

Plenary

MUTUAL EVALUATION OF ARUBA, KINGDOM OF THE NETHERLANDS - FIRST FOLLOW-UP REPORT

17-19 February 2010, Central Bank of the UAE, Abu Dhabi, United Arab Emirates

FATF-XXI

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JT03278026

**ARUBA, KINGDOM OF THE NETHERLANDS
FIRST FOLLOW-UP REPORT**

1. The Mutual Evaluation Report (MER) of Aruba, Kingdom of the Netherlands, was adopted in October 2009. As the level of compliance of Aruba with the FATF standards was assessed as a low level (13 PC/NC on Core and Key Recommendations¹ and 25 PC/NC on the other Recommendations²), the Plenary decided to place Aruba under expedited follow-up process and asked Aruba to report back in February 2010.

2. Aruba provided the FATF Secretariat with the following documents:

- A table “strategic implementation planning process” presented under the format used by the World Bank for its Strategic Implementation Plan Process (SIPP) to reflect the priority level of the actions planned by the Aruban authorities. However it should be noticed that Aruba has not applied all the normal features of the World Bank’s SIPP at this stage, since it has not undertaken a ML/TF risk assessment (this should be done in two years, once Aruba will have improved its statistics and other monitoring tools).
- A letter of the Aruban FATF Committee to the Council of Ministers setting out the developments needed and seeking initial parliamentary support for these developments.
- A draft State Ordinance criminalising terrorist financing (TF) and modifying the current State Ordinance on Obligation of Reporting Transactions (SORUT) to transfer AML/CFT supervisory competencies on financial institutions to the Central Bank of Aruba.

3. Since the MER, Aruba has developed a Strategy to Counter Money Laundering and the Financing of Terrorism adopted in January 2010, by the “Strategy Group” composed of representatives from various agencies and administrations involved in the fight against ML/TF. This Strategy shows a commitment to remedy the deficiencies identified in the MER and to update the legislative framework. Aruba advises that it intends to present at least seven State Ordinances to the Parliament over the next 12-18 months (See annex 1 for a short analysis of the main deficiencies and actions proposed, though it should be noted that for many of the proposed legislative actions, draft legislation is not yet available and it is not known whether the proposals will adequately remedy the deficiencies):

- A State Ordinance to criminalise TF and to transfer the authority to supervise the obligation to report suspicious/unusual transaction report from the FIU (MOT) to the Central Bank of Aruba (CBA). According to the information provided by Aruba, this state Ordinance should be adopted on 1 February 2010. A draft law was provided, but it appears that the draft offence of TF is inadequate, since it seems to always require a link to a terrorist act for all types of TF offences.

¹ SR.II, R.5, R.13, SR.IV, R.3, SR.III, R.26, R.23, R.35, R.36, R.40, SR.I and SR.V.

² R.6, R.7, R.8, R.9, R.11, R.12, R.14, R.15, R.16, R.17, R.18, R.21, R.24, R.25, R.27, R.29, R.30, R.31, R.32, R.33, R.38, SR.VI, SR.VII, SR.VIII, and SR.IX.

- A State Ordinance to revise the Penal Code to remedy the deficiencies related to the Palermo and Vienna Convention and to R.3. The new Penal Code should be enacted in July 2010, and according to the timetable, this draft State Ordinance should currently be being discussed by the Parliament.
- A State Ordinance to revise and merge the current State Ordinance on Customer Due Diligence (SOIPS) and the State Ordinance on Suspicion Transaction Reporting (SORUT). According to the authorities, this would be enacted in January 2011. In addition, Aruba intends to revise the State Ordinance for Financial Service Industry (in January 2011) in order to remedy the deficiencies related to the AML/CFT supervision, in particular regarding specific sectors such as the investment sector. However, even before the adoption of the State Ordinances and the harmonization and clarification of the scope of financial institutions and financial services subject to AML/CFT requirements, the CBA plans to adopt five new AML/CFT directives for banks (July 2010), insurance (August 2010), money transfer companies (September 2010), Trust and companies services providers (October 2010) and the investment business (November 2010). Whilst it is understandable that the CBA is seeking to rapidly adopt new detailed directives, this is taking place before the new legislation is finalized, and runs the risk of requiring further amendments.
- A State Ordinance to amend the Penal Procedures Code, which is expected to be enacted in June 2011, after co-ordination with the other parts of the Kingdom of the Netherlands.
- A State Ordinance to amend the State Ordinance on Sanctions (SR.III), at a later stage. But before the revision of the legal basis to freeze terrorist assets, Aruba plans to adopt by April 2010 a State Decree implementing the current law. It is not clear that this will adequately meet the requirements of SR.III.
- A State Ordinance to enhance the transparency of companies and abolish the A.V.V, which should be enacted in January 2011.

4. While the proposed actions are positive, it has to be noted that only the first piece of legislation dealing with the new TF offence has been drafted and is actually moving towards adoption. Although this is a very speedy response, the initial analysis is that there are still some deficiencies and that the new offence does not meet all the requirements of SR.II.

5. The MER also identified many resources constraints that undermine the effectiveness of its regime, in particular regarding the FIU, the law enforcement authorities and the CBA. Aruba intends to remedy these deficiencies by modifying the composition of the FIU's Advisory Committee and by recruiting and training new staff for the FIU, the police force, the Public Prosecutor's office and the CBA. However, the timetable provided seems very slow: *e.g.* the FIU is starting its recruitment process now but will not recruit new staff before February 2011.

6. In addition, other important deficiencies identified in the MER, such as those in relation to R.17, R.18, and R.23 are not addressed, or only very partially, in the Strategy provided by Aruba, which raises further concerns.

Conclusion

7. In this 1st follow-up report, Aruba is showing a commitment to remedy most of the deficiencies of its AML/CFT regime identified in the MER. However, given the number of deficiencies identified in the MER, there are significant concerns regarding the expedited timetable provided, which while desirable

seems very ambitious and may subsequently be difficult to respect when one takes into account Aruba's resource constraints, and the lack of updated information on the stage of the various projects.

8. Despite the positive initial steps that have been taken, a number of other important factors need to be taken into account when assessing the next steps in the follow up process:

- The very low level of compliance of Aruba with the FATF Standards (13 PC/NC on Core and Key Recommendations and 38 PC/NC on the 40+9).
- The apparent inadequacies in the draft offence of TF.
- The adoption of the CBA directives before amending the various State Ordinances.
- The slow timetable to increase the resources of the relevant agencies.
- The fact that some important deficiencies identified in the MER are not really addressed in Aruba's Strategy.

9. Taking all these factors into account, the Plenary should give serious consideration to placing Aruba under enhanced follow-up and the President could send a letter to the relevant minister(s) drawing attention to the high level of non-compliance with the FATF Recommendations and reinforcing the efforts that have been initiated by Aruba to establish an expeditious but practical action plan to remedy these deficiencies.

FATF Secretariat
29 January 2010

**ANNEX 1: TABLE OF THE MOST SIGNIFICANT ACTIONS PLANNED BY ARUBA
IN RELATION TO THE CORE AND KEY RECOMMENDATIONS RATED PC/NC**

| Rec. | Rating | Comments |
|---|--------|---|
| Core Recommendations rated PC/NC | | |
| SR.II | NC | A draft law to criminalise TF to be adopted and to enter into force on 1 February 2010. A draft law was provided, but it appears that the draft offence of TF is inadequate, since it seems to always require a link to a terrorist act for all types of TF offences |
| R.5 | NC | Agreement on the necessity to prepare a draft State Ordinance to replace the current law (SOIPS) on CDD measures and to merge it with the law on unusual transaction reporting (SORUT). Aruban authorities plan to achieve this State Ordinance by January 2011, but they have not detailed the various steps setting out how this will be achieved. |
| R.13 | PC | Aruba advises that the structural deficiencies identified in the MER in relation to R.13 and SR.IV, such as the scope of financial institutions subject to reporting requirements, the inconsistencies with the scope of FIs subject to CDD requirements, the few guidance or feedback provided to FIs, the lack of awareness of FIs should be addressed through the new State Ordinance mentioned above and scheduled to be adopted in January 2011. No details are available Aruba authorities have also decided to strengthen the supervision of compliance with reporting requirements of FIs by transferring this power from the MOT (FIU) to the Central Bank (CBA), which will create an Integrity Unit. The MOT intends to recruit new staff to strengthen the supervision of DNFBPs. This transfer of competence from the MOT to the CBA is provided in the draft State Ordinance that also criminalises TF and that should be adopted and enter into force on 1 February 2010. |
| SR.IV | PC | |
| Key Recommendations | | |
| R.3 | PC | The adoption of the Draft State Ordinance that criminalises TF should also remedy the fact that Aruba does not currently have power to confiscate or take provisional measures in relation to TF. This is scheduled for adoption on 1 February 2010. Regarding the other deficiencies (lack of clear provision to allow the confiscation of property derived from the proceeds of crimes and the inability to take action against property held in the name of third parties and the lack of evidence of effective implementation of the powers to confiscate and take provisional measures), Aruba indicated this would necessitate amending the Penal Procedures Code, in line with the other parts of the Kingdom (Netherlands and the Netherlands Antilles). This would therefore take more time: Aruba indicated that the amendments to the Penal Procedures Code would be adopted by June 2011. |
| SR.III | NC | Aruba intends to revise the Draft Sanction Decree, which was assessed as NC by the assessment team although it has been adopted. This revised draft Sanctions Decree is scheduled to be debated by the Parliament on 1 st February 2010 and to be adopted on 15 April 2010. Regarding the revision of the State Ordinance on Sanctions, which does not provide for a national mechanism in the context of UNSCR 1373, Aruba has indicated that the Secretary of the FATF Committee is responsible for a study to evaluate this recommendation of the MER. Under these circumstances, the extent of the revision of the draft Sanctions Decree (when the State Ordinance itself has not been revised) is not clear. This new draft Sanction Decree has not as yet been shared with the FATF Secretariat. |

