



# Anti-money laundering and counter-terrorist financing measures

# Aruba

## Mutual Evaluation Report

July 2022





The Caribbean Financial Action Task Force (CFATF) is an inter-governmental body consisting of twenty-four member states and territories of the Caribbean Basin, Central and South America which have agreed to implement common countermeasures to address money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. For more information about the CFATF, please visit the website: [www.cfatf.org](http://www.cfatf.org)

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## *Executive Summary*

1. This report summarises the AML/CFT measures in place in Aruba as at the date of the on-site visit from August 30<sup>th</sup> to September 10<sup>th</sup>, 2021. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Aruba's AML/CFT systems and provides recommendations for the strengthening of the systems.

### **Key Findings**

- a) Most competent authorities and private sector officials have demonstrated a good understanding of the ML/TF risks that are affecting the jurisdiction. The knowledge and understanding of the ML/TF risks are based on several factors, including the conduct of three ML/TF/PF National Risk Assessments (NRAs) and sectoral risk assessments. The 2021 ML/TF/PF NRAs which commenced in 2018 were robust, involved the participation of public and private sector officials and the findings were reasonable and comprehensive, despite challenges, such as lack of statistics. Summaries of findings of the 2012 and 2021 ML/TF/PF NRAs were published and are publicly available. The 2021 NRAs did not take into consideration the ML/TF risks associated with virtual asset service providers (VASPs) and virtual assets (VAs), as those assessments preceded the revisions to Aruba's September 8 2021, AML State Ordinance, which served to include VASPs. Additionally, the 2021 NRAs did not consider the ML/TF risks to all the different types of legal persons in Aruba.
- b) A national AML/CFT/CPF strategy document, designed to address and mitigate the ML/TF/PF risks identified in the 2021 NRAs, has been drafted and is awaiting approval. Despite the absence of a national AML/CFT/CPF policy, competent authorities, such as the Public Prosecutor's Office (PPO), Central Bank of Aruba (CBA), Financial Intelligence Unit (FIU) and the Aruba Police Force (In Dutch: "*Korps Politie Aruba*" KPA) have policies and procedures at the departmental level to address and mitigate ML/TF risks, including the higher-level threats and vulnerable areas which were identified in the NRAs. The objectives and activities of competent authorities are largely aligned with the ML/TF risks identified in the NRAs, however, resource constraints, in some instances, have an impact on some competent authorities' ability to execute those policies and objectives in a more effective manner.
- c) Competent authorities have demonstrated that they are providing international cooperation (via mutual legal assistance (MLA) and extradition as well as through other forms) in a timely manner. Most competent authorities are seeking international cooperation in line with ML/TF risks to conduct their functions, which was demonstrated by case examples and statistics, in some instances. There is nevertheless a minor gap in the determination of the extent to which some law enforcement agencies (LEAs) are seeking informal international cooperation since adequate statistics are not maintained. Whilst the procedure for handling MLA requests is well known by the authorities, the procedure is not documented. Further, though a case management system exists with regard to MLA requests, it can be enhanced to allow for more robust feedback and follow up.
- d) The CBA is the sole AML/CFT supervisory authority for FIs and DNFBPs. In September 2021, the CBA was granted supervisory authority for VASPs. The technical requirements for supervision are strong and the CBA has demonstrated a strong understanding of its supervisory functions and has implemented a risk-based approach to supervision. All FIs are subjected to strong licensing requirements, including fit and proper checks, to ensure that criminals and their associates do not

hold or have a controlling interest in those entities. Whilst most entities operating in the DNFBPs sector are subject to robust fit and proper requirements, the same does not apply to the real estate and jewellers' sectors as these are only subject to basic requirements.

- e) The CBA has adequate resources and a cadre of well-trained staff to conduct its functions. The CBA has adopted and implemented a risk-based approach to supervision across the various sectors, which is guided by a methodology and manual for examination. The supervisory actions (such as training and outreach) of the CBA, supported by the FIU, have resulted in higher levels of compliance by supervised entities and a clear understanding of AML/CFT obligations and ML/TF risks. Further the supervisory actions taken by the CBA, including the application of effective, proportionate and dissuasive sanctions, have resulted in remedial actions taken by supervised entities. VASPs are not subject to risk-based supervision due to the recent amendments to the legislation.
- f) The preventive measures including internal policies and controls that are in place for FIs and DNFBPs are robust, with some minor shortcomings. The implementation of these measures by FIs is strong, with the exception of some credit unions which are classified as low risk. The level of implementation of the preventive measures among DNFBPs varies. Nevertheless, through the supervisory efforts of the CBA supported by the FIU, DNFBPs, including the real estate sector and others that are considered as vulnerable for ML/TF, have made remarkable and consistent improvement in implementation of preventive measures. FIs and DNFBPs are aware of their reporting obligations and have demonstrated (with the exception of credit unions which are deemed low risk) that they are reporting of Unusual Transaction Reports (UTRs).
- g) Aruba has mechanisms to identify and describe the different types, forms and basic features of legal persons and arrangements. There is some level of awareness of the vulnerabilities associated with all legal persons and legal arrangements and the extent to which they can or are being misused for ML/TF. The awareness is based on competent authorities' (such as the FIU, PPO and LEAs) expertise and working knowledge but not any detailed risk assessment. Basic information on legal persons is publicly accessible in Aruba. BO information is held by FIs and DNFBPs including notaries who play an important role in company formation. The information is required to be accurate and up-to-date. The Chamber of Commerce (CoC), the competent authority responsible for oversight of legal persons, and legal persons themselves are only mandated to keep shareholders' information which does not equate to BO information in all instances, as a result of the deficiency in the law. The information that is held by the FIs, DNFBPs, the CoC and legal persons is easily accessible to law enforcement and other competent authorities.
- h) The FIU is the main repository of financial intelligence and is well-respected by competent authorities as a result of the quality of work undertaken, including analysis. Financial intelligence and relevant information are accessed and used by competent authorities to a large extent for a variety of reasons, including conducting ML/TF investigations, identification of new targets, asset recovery, identification of ML/TF risks, international cooperation, and supervision. The access to and use of financial intelligence and relevant information was demonstrated via numerous case examples (including ML and confiscation) and their successful outcomes. The maintenance of statistics by LEAs pertaining to the accessing of financial intelligence and relevant information nevertheless posed a challenge. Strong domestic cooperation and coordination related to the exchange of financial intelligence and relevant information is a hallmark of Aruba's regime and has resulted in the FIU's operational analysis supporting the operational needs of competent authorities to a large extent.
- i) The PPO is the competent authority that is responsible for the prosecution of ML cases and has supervisory responsibility for the investigations of ML and other associated offences which is

generally conducted by the KPA. This allows the PPO to be involved in the investigations of ML cases from the onset of an investigation and offer advice and guidance to the investigators. ML activities are identified via various means, including parallel financial investigations. The various types of ML activities, including complex ML cases, are investigated and prosecuted to a moderate extent and in most instances are consistent with the ML risk identified in the NRA. ML investigations, prosecutions and convictions declined from 2015 due to inadequate human resources and dedication/re-allocation of resources to investigate more complex ML cases which generally take more time and resources to investigate. Despite sanctions being proportionate and dissuasive in law, the application of sanctions by an independent judiciary in most instances is not proportionate and dissuasive.

- j) There are mechanisms in place to identify potential TF cases, including via analysis and disseminations by the FIU. The recent establishment and operation of the National Central Bureau Counterterrorism, Safety and Interpol (NCTVI) is a demonstration of the authorities' commitment to address TF and terrorism. Aruba has not recorded any prosecutions for TF, as no evidence of such was obtained based on investigations conducted. The jurisdiction has nevertheless adopted other criminal justice measures, such as regulatory and international cooperation mechanisms, to disrupt potential activities. LEAs and prosecutors have not been subjected to consistent training related to TF investigations and prosecutions.
- k) Financial investigations, with the intent of identifying, tracing, and confiscating proceeds of crime and property of corresponding value, are an integral part of the policy objective of the PPO and LEAs. The commitment and seriousness towards the recovery of criminal proceeds are reflected in the work of the LEAs, FIU and PPO, the policies implemented and institutions, specifically the Asset Recovery Team (ART), that were established. Competent authorities have seized a wide range of assets including gold, cash, real estate and motor vehicles that are the proceeds of domestic and foreign predicate offences or are corresponding property of equivalent value. Confiscation results in most instances are reflective of some of the ML risks in the jurisdiction, for example, significant amounts of assets confiscated are in relation to drug trafficking. Resource constraints as well as a lack of consistent training and maintenance of statistics in a proper manner are minor weaknesses in the confiscation and provisional measures regime.
- l) The implementation of a targeted financial sanctions (TFS)-TF framework is done via the National Sanctions Committee and the Kingdom of the Netherlands. TFS-TF is implemented to a large extent, as the designations are published through direct access on the CBA website and the reporting entities have access to the designations and are aware of their obligations. The implementation without delay is not optimally achieved regarding TFS-PF, as some weaknesses exist in the legislation. Furthermore, reporting entities have expressed the need for further guidance, despite the documented guidance issued by the CBA. There was no mechanism in place to give guidance to other persons and entities relative to TFS-PF implementation.
- m) The technical deficiencies that exist in the law governing non-profit organisations (NPOs), which is the structural underpinning of an effective system have a cascading impact on the extent to which effectiveness is being achieved. Despite the various weaknesses that exist in the law, the NPOs interviewed have demonstrated the need to ensure that there is transparency and accountability. These NPOs are also conducting transactions via the financial system and are required to comply with the obligations of those FIs. The FIU has conducted a TF risk assessment to determine whether NPOs are vulnerable to TF.

## Risks and General Situation

2. Aruba is one of four autonomous countries within the Kingdom of the Netherlands. The others are the Netherlands, Curaçao and Sint Maarten. The 1954 Charter for the Kingdom of the Netherlands is the Constitution for the Kingdom as a whole and lays down the division of competences between the Kingdom of the Netherlands and its four autonomous countries. Each of the autonomous countries has the obligation to promote the realisation of fundamental human rights and freedoms, legal certainty and good governance, as this is primarily its own autonomous responsibility. However, the safeguarding of such rights and freedoms, legal certainty and good governance are deemed ‘Kingdom affairs.’ As a consequence, the Kingdom can respond if an autonomous country fails to fulfil its duty adequately in this field. Whether this is the case is primarily to be assessed by the Council of Ministers of the Kingdom which consists of the Ministers of the Netherlands and three ministers plenipotentiary<sup>1</sup> appointed by Aruba, Curaçao and Sint Maarten. Aruba is approximately 180 square kilometres with a population of approximately 111, 600<sup>2</sup> (2021). The official languages of Aruba are Dutch and Papiamentu. The official currency is the Aruban florin, which is pegged to the United States dollar (US) at US \$1.00 to Aruba Florin (Afl.) 1.79.
3. The Aruban economy is an open, free enterprise system, primarily based on tourism. Three (3) NRAs were conducted, of which two were money laundering (ML) risk assessments (2012 and 2021, with the latter having commenced in 2018) and one was a terrorist financing (TF) and proliferation financing (PF) risk assessment. According to the 2021 ML NRA, the major proceeds generating crimes include drug trafficking, bulk cash smuggling, bribery and corruption, fraud, underground banking, organised crime, human trafficking and migrant smuggling. The sectors that are vulnerable for ML include casinos, banks, real estate, money transfer companies and notaries. The 2021 ML NRA Report reflects that the overall ML risk is medium-high. Aruba has not conducted a risk assessment of VAs and VASPs, however, the authorities have not identified any such activities operating in the jurisdiction.
4. Aruba’s 2021 TF/PF NRA rated the TF risk as medium, however, Aruba has never been the subject of any terrorist activities. The TF risk assessment was based largely on UTRs received and analysed by the FIU, intelligence received from competent authorities, known regional TF typologies, experts’ opinion and open sources of information. Some of these sources of possible TF identified included legitimate activities or clean sources, such as cash-intensive businesses, real estate and salary, construction and donations.

## Overall Level of Compliance and Effectiveness

5. In 2008, Aruba underwent its 3rd round Mutual Evaluation and completed its 8th follow up report in 2014. The AML/CFT/PF regime has been strengthened due to the various legislative amendments and the development of effective institutional policies and procedures. Aruba has implemented an AML/CFT framework that has shown to be effective in some instances. Satisfactory results are being achieved largely as it pertains to the understanding of risk, domestic cooperation and coordination, the access to and use of financial intelligence and relevant information, supervision, implementation of preventive measures by FIs and DNFBPs and international cooperation. Most of Aruba’s competent authorities have a good understanding of the ML/TF risks, with the FIU and other competent authorities utilising financial intelligence and relevant information to identify targets, conduct investigations and

<sup>1</sup> Represent their respective countries of Aruba, Curaçao and Sint Maarten in the Netherlands and Europe: <https://www.government.nl/topics/caribbean-parts-of-the-kingdom/governance-of-aruba-curaçao-and-st-maarten>

<sup>2</sup> <https://www.britannica.com/place/Aruba>

for confiscation purposes. The CBA has adopted a risk-based approach to supervision and has ensured that the FIIs and DNFBPs are implementing the relevant preventive measures to prevent and detect ML/TF/PF. Although a strong framework is largely in existence and outcomes are being achieved, major and fundamental improvements are needed with regard to the implementation of TFS-TF, TFS-PF, NPO supervision, ML investigations and prosecution and the transparency of legal persons and arrangements.

6. Regarding technical compliance, Aruba substantially revised its AML/CFT State Ordinance. Revisions were also made to other legislation and guidelines, including the Criminal Code (CrCA), Code of Criminal Procedure (CCrPA) and the AML/CFT Handbook. In 2021, the AML/CFT Handbook was further revised to cover VASPs as a type of service provider. Despite the positive actions taken by Aruba, technical compliance improvement is needed with regard to TFS-PF, beneficial ownership of legal arrangements, maintenance of comprehensive statistics, requirements specific to NPOs as well as VAs and VASPs and responsibilities and powers of supervisors with regard to DNFBPs.

***Assessment of risk, coordination and policy setting (Chapter 2; IO.1, R.1, 2, 33 & 34)***

7. There is a good understanding of the AML/CFT risks affecting the jurisdiction by most competent authorities and private sector officials. The understanding of risk is based on different mechanisms that took into consideration threats and vulnerabilities affecting Aruba, including three ML/TF/PF NRAs (two ML and one TF/PF), sectoral risk assessments conducted by the CBA, risk assessments conducted by service providers, participation of competent authorities in typology exercises, expertise and institutional knowledge of the different competent authorities. The 2021 NRAs involved participation of public and private sector officials and the findings are considered to be reasonable. The NRAs considered a wide cross-section of threats and vulnerabilities but did not comprehensively consider all types of legal persons that are operating in the jurisdiction. The NRAs also did not consider the ML/TF risks associated with VA and VASPs, however this was considered a minor deficiency, taking into consideration the factor of materiality, i.e., no identified VASPs operating in the jurisdiction at the time of on-site visit. Although there is a good understanding of ML/TF risks by most private sector officials and the publication of the findings of the NRAs, there is still need for greater discussions with the private sector on the findings of the NRAs.
8. Aruba does not have an overarching national AML/CFT policy to address its ML/TF risks. At the conclusion of the on-site visit, the authorities had finalised the national AML/CFT/CPF policy and were awaiting approval of same prior to its implementation. Despite the absence of an overarching national policy, competent authorities such as the FIU, CBA, PPO and the KPA have policies and strategies in place to address ML/TF risks that were identified in the NRAs. The objectives and activities of competent authorities are largely aligned with the ML/TF risks that have been identified in the NRAs, for example, there is a strong focus on confiscation and offences such as corruption by the different competent authorities. Human resource constraints continue to have an impact on the extent to which some of these policies and objectives are achieved by some competent authorities. The inadequacy of resources among some competent authorities is addressed to some extent, as in most instances, resources are combined by the different LEAs - working in conjunction with the FIU, the PPO and the other competent authorities - to ensure that cases are properly investigated and prosecuted, especially for complex ML or associated predicate offences that are considered as high-risk. This is further addressed to some extent through the use of taskforces and the targeting of those offences that are considered major threats for ML and provision of resources and support from the Kingdom of the Netherlands.

9. Domestic cooperation and coordination are major strengths of Aruba's AML/CFT framework. Domestic cooperation and coordination are easily facilitated, given the small size of the island and the close working relationship between the different competent authorities. Cooperation and coordination are easily facilitated at the strategic and operational levels via the AML/CFT Steering Group and other mechanisms, including the use of MOUs and taskforces, such as the Asset Recovery Team (ART). Domestic cooperation and coordination are easily demonstrated by the various case examples provided by the authorities. The same however does not apply to TFS-PF.

***Financial intelligence, ML investigations, prosecutions and confiscation (Chapter 3; IO.6, 7, 8; R.1, 3, 4, 29–32)***

10. Aruba has a fully operational FIU that is conducting its core functions in line with the requirements of R. 29, and which is highly regarded by the other competent authorities who applaud its work. The FIU has access to a wide range of databases in accessing information and utilises technology to complement its human resources in the conduct of its functions. The FIU is the main repository of financial intelligence in Aruba; therefore, LEAs and other competent authorities generally rely on the FIU to provide financial intelligence and relevant information to assist in their functions, despite having their own access to financial information from FIs and DNFbps. Financial intelligence and relevant information are accessed and used for a variety of reasons, including identification of new targets, ML/TF investigations, confiscation and other provisional measures, identification of ML/TF risks, supervision, and international cooperation.
11. The FIU's analysis largely supports the operational needs of competent authorities as the FIU has a close working relationship with the LEAs, CBA and the PPO and is aware of the needs of those competent authorities. Taskforces and forums such as the ART and the Financial Investigations Partners Forum also ensure that the FIU is aware of competent authorities' needs and its analysis is prioritised to support those needs. Cooperation and the sharing of information among competent authorities are relatively easy due to the size of the jurisdiction and the relationship among the different competent authorities. Information is shared in a confidential and secure manner. The use of financial intelligence and relevant information can easily be demonstrated by the numerous case examples provided by the authorities, however, there are some deficiencies that exist within the system that are considered to be minor in nature, for example, the inability of LEAs to keep and maintain statistics in a comprehensive manner relative to the access and use of financial intelligence and relevant information.
12. The PPO is the sole authority responsible for the supervision of ML investigations that are dealt with by the different LEAs and is tasked with the prosecution of ML, associated predicates, and TF offences. Prosecutors are assigned to cases from the onset of an investigation and provide guidance to the investigators. There are measures in place to ensure that ML activities are properly identified, including via intelligence, proactive investigations, financial intelligence reports disseminated by the FIU, parallel financial investigations and the Steering Group that focuses on, *inter alia*, cross-border ML. There are two (2) trained prosecutors for financial crimes, which include ML.
13. Aruba does not have a national AML/CFT policy in place to ensure that ML activities are investigated and prosecuted in line with same, however, policies and procedures exist at the departmental level that incorporate directions with regard to ML investigations. There is a high-level of commitment and focus by competent authorities to investigate and prosecute ML, however, this commitment is not always reflected in the results, due to the lack of resources. In an effort to address the challenge of inadequate resources, for efficient ML investigations, joint investigative teams created with staff from the other LEAs and a multi-disciplinary

approach to ML and parallel financial investigations are adopted, especially in complex ML cases, such as those involving corruption and those offences that are cross-border in nature. LEAs and prosecutors have demonstrated to a moderate extent that they are focusing on ML cases that are linked to those offences that posed a high risk to ML in the jurisdiction. This was evidenced from the numerous case examples that were provided, demonstrating investigations and prosecutions that are connected to the key predicate offences such as corruption, drug trafficking, underground banking etc. The authorities have pursued different types of ML cases, such as third party and standalone ML. In circumstances where it is not possible to prosecute for ML, there are mechanisms available for the PPO to use other criminal justice measures such as prosecution for other offences, including tax crime, and asset forfeiture. Deficiencies that were considered to be moderate in nature, such as lack of data and statistics, had an impact on the effectiveness of the regime. The sanctions that have been applied for ML in some instances are not proportionate and dissuasive.

14. The identification, tracing and confiscation of assets are integral parts of the PPO's and LEAs' policies. Financial investigation generally forms part of an investigation into a predicate offence and is not only conducted to determine whether ML offences were committed but to also identify, trace and confiscate proceeds of crime and properties of corresponding value. The PPO has several documented policies in place that address the identification and confiscation of assets and the seizure of cash. There is a culture regarding the understanding and importance of confiscation among LEAs and the PPO, with some good measures of success including consistency with the ML/TF risk profile of Aruba.
15. The creation of the ART, an inter-agency taskforce comprising several LEAs, the PPO and FIU, is just one of the excellent initiatives by the PPO and other authorities to ensure that assets are traced and recovered. The establishment of this team allows for the sharing of real time information and discussion of cases and targets, thereby allowing for a targeted approach to seize and confiscate assets and maximise the use of the limited resources that exist. The ART allows the different agencies to align their mandates and have common goals. The ART has recorded some excellent success in the recovery of assets, including precious metals (gold), jewellery, real estate, and motor vehicles. The work and success of the team are nevertheless impacted to a limited extent by the lack of dedicated resources (as there are only two permanent staff) and differences in priorities at times by some members of the team and other work commitments by members of the team. This is nevertheless mitigated by efforts of most to work together to recover the proceeds of crime.
16. The PPO and LEAs have all demonstrated the ability to seize and manage a variety of assets including real estate, motor vehicles, precious metals, and cash. Focus is generally given to proceeds from domestic and foreign predicate offences; however, this is not the same for proceeds located abroad. The lack of focus on proceeds located abroad is largely due to inadequate human resources. Nevertheless, this was considered to be a minor deficiency as it is not in line with the risk profile of Aruba for criminals to move assets abroad. The authorities gave an undertaking that where such cases are identified, actions will be taken to recover the asset. The lack of resources and continuous training also impact customs officials' work in the seizure of cash and Bearer Negotiable Instruments (BNIs). Customs authorities nevertheless have demonstrated that despite the challenges, cash and BNIs continue to be seized at the different ports of entry. Confiscation results thus far are largely aligned to some of the risks identified in the NRA and the risk profile of the country. For example, proceeds that have a nexus to drug trafficking, smuggling and corruption have been confiscated.

***Terrorist and proliferation financing (Chapter 4; IO.9, 10, 11; R. 1, 4, 5–8, 30, 31 & 39.)***

17. Based on the findings of the NRA, there is a good understanding of the TF risk. Potential TF cases are identified via several mechanisms including intelligence, proactive investigations and financial intelligence reports disseminated by the FIU. All potential TF cases that were identified in Aruba at the time of the on-site visit were as a result of disseminations by the FIU. Due to insufficient evidence, none of the cases resulted in any prosecution for TF. In some of those cases, the authorities have taken other criminal and regulatory measures, such as prosecution for the predicate offence, educating the unsuspecting persons in circumstances where the investigations revealed that the individual was a victim of a scam or having the financial institution discontinue that aspect of the business relationship. Other measures taken include spontaneous dissemination of the information to the authorities in countries where the monies are destined. The PPO has benefitted from TF-related training; however, this was only to a limited extent. LEAs have not benefitted from training in this regard. Despite the lack of training, the authorities have advised that should assistance be required in such cases, it can be sought from the Kingdom of the Netherlands, which has more expertise.
18. Aruba does not have a national AML/CFT/CPF Strategy as approval was pending. The authorities were also working towards the finalisation of the 2022-2025 counter-terrorism strategy which will incorporate TF investigations. There is commitment to address TF, which was demonstrated through the different policies and procedures that have been implemented by the FIU and the establishment of the NCTVI. The NCTVI is a dedicated agency responsible for the investigation of TF, thereby ensuring that potential TF cases are given adequate time and resources, resulting in more complete investigations. The NCTVI also bridges the gap between the FIU and the PPO, thereby ensuring more dialogue and continuous feedback on potential TF cases between both agencies.
19. By virtue of being a constituent of the Kingdom of the Netherlands and the requirements in the Charter of the Kingdom of the Netherlands, Aruba relies largely on the Netherlands (Ministry of Finance) to make a designation on its behalf to the United Nations (UN) 1267 Committee, as it cannot directly engage the UN. On the domestic level, (1373) designation is done by the Minister of Justice who works in conjunction with the National Sanctions Committee as specified in the Sanction Decree and the Anti-Terrorism Freezing Measures. Aruba has not made any designation or received a request for designation at the time of the assessment. The CBA is responsible for communication of the UN designations and for ensuring that FIs and DNFBPs are aware of their obligations and implementing TFS-TF without delay. Communication is done via e-mail and letters are sent to reporting entities reminding them of their obligations, with the UN designations posted to the CBA website as soon as it is received. FIs and most DNFBPs interviewed indicated that they have commercial databases and are proactively accessing the UN designations in those databases and do not solely rely on the dissemination of the UN designations by the CBA. Most FIs and DNFBPs have a good understanding of their obligations to freeze without delay where terrorist properties are identified and report same to the CBA and the FIU. The CBA, through its supervision mechanisms, ensures that FIs and DNFBPs have the necessary policies and procedures to address TFS-TF and are implementing the requirements.
20. The gaps in technical compliance, which represents the structural underpinning of an effective system, have a cascading impact on the supervision of NPOs that fall within the FATF definition and the implementation of some of the FATF requirements by NPOs. Despite the technical compliance weaknesses, NPOs interviewed by the assessors demonstrated a good understanding of the obligations in the areas of accountability and transparency. Some of the NPOs that operate in the jurisdiction raised funds from donations by nationals, government

subsidy and fundraising conducted in Aruba. The funds obtained by NPOs are used for domestic purposes. The FIU has conducted an assessment of the NPO sector to determine its vulnerability to TF and the findings show that the NPO sector is more vulnerable to be misused for ML than TF.

21. PF is criminalised in Aruba and the authorities have conducted a risk assessment of the activity which was assessed as medium. The deficiencies that exist in the technical compliance for PF have a cascading impact on the implementation of measures related to TFS-PF. Unlike ML/TF, cooperation and coordination is in its developmental stage. The CBA is responsible for the implementation of TFS-PF by FIs and DNFBPs and has issued guidance to them in the form of the AML/CFT Handbook and a Guidance Note on Proliferation. The CBA is responsible for publishing the UN designations, which is not done without delay. Notwithstanding, some FIs and DNFBPs, specifically the larger entities, are aware of their obligations, have software in place where the UN designations are accessed but have communicated the need for greater outreach and guidance on this area. The authorities have not identified or seized assets of any designated persons or entities related to PF.

***Preventive measures (Chapter 5; IO.4; R.9–23)***

22. The preventive measures that exist in Aruba are robust and largely conform with the FATF requirements (with the exception of VAs and VASPs). Preventive measures are applicable to all FIs, DNFBPs and VASPs and are contained in several different pieces of legislation and guidance, including the AML/CFT State Ordinance and the AML/CFT Handbook. There is a relatively strong implementation of the requirements by those sectors that are deemed highly important and are considered as posing a high, medium-high and medium risk for ML. For example, banks, money transfer companies (MTCs), casinos, real estate and notaries. Implementation among FIs, especially the banks and MTCs, with the exception of credit unions, is stronger than those entities operating in the DNFBP sector. Despite the positive implementation across the various sectors, deficiencies that are considered to be moderate in nature exist.
23. Areas that should be enhanced include the need for internal controls (auditors etc) by some entities operating in the real estate sector, given that the sector is considered to be high risk for ML. Further, although credit unions are considered a medium-low risk for ML and were treated as less important, there is a need to ensure that the sector is implementing all of the applicable preventive measures to acceptable standards.
24. All FIs and DNFBPs are aware of their reporting obligations, with training being provided to staff by the different entities, such as the CBA and the FIU. Tipping off provisions generally form part of the training for reporting entities. Most FIs, especially the larger ones such as banks and MTCs and a few of the DNFBPs, utilise technology as part of their UTR process. There was a noticeable increase in the submission of UTRs to the FIU among most of the entities, however, no reports were forthcoming from the credit unions.
25. To assist in the implementation of preventive measures, some DNFBPs have contracted AML/CFT consultancy firms. The CBA and the FIU also provide support in the form of training, guidance, and outreach to ensure that measures are effectively implemented.

***Supervision (Chapter 6; IO.3; R.14, R.26–28, 34, 35)***

26. The CBA is the sole AML/CFT supervisory authority for the supervision of FIs and DNFBPs operating in Aruba. In September 2021, the CBA was authorised to supervise VASPs. This process has not yet commenced as no VASPs were registered to operate in the jurisdiction or

were found to be operating in the jurisdiction during the on-site visit. The supervisory powers are robust and are implemented/applied to a large extent by the CBA.

