners during the course of establishing a business relationship, while in practice some financial institutions have recourse to this practice • The provisions of the AML/CFT directive for the banking and insurance sectors to a certain extent contradictory with the provisions of the SOIPS • Although financial institutions are not permitted to apply reduced or simplified CDD where there are lower risks, the directives, which are not enforceable means, allow it, thus leading to a lack of clarity and some implementation problems.
6. Politically exposed persons	NC	• There are no requirements to apply any additional CDD requirements vis–a-vis PEPs.
7. Correspondent banking	NC	• There are no AML/CFT requirements vis–a-vis cross-border correspondent banking.
8. New technologies & non face-to-face business	NC	• There are no requirements to safeguard against misuse of technological developments.

Forty Recommendations	Rating	Summary of factors underlying rating
9. Third parties and introducers	NC	• There are no provisions to make reliance on third parties subject to the requirements of Recommendation 9, even though reliance on third parties is applied in practice by financial institutions, including banks, based on provisions set out in the CDD directive for banks issued by the CBA.
10. Record keeping	LC	• The full scope of financial services is not covered by records keeping requirements. • No specific requirements for financial institutions to record transactions in a manner to permit reconstruction of individual transactions, in particular for occasional customers. • No requirement to make this information available on a timely basis to competent authorities.
11. Unusual transactions	PC	• The full scope of financial services is not covered by requirements with respect to Recommendation 11. • There is no specific requirement to monitor all complex, unusual large transactions unless they meet the indicators of unusual large transactions that must be reported to the FIU. • There is no explicit requirement to examine the background and purpose of these unusual transactions and to set forth the findings in writing. • There is no requirement to keep a record of financial institutions' findings in relation to complex, unusual large or unusual patterns of transactions.
12. DNFBP – R.5, 6, 8-11	NC	*Casinos*: • The threshold for the identification requirement is too high (AWG 20 000 or USD 11 000). • Internet casinos are not prohibited but they are not subject to AML/CFT obligations. • Cruise ship based casinos are not covered by CDD requirements. *Other DNFBPs:* • TCSPs – the definition of "trust company" is not fully in line with FATF requirements. • AML/CFT requirements as set out in the SOIPS and SORUT do not apply to them, and the identification requirements in the new legislation are inadequate. • Real estate agents are not required to perform CDD in relation to both the purchasers and the vendors of immobile properties. • Deficiencies identified in Recommendation 5 also apply to DNFBPs. • Obligations in Recommendations 6, 8, 9 and 11 are not applied to DNFBPs. • Deficiencies identified for Recommendation 10 also apply to DNFBPs. • Lawyers and notaries are not subject to CDD

Forty Recommendations	Rating	Summary of factors underlying rating
		requirements for their activities relating to the legal status of a client, his legal representation or defence, the giving of advice before, during and after a legal case or the giving of advice on the start or avoidance of a legal case. • Professional secrecy rules should not be applied to create CDD and record keeping exemptions. *Effectiveness:* • Low level of effectiveness of the new provisions of the revised SOIPS as they have not been subject to proper consultation by the industry.
13. Suspicious transaction reporting	PC	• The scope of the ML predicate offences for STR reporting does not satisfy all the FATF standards. • The scope of SORUT is unclear, but the whole range of financial activities is not covered. • The scope of the SORUT and the SOIPS are not harmonised, which would in some cases undermine the quality of the information reported. • Lack of indicators to identify suspicious transactions for a number of financial services, which de facto exclude them from the reporting regime. • Effectiveness: In general, there are some concerns about the effectiveness of the reporting system, in particular regarding TF related transactions, and also due to inconsistencies regarding the nature and the number of reports made by reporting entities.
14. Protection & no tipping-off	PC	• Protection of financial institutions from penal and civil liability for breach of rules of confidentiality is not sufficiently assured since Article 286 of CrCA is not included in the same harbour provision. • The safe harbour provision does not apply when it is made plausible that the reporting entity should not have proceeded to making the report in reason – the threshold is higher than good faith. • The civil safe harbour provision does not apply to employees of the reporting entity • Public access to information provisions in SORUT can undermine the effectiveness of the prohibition on tipping-off.
15. Internal controls, compliance & audit	NC	• The scope issues identified for Rec. 5 also apply. • There are no provisions in law, regulation or other enforceable means that require financial institutions to establish and maintain internal procedures, polices and controls to prevent ML and TF; • There are no provisions in law, regulation or other enforceable means that require financial institutions to develop appropriate compliance

Forty Recommendations	Rating	Summary of factors underlying rating
		management, or at least to designate a compliance officer; • There are no provision in law, regulation or other enforceable means that require financial institutions to maintain an adequately resourced and independent audit function; • There are no provisions in law, regulation or other enforceable means that require financial institutions to establish an ongoing employee training programme and to put in place screening procedures to ensure high standards when hiring employees.
16. DNFBP – R.13-15 & 21	NC	• No AML/CFT measures apply to TCSPs. • The scope of the predicate offences for STR reporting does not satisfy all the FATF standards. • The effectiveness of the unusual transactions reporting regime is as yet untested, except for casinos where it is low. • DNFBPs are not obliged to establish and maintain internal procedures, policies and controls to prevent ML and TF, to maintain an adequately resourced and independent audit function to test compliance, to establish ongoing employee training on ML and TF techniques and risks, nor to put in place screening procedures to ensure high standards when hiring employees. • DNFBPs are not required to pay special attention to transactions with countries which do not or do not adequately implement the FATF Recommendations. • The limitations in Recommendation 14 as applied to financial institutions also apply to DNFBPs.
17. Sanctions	NC	• The scope issues identified in the preamble of section 3 of this report also apply. • The range of sanctions of the CBA and the MOT, although expanded under the new law, are not broad enough and are not effective, proportionate and dissuasive. • There are no sanctions available against directors and senior managers of financial institutions. • The level of fines, which may be issued, is low, in particular for credit institutions and insurance companies. • There are no sanctions available for securities firms as they do not fall under the scope of the AML/CFT obligations. • No procedures in place as yet to impose sanctions. • Effectiveness of sanctions regime still to be tested.
18. Shell banks	NC	• The facts show that there has been no effective implementation of the Policy rule. There is no explicit requirement to withdraw a licence granted to a credit institution that would