| Rec. | Rating | Comments |
|------|--------|---|
| R.26 | PC | <p>Regarding the composition of the MOT's Advisory Committee, which is currently partially composed with representatives from the private sector, the Secretary of the FATF Committee is in charge of carrying out an evaluation. The decision to change/appoint new members is expected for June 2010, but Aruba advised that depending on this decision the implementation of these changes would start at a date to be determined.</p> <p>Concerning the recommendation made by the MER to recruit staff to fill the current vacancies, as well as additional staff to properly conduct its tasks, Aruba advised that the MOT will seek the Ministerial approval in March 2010 in order to have new trained staff for February 2011. This approval has now been granted.</p> <p>The MOT is also developing an on-line system for the reception of STRs, which should be ready for end of March 2010.</p> |
| R.23 | NC | <p>The MER noticed an important number of deficiencies in relation to R.23: scope of financial institutions and activities subject to supervision is not in line with the FATF Standards; securities and investment sectors are not licensed, regulated nor supervised; absence of licensing or registration for life insurance intermediaries and for persons that carry on currency exchange activities; deficiencies identified regarding fit and proper test, related to nature, frequency, source of information of the checks performed by the CBA; and problems of effectiveness due to the existence of 2 supervisors for AML/CFT purposes (CBA and MOT) on FIs and lack of resources of these two supervisors.</p> <p>Aruba considers it will adopt a two tier response (please refer to the SIPP row 48):</p> <ul style="list-style-type: none"> • In March 2010, the AML/CFT supervisory staff of the CBA and the MOT should benefit from a specific training session. <p>The revision of the SOIPS and the SORUT which impose AML/CFT requirements on FIs and DNFBPs will be an opportunity to regulate the investment businesses and insurance brokers and to prohibit the electronic stock exchanges. This should be adopted in January 2011.</p> <ul style="list-style-type: none"> • With regard to the deficiencies related to the fit and proper tests, Aruba has established an Integrity Unit, gained approval and budget for additional staff for it, sought technical assistance (and this has been now been granted) from the Dutch Central Bank and has just obtained approval for legislation to give it access to law enforcement records. The other deficiencies identified in the MER (the scope of the fit and proper tests) in relation with the legal provisions are not addressed in the timetable provided by Aruba. |
| R.35 | PC | <p>The adoption of the Draft State Ordinance criminalizing TF should contribute to remedying the deficiencies identified in relation to R.35. This step should be completed on 1 February 2010.</p> <p>Moreover, the measures taken in relation to SR III (see above) should contribute to this goal (timetable: not defined).</p> <p>Lastly, regarding the deficiencies related to the Vienna and Palermo Conventions, Aruba advised that it has prepared a draft State Ordinance to amend the Penal Code. This draft State Ordinance is supposed to be debated in the Parliament in February 2010 and enacted in July 2010. This State Ordinance has not yet been supplied to the Secretariat but will be as soon as finalized.</p> |
| R.36 | PC | <p>After the enactment of the criminalization of TF, the adoption of the State Ordinance modifying the Penal Code and extending the range of predicates for ML in July 10, Aruba expects that some of the deficiencies related to R.36 will be remedied.</p> <p>Moreover, the Public Prosecutor Office will review the feasibility to expand the range of mutual legal assistance agreements, in particular with other countries of the region. This report is expected for April 2010.</p> |
| R.40 | PC | <p>Aruba advises that the deficiencies should be remedied with: <i>i)</i> the next State Ordinance on AML/CFT that should replace the current SOIPS and SORUT. This State Ordinance is scheduled for January 2011; <i>ii)</i> the transfer of the AML/CFT supervision of FIs to the CBA (February 2010); <i>iii)</i> a long term review of the financial</p> |

| Rec. | Rating | Comments |
|------|--------|---|
| | | services legislation (January 2011). |
| SR.I | NC | The criminalization of TF (February 2010) and the resolution of the deficiencies related to SR.III (see above) should automatically improve SR. I if the amendments are adequate. |
| SR.V | NC | The deficiencies related to SR.V will require substantial legislative change to be remedied. So far, Aruba has focused its efforts on the improvement of its legislation on TF and ML offences, and it advises it will consider the deficiencies related to SR.V in January 2011. |

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

FATF/PLEN(2010)17

| FATF 40+9 | Rating | Summary of Factors for Rating | Recommended Actions | Actions Undertaken by Aruba |
|--|--------|---|--|---|
| Legal systems | | | | |
| 1. ML offense | LC | <p>The ML offence does not adequately cover all designated categories of predicate offences (TF, counterfeiting and piracy of products, insider trading and market manipulation, environmental crime, fraud).</p> <p>The full range of ancillary offences are not provided for as neither conspiracy nor association to commit are applicable to ML.</p> <p>There is a lack of a clear, unequivocal provision pursuant to which Aruba can prosecute ML based on foreign predicate offences.</p> | <ul style="list-style-type: none"> The authorities should revisit the scope of the predicate offence to ML in order to fully cover all the designated predicate offences listed in the FATF Glossary, in particular terrorist financing, and insider trading and market manipulation, but also a wider range of environmental crime, fraud and counterfeiting and piracy of products. Aruban authorities should consider devoting greater resources to the MOT to enhance the initial assessment of STRs and to the police to ensure they investigate the files disclosed by the MOT, so as to produce a larger number of cases referred to the Public Prosecutor's Office for investigations and consequently, for prosecution. | <ul style="list-style-type: none"> Aruba is in the process of introducing a new Penal Code which will, amongst others, criminalize counterfeiting and piracy of products, insider trading and market manipulation, environmental crime, fraud, thereby expanding the scope of predicate offence for ML. As for TF, the current Penal Code has been amended to include TF as a separate and independent offense. The new Penal Code will also criminalize conspiracy and association to commit ML and will provide clear provisions for the prosecution of foreign-based ML offences. The proposal for the new Penal Code will be submitted to Parliament by the end of April and is scheduled to enter into force on July 1st of this year. The MOT has received ministerial approval for the hiring of additional staff outside the government work force. Meanwhile new job applications are being handled. Also, the SORUT has been amended to provide for the transfer of supervision of the financial institutions regarding their compliance with the SORUT to the Central Bank of Aruba (CBA), thereby allowing the MOT to focus more on the investigation and dissemination of unusual transactions reports (UTRs) |
| 2. ML offense—mental element and corporate liability | LC | <p>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.</p> | <ul style="list-style-type: none"> Aruba should also apply the ancillary offence of conspiracy to money laundering. Aruba should clearly and explicitly provide that the ML offence applies to foreign predicate offences. | <ul style="list-style-type: none"> The new Penal Code scheduled for introduction on July 1st of this year will criminalize conspiracy to ML The new Penal Code scheduled for introduction on July 1st will provide clear provisions for the prosecution of foreign-based ML offences |
| 3. Confiscation and provisional measures | PC | <p>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).</p> | <ul style="list-style-type: none"> Aruba should introduce a separate and independent FT offence as soon as possible and ensure that TF is a predicate offence for money laundering. | <ul style="list-style-type: none"> Shortly after the adoption of the MER by the FATF and the CFATF in October 2009 a proposal was submitted by the Government to Parliament for the amendment of the current Penal Code to criminalize TF as a |

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| FATF 40+9 | Rating | Summary of Factors for Rating | Recommended Actions | Actions Undertaken by Aruba |
|-----------|--------|---|--|---|
| | | <p>No clear provision to allow the confiscation of property derived indirectly from the proceeds of crime, such as income and other benefits.</p> <p>Inability to take action against property held in the name of third parties under the special confiscation powers.</p> <p>Lack of evidence of effective implementation of the powers to confiscate and take provisional measures</p> | <ul style="list-style-type: none"> • Aruba should consider amending its law to clearly provide that property derived indirectly from the proceeds of crime, such as income and other benefits, are subject to confiscation. • Aruba should amend its CCrPA to allow special confiscation of property held in the name of third parties | <p>separate and independent offence. This proposal has been approved and has entered into force on March 6th of this year. Subsequently TF is now a predicate offence for ML.</p> <ul style="list-style-type: none"> • Criminal confiscation is addressed in the Code for Criminal Procedures Aruba. Pursuant to the Cooperation Agreement between Aruba and the Netherlands Antilles, matters relating to criminal procedures such as confiscation must be uniform between Aruba and the Netherlands. This is because Aruba and the Netherlands Antilles share a common court and appeals system. Consequently the criminal procedures as set out in Codes for Criminal Procedures of Aruba and of the Netherlands Antilles have to be consistent with each other. Nevertheless, a joint committee of experts has been instituted by the governments of Aruba and the Netherlands Antilles for the purpose of reviewing the Codes for Criminal Procedures of Aruba and of the Netherlands Antilles and make proposals for amendments. In doing so, the issues of confiscation of property derived indirectly from the proceeds of crime and special confiscation of property held in the name of third parties will be addressed. The planned date for enactment is January 1st 2011. |