27. FIs are subject to a strong/robust licensing regime, which includes the requisite fit and proper checks to ensure that criminal and their associates are not holding controlling interests in those institutions. The same cannot be said for all DNFBPs, with the exception of TCSPs, casinos, lawyers, notaries and accountants which are either directly subject to same legal requirements as FIs (TCSPs and casinos as DNFBPs have legal requirements similar to FIs) or have legal requirements for the profession which serves as fit and proper requirements. The existing fit and proper requirements for casinos were strengthened by Aruba in September 2021 just prior to the completion of the on-site visit and some aspects of the new requirements, such as the establishment and implementation of the Gaming Board, were not in place at the conclusion of the on-site visit. Licenses for casinos are granted in specific circumstances (hotels with 500 rooms or more and serves as a control mechanism) and the larger casinos are owned and operated by reputable international brands. Realtors and jewellers are required to obtain a business license to conduct business in Aruba and are required to submit all relevant documents to the Department of Economic Affairs, Commerce and Industry of Aruba, including a certificate of good character obtained from the PPO or from the competent authority in which the applicant resides. The requirement for realtors and jewellers is a low threshold and does not fully capture the requirements for fit and proper that are set out in the FATF Standards.
28. As the supervisory authority, the CBA has a robust understanding of the requirement to apply a risk-based approach. This approach is based on the CBA risk-based methodology and different measures, such as questionnaires and sectoral risk assessments conducted by the CBA. There are nevertheless some moderate shortcomings in the extent to which the risk-based approach is applied across the different sectors.
29. The CBA has demonstrated a strong approach to the application of sanctions when breaches are identified. The sanctions that have been applied range from warning letters to revocation of licences. The sanctions are proportionate, dissuasive and effective.

***Transparency and beneficial ownership (Chapter 7; IO.5; R.24, 25)***

30. Aruba's legal framework recognises over 10 different types of legal persons. The legislative framework nevertheless contains several deficiencies and is not fully compliant with the FATF requirements. Aruba's CoC is the designated authority that is responsible for oversight of legal persons and arrangements and ensuring that they are complying with the requirements that are set out in domestic legislation. Aruba has not conducted a detailed risk assessment to determine the vulnerability and the extent to which legal persons can be or are being misused for ML/TF, however, the NRA did take into consideration some of the ML/TF risks posed by some legal persons such as the Aruba Exempt Companies (AVV). Some competent authorities such as the FIU, PPO and LEAs, based on their functions, are also aware, to some extent, of the ML/TF risks associated with legal persons.
31. Basic information pertaining to the formation of legal persons is publicly available on the [CoC website](#). Aruba allows for the combination of different approaches for the maintenance of BO information. Information held at the CoC and by legal persons is limited to shareholder information and does not include BO in all instances; however, FIs and DNFBPs, including notaries who play a major part in company formation, are required to maintain accurate and up-to-date BO information in accordance with the requirements under the AML/CFT State Ordinance. The information is accessed in a timely manner by LEAs and other competent authorities, with no impediment in the system. The Civil Code of Aruba (CCA), Book 2 places an obligation on the board of the legal person to keep BO information and use independent

sources to verify its accuracy. Further, FIs and DNFBPs are mandated through the AML/CFT State Ordinance to maintain, verify and keep such information updated. Sanctions for breaches by legal persons have not been applied, however this does not mean that breaches have not been committed. The lack of identification of breaches by the CoC is partly due to the lack of resources by that department.

32. Regarding trusts, Aruban law does not make provision for the formation of domestic trusts, however, TCSPs can act as trustees for foreign trusts. Currently (at the of the conclusion of the on-site visit) there are no operational TCSPs who act as trustee for foreign trusts. TCSPs are supervised by the CBA and are required to maintain ultimate beneficial ownership (UBO) information. Further TCSPs are required to ensure that data, documents and information obtained through the CDD process are kept up-to-date and relevant, in particular, if it concerns customers, UBO or business relationships that pose a higher ML/TF risk. The AML/CFT State Ordinance places an obligation on the TCSP, as a service provider, to ensure that the UBO and the settlor of the trust are identified. This information held by the TCSP can be accessed by competent authorities.

***International cooperation (Chapter 8; IO.2; R.36–40)***

33. International cooperation is critical to Aruba's fight against ML/TF and other associated predicate offences, which is recognised by competent authorities in Aruba. Aruba has a sound technical compliance framework to provide and seek MLA, extradition, and other forms of cooperation in relation to ML/TF and the associated predicate offences (see R.36-40). The PPO is the Central Authority for MLA and extradition and has mechanisms to ensure that MLA and extradition requests are prioritised and processed in a timely manner. MLA is prioritised based on the required timelines in the request and the nature of the offence, with there being specific procedures and timeliness identified in the standard operating procedures for extradition, which allow for timely execution. Extradition is prioritised based on the timeliness in the request and the treaty obligations.
34. A basic case management system exists pertaining to the processing of MLA and extradition requests. Despite being basic in nature, given the limited number of requests received and processed by competent authorities, the system is workable and is achieving its objectives. There are no documented procedures in place for the handling of MLAs, however, the procedure is known by the competent authority. Responses from the Global Network were positive pertaining to Aruba's provision of information and the rendering of international cooperation. The authorities have demonstrated their ability to obtain and provide basic and BO information to foreign counterparts. The PPO has sought MLAs from foreign counterparts to support its domestic investigations in alignment with the risks identified in the NRAs.
35. Competent authorities are actively seeking and responding to requests using other forms of cooperation mechanisms that are captured in the analysis of R. 40. Requests for assistance are sought to, *inter alia*, analyse UTRs, investigate ML, associated predicate offences and TF and for confiscation. The lack of data related to the request sought via other forms of cooperation by LEAs continues that competent authority ability to demonstrate a higher level of effectiveness. Competent authorities are also able to seek international cooperation to trace and identify assets located abroad when they conducted such investigations, although no evidence of this was found. Overall, competent authorities are seeking international cooperation in a manner that is consistent with ML/TF risks, with the information provided by the jurisdiction showing that international cooperation is being requested for offences such as drug trafficking, corruption, and ML.

## Priority Actions

- a) Aruba should approve and implement the national AML/CFT/PF Policy. Further, Aruba should ensure that resources are allocated to competent authorities based on the ML/TF risks identified and to ensure that the objectives of competent authorities are achieved to a greater extent, especially those related to the investigations of ML activities. Competent authorities should ensure that further discussions are also held with the private sector on the findings of NRAs, primarily in relation to TF.
- b) Aruba should strengthen technical compliance to ensure that entities operating in the DNFBP sector, especially those that are considered to be in the higher risk bracket that are not subject to robust licensing requirements, including fit and proper checks, are required to do so. Further, Aruba should ensure that there is implementation of the requirements in the law regarding the licensing of casinos, including fit and proper tests and the establishment of the Gaming Authority. Moreover, the deficiencies that exist related to technical compliance and are applicable to VAs and VASPs should be addressed.
- c) Aruba should ensure that consistent training is provided to LEAs and prosecutors, the NCTVI and other applicable competent authorities related to ML/TF investigations and prosecution and confiscation. Further, the authorities should ensure that adequate resources are allocated to LEAs and prosecutors to conduct their functions, including parallel financial investigations, and ensure that ML offences are identified in a manner that is consistent with ML/TF risk. Aruba should provide AML/CFT training to the judiciary on, *inter alia*, matters related to the requirement related to application of sanctions that are proportionate and dissuasive for ML offences.
- d) The CBA is encouraged to sustain its efforts in applying a risk-based approach to supervision. This includes ensuring that the risk-based approach, such as for the conduct of on-site and off-site inspections, is applied to all the different sectors in a manner that is commensurate with identified ML/TF risks.
- e) The CBA is encouraged to sustain its efforts in ensuring that all FIs and DNFBPs are fully implementing the AML/CFT requirements (preventive measures), especially those that are considered most at risk for ML/TF. The FIU and CBA are encouraged to sustain their efforts to ensure that all FIs and DNFBPs continue to be aware of their AML/CFT obligations, including the filing of UTRs. Further, the CBA and the FIU should ensure that credit unions, despite being low risk, are taking measures to identify and file UTRs with the FIU. Low risk does not mean that there is an exemption from filing UTRs.
- f) Competent authorities, especially LEAs and the PPO, should ensure that statistics, including those pertaining to confiscation and international cooperation, are maintained in a proper manner and can be easily accessed and retrieved when required.
- g) The PPO should develop and implement documented procedures for the handling and tracking of MLAs. Additional human resources should be allocated to the PPO to enable it to undertake its AML/CFT functions to a greater extent.
- h) LEAs and prosecutors should make greater use of international cooperation to conduct ML and associated predicate investigations and to trace, identify and confiscate assets that may be located abroad.
- i) Aruba should identify and assess its ML/TF risks emerging from VAs and the operations of VASPs and take measures to prevent and mitigate identified ML/TF risks. The requirements

of Immediate Outcome 1 should be applied, including having national policies in place to address the identified risks and ensure that FIs, DNFBPs and VASPs are aware of the ML/TF risks.

- j) Aruba should assess the ML/TF risks that are associated with all types of legal persons, take measures to mitigate those risks, and address the weaknesses in the legal framework related to BO information that is held by the CoC and legal persons.
- k) Aruba should address the technical deficiencies that exist related to the NPO sector, Greater awareness should be undertaken with the NPO sector, including making them aware of the vulnerability to TF.
- l) Aruba should address the TFS-PF technical deficiencies that exist as they have a cascading impact on the effectiveness of the regime. Greater awareness and outreach sessions should be held with FIs and DNFBPs related to their obligations to implement TFS-PF. Further, the authorities should strengthen the domestic TFS-PF cooperation and coordination regime.

## Effectiveness & Technical Compliance Ratings

**Table 1. Effectiveness Ratings**

IO.1	IO.2	IO.3	IO.4	IO.5	IO.6	IO.7	IO.8	IO.9	IO.10	IO.11
SE	SE	SE	SE	ME	SE	ME	SE	ME	ME	LE

Note: Effectiveness ratings can be either a High- HE, Substantial- SE, Moderate- ME, or Low – LE, level of effectiveness.

**Table 2. Technical Compliance Ratings**

R.1	R.2	R.3	R.4	R.5	R.6	R.7	R.8	R.9	R.10
LC	LC	LC	C	C	LC	PC	PC	C	LC
R.11	R.12	R.13	R.14	R.15	R.16	R.17	R.18	R.19	R.20
C	C	C	C	PC	C	C	C	LC	C
R.21	R.22	R.23	R.24	R.25	R.26	R.27	R.28	R.29	R.30
C	LC	LC	PC	PC	C	C	PC	C	C
R.31	R.32	R.33	R.34	R.35	R.36	R.37	R.38	R.39	R.40
C	LC	PC	C	LC	LC	LC	LC	LC	LC

Note: Technical compliance ratings can be either a C – compliant, LC – largely compliant, PC – partially compliant or NC – non compliant.

## *MUTUAL EVALUATION REPORT*

### **Preface**

This report summarises the AML/CFT measures in place as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations and was prepared using the 2013 Methodology. The evaluation was based on information provided by the assessed country, and information obtained by the evaluation team during its on-site visit to the country from August 30-September 10, 2021.

The evaluation was conducted by an assessment team consisting of:

- Ms. Kozel Creese, Saint Lucia - Attorney General's Chambers (Legal Expert)
- Mrs. Dana L. Munnings-Gray, The Bahamas - The Securities Commission of the Bahamas (Financial Expert)
- Mrs. Amy Callwood-McIntosh, The Virgin Islands - Financial Intelligence Agency (Financial Expert) and
- Mr. Floyd J. Theodore, Dominica - Financial Intelligence Unit (Law Enforcement Expert).

With the support of:

- Mr. Pedro Harry, Law Enforcement Advisor, CFATF Secretariat (Mission Leader) and
- Ms. Camille Renie, Legal Advisor, CFATF Secretariat (Co-Mission Leader).

The report was reviewed by Ms. Casandra Seetahal (Trinidad and Tobago), Ms. Helen Spiegel (Cayman Islands), Mr. Michail Alexopoulos (Greece), Ms. Sumera Baloch (Pakistan) and the FATF Secretariat.

Aruba previously underwent a FATF Mutual Evaluation in 2009, conducted according to the 2004 FATF Methodology. The 3<sup>rd</sup> Round Mutual Evaluation Report concluded that the country was compliant with 2 Recommendations; largely compliant with 7; partially compliant with 13; and non-compliant with 25. 2 Recommendations were not applicable. Aruba was placed in expedited follow-up. In February 2010, considering that the action plan presented by Aruba was inadequate, the Plenary moved the country to enhanced follow-up. Aruba was removed from the follow-up process in February 2014. [The 2009 MER](#) and [2014 follow-up report](#) have been published and are available on the FATF's website.

## Chapter 1. ML/TF RISKS AND CONTEXT

### 1.1. ML/TF Risks and Scoping of Higher Risk Issues

36. Aruba, the capital of which is Oranjestad, is one of the islands of the Lesser Antilles located in the Southern Caribbean Sea and lies north of the coast of the Bolivarian Republic of Venezuela and northwest of Curaçao. The island is approximately 20 miles (32 km) long, 6 miles (10 km) wide and has an area of about 75 square miles (193 square km). The population is estimated at 111,600<sup>3</sup> and citizens of Aruba are Dutch nationals who enjoy the benefits of European citizenship. Dutch and Papiamentu are the official languages, with English and Spanish also being spoken. The local currency is the Aruban florin, which is pegged to the United States dollar.
37. Aruba is one of four (4) autonomous partner countries of the Kingdom of the Netherlands, with the others being the Netherlands, Curaçao and Sint Maarten. The Charter for the Kingdom of the Netherlands (Kingdom) is deemed the Constitution for the Kingdom as a whole and identifies the internal competences of each of the four (4) countries and those areas (Kingdom Affairs) which require shared responsibilities. Aruba has its own Constitution and government, which is led by a Prime Minister, and has a Governor, who is the representative of the head of state of the Kingdom. Aruba also has a Parliament which consists of 21 members elected for a four-year term by proportional representation. Each member holds his seat until the dissolution of Parliament, which typically takes place every four (4) years by a general election.
38. “Kingdom Affairs” include foreign relations, defence and citizenship and in furtherance of the need to collaborate in these areas, a Council of Ministers for the Kingdom was established, and it comprises the Netherlands’ government ministers and one minister each for Aruba, Curaçao and Sint Maarten. The Kingdom represents the interests of its autonomous countries in international organisations and can assign these countries a status of their own within such organisations. The conclusion, ratification and accession to international legal agreements fall under the purview of the Kingdom and in many instances, the application of key international conventions has been extended to Aruba, except for the United Nations Convention Against Corruption. The Treaties of the European Union were signed by the Kingdom, with Aruba being identified as an associated territory of the European Union, which allows it to benefit from *inter alia*, funding, partnership and free movement within the European Union. Aruba can head its own delegation at international meetings and is empowered to execute Memoranda of Understanding for areas over which they have autonomy, on the condition that they do not infringe upon the Kingdom’s foreign policy.
39. Aruba’s Parliament enacts laws related to its internal affairs. Sources of law include national ordinances, national decrees (binding general measures and ministerial regulations), international treaties or decrees of relevant international organisations and court judgements. Aruba has a civil law system (based on the Dutch model) with the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba being responsible for the administration of justice in first instance and on appeal on the islands. The Members of the Joint Court of Justice deal with civil, criminal and administrative law. Most decisions of the court of appeal may be appealed *in cassation* to the Supreme Court of the Netherlands in The Hague.

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<sup>3</sup> <https://www.britannica.com/place/Aruba>

### *1.1.1. Overview of ML/TF Risks*

40. Aruba's crime rate is relatively low and the country has a good standard of living. Aruba is largely a cash-based economy. The ML threats to Aruba are internal and external in nature, based on the findings in the 2021 ML NRA conducted by the authorities. The proceeds of crime from offences committed domestically is low, however, the ML threat from domestic crime was determined to be high, primarily as a result of drug trafficking. Further, the 2021 ML NRA identified the ML threat from offences committed abroad as high, with the likelihood that some of the proceeds are laundered in Aruba's financial sector. The overall threat of ML to the jurisdiction is medium-high.
41. Drug trafficking poses the most significant threat of ML to Aruba. Due to the island's geographical location (between South America, the United States of America and Europe), the island is seen as attractive for the trafficking of drugs from the source countries to the consuming countries. Proceeds from drug trafficking are generally cash-based and some of the laundering methods used by criminals associated with drug trafficking include bulk cash smuggling. The known proceeds of US\$100,000.00-US\$250,000.00 represent a medium level threat, however, the number of cases increases the threat level to high.
42. Bulk cash smuggling also represents a risk to the jurisdiction due to its geographical location. Smuggling, in the context of bulk cash, refers to criminals' attempt to transport the cash physically from one country to another. In some instances, suspected criminals and travellers have taken the opportunity to declare cash, suspected of being derived from or intended for criminal conduct, to customs authorities in an effort to give some form of legitimacy to the cash. The risk associated with bulk cash smuggling is reflected in the numerous cash seizures and ML cases investigated and prosecuted by the authorities.
43. Corruption and bribery are a third category of offences that represents the highest ML risk to the jurisdiction. Despite the fact that Aruba is rated favourably on the Corruption Perception Index by Transparency International, the findings of a survey conducted by the CBA shows that a significant portion of the population believes that corruption is widespread on the island. The ML risk associated with corruption is also reflected in the complex ML and corruption cases investigated and prosecuted by the authorities.
44. The sectors that are vulnerable for ML include casinos, banks, real estate, MTCs and notaries. Factors that contribute to the vulnerability of those sectors include size, product and services offered and customers. Tables 1.1 and 1.2 below show the ML threats, sectors that are vulnerable and the risk rating as outlined in the 2021 ML NRA.

*Table 1.1. ML threats and risk rating*

<b>Threats</b>	<b>Risk rating</b>
Drug trafficking	High
Bulk cash smuggling	High
Bribery and corruption	High
Underground banking	Medium-High
Fraud	Medium
Organised criminal activity	Medium
Human trafficking and migrant smuggling	Medium
Smuggling	Medium

*Table 1.2. FIs and DNFBPs' Vulnerabilities and risk rating<sup>4</sup>*

Sector	Threat Score	Vulnerability Score	Overall ML Risk Score
Casino	High	Medium-High	High
Real Estate <sup>5</sup>	High	Medium-High	High
Banking	High	Medium	Medium-High
Money Transfer Companies	Medium-High	Medium	Medium-High
Notary	High	Medium	Medium-High
Jeweller	Medium-High	Medium-High	Medium-High
Trust and Company Service Providers	Medium-High	Medium-High	Medium-High
Lawyer	Medium-High	Medium	Medium-High
Car Dealer <sup>6</sup>	Medium	Medium-High	Medium-High

45. Aruba's TF and terrorism threats weighting and findings are largely based on the findings of the TF/PF risk assessment conducted by the authorities. Aruba has considered regional and international TF and terrorism threats and their impact on the jurisdiction. Aruba's 2021 TF/PF NRA rated the TF risk as medium and the risk of terrorism as low. The country has investigated a few instances of suspicious TF activities, however, no evidence was obtained to meet the threshold for prosecution of the offence. Aruba has never been subject to a terrorist attack or has no known terrorist groups, however, Aruba has taken into consideration that a possible future terrorist attack cannot be ruled out.

### *1.1.2. Country's Risk Assessment & Scoping of Higher Risk Issues*

46. Aruba's understanding of its ML/TF risks is based on several/different types of ML/TF risk assessments conducted by the country, the AML/CFT supervisor<sup>7</sup>, private sector, and information gleaned from regional risk assessments/typology exercises. Nationally, three NRAs were conducted, one ML NRA 2012, one ML NRA in February 2021 and the completion of the TF/PF assessment in June 2021.
47. The 2021 ML NRA was mandated by the AML/CFT Steering Group, which is chaired by the Minister of General Affairs who is the Honorable Prime Minister and was coordinated by the FIU and the CBA. Both private and public sector officials participated in the 2021 ML NRA. The 2021 TF/PF NRA was conducted by public sector officials and involved the provision of information from the private sector. Due to the sensitive nature of the information that was discussed pertaining to TF, the authorities decided not to have direct participation from the private sector. The 2021 NRAs were robust and their findings reasonable.
48. In deciding which issues to prioritise for increased focus, the assessors reviewed material submitted by Aruba on its ML/TF/PF risks, publications, and credible open sources of information (for example, reports from international organisations). The assessors focused on

<sup>4</sup> The entire FI and DNFBP sectors in Aruba were reviewed during the NRA, however this Table only takes into consideration the major sectors that were risk rated as high and medium-high.

<sup>5</sup> Where reference is made to Realtors in the report, it has the same meaning as Real Estate.

<sup>6</sup> In Aruba, car dealers are treated as a DNFBP. However, in this report and in keeping with the FATF Methodology, car dealers and the risk associated with the sector is only addressed in Chapters 1 and 2 and not Chapters 5 and 6.

<sup>7</sup> Sectoral risk assessments are conducted by the Central Bank of Aruba as the Supervisor for FIs and DNFBPs. The FIs and DNFBPs are also required to undertake risk assessments.

the following areas which were determined to be of the highest risk and vulnerability. Some of the areas were also highlighted in the NRAs and sectoral risk assessments in most instances.

- a) ***Proceeds from Drug Trafficking (DT)***: The focus of the assessors included risk mitigation measures applied to the ML/TF risks associated with drug trafficking and the effectiveness thereof, the extent of identification, investigation and prosecution of ML offences related to the proceeds from DT, the ability to identify, trace and confiscate proceeds generated from the offence as well as the extent and effectiveness of domestic and international cooperation mechanisms.
- b) ***Physical Cross-Border Movement of Currency and Bearer Negotiable Instruments***: The assessors focused on risk mitigation measures related to the threat, the authorities' policy objectives with regard to confiscation, the ability to disrupt, seize, confiscate falsely declared/undeclared/declared cash and BNIs, investigation and prosecution for ML/TF offences related to falsely declared/undeclared/declared cash and BNIs that have a nexus to ML, associated predicate offences or TF and the application of effective, proportionate and dissuasive sanctions, as well as the extent and effectiveness of domestic and international cooperation efforts.
- c) ***Proceeds from Bribery and Corruption***: The focus of the assessors included the measures taken by Aruba to mitigate the ML risks associated with corruption and to address politically exposed persons (PEPs), inclusive of preventive measures, training and resources available to LEAs, coordination and cooperation mechanisms and the capacity and effectiveness of competent authorities to identify, investigate, prosecute, apply proportionate and dissuasive sanctions or take any other criminal justice measures regarding offenders, in circumstances where a prosecution or conviction for ML is not possible.
- d) ***Proceeds from Gold Smuggling***<sup>8</sup>: The focus of the assessors included risk mitigation measures employed to address the threat of ML from the offence of gold smuggling, competent authorities' ability to identify, investigate, prosecute, apply proportionate and dissuasive sanctions or take any other criminal justice measures in relation to this threat, policy objectives pertaining to confiscation, the effectiveness of the measures used for tracing, identifying and confiscating proceeds from this threat, as well as the extent and effectiveness of domestic and international cooperation.
- e) ***Proceeds from Human Trafficking (HT) and Migrant Smuggling (MS)***: The assessors' focus included the authorities' ability to mitigate the ML/TF risks associated with HT and MS, the capacity and effectiveness of competent authorities to identify, investigate, prosecute ML cases that have a nexus to HT and MS, application of proportionate and dissuasive sanctions or any other criminal justice measures regarding offenders, and the ability to effectively trace, identify and confiscate proceeds from the offence.
- f) ***ML through an Underground Banking System***: The focus of the assessors included risk mitigation measures utilised to address the ML threat associated with this type of activity, investigative, prosecutorial and asset recovery actions by the authorities, activities undertaken to address informal banking arrangements and measures taken to ensure that persons utilise the formal financial system (financial inclusion).
- g) ***Misuse of Legal Persons & Legal Arrangements and the availability of Beneficial Ownership Information***: Aruba's legal regime provides for the registration and formation of various types of legal persons. Aruban law does not allow for the formation of trusts but TCSPs can act as trustees for foreign trusts. The focus of the assessors included

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<sup>8</sup><https://www.dutchnews.nl/news/2018/02/venezuelan-heading-for-the-netherlands-is-arrested-with-46-gold-bars/>

understanding how legal persons in Aruba are or may be misused for ML, measures taken to mitigate the vulnerability that is associated with legal persons and legal arrangements, including preventive and supervisory measures for TCSPs, the extent to which timely, accurate, complete and up-to-date basic and beneficial ownership information is available as well as the extent and effectiveness of domestic and international cooperation.

- h) DNFBP Sector (Casinos, real estate, and other sectors):** The focus of the assessors included the implementation of effective risk-based supervision and preventive measures (including understanding of/implementing AML/CFT obligations) to mitigate the ML/TF risks to these sectors. Notaries, lawyers, and jewellers, all of whom received a ML risk score of medium-high in the 2021 ML NRA, also received heightened focus by the assessors.
- i) Banking Sector:** The focus of the assessors included supervisory, preventive and risk-based measures (such as understanding of/implementing AML/CFT obligations) that are intended to mitigate the ML/TF risks in these sectors.
- j) Money Transfer Companies (MTCs):** The assessors focussed on the risk-based supervision measures in place, preventive measures and actions taken by supervisors and the industry to mitigate the risk of ML/TF and competent authorities' ability to actively identify unregistered MTCs.
- k) Terrorist Financing:** Given the nature of the consequences associated with TF, the assessors gave this area some level of increased focus by considering, *inter alia*, the findings and reasonableness of the TF risk assessment, TF risk mitigation measures, including preventive and supervisory measures, measures to prevent the misuse of NPOs, ability of competent authorities and reporting entities to identify potential TF activities, investigative and prosecutorial skills-set of competent authorities, measures to disrupt potential TF activities and the implementation of *TF-TFS measures*.
- l) Emerging Issues:** The jurisdiction has not undertaken any ML/TF risk assessment that is associated with VAs and VASPs, despite reports of VAs operating within the jurisdiction<sup>9</sup>. Given the 2019 amendments to the FATF Standards and Methodology to capture this type of activity, Aruba has neither prohibited the registration and use of VASPs and VAs nor established a regulatory and supervisory framework<sup>10</sup>. The assessors therefore examined the extent of the unregulated activity.

49. The main areas that were identified for lower risk and warranted reduced focus were the securities sector, given the risk associated with the sector and materiality and the Free Trade Zone, given the level of measures that are in place to prevent trade-based ML and other types of ML activities from occurring.

## 1.2. Materiality

50. Aruba is not considered a regional financial centre<sup>11</sup>. Aruba is a small open economy society that is heavily dependent on tourism. Based on the World Bank's figures, Aruba's 2018 GDP stood at 3.202 billion United States dollars<sup>12</sup>. Tourism is the mainstay of the economy and is

<sup>9</sup> <https://www.coinbase.com/places/aruba>; <https://www.coindesk.com/blockchain-beach-aruba-looks-ethereum-sustain-tourism>;

<sup>10</sup> Following the scoping of this issue, in September 2021 the AML/CFT State Ordinance was revised to capture VASPs and VAs. See Recommendation 15 and IOs 3 and 4 for more information.

<sup>11</sup> [https://www.state.gov/wp-content/uploads/2021/02/21-00620-INLSR-Vol2\\_Report-FINAL.pdf](https://www.state.gov/wp-content/uploads/2021/02/21-00620-INLSR-Vol2_Report-FINAL.pdf). Retrieved from page 48.

<sup>12</sup> The authorities have advised that the 2019 GDP is not available but estimate same to be approximately US\$3,310.2 million based on the calculation from the CBA.

supported by the financial and hospitality industries. Aruba is also heavily dependent on imports, with its main markets being the United States of America (USA) and The Netherlands.

51. Aruba's financial system is relatively small when compared with the rest of the world. The financial sector is dominated by banks, namely five commercial banks, one investment bank and one mortgage bank. The commercial banks' aggregate balance sheet as of 2019 amounted to Afl. 6,092.8 million (USD\$3,403.7 million), equivalent to 102.9 % of Aruba's 2019 GDP, as estimated by the CBA. Bank-like institutions' aggregate balance sheet total was Afl. 803.3 million (USD\$448.77 million) at the end of the same fiscal year, equivalent to 13.6 % of Aruba's 2019 GDP, as estimated by the CBA.
52. The other aspect of the financial sector is relatively small but important, especially the MTCs, of which there are three in operation in the jurisdiction. Although Aruba is not considered a regional financial centre, both outbound and inbound remittances between Aruba and other countries regularly take place, given the existence of foreign workers in the tourism industry and are considered high. A substantial number of Aruban workers consist of foreign workers who utilise MTCs to remit monies. Colombia is the main destination for outgoing money transfers (more than 50% of 2018 total transfers). In 2019, the total outgoing money transfers increased by Afl. 13.3 million (approximately USD \$7.4 million) to Afl. 143.8 million (approximately USD \$80.33 million) from the previous year, with Colombia being the main destination.
53. The number of entities within the DNFBP sector is greater when compared to the number of entities operating within the FI sector. Some of the larger sectors include real estate, casinos, and accountants. There are fifty-seven (57) accountants with a turnover of Afl. 32.5 million (approximately US\$18.15 million) in 2019, which is equivalent to 0.6% of the estimated GDP. The real estate sector also engages in project development, with realtors accounting for Afl. 45.4 million (approximately US\$25.3 million) or 0.8% of the GDP, while project developers utilised Afl. 98.1 million (approximately US\$54.5 million) or 1.7% of the GDP. Casinos must form part of a hotel chain and contributed approximately 10.7% of Aruba's GDP or approximately Afl. 630.6 million (approximately US\$352.3 million) in 2019.

### **1.3. Structural Elements**

54. Aruba has the key structural elements required for an effective AML/CFT regime, including political and institutional stability, rule of law, a professional and independent judiciary and government accountability. The Prime Minister, who is the Head of the Cabinet and Government, is the Chairman of the AML/CFT Steering Group, which is the multi-stakeholders' group that is responsible for coordination and cooperation at the strategic level. This is a demonstration of the highest level of commitment to combat ML/TF/PF, which was evident during the on-site visit, when the assessors met with the Prime Minister, Ministers of Finance and Justice and other senior government officials.