Forty Recommendations	Rating	Summary of factors underlying rating
		later become a shell-bank. • There is no prohibition in law, regulation or other enforceable means on financial institutions from entering into or continuing correspondent banking relationships with shell banks • There is no obligation to require financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. • Effectiveness: Despite there being 2 licensed banks with mind and management and records outside of Aruba, no real supervisory action has been taken for more than 10 years.
19. Other forms of reporting	C	• The criteria are fully met.
20. Other NFBP & secure transaction techniques	LC	• Although Aruba has been taking steps to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering, its economy is still cash based and authorities encourage customers to use both the Aruban Florin and the US dollar, which potentially increases ML/TF risks.
21. Special attention for higher risk countries	NC	• The scope issues identified for Rec.5 also apply to R. 21. • There is no requirement in law, regulation or other enforceable means for financial institutions to pay special attention to business relationship and transactions with jurisdictions, which either do not or insufficiently apply the FATF Recommendations. • In case where transactions with such jurisdictions have no apparent or visible lawful purpose, financial institutions are not required to examine them and set forth their findings in writing. • Financial institutions are not required to implement any specific counter-measures to mitigate the increased risk of transactions with such jurisdictions. • Aruba has no mechanism to implement counter-measures against countries that continue not to apply or insufficiently apply the FATF Recommendations.
22. Foreign branches & subsidiaries	NA	• The Recommendation is not applicable since Aruban financial institutions have no branches or subsidiaries abroad.
23. Regulation, supervision and monitoring	NC	• The scope issues identified in section 3.2 also apply. • Securities and investment sector is not licenced, regulated nor supervised. • Absence of licensing or registration requirements for insurance intermediaries. • Absence of licensing or registration requirements for persons that carry on currency exchange activities. • There are no provisions in place to prevent

Forty Recommendations	Rating	Summary of factors underlying rating
		criminals or their associates from holding or being beneficial owners of a significant or controlling interest or holding a management function in a credit institution or an insurance company. • The fit and proper tests are performed on the basis of information provided by the licence applicants, but the CBA does not sufficiently check this information. • Lack of ongoing checks of the fitness and properness of credit institutions, insurance companies and money transfer companies. • Lack of effectiveness with regard to the supervision of the MOT. Effectiveness: • The division of the scope of the supervision powers of the CBA and the MOT is not appropriate and undermines the overall effectiveness of the supervision of financial institutions. • The communication between the 2 supervisory bodies that supervise the same financial institutions for AML/CFT purpose needs to be strengthened. • The resources and training of staff of the CBA and the MOT are not adequate.
24. DNFBP - regulation, supervision and monitoring	NC	• Aruba has not taken any measures vis-à-vis Internet casinos. • Trust and company service providers are not regulated or supervised for AML/CFT purpose. • Although most DNFBPs are now included within the scope of the SOIPS and the SORUT, no effective supervision, except for casinos, is currently taking place. • The range of sanctions available against casinos and other DNFBPs is not effective, proportionate and dissuasive. • There are no effective measures in place to prevent criminals or their associates taking control of a casino. • Lawyers, civil notaries, tax advisors and accountants can refuse to cooperate with the MOT as a supervisory body, if there is a legal or otherwise established secrecy obligation, even if it concerns a service they perform that falls within the scope of the identification and reporting obligations. • The MOT lacks resources to effectively monitor DNFBPs subject to AML/CFT requirements.
25. Guidelines & Feedback	PC	MOT (as a FIU):

Forty Recommendations	Rating	Summary of factors underlying rating
		• The FIU does not issue feedback on ML/TF methods and trends nor sanitised cases. – Of the range of DNFBPs, only casinos have been given any feedback or guidance; – The guidance issued to casinos is limited to quarterly newsletters, compliance officers sessions and liaison. MOT (as a supervisor) • The MOT has not issued any guidelines to assist FIs or DNFBPs to comply with their respective AML/CFT requirements. CBA • The AML/CFT directives for banks and insurance companies, although very useful, are limited to CDD requirements and do not establish links with reporting obligations. • The scope of the Operational and AML/CFT guidelines for money transfer companies is to narrow and does not really address AML/CFT provisions. • The scope of this guidance does not clarify the scope of financial activities subject to AML/CFT requirements.
Institutional and other measures		
26. The FIU	PC	• The composition of the FIU Advisory Committee (presence of private sector members) gives the appearance of compromising the autonomy and independency of the MOT in terms of determination of its budget and staff policy. • Since its creation in 1999, the MOT Aruba has published only one report covering typologies. • The reporting entities are not required to give all the identification data of a legal person involved in an unusual transaction report, except when the MOT asks for further information. • The MOT faces resource constraints that impact its effectiveness, as shown by the recent decrease of reports made to the Public Prosecutor upon its own initiative. • The staff of the MOT are not sufficiently trained for receiving and analysing TF reports. • The MOT deploys the larger part if its investigative capacity on cash and wire transfer transactions, and less on more complex ML/TF schemes and methods which impacts its overall effectiveness.
27. Law enforcement authorities	PC	• No authority to investigate TF (as TF is not an offence), unless the activity is otherwise criminalised. • Low level of effectiveness in investigating ML, caused by lack of sufficient resources in both

Forty Recommendations	Rating	Summary of factors underlying rating
		police services and prosecution, lack of sufficient training, little use of disseminated reports from the MOT.
28. Powers of competent authorities	LC	• Law enforcement competent authorities have no power with respect to TF as it is not an offence, unless the activity is otherwise criminalised.
29. Supervisors	NC	• Supervisors have no power of enforcement and sanction against directors and senior management of financial institutions. • The level of requirements of the off-site inspections carried out by the MOT is very low. • The scope of the on-site inspections carried out by the CBA for banks and money transfer companies needs to be strengthened, across a wider range of regulated institutions and in more details. • The State Decree on the standardisation of regulatory powers could undermine the authorisation of supervisors to obtain all the information needed. Effectiveness: • The CBA has not exercised its power to supervise off-shore banks. • The MOT has not exercised its powers to supervise life insurance companies and intermediaries and off-shore banks.
30. Resources, integrity and training	NC	<u>In relation to the FIU:</u> • The composition of the MOT Advisory Committee (presence of private sector members) gives the appearance of compromising the autonomy and independency of the MOT in terms of determination of its budget and staff policy. • The MOT faces resources constraints that impact its effectiveness. • The MOT has not conducted any analysis on terrorist financing and its staff have not been trained in analysing such reports. <u>In relation to the law enforcement authorities and prosecution authorities:</u> • Low level of effectiveness in investigating ML, caused by lack of resources in both police services and prosecution. • Budgetary constraints affecting all government services have limited the possibilities of the relevant personnel of the Public Prosecutor's Office and the Police to participate in AML/CFT training courses and programs. <u>In relation to the supervisory authorities</u>: • The resources and training of staff of the CBA