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|---|--------|---|---|--|
| Preventive measures | | | | |
| 4. Secrecy laws consistent with the Recommendations | LC | <p>It is unclear whether MTC's are able to exchange information according to the requirements of SR VII.</p> <p>Although financial institutions are allowed to share information with the CBA by State Ordinance, Article 286 of the Criminal Code criminalises the fact of revealing secret information.</p> | <ul style="list-style-type: none"> Aruba should clarify the legal situation so that it is clear that money transfer companies are allowed to share information in a SR.VII scenario with competent authorities. | <ul style="list-style-type: none"> As a consequence of the intended merger of the intended merger of the SOIPS and SORUT per January 1st 2011 Aruba intends to amend the SOSMTC in order to facilitate the implementation of the new law and to bring it more in line with the FATF standards. This can include the sharing of information in a SR.VII scenario with competent authorities, although a definitive decision on this has not yet been taken.. |
| 5. Customer due diligence | NC | <p>The full scope of financial services is not covered by the CDD obligations:</p> <ul style="list-style-type: none"> Consumer credit and loans provided by financial institutions not falling under the definition of credit institutions Financial guarantees and commitments performed by non-credit institutions; Issuing and managing of means of payment Trading in money market instruments, foreign exchange transactions, exchange, interest rate and index instruments and commodity future trading Participation in securities issues and provision of financial services related to such issues Individual and collective portfolio management The investing, administering and managing of funds, money on behalf of other persons (including the companies pension funds) Foreign currency exchange transactions, except where conducted by credit institutions <p>Certain categories of financial service providers are not covered by the scope of the SOIPS:</p> | <p><i>General:</i></p> <ul style="list-style-type: none"> Aruba should ensure that all basic obligations as defined by the FATF are set out in the SOIPS. Aruba is urged to submit all financial institutions conducted financial designated activities are subject to AML/CFT requirements. <p><i>In relation to Recommendation 5:</i></p> <ul style="list-style-type: none"> Aruba should require financial institutions to identify and verify the identity of the ultimate beneficial owner of the business relationship or to understand the control structure of these customers; Aruba should also require financial institutions to identify beneficial owners of foreign trusts and similar legal arrangements, since they can operate on the territory; Aruba should not limit the obligation of identification of legal persons and verification of the identification data to the 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; | <ul style="list-style-type: none"> Aruba will remedy these substantial deficiencies by replacing the current SOIPS and the SORUT and the underlying secondary legislation with a new state ordinance containing new and comprehensive rules on the identification and verification of customers and the reporting of unusual transactions to the FIU. As for its scope, it will be directed to the same financial institutions and DNFBPs as defined in de FATF standards, thereby eliminating the scope issue. It will cover the requirements of R 5-12 as well as 13-16 and 26. As for CDD it will create <i>inter alia</i> explicit obligations for financial institutions as well as for DNFBPs regarding the identification and verification of the ultimate beneficiary owner, the proper documents required for the identification and verification of legal persons, the ongoing monitoring of business relationships and the nature and purpose of the business relationship, the application of enhanced or simplified CDD in appropriate cases, and the filing of an unusual transaction report to the MOT in case of failure to identify their customer and beneficial owner. Consequently, the existing AML/CFT Directives issued by the CBA to the supervised financial institutions will have to be revised significantly. Currently a |

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

FATF/PLEN(2010)17

| FATF 40+9 | Rating | Summary of Factors for Rating | Recommended Actions | Actions Undertaken by Aruba |
|-----------|--------|---|---|---|
| | | <ul style="list-style-type: none"> ○ Intermediaries operating on the stock exchange market of Aruba, which is neither regulated or supervised ○ Life insurance agents ○ Currency exchange transactions performed by other entities than credit institutions <p>Money and currency change performed by banks is covered only below the threshold of AWG 20 000</p> <p>There is no clear obligation to identify customers in situations of occasional transactions covered by SRVII</p> <p>There are no obligations in law or regulation to identify the client when the financial institutions have doubts about the veracity or adequacy of previously obtained identification data</p> <p>Financial institutions are not required to identify the client in situation where there is a suspicion of ML or TF</p> <p>Identification of legal persons is based on potentially inaccurate documents and financial institutions are not obliged to verify the identity of the directors of legal persons</p> <p>There are no provisions on the identification of customers that are foreign trusts or other similar legal arrangements</p> <p>There is no obligation to identify legal person in circumstances when a legal person is acting on behalf of another person</p> <p>Financial institutions are neither required to understand the ownership and control structure of the legal person/legal arrangement customer nor obliged to determine who are the beneficial owners (<i>i.e.</i> natural persons that ultimately own or control the customer)</p> <p>There are no requirements to obtain information on the purpose and nature of the business relationship</p> | <ul style="list-style-type: none"> • Aruba is recommended to revise the SOIPS to clearly require FIs to undertake CDD measures when there is a suspicion of ML/TF, regardless of any exemptions or thresholds; • When FIs have doubt about the veracity and adequacy of previously obtained information, they should be required to undertake CDD measures; • Aruba should urgently require, by law or regulations, FIs to conduct ongoing monitoring on business relationships and to understand the nature and purpose of the business relationship, to apply enhanced or simplified CDD in appropriate cases; • Aruba should ensure that the different AML/CFT directives issued by the CBA for credit institutions, insurance companies and money transfers companies are consistent with the SOIPS and the SORUT; • Aruba should allow FIs to complete the verification the identity of their customers and beneficial owner following the establishment of the business relationship when it is essential not to interrupt the business relationship and provided appropriate safeguards. • When FIs fail to identify their customer and beneficial owner, Aruba should clearly state that they should consider making a suspicious transaction report. | <p>large portion of the CDD framework is contained in these frameworks. With the new comprehensive state ordinance the basic requirements of R5-12 (including but not limited to the asterisked ones) will be set on the level of primary legislation (the new state ordinance), will the directives will contain complementary secondary obligations and guidance. The CBA has begun with the drafting of the new Directives. These are expected to be presented shortly to the industry for discussion. Their adoption is scheduled for July 15th (banks), August 15th (insurance companies), September 15th (MTCs), October 15th (TCSPs) and November 15th (investment business) of this year. The proposal for this new state ordinance is planned for submittal to parliament in September of this year. Its scheduled enactment date is January 1st 2011.</p> |

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| FATF 40+9 | Rating | Summary of Factors for Rating | Recommended Actions | Actions Undertaken by Aruba |
|-----------|--------|---|---------------------|-----------------------------|
| | | <p>There are no requirements to conduct ongoing monitoring on the business relationship and transactions</p> <p>There are no requirements to apply enhanced due diligence for high risk business relationships</p> <p>There are no requirements for financial institutions to consider making suspicious transaction report when they fail to identify and verify the identity of customer</p> <p>There is no obligation to apply CDD requirements to existing customers on the basis of materiality and risk The effective implementation of the requirements that exist is undermined by factors such as:</p> <p>The definition of financial services subject to AML/CFT obligations is vague, thus making it unclear for financial institutions if they are subject to AML/CFT requirements</p> <p>The SOIPS and the SORUT are inconsistent in terms of the scope of the services they cover.</p> <p>The SOIPS does not allow financial institutions to complete the verification of the identity of their customers and beneficial owners during the course of establishing a business relationship, while in practice some financial institutions have recourse to this practice.</p> <p>The provisions of the AML/CFT directive for the banking and insurance sectors to a certain extent contradictory with the provisions of the SOIPS.</p> <p>Although financial institutions are not permitted to 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.</p> | | |

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|---|---------------------|---|--|---|
| 6. Politically exposed persons | NC | There are no requirements to apply any additional CDD requirements vis-a-vis PEPs. | <ul style="list-style-type: none"> Aruba should introduce in law, regulation or other enforceable means all FATF requirements in relation to PEPs. | <ul style="list-style-type: none"> Being part of the basis requirements of R5-12 this issue will be addressed as a primary obligation of financial institutions and DNFBPs in the new comprehensive state ordinance that will replace the current SOIPS and SORUT. The proposal for this new state ordinance is planned for submittal to parliament in September of this year. Its scheduled enactment date is January 1st 2011. |
| 7. Correspondent banking | NC | There are no AML/CFT requirements vis-a-vis cross-border correspondent banking. | <ul style="list-style-type: none"> Aruba should introduce in law, regulation or other enforceable means all FATF requirements in relation to cross-border correspondent banking relationships or other similar relationships. | <ul style="list-style-type: none"> Being part of the basis requirements of R5-12 this issue will be addressed as a primary obligation of financial institutions and DNFBPs in the new comprehensive state ordinance that will replace the current SOIPS and SORUT. The proposal for this new state ordinance is planned for submittal to parliament in September of this year. Its scheduled enactment date is January 1st 2011. |
| 8. New technologies & non face-to-face business | NC | There are no requirements to safeguard against misuse of technological developments. | <ul style="list-style-type: none"> Aruba should introduce in law, regulation or other enforceable means all FATF requirements to prevent the misuse of technological development in ML/TF and to manage non face-to-face customers. | <ul style="list-style-type: none"> Being part of the basis requirements of R5-12 this issue will be addressed as a primary obligation of financial institutions and DNFBPs in the new comprehensive state ordinance that will replace the current SOIPS and SORUT. The proposal for this new state ordinance is planned for submittal to parliament in September of this year. Its scheduled enactment date is January 1st 2011. |
| 9. Third parties and introducers | NC | There are no provisions to make reliance on third parties subject to the requirements of Recommendation 9, even though reliance on third parties is applied in practice by financial institutions, including banks, based on provisions set out in the CDD directive for banks issued by the CBA. | <ul style="list-style-type: none"> Aruba is strongly recommended to harmonise the provisions of its State Ordinance and related regulation with those of the CBA's directive to avoid any contradictions between these texts and clarify which requirements financial institutions are subject to. Aruba should consider authorising in particular insurance companies to rely on other financial institutions to carry out CDD for them subject to the required safeguards. | <ul style="list-style-type: none"> Being part of the basis requirements of R5-12 this issue will be addressed as a primary obligation of financial institutions and DNFBPs in the new comprehensive state ordinance that will replace the current SOIPS and SORUT. The proposal for this new state ordinance is planned for submittal to parliament in September of this year. Its scheduled enactment date is January 1st 2011. Consequently the CDD directive for banks is being revised to bring it up to standards and avoid contradictions with the new state ordinance. The basic obligations |