### **1.4. Background and Other Contextual Factors**

55. Aruba has a very mature AML/CFT system as the CBA has been conducting AML/CFT supervision for a significant amount of time with knowledgeable staff and a low turnover. The CBA is the sole AML/CFT supervisor and has a good history of supervision. Financial inclusion is a concern to the authorities and a working paper titled "Strengthening Digital Financial Inclusion in Aruba," which was published in 2019, indicated that despite a high degree of financial stability and access to financial services, the state of financial inclusion remains vulnerable in Aruba. The paper further noted that households, consumers, and businesses describe a situation in which basic access to transaction and deposit accounts is

readily available and extensive. Approximately 50% of surveyed households in Aruba have access to basic financial services including a current account (91%), debit card (72.6%), credit card (61.3%) and a savings account (58.5%). The findings are based on a paper titled “Financial Wellbeing of Households” (Findings of the 2021 household survey by the CBA-July 2021). Nevertheless, access to and responsible usage of credit, savings and insurance, lag considerably among households, despite the available basic access. The issue of financial inclusion is further compounded by the illegal migration of persons from Venezuela to Aruba seeking employment and refuge.

56. Aruban authorities have prioritised the investigation and prosecution of corruption and bribery offences, especially cases involving PEPs. Corruption is considered as an area of risk for ML in the jurisdiction and was addressed extensively in the 2021 ML NRA Report. Corruption offences are criminalised under the CrCA however, the United Nations Convention Against Corruption (UNCAC) has not been extended to the jurisdiction by the Kingdom. In 2019, Aruba was ranked 85.10% (100% being the highest) by the World Bank<sup>13</sup>. The lack of extension of the UNCAC to Aruba does not have any negative impact on the authorities’ ability to effectively implement the FATF requirements in Aruba, as there are well functioning independent institutions in place and high-level political commitment to implementing the FATF requirements and fighting crime on a whole.

#### *1.4.1. AML/CFT strategy*

57. Aruban authorities have developed an AML/CFT/CPF Strategy based on the findings in the 2021 NRAs. The AML/CFT/CPF Strategy is pending approval by the relevant authorities and was not implemented at the time of the conclusion of the on-site visit. The AML/CFT/CPF Strategy outlines Aruba’s AML/CFT/CPF strategic priorities over the coming three to four years (medium term). The aim of the strategy is to proactively prevent and combat financial crimes to protect Aruba’s reputation as a well-regulated jurisdiction.
58. The AML/CFT/CPF Strategy is also designed to assist the authorities in initiating coordinated actions for the implementation of effective ML, TF and PF risk mitigation measures under three strategic themes, i.e. (a) enhance the AML/CFT/CPF framework, (b) proactively investigate and prosecute ML, TF and PF in a coordinated way, and (c) improve the information position on legal persons and arrangements as well as for FIs and DNFBPs. The authorities have advised that once approved, the Strategy will be implemented.
59. Besides the national AML/CFT/CPF Strategy, key competent authorities such as the FIU, CBA, PPO, and the KPA have departmental policies to address risks that mirror those identified in the NRA (for example, cash smuggling and seizures and corruption-See Chapter 2 for more information) and there is a clear determination to address ML/TF/PF.

#### *1.4.2. Legal & institutional framework*

60. Aruba’s AML/CFT/CPF legal framework is characterised by the following core enactments, which are routinely updated. These include:

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<sup>13</sup> <http://info.worldbank.org/governance/wgi/Home/Reports>

Table 1.3. Legislative Framework

Title of Legislation	Purpose
The AML/CFT State Ordinance (2011 and subsequent amendments)	Rules for the identification and verification of clients and the reporting of unusual transactions to prevent and combat ML, TF and PF, when providing certain services.
Sanctions State Ordinance (2006 and subsequent amendments)	Regulations on taking measures to comply with international obligations for preserving or restoring peace and safety or ensuring or restoring international rule of law or combating of terrorism.
Sanctions Decree to combat Terrorism and TF (2010 and subsequent amendments)	General Administrative Orders for the purpose of combatting terrorism and its financing.
Interim State Decree on Priority Sanctions	Rules for ensuring the freezing of designated persons' assets that may be found in Aruba, to maintain or restore international peace and security or to promote international legal order.
Criminal Procedure Code of Aruba	Rules for ensuring that procedures are followed with respect to the investigation and prosecution of offences within Aruba.
Criminal Code of Aruba	Criminalises all offences within Aruba.
AML/CFT Handbook	Guidelines (enforceable) to FIs and DNFBPs related to the application of AML/CFT requirements as set out in the AML/CFT State Ordinance.

61. The following entities are Aruba's principal institutional arrangements which contribute towards the combatting of ML, TF and PF and allow for designated entities to collaborate with other competent authorities as well as the private sector.
- a) **AML/CFT-Steering Group Aruba:** The AML/CFT Steering Group Aruba was established by Ministerial Order of May 21, 2010. A revised Ministerial Order was made on September 19, 2017 and replaced the Ministerial Order of May 21, 2010. One of the duties of the AML/CFT Steering Group mentioned in Section I (6) of the Ministerial Order of 2017 is to ensure adequate cooperation between the Aruban institutions active in the area of the prevention and combating of ML, TF and the financing of the proliferation of weapons of mass destruction. The AML/CFT Steering Group comprises a wide cross-section of competent authorities including the Ministry of Justice, Ministry of Finance, PPO, KPA, Customs, Tax Department, Security Service of Aruba, Department of Legislation and Legal Affairs and the CBA.
  - b) **Ministry of Justice, Security and Integration:** The Ministry is responsible for, *inter alia*, law enforcement, public order and security, border control, immigration and integration policy, fire brigade, legislation of all ministries, advice on administrative and legal matters of all ministries and representation of Aruba in legal proceedings.
  - c) **Department of Foreign Relations:** Receipt and sending of MLATs, extradition requests and the UN designations.
  - d) **Public Prosecutor's Office (PPO)/ Public Prosecution Service:** The PPO is responsible for prosecuting criminal offences, the execution of judgments and orders in criminal matters, giving instructions to conduct ML/TF investigations and operating as the Central Authority with regard to incoming and outgoing requests for mutual assistance. The Asset Recovery Team (ART), which comprises different entities, falls under the instructions of the PPO and is responsible for identifying, tracing and ensuring that assets derived from or intended for criminal conduct are confiscated.

- e) **Department of Legislation and Legal Affairs:** This department operates as the Secretariat to the AML/CFT Steering Group. In this capacity, it is the prime contact for Aruba in the mutual evaluation process.
- f) **Aruba Police Force (in Dutch: Korps Politie Aruba, abbr. KPA):** Operates under the Minister of Justice and is under the direction of a Commissioner of Police. The KPA consists of 3 divisions: the general police operations (uniformed police), the criminal investigation operations and Special Forces (e.g. the K9 unit, border patrol, SWAT etc.). The Bureau of Financial Investigations (BFO), which is a department of the KPA, is the agency that is primarily responsible for conducting financial investigations.
- g) **Central Bank of Aruba (in Dutch: Centrale Bank van Aruba, abbr. CBA):** The Central Bank of Aruba is the designated AML/CFT supervisory authority in Aruba, pursuant to Article 35 (1) of the AML/CFT State Ordinance. It is the sole AML/CFT supervisory entity charged with the responsibility of supervising FIs and DNFBPs.
- h) **Financial Intelligence Unit:** The FIU is the designated central agency to receive and analyse UTRs from service providers (also referred to as reporting entities, which include FIs and DNFBPs). Subsequently, the result of its analysis is disseminated to the relevant LEAs (including the PPO). These main responsibilities are embedded in Article 20 of the AML/CTF State Ordinance.
- i) **Customs Investigation Unit (in Dutch: Douane Recherche):** The Customs Investigation Unit is part of the Aruban Customs Administration and is charged with preventing and combating trade-based ML, smuggling of narcotics, cash, valuable papers, and/or weapons. The Customs Administration has an important duty in the detection of the aforementioned criminal offences.
- j) **Fiscal Intelligence and Investigation Team (In Dutch: Fiscale Inlichtingen en Opsporings Team; Abbr. FIOT):** The FIOT, a unit within the tax department, is charged with investigating tax offences, in addition to the collection and levy of the taxes due. The team is also approached during other police investigations, if it is determined that there is a question of tax evasion.
- k) **Fusion Center Aruba (abbr. FCA):** The FCA was constituted in 2016 as a collaboration platform, in which partners of various LEAs, including the KPA and the Dutch Coast Guard, assemble information in order to develop proposal reports to initiate criminal investigations. Another objective of this platform is to share knowledge and expertise to prevent and combat crimes.
- l) **Royal Netherlands Marechaussee, also called the Military Police (in Dutch: de Koninklijke Marechaussee, abbr. KMar):** The Royal Netherlands Marechaussee is one of the branches of the Netherlands Armed Forces. An objective of this entity is to perform police military duties. Additionally, the duties consist of fighting international crime, fighting illegal immigration (human trafficking and human smuggling) and guarding national borders.
- m) **National Internal Investigations Department (In Dutch: de Landsrecherche; abbr. LR):** The ‘Landsrecherche’ is an investigative authority charged with investigating civil servants and politically prominent persons who are suspected of fraud, corruption, and serious offences involving abuse of office. This authority is managed by the Procurator General.
- n) **National Sanctions Committee (in Dutch: de Nationale Sanctie Comite):** Pursuant to Article 10 of the Sanctions Decree, this committee is empowered to designate persons, entities, and legal persons for freezing measures. Members of this committee are the

Prosecutor General (Chairman), and representatives of the Security Service of Aruba, Ministry of Justice and Department of Foreign Relations.

- o) Security Service of Aruba (SSA) (in Dutch: de Veiligheidsdienst van Aruba, abbreviatie VDA):* This agency is referred to as the Aruban Secret Service. The objective of this agency is as follows: to promote the fundamental interests of Aruba regarding the continued existence of a democratic order, the integrity of governance, national security and other vital interests of Aruba and the Kingdom of the Netherlands. This Service conducts the security and confidentiality clearance regarding the personnel of various government agencies, such as the staff members of the FIU.
- p) National Central bureau for Counterterrorism, Security and Interpol. (in Dutch: Nationaal Centraal Bureau Terrorisme en Interpol):* This task force aims to create a safe society by minimising threats that may disrupt society. The main objectives of the NCTVI are to ensure a safe and stable Aruba by drafting, coordinating and implementing policies by identifying threats in the fight against terrorism, cybercrime and (trans)national crime and by strengthening the resilience and protection of vital interests against these threats in order to prevent social disruption.
- q) Chamber of Commerce and Industry (CoC):* The CoC provides solicited and unsolicited information and advice of a social, financial and economic nature to the Aruban Government and the Minister of Economic Affairs in particular. The CoC is headed by an executive director. In addition to its advisory obligations, the CoC is also responsible for administering and supervising the Trade Registry and the Foundations Registry. The day-to-day activities of the Aruba CoC are supervised by a Board of Directors, consisting of 9 members who are elected by the Aruban business community through a democratic system according to Aruban law. The CoC's organisation consists of 19 full time employees. The CoC is responsible for ensuring that basic and beneficial ownership related to legal persons and arrangements is maintained, up-to-date and accurate.
- r) Department of Economic Affairs, Commerce and Industry (DEZHI):* The Department of Economic Affairs, Commerce & Industry of Aruba was established in 1986 with the introduction of the separate status of Aruba within the Dutch Kingdom. It exists under the Minister of Finance, Economic Affairs and Culture and is responsible for advising the Minister on economic policies and implements these in turn on behalf of the Minister.

#### 1.4.3. Financial sector, DNFBPs and VASPs

62. The assessors ranked the sectors based on their level of importance in Aruba's context, given their respective materiality and level of ML/TF risks. The assessors used these rankings to inform their conclusions throughout this report, weighting positive and negative implementation issues more heavily for important sectors than for less important sectors. This approach applies throughout the report but is most evident in Chapter 6 on I.O. 3 and Chapter 5 on I.O. 4.

**Table 1.4. Financial Sector Type, Number of Entities and Weight**

Financial Sector Type	Number of Entities	Sector Weight
Banks	07	Highly Important
MTCs	03	Highly Important
Finance Companies	03	Moderately Important

Financial Sector Type	Number of Entities	Sector Weight
Life Insurance <sup>14</sup> Companies	06	Moderately Important
Pension Funds	08	Less Important
Securities	03	Less Important
Credit Unions	02	Less Important

63. Banks and MTCs were considered to be highly important by the assessors, based on the following factors:

a) **The banking sector** is weighted the heaviest as being the most important sector, based on its materiality, risk, customers and products and services offered. The banking sector consists of five commercial banks, one international bank and one mortgage bank. The banking sector plays an important role in the jurisdiction based on its contribution to GDP. The 2021 NRA deemed the ML threat to the banking sector as high and the vulnerability as medium. The overall risk for ML/TF was assessed to be **Medium-High**. Some of the main threats facing the banking sector include increased investment by subjects from jurisdictions in political turmoil, large volumes of cash deposits, structuring of money from China, scams, foreign PEPs and co-mingling of personal and business funds.

b) **Money Transfer Companies (MTCs/MVTS)**: There are three MTCs registered and operating in Aruba. Two of the MTCs are domestic agents of reputable international companies and the third is a local agent that renders money transfer services for countries within the Dutch Caribbean (Curaçao, Bonaire, Sint Maarten, Saba and Sint Eustatius). MTCs' aggregate total income as of 2019 was Afl. 8.9 million (US\$4.9 million) with a 0.2% contribution to GDP. Colombia is the main destination for outgoing transfers of funds, as a significant amount of Aruba's workforce consists of foreign workers, predominantly from Colombia. The majority of incoming money transfers originate from the USA and the Netherlands. The 2021 NRA found the ML threat to the MVTS sector as medium-high and the vulnerability as medium. The overall risk for ML/TF was assessed to be **Medium-High**. Some of the main threats facing the sector include the number of investigations and prosecutions involving MTCs and the large volume of UTRs submitted to the FIU by the entity.

64. Insurance and Finance Companies were considered to be moderately important based on factors such materiality, risk, contribution to GDP and products and services offered.

a) **Insurance Companies**: Aruba's life insurance sector comprises six insurance companies and eight brokers. Insurance aggregate total income as of 2019 was Afl. 201 million (approximately US\$112.30 million) with a 3.4 percent contribution to GDP. Most life insurance companies are part of a group structure of life insurance companies operating outside of Aruba that offer continuous AML/CFT compliance support and regular assessment of the AML/CFT framework of the local companies. The majority of products offered are either pure life insurance or pension related products which are subject to legal limitations for early redemption, therefore making them less attractive for ML. The ML threat facing the insurance sector was rated low and the vulnerability was medium-low. The overall risk of ML was considered to be **Medium-Low**.

b) **Finance Companies**: As of 2019 there were three finance companies in operation. These companies grant small loans, mostly to consumers and small businesses.

<sup>14</sup> Although there are 6 insurance companies, the sector also comprises 8 insurance brokers.

65. The following sectors were considered to be less important based on the products and services offered, ML/TF risks, contribution to GDP or the sector being non-existence at the time of the on-site visit.
- a) **Credit Unions:** There are two credit unions operating in Aruba with a total membership size of 1,423 and aggregate total income of Afl 2.1 million (approximately US\$1.17 million). The asset size of the two credit unions, as per the year ending 2019, was US\$10 million dollars, constituting 0.1 percent share of the aggregate balance sheet of the financial sector. The credit unions are relatively small and offer only very basic financial services to their members. Only members and their families can be granted loans, which cannot exceed US\$11,200.00. Members of the credit union cannot make cash payments on their loans and must be a member of the Employers' Union. Credit unions do not perform external transactions and therefore do not pose a threat to the global financial system. The 2021 ML risk assessment considered the overall risk to credit unions as **Medium-Low**.
  - b) **Securities:** The securities sector is relatively small based on the number of entities licensed to conduct securities related activities. Credit institutions are required to notify the CBA of their intention to act as an investment brokerage or asset manager before implementing this intention, as per the requirement that is set out in the State Ordinance<sup>15</sup>. Three commercial banks (credit institutions) have communicated their intention to the CBA to conduct securities activities and are thus registered pursuant to the State Ordinance on the Supervision of Securities Business<sup>16</sup>. There are no institutions in Aruba whose primary activity is asset management or investment brokerage.
  - c) **Pension Funds:** There are eight company owned pension funds which are only supervised for AML/CFT when granting loans. The aggregate total income to the sector as of 2019 was Afl. 415.2 million (approximately US\$231.95 million) and its contribution to GDP for the same year was 7%. Pension funds manage the rights/funds of former employees in specific sectors such as tourism and government (civil servants). Some pension funds grant mortgage loans to participants or to third parties (through participation in financing consortiums) and typically government owned institutions, for example, the electricity company. The 2021 NRA classified the risk to the sector as **low** based on the products and services that are offered.

#### **VA and VASPs:**

66. **VASPs:** were considered by the team to be less important due to the fact that there were no VASPs operating in the jurisdiction at the time of the on-site visit, based on the information provided by the authorities. Nevertheless, based on publicly available information, one VASP, external to Aruba, was reported as having an automated teller machine (ATM) operating in the jurisdiction. The information was shared with the country, which advised and confirmed post-on-site visit that the ATM was located in Aruba and only operated between June 2020 to December 2020 with 19 transactions totalling US\$3000.00 conducted. Aruba does not prohibit VAs and VASPs. The AML/CFT State Ordinance and the State Ordinance on the Supervision of Securities Business were amended in September 2021 to address the supervision of VASPs by the CBA.

<sup>15</sup> Art.10 of the State Ordinance of Supervision of Securities Business Ordinance

<sup>16</sup> For some entities that fall within the DNFBP sector, the country did not provide any information to indicate their asset size and contribution to GDP. Therefore, in arriving at weighting for the different sectors, heavy reliance was placed on the findings of the ML NRA, interviews with competent authorities and private sector officials and open sources of information.

*DNFBPs***Table 1.5. DNFBP (as of 2019) Sector Type, Number of Entities and Weight**

DNFBP Sector Type	Number of Entities	Sector Weight
Real Estate	193	Highly Important
Casinos	13	Highly Important
Notaries	06	Highly Important
Trust Service Providers	10	Moderately Important
Jewellers and dealers in precious metal and stones	39	Moderately Important
Lawyers <sup>17</sup>	61	Moderately Important

67. The following sectors were considered highly important:

- a) **Casinos:** At the end of 2019, 13 casinos are licensed with the Ministry of Justice and are registered with the CBA for supervision. Prior to the on-site visit, there were no requirements to conduct fitness and propriety checks to ensure that criminals and their associates do not hold or have controlling interests in casinos. Legislation was however enacted during the on-site visit to ensure that this is now a requirement. Casinos can be leased to another individual/entity; therefore, it is possible for the holder of the casino license to be different than the operator. Most of the UBOs of casinos are non-residents. The gross revenue from casinos in 2019 was reported to be Afl. 630.6 million (approximately US\$352.3 million) (based on tax payments) which was 10.7 percent of GDP. The 2021 ML NRA considered the risk to casinos as being **High**. Some of the main threats identified to the sector include criminals attempting to gain control of the gambling businesses and use of front men (persons acting as a front for gambling at a casino).
- b) **Real Estate:** The real estate sector can be divided into (i) real estate companies/agents and (ii) property developers. At the end of 2019, 193 realtors were registered with the CBA, however this number does not reflect active realtors, as a significant number of realtors are either inactive or involved in only a very small number of real estate transactions. For real estate agents that are inactive, they are de-registered with the CBA and are not allowed to conduct real estate transactions. The CBA maintains a registry with the list of real estate agents that are active. To conduct financial business transactions via the regulated sector, real estate agents are required to provide evidence that they are registered with the CBA. The 2021 NRA considered the ML risk to the real estate sector as being **High**. Some of the main threats include increased investments by subjects from jurisdictions in political turmoil, ML via project development and investment of illicit funds in the local estate market. In 2019, the recorded turnover from realtors, based on taxable sales, was Afl. 45.4 million (approximately US\$25.3 million dollars) which was 0.8 percent of GDP. In the same year, the turnover from project developers based on taxable sales was Afl. 98.1 million (approximately US\$54.8 million) which was 1.7 percent of GDP.
- c) **Notaries:** The notary sector is relatively small when compared with the other DNFBPs, with four notaries registered with the CBA. Notaries are however heavily involved in the majority of real estate transfers and transactions. Notaries are also involved in the incorporation of legal entities. The 2021 ML NRA considered the overall risk of ML to the

<sup>17</sup> The 61 include two legal professionals (non-lawyers)

sector as **Medium-High**. The main threats facing the sector include those related to the important work that is performed by notaries in the acquisition and sale of real estate and the formation of legal persons.

68. The following sectors were considered moderately important, based on factors such as risk and materiality.

- a) **TCSPs:** At the end of 2019, the trust sector comprised 10 licensed TCSPs that provide service to both on-shore and off-shore clients. The top five places where UBOs are domiciled are Latin America, Europe, USA, Curaçao and Aruba. The core business of the TCSP is to act as managing director and grant domicile to companies conducting business in Aruba in which the UBO or investor is not an Aruban resident, real estate business, consultancy, investment business, trading, aircraft ownership and registration and development and holding companies. The majority of the TCSPs are small, due to the fact that the tax regimes that existed previously in Aruba no longer exist. In 2019, the reported turnover was Afl. 5.5 million (approximately US\$3.07 million), representing 0.1 percent of GDP. TCSPs continue to decline in number, along with the reported turnover. The ML risk associated with TCSPs is considered to be **Medium High**. Some of the threats facing the TCSP sector include investment of illegal monies in local real estate and an increase in investment by subjects from jurisdictions in political turmoil.
- b) **Jewellers and Dealers in Precious Metals and Stones:** At the end of 2019, 39 jewellers were registered with the CBA. The majority are small family-owned businesses with a few multinational businesses. The five largest jewellers represent 70 percent of the sector market share. Most of the customers are repeat/existing customers, mainly from North America and Europe. In 2019, the recorded turnover based on taxable sales amounted to Afl.107.4 (approximately US\$60 million), representing 1.8 percent of GDP. The overall ML risk to the sector is **Medium-High**. One of the main threats to the sector is the history of being used for ML.
- c) **Lawyers:** At the end of 2019, 59 lawyers and two legal professionals (non-lawyers) were registered with the CBA. The majority of law firms in Aruba are small businesses focusing on providing services that fall outside the scope of the FATF requirements. In 2019, the turnover from lawyers based on taxable sales was reported to be Afl. 30 million (approximately US\$16.7 million) which represents 0.5 percent of GDP. The ML risk level associated with lawyers is **Medium-High**. Some of the major threats associated with lawyers are based on services rendered related to real estate and the establishment of legal entities.
- d) **Tax Advisors:** At the end of 2019, there were 37 tax advisors registered with the CBA. The sector comprises firms of different sizes, from offices related to large global firms to sole proprietorships. In 2019, the turnover based on taxable sales within the sector (inclusive of accountants) was Afl. 32.5 million (approximately US\$18 million), which was 0.6 percent of GDP. The sector provides a range of vastly differing services and activities. The ML risk associated with the sector is considered to be **Medium**. The major threat to the sector relates to misuse of corporate vehicles, especially AVVs.<sup>18</sup>

69. The following sector is considered to be less important:

**Accountants:** At the end of 2019, 54 Accountants were registered with the CBA. In 2019, the reported turnover for accountants (including tax advisors) was Afl. 32.5 (approximately US \$18.15 million) which represented 0.6 percent of GDP. Due to the amendment of the tax legislation over the years, complicated legal structures are no longer found in Aruba and the threat level to the

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<sup>18</sup> AVVs were prohibited from registering in Aruba as of 2020



Types of Legal Persons (Dutch)	Types of Legal Persons (English)	Numbers as of June 2021			
		Active	Dormant	Board-less	Total
CV- Commanditaire Vennootschap	Limited Partnership	13		3	16
Vereniging	Associations	21		1	22
Stichtingen	Foundations	1719		6	1,725
Eenmanszaak	Sole proprietorship	6,178		36	6,234
<b>Total</b>		<b>19,611</b>	<b>843</b>		<b>21,704</b>

73. There were several shortcomings in the framework for legal persons and legal arrangements, which Aruba has sought to remedy through the upgrade of the CCA and in this regard, most amendments came into effect in September 2021. Amendments to the legislation include prohibition against the incorporation of AVV and bearer shares. Aruba has however not conducted a comprehensive ML/FT risk assessment of all legal persons and the recency of the legislative revisions has not yet allowed for optimum technical compliance with and effective implementation of the FATF Standards, especially as it pertains to the requirement to obtain and maintain, in a timely manner, accurate BO information.
74. Regarding legal persons, the CoC is the agency that is responsible for the creation, registration and supervision of legal persons as required under the various pieces of legislation, including the CCA and the Trade Register Ordinance.
75. Trusts and other legal arrangements are not required to be created in Aruba, nevertheless, TCSPs can act as trustees for foreign trusts. The total number of clients of TCSPs as of 2019 was 312. The authorities have advised that as of 2019, none of the TCSPs had foreign trusts as clients or act as trustees. At the time of drafting this report, the core business of TCSPs was acting as managing director and granting domicile to companies doing businesses in Aruba of which the UBO or investor is not an Aruban national.

#### *1.4.6. Supervisory arrangements*

76. The CBA is the sole AML/CFT Supervisor in Aruba, with the responsibility for supervising and monitoring all reporting entities, namely all FIs, VASPs and DNFBPs. The CBA's mandate, basic powers and responsibilities are set out in the State Ordinance for the Prevention and Combating of Money Laundering and Terrorist Financing (2011 and subsequent amendments), State Ordinance on the Supervision of the Credit System, State Ordinance on the Supervision for the Insurance Business, State Ordinance on the Supervision for the Securities Business, State Ordinance on the Supervision for Trust Service providers, State Ordinance on the Supervision of Money Transaction Companies and State Decree on the Supervision of Insurance Brokers. These primary enactments are complemented by the provisions in the AML/CFT Handbook, which is enforceable and provides guidance to FIs, DNFBPs and VASPs on the implementation of the AML/CFT State Ordinance. The AML/CFT State Ordinance was revised in September 2021 to provide the CBA with supervisory oversight for VAs and VASPs.
77. Regarding legal persons, the CoC is the agency that is responsible for the supervision for the creation, registration and supervision of legal persons as required under the various pieces of legislation, including the CCA and the Trade Register Ordinance.

#### ***1.4.7. International cooperation***

78. Due to its location, Aruba is exposed to transnational ML/TF risks, such as drugs, arms, gold, and human trafficking. Further, although the jurisdiction is not a financial centre, based on the number of foreign nationals within the Aruban workforce, there is a significant volume of monies being remitted to jurisdictions, some of which are classified as high-risk.
79. International cooperation is rendered by competent authorities such as the FIU, LEAs and the PPO. The PPO, by virtue of the measures contained in the Code of Criminal Procedure of Aruba (CCrPA), is the designated Central Authority and therefore is responsible for, *inter alia*, processing MLA requests, for which there are no unreasonable or unduly restrictive conditions. The CCrPA also contains legislative measures to freeze, seize and confiscate objects, including instrumentalities intended for use in criminal conduct. The measures also allow for the management and disposal of assets. Non-conviction-based confiscation can also be undertaken, but only where treaties permit for such, for example, the Treaty between the Kingdom of the Netherlands and the USA. As it pertains to extraditions, the Extradition Decree of Aruba, Curaçao and Sint Maarten empowers Aruba to execute extradition requests in relation to ML/TF.
80. In addition to the legislation, competent authorities can engage in other forms of cooperation through various mechanisms and organisations of which they are members. These include Interpol, Caribbean Customs Law Enforcement Council (CCLEC), Asset Recovery Inter-Agency Network for the Caribbean (ARIN-CARIB) and the Egmont Group of FIUs. Aruba has also entered into cooperation agreements to exchange information with different countries such as the USA, one of its main partners. Competent authorities, for instance, the FIU and the CBA, also have MOUs with foreign counterparts to facilitate the exchange of information.