Forty Recommendations	Rating	Summary of factors underlying rating
		is not adequate. • The MOT's supervisory unit is not sufficiently staffed and resourced, particularly since February 2009 as the same staff are also responsible for the supervision of all the DNFBPs and all other non-financial businesses and professions. • The MOT does not provide training to its staff in relation to supervisory functions and methods.
31. National co-operation	PC	• No proactive and coordinated AML/CFT policy making at a jurisdictional level. • Lack of operational level coordination between MOT and the CBA, and also with other agencies. • Lack of effective implementation in the mechanisms used for AML/CFT coordination and cooperation in Aruba.
32. Statistics	NC	<u>Review of the effectiveness of the AML/CFT system:</u> • There is no information to suggest that Aruba has conducted comprehensive reviews which were intended to result in an enhancement of the AML/CFT system. <u>Collection of statistics:</u> • In relation to mutual legal assistance: no statistics on requests, their nature and on whether they were granted or refused and the time to respond. • In relation to extradition: no statistics available. • In relation to administrative co-operation: no statistics available for the law enforcement and the CBA. The statistics made available by the FIU do not detail the number of requests granted or refused, nor the time to respond.
33. Legal persons – beneficial owners	NC	• There are inadequate requirements to collect or make available information on beneficial ownership and ultimate control of legal persons; • The system in place does not provide access to adequate, accurate and current information on beneficial ownership and ultimate control in a timely manner; • The measures to ensure transparency as to the shareholders of companies that have issued bearer shares are inadequate.
34. Legal arrangements – beneficial owners	NA	• Trusts are not recognised under Aruban law. There are no other legal arrangements similar to trusts that exist in Aruba.
International Co-operation		
35. Conventions	PC	• Lack of implementation of the Terrorist Financing Convention in relation to terrorist financing. • No implementation of UNSCR 1267 and 1373. • Several failings regarding implementation of the Vienna and Palermo Conventions.
36. Mutual legal assistance (MLA)	PC	• Aruba is party to only 5 bilateral MLA agreements, only one with a country in the region. This limits Aruba's capacity to

Forty Recommendations	Rating	Summary of factors underlying rating
		effectively and efficiently provide the widest range of MLA. • As dual criminality is required for mutual legal assistance, the lack of a TF offence impacts on the extent and effectiveness of mutual legal assistance provided by Aruba in TF matters. • The limitations regarding the predicate offences for money laundering also limit the ability to assist in relation to ML based on such predicates. • The requirement that non-treaty based requests must be "reasonable" (undefined), combined with a discretion, which is unclear, as to when such requests will be actioned, is an unreasonable and disproportionate condition on providing MLA. • The deficiencies that exist in relation to assistance for seizure and confiscation of illegal proceeds (see R.38) also impact on R.36. • The lack of data on the MLA requests means that it is has not been demonstrated that Aruba can handle MLA requests in a timely and effective manner.
37. Dual criminality	C	• Criteria are fully met.
38. MLA on confiscation and freezing	PC	• As dual criminality is required for mutual legal assistance, the lack of a TF offence impacts on the extent and effectiveness of mutual legal assistance provided by Aruba in TF matters. • The limitations regarding the predicate offences for money laundering also limit the ability to assist in relation to ML based on such predicates. • The seizure assistance that can be provided does not extend to all proceeds, nor to instrumentalities or intended instrumentalities, nor is it clear that it applies in relation to property of corresponding value. • There is a lack of clarity in the provisions that provide the Aruban authorities or judiciary with the ability to register, recognise or enforce a foreign confiscation order. • Assistance cannot be provided concerning property held in the name of third parties. • Aruba should consider arrangements for co-ordinating seizure and confiscation actions with other countries.
39. Extradition	LC	• Aruba is party to only 4 bilateral extradition agreements, only one with a country in the region. This limits Aruba's capacity to effectively and efficiently provide extradition to likely partner jurisdictions. • The limitations regarding the predicate offences for money laundering also limit the ability to extradite in relation to ML based on such predicates.
40. Other forms of co-operation	PC	Law enforcement authorities: • There are no statistics available to suggest that

Forty Recommendations	Rating	Summary of factors underlying rating

		exchange of information with foreign law enforcement authorities is effective.
		
		CBA:
		• the capacities of the CBA to co-operate and exchange information with foreign counterparts are limited by:
		  • the scope issue;
		  • the fact that the CBA only supervises the compliance with the CDD requirements;
		  • the deficiencies identified in relation to the preventive measures;
		  • the broadly defined safeguards and controls;
		• Regarding the banking and insurance sectors, the CBA can only exchange information that is already in its possession, but it cannot conduct inquiries on behalf of foreign counterparts.
		• Regarding the TCSPs, since they are not subject to AML/CFT requirements, the CBA cannot exchange information related to ML, TF or predicate offences.
		
		The MOT as a supervisory body:
		• The MOT as a supervisory body, cannot co-operate and exchange information with its foreign counterparts.
		
		The MOT as a FIU:
		• The capacities of the MOT to exchange information are limited by the fact that Aruba has signed MOUs with a limited set of jurisdictions.
		• The MOT can only provide information that is already in its possession but it cannot conduct inquiries on behalf of foreign counterparts.
		• The MOT cannot search other databases to which it have direct or indirect access to answer to the request of a foreign FIU.
		
		Effectiveness:
		• There are no statistics to suggest that cooperation between supervisors and their counterparts in AML matters is effective and is provided in line with the FATF standards.

Nine Special Recommendations	Rating	Summary of factors underlying rating
SR.I Implement UN instruments	NC	• Lack of implementation of the Terrorist Financing Convention in relation to terrorist financing. • No implementation of UNSCR 1267 and 1373.
SR.II Criminalise terrorist financing	NC	• No separate and independent offence of terrorist financing as required by SR.II, and reliance solely on ancillary offences to existing criminal offences committed with a “terrorist

Nine Special Recommendations	Rating	Summary of factors underlying rating
		intent" as defined. • Existing offences inadequate due to insufficient coverage of the types of property(funds) to be provided, non-coverage of financing individual terrorists, the set of "terrorist felonies" to be covered is too narrow, and there is a need in some cases to prove that specific terrorist act actually took place. • It is not clear that all ancillary offences would be applicable given that certain combinations of ancillary offence are not possible. Additionally, neither conspiracy nor association would be available. • Terrorist financing is not an offence and thus is not adequately a predicate offence for money laundering. • It is not clear that in all cases persons in Aruba financing foreign terrorist groups will be committing an offence. • The penalties for having engaged in terrorist financing activity are not clearly effective, proportionate and dissuasive.
SR.III Freeze and confiscate terrorist assets	NC	• Overall, since the Draft Sanctions State Decree has not yet been adopted, Aruba does not have effective laws, regulations and procedures to give effect to freezing designations in the context of S/RES/1267 and S/RES/1373, and in effect has no measures in place to implement SR.III. • The State Ordinance does not provide for a national mechanism to designate persons in the context of S/RES/1373, nor a comprehensive mechanism in place to examine and give effect to actions initiated under the freezing mechanisms of other jurisdictions. • Aruba does not have effective laws and procedures to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions. • Aruba does not ensure that the confiscation of assets also apply to terrorist assets.
SR.IV Suspicious transaction reporting	PC	• The scope of SORUT is unclear, but the whole range of financial activities is not covered. • The scope of the SORUT and the SOIPS are not harmonised, which would in some cases undermine the quality of the information reported. • The scope of the reporting obligation does not cover the financing of individual terrorist. • Lack of effectiveness: only one transaction related to TF has been reported to the MOT.
SR.V International co-operation	NC	• Terrorist financing is not an offence, and as dual criminality is a requirement for MLA, this means that assistance cannot be provided. • The other limitations that are set out in Recommendations 36-38 apply equally to terrorist financing activity.