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| | | | <ul style="list-style-type: none"> 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. | <p>regarding third parties and introduced business will be set in this state ordinance with the revised CDD Directive for banks playing a complementary and guiding role.</p> <ul style="list-style-type: none"> The new state ordinance will allow for in particular insurance companies to rely on other financial institutions to carry out CDD for them subject to the required safeguards . |
| 10. Record keeping | LC | <p>The full scope of financial services is not covered by records keeping requirements.</p> <p>No specific requirements for financial institutions to record transactions in a manner to permit reconstruction of individual transactions, in particular for occasional customers.</p> <p>No requirement to make this information available on a timely basis to competent authorities.</p> | <ul style="list-style-type: none"> Aruba should revise SOIPS in order to explicitly provide that financial institutions should keep records of customer identification data and transaction information in a manner to permit reconstruction of individual transactions and in order to clearly require financial institutions to make customer identification data and transaction information available to competent authorities on a timely basis | <ul style="list-style-type: none"> This issue will be addressed in the new state ordinance that will replace the SOIPS and SORUT which will also contain rules on record keeping in conformity with the FATF standards. |
| 11. Unusual transactions | PC | <p>The full scope of financial services is not covered by requirements with respect to Recommendation 11.</p> <p>There is no specific requirement to monitor all complex, unusual large transactions unless they meet the indicators of unusual large transactions that must be reported to the FIU.</p> <p>There is no explicit requirement to examine the background and purpose of these unusual transactions and to set forth the findings in writing.</p> <p>There is no requirement to keep a record of financial institutions' findings in relation to complex, unusual large or unusual patterns of transactions.</p> | <ul style="list-style-type: none"> Aruba should revise its system so that financial institutions pay attention to all complex, unusual large transactions, examine their background and purpose and decide as to whether such transactions are suspicious and are to be reported to the MOT. Aruba should ensure that the findings of these researches are recorded and made available on request to the MOT. | <ul style="list-style-type: none"> The new state ordinance replacing the SOIPS and SORUT will contain an obligation for financial institutions to 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. The new obligation will ensure that the findings of these researches are recorded and made available on request to the MOT |
| 12. DNFBP–R.5, 6, 8-11 | NC | <p><u>Casinos:</u></p> <ul style="list-style-type: none"> The threshold for the identification requirement is too high (AWG 20 000 or USD 11 000). Internet casinos are not prohibited but they are not subject to AML/CFT obligations. | <ul style="list-style-type: none"> Aruba should clarify the scope of DNFBPs subject to the SOIPS, in particular each DNFBPs' activities falling into the scope of the State Ordinance and submit TCSPs to CDD requirements; Aruba should consider reducing the level of secrecy which legal professionals are submitted to in order to ensure that they are | <ul style="list-style-type: none"> As mentioned above, the new comprehensive state ordinance that will replace the SOIPS and SORUT, will also provide for new and comprehensive CDD rules on a primary level. In that respect Aruba plans to follow the FATF standards when defining the DNFBP's activities subject to the new CDD requirements. TCSPs will in this respect be subject to the |

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| | | <ul style="list-style-type: none"> Cruise ship based casinos are not covered by CDD requirements. <p><i>Other DNFBPs:</i></p> <p>TCSPs – the definition of “trust company” is not fully in line with FATF requirements.</p> <p>AML/CFT requirements as set out in the SOIPS and SORUT do not apply to them, and the identification requirements in the new legislation are inadequate.</p> <p>Real estate agents are not required to perform CDD in relation to both the purchasers and the vendors of immobile properties.</p> <p>Deficiencies identified in Recommendation 5 also apply to DNFBPs.</p> <p>Obligations in Recommendations 6, 8, 9 and 11 are not applied to DNFBPs.</p> <p>Deficiencies identified for Recommendation 10 also apply to DNFBPs.</p> <p>Lawyers and notaries are not subject to CDD requirements for their activities relating to the legal status of a client, his legal representation or defence, the giving of advice before, during and after a legal case or the giving of advice on the start or avoidance of a legal case.</p> <p>Professional secrecy rules should not be applied to create CDD and record keeping exemptions.</p> <p><i>Effectiveness:</i> Low level of effectiveness of the new provisions of the revised SOIPS as they have not been subject to proper consultation by the industry.</p> | <p>adequately subject to CDD requirements;</p> <ul style="list-style-type: none"> 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. | <p>new CDD requirements Another issues to be addressed in accordance with FATF standards in the new state ordinance is the appropriate level of secrecy for legal professionals. As for casinos it should be noted that currently there are no internet casino’s active on Aruba as the Government does not allow them to do so. Nevertheless an explicit prohibition on internet casinos will be inserted in the proposal for the State Ordinance on the Supervision of Casinos, which is currently at parliament.</p> <ul style="list-style-type: none"> As for awareness of the DNFBPs with respect to their new AML/CFT obligations , the MOT has been working on this issue. In the week of April 15 an informational session was held by the MOT in cooperation with the Dutch Bureau for Financial Investigation for legal professionals with respect to their legal obligations under the SOIPS and the SORUT. |

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

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

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| 16. DNFBP–R.13-15 & 21 | NC | <p>No AML/CFT measures apply to TCSPs.</p> <p>The scope of the predicate offences for STR reporting does not satisfy all the FATF standards.</p> <p>The effectiveness of the unusual transactions reporting regime is as yet untested, except for casinos where it is low.</p> <p>DNFBPs are not obliged to establish and maintain internal procedures, policies and controls to prevent ML and TF, to maintain an adequately resourced and independent audit function to test compliance, to establish ongoing employee training on ML and TF techniques and risks, nor to put in place screening procedures to ensure high standards when hiring employees.</p> <p>DNFBPs are not required to pay special attention to transactions with countries which do not or do not adequately implement the FATF Recommendations.</p> <p>The limitations in Recommendation 14 as applied to financial institutions also apply to DNFBPs.</p> | <ul style="list-style-type: none"> The reporting obligations of DNFBPs present the same deficiencies than for those of financial institutions and therefore the same recommendations apply; The Aruba authorities should give priority to extend the scope of the DNFBPs' obligations to Recommendations 15 and 21; The MOT should take urgent steps to raise the awareness of the relevant provisions of the State Ordinances as they apply to DNFBPs; Aruba should consider the provisions applicable for DNFBPs to ensure that they are relevant for these professionals and increase their level of engagement in AML/CFT | <ul style="list-style-type: none"> Aruba will address the deficiencies of the reporting obligation of DNFBPs and the extension of the scope of this reporting obligation to Recommendations 15 and 21 in the new state ordinance that will replace the SOIPS and SORUT. As for awareness of the DNFBPs with respect to their new AML/CFT obligations, the MOT has been working on this issue. In the week of April 15 an informational session was held by the MOT in cooperation with the Dutch Bureau for Financial Investigation for legal professionals with respect to their legal obligations under the SOIPS and the SORUT. The introduction of the new state ordinance replacing the SORUT and SOIPS will be accompanied by a revision of the ministerial indicator regulations for the reporting of UTRs. Consequently the provisions applicable for DNFBPs will be considered to ensure that they are relevant for these professionals. The effective date for this is scheduled for January 1st 2011 |
| 17. Sanctions | NC | <p>The scope issues identified in the preamble of section 3 of this report also apply.</p> <p>The range of sanctions of the CBA and the MOT, although expanded under the new law, are not broad enough and are not effective, proportionate and dissuasive.</p> <p>There are no sanctions available against directors and senior managers of financial institutions.</p> <p>The level of fines, which may be issued, is low, in particular for credit institutions and insurance companies.</p> <p>There are no sanctions available for securities firms as</p> | <ul style="list-style-type: none"> Aruba should revise the range of levels of sanctions available to ensure that they are effective, proportionate and dissuasive and also applicable to directors and senior management of financial institutions. | <ul style="list-style-type: none"> Aruba will address these issues in the new state ordinance that will replace the SOIPS and SORUT by substantially increasing the maximum administrative and criminal fines and by extending the scope of sanctions to directors and senior management officials of FIs and DNFBPs. The effective date for this is scheduled for January 1st 2011. |

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| | | 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. | | |