## Chapter 2. NATIONAL AML/CFT POLICIES AND COORDINATION

### 2.1. Key Findings and Recommended Actions

#### Key findings

- a) There is a good understanding of the ML/TF risks among most competent authorities. The understanding of the ML/TF risks is based on the published findings of the ML/TF/PF NRAs, sectoral risk assessments conducted by the CBA, participation in regional typology exercises and the NRAs, ML/TF risk assessments conducted by the FIs and DNFBPs and the institutional knowledge and expertise of various competent authorities, primarily LEAs, the PPO, the FIU and CBA. The foregoing has resulted in a shared understanding among most competent authorities of the higher risk issues that have an impact on the jurisdiction. The authorities have not identified and assessed the ML/TF risks associated with VAs and VASPs and there was limited understanding of the risk posed by VAs and VASPs by competent authorities.
- b) Aruba has conducted three NRAs, two (ML and TF in 2021 and one (ML) in 2012). The 2021 NRAs involved participation and the provision of information from a wide cross-section of competent authorities and private sector officials. The 2021 NRAs were robust, and their findings reasonable. Inadequate statistics, lack of information pertaining to financial inflows and outflows and lack of data on the informal economy were some of the main challenges experienced by competent authorities in the conduct of the 2021 NRAs. However, the challenges experienced did not significantly impact the conduct and outcomes of the NRAs, as these were mitigated by alternative sources of information, for example, qualitative data such as case studies on ML investigations and prosecutions, and publications from regional and international organisations and countries, including the FATF and the USA.
- c) The main competent authorities such as the CBA, PPO, KPA and the FIU have documented policies and procedures to address some of the ML/TF risks (higher risk issues, for example corruption) that have been identified and reflected in the NRAs and have implemented same. The implementation of these policies and procedures have guided the work of the various agencies and ensure that policies, objectives and activities are being achieved to a significant extent. At the national level, an AML/CFT/CPF Strategy was finalised as a result of the findings in the NRAs but has not been approved for implementation. The implementation of this Strategy will allow for a more defined and holistic approach in addressing ML/TF risks identified and the better allocation of resources based on risks identified.
- d) Resource constraints in some instances have an impact on competent authorities, particularly LEAs, in achieving their objectives and activities. LEAs and other competent authorities have nevertheless taken a collaborative and shared resources approach, such as the use of taskforces to ensure that their objectives, including targeting those predicate offences that are high risk, ML and confiscation, are achieved.
- e) Aruba has not granted any exemptions. FIs and DNFBPs are required to apply simplified (SDD) and enhanced due diligence (EDD) on the basis of identified ML/TF risks. EDD

is applied in higher risk situations whilst SDD is applied in circumstances involving lower risk.

- f) Most private sector officials are aware of and have demonstrated a good understanding of the ML/TF risks affecting Aruba, based on their direct participation in the 2021 ML NRA, contribution of information to the 2021 TF/PF NRA, outreach conducted by the FIU and publication of detailed findings of the NRAs. The private sector's awareness of risks, especially vulnerabilities, is also based on individual ML/TF risk assessments conducted by their respective institutions. Some private sector officials nevertheless recommended that there is a need for further dialogue to gain a better understanding of the ML/TF risks and possible changes to risk.
- g) National coordination and cooperation are two of the greatest strengths of Aruba's AML/CFT framework. Coordination and cooperation pertaining to ML/TF at the operational and strategic level are robust and at an advanced stage, however, cooperation and coordination related to PF is not as robust, despite some work undertaken by the authorities, including the conduct of a PF risk assessment.

### Recommended Actions

- a. Aruba should implement the National AML/CFT/CPF Strategy and ensure that resources are allocated based on the risk identified to ensure that competent authorities' objectives and activities can be achieved to a greater extent. Further, the authorities should ensure that the AML/CFT/CPF Strategy is regularly reviewed and updated.
- b. Aruba should identify, assess and understand the ML/TF risks associated with VAs and VASPs. Based on the findings of the assessment, measures should be implemented to mitigate the risk associated with this type of activity.
- c. Resources should be allocated to competent authorities on a risk-based manner, to ensure that objectives are efficiently achieved and identified risks are mitigated to the greatest extent possible.
- d. Competent authorities, especially LEAs and the PPO, should ensure that statistics are kept and maintained in a proper manner.
- e. Aruba should ensure that there is a sustained effort on the part of competent authorities to engage private sector officials pertaining to the findings of the ML/TF risk assessments and changes to the ML/TF risks.
- f. Efforts should be made to further strengthen and deepen national cooperation and coordination pertaining to PF, especially at the operational level.

81. The relevant Immediate Outcome considered and assessed in this Chapter is IO.1. The Recommendations relevant for the assessment of effectiveness under this section are R.1, 2, 33 and 34, and elements of R.15.

## 2.2. Immediate Outcome 1 (Risk, Policy and Coordination)

### 2.2.1. Country's understanding of its ML/TF risks

82. Most competent authorities (with the exception of one interviewed entity) in Aruba have demonstrated a good knowledge and understanding of the ML/TF risks affecting the jurisdiction. The assessors' findings are based on information and documentation submitted by Aruba that were reviewed by the assessors and interviews conducted with public and private sector officials. One entity interviewed registered disagreement with the threat of corruption being considered as high-risk due to the fact that actions are being taken to investigate and prosecute corruption offences. The assessors considered the feedback from the competent authority. However, the assessors found that the rating of high assigned for corruption was warranted based on the review of the 2021 ML NRA and discussions held with competent authorities including LEAs, the CBA, FIU and prosecutors. The assessors therefore did not consider the comments from the one entity to have significant weight and serious implication on the team's findings.
83. The understanding of ML/TF risks by competent authorities is largely based on the factors identified in Box 2.1 below. Reliance on the findings of the NRAs and their contributions to competent authorities' knowledge and understanding of ML/TF risks were given more focus in this section of the report and were given significant weight by the assessors who concluded that the NRAs, including the process and their findings, to be robust, rigorous (as a result of the process and procedure employed), fair (considered the challenges in conducting the NRA) and reasonable (taking into consideration the information and analysis undertaken and conclusions arrived at). The assessors found that there was a shared understanding of ML/TF risks, most importantly the higher risk issues as reflected in the NRAs, among most competent authorities. The paragraphs that follows (84-91) summarise the NRA process, the risks identified, and challenges experienced.

#### *Box 2.1. Understanding of Risk Contributors*

- Expertise-Largely among the FIU, LEAs, Prosecutors and the CBA, based on the conduct of their functions;
- NRAs conducted;
- Sectoral risk assessments conducted by the Supervisor;
- Participation in regional typologies exercises; and
- Risk assessments conducted by the FIs and DNFBPs and reviewed by the CBA during inspections.

84. Aruba has conducted three risk assessments, two of which (2021 ML/TF/PF NRAs) were commissioned and approved by the AML/CFT Steering Group headed by the Minister of General Affairs who is the Honorable Prime Minister of Aruba. The first ML risk assessment was conducted in 2012 without the involvement of the private sector and was largely based on institutional knowledge of competent authorities. In 2018, with the utilisation of the World Bank Tool, Aruba commenced a second and more comprehensive ML risk assessment that was coordinated by the FIU and CBA and involved more than 80 public and private sector officials. The 2021 ML NRA was conducted using the World Bank tool and it focused on the threats and vulnerabilities affecting the jurisdiction and risk rated the threats and vulnerabilities (see Tables 1.1 and 1.2 in Chapter 1) and rated the overall ML risk to the jurisdiction as medium-high. The ML risk assessment also considered the consequences of the threats and vulnerabilities, if not mitigated, to Aruba, including to the financial system. The ML assessment took approximately 18 months to complete, following which a detailed report and a summary report (for publication

purposes) were drafted based on discussions and outcomes. The ML NRA found that threat of ML from domestic crime was high primarily as a result of the threat of drug trafficking that takes place via Aruba and this was also communicated to the assessors by competent authorities (including LEAs and FIU). Competent authorities noted (also reflected in the NRA Report) that the actual proceeds generating activity does not take place only within Aruba.

85. The ML threat from predicate offences committed abroad was considered to be the main threats to Aruba by the authorities, with proceeds from drug trafficking, smuggling and foreign corruption deemed to be the main sources of criminal proceeds. Other predicate offences that were considered as being threats include underground banking, fraud, organised criminal activities and trafficking and smuggling of migrants. The ML threat was considered by the authorities as flowing in both directions and had a nexus to countries such as the Netherlands, Curaçao, the USA, Colombia, Venezuela and China (underground banking). Some competent authorities suspected that given the nature of Aruba's economy, the likelihood exists that proceeds from offences such as cash smuggling, corruption and bribery can be found in Aruba's FIs. This clearly shows that competent authorities took the issue into consideration, which also forms the basis for the authorities' understanding of the vulnerabilities (how proceeds are laundered).
86. In assessing the vulnerabilities, the NRA took into consideration, *inter alia*, the areas of weakness within Aruba's AML/CFT framework, the likelihood that the vulnerabilities can be abused, the products and services offered by FIs and DNFBBs, types of customers, regulatory environment including laws and supervisory framework and level of compliance by FIs and DNFBBs. The banking, casino, notary and real estate sectors were considered to be sectors that were most vulnerable to ML.
87. In 2018, Aruba commenced a separate TF/PF risk assessment using the World Bank tool and completed same in 2020. The TF threat was rated as medium. The assessment was chaired by the FIU and included direct participation of the various law enforcement, intelligence and prosecutorial agencies. The construct of the group (i.e., absence of private sector representatives' direct involvement) to conduct the risk assessment was due to the sensitivity of the information held by the different agencies, including the intelligence agencies. Information was provided by the CBA and private sector officials including FIs and DNFBBs towards the conduct of a TF NRA. Importantly, the TF risk assessment did not only consider the domestic TF/terrorism threat but also international and regional TF and terrorism threats to Aruba and the potential impact those threats can have on Aruba.
88. The 2021 TF/PF NRA considered to some extent the risk of TF occurring within the different sectors, the raising of funds and assets for TF purposes, immigrants from high-risk jurisdictions, religious radicalisation, lone wolf terrorism and hate crimes, ISIL, Al-Qaeda and its regional affiliates and the presence of terrorist organisations or groups and their threats to Aruba, victims of scams and potential nexus to TF and foreign terrorist fighters (including from a regional context). The TF/PF risk assessment also considered the vulnerabilities, including the quality of the legislation, quality of intelligence, the effectiveness of the TF related unusual transactions, adequacy of resources and effectiveness of international cooperation. The major challenge in conducting the TF NRA was the absence of prosecutions and convictions for TF offences in Aruba. The authorities, in conducting the NRA, took into consideration a wide cross section of information, including suspected TF UTRs received by the FIU, intelligence held by the intelligence agencies, cross-border wire-transfers, expert opinions and open sources of information. The assessors found that the process used to conduct the TF/PF NRA was rigorous and the findings reasonable.

89. The ML/TF 2021 NRAs consisted of three phases, i.e. (i) preparation, launch and initial assessment, (ii) data collection, analysis and initial assessment and (iii) finalisation of the report and drafting of an overview of the action points, following the assessment. The NRAs took into consideration qualitative (case studies, international cooperation (MLAT) information etc.) and quantitative data and publications from international organisations (such as the FATF), countries (such as the USA), academia information and experience of competent authorities and private sector officials. The findings of the AML/CFT sectoral risk assessments also contributed to the 2021 ML NRA and its findings. The assessors found that the authorities were honest in the conduct of the NRAs, as challenges, including the absence of statistics in some instances (ML investigations and prosecutions by LEAs and the PPO) and lack of information on the informal economy and financial flows were clearly cited. The NRAs also clearly identified the actions taken by the authorities to mitigate the challenges experienced in conducting the NRAs, including the use of qualitative information and other sources of information in cases where the data and statistics were unavailable.
90. Apart from the conduct of the NRAs, AML/CFT sectoral risk assessments that were conducted by the CBA were also used by the competent authorities to gain an understanding of the AML/CFT risks associated with FIs and DNFBBs. Further, in an effort to better understand its ML/TF risks, Aruba has participated in and contributed to several projects geared towards identifying regional threats. Some of these projects include “Regional Crime Image, Trends in the Dutch Caribbean 2020-2022” and the “Heads of FIUs Meetings of the Kingdom of Netherlands”.
91. Although the assessors accepted the findings of the NRAs as being reasonable, the assessors found that the NRAs did not provide an in-depth focus on the ML/TF risks associated with all of the different types of legal persons and arrangements in Aruba, although they did consider the ML/TF risks associated with legal persons, albeit to a limited extent. For example, the ML/TF risks associated with NPOs, which is a form of legal person including Aruba Exempt Companies (AVV), FIs and DNFBBs featured in the TF risk assessment conducted by the FIU and other competent authorities (see IOs 5 and 10). The assessors also found that some competent authorities have a good understanding of ML risks affecting legal persons as a result of functions, for example, the number of investigations and prosecutions of ML cases involving the use of legal persons. The NRAs did not take into consideration the ML/TF risks associated with VAs and VASPs, nevertheless, this was treated as a minor deficiency on the basis of materiality (see paragraph 65, Chapter 1).

### ***2.2.2. National policies to address identified ML/TF risks***

92. Aruba has finalised a national AML/CFT/CFP Strategy which is based on the findings of the 2021 NRAs, and its approval is pending. Competent authorities have indicated that once finalised, it will be implemented and operationalised, complementing the other departmental policies and objectives. The AML/CFT/CFP Strategy outlines Aruba’s AML/CFT/CFP strategic priorities for the next three to four years (medium term) and its aim is to proactively prevent and combat financial crime and to protect Aruba’s reputation as a well-regulated jurisdiction. The Strategy is designed to prevent and combat ML, TF, and PF and consists of a variety of mitigation measures, including legislative reviews and amendments, enhancing cooperation and coordination mechanisms and allocation of resources that collectively will ensure an effective risk-based approach. The AML/CFT/CPF Strategy, which was shared with the assessors, is comprehensive and also contains an action plan setting out the action points, the lead agencies responsible for the implementation of the action and the timelines for the implementation of the actions.

93. Despite the absence of the approval and implementation of the national AML/CFT/CPF Strategy, the assessors found that there are several policy documents among key agencies such as the FIU, PPO, KPA and the CBA to address ML/TF risks that falls within the scope of their departments and therefore gave recognition and credit to these departmental policies. The departmental policies focused on some areas of high risk that were identified in the ML and TF risk assessments and provide a roadmap to guide competent authorities on the actions needed to mitigate those risks. As an example, the PPO has implemented a Policy Letter pertaining to the seizure of cash and an Asset Recovery Policy which creates the Asset Recovery Team (ART) (a multi-agency task force), both of which focus on asset recovery, including cash smuggling, which was identified as a threat in the ML risk assessment. Most of these policies existed prior to the completion of the 2021 NRA and were largely developed based on the experience and institutional knowledge of competent authorities, sectoral risk assessments and as a result of direct participation in the NRAs<sup>19</sup>. These policies addressed ways to mitigate the risks that were identified in the NRAs and some are identified in Table 2.1 (the list is non-exhaustive).

*Table 2.1. Competent authorities' policies and strategies to address ML/TF risks*

Name of Agency	Title of Policy	Intent of Policy
<b>PPO</b>	Strategic Vision 2018-2022	To tackle all forms of crimes that threaten the integrity of the society and develop an integrated approach to improve and intensify the fight against these crimes.
	Strategic and Policy document following the 2012 NRA	Developed for the enforcement of investigation and prosecution priorities. These investigation and prosecution priorities include addressing the following crimes: illegally gained assets by committing crime; fraud; corruption; ML; and domestic drug crime. This policy and strategic vision also focus on combatting transnational crime, which includes the fight against cross-border offences: ML; human trafficking/people smuggling; drug crimes; cybercrime; terrorism and terrorist financing.
	Policy Letter, Seizure of cash at the Airport	Addresses the risk of cash smuggling, seizure and confiscation.
	Asset Recovery Policy	Creation of the ART to address confiscation of assets, including cash.
	Asset Recovery Instruction	Instruction sets out rules for the recovery under criminal law, by the PPO, of financial proceeds from criminal activities. It describes various recovery options and an effective response of government services.
<b>KPA</b>	Annual Reports (2018-2020 and 2020-2022)	Communicating the importance of financial investigation as an important component of the police mandate (including parallel financial investigations).
	Establishment of Infodesk	Facilitates timely cooperation and response to requests among the different entities.
	Establishment of the Fusion Center	Facilitate the collation and sharing of information among law enforcement and intelligence agencies.
<b>FIU</b>	Strategic Policy-Production of TF typology reports.	
	MTTP document (TF Strategy 2017)	Coordinated approach to combat TF and its activities.
	Establishment of a dedicated relationship manager to improve the	To enhance the relationship between the FIU and the other competent authorities, thereby ensuring that financial

<sup>19</sup> During the NRA process, as threats and vulnerabilities were identified, competent authorities drafted, adopted and implemented policies to mitigate the ML/TF risks.

Name of Agency	Title of Policy	Intent of Policy
	help-desk function of the FIU	intelligence and relevant information are easily accessible and used in investigations.
	Combatting Corruption as a high policy objective.	To address the ML risks associated with corruption and to give priority to corruption.
<b>CBA</b>	CBA supervisory agenda and TF Action Plan (2019-2020)	To plan CBA risk-based supervision.
	CBA Risk-Based Methodology	To outline the methodology the CBA applies for determining its AML/CFT supervisory approach.
	TF Action Plan	To provide guidance to supervised sectors, to discuss approaches regarding the topic of TF to relevant authorities; to send out targeted TF questionnaire; and to conduct on-site examinations.

94. Apart from the policies mentioned in Table 2.1 above, Aruba's Parliament enacted a series of legislation to address some of the ML/TF risks identified in the NRA and those otherwise known. Some of the legislative changes include (i) amendment to the AML/CFT State Ordinance to address VAs and VASPs and (ii) amendment to the Civil Code of Aruba (CCA) to address weaknesses in the maintenance of basic and BO information. Further, Decrees such as the Sanctions Decree in relation to Iran were introduced and implemented.
95. The assessors found that resource constraints had an impact on some competent authorities, primarily LEAs, in conducting their functions including the execution of policies, policies and objectives and to ensure that higher levels of effectiveness are achieved (see Chapter 3 of the report for further details on this impact). At the time of the conclusion of the on-site visit, resources were not fully allocated based on identified ML/TF risks to agencies such as the KPA. Aruban authorities advised that the implementation of the AML/CFT/CPF Strategy will result in the allocation of resources across all relevant agencies based on the risk assessments. This was a shared finding of the assessors as the AML/CFT/CPF Strategy mandates that additional resources be provided to agencies and the provision of investigative powers to some agencies such as customs to conduct investigations.

### ***2.2.3. Exemptions, enhanced and simplified measures***

96. Aruba's regulatory and legislative framework allows for the application of enhanced and simplified measures but not for exemptions. The requirements and implementation measures are set out in the AML/CFT Ordinance (Art. 10) and the AML/CFT Handbook (s.5.1) and hinge on the application of the findings of ML/TF risk assessments conducted. There is no requirement in the legislative framework for exemptions and the assessors' findings do not indicate that the authorities have granted any such exemptions.

### ***2.2.4. Objectives and activities of competent authorities***

97. The objectives and activities of competent authorities are largely based on the ML/TF risks affecting the jurisdiction, with higher risk issues given priority. Despite the impact of human resource constraints in most instances (particularly among LEAs and prosecutors), competent authorities continue to ensure that objectives and activities are being achieved to a substantial extent. This is largely being achieved through a collaborative and shared resource approach (including through the use of task forces and assistance from the Netherlands) among the various

competent authorities especially those involved in the investigation and prosecution of ML and confiscation (operational issues) and the FIU and CBA.

98. LEAs and prosecutorial authorities have demonstrated that a targeted approach is being taken to fight financial crimes, including ML. This is done by focusing on financial investigations and conducting parallel financial investigations into predicate offences and ML that are cross-border in nature, complex and are considered as high risk, for example, corruption cases involving public officials and organised crime. A significant number of ML investigations and prosecutions undertaken by the authorities are largely based on the predicate offences that are identified in the NRAs as high-level threats that can give rise to ML. Several of these cases are identified in the analysis of Immediate Outcomes 6 and 7 of Chapter 3 of the report and include “*the Hamburg case*” (organised crime/underground banking ML), “*Case IBIS*” (corruption-based ML) and “*Dragon Case*” (drug trafficking/ML).
99. The PPO is heavily invested and focused on confiscation proceedings (inclusive of cash smuggling). This can be gleaned from the policies and procedures that are in place and the establishment of the ART. LEAs and prosecutors continue to focus on cases that are complex in nature and have a public interest, especially those involving corruption and proceeds from the commission of the offence. Resources are pooled from various LEAs, task forces are established, and bi-lateral and multi-lateral meetings are held to focus on crime and the proceeds generated from those crimes that are deemed to be of high-risk to the jurisdiction. The goal of the operational agencies including the PPO is not only to focus or prioritise cases where prosecution and convictions are easily achievable but to also pursue complex cases including those that are higher risk for ML/TF and those that have a high public interest such as corruption.
100. The FIU has utilised the outcomes of several risk assessments, in addition to the 2012 and 2021 NRAs, to prioritise its activities in the area of financial intelligence, training, awareness building and information exchange with AML/CFT key partners, through various platforms. Priority is given to threats and vulnerabilities such as drug trafficking, real estate fraud, corruption, TF, cross border cash transactions, casinos, money transfers, fraud, gold smuggling and ML. For example, corruption related Unusual Transaction Reports (UTRs) and TF are given priority by the FIU in its analysis. A directive was executed in 2017 by the FIU for reporting entities to include the word “Politically Exposed Persons”(PEP)” in the description of the UTR submitted to the FIU (when the report involved such categories of persons). The foregoing measure was implemented to allow the FIU to urgently filter, analyse and disseminate the results of its analysis should there be any suspicion/ evidence of corruption. This directive, in combination with other activities such as providing information and raising awareness in the area of corruption, has led to an increase in the number of UTRs related to PEPs. The “*IBIS*” and “*Aventruz*” cases are examples of analysis/UTRs prioritised by the FIU that have resulted in successful ML convictions and are reflective of the objective and activities of the FIU being achieved. The objective of the FIU is to also ensure that its operations are closely aligned to the agencies that access and utilise financial intelligence and relevant information in their functions, thereby ensuring that there is a greater and more effective outcome from its operations, including UTR analysis.
101. To address the risk associated with human trafficking and migrant smuggling, Aruba created the CMMA taskforce, a multi-disciplinary advisory group consisting of representatives of government agencies with a role in migration. CMMA generates and disseminates information on the subject of human trafficking and migrant smuggling, creates awareness by providing training and outreach and provides assistance to victims of human trafficking. At the time of the on-site visit, the CMMA was preparing a first draft of its Action Plan 2022-2026 for discussion in its bi-monthly meetings. The CMMA continues to engage in public awareness and conducted

a campaign in four different languages (Dutch, Papiamentu, Spanish and English) to make persons aware of the risk of human trafficking and migrant smuggling.

102. To mitigate the threat of drug trafficking and other transnational crimes including smuggling, with the support of the Kingdom of the Netherlands, additional assets (resources) were provided to the Coast Guard. The objectives, activities and measures utilised by the Coast Guard to mitigate the threats within its domain were communicated to the assessors. However, due to the sensitivity of the information a decision was taken by the assessors to not reference the actions in the MER.
103. The NCTVI was established as an agency responsible for the national cybersecurity infrastructures, survey and protective program, safety and security for dignitaries, crisis management regarding cyber and terrorist issues, counter terrorism strategy for the island and INTERPOL. Regarding terrorism, in 2018 the department created a roadmap to capture all the policies and responsibilities the government agencies with the intention of developing a threat assessment strategy and policy and incident response for the period 2022-2025. The NCTVI also bridges the gap between the PPO and the FIU and addresses matters related to TF dissemination. The NCTVI ensures that detailed investigations are conducted on matters related to TF.
104. The CBA continues to focus on risk-based supervision based on the findings of the sectoral risks conducted . The CBA's AML/CFT focus lies on the prime areas of ML/TF concern ('themes/topics') as well as specific sectors or institutions. The themes/topics are based on a multitude of information sources (with an emphasis on the 2021 ML NRA, the FIU reporting statistics and the on-site and off-site supervisory history), as well as the professional judgment of the CBA's experts. The 'themes/topics' which the CBA dedicates its supervisory resources are determined yearly in the annual AML/CFT supervisory plan. The issue of financial inclusion has been given some attention by the CBA. In 2019, the CBA finalised work on a paper titled "Strengthening Digital Financial Inclusion in Aruba, 2019". The work of the CBA on financial inclusion is still in its early stage but will complement other work and actions undertaken by other competent authorities to address financial inclusion and will also address the threat posed by underground banking (in collaboration with the actions taken by LEAs and the PPO) and informal economy.
105. The assessors found a harmonised approach and the pooling of resources by competent authorities was taken in a significant amount of investigations ML and associated predicate offences cases and to mitigate the ML/TF risks, thereby resulting in some level of effectiveness and efficiency of the system. Examples of competent authorities working together and combining resources to mitigate ML/TF risks is the establishment of the ART, a multi-agency taskforce with the intent of identifying, tracing and recovering the proceeds of crime, the Financial Investigation Partners Platform and the Steering Group which comprised senior members within the KPA and the PPO which is tasked with some responsibility of identifying and prioritising ML cases. Other examples of competent authorities working together to achieve their objectives and policies by combining resources are reflected in the numerous case examples provided by the assessed country and reviewed by the assessors, some of which are cited in Chapter 3 of the Report (IOs 6, 7 and 8).

#### ***2.2.5. National coordination and cooperation***

106. National coordination and cooperation are collectively one of the strengths of Aruba's AML/CFT framework. The size of the jurisdiction contributes significantly to the authorities' success in effectively coordinating and cooperating. The assessors found that there was strong cooperation and coordination among the different authorities at the policy and operational levels

to ensure that ML/TF requirements are properly addressed. Evidence of strong cooperation and coordination at the operational level is reflected in the establishment of taskforces and the fusion center, meetings held among competent authorities and ML investigations and prosecutions that were reviewed by the assessors. All competent authorities interviewed articulated and demonstrated that there was a strong level of coordination and cooperation between the authorities. Whilst there is a strong cooperation and coordination at the policy and operational levels pertaining to ML/TF, the assessors found that cooperation and coordination at the operational level with regard to PF requires strengthening, despite the conduct of the PF risk assessment.

107. At the policy level, AML/CFT/CPF coordination and cooperation is managed by the AML/CFT Steering Group. This Steering Group is chaired by the Minister of General Affairs who is the Honorable Prime Minister and consists of the main government agencies and public sector organisations that are responsible for designing the AML/CFT architecture and implementing the AML/CFT laws, regulations and policies such as the PPO, the police, FIU and the CBA. The Steering Group meets periodically to discuss AML/CFT matters, including international ML/TF/PF requirements, the related risks, policies to mitigate those risks, and to ensure that there is effective coordination. A small AML/CFT Committee, consisting of entities such as the FIU, the CBA, PPO and the Department of Legislation and Legal Affairs, was also established by the authorities to ensure that there is efficiency in the process and the mandates of the larger Steering Group are addressed and implemented. Meetings of the smaller AML/CFT Committee take place in an *ad hoc* manner and are based on matters that need to be actioned or implemented. Some of the issues addressed by this team included the mutual evaluation of Aruba, legislation to address AML/CFT deficiencies and the NPOs' risk assessment.
108. Cooperation and coordination at the policy level does have its own challenges. For example, there are occasions when some competent authorities did not prioritise and address tasks assigned to them following discussions within the AML/CFT Steering Group. However, due to the Honorable Prime Minister, the Ministers of Finance and Justice being members of the Committee (a demonstration of high-level political commitment) the challenges were often resolved. The presence of these high-level officials on the Steering Group also ensures that actions such as amendments to AML/CFT laws amendments are urgently addressed. The small AML/CFT Steering Group also acts as agent to ensure that tasks assigned by the AML/CFT Steering Group are completed.
109. Coordination and cooperation at the operational level takes place through mechanisms such as the ART, the Fusion Center, Infodesk and the Steering Group<sup>20</sup> comprising the Chief Prosecutor and other LEAs that are responsible for the prioritisation of ML cases (see IO 7 in Chapter 3 for more detail) and MOUs, for example MOUs between the CBA and the FIU and the CBA and the PPO. Coordination and cooperation at the operational level was evidenced from the number of meetings that are held among the different operational agencies to target ML/TF cases. Several of the cases reviewed by the assessors demonstrated that there was a strong level of coordination and cooperation among the authorities, for example, resources are shared among LEAs to ensure that cases are thoroughly investigated. Coordination and cooperation at the domestic level largely takes place to ensure that the ML/TF risks that are identified in the NRA are properly addressed.

#### **2.2.6. Private sector's awareness of risks**

110. Most of the private sector authorities demonstrated a good awareness of ML/TF risks and are in agreement with the findings (with the exception of one realtor- see Chapter 5 of the report for

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<sup>20</sup> This Steering Group is different than the AML/CFT Steering Group.

further information). Competent authorities have published a summary of the findings of all three NRAs via different mediums, including on the CBA's website. The authorities have also communicated the findings of the NRAs via letters and other means to private sector officials. The FIU has demonstrated that it has a strong relationship with the private sector and has used some of its training and seminars to communicate the ML/TF risks to these entities. The feedback from the private sector authorities interviewed indicates that the quality of the information provided by the FIU during those information sessions was instrumental towards them gaining an understanding of ML/TF risks.

111. The private sector's awareness of risk is also based on their participation in the 2021 ML risk assessment that was conducted. Some private sector entities participated by being representatives on the different working groups, whilst others contributed by providing information. Most of the private sector officials interviewed clearly articulated the higher risk issues and vulnerabilities affecting the jurisdiction and those were in line with those risks identified in the NRAs.
112. Some private sector representatives interviewed recommended that the authorities have further discussions and dialogue on the findings of the NRAs and changes to ML/TF risks (when such occurred). Further and more sustained outreach on the NRAs by competent authorities was impacted by the coronavirus pandemic (COVID-19) and the implementation of measures such as social distancing and restriction on gatherings by the Government of Aruba to curb the spread of the virus.