Nine Special Recommendations	Rating	Summary of factors underlying rating

		• As dual criminality is required for extradition, the lack of a TF offence means that, in effect terrorist financing is not an extraditable offence.
		Law enforcement authorities:
		• It is unclear if the law enforcement authorities can cooperate with their foreign counterparts since TF is not an offence.
		• No statistics available to suggest that exchange of information with foreign law enforcement authorities is effective.
		CBA:
		• The capacities of the CBA to co-operate and exchange information with foreign counterparts are limited by:
		  • the scope issue;
		  • the limited number of MOUs it has entered into;
		  • the fact that the CBA only supervises the compliance with the CDD requirements;
		  • the deficiencies identified in relation to the preventive measures;
		  • the broadly defined safeguards and controls.
		• Regarding the banking and insurance sectors, the CBA can only exchange information that is already in its possession, but it cannot conduct inquiries on behalf of foreign counterparts.
		• Regarding the TCSPs, since they are not subject to AML/CFT requirements, the CBA cannot exchange information related to ML, TF or predicate offences.
		The MOT as a supervisory body:
		• The MOT as a supervisory body cannot co-operate and exchange information with its foreign counterparts.
		The MOT as a FIU:
		• The capacities of the MOT to exchange information are limited by the fact that Aruba has signed MOUs with a limited set of jurisdictions.
		• The MOT can only provide information that is already in its possession but it cannot conduct inquiries on behalf of foreign counterparts.
		• The MOT cannot search other databases to which it have direct or indirect access to answer to the request of a foreign FIU.
		Effectiveness:
		• There are no statistics to suggest that cooperation between supervisors and their counterparts in FT matters is effective and is provided in line with the FATF standards.

SR VI AML requirements for money/value transfer services	NC	• The deficiencies regarding the fit and proper test described in section 3.10 of this report also apply: there are no measures in place to prevent criminals and their associates to be beneficial owner of a money transfer company and the CBA does not undertake an

Nine Special Recommendations	Rating	Summary of factors underlying rating
		independent check on the information provided by the registration applicants. • The requirements and their implementation for Recommendations 5, 6, 7, 8, 9, 10, 13, 15, and 22 in the MTCs sector suffers from the same deficiencies than those that apply to other financial institutions and which are described in section 3 of this report. • The range of sanctions available is not sufficiently effective and proportionate and does not apply to MTC's directors and senior management. • The assessment team had serious concern regarding the existence of remaining informal remitters.
SR VII Wire transfer rules	NC	• There is no explicit requirement to obtain and maintain address and account number or unique reference number of the customer. • There are no requirements to accompany the wire transfer with full originator information; • There are no requirements to include in the message or payment form accompanying domestic wire transfers information on the originator; • There are no requirements for each intermediary or beneficiary financial institution in the payment chain to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer; • There are no requirements for financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information; • The identified shortages regarding sanctions under Recommendation 17 equally apply in the context of the obligations pertaining to wire transfers.
SR.VIII Non-profit organisations	NC	• There has been no review of the NPO sector and no identification of its vulnerabilities for terrorist financing. • Authorities do not conduct outreach or provide guidance on terrorist financing to the NPO sector. • The Foundation register is not kept to-to-date and the information on the association with legal personality, in particular on the persons who control the association are not kept registered. • Foundations can control wholly or partially other legal person, without any registration obligation. • There is no supervision or monitoring of the non-profit sector. • Foundations and associations with legal personality cannot be revoked in case of ML or TF. • There is no effective domestic co-operation or

Nine Special Recommendations	Rating	Summary of factors underlying rating
		coordination amongst authorities that would eventually have information on NPOs. • The system for obtaining information on NPOs, in particular in case of international request, is weakened by the overall lack of accuracy of information maintained in the Foundations Register and the lack of information on the beneficial ownership of association with legal personality. • It is not clear as to whether Aruba can exchange information with foreign counterpart regarding particular NPOs that are suspected of TF.

SR.IX Cross Border Declaration & Disclosure	NC	• The Declaration system is limited to bank notes above a threshold of AWG 20 000, but does not apply to other means of payments nor to bearer negotiable instruments.
		• The declaration requirements do not apply to import of cash with the sole purpose of direct transit.
		• The competent authorities cannot stop or restrain currency or bearer negotiable instruments where there is a suspicion of ML or TF.
		• Absence of adequate co-ordination among customs, immigration and other relevant authorities on issues related to the implementation of SRIX.
		• International co-operation and assistance is limited to co-operation between FIUs which the MOT has concluded MOUs with – No possibility to co-operate or exchange information between customs services.
		• In practice, the Customs Department does not have law enforcement powers to investigate false declaration or failure to declare.
		• Procedures used by Police to investigate a case of false declaration or failure to declare seem to be bureaucratic and slow.
		• Regarding false declarations offence, the right of prosecution expires by voluntarily complying with the condition set by the authorized official of the Public Prosecutor's Office.
		• Absence of assets freezing measures applicable to currency or bearer negotiable instruments that are related to terrorist financing.
		• Lack of effectiveness of the declaration system:
		  • Lack of effectiveness of the declaration system for import and export of cash via shipping cargos.
		  • Lack of training of Customs officials.
		  • Insufficient number of dedicated AML/CFT staff at the borders.
		  • Customs checks are made on an arbitrarily basis, which undermines their effectiveness.

Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT system	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional	
2.1 Criminalisation of Money laundering Measures (R.1 & R.2)	• The authorities should revisit the scope of the predicate offence to ML in order to fully cover all the designated predicate offences listed in the FATF Glossary, in particular terrorist financing, and insider trading and market manipulation, but also a wider range of environmental crime, fraud and counterfeiting and piracy of products. • Aruba should also apply the ancillary offence of conspiracy to money laundering. • Aruba should clearly and explicitly provide that the ML offence applies to foreign predicate offences. • Aruban authorities should consider devoting greater resources to the MOT to enhance the initial assessment of STRs and to the police to ensure they investigate the files disclosed by the MOT, so as to produce a larger number of cases referred to the Public Prosecutor's Office for investigations and consequently, for prosecution.
2.2 Criminalisation of Terrorist Financing (SR.II)	• Aruba is urged to take urgent action to create a separate and independent offence of terrorist financing to meet its international obligations.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• Aruba should introduce a separate and independent FT offence as soon as possible and ensure that TF is a predicate offence for money laundering. • Aruba should consider amending its law to clearly provide that property derived indirectly from the proceeds of crime, such as income and other benefits, are subject to confiscation. • Aruba should amend its CCrPA to allow special confiscation of property held in the name of third parties