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| 18. Shell banks | NC | <p>The facts show that there has been no effective implementation of the Policy rule.</p> <p>There is no explicit requirement to withdraw a licence granted to a credit institution that would later become a shell-bank.</p> <p>There is no prohibition in law, regulation or other enforceable means on financial institutions from entering into or continuing correspondent banking relationships with shell banks</p> <p>There is no obligation to require financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.</p> <p>Effectiveness: Despite there being 2 licensed banks with mind and management and records outside of Aruba, no real supervisory action has been taken for more than 10 years.</p> | <ul style="list-style-type: none"> Aruba is urged to clarify the implementation of its Policy rule on the licensing of credit institutions and to expand its scope to the two off-shore banks already licensed, by requiring them to maintain their records in Aruba. Aruba should also take steps to effectively supervise, in particular for AML/CFT purposes, these two off-shore banks based in Venezuela; Aruba is called to modify its SOSCS to allow the CBA to withdraw a license granted to a credit institution that would become a shell bank; Aruba should explicitly prohibit by law, regulation or other enforceable means financial institutions to establish or maintain correspondent banking relationships with a shell bank and with a financial institutions in a foreign country that permits its accounts to be used by shell banks. | <ul style="list-style-type: none"> As a consequence of the new state ordinance replacing the SOIPS and SORUT the AML/CFT Directives for financial institutions and the Policy rule on the licensing of credit institutions will be modified significantly. It should be noted that currently there is only one off-shore bank active in Venezuela. The CBA has met recently with representatives of this bank with a view to the upcoming AML/CFT legislation in Aruba. Parallel with the introduction of the the new state ordinance replacing the SOIPS and SORUT the licensing provisions of the SOSCS will be modified to <i>inter alia</i> allow for the withdrawal of a license granted to a credit institution that would become a shell bank. The effective date for this is scheduled for January 1st 2011; This issue will be addressed in the the new state ordinance replacing the SOIPS and SORUT. |
| 19. Other forms of reporting | C | The criteria are fully met. | | |
| 20. Other NFBP & secure transaction techniques | LC | Although Aruba has been taking steps to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering, its economy is still cash based and authorities encourage customers to use both the Aruban Florin and the US dollar, which potentially increases ML/TF risks. | <ul style="list-style-type: none"> Aruba should extend the measures it is taking to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML/TF. | <ul style="list-style-type: none"> The CBA is considering this recommendation. At this moment it is likely that a CBA staff member will be charged with researching this subject and present recommendations. |
| 21. Special attention for higher risk countries | NC | <p>The scope issues identified for Rec.5 also apply to R. 21.</p> <p>There is no requirement in law, regulation or other enforceable means for financial institutions to pay special attention to business relationship and transactions with jurisdictions, which either do not or insufficiently apply the FATF Recommendations.</p> <p>In case where transactions with such jurisdictions have</p> | <ul style="list-style-type: none"> Aruba should urgently introduce in law, regulation or other enforceable means provisions to require financial institutions to pay special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations. If these transactions have no apparent or visible lawful purpose, Aruba should ensure that they are examined and that the findings are kept written and | <ul style="list-style-type: none"> These issues will be addressed in the new state ordinance that will replace the SOIPS and SORUT, and in the revised AML/CFT Directives for the supervised financial institutions. In doing so Aruba will follow the standards set out in Recommendation 21and the Methodology. |

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

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| 22. Foreign branches & subsidiaries | NA | The Recommendation is not applicable since Aruban financial institutions have no branches or subsidiaries abroad. | | |
| 23. Regulation, supervision and monitoring | NC | <p>The scope issues identified in section 3.2 also apply.</p> <p>Securities and investment sector is not licenced, regulated nor supervised.</p> <p>Absence of licensing or registration requirements for insurance intermediaries.</p> <p>Absence of licensing or registration requirements for persons that carry on currency exchange activities.</p> <p>There are no provisions in place to prevent criminals or their associates from holding or being beneficial owners of a significant or controlling interest or holding a management function in a credit institution or an insurance company.</p> <p>The fit and proper tests are performed on the basis of information provided by the licence applicants, but the CBA does not sufficiently check this information.</p> <p>Lack of ongoing checks of the fitness and properness of credit institutions, insurance companies and money transfer companies.</p> <p>Lack of effectiveness with regard to the supervision of the MOT.</p> <p><u>Effectiveness:</u></p> <p>The division of the scope of the supervision powers of the CBA and the MOT is not appropriate and undermines the overall effectiveness of the supervision of financial institutions.</p> <p>The communication between the 2 supervisory bodies that supervise the same financial institutions for AML/CFT purpose needs to be strengthened.</p> <p>The resources and training of staff of the CBA and the MOT are not adequate.</p> | <ul style="list-style-type: none"> • Aruba should review the supervisory competences of the CBA and the MOT in order to ensure that all financial institutions activities designated by the FATF Glossary are properly regulated and supervised. In particular, Aruba is strongly urged to regulate and supervise its securities sector, including its electronic stock exchange market established in 2006 and all the professionals operating in this field, as well as the offshore banks and the life insurance companies and intermediaries. • Aruba should review the AML/CFT supervisory powers of the CBA in order to strengthen the quality of the fit and proper tests. Aruba should have procedures in place to apply ongoing fit and proper test to managing directors and to be able to conduct independent check on the quality of the information provided by the licence applicants. The CBA should have procedures in place to prevent criminals and their associates from becoming beneficial owners of credit institutions and insurance companies; | <ul style="list-style-type: none"> • Pursuant to the new state ordinance replacing the current SOIPS and SORUT all financial institutions activities designated by the FATF Glossary will be subject to AML/CFT oversight. Furthermore, the CBA is preparing a proposal for a state ordinance for the regulation and the supervision of investment business and all forms of stock exchanges and of the professionals operating in this field. The enactment date is scheduled for January 1st 2011. Likewise, scenarios are being considered for the proper regulation and supervision of insurance intermediaries. Aruba is considering the option of seeking external assistance on this. • Parallel with the introduction of the new state ordinance replacing the SOIPS and SORUT the licensing provisions of the SOSCS and the SOSIB will be modified in order to strengthen the quality of the fit and proper tests and to provide for procedures to apply ongoing fit and proper test to managing directors, as well as independent check on the quality of the information provided by the license applicants. These modifications will also include procedures in place to prevent criminals and their associates from becoming beneficial owners of credit institutions and insurance companies. Noteworthy in this respect is that in January of this year a ministerial regulation concerning the granting of access of certain persons and institutions to the criminal records kept by the Public Prosecutor's Office was modified to include the CBA as one of the authorities who may request access to these records. |

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| 24. DNFBP - regulation, supervision and monitoring | NC | <p>Aruba has not taken any measures vis-à-vis Internet casinos.</p> <p>Trust and company service providers are not regulated or supervised for AML/CFT purpose.</p> <p>Although most DNFBPs are now included within the scope of the SOIPS and the SORUT, no effective supervision, except for casinos, is currently taking place.</p> <p>The range of sanctions available against casinos and other DNFBPs is not effective, proportionate and dissuasive.</p> <p>There are no effective measures in place to prevent criminals or their associates taking control of a casino.</p> <p>Lawyers, civil notaries, tax advisors and accountants can refuse to cooperate with the MOT as a supervisory body, if there is a legal or otherwise established secrecy obligation, even if it concerns a service they perform that falls within the scope of the identification and reporting obligations.</p> <p>The MOT lacks resources to effectively monitor DNFBPs subject to AML/CFT requirements.</p> | <ul style="list-style-type: none"> The MOT should urgently start to supervise DNFBPs subject to SOIPS and SORUT; Aruba is strongly recommended to significantly develop the MOT in terms of staffing numbers, skills, support services and budget, as well as the legal framework which underpins its activity; | <ul style="list-style-type: none"> With regards to internet casinos a proposal for a state ordinance has been submitted to parliament for the supervision of casinos. This state ordinance will include a provision explicitly prohibiting internet casinos in Aruba. TCSPs are already been supervised pursuant to the State Ordinance on the Supervision of Trust and Company Services Providers which came into force on February 5th 2009. The provisions of the new state ordinance replacing the SOIPS and SORUT will also apply to TCSPs. The sanctions issue will be addressed in the new state ordinance replacing the SOIPS and SORUT; The proposal for the new state ordinance for the supervision of casinos, which is already at parliament, contains measures to prevent criminals or their associates taking control of a casinos; The issue of professional secrecy versus the supervisory powers of the MOT will be dealt explicitly in the upcoming state ordinance that will replace the SOIPS and SORUT The government is considering the transfer the supervision of the DNFBPs for their AML/CFT obligations to the CBA. This would take effect in the new state ordinance replacing the SOIPS and SORUT. The effective date would thus be January 1st 2011. In doing so the supervision of the DNFBPs by the MOT would no longer be an issue. |
| 25. Guidelines & Feedback | PC | <p>MOT (as a FIU):</p> <p>The FIU does not issue feedback on ML/TF methods and trends nor sanitised cases.</p> <ul style="list-style-type: none"> Of the range of DNFBPs, only casinos have been given any feedback or guidance; | <ul style="list-style-type: none"> The MOT or other competent authorities, such as the DAC for casinos, should provide guidance and feedback to DNFBPs subject to AML/CFT requirements. Competent authorities should provide more comprehensive guidance and more | <ul style="list-style-type: none"> The Government has approved the hiring of additional staff for the MOT. Per June 1st 2010 the SORUT supervision of financial institutions will be transferred to the CBA. Consequently, resources will be come available to provide guidance and feedback to DNFBPs on their AML/CFT requirements. The same will be the case |

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| | | <p>– The guidance issued to casinos is limited to quarterly newsletters, compliance officers sessions and liaison.</p> <p>MOT (as a supervisor) The MOT has not issued any guidelines to assist FIs or DNFBPs to comply with their respective AML/CFT requirements.</p> <p>CBA</p> <p>The AML/CFT directives for banks and insurance companies, although very useful, are limited to CDD requirements and do not establish links with reporting obligations.</p> <p>The scope of the Operational and AML/CFT guidelines for money transfer companies is too narrow and does not really address AML/CFT provisions.</p> <p>The scope of this guidance does not clarify the scope of financial activities subject to AML/CFT requirements.</p> | <p>feedback to financial institutions to improve the effectiveness of the reporting regime by educating them;</p> <ul style="list-style-type: none"> The MOT should improve the awareness of financial institutions regarding their reporting obligations and should work to enhance their capability to identify TF related transactions; | <p>with guidance and feedback to the financial institutions on their reporting behavior and their capability to identify TF related transactions ;</p> |

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

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| | | | <p>investigations.</p> <ul style="list-style-type: none"> • Aruba should consider exploring the possibility to establish new mechanisms and techniques in order to initiate investigations from the proactive reports made upon the financial analysis carried on by the MOT. | |