### Overall Conclusion on IO.1

113. There is a good and shared understanding of ML/TF risks among most competent authorities and private sector officials in Aruba. The understanding of risk is largely based on the conduct of the ML/TF NRAs. The NRAs did not fully consider the ML/TF risks posed by all legal persons and arrangements and the risks associated with VAs and VASPs. Competent authorities have policies in place to address some of the high-risk areas identified in the NRA despite the national AML/CFT Strategy awaiting approval and implementation. Competent authorities' objectives and activities are geared towards addressing/mitigating ML/TF risks. Resource constraints, in some instances, nevertheless have an impact on some competent authorities' ability to ensure that objectives and activities are achieved to a greater degree.
114. AML/CFT coordination and cooperation at the policy and strategic levels is one of the main strengths of Aruba's AML/CFT framework. Although there is some level of cooperation and coordination at the policy level relative to PF, same needs to be strengthened at the operational level.
115. Deficiencies such as absence of the AML/CFT Strategy and limited resources in some instances (when taken into totality) were considered and weighted accordingly by the assessors, following which the assessors considered that moderate improvements were required.

**Aruba is rated as having a substantial level of effectiveness for IO.1.**

## Chapter 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

### 3.1. Key Findings and Recommended Actions

#### Key Findings

##### Use of financial intelligence and relevant information (IO.6)

- a) Aruba has established an FIU that is responsible for the receipt, analysis and dissemination of UTRs and currency declaration reports. The FIU is properly resourced with well trained staff. It is the central repository for financial intelligence. The FIU has access to a wide range of databases, which it utilised to perform its functions, including the conduct of operational and strategic analysis, in addition to rendering domestic and international cooperation.
- b) The FIU receives UTRs from a wide range of reporting entities and has an excellent working relationship with them. Feedback and guidance are provided in different formats to the different reporting entities. Such feedback and guidance have led to an increase in the quality of reports by the entities.
- c) LEAs, the PPO and other competent authorities have demonstrated that they are accessing and using financial intelligence from the FIU and other relevant information to a large extent to identify new targets, support the investigations of associated predicate offences, especially in cases involving corruption and cash smuggling, investigate potential ML/TF cases and for the identification, tracing and confiscation of criminal proceeds, render international cooperation and support supervisory functions.
- d) LEAs and other competent authorities in some instances have provided written and oral feedback to the FIU on the quality of the financial intelligence and relevant information disseminated. However, although some competent authorities do provide feedback, there is a need for more consistent and in-depth written feedback.
- e) Cooperation and coordination pertaining to the exchange of financial intelligence and relevant information are present and constitute a hallmark of Aruba's system. Aruba has established a multi-agency task force and other forums, such as the ART, comprising competent authorities such as the PPO, BFO, RST, the Customs Authority and the FIU to ensure that financial intelligence and relevant information are easily accessible and available for use in ML investigations, confiscations, prosecutions and convictions.
- f) The FIU's analysis largely supports the operational needs of competent authorities. The FIU is greatly aware of the needs of competent authorities by virtue of the agency's close working relationship with different competent authorities and by being part of the different taskforce and forums such as the ART. The FIU has aligned its work to that of the PPO and the different LEAs and prioritised its analysis and dissemination in line with ML/TF risks and the operational needs of competent authorities. For example, corruption, which is deemed a high risk, is given significant and urgent focus by the FIU.

##### ML identification, investigation and prosecution (IO7)

- a) ML is identified via various mechanisms, including intelligence, proactive investigations and parallel financial investigations. The authorities have also established a Steering Group

comprising various competent authorities, including the Commissioner of Police and the PPO, which are also responsible for identifying ML offences, especially those which have a cross-border component.

- b) Aruba does not have a national strategy for combatting ML nevertheless departmental policies exist within the PPO for guiding the investigations and prosecution of ML. It was also evident, based on interviews and information reviewed, that LEAs, the PPO and other competent authorities are dedicated and committed to ensuring that ML is properly identified, investigated and prosecuted.
- c) Competent authorities have taken a targeted approach with regard to the conduct of parallel financial investigations, which mainly takes place for associated predicate offences such as corruption, drug trafficking and smuggling. There is nevertheless a greater need for parallel financial investigations.
- d) Aruba has demonstrated that it has the capabilities to investigate and prosecute the different types of ML offences, such as stand-alone ML and third-party ML. In some instances, ML investigations are conducted based on the jurisdiction's ML risk profile. For example, the authorities have demonstrated a zero-tolerance policy for corruption and have dedicated resources to identify, investigate and prosecute ML from such offences. Despite the effort and willingness to investigate and prosecute such types of cases, ML investigations and prosecutions into the different types of ML activities are not fully consistent with the country's risk profile.
- e) The authorities have consistently recorded a decline in ML investigations and prosecutions between 2015-2020 which is due to inadequate resources that are available to LEAs to commence ML investigations and parallel financial investigations. Despite the lack of resources, LEAs have taken a holistic/strategic approach to investigating ML. Resources are shared between the different agencies and focus is given to complex ML cases, especially those that involve corruption and have a public interest.
- f) LEAs and the PPO do not have a database related to maintaining statistics on the number of investigative orders, therefore this represents a challenge to those agencies to provide data to demonstrate the extent to which effectiveness is being achieved.
- g) The sanctions that are available for ML are effective, proportionate and dissuasive. (See R.3), however, the sanctions applied by the judiciary, which is an independent and autonomous entity, are not effective, proportionate and dissuasive.
- h) The PPO has demonstrated that other criminal justice measures, such as non-conviction-based confiscation, are utilised when it is not possible to obtain a conviction for ML, due to factors such as insufficient evidence.

#### **Confiscation (Immediate Outcome 8)**

- a) Confiscation is a priority objective for the PPO and LEAs in Aruba. The tracing, identification and confiscation of assets (financial investigations) is an integral part of combatting ML and most associated predicate offences from the onset. The authorities' commitment to pursuing confiscation is demonstrated through the different confiscation policies, such as the PPO's cash smuggling policy and the creation of

institutions/taskforces, such as the ART. The creation of the ART and its work, despite the challenges, represent an excellent initiative by the authorities towards the recovery of assets.

- b) Aruba has demonstrated to a large extent that it is seizing and, in some instances, confiscating proceeds from domestic and foreign predicate offences. This is demonstrated by the numerous case examples provided showing that the authorities have seized a wide range of assets including cash, vehicles, real estate and precious metals. On the other hand, the authorities presented limited evidence to demonstrate that there is a strong focus towards identifying, tracing, seizing and confiscating proceeds located abroad and have indicated that there are limited cases related to proceeds located abroad.
- c) Customs and the PPO have demonstrated that the recovery of falsely declared cash and BNIs is part of their mandate and to a significant extent, they are seizing and confiscating cash and BNIs. The extent to which falsely/ not declared or disclosed cross-border movements of currency and BNIs are recovered by competent authorities is impacted by inadequate training and resources in some instances.
- d) The institutional framework and policies pertaining to the recovery of assets are all present in Aruba, however, inadequate resources and training have a moderate impact on the extent to which the authorities are identifying, tracing, seizing and confiscating proceeds of crime.

## Recommended Actions

### Immediate Outcome 6 (Use of financial Intelligence and relevant information)

- a) Despite being well resourced and financed to undertake its functions, the assessors recommend that the FIU would benefit from additional technical resources to further enhance its functions and to further innovate its technical infrastructure.
- b) LEAs and the PPO should also be provided with additional resources, which will result in a greater use of financial intelligence and relevant information in cases involving ML/TF investigations and to further support the identification, tracing and confiscation of criminal proceeds and instrumentalities.
- c) Competent authorities should provide more consistent and detailed (written) feedback to the FIU on the quality of its disseminations.
- d) LEAs and the PPO should ensure that proper statistics related to the use of and access to financial and relevant information are maintained in a manner that is easily retrievable to ensure that a greater level of effectiveness can be demonstrated.
- e) Competent authorities are encouraged to sustain the use of financial intelligence and relevant information and ensure that this information continues to be used for the different purposes and higher levels of outcomes are achieved.

### **Immediate Outcome 7 (ML investigation and prosecution)**

- a) The authorities should continue to strengthen their efforts to ensure that ML is properly identified, investigated and prosecuted. To ensure that this done, Aruban authorities should provide adequate resources and training to the various LEAs such as the BFO and the PPO.
- b) Aruba should implement the national AML/CFT/CPF Strategy for combatting ML, which serves as a roadmap and allows for a holistic approach to be adopted by LEAs and prosecutors pertaining to the investigations and prosecution of ML. The authorities should ensure that ML activities are investigated and prosecuted in line with the national strategy and to a greater extent, with the risk profile of the country.
- c) The authorities should ensure that comprehensive statistics relevant to the effectiveness and efficiency of their AML/CFT systems and operations are maintained.
- d) Despite being an independent entity, efforts should be made by the authorities to communicate and sensitise the judiciary through training and outreach on the requirement to apply sanctions that are effective, proportionate and dissuasive.

### **Immediate Outcome 8 ( Confiscation)**

- a) There should be an increase of human resources within the ART and the BFO to enhance their capacity to conduct their functions to a greater extent relative to the identification, tracing and seizing of assets.
- b) Competent authorities should give more focus to identifying, tracing and confiscating proceeds of crime that may be located abroad.
- c) Competent authorities are encouraged to sustain their good work in seizing and confiscating different types of assets, especially those that have a nexus to offences that are considered high-risk, thereby ensuring that confiscation results are commensurate with the ML/TF risks identified.

116. The relevant Immediate Outcomes considered and assessed in this Chapter are IO.6-8. The Recommendations relevant for the assessment of effectiveness under this section are R.1, R. 3, R.4 and R.29-32 and elements of R.2, 8, 9, 15, 30, 31, 34, 37, 38, 39 and 40.

## **3.2. Immediate Outcome 6 (Financial Intelligence ML/TF)**

### ***3.2.1. Use of financial intelligence and other information***

117. Aruba has demonstrated that competent authorities are accessing and using financial intelligence and relevant information to a significant extent in the conduct of their functions. The assessors' findings are based on information submitted, including detailed case examples, and interviews conducted with competent authorities.

*Use of Financial Intelligence and relevant information by the FIU and LEAs*

118. Based on the discussions held with competent authorities, the assessors found that there is the existence of a clear culture pertaining to the use of financial intelligence and relevant information, especially in complex ML investigations and the recovery of assets among the different competent authorities. Aruba's laws and institutions make it possible for competent authorities to access and utilise financial intelligence and relevant information. Competent authorities, including the law enforcement and prosecutorial authorities, have all demonstrated that they are accessing and utilising financial intelligence and relevant information to a great extent. Financial intelligence and relevant information are being accessed and used for a variety of reasons, including ML, TF and associated predicate offences, investigations and prosecutions, asset tracing, confiscation, supervisory purposes (on-site inspections), international cooperation, identification of ML/TF risks and identification of new targets.
119. The assessors found that there are no impediments within the system with regard to accessing and using financial intelligence and relevant information. Aruba's effectiveness with respect to the use of financial intelligence and relevant information is demonstrated largely by the number of ML cases investigated and prosecuted between 2016 to 2021 and seizure and confiscation results as reflected in IOs 7 and 8, respectively. One of the challenges experienced by the assessors in determining the extent to which competent authorities are accessing and utilising financial intelligence and relevant information was the lack of quantitative information (statistics) in the possession of competent authorities, with the exception of the FIU. The assessors are nevertheless cognisant that this report is not a statistical exercise and relied heavily on qualitative data, such as case examples, to demonstrate and arrive at their findings pertaining to what extent financial intelligence and relevant information are being accessed and utilised.
120. The FIU is the largest repository of financial intelligence in Aruba. This is as a result of its core functions related to the analysis of UTRs and currency declarations. LEAs and other competent authorities such as the CBA and Tax Authority generally rely on the FIU to provide financial intelligence to assist in their functions, despite having access to financial information from FIs and DNFBPs via investigative tools such as production orders and search warrants (see Rec 31). The FIU has access to a wide range of databases to obtain financial and relevant information to conduct its functions. Box 3.1 below represents some of the databases to which the FIU has accessed directly and indirectly:

*Box 3.1. Examples of databases to which the FIU has access*

- FIs and DNFBPs
- Central Bank of Aruba
- Chamber of Commerce (Basic and BO information)
- KPA
- Security Service of Aruba
- NCTVI
- Customs Department
- Public Prosecutors' Office
- Tax Department
- Land Registry
- Closed and open sources of information
- Aruba Fusion Center
- Infodesk

· Immigration

121. The types of information that can be accessed include all customer information, basic and BO information, land ownership and leasing information, currency and trade information, criminal records, intelligence, tax information and commercial records. The FIU maintains a comprehensive database with information from various sources. The information kept at the FIU is accessed by all competent authorities through direct disclosure and upon requests. There are designated screened personnel from the various competent authorities with whom financial intelligence and other relevant information are shared or disseminated for investigations, prosecution of ML matters and/or predicate offences in addition to the identification and tracing of criminal proceeds.
122. The FIU also maintains a register (database) which is used to store a wide variety of data, such as financial intelligence and relevant information, including that which is obtained from international counterparts. This information is used to conduct operational and strategic analysis, investigations by LEAs and international cooperation as well as for other requirements. The types of data and information maintained by the FIU in its register are summarised in Box 3.2.

*Box 3.2. Examples of financial intelligence/information and relevant information maintained by the FIU*

- Reports of unusual transactions received from service providers established by law;
- Declaration forms for cash and bearer payable papers that anyone imports or exports;
- Notifications of transactions received from the Central Bank of Aruba;
- Data and information received from the Central Bank of Aruba as the supervisory authority;
- Data received by virtue of Article 24 of the AML/CFT State Ordinance, which is data received through information requests from investigating officers related to individuals who might be guilty of ML/TF infractions, or of which there is reasonable suspicion thereof and data that is crucial to a ML/TF investigation;
- Data received through an information request as referred to in Article 3 paragraph 2 of the State Ordinance Secret Service Aruba in conjunction with Article 49 of the AML/CFT State Ordinance, referring to CDD information of other parties involved;
- Other data or information obtained from service providers or the Central Bank of Aruba as a result of the application of Article 27 (the authority to request any additional data) and Article 55a, paragraph 5 of the AML/CFT State Ordinance (additional relevant data received from the CBA);
- Data received from foreign FIUs in the context of data exchange;
- Data obtained accessing registers, open and close sources; and
- Data obtained by virtue of AML/CFT Regulations.

123. Financial intelligence and relevant information are also obtained by the FIU from foreign counterparts to conduct its own functions and to support those of the competent authorities. The FIU has demonstrated that it is utilising international cooperation through requests for information, as the need arises, to obtain financial intelligence and relevant information. As is shown in Table 3.1, a total of 70 requests to obtain financial intelligence and relevant

information was sent by the FIU to its foreign counterparts for the period reviewed. The increase in requests was due to the investigation of the “Avestrus case” (involving the predicate offence of corruption) in which the FIU was integrally involved.

*Table 3.1. Outgoing requests to foreign FIUs for financial intelligence and relevant information*

<b>Year</b>	<b>Amount</b>
2016	10
2017	5
2018	7
2019	24
2020	24
<b>Total</b>	<b>70</b>

124. Competent authorities in Aruba, through both legislative and collaborative processes and approaches are able to access a wide range of information in the investigation of ML, TF, associate predicate offences and the tracing and confiscation of criminal proceeds and instrumentalities of crime. Competent authorities obtain relevant information and financial intelligence from the FIU based on requests for information and as a result of products such as reports that are spontaneously disseminated by the FIU. The FIU has maintained comprehensive statistics on the number of requests received and reports disseminated to the authorities. This information is found in Tables 3.6 and 3.9 below, respectively. The assessors, based on discussions held with competent authorities and information, including case examples, submitted by the jurisdiction, found that a wide cross-section of competent authorities utilise financial intelligence and relevant information in their functions. The FIU plays a critical role in Aruba’s AML/CFT system and is highly regarded by the other competent authorities. Competent authorities value and recognise the work of the FIU in providing financial intelligence and relevant information to assist in their functions.
125. The financial intelligence and relevant information obtained by the FIU are largely used to support and/or add value to its operational and strategic analysis products, which are then disseminated to competent authorities and foreign counterparts. There are no impediments with the framework to accessing such types of information, based on the level of cooperation and coordination that exists within the jurisdiction among both public and private sector officials. The FIU has demonstrated through both qualitative and quantitative information provided to the assessors (see Table 3.3) that it is consistently accessing the databases of different competent authorities, whether for its own operational requirements and/or on behalf of competent authorities, to obtain relevant information. The assessors reviewed samples of the intelligence reports disseminated by the FIU to competent authorities and found that the FIU has made good use of financial and relevant information in the conduct of its functions. As examples, dissemination of intelligence reports to the PPO has led to the initiation of ML investigations and prosecutions. Further, the CBA has used the information from the intelligence reports in the conduct of its AML/CFT supervisory functions.
126. One of the hallmarks of Aruba’s AML/CFT system is the fact that the FIU and other competent authorities do not operate in silos. The FIU ensures that its mandate is also aligned with those of the other competent authorities. The FIU has demonstrated that it has a close working relationship with the other competent authorities, as is detailed in Table 3.3 below, and often requests information on their behalf. Unlike the FIU which keeps comprehensive statistics of financial intelligence and relevant information it may have accessed in the performance of its duties, competent authorities, primarily LEAs and the PPO, do not have any database on the number of requests made to FIs and DNFBPs etc, and investigative orders such as production

orders and search warrants obtained within the last five years to obtain financial intelligence and relevant information. The assessors were informed that records related to production orders and search warrants can be accessed on the individual files but were not recorded in any database. Several of the case examples provided by the authorities and reviewed by the assessors nevertheless show that search warrants and other investigative tools were used to obtain financial intelligence and relevant information.

127. Further, due to the close working relationship between competent authorities and private sector officials, and Aruba being a small jurisdiction, financial intelligence and relevant information are often accessed in an informal manner (during meetings/phone calls etc) with no record of same. The access to and use of financial intelligence and relevant information are also permissible other than via written requests. A request for information may be facilitated via different means, including during meetings and evaluation cycles among peers. Based on discussions held by the assessors with competent authorities, there is a clear understanding that meetings are held regularly among the different competent authorities to discuss, clarify and receive feedback on disseminated reports. The intention of those meetings was to build on the relationship between the FIU and the other competent authorities and to ensure that financial intelligence and relevant information are used in investigations was communicated to competent authorities.
128. To ensure that competent authorities effectively utilise financial and relevant information for criminal investigations in an effective manner, the FIU staff is actively involved in the early stages of an investigation, once this is permissible. The analyst at the FIU who is tasked with a specific case is in daily contact and supports the investigator assigned to the case, as the case progresses. The collaborative efforts of the FIU and these competent authorities are reflected in several high profile and complex cases, some of which were reviewed by the assessors, such as the “*Ibis Case*” which is reflected in Box 3.4.
129. The assessors, in determining the extent to which these competent authorities are accessing and using financial intelligence and relevant information relied largely on qualitative data such as case examples and the structure/relationship that exists between competent authorities and the FIU, which is the largest repository of financial intelligence.
130. The FIU has requested additional information, financial and relevant information from service providers (FIs and DNFBBs) in the conduct of its analysis. The products developed and disseminated by the FIU as a result of its analysis have been provided to other competent authorities for investigations, for the development of policies, to aid in the identification, investigation and prosecution of complex ML cases and confiscation. The information provided below shows the number of requests for additional information made by the FIU for its own operational requirements and on behalf of foreign FIUs.

**Table 3.2. Requests from the FIU to Reporting Entities for financial and relevant information**

Year	Number of Requests on own behalf	Number of Requests on behalf of foreign FIUs
2016	26	2
2017	31	6
2018	16	2
2019	14	2
2020 (till March 1)	3	0
<b>Total</b>	<b>90</b>	<b>12</b>

**Table 3.3. Access to other data sources for operational purposes on behalf of other competent**

*authorities by the FIU*

Year	2016	2017	2018	2019	2020
Database					
Times Accessed					
Chamber of Commerce	06	06			5
Civil Registry	09	08	01	02	7
Immigration	13	04	01	01	8
Land	1				
KPA			01	01	
PPO			03	04	
<b>Total</b>	<b>29</b>	<b>18</b>	<b>06</b>	<b>8</b>	<b>20</b>

131. The assessors found that the FIU's requests for information have declined in some instances and the number of requests is small in nature, taking into consideration the ML/TF risks affecting the jurisdiction. Although this was acknowledged by the FIU, the authorities advised that the limited number of requests is due to the fact that the FIU works closely with most of the stakeholders, including by being a member of the ART, thereby ensuring that the information is requested directly from its counterparts through the multi-agency approach, in which case, the requests are generally not registered/recorded. Further, the limited number of requests was due to the fact that the FIU continues to take a targeted approach in its analysis by ensuring that same is prioritised in such a manner that it supports the operational needs of competent authorities. For example, where the focus of competent authorities is on corruption, the focus of analysis will be on corruption related UTRs.
132. LEAs have demonstrated that they are accessing and utilising financial intelligence and relevant information directly from the FIU to conduct their investigations. Table 3.4 below shows the number of requests that were made by the different competent authorities to the FIU to investigate ML/TF and other associated predicate offences. The table does not provide a true description as to what occurs in the jurisdiction (at the time of the on-site), as requests are often made and not recorded. The foregoing is due to the close cooperation and coordination that exists between the FIU and operational agencies which makes it easy to share information.
133. During the period 2016-2019, a total of 53 requests for information were made by competent authorities to the FIU, which the assessors recognised is low. However, as indicated in the paragraph above, the figure is not reflective of the situation that occurs in the jurisdiction, as financial intelligence and relevant information are generally shared during meetings and other informal settings and at times, the data is not recorded, for example, during meetings of the ART and between the analyst responsible for a particular case and the investigator. This was substantiated based on information reviewed (financial intelligence reports etc) and discussions held with the authorities, particularly the staff of the FIU.
134. As is demonstrated in Table 3.4, financial intelligence and relevant information, as recorded by the FIU, was requested by different competent authorities to investigate a wide range of predicate offences, including some that are classified as major threats for ML/TF. The information shows that a wide cross-section of LEAs, including the National Internal Investigation Department (*in Dutch: Landsrecherche/LR*), the agency responsible for the

investigation of corruption offences, are accessing and using financial intelligence and relevant information in the conduct of their functions. Although there is evidence of competent authorities accessing and using financial intelligence and relevant information from the FIU, the assessors' finding is that there is a greater need for the KPA to access and use financial intelligence in the conduct of parallel financial investigations, particularly in cases involving the investigation of those predicate offences that are linked to ML. This was nevertheless not considered to be a serious deficiency and was not weighted significantly as LEAs and the PPO have demonstrated that they are accessing and using financial intelligence and relevant information in complex ML and confiscation cases involving high-risk predicate offences such as corruption involving natural and legal persons. As mentioned in IO 7, these complex cases also take a significant amount of time to investigate and prosecute.

*Table 3.4. Type of information/intelligence requests from domestic competent authorities to the FIU*

Year	Competent Authorities	ML/TF Offences	Description/Predicate Offence	Number of Requests/ Strategic (s) or Operational (o)
2016	BFO, PPO, RST	ML	Execution of MLA & Proactive Action	3 (o)
2017	PPO, RST, FIB, ART, NSA, FIOT	ML	Drug trafficking, fraud, bribery, financial investigations, asset recovery, tax evasion and cash smuggling	21 (20 (o)-1(s))
2018	PPO, ART, KPA	ML	Drug trafficking, firearms, and gold smuggling	8 (7(o)- 1(s))
2019	PPO, NCTVI, NSA	ML/TF	Fraud, TF and corruption	12(o)
<b>2020</b>	PPO, SSA, KPA and LR			9
<b>Total</b>				<b>53</b>

135. Competent authorities have demonstrated that financial intelligence and relevant information are also used in rendering international cooperation. Statistics provided show that a number of MLA requests, involving ML and received between 2016 and 2019, were satisfied by the PPO using financial intelligence and relevant information (see analysis IO. 2- Chapter 8 of the report for further details).
136. The FIU has demonstrated that it is accessing, utilising and sharing financial intelligence and relevant information with foreign counterparts. As demonstrated below, some of the cases have resulted in positive outcomes.

*Box 3.3. Case Example: Use of financial intelligence and relevant information: Accessing databases on behalf of foreign FIUs.*

**Competent Authorities: FIU and Foreign FIUs**

**Relevance to the FATF Outcomes:**

IO2: Exchange of information with another FIU.

IO6: Accessibility, quality and use of relevant information.

In 2016, the FIU received a request for information from a foreign FIU regarding an individual suspected of drugs smuggling and ML. Upon first review of its database, there were no UTRs filed with the FIU by local service providers. In accordance with the FIU's internal procedures and to conduct analysis effectively, the database of the Immigration Department, the Chamber of Commerce and subsequently, the Land Registry Department were consulted (checked). With this data, a thorough analysis was conducted and the findings shared with the requesting FIU. The foreign FIU obtained the FIU's permission to disclose the provided information with its domestic LEAs.

**Outcome:** Suspect was convicted in 2017 and over a million euros worth of property was confiscated in Aruba.

137. The inter-agency approach to investigations and the use and sharing of financial and relevant information were demonstrated and communicated by Aruba to the assessors during the on-site visit including via the provision of numerous case examples. The three cases cited below are examples used to demonstrate the approach and actions taken by competent authorities using financial intelligence and relevant information to investigate and prosecute ML offences that were connected to predicate offences considered to be in the higher risk bracket, i.e., corruption, drug trafficking and underground banking. The case examples also demonstrate collaboration between the various competent authorities and a targeted and strategic approach to using financial intelligence and relevant information. Further, the cases also demonstrate the FIU working to ensure that its analysis supports the operational needs of competent authorities.

***Box 3.4. Case Example: Use of financial intelligence and relevant information: “Case IBIS.”***

**Competent Authorities involved: FIU, LR, RST and the PPO**

The financial intelligence provided by the FIU made an important contribution to developing evidence and tracing proceeds related to ML and associated predicate offences.

In the IBIS case, an acting government minister was investigated by the LR, together with investigators of the RST. After concluding the investigation, the fraud prosecutor of the PPO decided that the former minister, his wife, several of his employees and a number of other persons would be prosecuted for corruption, ML, and embezzlement. Additionally, the PPO announced the procedure in which the main suspect, i.e., the former minister, and his wife would be deprived of the proceeds of crime that were gained. The decision to request a court order for restitution of the proceeds of crime is possible pursuant to Article 1:77 of the Criminal Code of Aruba (deprivation of assets claim).

The analyses and the intelligence gained through financial investigations allowed for a larger amount of illegal assets to be identified. The FIU's disseminated reports also gave insight about the legal entities and a foundation that were used.

**Outcome:** The suspect and his wife were convicted for ML and the sum of Afl. 424,227.60 (approximately US\$238,674.00) was confiscated.

*Box 3.5. Case Example: Use of financial intelligence and relevant information “Case Hamburg”*

**Countries involved:** Aruba, China, Curaçao, Venezuela, Colombia, Suriname, The Netherlands, Sint Maarten, Anguilla and other countries.

**Competent authorities involved:** FIU, BFO, Aruba Tax Authorities (SIAD), Investigators at the FIOT and the KPA.

**Offence:** Underground banking

**ML Type:** Self-laundering

**Start of Case:** FIU analysis and dissemination.

**Summary of case:** The investigation showed that the main suspects acted as a money transaction company. This means that the suspects received cash from third parties into their bank accounts (in Aruba or in China), and thereafter made that money available elsewhere, against payment of a commission to those third parties or others, such as family members of those third parties. During this investigation, it also became clear that the suspects, although it appeared that they were running a supermarket, were widely involved in forms of underground banking, thereby conducting more forms of illegal financial operations and thus generated large illegal income. Among other things, (on a large scale), dollars were exchanged against florins (and vice versa), Venezuelan tourists were attracted to the company to "grate" their credit cards against commission, loans were provided, and money couriers were deployed to facilitate substantial cash amounts leaving and entering Aruba.

The investigation also showed that one of the main suspects had an extensive international network, through which he apparently performed the financial transactions, including in Aruba. For example, transactions were done with contacts in Venezuela, Colombia, Suriname, the Netherlands, Sint Maarten, Anguilla and other countries. The income generated by the business was not reported to the tax authorities. For the tax authorities, suspects were “only” registered as minimum loners. A certain portion of the illegally generated income was converted into real estate and valuable items, such as jewellery and watches. The investigation revealed, among other things, that the suspects acquired several immovable properties in a relatively short period of time and brought in large sums of their own, which were inexplicable in view of that tax. For the purchase of the real estate and for the watches and jewellery, the suspects have walked unusual roads, including through the use of loan-back constructions, by buying up gift certificates, or by letting third parties purchase such items. These are constructions that conceal that a person possesses unexplainable power. The financial intelligence and relevant information provided by the FIU to the competent authorities were useful in the investigation and prosecution of the case.

**Outcome:** Defendants were sentenced to 24 months imprisonment, of which 12 months were conditional and with probation for three years. The suspect was also sentenced to pay a fine

of Afl.100,000.00 (approximately US\$55,555.00).