2.4 Freezing of funds used for terrorist financing (SR.III)	• Aruba is encouraged to revise the Draft Sanctions State Decree provided to the assessment team since it is not designed in a manner that meets the specific requirements of FATF Special Recommendation III;
	• As for resolution UNSCR 1267, this draft Decree should refer directly refer to the Consolidated List established and maintained by the 1267 Committee with respect to Al-Qaida, Usama bin Laden, and the Taliban and other individuals, groups, undertakings and entities associated with them.
	• As for UNSCR 1373, Aruba should reconsider the system provided by the Draft Sanctions State Decree in order to have a domestic mechanism to be able to designate terrorists at a national level. Aruba should also revise the State Ordinance in order to extend the freezing actions to funds controlled directly or indirectly by designated persons or entities as well as to funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities.
	• Aruba should also consider revisiting its Sanctions State Ordinance in order to provide procedures:
	  • for evaluating de-listing requests;
	  • for releasing funds or other assets of persons or entities erroneously subject to the freezing;
	  • for authorising access to frozen resources pursuant to S/RES/1452(2002);
	  • for implementing a screening procedure and designated authority

AML/CFT system	Recommended Action (listed in order of priority)
	responsible for evaluating the foreign lists based request. • Aruba should also provide lists of designated persons and entities and guidance to financial institutions and DNFBPs.
2.5 The Financial Intelligence unit and its functions (R.26)	• Aruba should consider revisiting the composition of the Advisory Committee of the MOT in order to ensure the total independence of the FIU concerning its budget and its staff recruitment policy. • The MOT should be provided with additional staff resources and is strongly recommended to take appropriate step to fill the actual vacancies with professionals having appropriate skills and to increase the total staff of the MOT. • The MOT should consider developing an on-line system for the reception for all the unusual transaction reports STRs and for all the sectors which are required to report to the MOT. • The MOT should consider developing a mechanism which would allow it to evaluate the effectiveness of the AML/ CFT regime, notably the added value of intelligence reports to investigations and prosecutions. • The MOT should consider establishing a permanent feedback mechanism which would allow it to evaluate the needs of the police but also which would force the police to justify their follow-up actions vis- a-vis information disclosed.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	• Aruba is strongly recommended to remedy the lack of resources of law enforcement and prosecution authorities which they need to properly face to their workload. • Aruba should develop training sessions on AML/CFT investigative techniques for law enforcement officers involved in ML/TF investigations. • Aruba should consider exploring the possibility to establish new mechanisms and techniques in order to initiate investigations from the proactive reports made upon the financial analysis carried on by the MOT. • Aruba should ensure that law enforcement authorities have power to compel productions of and search persons or premises for and seize and obtain transaction records, identification data, files and business correspondence and other records held or maintained by financial institutions and DNFBPs and to take witness' statements when they conduct TF investigations.
2.7 Cross Border Declaration & Disclosure	• Aruba should extend its declaration system beyond currencies and include all bearer negotiable instruments as well as other means of payment, *e.g.* high value coinage. • Aruba should also consider extending the system to import of cash with the sole purpose of transit through Aruba. • Aruba should consider giving its Customs Services law enforcement powers to ensure that the Customs Services, which are the competent authority to collect the declaration forms, can also request and obtain further information from the carrier with regard to the origin of the currency or bearer negotiable instruments and their intended use. • Aruba should ensure that competent authorities are able to stop or restraint currency or bearer negotiable instruments where there is a suspicion of ML or TF and even in the absence of false declaration or failure to declare. • Aruba should set out mechanisms to ensure domestic co-ordination among Customs service, the MOT, the police, the immigration department and other relevant departments. • Aruba should change its legislation to ensure that its Customs Department can answer to international co-operation requests and

AML/CFT system	Recommended Action (listed in order of priority)
	have the possibility to conclude co-operation arrangements with foreign counterparts. • Aruba should revisit its sanctions regime in order to ensure that prosecution does not expire if the defendant voluntarily complies with the conditions set by an official designated by the Public Prosecutor in order to avoid prosecution. • Aruba should also increase the resources of the Customs Services with staff adequately trained.
3. Preventive measures – Financial institutions	
3.1 Risk of money laundering or terrorist financing	• Aruba should carry an AML/CFT risk assessment of this overall financial sector.
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	*General*: • Aruba should ensure that all basic obligations as defined by the FATF are set out in the SOIPS. • Aruba is urged to submit all financial institutions conducted financial designated activities are subject to AML/CFT requirements. *In relation to Recommendation 5:* • Aruba should require financial institutions to identify and verify the identity of the ultimate beneficial owner of the business relationship or to understand the control structure of these customers; • Aruba should also require financial institutions to identify beneficial owners of foreign trusts and similar legal arrangements, since they can operate on the territory; • Aruba should not limit the obligation of identification of legal persons and verification of the identification data to the deed if incorporation or the extract from the Chamber of Commerce, but it should ensure that up-to-date record of ownerships and control are verified; • Aruba is recommended to revise the SOIPS to clearly require FIs to undertake CDD measures when there is a suspicion of ML/TF, regardless of any exemptions or thresholds; • When FIs have doubt about the veracity and adequacy of previously obtained information, they should be required to undertake CDD measures; • Aruba should urgently require, by law or regulations, FIs to conduct ongoing monitoring on business relationships and to understand the nature and purpose of the business relationship, to apply enhanced or simplified CDD in appropriate cases; • Aruba should ensure that the different AML/CFT directives issued by the CBA for credit institutions, insurance companies and money transfers companies are consistent with the SOIPS and the SORUT; • Aruba should allow FIs to complete the verification the identity of their customers and beneficial owner following the establishment of the business relationship when it is essential not to interrupt the business relationship and provided appropriate safeguards. • When FIs fail to identify their customer and beneficial owner, Aruba should clearly state that they should consider making a suspicious transaction report. *In relation to Recommendation 6:* • Aruba should introduce in law, regulation or other enforceable means all FATF requirements in relation to PEPs. *In relation to Recommendation 7:* • Aruba should introduce in law, regulation or other enforceable means all FATF requirements in relation to cross-border correspondent banking relationships or other similar relationships. *In relation to Recommendation 8:* • Aruba should introduce in law, regulation or other enforceable means all FATF requirements to prevent the misuse of technological