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| 28. Powers of competent authorities | LC | Law enforcement competent authorities have no power with respect to TF as it is not an offence, unless the activity is otherwise criminalised. | <ul style="list-style-type: none"> Aruba should ensure that law enforcement authorities have power to compel productions of and search persons or premises for and seize and obtain transaction records, identification data, files and business correspondence and other records held or maintained by financial institutions and DNFBPs and to take witness' statements when they conduct TF investigations. | Law enforcement powers are addressed in the Code for Criminal Procedures Aruba. Pursuant to the Cooperation Agreement between Aruba and the Netherlands Antilles matters relating to criminal procedures such as law enforcement powers must be uniform between Aruba and the Netherlands. This is because Aruba and the Netherlands Antilles share a common court and appeals system. Consequently the criminal procedures as set out in Codes for Criminal Procedures of Aruba and of the Netherlands Antilles have to be consistent with each other. Nevertheless, a joint committee of experts has been instituted by the governments of Aruba and the Netherlands Antilles for the purpose of reviewing the Codes for Criminal Procedures of Aruba and of the Netherlands Antilles and make proposals for amendments. In doing so, the issues of 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, will be addressed. The planned date for enactment is January 1 st 2011. |
| 29. Supervisors | NC | <p>Supervisors have no power of enforcement and sanction against directors and senior management of financial institutions.</p> <p>The level of requirements of the off-site inspections carried out by the MOT is very low.</p> <p>The scope of the on-site inspections carried out by the CBA for banks and money transfer companies needs to be strengthened, across a wider range of regulated institutions and in more details.</p> <p>The State Decree on the standardisation of regulatory powers could undermine the authorisation of supervisors to obtain all the information needed.</p> <p>Effectiveness:</p> <p>The CBA has not exercised its power to supervise off-shore banks.</p> | <ul style="list-style-type: none"> Considering the important resource constraints of the MOT that prevent it from effectively performing its supervisory functions, Aruba should consider designated the CBA as the only AML/CFT supervisor for all financial institutions; | Following up on a modification of the SORUT of March of this year, the AML/CFT supervision of financial institutions will rest solely with the CBA as per June 1 st . |

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| | | The MOT has not exercised its powers to supervise life insurance companies and intermediaries and off-shore banks. | | |

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| 30. Resources, integrity and training | NC | <p><u>In relation to the FIU:</u></p> <p>The composition of the MOT Advisory Committee (presence of private sector members) gives the appearance of compromising the autonomy and independency of the MOT in terms of determination of its budget and staff policy.</p> <p>The MOT faces resources constraints that impact its effectiveness.</p> <p>The MOT has not conducted any analysis on terrorist financing and its staff have not been trained in analysing such reports.</p> <p><u>In relation to the law enforcement authorities and prosecution authorities:</u></p> <p>Low level of effectiveness in investigating ML, caused by lack of resources in both police services and prosecution.</p> <p>Budgetary constraints affecting all government services have limited the possibilities of the relevant personnel of the Public Prosecutor's Office and the Police to participate in AML/CFT training courses and programs.</p> <p><u>In relation to the supervisory authorities:</u></p> <p>The resources and training of staff of the CBA is not adequate.</p> <p>The MOT's supervisory unit is not sufficiently staffed and resourced, particularly since February 2009 as the same staff are also responsible for the supervision of all the DNFBPs and all other non-financial businesses and professions.</p> <p>The MOT does not provide training to its staff in</p> | <p><i>In relation to the FIU:</i></p> <ul style="list-style-type: none"> Aruba is strongly recommended to take appropriate step to fill the current vacancies of the MOT with professionals having appropriate skills and to increase the total staff of the MOT; Aruba should revisit the composition of the MOT's Advisory Committee in order to ensure that representatives from the private sector are not consulted on the yearly budget of the MOT or on the MOT's staff recruitment policy and process; <p><i>In relation to the law enforcement and prosecutions authorities:</i></p> <ul style="list-style-type: none"> Aruba is strongly recommended to remedy the resource constraints faced by the law enforcement and prosecution authorities to allow them to properly face their workload; Aruba should develop, as foreseen, training sessions on AML/CFT investigative techniques for law enforcement officers involved in ML/TF investigations; <p><i>In relation to the supervisory authorities:</i></p> <ul style="list-style-type: none"> Aruba should enhance the resources and the trainings of the staff in charge of AML/CFT supervision in both the CBA and the MOT. <p><i>In relation to the review of the effectiveness of the AML/CFT regime:</i></p> <ul style="list-style-type: none"> Aruba should move to efficiently use its existing mechanisms to develop forward looking strategy that will, at least in the medium term, address the vulnerabilities that exist and the risks it faces. | <p>Actions Undertaken by Aruba</p> <ul style="list-style-type: none"> After securing ministerial approval the MOT has started the process of recruiting additional staff. Various applications are currently being reviewed. The issue of the composition of the Advisory Committee will be addressed in the upcoming state ordinance that will replace the SOIPS and SORUT. Although it is probable that the Advisory Committee will be retained, it will have no say over the MOT's budget and staff recruitment policy; The resources constraints at the law enforcement authorities will be discussed in the AML/CFT Strategy Group in which the ministers and institutions involved participate; Since the adoption of the MER training sessions on AML/CFT investigative techniques for law enforcement officers involved in ML/TF investigations have been held, amongst others with sister organizations from the Netherlands Antilles and the Netherlands; The CBA has meanwhile hired 2 additional staff members for its Integrity Unit while in August a staff member will arrive from the Netherlands to head this unit of the Supervision Department of the CBA. Members of the Integrity Unit as well as other CBA staff members have attended the MOT's Training session of April 12-17 on AML/CFT supervision of DNFBPs. The CBA is also organizing workshops in the area of AML/CFT together with the Dutch Compliance Institute. These will be held from May 11th till May 20th. Participation is open to staff members as well as financial institutions. The AML/CFT Strategy Group Aruba has been instituted recently which has as one of its tasks the development of a forward looking strategy that will, at least in the medium term, address the vulnerabilities |

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| | | relation to supervisory functions and methods. | | that exist and the risks Aruba faces |

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| 31. National cooperation | PC | <p>No proactive and coordinated AML/CFT policy making at a jurisdictional level.</p> <p>Lack of operational level coordination between MOT and the CBA, and also with other agencies.</p> <p>Lack of effective implementation in the mechanisms used for AML/CFT coordination and cooperation in Aruba.</p> | <ul style="list-style-type: none"> Aruba should move to efficiently use its existing mechanisms to develop forward looking strategy that will, at least in the medium term, address the vulnerabilities that exist and the risks it faces; The FATF Committee could be the body that drives the development of such a strategy provided that the Committee is able to more proactively to address all relevant issues in a holistic manner. Aruba should therefore examine the various coordination and cooperation mechanisms that exist, and determine how enhancements might be made in areas such as with respect to AML/CFT supervision of FIs and DNFBPs. | <ul style="list-style-type: none"> The AML/CFT Strategy Group Aruba has been instituted recently which has as one of its tasks the development of a forward looking strategy that will, at least in the medium term, address the vulnerabilities that exist and the risks Aruba faces The AML/CFT Strategy Group has a central policy development and coordination role with respect to AML/CFT matters in Aruba. It is chaired by the Prime Minister and has the participation of 3 other ministers in order to ensure proper and timely implementation of policy. It consists furthermore of high level executives of the CBA, the MOT, the Public Prosecutor's Office, the Directorate for Legislation and Legal Affairs, the Tax Office, the Chamber of Commerce and Industry, the Office of the High Commissioner, the Directorate for Economic Affairs, the Department for Casino Affairs, the State Security Service and the Free Zone Management Company. |
| 32. Statistics | NC | <p><u>Review of the effectiveness of the AML/CFT system:</u></p> <p>There is no information to suggest that Aruba has conducted comprehensive reviews which were intended to result in an enhancement of the AML/CFT system.</p> <p><u>Collection of statistics:</u></p> <p>In relation to mutual legal assistance: no statistics on requests, their nature and on whether they were granted or refused and the time to respond.</p> <p>In relation to extradition: no statistics available.</p> <p>In relation to administrative co-operation: no statistics available for the law enforcement and the CBA. The statistics made available by the FIU do not detail the number of requests granted or refused, nor the time to respond.</p> | <ul style="list-style-type: none"> Aruba should introduce a system to ensure that proper data and statistics regarding ML/TF investigations, prosecutions and convictions, property frozen, seized or confiscated, MLA requests (made and received); extradition. | <ul style="list-style-type: none"> The Public Prosecutor's Office plans to initiate work on this issue during the course of this year. |
| 33. Legal persons- | NC | There are inadequate requirements to collect or make | <ul style="list-style-type: none"> Taking into account the lack of transparency | <ul style="list-style-type: none"> In general terms, Aruba intends to |