**Box 3.6. Case Example: Use of financial intelligence and relevant information “Case Tzuhim”**

**Country involved:** Aruba

**Competent authorities involved:** FIU, BFO, SIAD and the KPA.

**Offence:** Drug-based ML

**ML Type:** Self-laundering

**Start of Case:** Arrest for drug possession

**Summary of case:**

The police were near the restaurant Tzuhim (which has been closed for a while) when they got a strong scent of marijuana. They investigated and found that the smell came from the restaurant. There they spoke to a suspect and asked him if they had permission to search the house / restaurant. In the restaurant and house, the police found marijuana grinders, plastic bags, scales (instrumentalities that are often used in the sale of drugs), and money were found in the house. The FIU worked closely with the competent authorities involved in the investigations of the predicate offence by providing useful financial intelligence and relevant information. The financial intelligence and relevant information provided were also useful in supporting confiscation measures.

**Outcome:** Defendant was convicted and sentenced to 12 months imprisonment, of which 4 months were conditional with a probation period of 3 years. Confiscation was ordered in the amount of Afl. 52,500.00 (US\$29,329.00). In the absence of full payment or recourse, custody was for the duration of 12 months.

**Access and Use of Financial Intelligence and relevant information by Supervisory Authority**

138. The CBA has also received and used financial intelligence and relevant information in the conduct of its functions, as is demonstrated from the data provided in the table below (3.5) and case examples represented in Box 3.7 . In prioritising its on-site examination planning of the Integrity Supervision Department, the CBA requests information from the FIU on the reporting behaviour of service providers for the purpose of conducting on-site investigations and “risk assessments” of the various sectors. The information about the reporting behaviour obtained from the FIU is used to determine whether the number of filed reports is correct for both the service provider and the FIU. The CBA does not assess the quality of the reports. The information shows that from 2017, the CBA has consistently requested financial intelligence and relevant information from the FIU. Further, the authorities have provided case studies which are reflected below to demonstrate that financial intelligence and relevant information are not only being requested but are being put to good use by CBA.

**Table 3.5. Requests for Information to the FIU by the CBA**

<b>Year</b>	<b>Amount</b>
2016	0
2017	8
2018	22
2019	21
<b>Total</b>	<b>51</b>

***Box 3.7. Case Examples: Use of financial intelligence and relevant information by the CBA***

*Case A:* The CBA received written intelligence information from the FIU, which led to the writing to a tax advisor in the Free Zone about activities performed and which led an on-site examination at a law firm.

*Case B:* Based on information provided by the FIU, the CBA needed to request additional information from the Chamber of Commerce. The CBA received information in the context of determining illegal activities (performing activities as a service provider without registration pursuant to Art 50 of the AML/CFT State Ordinance or operating without a permit/registration or exemption under sectoral supervisory legislation).

139. LEAs and the different departments within the KPA such as the Infodesk, Bureau of Financial Investigations (BFO) and the Fusion Center have cooperated and exchanged relevant information to a large extent, as demonstrated in the inter-agency investigations. The assessors found that the sharing of information and the access to financial intelligence amongst competent authorities proved essential in the prosecution of several ML and confiscation cases.
140. Infodesk is a department within the KPA which gathers information and discloses information to the various internal departments within the KPA and other competent authorities. The main objective of this department is to be a single point of contact between the police and other competent authorities. The Unit was established in 2014 as a result of the need to centralise, register and monitor the requests for information for other entities on a national and international level. Infodesk provides valuable support and information to facilitate competent authorities' conduct of their functions, including the conduct of ML investigations. The information below in Table 3.6 represents the number of requests received by Infodesk from different authorities in Aruba for relevant information. The information shows that competent authorities, such as the PPO, BFO, Organised Crimes Department, Customs Investigation Unit and the ART, which are responsible for the investigation of ML/TF, asset recovery and international cooperation, have all utilised Infodesk resources to access relevant information.

***Table 3.6. Sharing of relevant information by competent authorities as collated by Infodesk***

<b>Competent Authorities</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Asset Recovery Team	n/a	13	7	19
Fiscal Intelligence & Investigation Team	10	2	9	7
Internal Affairs Law Enforcement Aruba		36	111	67
Civil Registry Office of Aruba				
Aruban Tax Department		4		
Crime Investigation Department	32	98	151	173
NCTVI/Interpol	3	28	09	14
Taskforce support of parties concerned regarding a criminal offence			1	
Management of the KPA	6	21	03	52
Police Academy		102		
Special Victims Unit	20	22	36	20
Royal Netherland Marechaussee	10	21	07	09
PPO	1	04	11	26

Competent Authorities	2016	2017	2018	2019
Beach Patrol		08	63	70
Steering Committee of Infodesk	02		01	
Patrol Officers Unit	8	5	4	77
Traffic Department		1	1	6
Airport Authority		1		3
Neighborhood Police		7		2
Special Investigation Task Force (RST)	34	27	140	77
Port Authority		1		13
Bureau of Financial Investigations	2	20		9
Forensic Investigation Unit	3	1	2	10
Customs Investigation Team		2		5
Border Police				19
Prison	1	10		1
Coast Guard	5	8	3	10
National Internal Investigation Department		11	38	15
Police Motorcycle Unit				1
Observation Team (KPA)	8	3		5
Department of Permit				1
Organised Crime Unit	53	98	113	73
Security Service of Aruba	1			
Robbery Department	2	30	36	67
<b>Total</b>	<b>201</b>	<b>584</b>	<b>746</b>	<b>851</b>

### 3.2.2. STRs received and requested by competent authorities

141. The FIU is the sole agency that is responsible for the receipt of STRs, which are classified as UTRs in Aruba (see analysis of R.29). Transactions are deemed unusual by means of indicators pursuant to the Ministerial Regulation Indicators for Unusual Transactions and submitted based on objective and subjective indicators. Objective indicators include all Giro transactions valued at Afl. 500,000.00 (US\$279,329.00) (or counter-value thereof in foreign currency) or more and all cash transactions valued at Afl. 25,000.00 (US\$13,966.00) (or counter-value thereof in foreign currency) or more. Subjective indicators are those transactions that the reporting entities assume can give rise or are related to ML or TF.
142. In order to ensure that the quality of UTRs received is maintained and the UTR contains information that is accurate and useful, the FIU conducts regular training and information sessions with the reporting entities. Data provided to the assessors shows that over 41 information sessions and compliance officers' meetings were conducted by the FIU between 2016-2019. The information sessions and compliance meetings do not include the informal guidance that is often provided by the FIU to the reporting entities. Feedback received by the assessors as a result of interviews conducted with the reporting entities during the on-site indicate that the training and information sessions are useful, and the relationship and guidance provided by the FIU have contributed to an increase in quality UTRs. In addition to the various information sessions, the FIU has issued and published guidance on UTR identification (red flag indicators) in March 2013. This guidance was revised in November 2018 and is available on the [FIU's website](#). The FIU has also published and revised red flag indicators and other instructional material on its website for the benefit of the reporting entities. These red flag indicators are very comprehensive and cover various areas, including identification and verification, relationships between clients and service providers and legal entities and structures.

*Table 3.7. Unusual Transaction Reports submitted to the FIU during the period 2016-2020*

<b>Sector</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Commercial Banks	18,144	19,084	20,034	21,811	14,931
Money Transfer Companies	2,566	3,363	1,614	2,696	2,143
Life Insurance Companies	1	6	6	10	23
Offshore Banks	32	39	1264	-	-
Other FIs	161	215	194	223	133
Accountants	4	6	27	43	65
Pension Funds	-	9	-	2	16
Lawyers	4	133	43	138	58
Other Legal Advisors	4	1	5	1	-
Tax Advisors	4	2	-	15	10
Casinos	9,593	11,343	12,627	13,848	8,330
Jewellers	6	9	13	14	12
Real Estate Agents	39	80	168	282	256
Notaries	296	273	435	420	350
Pawnshops	7	7	-	21	23
Trust Service Providers	1,278	410	388	375	236
<b>Total</b>	<b>30,204</b>	<b>34,088</b>	<b>36,437</b>	<b>39,086</b>	<b>26,634</b>

143. The information provided in Table 3.7 shows that there has been a consistent increase in the number of UTRs submitted to the FIU, with the exception of 2020, with the decrease due to the COVID-19 pandemic. Most of the UTRs were submitted based on objective indicators (large cash transactions) with the exception of those from the MTCs which were largely based on subjective indicators. The authorities credited this to the Aruban economy being cash-based. UTRs submitted based on subjective indicators are important to the FIU and are often used in the conduct of strategic analysis. UTRs based on subjective indicators have also been used in the conduct of ML risk assessments. From a contextual standpoint, for example, in 2012 during the NRA process, the real estate sector was informed of its vulnerability to ML activities. To address the vulnerability, a strategic analysis was done to establish a threshold for wire-transactions.
144. The assessors found that the FIU continuously works with the reporting entities to strive to enhance the quality of the UTRs. Most of the reporting entities interviewed during the on-site spoke highly of their relationship with the FIU and the willingness of the staff to assist. The FIU provided information to demonstrate that it has consistently provided feedback to the reporting entities during the meetings that are held with the compliance officers. In the few circumstances where defective UTRs are identified, the FIU returned those reports, and the necessary guidance and instructions are provided to the reporting entity. Both oral and written feedback is provided to the Money Laundering Reporting Officer (MLRO) and Money Laundering Compliance Officer (MLCO) of the reporting entities to ensure that the quality of the reports is maintained or improved. Besides the feedback and guidance provided to the reporting entities, the FIU has also issued alerts and red flags to reporting entities. Alerts are published on current events, emerging risks and new methods regarding ML and TF. Some of the alerts published by the FIU are with regard to romance scams, pyramid schemes (Questra Alert), issuance of the new banknote and COVID-19.

145. The FIU expressed that it is largely satisfied with the quality of the UTRs it received as the reports contained valuable information that is needed to conduct both operational and strategic analyses. The assessors reviewed a sample of the UTRs submitted by the entities and found that they are of good quality. The UTRs contained a wide range of information including the reasons for suspicion. The assessors credit the quality of the UTRs filed to the work undertaken by the FIU in providing guidance and feedback.
146. Several UTRs received by the FIU have led to investigations, prosecutions and convictions, identification of assets, spontaneous sharing of information with foreign counterparts, confiscation and identification of new targets. Information from UTRs that was used in investigation and prosecutions and resulted in conviction and confiscation are referenced in the report through the various case examples in IOs 6, 7 and 8. The information below is a reflection of one such case that was shared with foreign counterparts

### **Box 3.8. Case Example: Spontaneous information sharing/ Quality of UTR.**

**Competent authorities:** FIU, PPO and investigative team

**Relevance:** Based on received UTRs from various service providers, information was provided about the alleged motive of robbery, which resulted in the death of a person.

#### **Summary of Case:**

A few years before this analysis was initiated, FIU disseminated intelligence related to the victim and possible ML activities. In the dissemination, information was provided that the victim had a large sum of cash in her possession. The suspect in custody was related to the victim.

#### **Notable conclusions drawn from the UTRs:**

The alleged suspect was the owner of a business, which had great financial difficulties. His mother had apparently provided money to help to booster the cash flow a few times (withdrew cash from her personal account). The suspect deposited the same amount into his business account within a very short timeframe.

#### ***Consulting the immigration database regarding the embarkment of the suspect:***

The suspect seemed to travel abroad with a companion a few times for quite extended stays. A considerable amount of cash was withdrawn from the business account before the travel, despite the vulnerable financial state of the business. The suspect and the ‘companion’ were convicted for manslaughter. Apparently and allegedly, the suspect was aware of the significant amount of cash the victim possessed and in order to obtain the cash from the victim, he engaged the ‘companion’ to stage an armed robbery, which got out of control.

### ***Electronic Reporting System (MOTsys)***

147. UTRs are submitted electronically to the FIU via secured platform referred to as the MOTsys, which was developed by the FIU. This platform has enabled the reporting entities to submit UTRs in an efficient manner and has provided the FIU with the ability to select, process, analyse data and subsequently disseminate the results of the analysis to competent and relevant authorities through secured mechanisms.

148. At the time of the completion of the on-site, there was no backlog in the system. Some service providers interviewed, communicated to the assessors that there were some technical impediments such as outdated web browsers and improper filing of UTRs, which created technical issues in inputting the data into the system. These issues, when reported, were immediately addressed by the FIU.
149. The MOTsys enables the FIU to gather information, extensively and to provide intelligence and information requested from the FIU in a timely manner. The FIU provides qualitative information to the key competent authorities, both on request and spontaneously.
150. Overall, the assessors found that the UTR system has many advantages and creates a good perspective for and of the FIU. The assessors were provided with an overview as to how the system works and were satisfied that the system assists the FIU in conducting its functions with some level of ease. Digitising the reporting and collecting process has made the reporting obligation less laborious for the reporting entities, which was confirmed by the assessors, based on interviews conducted. More time is allocated to staff to conduct content review of the received UTRs in order to increase the quality of the UTRs. Content reviews are generally conducted in a risk-based manner. For example, in 2012, ML through the real estate sector was identified as a risk and in the 2021 NRA Report, the sector was rated as having a high ML risk. This prompted the FIU to develop and intensify its focus on enhancing the quality of UTRs reported by the real estate sector. Another example pertains to corruption offences which were considered high-risk by the jurisdiction and reflected in the findings of the 2021 NRA. This prompted the FIU to impose a mandate that reporting entities clearly include the word “PEP” in UTRs when reports include such categories of persons, so that priority can be given to such reports. Digital reporting has helped to decrease the backlog in the data entry process as UTRs are practically accessible to all analysts.

#### ***Cross-border cash transport declaration***

151. The FIU is mandated to receive cross-border cash declarations. These reports are generally submitted by the customs department. A total of 2,642 reports was received by the FIU during the period 2016-2020. The information presented and analysed shows that there is a consistent decline in the number of cross-border declarations over the reporting period. The authorities reported that this decline is largely due to the closure of the borders between Aruba and Venezuela, increased and intensified surveillance by customs and instructions from the PPO regarding ML via importing and exporting of cash. The cross-border reports are important to the FIU and often used as part of the FIU’s analysis and are also shared with foreign counterparts. The FIU reported that there are challenges regarding the submission of the declaration, which include the allocation of already scarce resources to input the information into its database, taking into consideration that the information is submitted in hard copy and there is delay in the availability of the information.
152. In collaboration with the Dutch Customs Department, the FIU held a three-day training workshop with the Aruban Customs Department. The objectives of the training included the review of the cross-border cash declarations, which was intended to ensure that as much information is captured in the declaration information submitted to the FIU.

***Table 3.8. Number of cross-border cash transportation declarations submitted to the FIU***

<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
920	657	563	502	199

***Table 3.9. Number of UTRs and reports disseminated***

Year	Number of UTRs disseminated	Number of dissemination reports
2016	324	26
2017	375	30
2018	303	26
2019	187	35
<b>2020</b>	<b>178</b>	<b>42</b>
<b>Total</b>	<b>1,367</b>	<b>159</b>

153. The information in Table 3.9 shows that from 2017, there was a decline in the number of UTRs that were disseminated, with a continuous increase in the number of dissemination reports. The decrease in the number of UTRs disseminated was due to the impact of the COVID-19 pandemic, which hampered the operations of the FIU. Further, the authorities credited the decline in the use of UTRs to a more collaborative and more strategic approach by the FIU to ensure that its analysis supports the operational need of competent authorities, primarily, LEAs with a focus on the high-risk offences such as drug trafficking and corruption. The assessors did not weigh this factor negatively on the FIU, as the information gathered during the interviews indicated that the FIU realigned its mandate to focus more on supporting the operational needs of competent authorities, especially the LEAs. UTRs that were considered to be high-risk, of public interest and aligned to offences such as corruption, were given more focus by the FIU. This therefore contributed to the effectiveness and achievement of more desired outcomes. Most of the UTRs disseminated by the FIU were from commercial banks, which represents one of the most important sectors, followed by MTCs, casinos and notaries. The assessors' finding is that there was limited dissemination of UTRs received from the real estate sector, which is not in keeping with the risk that is associated with that sector.

*Prioritisation of Analysis:*

154. The filing of a UTR should not be interpreted to mean that a criminal act was or is about to be committed. The threshold for the filing of UTRs in Aruba is lower than a criminal standard and is based on reasonable grounds for suspicion and in keeping with the requirements of R. 20. Given the volume of UTRs received, it is impossible for the FIU to analyse all reports, therefore, UTRs are prioritised based on the FIU's internal systems including manuals that address factors such as ML/TF risks and the operational needs of competent authorities. For example, UTRs involving PEPs are given priority due to the threat of corruption identified in the NRA. To ensure that UTRs involving PEPs are easily identified, the FIU revised its reporting forms and mandated reporting entities to include in their submissions whether the UTR involves a PEP.
155. Due to the fact that the FIU utilised technology, including an electronic reporting system, it is relatively easy for analysts to cross-check the database and give priority to those reports involving PEPs and other offences that are considered to be a major threat for ML/TF. TF-related UTRs are also prioritised by the FIU due to the risk that may be posed to the jurisdiction. The FIU also takes into consideration the operational needs of competent authorities in prioritising UTRs. To maximise the use of the resources of the FIU and competent authorities, especially LEAs and prosecutorial authorities and to ensure that the FIU analysis supports operational needs, the FIU ensures that it targets its analysis based on their needs. This is generally made easy as the FIU meets regularly with the other competent authorities and is a member of the ART.

*3.2.3. Operational needs supported by FIU analysis and dissemination*

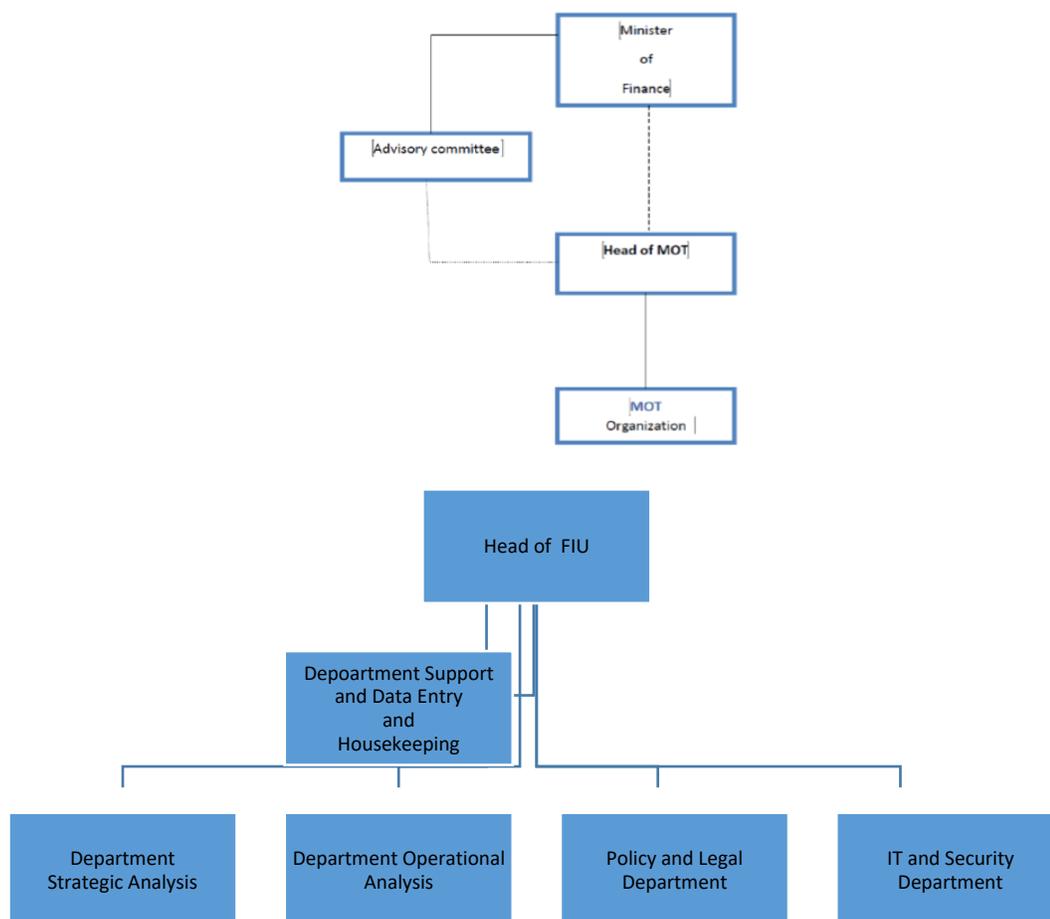
156. The FIU is an independent and autonomous entity that complies with the principles that are set out in requirements of R.29 and those by the Egmont Group of FIUs of which it is a long-

standing member. The Director of the FIU is responsible for the management of the Unit including making decisions regarding analysis and dissemination. The FIU conducts both strategic and operational analyses. In most instances, the focus of the FIU's operational analysis is to ensure that it supports the operational needs of competent authorities, primarily LEAs and the PPO. The FIU works closely with competent authorities, in an effort to ensure that its analysis supports their operational needs. This section of the report provides further details on how the FIU ensures that its analysis supports the operational needs of competent authorities.

157. The FIU disseminates information and intelligence on its own initiative to competent authorities in order to prevent and combat ML (and other related crimes) and TF. Although LEAs can legally request information from the FIU, the official request is submitted through the intervention of the PPO. Analytical focus is generally given to those offences that are classified as high-risk and are a focus of LEAs, such as corruption involving PEPs and asset recovery.

***FIU Organisational Chart, Staffing and Training (Independence and autonomy).***

*Chart 1 Organization chart in regards to the minister of Finance*



*Chart 2 : Organisation Chart FIU (Internal)*

158. The FIU has a staff complement of 14, comprising a Department Head (1), an Operational Department (6), Strategic Analyst (1), Policy and Legal Advisors (2), IT-Manager (1), Management Support and Data Entry (2) and housekeeping (1). All analysts and policy & legal

advisors are ACAMS-certified. The Operational Department comprises six (6) trained analysts, one of whom is fully dedicated to TF. Additionally, there is one strategic analyst, who is extensively trained and has a comprehensive background in analysis. All employees have relevant experience and were previously employed at various reporting entities (e.g., TCSP, MTC, notary and law office), at the supervisory authority and at the PPO. The FIU strives to stay up to date on the latest ML/TF methods and how to prevent and combat these kinds of activities. Accordingly, the staff members are regularly trained and attend relevant seminars.

159. To complement its human resource, the FIU also utilised technology to assist in its operational and strategic analyses. The assessors found that despite the best efforts of the FIU and excellent work undertaken to achieve acceptable outcomes, the organisation can benefit from additional technical resources to further enhance its functions, including analysis of currency declarations and further innovate its technical infrastructure. The assessors nevertheless considered this to be a minor deficiency as it does not have any major implication on the work of the FIU. The conclusion was arrived at by the assessors who determined that results including outcomes are being achieved, as a result of the FIU's prioritisation of UTRs are based on ML/TF risks, FIU's positive cooperation and coordination with competent authorities and the FIU's continuous support of the operational needs of competent authorities, as a matter of priority. The FIU budget has consistently increased, thereby ensuring that financial resources are available for the FIU to undertake its functions, including the provision of training to staff. The FIU budget is allocated for operational expenses, personnel expenses and training. This demonstrates that the FIU values training and developing its staff, to ensure that they are conducting their functions in an effective manner.

***Operational Analysis:***

160. The FIU has direct and indirect access to a wide range of databases to adequately conduct its functions and has demonstrated that it is accessing and using information from those databases to conduct its analysis. The assessors reviewed samples of the FIU's operational analysis and dissemination and found that they were of excellent quality. The reports showed that financial and relevant information were accessed and effectively used in the analysis. The dissemination/reports were of a good quality and contained information pertaining to the financial profile of the subject, the suspected predicate offence and financial flows.
161. The first step in the FIU's operational analysis process is to assess if any particularities are to be found after a thorough data mining process. Thereafter, the main research question and hypothesis are formulated to give guidance to further analysis and other relevant information that would need to be acquired. Each analyst at the FIU has their specialty and is therefore assigned cases according to their portfolio. The analysts at the FIU brainstorm with each other and cases are discussed at regular meetings. As mentioned before, UTRs are prioritised with TF related UTRs given the highest priority. The FIU has established a Multi-disciplinary Team, Terrorism-Financing and Proliferation Financing (MTTP) consisting of two operational analysts, the strategic analyst and the policy and legal advisor to give focus to TF/PF related matters.

***FIU supporting the operational needs of competent authorities***

162. To ensure that the FIU's analysis supports the operational needs of competent authorities, some of the following steps are taken: (i) responding to requests for information of the LEAs (including the PPO) and (ii) seeking alignment with the (annual) priorities (in terms of policy and strategy) with the PPO. To illustrate, FIU agreed with the PPO to focus on, among other UTRs, activities, information and methodologies related to corruption (as corruption has been identified as a high-risk issue). Other steps include (iii) periodical meetings with the PPO and the LEAs (bilateral level or multilateral level; e.g. Financial Investigation Partners Forum)

during which, *inter alia*, emerging risks or new methods are discussed; (iv) participation on the ART where the FIU representatives provide relevant information with regard to the objectives of the team; (v) participation in complex criminal investigations in order to provide information as the criminal investigation progresses; (vi) maintaining watch lists regarding subjects of interest of the LEAs, which operate as a data mining tool to filter the relevant UTRs for FIU's database; (vii) participating on various strategic platforms in order to stay up to date with the AML/CFT developments on a national level; and (viii) requesting feedback from the competent authorities and in the event that negative feedback is received, requesting a meeting to discuss the feedback further to improve and/or correct processes, duration, complexity, capacity, etc. Some of these are further elaborated in the paragraphs to follow.

#### ***Financial Investigation Partners Forum***

163. Aruba has taken steps to ensure that competent authorities are accessing and using financial intelligence and relevant information and the FIU's operational analysis supports the operational needs of competent authorities through various mechanisms, such as the "Financial Investigating Partners' Forum which was established in 2010. The objective of the forum is to promote and stimulate multi-disciplinary collaboration through targeted investigations of subjects/suspects or networks of subjects/suspects, target investigations, asset tracing and the sharing of knowledge and experience on national and international developments concerning financial investigations etc. The members of the forum include the BFO, CBA, FIOT, PPO, NCTVI, Infodesk, Royal Marechaussee, Customs Department, LR and the FIU. Meetings of the Forum are held at least quarterly. Some of the matters discussed at the forum include implementation of new legislation, gold and fuel smuggling, discussion on ongoing and concluded cases, emerging risks and jurisprudence regarding ML.

#### ***The Asset Recovery Team (ART)***

164. The ART is a multi-disciplinary taskforce comprising several LEAs, the PPO and the FIU. The role of the ART will be discussed in further detail in IOs 7 and 8. The findings of the assessors, based on interviews conducted and information reviewed, showed that the ART adds tremendous value to the authorities accessing and using financial intelligence and relevant information and ensuring that the FIU's analysis supports the operational needs of competent authorities. The participation of the FIU in the ART includes providing information regarding possible money flows to and from other jurisdictions; identifying possible criminal networks; indicating assets hidden in legal arrangements, property or other assets; providing information to initiate a possible criminal investigation; and providing information about possible methods of ML pertaining to the ongoing cases.
165. Experienced analysts with extensive backgrounds participate weekly (or if required more frequently) with the investigative partners in briefings, meetings and other platforms of communications. These platforms inform the representatives of ongoing investigations to gather leads, evidence or information. The FIU strives to support the investigation with relevant information, rapidly, as the investigation progresses.
166. One of the objectives of the direct participation of the FIU in the ART meetings and other forums is to ensure that information is instantaneously provided (observing the requirements of the law with respect to confidentiality), with as little bureaucracy as possible. The information/intelligence is current and can be utilised in a timely fashion. Formalisation (registration etc.) of requests, replies and providing information are concluded simultaneously or subsequently, however, by all means, it does not impede expeditious information exchange and collaboration. The participation of the FIU in these types of networks has improved the efficiency in the use of financial intelligence and relevant information and ensures that the FIU's operational analysis supports LEAs operational needs.