AML/CFT system	Recommended Action (listed in order of priority)
	development in ML/TF and to manage non face-to-face customers.
3.3 Third parties and introduced business (R.9)	• Aruba is strongly recommended to harmonise the provisions of its State Ordinance and related regulation with those of the CBA's directive to avoid any contradictions between these texts and clarify which requirements financial institutions are subject to. • Aruba should consider authorising in particular insurance companies to rely on other financial institutions to carry out CDD for them subject to the required safeguards. • The provisions of the CDD directive for banks, which is not OEM, should be reinforced to limit the possibility to rely on third parties to those which are regulated and supervised and located in countries that adequately implement the FATF Recommendations.
3.4 Financial institution secrecy or confidentiality (R.4)	• Aruba should clarify the legal situation so that it is clear that money transfer companies are allowed to share information in a SR.VII scenario with competent authorities.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	*In relation to Recommendation 10:* • Aruba should revise SOIPS in order to explicitly provide that financial institutions should keep records of customer identification data and transaction information in a manner to permit reconstruction of individual transactions and in order to clearly require financial institutions to make customer identification data and transaction information available to competent authorities on a timely basis. *In relation to Special Recommendation VII:* • Aruba should fully implement SR.VII, in particular in order to ensure that full originator information accompanies wire transfers and that financial institutions adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.
3.6 Monitoring of transactions and relationship (R.11 & 21)	*In relation to Recommendation 11:* • Aruba should revise its system so that financial institutions pay attention to all complex, unusual large transactions, examine their background and purpose and decide as to whether such transactions are suspicious and are to be reported to the MOT. Aruba should ensure that the findings of these researches are recorded and made available on request to the MOT. *In relation to Recommendation 21:* • Aruba should urgently introduce in law, regulation or other enforceable means provisions to require financial institutions to pay special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations. If these transactions have no apparent or visible lawful purpose, Aruba should ensure that they are examined and that the findings are kept written and made available to competent authorities; • Aruba is also urged to develop a set of counter-measures against countries that continue not to apply or insufficiently apply the FATF Recommendations.
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• Aruba should revise the SORUT to ensure that all financial institutions that conduct one of the financial activities designated by the FATF Recommendations are subject to reporting obligations; • Aruba should also ensure that the scope of the SOIPS is consistent with the scope of the SORUT; • Aruba should review the scope of predicate offences for ML that impacts the scope of the reporting obligations; • Aruba is strongly demanded t criminalise TF and to extend the scope of the TF reporting system in accordance with the FATF

AML/CFT system	Recommended Action (listed in order of priority)
	Recommendations, particularly in relation to the financing of individual terrorists; • Aruba should strengthen the supervision of the compliance of the reporting entities with the reporting system; • Competent authorities should provide more comprehensive guidance and more feedback to financial institutions to improve the effectiveness of the reporting regime by educating them; • The MOT should improve the awareness of financial institutions regarding their reporting obligations and should work to enhance their capability to identify TF related transactions; • Aruba should extend the safe harbour provision to predicate offences for ML and terrorism related offences. Aruba should also revise its civil safe harbour provision to ensure it covers directors and employees of financial institutions.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	• Aruba should explicitly require, trough law, regulation or other enforceable means, all financial institutions to establish and maintain an AML/CFT internal control system, to designate a compliance officer at management level, with further guidance on the role and responsibilities of the compliance officer, as well as to establish audit function in charge of ensuring the compliance with the procedures, policies and controls; • Compliance officer should have timely access to CDD data and to all relevant information and Aruba should require financial institutions to develop AML/CFT staff training programmes as well as screening procedures to ensure high standard when hiring employees.
3.9 Shell banks (R.18)	• Aruba is urged to clarify the implementation of its Policy rule on the licensing of credit institutions and to expand its scope to the two off-shore banks already licensed, by requiring them to maintain their records in Aruba. Aruba should also take steps to effectively supervise, in particular for AML/CFT purposes, these two off-shore banks based in Venezuela; • Aruba is called to modify its SOSCS to allow the CBA to withdraw a license granted to a credit institution that would become a shell bank; • Aruba should explicitly prohibit by law, regulation or other enforceable means financial institutions to establish or maintain correspondent banking relationships with a shell bank and with a financial institutions in a foreign country that permits its accounts to be used by shell banks.
3.10 The supervisory and oversight system – competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	• Aruba should review the supervisory competences of the CBA and the MOT in order to ensure that all financial institutions activities designated by the FATF Glossary are properly regulated and supervised. In particular, Aruba is strongly urged to regulate and supervise its securities sector, including its electronic stock exchange market established in 2006 and all the professionals operating in this field, as well as the offshore banks and the life insurance companies and intermediaries. • Considering the important resource constraints of the MOT that prevent it from effectively performing its supervisory functions, Aruba should consider designated the CBA as the only AML/CFT supervisor for all financial institutions; • Aruba should review the AML/CFT supervisory powers of the CBA in order to strengthen the quality of the fit and proper tests. Aruba should have procedures in place to apply ongoing fit and proper test to managing directors and to be able to conduct independent check on the quality of the information provided by the licence applicants. The CBA should have procedures in place to prevent criminals and their associates from becoming beneficial owners of credit institutions and insurance companies;

AML/CFT system	Recommended Action (listed in order of priority)
	• Aruba should revise the range of levels of sanctions available to ensure that they are effective, proportionate and dissuasive and also applicable to directors and senior management of financial institutions.
3.11 Money or value transfer services (SR. VI)	• Aruba should upgrade the AML/CFT guidelines applicable to MTCs in content and nature to meet the FATF standard. The definition of money transfer services should be further detailed; • Aruba should review the sanction regime and implement a comprehensive, proportionate and effective regime, which is sufficiently enforced by the CBA.
4. Preventive measures – Non-Financial Business and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• Aruba should clarify the scope of DNFBPs subject to the SOIPS, in particular each DNFBPs' activities falling into the scope of the State Ordinance and submit TCSPs to CDD requirements; • Aruba should consider reducing the level of secrecy which legal professionals are submitted to in order to ensure that they are adequately subject to CDD requirements; • Aruba is strongly recommended to refine the CDD requirements, particularly regarding Rec. 5, 6, 8 to 11 and to strengthen the obligations relating to the casinos, including to the internet casinos; • Aruba should increase the awareness of the DNFBPs of their new AML/CFT obligations.
4.2 Suspicious transaction reporting (R.16)	• The reporting obligations of DNFBPs present the same deficiencies than for those of financial institutions and therefore the same recommendations apply; • The Aruba authorities should give priority to extend the scope of the DNFBPs' obligations to Recommendations 15 and 21; • The MOT should take urgent steps to raise the awareness of the relevant provisions of the State Ordinances as they apply to DNFBPs; • Aruba should consider the provisions applicable for DNFBPs to ensure that they are relevant for these professionals and increase their level of engagement in AML/CFT
4.3 Regulation, supervision and monitoring (R.24-25)	• The MOT should urgently start to supervise DNFBPs subject to SOIPS and SORUT; • Aruba is strongly recommended to significantly develop the MOT in terms of staffing numbers, skills, support services and budget, as well as the legal framework which underpins its activity; • The MOT or other competent authorities, such as the DAC for casinos, should provide guidance and feedback to DNFBPs subject to AML/CFT requirements.
4.4 Other non-financial businesses and professions (R.20)	• Aruba should extend the measures it is taking to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML/TF.
5. Legal Persons and Arrangements & Non-profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	• Taking into account the lack of transparency concerning the beneficial ownership and control of legal persons, in particular of A.V.V, Aruba is suggested that it would be best to completely abolish or phase out the A.V.V companies; • As regards N.V companies, basic measures such as maintaining an up to date register of shareholders, are urgently required and bearer shares should be abolished; • The system for corporate vehicle should be carefully reviewed, while