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| beneficial owners | | <p>available information on beneficial ownership and ultimate control of legal persons;</p> <p>The system in place does not provide access to adequate, accurate and current information on beneficial ownership and ultimate control in a timely manner;</p> <p>The measures to ensure transparency as to the shareholders of companies that have issued bearer shares are inadequate.</p> | <p>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;</p> <ul style="list-style-type: none"> • As regards N.V companies, basic measures such as maintaining an up to date register of shareholders, are urgently required and bearer shares should be abolished; • The system for corporate vehicle should be carefully reviewed, while the enforcement and sanctions system for failure to file an annual return or to otherwise not comply with the law should be considerably enhanced; • Aruba should also work to create a computerised and modern registration system for all legal persons, which provides appropriate transparency; • There should be easier gateways for competent authorities to access in a timely fashion to adequate, accurate and current information on beneficial ownership and control records. | <p>completely revise the current framework for legal person through the introduction of a comprehensive set of rules in the Civil Code which will apply to all legal persons. This general revision is also expected to cover the deficiencies identified in the MER regarding bearer shares, shareholders registration and information regarding the ultimate beneficiary owner. Due to the large amount of work involved this revision process is expected to take some time. With this in mind, the Government is considering the feasibility of introducing intermediate modifications per January 1st 2011 of the Code of Commerce in anticipation of the general revision. These modifications would concern the abolition of bearer shares, the introduction of shareholders registration and the registration of the ultimate beneficiary owners.</p> <ul style="list-style-type: none"> • In tandem with the revision of the legal persons legislation, the company registration system will also have to be revised thoroughly. The legislative process required for this will run parallel to that of the revision of the legal persons • As for the AVV the Government has considered the abolition of this international financial services vehicle. Based on consultations with the industry and having heard the opinion of the parliament the Government has decided that the AVV should be kept, albeit with significant changes in order to bring it in line with the international standards. |
| 34. Legal arrangements – beneficial owners | NA | Trusts are not recognised under Aruban law. There are no other legal arrangements similar to trusts that exist in Aruba. | | |
| International Cooperation | | | | |
| 35. Conventions | PC | Lack of implementation of the Terrorist Financing | | As will be demonstrated below, Aruba has in the |

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| | | <p>Convention in relation to terrorist financing.</p> <p>No implementation of UNSCR 1267 and 1373.</p> <p>Several failings regarding implementation of the Vienna and Palermo Conventions.</p> | | <p>meantime implemented the Terrorist Financing Convention in relation to terrorist financing by introducing a separate and independent TF offence in its Penal Code (see SR II). Aruba has also started the legislative process for the introduction of a state decree for the implementation of UNSCR 1267 and 1373 (see SR III). The failings regarding implementation of the Vienna and Palermo Conventions will be addressed in the new Penal Code discussed above.</p> |

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| 36. Mutual legal assistance (MLA) | PC | <p>Aruba is party to only 5 bilateral MLA agreements, only one with a country in the region. This limits Aruba's capacity to effectively and efficiently provide the widest range of MLA.</p> <p>As dual criminality is required for mutual legal assistance, the lack of a TF offence impacts on the extent and effectiveness of mutual legal assistance provided by Aruba in TF matters.</p> <p>The limitations regarding the predicate offences for money laundering also limit the ability to assist in relation to ML based on such predicates.</p> <p>The requirement that non-treaty based requests must be "reasonable" (undefined), combined with a discretion, which is unclear, as to when such requests will be actioned, is an unreasonable and disproportionate condition on providing MLA.</p> <p>The deficiencies that exist in relation to assistance for seizure and confiscation of illegal proceeds (see R.38) also impact on R.36.</p> <p>The lack of data on the MLA requests means that it is has not been demonstrated that Aruba can handle MLA requests in a timely and effective manner.</p> | <ul style="list-style-type: none"> • Aruba (as part of the Kingdom of the Netherlands) should work to expand the range of mutual legal assistance agreement it has, particularly with other countries in the region, but also with countries which it has more regularly had to cooperate in the past. A more extensive network of agreement will allow it to more effectively provide a broader range of cooperation. Broader MLA cooperation will also be possible when the deficiencies regarding the predicate offences for ML and the lack of a separate and independent TF offence are rectified; • As regards international cooperation and MLA in general, Aruba should give serious consideration to enacting a comprehensive and up-to-date State Ordinance dealing with MLA; • 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; | <ul style="list-style-type: none"> • Within the Public Prosecutor's Office a person has been assigned to review the matter and come up with recommendations on the expansion of the amount and range of MLAs.; • The other MLA-related issued will have to be addressed with the revision of the Code Criminal Procedures of Aruba. |
| 37. Dual criminality | C | Criteria are fully met. | | |
| 38. MLA on confiscation and freezing | PC | <p>As dual criminality is required for mutual legal assistance, the lack of a TF offence impacts on the extent and effectiveness of mutual legal assistance provided by Aruba in TF matters.</p> <p>The limitations regarding the predicate offences for money laundering also limit the ability to assist in relation to ML based on such predicates.</p> <p>The seizure assistance that can be provided does not extend to all proceeds, nor to instrumentalities or intended instrumentalities, nor is it clear that it applies</p> | <ul style="list-style-type: none"> • Aruba should take actions to rectify its inability to take action against property held in the name of third parties; • Aruba should rectify its deficiencies regarding seizure assistance; and it should also consider what arrangements it should have regarding coordinated action in seizure and confiscation cases. | The recommended actions mentioned here will be addressed in the evaluation and revision of the Code for Criminal Procedures which will be conducted in cooperation with the Netherlands Antilles. |

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| | | <p>in relation to property of corresponding value.</p> <p>There is a lack of clarity in the provisions that provide the Aruban authorities or judiciary with the ability to register, recognise or enforce a foreign confiscation order.</p> <p>Assistance cannot be provided concerning property held in the name of third parties.</p> <p>Aruba should consider arrangements for co-ordinating seizure and confiscation actions with other countries.</p> | | |

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| 39. Extradition | LC | <p>Aruba is party to only 4 bilateral extradition agreements, only one with a country in the region. This limits Aruba's capacity to effectively and efficiently provide extradition to likely partner jurisdictions.</p> <p>The limitations regarding the predicate offences for money laundering also limit the ability to extradite in relation to ML based on such predicates.</p> | <ul style="list-style-type: none"> • Aruba should work to broaden the range of agreements that it has in place for extradition; • By rectifying predicate offences for ML, Aruba should have a greater capacity to assist foreign countries so that Aruba could extradite individuals for the full range of ML offences; | <ul style="list-style-type: none"> • No action has yet planned for broadening of the extradition agreements; • The new Penal Code (scheduled for July 1st 2010) will expand the range of predicate offences enabling Aruba to extradite individuals for the full range of ML offences; |
| 40. Other forms of co-operation | PC | <p><u>Law enforcement authorities:</u></p> <p>There are no statistics available to suggest that exchange of information with foreign law enforcement authorities is effective.</p> <p><u>CBA:</u></p> <p>the capacities of the CBA to co-operate and exchange information with foreign counterparts are limited by:</p> <ul style="list-style-type: none"> • the scope issue; • the fact that the CBA only supervises the compliance with the CDD requirements; • the deficiencies identified in relation to the preventive measures; • the broadly defined safeguards and controls; <p>Regarding the banking and insurance sectors, the CBA can only exchange information that is already in its possession, but it cannot conduct inquiries on behalf of foreign counterparts.</p> <p>Regarding the TCSPs, since they are not subject to AML/CFT requirements, the CBA cannot exchange information related to ML, TF or predicate offences.</p> <p><u>The MOT as a supervisory body:</u></p> <p>The MOT as a supervisory body, cannot co-operate and exchange information with its foreign counterparts.</p> <p><u>The MOT as a FIU:</u></p> | <ul style="list-style-type: none"> • The powers of the CBA and the MOT to exchange information with foreign counterparts are limited by a number of factors such as the scope issue, the deficiencies identified regarding the preventive measures, the architecture of the 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; | <p>The recommended actions mentioned here will be implemented in the new state ordinance that will replace the SOIPS and the SORUT, of which the drafting has already begun. The scheduled enactment date is January 1st 2011.</p> |

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| | | <p>The capacities of the MOT to exchange information are limited by the fact that Aruba has signed MOUs with a limited set of jurisdictions.</p> <p>The MOT can only provide information that is already in its possession but it cannot conduct inquiries on behalf of foreign counterparts.</p> <p>The MOT cannot search other databases to which it have direct or indirect access to answer to the request of a foreign FIU.</p> <p><u>Effectiveness:</u></p> <p>There are no statistics to suggest that cooperation between supervisors and their counterparts in AML matters is effective and is provided in line with the FATF standards.</p> | <ul style="list-style-type: none"> • Aruba should ensure that clear and effective gateways, mechanisms or channels in order to facilitate and allow for prompt and constructive exchanges of information directly between counterparts. | |

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| 9 Special Recommendations | | | | |
| SR.I Implement UN instruments | NC | <p>Lack of implementation of the Terrorist Financing Convention in relation to terrorist financing.</p> <p>No implementation of UNSCR 1267 and 1373.</p> | <ul style="list-style-type: none"> Aruba must urgently take action to rectify the shortcomings in the TF offences and the freezing of terrorist assets. A comprehensive package of measures to implement the requirements of the Terrorist Financing Convention, S/RES/1267(1999) and S/RES/1373(2001) should be enacted expeditiously and comprehensively and effectively implemented immediately thereafter; Action must be taken also to rectify the deficiencies noted with respect to ML offence. | <ul style="list-style-type: none"> Aruba has in the meantime implemented the Terrorist Financing Convention in relation to terrorist financing by introducing a separate and independent TF offence in its Penal Code (see SR II). Aruba has also started the legislative process for the introduction of a state decree for the implementation of UNSCR 1267 and 1373 (see SRIII); The new Penal Code (scheduled for July 1st 2010) will expand the range of predicate offences for the full range of ML offences; |
| SR.II Criminalize terrorist financing | NC | <p>No separate and independent offence of terrorist financing as required by SR.II, and reliance solely on ancillary offences to existing criminal offences committed with a “terrorist intent” as defined.</p> <p>Existing offences inadequate due to insufficient coverage of the types of property(funds) to be provided, non-coverage of financing individual terrorists, the set of “terrorist felonies” to be covered is too narrow, and there is a need in some cases to prove that specific terrorist act actually took place.</p> <p>It is not clear that all ancillary offences would be applicable given that certain combinations of ancillary offence are not possible. Additionally, neither conspiracy nor association would be available.</p> <p>Terrorist financing is not an offence and thus is not adequately a predicate offence for money laundering.</p> <p>It is not clear that in all cases persons in Aruba financing foreign terrorist groups will be committing an offence.</p> <p>The penalties for having engaged in terrorist financing activity are not clearly effective, proportionate and</p> | <ul style="list-style-type: none"> Aruba is urged to take urgent action to create a separate and independent offence of terrorist financing to meet its international obligations. | <p>By State Ordinance of February 19th 2010 Aruba modified its Penal Code by introducing a new article 140a which criminalizes TF as a separate and independent offence. Its text reads as follows:</p> <p align="center">Article 140a</p> <p align="center">1. Any person that willfully:</p> <p>a. directly or indirectly collects funds for himself or for another for the commission of a terrorist offense or for the support of persons or organizations that commit or intend to commit terrorist offenses, or an offense to prepare or facilitate a terrorist offense or to support persons or organizations that commit or intend to commit terrorist offenses,</p> <p>b. directly or indirectly collects funds for himself or for another, in the knowledge that these funds are to be used, in full or in part, for the commission of a terrorist offense or for the support of persons or organizations that commit or intend to commit terrorist offenses, or an offense to prepare or facilitate a terrorist offense or to support persons or organizations that commit or intend to commit terrorist offenses,</p> <p>c. directly or indirectly provides or makes available funds to another for the commission of a</p> |