167. Apart from the Financial Investigating Partners Forum and the ART, a similar working relationship exists between the FIU and the LR pertaining to certain cases. The FIU also has spontaneous meetings with relevant authorities such as the Fusion Center to ensure that they are able to provide relevant support. A watchlist of subject/suspects in investigations on whom financial intelligence and relevant information is also kept by the FIU in its MOTsys database. Any reports received from the reporting entities will automatically trigger a warning, which will in turn cause the analyst at the FIU to initiate or resume analysis of the new information.
168. Further, to ensure that its operational analysis supports the operational needs of competent authorities, and it provides relevant information/intelligence to LEAs, the FIU ensures that it aligns its annual objective with the PPO who has the lead in criminal investigations and prosecutions. In the request, the respective LEAs will indicate specific timelines by when the information or intelligence is needed. Additionally, LEAs may involve the designated FIU analyst at an early stage of the investigation. This involvement entails the participation in briefings and information exchange, as the FIU would provide information according to the progress of the investigation.
169. A memorandum of understanding (MOU) has been executed with the objective of creating alignment among the competent authorities. The LEAs and the FIU meet to exchange information and discuss topics, trends and risks in order to be able to prioritise and provide relevant information/intelligence to respective competent authorities. The PPO, which is responsible for initiating criminal investigations, intends to create alignment in terms of annual themes, areas of interest and operational and strategic objectives. For example, in 2017, there was a focus on corruption in public office. The intention is that through this platform, the PPO and the FIU would collaborate to ensure that the operational and strategic analysis of the FIU effectively supports the operational needs of competent authorities.
170. The FIU regularly meets with LEAs and the CBA to ensure that its operational analysis supports their operational needs. At these meetings, LEAs provide feedback on the information provided by the FIU. The PPO, which serves as the central point between the FIU and other LEAs such as the police. Samples of documented feedback from the PPO to the FIU were provided to the assessors and were reviewed. The feedback outlines the actions taken with regard to the report it received, for example, to which LEA was the case referred for investigation, the quality of the information/analysis contained in the dissemination and the usefulness of the information.
171. Besides the written feedback, oral feedback is also provided to the FIU by competent authorities on the usefulness and quality of the information/analysis by some competent authorities. Feedback of this nature is provided at meetings and debriefings held between the FIUs and the competent authorities. The FIU, by being a member of the ART, is better able to ensure that its operational analysis supports the operational needs of that agency. This is demonstrated by the number of confiscation cases submitted and reviewed by the assessors, some of which are reflected in the report at IO 8. The assessors found that there is nevertheless a need for more consistent documented and detailed feedback from LEAs and other competent authorities on the usefulness of the FIU analysis.
172. The FIU's operational analysis has also led to investigations and prosecutions in numerous ML cases which were reviewed by the assessors, some of which are referenced throughout the report. Some of these reports were initiated as a result of the FIU's analysis of UTRs (for example, Case "IBIS") whilst others benefitted from financial and relevant information obtained and analysed by the FIU.
173. The number of disseminations to LEAs varies and depends on the type of analysis, complexity (for example corruption cases that are very complex) and priority of the case at hand. Table 3.10 below provides a summary of the total number of UTRs received and how many were

utilised to draft intelligence reports. The information shows that the FIU has consistently utilised UTRs in its intelligence reports. The assessors note that the limited number of disseminations when compared to the number of UTRs received, however, most of the UTRs received were based on objective indicators (transaction of specific value) and not subjective indicators (suspicion of ML/TF). The assessors also acknowledged that not all UTRs based on subjective indicators, which are received and analysed, will result in a dissemination. The assessors also found that analyses were prioritised and disseminations were largely done based on the operational needs of competent authorities, hence the reason for the limited number of disseminations when compared to UTRs received. Analysis and disseminations were also affected to a limited extent by the resources that are available to the FIU. As indicated previously, this was not found to be a major deficiency as the FIU takes a strategic and targeted approach to analysis by prioritising its analysis and ensure that its analytical function supports the operational needs of competent authorities.

*Table 3.10. Number of intelligence reports disseminated containing UTRs*

Year	2016	2017	2018	2019	2020
Total number of UTRs filed with FIU	32,402	34,744	37,000	39,558	26,833
Total UTRs disseminated in intel reports	324	375	303	187	178
<b>Total intel reports submitted</b>	<b>26</b>	<b>30</b>	<b>26</b>	<b>35</b>	<b>42</b>

174. Notwithstanding this effort to create alignment, there remains sufficient room for analysis and dissemination of financial intelligence reports on the FIU's own initiative, which are based on identified trends and risks identified in its database.
175. The FIU in conducting its operational analysis identifies the type of crimes. Table 3.11 provides a breakdown of the number of intelligence reports submitted by the FIU to LEAs and the nexus to the different type of crimes. The increase in the number of ML cases was due to the establishment of the ART and the focus of that team. The decrease in the number of suspected TF cases is due to the change in modus operandi of terrorists (for example, lone wolves' actions) and the dismantling of Da'esh (ISIL). There was nevertheless an increase in suspected TF cases in 2020. The data presented in Table 3.11 also shows that the FIU continues to prioritise its analysis and give focus to predicate offences that have been rated as high-risk for ML and are a focus to LEAs. For example, corruption and bribery offences.

*Table 3.11. Suspected predicate offences link to dissemination*

Suspected Predicate Offence	2016	2017	2018	2019	2020
Corruption and bribery		3	2	9	10
Fraud	6	4	1	2	2
Drugs related crimes	4	1	7	1	3
Integrity breaches	2	-	-	-	3
Murder or aggravated assault	2	-	-	-	1
Smuggling	-	1	3	6	
Terrorism (financing of)	8	7	1	3	12
ML	4	14	10	3	9

Suspected Predicate Offence	2016	2017	2018	2019	2020
Partaking in a criminal organisation	-	-	2	1	2
<b>Total</b>	<b>26</b>	<b>30</b>	<b>26</b>	<b>35</b>	<b>42</b>

*Table 3.12. Number of reports disseminated/UTRs received (Rep- Reports)*

Suspected offence	2016		2017		2018		2019		2020	
	Rep	UTR								
Corruption & Bribery	-	3	153	2	8	9	107	10	57	-
Fraud	6	38	4	20	1	7	2	-	2	30
Drug related crimes	4	53	1	4	7	79	1	-	3	26
Integrity breaches	2	8	-	-	-	-	-	-	3	6
Murder or Aggravated Assault	2	135	-	-	-	-	-	-	1	1
Smuggling	-	-	1	2	3	31	6	4	-	-
TF	8	46	7	16	1	4	3	3	12	18
ML	4	44	14	180	10	171	13	73	9	16
Partaking in a criminal organisation	-	-	-	-	2	3	1	2	2	15
<b>Total</b>	<b>26</b>	<b>324</b>	<b>30</b>	<b>375</b>	<b>26</b>	<b>303</b>	<b>35</b>	<b>189</b>	<b>42</b>	<b>178</b>

176. The information above in table 3.12 further demonstrates that the FIU continues to use the UTRs it received and prioritised its analysis to address the threats that are considered as high-risk, complex crimes and crimes that can cause serious impact on lives and property (TF). The information demonstrates that ML, TF, corruption and bribery continue to be a focus for the FIU. Based on discussions held with competent authorities, these areas are also important for the LEAs and the PPO. The finding of the assessors is that this approach greatly assists the authorities to properly utilise their limited resources.
177. Given their respective roles in the supervision, identification, investigations and prosecution of ML and associated predicate offences, the PPO and the KPA were the main recipients of the intelligence reports disseminated by the FIU. Other LEAs that received disseminations include the FIOT, LR, NCTVI (TF) and the Secret Service of Aruba (TF). The feedback received from these entities indicates that the FIU's analysis is robust, adds value to their work and supports their operational needs. The assessors found that inadequacy of resources and training of LEAs, in some instances, have an impact on achieving greater outcomes (substantial/high), such as ML investigations and prosecution from those reports disseminated, especially those related to TF (See I.O. 9).
178. The numerous case examples related to ML investigations and prosecutions, identification and recovery of assets, domestic cooperation and coordination, international cooperation that are referenced throughout the report (see IOs 1,2,7, 8 and 9), along with the numerous case

examples that were provided to and reviewed by the assessors but not referenced in the report, were taken into consideration by the assessors, and demonstrated the importance of the FIU's operational analysis to competent authorities. These cases assisted the assessors in forming the basis and arriving at the conclusion that the FIU's analysis supports the operational needs of competent authorities in Aruba, especially the LEAs and PPO. The assessors' findings were also supported by the documented feedback provided by the PPO to the FIU and reviewed by the assessors.

**Box 3.9. Example Case Study: FIU supporting operational needs of competent authorities “Case BRAT”**

Competent authorities: FIU and BFO

Relevance:

IO.6: BFO was able to trace illegally obtained funds and assets, with the support of financial intelligence received from the FIU. Additionally, intelligence gave insights on a ‘network and money flow’ to other jurisdictions.

IO.7; An investigation regarding local suspects was initiated.

IO.8; There was confiscation of illicitly obtained funds and assets.

IO. 2: International cooperation

Summary of Case:

The BFO received an incoming MLA request from the Netherlands, regarding a Dutch citizen, convicted of ML. The MLA pertains to the Dutch authorities tracing the illicitly obtained funds and assets. Meanwhile, the ART received intelligence from the FIU regarding an Aruban citizen, who happened to be the brother of the aforementioned suspect. The intelligence was relevant (concrete, precise and complete), which indicated possible ML activities. Based on that intelligence, the Aruban brother became a suspect of ML. The intelligence from the FIU indicated that even though the Aruban suspect had no significant income, he deposited a lot of small sums of cash and wired funds abroad; (“small,” apparently/possibly to be able to stay under the threshold of the AML/CFT reporting obligation). Additionally, he purchased rather sizeable real estate and owned a number of vehicles (cars and scooters) as well. During the execution of the search warrant (in order to confiscate property), the investigators encountered the Aruban suspect on the premises of the Dutch suspect, with drugs and (unregistered) firearms. Both suspects (among others) were arrested and convicted based on the newfound facts in mid-2018. Funds and assets were confiscated. Further information regarding the confiscation is included in Immediate Outcome 8.

### Box 3.10. Case Example: Reporting Behaviour

Relevance to Immediate Outcome

IO.3: Supervision- On-site and desk-based supervision

IO.6: Use of financial and relevant information by the CBA

The reporting behaviour reports are disclosed to the supervisory authority (the CBA).

These reports are generated from the database of the FIU, based on the received UTRs (from the reporting entities). The reports describe how (well) service providers reported their UTRs to the FIU (e.g., the number of UTRs, if they were reported promptly, the number of UTRs per indicator, comparison with previous months/years, comparison of the reporting behaviour of a specific reporting entity in relation to the sector it belongs to, types of UTRs etc.).

These reporting behaviour reports are used by the supervisory authority to, among others:

- support its risk assessments (per reporting entity, per industry, etc);
- plan (prioritise) its AML/CFT-supervision agenda; and
- identify/focus on possible (non)-compliance issues.

Subsequently, the reports provide FIU and the supervisory authorities with insights to determine subjects/themes for information sessions, guidance and to continuously create awareness with respect to the reporting obligations.

Note: Service providers periodically receive their own reporting behaviour report for their own management/audit purposes (assessment of the productivity of their compliance department). They often use these reports to assess their own performance in comparison with other service providers in the same branch. In addition to the (automatic) periodic reports sent by the FIU to each service provider, they can request a reporting behaviour report at any time.

### *Strategic Analysis*

179. The FIU conducts strategic analysis as a priority objective and has a dedicated section for this purpose. This section identifies trends, typologies and emerging risks associated with TF, ML or other predicate offences as a result of strategic analysis conducted by the FIU. The analyses conducted by the FIU are shared with various competent authorities through multiple levels of dissemination, for instance, the delivery of strategic data to the CBA with regard to the aggregated value of import and export of money. Strategic analysis reports and products including development of red flags, are published on the [FIU website](#) “Voorlichting.” In conducting strategic analysis, the FIU takes into consideration factors such as, the legal basis for conducting the analysis, the possibility of collecting the data correctly, fully completed UTRs, access to relevant data and agreements with national and international partners.
180. ML/TF related trends, patterns, reporting behavior and typologies are identified as a result of strategic analysis conducted and then disseminated to competent authorities and or utilised by the FIU for its internal purposes (supporting the decision-making and prioritisation process of the operational analysis). Strategic analysis was utilised for external purposes such as: (a) to support and provide feedback to competent authorities (including LEAs); (b) creating national awareness and sharing experience with international stakeholders; (c) supporting risk-based supervision; (d) outreach to reporting entities; and (e) include establishing strategic policies and goals for the FIU and other entities within the AML/CFT regime.

181. The FIU conducts strategic analysis by leveraging a range of open and classified sources of information and by using available and obtainable information, including data that may be provided by other competent authorities, reporting entities and several government agencies. The FIU has also participated and sub-coordinated Aruba's first and second formal NRA, where strategic analysis information was utilised by various competent authorities. The information captured in the table below shows the different types of strategic analysis reports and outreach on the subject conducted by the FIU.

*Table 3.13. Strategic Analysis reports issued by the FIU*

Year	Competent Authorities	Outreach
2016	Customs Authority	Presentation Typology Report Drug Trafficking at the airport
	Compliance Officers and PPO	TF Typology Report 2008-2016
	FIU Staff	Strategic Analysis TF trends in Aruba/methods and techniques
2017	FOP/SSA	TF Typology Report 2016
	Notaries, Lawyers and Tax Advisors	Congress Risky Business: Strategic presentation on ML/TF risks for gatekeepers, reporting behavior, examples of reported UTRs for inspiration
2018	Compliance staff of casinos, CBA, FIU and FOP staff	Presentation Strategic Report Casinos (Key statistics 2016-2018) Why high Risk? Key Indicators of ML through casinos, How to improve Effectiveness?
	Analysts FIU-Suriname	Technical Assistance Strategic Analysis FIU-Suriname
	FIU staff	Strategic NRA 2018 approach.
2019	CBA, FIU, NCTVI, Secret Service Aruba.	Cooperation in preventing and combating TF (FIU approach to TF, Collaboration within Kingdom of the Netherlands, collaboration within Egmont, suggestions for collaboration on National Level).
	FIU Staff, PPO, Supervisory Authority, FIU of the Kingdom of the Netherlands, Supervisors of the Kingdom of the Netherlands	Presentation Typology report Cloudy with a Chance of Cash (conclusions, mitigating measures per risk).
	Compliance officers financial and non-financial service providers and TCSPs.	Presentation Having Trust Issues? (key statistics 2016-2019, Why High Risk? Key indicators of ML through TCSP, how to improve effectiveness?).
2020	FIU-Aruba Analysts, Supervisory Authority, PPO, Fusion Centre, NCTVI, Management and compliance officers of Money Transfer Companies, Directors and operational and strategic analysts of FIU of the Netherlands, Curaçao, Sint Maarten, FIU Belize ( <i>more than one meeting encounter</i> ).	Strategic Covid-19 Crime in Aruba

Year	Competent Authorities	Outreach
	Suriname PPO, LEAs of Suriname ( <i>virtual meeting</i> ).	Effective Financial Intelligence in Aruba, The Covid-19-Crime Case in collaboration with the OAS

182. The objectives of the outreach sessions referenced in the table above were to discuss the findings of the strategic analysis conducted, foster knowledge and understanding among internal staff at the FIU and external stakeholders with respect to the effective prevention and combatting of ML. In addition to the reports mentioned in the table above, trends and typologies were presented to service providers, with the objective of providing them with the correct interpretation of the objective indicators and broaden their overall knowledge, thus enabling them to maintain the submission of quality UTRs based on the subjective indicators. The case study below is an example of competent authorities effectively using strategic analysis in the conduct of their functions.

***Box 3.11. Case Example: Alert to service providers and the general public***

It is the legal task of the FIU to inform and educate the service providers and the general public of AML/CFT trends and risks. The FIU performs this task by issuing alerts and press releases. Suffice to say that the FIU can also organise seminars and webinars. To date, the FIU has released various alerts, the objective of which was to inform the service providers regarding emerging ML/TF methods, such as “romance scams” (released in 2019 and in 2020). The purpose was to bring awareness to the general public (based on international developments and UTRs received nationally).

Another published alert was related to COVID-19 (related risks of fraud and embezzlement). This alert was released in April 2020. Noteworthy is that the COVID-19 alert triggered an interesting strategic analysis. The conclusions were shared with both internal and external stakeholders (among others, the PPO, CBA, Service Provider, NCTVI and counterpart FIUs of the Kingdom of the Netherlands). The main conclusions of this strategic report were that the identified scheme had nothing to do with COVID-19, rather, originators of the transaction provided incorrect/incomplete/mocked up addresses allegedly to disguise the whereabouts of the receivers. A great accomplishment of this report is that it triggered a service provider to acquire software to support her in the verification of US-based addresses.

In addition to the foregoing, the CBA was able to identify some compliance issues.

***3.2.4. Cooperation and exchange of information/financial intelligence***

183. Cooperation is one of the hallmarks of Aruba’s AML/CFT system. The FIU and other competent authorities largely cooperate and exchange information and financial intelligence. There are bilateral and multi-agency collaborative actions to prevent and combat ML and TF. For example, the establishment of collaborative platforms involving multifaceted teams such as the ART and the Fusion Center. Financial intelligence and relevant information are disseminated in the early stages of investigations and during the initial case briefs with the PPO. Cooperation and the exchange of information and financial intelligence and relevant information are also facilitated by MOUs signed between the FIU and agencies such as the CBA.
184. At the strategic level, cooperation and exchange of financial intelligence and relevant information were used in the conduct of ML/TF NRAs. The FIU provides information to the

AML/CFT Steering Group of Aruba, the body responsible for cooperation and coordination AML/CFT/CPF activities at the strategic level. The AML/CFT State Ordinance provides the established framework for the exchange of information and financial intelligence by the FIU. The FIU has used the powers provided by the Ordinance to gather financial intelligence and relevant information and enhance cooperation within the jurisdiction.

185. The FIU has cooperated and exchanged information and financial intelligence through collaborative platforms that have been established in Aruba. There is a once per year meeting between personnel from the PPO and the FIU to exchange information and discuss topics, trends and risks. The main objective is to focus on and develop national priorities, as illustrated in the concentration on corruption offences in 2017. The various case examples of this level of cooperation are identified in IO.7. The intention is also that through this platform, both entities collaborate to ensure that the FIU's analysis and dissemination effectively support the operational needs of the LEAs.
186. The FIU holds bi-monthly meetings with the CBA. The objective of these meetings is to discuss AML/CFT topics, trends and risks, but most importantly to brainstorm on the required amendments in the AML/CFT legislation.
187. The Fusion Center (FCA) was established in 2016 and became operational in mid-2017. The FCA's main participating bodies are the PPO, the KPA, the Aruban Coast Guard, the Royal Marechaussee in Aruba and the Special Investigation Task Force. The objective of the FCA is to share knowledge and expertise, and exchange information to combat subversive activities. The FCA is under the leadership of the KPA.
188. Within the FCA, information regarding new trends and developments is shared in a preliminary report. The relevant partners consult their respective databases and include the additional obtained information to the report. If needed, requests for information from other databases are obtained. Sporadically, the FCA receives spontaneous information which is verified and analysed by the partners of the forum. Once the information is considered to be reliable, it is added to the proposal report. The objective is to evolve the preliminary report to a criminal investigation proposal report. The unique nature of these reports provides an advantage to the participants of the FCA. The FCA has provided relevant information in the investigations and prosecution of complex ML cases.
189. Information is shared among the different agencies via protected and dedicated channels. The FIU has a sophisticated network to safeguard the storage of data and with the necessary security measures. For security reasons and by virtue of the report being a public document, the assessors took a decision not to reference the nature of the measures taken by the FIU to safeguard its information. The assessors were nevertheless satisfied with the systems that exist, including the security. The exchange of financial information and financial intelligence with foreign counterparts is done via the Egmont Secure Website (ESW) (see IO 2 for more details).
190. The case examples below (3.12 and 3.13), coupled with those referenced at different aspects of the report, are examples of cooperation and exchange of information between the FIU and competent authorities.

***Box 3.12. Case Example: Cooperation and the exchange of financial intelligence — “Case Edy’s, Irma/Lingot and Locusa1”***

**Relevance:**

IO.6: Use and sharing of financial intelligence and relevant information

IO.7: Identification and investigation of ML, joint investigation and emerging risk/threat

IO.8: Non-Conviction based confiscation

**Summary of Case:**

The cases Edy’s, Irma/Lingot and Locusa1 serve as an example of the effectiveness of exchanging information between the partners of the ART that led to the emerging risk of fuel smuggling from Venezuela to Aruba being addressed. The first two cases were investigated in 2017 and the last one in 2019. The intelligence received from different partners indicated that the smuggling of fuel from Venezuela to Aruba has been ongoing for some time and the partners of the ART noted that certain persons possessed luxury goods without any apparent source of income.

The suspects in these three investigations were believed to be trafficking illegal Venezuelan gasoline with go-fast boats, which constitutes a breach of Customs’ regulations. The ART soon recognised that the joint efforts of the coastguard, customs, FIU and various disciplines within the local police force (intelligence sharing, observations and financial investigation) were needed to gather evidence in these cases.

It took a lot of effort and capacity to resolve the first case, Edy’s. In order to be more effective, the decision was taken to shift to the ML side of the crime. The crime is committed to make money and the suspects have no legal income. Nevertheless, they do have big expensive go-fast-boats. In the two other cases, Lingot and Locusa1, from the beginning of the criminal investigation, priority was given to tackling the ML so that the capacity of the investigators was used as effectively as possible. The suspects can be considered as self-launderers. The decision was taken to not proceed with prosecution in all three cases because the prosecutor of the ART was able to reach a deal with the suspects. The go-fast-boats and the engines were confiscated and in exchange, the prosecutor would not prosecute them to trial. All confiscated goods (speedboat Edy’s, Nissan Frontier and go-fast-4-babys) were sold during the auctions held in 2018 and 2020. The money from the sale was deposited into the crime prevention fund.

***Box 3.13. Example: Cooperation and the exchange of financial intelligence- “SeaSalt”***

**Competent authorities: FIU, Customs, BFO and PPO/Asset Recovery Team**

**Relevance:**

IO.6: Use and sharing of Information

IO.7: Identification and investigation of ML, joint investigation.

IO.8: Asset seizure

**Summary of Case:**

An example of close cooperation between the ART and the FIOT is the investigation into the Seasalt case. In May 2019, the ART received intelligence about a subject who was allegedly a drug dealer on the beach and well known to tourists for many years. His criminal record did not

reflect as such. He was apprehended a couple of times, only with a small user amount on him. It seems that the suspect did not have a job for years: he did not fill in any tax return, he did not have any legitimate income whatsoever, however he did possess a Hummer, a UTV and a savings account. This may indicate that he is earning money illicitly (consequently leading to ML). For the ART, the priority was to investigate the financial side of this suspect because that would be more effective: with less capacity, the approach could be “hit where it hurts most”: namely, take away his assets.

The investigators reviewed his old police reports which showed that he had stated that he was earning some money on the beach with a couple of watersport companies where, if he brought some customers in, he would receive a commission. Initially this could be true. In such an event, there are no grounds for criminal prosecution for ML, although, he should instead be paying overdue taxes. Little did the suspect know: FIOT (a department of the Tax Department), among others, a regular member of the ART took over the case. FIOT concluded that the indicated watersport companies did not work with the suspect at all. The companies did not pay him and he told the Tax Department he did not work with these companies. FIOT shared this information through their participation in the ART. In other words: no traceable income, but some valuable assets. This is a probable cause of prosecution of ML. In May 2020, the ART received permission from the investigative judge to search the suspect’s premises for evidence. During the search, the ART encountered and seized cash and found bank statements relating to a savings account, cocaine and marijuana. The Hummer and his UTV were seized, as well.

**Outcome:** The suspect was arrested, and the investigation is still ongoing.

### Overall conclusion on IO.6

191. Aruba has a fully operational FIU that has demonstrated that is conducting its core functions. The FIU has an excellent working relationship with competent authorities and reporting entities, which has resulted in the submission of timely and quality UTRs and the provision of useful financial intelligence and relevant information to the different competent authorities and foreign counterparts. The FIU staff is adequately trained and uses technology to assist in its functions.
192. Competent authorities have demonstrated that they are accessing and using financial intelligence and relevant information to achieve desired outcomes including the investigations of ML/TF and related predicate offences, confiscation and provisional measures, the identification of new/unknown targets, international cooperation, the identification of risks and the creation of risk-based supervision. The effectiveness of the regime was largely demonstrated through the qualitative information (case studies), the existence of institutional framework such as the FIU and the level of cooperation that exists between the FIU and the other competent authorities including the PPO, LEAs and the CBA. The assessors considered and weighted the deficiencies that exist and concluded that moderate improvements were required.

**Aruba is rated as having a substantial level of effectiveness for IO. 6**

### 3.3. Immediate Outcome 7 (ML investigation and prosecution)

193. Aruba considers ML and related associated predicate offences, such as corruption and drug trafficking, to be serious criminal offences and in some instances gives them the highest investigation and prosecutorial priority. Aruba has some excellent mechanisms in place to identify, investigate and prosecute ML cases. These systems/mechanisms, the strengths, coupled with the weaknesses and challenges of investigators and prosecutors are highlighted in this section of the report. The investigation and prosecution of ML in Aruba is being achieved to a moderate extent. The assessors based their findings on information submitted by the jurisdiction, interviews conducted with competent authorities, review of the numerous case studies and statistics provided, where available.

#### 3.3.1. ML identification and investigation

194. The 2021 ML NRA identified Aruba's overall national ML risk level to be **Medium-High**. Proceeds generating activities occurring outside of Aruba pose the highest risks. The cross-border ML risks identified were cash smuggling, foreign corruption and trade-based ML. The assessors recognised that the authorities have sought to address the threat by formalising multi-agency task forces, strategic planning with the competent authorities and targeted complex ML investigations during the assessed period. The extent to which the competent authorities are identifying and investigating potential ML activities are generally in line with the identified risks in the 2021 ML NRA, however, these activities are impeded by inadequate training and human resources within some sections of law enforcement.
195. The PPO is the sole authority responsible for the supervision of ML investigations and is also tasked with ML prosecutions. The identification and investigation of ML and associated predicate offences are handled by LEAs such as the BFO situated within the KPA, RST, the FIU, customs and tax authorities. At the time of the on-site visit there were six operational public prosecutors within the PPO, two (2) of whom dealt mainly with financial crimes, including ML. Although these prosecutors are tasked with other functions, it shows that there is a sufficient level of dedication towards investigations and prosecution of ML activities. To ensure that ML investigations are conducted efficiently, joint investigative teams with various expertise are formulated and a multi-disciplinary approach to ML is taken with parallel financial investigations occurring.
196. Due to the limited resources available to LEAs and prosecutors, it is impossible to conduct parallel financial investigations into all predicate offences to identify potential cases of ML. To address this issue, the authorities have established a Steering Group to determine which larger project-based criminal investigations will be conducted and by which LEA. The use of this method is to ensure that LEAs and prosecutorial resources are optimally deployed.
197. The Steering Group meets on a monthly basis and its members include: The Chief Prosecutor, the "Recherche" Prosecutor (assigned to organised crime investigations and official corruption cases), the BCI prosecutor (designated to criminal intelligence), the Chief Commissioner of Police, the Chief of the National Internal Investigations Department and the Head of the Special Investigating Task Force. The Steering Group focuses on crimes that are cross-border in nature and are considered high priority. These types of crimes include terrorism, international drug trafficking, cybercrime, ML, firearms trafficking and corruption.
198. Apart from the conduct of parallel financial investigations, potential ML cases are identified from intelligence reports disseminated by the FIU, information from MLAs and other requests received and from intelligence and other information received, including via the infodesk of the KPA. The FIU despite being administrative in nature is integrally involved in criminal

investigation at an early stage to provide relevant information based on how the criminal investigation is progressing.

199. Different agencies in Aruba are responsible for conducting investigations into predicate offences and ML. For example, the National Internal Investigation Department (LR) is responsible for investigating corruption offences committed by public servants and politicians and ML associated with those type of offences. The BFO is nevertheless the main agency responsible for conducting ML investigations.

***Bureau of Financial Investigations (BFO)***

200. The BFO is a department within the KPA that is primarily responsible for conducting financial investigations with the view of identifying ML cases and assets for confiscation, etc. The BFO identifies and pursues ML investigations based on the ML/TF risks identified in the NRA, for example, cases involving human trafficking and drug trafficking are given some level of focus. During the conduct of an investigation into a predicate offence by a department within the KPA in situation where potential ML activities are identified, the matter is reported to the BFO to conduct a parallel financial investigation. The work of the BFO is impacted by the limited number of financial investigators assigned to the department. At the completion of the on-site visit, seven investigators were assigned at the BFO and they were provided with some level of training and expertise in conducting financial investigations. Nevertheless, the authorities were of the belief that there was a need for more specialised training in conducting financial investigations.
201. Table 3.14 shows the number of parallel financial investigations conducted by the different departments and districts of the KPA, in cooperation with the BFO.

***Table 3.14. Parallel financial investigations by the BFO***

Departments/ District	2016	2017	2018	2019	2020
District 1	2	5		2	1
District 2				1	2
District 3		1	2	1	
District 4	1			1	2
Organised Crime Unit	3	4	7	6	2
Human Trafficking Unit	1	6			
Special Team Project		3	1	1	5
<b>Total</b>	<b>07</b>	<b>19</b>	<b>10</b>	<b>12</b>	<b>12</b>

202. Besides the information mentioned in Table 3.14 above, a total of 304 drug cases were investigated in the jurisdiction, with nine resulting in ML investigations. The information presented the assessors and represented in the table shows that parallel financial investigations were undertaken by the BFO, however, this was being done to a limited extent. The cause of this limited number of parallel financial investigations was due to the limited resources available at the disposal of the BFO. Nevertheless, parallel financial investigations were conducted by the BFO, RST, FIOT and/or LR between 2015 and 2020. Some of the parallel financial investigations conducted by the authorities resulted in successful ML investigations and prosecution, as can be seen from the table 3.15 below. In some instances, parallel financial investigations also resulted in confiscation, as the goal of parallel financial investigation was also to identify assets.

*Table 3.15. Examples of successful Parallel Financial Investigations*

<b>Name of Case</b>	<b>Predicate Offence</b>
Tunis Case	Cash Smuggling
Criminal case against civil servants	Embezzlement and Forgery
IBIS	Corruption involving PEP
De Freitas/Pindar Case	Drug Trafficking
Tzuhim	Drug Trafficking
Avestrus	Corruption involving PEP
Seasalt	Drug Trafficking
Camelot	Human Trafficking and People Smuggling
Hamburg	Underground Banking
Cora	Underground banking and Tax Evasion
Sealand	Drug Trafficking
ML investigation	Tax Evasion

*National Internal Investigations Department (LR) (Corruption based investigations)*

203. The investigations of corruption offences by government officials and civil servants and ML activities associated with those types of offences are carried out by the LR under the instruction of the Attorney General. The assessors found that corruption and ML are high priority for the LEAs, PPO and the FIU. The LR receives support during its investigations into major corruption cases from the different competent authorities, including the BFO, customs, ART, Special Investigative Team and other agencies. The information provided to the assessors shows that the LR and the other departments have undertaken some excellent work in identifying and investigating complex cases of corruption, including those involving PEPs. For example, Case “IBIS” and “Avestrus,” both of which resulted in prosecutions (see summary of cases in this chapter).