AML/CFT system	Recommended Action (listed in order of priority)
	the enforcement and sanctions system for failure to file an annual return or to otherwise not comply with the law should be considerably enhanced; • Aruba should also work to create a computerised and modern registration system for all legal persons, which provides appropriate transparency; • There should be easier gateways for competent authorities to access in a timely fashion to adequate, accurate and current information on beneficial ownership and control records.
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	• Not applicable
5.3 Non-profit organisations (SR.VIII)	• Aruba should ensure that the Foundations Register is kept up-to-date and contains all information on the identity of the legal persons they own and control; • The information on the persons who own, control or direct the activities of the associations with legal personality should be kept up to date and should be immediately available to the Aruban authorities; • Aruba should also ensure that the domestic and international transactions of all NPOs are registered for a period of at least 5 years and made available to appropriate authorities to allow them to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation; • Aruba should conduct as soon as possible a review of its non-profit sector, including a review on the TF risks. It should start a program of outreach and awareness-raising with the NPOs in order to strengthen their resistance to TF abuse; • Aruba should also review its legislation to ensure an effective supervision or monitoring of its non-profit sector. • It should develop and implement mechanisms for the prompt sharing of information among all relevant competent authorities that have information on NPOs to take preventive or investigative actions; • Aruba should also designate a point of contact and should develop procedures to respond to international request for information regarding particular NPOs that are suspected of TF or other forms of terrorist support.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	• Aruba should move to efficiently use its existing mechanisms to develop forward looking strategy that will, at least in the medium term, address the vulnerabilities that exist and the risks it faces; • The FATF Committee could be the body that drives the development of such a strategy provided that the Committee is able to more proactively to address all relevant issues in a holistic manner. Aruba should therefore examine the various coordination and cooperation mechanisms that exist, and determine how enhancements might be made in areas such as with respect to AML/CFT supervision of FIs and DNFBPs.
6.2 The Conventions and UN special Resolutions (R.35 & SR.I)	• Aruba must urgently take action to rectify the shortcomings in the TF offences and the freezing of terrorist assets. A comprehensive package of measures to implement the requirements of the Terrorist Financing Convention, S/RES/1267(1999) and S/RES/1373(2001) should be enacted expeditiously and comprehensively and effectively implemented immediately thereafter; • Action must be taken also to rectify the deficiencies noted with respect to ML offence.
6.3 Mutual Legal Assistance (R.36-38	• Aruba (as part of the Kingdom of the Netherlands) should work to

AML/CFT system	Recommended Action (listed in order of priority)
& SR.V)	expand the range of mutual legal assistance agreement it has, particularly with other countries in the region, but also with countries which it has more regularly had to cooperate in the past. A more extensive network of agreement will allow it to more effectively provide a broader range of cooperation. Broader MLA cooperation will also be possible when the deficiencies regarding the predicate offences for ML and the lack of a separate and independent TF offence are rectified; • As regards international cooperation and MLA in general, Aruba should give serious consideration to enacting a comprehensive and up-to-date State Ordinance dealing with MLA; • Considerations should be given to extending the actions that can be taken on the basis of reciprocity and the conditions on which requests of that nature can be dealt with; • A system to ensure that proper data and statistics regarding MLA requests (made and received) should be introduced; • Aruba should take actions to rectify its inability to take action against property held in the name of third parties; • Aruba should rectify its deficiencies regarding seizure assistance; and it should also consider what arrangements it should have regarding coordinated action in seizure and confiscation cases.
6.4 Extradition (R.37, 39 & SR.V)	• Aruba should work to broaden the range of agreements that it has in place for extradition; • By rectifying predicate offences for ML, Aruba should have a greater capacity to assist foreign countries so that Aruba could extradite individuals for the full range of ML offences; • Aruba should urgently introduce a separate and independent TF offence, so that it can provide full extradition assistance of such a request was to be made.
6.5 Other forms of co-operation (R.40 & SR.V)	• The powers of the CBA and the MOT to exchange information with foreign counterparts are limited by a number of factors such as the scope issue, the deficiencies identified regarding the preventive measures, the architecture of the supervisory responsibilities between the CBA and the MOT, which Aruba is strongly recommended to remedy; • Aruba should ensure that the CBA can also conduct enquiries on behalf of a foreign counterparts, • Aruba should allow the MOT, as a supervisory body, to co-operate with other foreign supervisory bodies; • The MOT, as a FIU, should not be limited to exchanging information already in its possession and it should also be allowed to search other databases on behalf of a foreign FIU. • The SORUT should also be amended to allow the MOT to co-operate with other Egmont Group Members on the basis of this Group's Principles without a MOU. If this is not possible, the head of the MOT should enter into MOUs with as many countries as possible among the ones that have been identified as meeting the criteria set out in the State Decree; • Aruba should ensure that clear and effective gateways, mechanisms or channels in order to facilitate and allow for prompt and constructive exchanges of information directly between counterparts.
Other issues	
7.1 Resources and statistics (R.30 & 32)	*In relation to the FIU:* • Aruba is strongly recommended to take appropriate step to fill the current vacancies of the MOT with professionals having appropriate skills and to increase the total staff of the MOT; • Aruba should revisit the composition of the MOT's Advisory Committee in order to ensure that representatives from the private

AML/CFT system	Recommended Action (listed in order of priority)
	sector are not consulted on the yearly budget of the MOT or on the MOT's staff recruitment policy and process; *In relation to the law enforcement and prosecutions authorities:* • Aruba is strongly recommended to remedy the resource constraints faced by the law enforcement and prosecution authorities to allow them to properly face their workload; • Aruba should develop, as foreseen, training sessions on AML/CFT investigative techniques for law enforcement officers involved in ML/TF investigations; *In relation to the supervisory authorities:* • Aruba should enhance the resources and the trainings of the staff in charge of AML/CFT supervision in both the CBA and the MOT. *In relation to the review of the effectiveness of the AML/CFT regime*: • Aruba should move to efficiently use its existing mechanisms to develop forward looking strategy that will, at least in the medium term, address the vulnerabilities that exist and the risks it faces. *In relation to statistics* • Aruba should introduce a system to ensure that proper data and statistics regarding ML/TF investigations, prosecutions and convictions, property frozen, seized or confiscated, MLA requests (made and received); extradition.
7.2 Other relevant AML/CFT measures or issues	-
7.3 General framework – structural issues	-

Table 3: Authorities' Response to the Evaluation (if necessary)

Relevant sections and paragraphs	Country Comments

ANNEX 1: ABBREVIATIONS

Abbreviations	Full terms
AWG	Aruban Florin (USD 1=AWG 1,79)
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Combat of Financing of Terrorism
CBA	Central Bank of Aruba
CBO	Central Bank Ordinance
CCA	Civil Code of Aruba
CCPA	Code of Civil Procedure of Aruba
CCrPA	Code of Criminal Procedure of Aruba
CDD	Customer Due Diligence
CFATF	Caribbean Financial Action Task Force
CFT	Combating the Financing of Terrorism
CrCA	Criminal Code of Aruba
DNFBP	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
IAIS	International Association of Insurance Supervisors
KYC	Know Your Customer
MLA	Mutual Legal Assistance
MOT	Meldpunt Ongebruikelijke Transacties, Aruba's FIU
MOU	Memorandum of Understanding
NPO	Non-Profit Organisation
PEP	Politically Exposed Person
RIC	Regulation Indicator for Casinos