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| | | dissuasive. | | <p>terrorist offense or for the support of persons or organizations that commit or intend to commit terrorist offenses, or an offense to prepare or facilitate a terrorist offense or to support persons or organizations that commit or intend to commit terrorist offenses,</p> <p>d. directly or indirectly provides or makes available funds to another, in the knowledge that these funds are to be used, in full or in part, for the commission of a terrorist offense or for the support of persons or organizations that commit or intend to commit terrorist offenses, or an offense to prepare or facilitate a terrorist offense or to support persons or organizations that commit or intend to commit terrorist offenses,</p> <p>shall be liable to a prison sentence not exceeding eight years or a fine not exceeding one hundred thousand florins for being guilty of terrorist financing.</p> <p>2. For the purposes of the first paragraph, another shall be taken to mean natural persons, legal entities, groups of natural persons or legal entities, and organizations; funds shall be taken to mean money, as well as all objects and all property rights, however acquired, and the documents and data carriers, in any form or capacity, evidencing title to, or interest in the money, the objects, or property rights, including, but not limited to, bank credits, travelers' checks, bank checks, money orders, shares, securities, bonds, drafts, and letters of credit.</p> <p>This new article entered into force on March 6th 2010.</p> |

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

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| | | | <ul style="list-style-type: none"> Aruba should also provide lists of designated persons and entities and guidance to financial institutions and DNFBPs. | <p>The other list is a list of persons and entities drawn up by the Minister charged with judicial matters (to be named the Minister hereinafter) not being those that are already designated by virtue of the UN resolution 1267 (1999) and the resolutions building on it, of which either in this country, or outside this country, it was established that they are engaged in terrorist activities or financing of terrorism. This list is based on the UN resolution 1373 (2001) and will consist of:</p> <ol style="list-style-type: none"> natural persons that are involved in the commission of one or more terrorist offenses or in offenses for the preparation or facilitation of one or more terrorist offense; legal entities and other entities that directly or indirectly belong to, or are controlled by persons as meant under letter a; natural persons, legal entities and other entities that act on behalf or on instructions of the persons, legal entities and other entities meant under the letters a and b. <p>For the sake of clarity it is observed as regards letter a that this also relates to natural persons who endeavored to commit one or more terrorist offenses or offenses for the preparation or facilitation of one or more terrorist offenses.</p> <p>The lists will be managed by the CBA who will take it upon itself to publish the freezing lists as well as all changes to these lists. Because of their expected substantial magnitude, and the meanwhile widespread use of internet by the Service Providers, they will be placed on the CBA's website.</p> <p>The new draft also contains provisions with respect to:</p> <ul style="list-style-type: none"> for evaluating de-listing requests; for releasing funds or other assets of persons or entities erroneously subject to the freezing; for authorising access to frozen resources pursuant to S/RES/1452(2002); for implementing a screening procedure and designated authority responsible for evaluating the foreign lists based request. |

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| | | | | Currently the new draft is at the Directorate of Legislation and Legal Affairs for final review before it is sent to the Advisory Council for advice. Its enactment is scheduled for April 15 th 2010. |
| SR.IV Suspicious transaction reporting | PC | <p>The scope of SORUT is unclear, but the whole range of financial activities is not covered.</p> <p>The scope of the SORUT and the SOIPS are not harmonised, which would in some cases undermine the quality of the information reported.</p> <p>The scope of the reporting obligation does not cover the financing of individual terrorist.</p> <p>Lack of effectiveness: only one transaction related to TF has been reported to the MOT.</p> | <ul style="list-style-type: none"> • Aruba is strongly demanded to criminalise TF and to extend the scope of the TF reporting system in accordance with the FATF Recommendations, particularly in relation to the financing of individual terrorists; • | The issues mentioned here will be addressed in the new single state ordinance that will replace the SOIPS and the SORUT. Meanwhile two TF-related UTRs have been investigated and disseminated to the law enforcement authorities. Furthermore, because of the new TF provision (article 140a) in the Penal Code, the financing of individual terrorists is now also covered by the reporting obligation. |
| SR.V International cooperation | NC | <p>Terrorist financing is not an offence, and as dual criminality is a requirement for MLA, this means that assistance cannot be provided.</p> <p>The other limitations that are set out in Recommendations 36-38 apply equally to terrorist financing activity.</p> <p>As dual criminality is required for extradition, the lack of a TF offence means that, in effect terrorist financing is not an extraditable offence.</p> <p><u>Law enforcement authorities:</u></p> <p>It is unclear if the law enforcement authorities can cooperate with their foreign counterparts since TF is not an offence.</p> <p>No statistics available to suggest that exchange of information with foreign law enforcement authorities is effective.</p> <p><u>CBA:</u></p> <p>The capacities of the CBA to co-operate and exchange information with foreign counterparts are limited by:</p> | <ul style="list-style-type: none"> • Aruba should urgently introduce a separate and independent TF offence, so that it can provide full extradition assistance of such a request was to be made. | <ul style="list-style-type: none"> • By State Ordinance of February 19th 2010 Aruba modified its Penal Code by introducing a new article 140a which criminalizes TF as a separate and independent offence. This has expanded Aruba's possibilities to provide MLA, to consider extradition requests and for law enforcement authorities to cooperate with foreign counterparts in case of TF. • The other issues mentioned here will be dealt with in the state ordinance which will replace the SOIPS and SORUT and in the revision of the various state ordinances for the supervision of the financial institutions. |

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

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| SR.VI AML requirements for money and value transfer services | NC | <p>The deficiencies regarding the fit and proper test described in section 3.10 of this report also apply: there are no measures in place to prevent criminals and their associates to be beneficial owner of a money transfer company and the CBA does not undertake an independent check on the information provided by the registration applicants.</p> <p>The requirements and their implementation for Recommendations 5, 6, 7, 8, 9, 10, 13, 15, and 22 in the MTCs sector suffers from the same deficiencies than those that apply to other financial institutions and which are described in section 3 of this report.</p> <p>The range of sanctions available is not sufficiently effective and proportionate and does not apply to MTC's directors and senior management.</p> <p>The assessment team had serious concern regarding the existence of remaining informal remitters.</p> | <ul style="list-style-type: none"> Aruba should upgrade the AML/CFT guidelines applicable to MTCs in content and nature to meet the FATF standard. The definition of money transfer services should be further detailed; Aruba should review the sanction regime and implement a comprehensive, proportionate and effective regime, which is sufficiently enforced by the CBA. | <ul style="list-style-type: none"> In general, the SOSMTC will be revised to bring it up to FATF standards. The scheduled enactment date is January 1st 2011. The AML/CFT guidelines applicable to MTCs are already been revised by the CBA with the assistance of an external consultant. The revised AML/CFT guidelines are expected to be in force by September 15th 2010. The SOSMTC's sanctions system will be revised along with those of the other supervisory state ordinances by January 1st in order to make the sanctions sufficiently effective and proportionate and to let them apply to directors and senior management |
| SR.VII Wire transfer rules | NC | <p>There is no explicit requirement to obtain and maintain address and account number or unique reference number of the customer.</p> <p>There are no requirements to accompany the wire transfer with full originator information;</p> <p>There are no requirements to include in the message or payment form accompanying domestic wire transfers information on the originator;</p> <p>There are no requirements for each intermediary or beneficiary financial institution in the payment chain to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer;</p> <ul style="list-style-type: none"> There are no requirements for financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information; <p>The identified shortages regarding sanctions under Recommendation 17 equally apply in the context of the</p> | <ul style="list-style-type: none"> Aruba should fully implement SR.VII, in particular in order to ensure that full originator information accompanies wire transfers and that financial institutions adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. | <p>The AML/CFT guidelines applicable to MTCs are already been revised by the CBA with the assistance of an external consultant. The revision will include requirements on full originator information and effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. The revised AML/CFT guidelines are expected to be in force by September 15th 2010.</p> |

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| | | obligations pertaining to wire transfers. | | |

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

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

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| | | <ul style="list-style-type: none"> • Insufficient number of dedicated AML/CFT staff at the borders. <p>Customs checks are made on an arbitrarily basis, which undermines their effectiveness.</p> | <p>to avoid prosecution.</p> <ul style="list-style-type: none"> • Aruba should also increase the resources of the Customs Services with staff adequately trained. | |