Abbreviations	Full terms
RIIS	Regulation Indicators for life insurance sector
RIFSP	Regulation Indicators for Financial Service Providers
RIRLP	Regulation Identification Requirements for Legal Persons
SDDFS	State Decree for Designation of Financial Services
SDFIR	State Decree defining further Identification Requirements
SDGPIS	State Decree defining General Provisions on Implementation of Supervision
SDIECM	State Decree on Import and Export of Cash Money
SDRRRCUT	State Decree Regulating the Register Regulation of the Reporting Center of Unusual Transactions (MOT)
SOCML	State Ordinance of Criminalisation of Money Laundering
SOIPS	State Ordinance on Identification Requirements with Providing Services
SORIECM	State Ordinance on the Reporting of Import and Export of Cash Money
SORUT	State Ordinance on the Reporting of Unusual Transactions
SOSCS	State Ordinance on the Supervision of the Credit System
SOSIB	State Ordinance on the Supervision of Insurance Businesses
SOSMTC	State Ordinance on the Supervision of Money Transfer Companies
SOSTC	State Ordinance on the Supervision of Trust Companies
SR	Special Recommendation
STR	Suspicious Transaction Report
TF	Terrorist Financing
UN	United Nations
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
USD	United States Dollar
UTR	Unusual Transaction Report

ANNEX 2: ALL BODIES MET DURING THE ON-SITE VISIT

874. **Government Agencies:**

Prime Minister	Directorate of Legislation of Legal Affairs (DWJZ)
Minister of Finance and Economic Affairs	FATF Committee Aruba
Minister of Justice	MOT (Aruba's FIU)
Aruba Financial Center (AFC)	National Security Service Aruba
Aruba Police Force (KPA)	Public Prosecutor's Office (PPO)
Central Bank of Aruba (CBA)	Special Task Force Netherlands, Netherlands Antilles and Aruba (RST)
Chamber of Commerce and Industry	Tax and Customs Services (SIAD)
Department of Casino Affairs (DAC)	

875. Industry Bodies

Aruba Bankers Association	Association of Accountants
Aruba Bar Association	Association of Tax Advisors
Aruba Financial Center Association (TCSPs)	Insurance Association Aruba

876. Private Sector

Aruba Bank N.V	Free Zone Aruba N.V
Aruba Investment Bank N.V	**Money Transfer Companies** (4): GFP International N.V; Global Access Corporation N.V; Union Caribe N.V; Western Union
Caribbean Mercantile Bank N.V	**Real Estate Agents** (2): Century 21; Coldwell Bankers.
Casinos (3): Hyatt Regency Casino; Occidental Casino; Renaissance Crystal Casino.	RBTT Bank Aruba
Citibank	TCSPs (2): Admanco Trust; Euro Trust International N.V
Civil Notaries (4)	

ANNEX 3: LIST OF LAWS, REGULATIONS AND GUIDANCE

Codes:

- Civil Code of Aruba
- Code of Civil Procedure of Aruba
- Code of Criminal Procedure of Aruba
- Criminal Code of Aruba

State Ordinances

- State Ordinance on identification when providing services (SOIPS)
- State Ordinance on the reporting of unusual transactions (SORUT)
- State Ordinance on the Central bank (CBO)
- State Ordinance on the supervision of the credit system (SOSCS)
- State Ordinance on the supervision of insurance business (SOSIB)
- State Ordinance on the supervision of money transfer company (SOSMTC)
- State Ordinance on the supervision of trust company (SOSTC)
- State Ordinance on the reporting of import and export of cash money (SORIECM)
- State Ordinance on hazard games
- State Ordinance containing rules on taking measures to satisfy or implement international obligations (Sanctions State Ordinance 2006)
- State Ordinance on Foundations
- State Ordinance on the commercial registry
- State Ordinance on foreign exchange transactions
- State Ordinance on the establishment of Limited Liability Companies V.B.A
- State Ordinance on the protection of nature

- State Ordinance Regarding Government employment

State Decrees

- State Decree containing general measures for the implementation of section 1(b)(12) of the SOIPS and section 1(a)(13) of the SORUT (SDDFS)
- State Decree containing general measures for the implementation of section 1(b)(12) and section 3(1)(d) of the SOIPS (SDFIR)
- State Decree containing general measures for the implementation of Article 4 (3) and Article 7(1) of the SORUT (SDDRRRCUT)
- State Decree containing general measures for the implementation of the supervisory powers (SDGPIS)
- State Decree on the reporting obligation for import and export of cash money (SDIECM)

Ministerial regulations

- Ministerial regulation for the implementation of section 3(4) of the SOIPS (RIRLP)
- Ministerial regulation for the implementation of Article 1(b)(7) of the SOIPS
- Ministerial regulation defining indicators for unusual transactions for financial service providers (RIFSP)
- Ministerial regulation defining indicators for unusual transactions life insurance sector (RIIS)
- Ministerial regulation defining indicators unusual transactions for casinos (RIC)
- Ministerial regulation defining indicators of unusual transactions for traders in high value goods
- Ministerial regulation defining indicators of unusual transactions for lawyers; civil notaries, accountants and tax advisors

Guidance, Guidelines

- CDD Directive for banks
- AML/CFT directive for insurance companies
- Guidelines for the conduct of business and administrative organization of money transfer companies
- Operational and AML Guidelines for money transfer companies
- Directive for the issuance of multipurpose prepaid money cards
- List of indicators of unusual transactions for casinos pursuant to Article 10 of SORUT (RIC)

- List of indicators of unusual transaction for banks and money transfer companies pursuant to Article 10 SORUT (RIFPS)
- List of indicators of unusual transactions for life insurance companies pursuant to Article 10 SORUT (RIIS)
- Guidelines for the application of the list of indicators for casinos
- Guidelines for the application of the list of indicators for life insurance companies and brokers
- Reporting manual of the MOT
- Guidelines for the Business Establishment Ordinance
- Admission Policy of the CBA for credit institutions
- Admission Policy of the CBA for insurance companies
- Tightened Policy as regards the Operations of Casinos

Memorandum of understanding

- Memorandum of understanding between the Central Bank of the Netherlands Antilles and the Central Bank of Aruba
- Multilateral memorandum of understanding between the regional regulatory authorities for the exchange of information and co-operation and consultation
- Covenant on generic exchange of information between the Central bank of Aruba and the MOT

Other documents

- MOT's internal note on Supervision
- Reporting form for unusual transactions
- Tightened policy as regards with the operations of casinos
- MOT Annual Reports
- CBA Annual Reports
- CBA's Strategic Plan 2008-2012 for the supervision of financial sector