*Box 3.14. Case Example: “Case Avestrus”***Competent authorities:** FIU, Customs, BFO and PPO/Asset Recovery Team

Relevance:

IO.6: Utilisation of financial intelligence

IO.7: Identification, investigation and prosecution of ML activities based on ML risk, parallel financial investigation and joint investigation.

IO.2: International Cooperation (MLAT)

**Summary of Case:**

Due to the complexity of the case, it was deemed useful for the LR and the RST to collaborate and jointly investigate this case. The case was deemed complex because of the number of involved suspects, the complex network of suspects and the number of involved jurisdictions, namely, Curaçao, the USA, Uruguay, Panama, Nevis and the Virgin Islands.

In this case, operational analysts of the FIU were closely involved in order to be able to provide relevant intelligence to the investigative team in a timely manner. This new approach to collaboration between the investigative team and FIU was fruitful. With the financial intelligence, new investigation leads became apparent and were utilised to gather evidence, via MLA.

It took some time for the investigative team and the analysts of FIU to be at ease with this new approach to collaboration, because of the respective confidentiality obligations and operational procedures/methods of working, however, the accelerated working method was deemed to be successful and will be considered for future endeavours.

**Outcome:** Currently before the Court.

204. During the period 2016-2019, the LR team conducted a total of 12 investigations into the predicate offence of corruption and ML related to those offences, all of which were classified as complex cases. These cases were identified via various means including dissemination by the FIU. Due to the complex nature of the cases, some of the investigation are still ongoing and the information contained therein is confidential in nature and cannot be disclosed in the report. The investigations conducted involved PEPs, legal persons and senior civil servants.
205. Table 3.16 shows the total number of ML investigations (including the suspected predicate offences and agencies involved) that were conducted by the LEAs under the supervision of the PPO. The information shows that in some instances, there was a steady decline in the number investigations conducted, especially in the last five years. The authorities recognised the decline of cases and attributed this to factors such as lack of resources by the investigative agencies which has impacted LEAs' ability to focus on financial investigations via mechanisms such as parallel financial investigations to identify potential ML cases. The decline in the number of investigations is not only attributed to negative factors but is also as a result of a more targeted approach by LEAs to focus on complex ML and higher risk ML and associated predicate offences cases which required a more collaborative approach among the different agencies and therefore took a longer time period to investigate and prosecute. The assessors found that the goal of the authorities is not only the prioritisation of investigations and prosecution of simple ML cases (low hanging fruits), but there is also a focus and determination to also target and prioritised complex cases.

*Table 3.16. ML Investigations-PPO (2013-2020) (x- represents no information on jurisdiction(s) involved was provided)*

Year	No of Investigations	Fellow suspects/associates	Agencies Involved	Jurisdiction involved	Suspected /Predicate Offence
2013	45	32	UGC, RST, LR, BFO, FIU, SIAD	USA, The Netherlands, Mexico, Germany, Curaçao, Bonaire, Belgium, Colombia, Switzerland and Venezuela	Robbery, extortion, participation in organised criminal groups, theft, fraud, drug trafficking, smuggling, forgery and ML

Year	No of Investigations	Fellow suspects/associates	Agencies Involved	Jurisdiction involved	Suspected /Predicate Offence
2014	26	14	LR	x	Theft, Fraud, drug trafficking, participation-organised criminal group,
2015	17	5	CBA, SIAD, BFO, Customs, FIU	USA, The Netherlands, China, Curaçao, Anguilla, St. Martin, Canada and Venezuela	Underground banking, drug trafficking/possession and fraud
2016	03	02	RST, Customs BFO	x	ML, False declaration, fraud and forgery
2017	27	38	FIU, BFO, LR and Customs	The Netherlands and Colombia	Drug trafficking, fraud, robbery, extortion, cash smuggling, participation in organised criminal group, false declaration and corruption and bribery, human trafficking and embezzlement
2018	13	04	FIU, RST, BFO, Customs and LR	The Netherlands, Belgium, Curaçao and Dubai	Drug trafficking, corruption and bribery, theft, ML false declaration, smuggling and illegal gold trade

Year	No of Investigations	Fellow suspects/associates	Agencies Involved	Jurisdiction involved	Suspected /Predicate Offence
2019	10	15	FIU, Customs, LR, and FIOT	x	Human trafficking, participation in organised crimes, smuggling, false declaration and bribery
2020	04	0	FIOT, SIAD and FIU	x	Drug trafficking and breach of official secrecy

***Investigative tools utilised in the conduct of ML investigations***

206. LEAs are able to conduct surveillance, intercept communication and conduct controlled delivery (See analysis of Rec. 31). Data was not provided on the number of investigative tools that were obtained or utilised to investigate ML. Nevertheless, from some of the case studies provided, it was clear that search warrants were obtained and utilised, for example, case “IBIS,” “Tunis” and “Sealand.” In those particular cases, the PPO obtained warrants for the interception of communications, conducted surveillance of persons and obtained bank records, etc. The authorities indicated that the data is kept on individual investigation files, which makes it difficult to retrieve and compile.
207. Some of the main challenges identified in conducting ML investigations and prosecutions include lack of trained financial investigators and the limited human resources within the PPO. The authorities alluded to the interagency investigative team formation and multi-disciplinary task forces in the investigation and prosecution of complex ML cases such as corruption. For the assessment period, there were several cases identified and prosecuted as a result of the efforts and collaboration of the multidisciplinary taskforce and interagency investigative teams. The parallel financial investigations conducted by LEAs were also as a result of investigations into bulk cash smuggling, drug trafficking, fraud, forgery and corruption, consistent with the high-risk predicates identified.

***Box 3.15. Case Example: “Case Picuda”***

**Competent authorities: LR and PPO/Asset Recovery Team**

Relevance:

IO.6: Utilisation of financial intelligence

IO.7: Identification, investigation and prosecution ML activities.

**Summary of Case:**

This case is an example of a ML investigation with associated predicate offences (participation in an organised criminal group, bribery, forgery and human trafficking). This investigation was conducted in 2019 by the LR under the name “Picuda”. This investigation concerned,

among others, two immigration officials convicted of corruption and working at the international airport of Aruba. Eventually, it did not lead to a financial investigation (into ML) in this case because of the financial investigators' re-prioritisation. The investigators were involved in another (high profile) case and were therefore unable to conclude the financial investigation in the Picuda case. As a result, the main suspect was not prosecuted for ML, even though there was a suspicion of ML from the beginning of the investigation.

**Outcome:** The main suspect was sentenced in February 2020 by the Court of First Instance to 24 months of imprisonment and five years disqualification from performing in a position of civil servant. No appeal was brought against that judgment. In this context, potential cases of ML are being identified and investigated.

### *3.3.2. Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies*

208. The authorities in Aruba have pursued ML investigations and prosecutions in line with the threats identified in the ML NRAs to some extent. Investigations and prosecutions are prioritised and resources dedicated to conduct investigations and prosecutions into those cases that are considered to be a major threat to ML and are complex in nature, for example, corruption cases. Some competent authorities have developed and implemented internal policies for addressing ML investigations and prosecutions. In the 2012 NRA, the following risks were identified: introduction of illegal assets in companies, misuse of legal entities, illegal cross-border money transfers and transport and real estate transactions. An important element of the PPO's policy, strategic vision of LEAs and prosecution's priorities includes ensuring that financial investigation is a part of any major investigations into serious or organised crimes, specifically those that involve illegally gained assets, fraud, corruption, ML and domestic drug crimes.
209. As a result of the findings of the NRAs and on the basis of the identified risks, a Steering Group was established to tactically managed investigations and set priorities in terms of human and financial resources to ensure maximum output in the ML investigations and prosecutions. Several ML investigations were initiated by the Steering Group in relation to illegally gained assets, fraud, drug trafficking and illegal cross-border money transfers and transport. In the 2021 ML NRA, the following ML risks were identified: proceeds generated from drug trafficking, bulk cash smuggling, corruption, human trafficking and migrant smuggling, underground banking, the misuse of casinos, car dealership, money transfer businesses, notaries and real estate. The PPO and LEAs have developed and implemented various institutional policies and procedures and formulated multi-agency taskforces to address those risks (see IOs 1 and 6 for further detail).
210. There are no national overarching AML/CFT policies to ensure that ML investigations and prosecutions are done in line with same, as at the time of the completion of the on-site visit, the AML/CFT/policy was awaiting approval. However, several of the PPO policies (see IO 1) contain information pertaining to ML investigations and prosecutions. Further, interviews conducted with different competent authorities show that there is level of commitment and focus on the conduct of financial investigations including ML investigations. The substantial amount of case studies presented to the assessors by the authorities demonstrated that ML investigations and prosecutions are done to a large extent based on ML threats and the risk profile of the jurisdiction. For example, "case sky and dragon" had a nexus to large scale drug trafficking whilst "case Hamburg" was specific to underground banking. Despite some level of success in conducting ML investigations and prosecution based on identified risks, as indicated

previously, there was a decline in ML cases between 2015-2020 due to specific factors (see paragraph 204).

**Box 3.16. Case Example: “Case Sky”**

**Competent authorities: FIU, BFO, RST and PPO**

**Relevance:**

IO.2: International Cooperation

IO.5: Identification of BO

IO.6: Utilisation of financial intelligence

IO.7: Identification and investigation of ML activities. Financial investigation, legal entities, identified threats and risk profile

IO.8: Confiscation

**Summary of Case:**

This concerns an investigation into large-scale international drug trafficking involving authorities from the USA and Colombia. The investigation showed that drug funds obtained by the suspects from large-scale international drug trafficking network were invested in real estate in Aruba and Curaçao, using sophisticated legal persons (companies). During the investigation, a number of real estates were seized from the suspect in Aruba. Tax information showed that a number of companies/legal entities in Aruba, set up by a trust and management corporation based in Curaçao, actually belonged to one of the prime suspects and that the individual was the BO behind those companies and the recipient of the rental income of the real estate housed in the companies. The Aruban suspect was convicted for ML offences including and habitual ML. Two of the three houses were sold at auction and the proceeds were deposited into the crime prevention fund.

In 2013, in another criminal investigation based on the identified risks, three co-defendants were arrested for preparing drug couriers who exported the cocaine via Aruba’s airport to the USA and the Netherlands, among others. Additionally, they were charged with multiple counts of ML.

**Outcome:** This criminal case also led to a dispossession claim against the main suspect. The main suspect was sentenced in 2013 to four years in prison and in 2016, on the basis of the dispossession claim, he had to repay Afl. 127,948.06 (US\$71,082.00) in unlawfully obtained benefit to Aruba. This case is worth noting because the laundering of the money earned from the international drug trafficking was because the main suspect rented an apartment and three houses whilst he was not registered as a taxable person with the tax authorities and could not prove that he had working income or any other legitimate sources of income. The individual concerned had a bank account in Bonaire, where the proceeds from drug trafficking was deposited. The investigation showed that he always paid the rent of the various houses and the apartment in cash.

**Box 3.17. Case Example: “Dragon”**

Competent authorities: FIU, BFO, KPA and PPO

Relevance:

IO.6: Utilisation of financial intelligence

IO.7: Identification, investigation and prosecution of ML activities. Financial investigation, legal entities and identified threats and risk profile

IO.2: International Cooperation (MLAT)

**Summary of Case:**

In 2013/2014, the PPO brought a major drug and ML case called “Dragon” before the Court of First Instance of Aruba. The investigation showed that a group of suspects from Aruba, led by a Dutch prime suspect and an Aruban prime suspect, acted as a criminal organisation and engaged in cross-border drug trafficking. The suspects used money couriers to transport the illegally earned monies from drug shipments back to Aruba. Money exchange offices were also used to transfer the illegally earned money back to Aruba. The information disseminated by the FIU gave useful financial intelligence and relevant information on all who participated in ML and how this was done.

Outcome: The Aruban prime suspect was sentenced to 42 months in prison in Aruba. The Dutch prime suspect was sentenced to 48 months in prison in the Netherlands.

**Box 3.18. Case Example: “Tunis”**

Competent authorities: Customs, RST and PPO

Relevance:

IO.6: Utilisation of financial intelligence

IO.7: Identification, investigation and prosecution of ML activities. Financial investigation, legal entities and identified threats and risk profile

IO.8: Seizure and confiscation

IO.2: International Cooperation (MLAT)

**Summary of Case:**

The Tunis case is an investigation into the identified risk of bulk cash smuggling into Aruba. The Tunis case is also called “chicken cash” because the illegally obtained money was hidden in a shipment of chicken parts. The chicken parts were intended for consumption and was imported into containers through the port of Aruba and was destined for a restaurant.

This ML case was initiated 2016 and led to three convictions of the main suspects and prison sentences of 5 years by the Court of First Instance. The investigations showed that the suspects operated a clandestine operation transporting large amounts of cash from the Netherlands to Aruba in refrigerated containers with chicken parts. Exactly where and whom the cash came from was unclear, but it was suspected that the cash derived from drug crimes and had to be funnelled back to Venezuela (third party launderers). The case started when Aruba executed an MLA request from the USA and it became clear that suspects in Aruba were organising ML transactions from the Netherlands to Aruba. For Aruba, the case revolved around three suspects. One suspect apparently had contacts in Venezuela and Colombia. Previously, the suspect was convicted in Aruba for participating in a criminal organisation whose purpose was to commit drug crimes and launder criminal funds.

This suspect maintained communication about ML with those contacts in Venezuela and Colombia. The second suspect arranged with others for criminal proceeds from Amsterdam to be smuggled from Aruba to Venezuela, in particular, from the sale of drugs in the Netherlands and elsewhere. The suspect had previously approached acquaintances in Aruba and the Netherlands, and he delivered the money in the Netherlands to the owner of a company in Roermond. At that company, a meat products company in the Netherlands, the money was then hidden in chicken parts produced by the company. The parts were frozen and shipped to Aruba. The third suspect in Aruba ordered the chicken parts from the company in the Netherlands, supposedly for his restaurant business in Aruba, through another company in Aruba.

Upon arrival of the chicken parts in Aruba, the suspect distributed the hidden money in

cooperation with the other suspects. The third suspect also arranged for the administration of the imported frozen chicken parts to be handled via another company, without any names of the suspects or any of their companies being included in the documents. A fourth suspect, who worked closely with the suspects in Aruba, operated from the Netherlands and was prosecuted there by the Dutch PPO and was convicted. Aruba also requested MLA to the Netherlands, among others, to hear witnesses. The prosecutor and law enforcement in Aruba kept in close contact and cooperated with the investigation team in the Netherlands.

The investigation and data and Customs' documents in the Netherlands and Aruba showed that a total of 10 containers were transported to Aruba between December 2013 and June 2015, with money being transported in 8 out of 10 containers. It is estimated that the total amount of money transported and laundered was around Euro. 35,000,000. For their role in facilitating the transport of the money the defendants received a commission of 4% for a larger role in facilitating the offence and 2% for the lesser role in facilitating the offence.

Outcome: The defendants were convicted, and confiscation was ordered.

### *Box 3.19. Case Example: "Alpina Case"*

#### **Competent authorities: FIU, Customs, FIOD RST and PPO**

Relevance:

IO.6: Utilisation of financial intelligence

IO.7: Identification, investigation and prosecution of ML activities. Financial investigation, legal entities and emerging risk

IO.8: Seizure

IO.2: International Cooperation (MLAT)

Summary of Case: The investigation started in 2018 following the dissemination of intelligence from the Fusion Center, Aruba. The Alpina case concerns gold smuggling from Venezuela to Aruba and then to The Netherlands and United Arab Emirates (Dubai). MLA requests were sent to the Netherlands, Curaçao, Belgium, UAE and USA. The underlying offences were forgery, international gold smuggling and ML. The purpose of the requests was to question witnesses, gather information about use of credit cards and the use of special investigative powers. The sectors that were involved were: Tax Authority (via the Fiscal Information and Investigation Service) in the Netherlands, a company operating in the Free Zone established in Curaçao, the Chamber of Commerce Aruba and Curaçao to among other things obtain information to determine, the UBOs. There was also a need to retrieve the records, invoices and accounts of various companies based in the UAE and Belgium. Disseminations from the FIU were used.

In early 2018, the ART received information via an ongoing MLA request from the Netherlands concerning the laundering of gold from Venezuela, through Aruba, to Europe and beyond. Shortly thereafter, they received information that the primary target was at the Aruban Airport handling Venezuelan gold, which remained in transit and was supposed to be transported to the UAE in February 2018. As the gold was in transit and not officially imported and exported to or from Aruba, there was no requirement to complete a cross-border cash transport declaration form. During that day, prior to the flight, the members of ART apprehended the carrier of the gold and seized 50 kg of gold. Subsequently, they apprehended the commissioner of this transport; the target named in the information. The investigation

entailed MLA requests to Curaçao, where the buyer of the gold was located, the USA, Belgium, UAE and the Netherlands. On account of this international side to the investigation, it took some time to conclude it. In the beginning of March 2020, the investigation was concluded and was scheduled to go to trial on May 28, 2020 but was postponed as a result of the COVID-19 Pandemic.

**Outcome:** Case adjourned.

211. The Aruban authorities have coordinated and cooperated in the formation of an investigative team spearheaded by the PPO in conducting major ML investigations and prosecutions. The 2021 NRA showed that drug trafficking, bulk cash smuggling, bribery and corruption are major risks to Aruba. The competent authorities have developed updated strategic plans and utilised interagency task forces as a result of the ML risks. Table 3.17 below represents the number of ML investigations and prosecutions that were conducted and are connected to drug trafficking and corruption in Aruba, two of the major threats for ML in Aruba. No data was provided pertaining to the other predicate offences.

*Table 3.17. ML investigations and prosecutions linked to high-risk threats.*

Year	2016	2017	2018	2019	2020
<b>Predicate offence</b>					
<b>Drug trafficking</b>					
No of cases	205	218	309	212	346
No of charges	111	72	106	68	94
ML Counts	1	3	4	-	1
<b>Corruption</b>					
No of cases	3	10	23	15	8
No of charges	-	8	20	8	6
ML Counts	-	2	-	-	-

212. In 2016, Aruba established a fusion center headed by the PPO. The fusion center is responsible for the integrated approach in the investigation and prosecution of ML and other matters. The fusion center has been tasked with collecting and analysing information provided by its members to enhance safety in Aruba. The assessors were provided with information on the achievements of the fusion center since its establishment. Two case examples of information provided by the fusion center are: (i) the laundering of cash through the port at Barcadera and (ii) gold smuggling through the airport to other parts of the world.
213. The consistency of ML investigations and prosecutions based on the identifiable risks is hampered by the inadequate staffing and training to some extent at the PPO and units within the KPA. Unlike the investigators, several of the prosecutors have undergone training and have an understanding with regard to ML investigations and prosecutions, as they are from the Netherlands and are provided with training by that country. Notwithstanding the ML prosecution successes that were achieved, the assessors found that the PPO, as the lead investigative (supervisor) and prosecutorial agency, needs to enhance its capacity to sustain supervision of multiple investigations and prosecutions of ML offences in keeping with the high risks and ML threats identified in the NRAs.

### 3.3.3. Types of ML cases pursued

214. The PPO has demonstrated that there are investigations and prosecutions of complex ML matters including stand alone, self-laundering and third-party laundering. Aruba has not investigated or prosecuted a case involving the laundering of proceeds from foreign predicates offences which was identified in the 2021 ML NRA as a significant ML threat. The assessors were informed that all ML matters are prioritised based on the policy objective for the period and the risks identified by the Steering Group. Aruba identified that for the year 2017, corruption was a major risk, therefore, significant investigative and prosecutorial resources were utilised in the investigation and prosecution of these matters that have resulted in convictions in the ensuing years. The case examples, for example, IBIS referenced in the report provides evidence of this. Table 3.18 shows the cases referred to the PPO:

*Table 3.18. Number and types of ML cases referred to the PPO; Prosecutions; Convictions; Acquittals; and Pending Cases for the period 2015-2020*

Year	No of suspects	No of Prosecution	No of Convictions	No of Acquittal/Dismissal	No of cases pending	Types of ML Prosecution	No of Types of ML Prosecution
2015	17	17	11	05	01	Third Party	05
						Self-Laundering	08
						Stand-alone	03
						Undecided (self/third party)	01
2016	03	02	02	00	00	Third-party/ Standalone	01
						Self-Laundering	01
2017	27	23	03	17	01	Third-party	08
						Self-laundering	04
						Stand-alone	09
						Stand-alone/self-laundering	01
2018	13	13	01	07	03	Stand-alone	08
						Self-laundering	03
						Third-party	02

Year	No of suspects	No of Prosecution	No of Convictions	No of Acquittal/ Dismissal	No of cases pending	Types of ML Prosecution	No of Types of ML Prosecution
2019	10	09	00	01	01	Stand-alone	04
						Self-laundering	05
2020	04	00	00	00	00	Stand-alone	01
						Self-Laundering	02

215. The data provided by Aruba shows that for the period 2015-2020, a total of 74 persons were investigated for suspected of ML activities, resulting in 64 prosecutions and 17 convictions for ML. The types of ML prosecutions consisted of 16 cases of third-party laundering, 23 cases of self-laundering and 25 stand-alone ML offences. There were 30 dismissals/acquittals based on decisions of the Chief Prosecutor under the consideration that the seized funds/assets were forfeited to the Crime Fund and there were prosecutions for lesser offences. There are 6 cases pending in the criminal justice system.
216. The data provided to the assessors shows that the authorities in Aruba have successfully obtained prosecution for different types of ML cases to a significant extent. The investigative and prosecutorial framework and policies are well established, however, the ability to pursue ML cases is solely hampered by the limited human resources available to investigate and prosecute multiple cases concurrently.

#### *3.3.4. Effectiveness, proportionality and dissuasiveness of sanctions*

217. The sanctions available for ML include nine years imprisonment or a fine of Afl. 100,000.00 (US \$55,865.92) for habitual ML and 8 years imprisonment or a fine of Afl.100,000.00 (US \$55,865.92) for other associated ML offences. There is a specific sanction of 4 years imprisonment or a fine of Afl. 25.000.00 (US \$13,966.48) for persons who have reasonable cause to believe that the object proceeds directly or indirectly of any crime. See the analysis of criterion 3.8 for further details pertaining to sanctions.
218. The sanctions for ML are similar to other serious offences in Aruba. The authorities have suggested that more severe penalties should be legislated to reinforce the point that crime does not pay. However, the authorities are satisfied with the use of the sanctions imposed by the judiciary in ML related matters and the confiscation of assets within the sentencing provisions as identified in the statistical information for IO8. In sentencing, the Court takes into consideration the type of predicate offences involved, (for example drugs trafficking and corrupt activities have been given major focus by the judiciary), the facts of the case as presented by the PPO, the type of laundering and the assets to be confiscated. The Court also takes into consideration the character of the accused, the extent to which the conduct attributable to the accused, the seriousness of the offence and the circumstances under which the offence was committed. Between the period 2016-2020, no sanction was applied to any legal persons, however, in 2012 one legal person was sanctioned. From a contextual standpoint, this shows that the authorities can take action when such cases arise. In 2020, a legal person

was fined for violation of the LMCG that deals with the physical cross-border movement of cash and BNIs.

*Table 3.19. ML Sanctions: 2015-2020*

Year	2015	2016	2017	2018	2019	2020
<b>Sentence</b>						
<b>Custodial</b>						
Imprisonment	10	03	03	01	00	00
<b>Non-Custodial</b>						
Fines	02	00	02	01	01	00
Seized money into crime prevention fund	00	01	6	7	6	2
Suspended sentences/Probation	01	00	01	01	00	00
Community Service	03	00	00	02	00	01

*Table 3.20. Length of Custodial Sentences for ML- 2015-2020.*

Custodial Sentence for ML	2015	2016	2017	2018	2019	2020	Total
0-12 months	05	01	02	01	00	00	9
13-24 months	01	00	00	00	0	00	1
25-36 months	02	01	00	00	00	00	3
37-48 months	02	01	1	00	00	00	4
>48 months	00	00	00	00	00	00	0

*Table 3.21. Financial Penalties ML- 2015-2020*

Financial penalties for ML (Florin)	2016	2017	2018	2019	2020	Total
0- 10,000	1	02	01	01	00	5
11,000- 20,000	00	00	00	00	00	00

Financial penalties for ML (Florin)	2016	2017	2018	2019	2020	Total
21,000-30,000	00	00	00	00	00	00
31,000-40,000	00	00	00	00	00	00
>40,000	1	00	00	00	00	1

219. The nature of offences that the Aruban authorities have prosecuted for the assessment period are primarily corruption related offences, bulk cash smuggling and to a lesser extent narcotics related matters. Although legal persons are captured in the CrCA, there have been no major investigations and/or prosecution of a legal person. Table 3.20 illustrates that sentences in terms of imprisonment ranged from 1-4 years and fines with a maximum of Afl. 40.000.00 (approximately US\$22,000.00). The information provided by the authorities showed that community service in some instances was the penalty for the offence of ML. Based on the information provided on penalties applied, the assessors conclude that the penalties applied are not proportionate and dissuasive in all instances, as the fines and custodial sentences are on the lower end.

### 3.3.5. Use of alternative measures

220. The PPO is the sole authority in Aruba with the discretionary powers to decide how matters are prosecuted and the use of alternative measures. For the assessment period, the PPO has utilised various alternative measures to a large extent. Some of the circumstances that informed a decision not to prosecute for ML offences include lack of evidence, the forfeiture of assets and prosecution for the predicate offences, waiver of rights and assets by the defendant, lack of adequate investigative or prosecutorial resources and the use of the provisional measures available to other competent authorities such as the imposition of administrative penalties by the Tax Authority. Due to the unique responsibility of the PPO, bilateral meetings are held with respective competent authorities and within those meetings, decisions are made as to the appropriate course of investigations and/or prosecutions. In February 2020, the PPO developed an asset recovery instruction document that seeks to provide the guidelines for recovery under the criminal law and provides for the forfeiture, confiscation of unlawfully obtained gains, settlement as part of the confiscation, compensation orders, compensation as a special condition in case of a suspended sentence, recovery by transfer enforcement of a third party (country) and compensation as a condition for dismissal.
221. There are also provisions within that document that provides for the engagement of competent authorities to establish recovery options in ML related matters. During the on-site, the assessors were informed by competent authorities of the different mechanisms established in Aruba in relation to the commencement of ML investigations, leading to prosecutions or the utilisation of other criminal justice measures. The assessors have concluded that the PPO remains the sole authority that decides whether to prosecute for ML or pursue matters using other criminal justice methods. Examples of the use of alternative measures are reflected in the cases highlighted in box 3.20. Table 3.22 also shows that cases involving tax offences were submitted to the PPO for action and the focus is not only on ML cases.

#### *Box 3.20. Case Example: Use of an administrative settlement.*

**A:** Investigation Cora concerns a criminal investigation into underground banking. The start

of the investigation is based on intelligence information of the Bureau Criminal Intelligence. During the investigation, information was requested about the suspect in order to identify the suspect's financial position. The investigation was carried out by the RST. Financial intelligence was also requested to gain a better understanding of the financial flows. Valuables and cash were seized during a search and were put under a third party because information emerged that the suspect also had a tax debt (i.e. the cash was confiscated and placed in escrow account, so if the suspect still had an outstanding tax debt, the escrow account would be used to settle the debt with the amount that is confiscated pursuant to Art.119a of the CrCA). As more evidence was gathered, it became clear that it would be more effective to transfer the case to the Tax Authorities. Given the capacity of the financial investigators present at the time, the authorities thought the investigation would take a long time to bring it to court for the offence of underground banking. An administrative settlement was considered to be more effective and, in this case, the tax debt and the fine imposed could be paid from the third party's seizure. The sum of Afl. 21.640.00 (US12,08938) was used to pay the tax debts.

**B:** In 2016, the FIOT received a financial intelligence report (in Dutch called 'doormelding') from the FIU. The conclusion of this report is with regard to the suspicion of ML by tax evasion. The case involved the suspect making high cash withdrawals and deposits at the bank, transporting large sums abroad, while the income of her business was unusually high for its nature. Most of the money exported by the person were to the USA for the buying of merchandise. The suspect exported large amounts of cash in very short periods and after analysing her business bank account, it appeared that it was not clear why she was exporting large amounts. After all, she also regularly bought merchandise by means of transfers or credit card payments.

In addition, the person concerned operates in the low to medium-priced segment, so the merchandise for purchase is relatively low-priced. Based on this notification, information was requested regarding the import data of the person concerned, in accordance with the Covenant on Cooperation and Information Exchange between the Tax Authorities and Customs. After this data was requested and received, research and analysis were performed in order to reconcile the input data with the exported cash. As a result, the case was presented to the 'selection meeting' with the PPO prosecutor and it was proposed to investigate and settle the case under administrative law. The purpose of the selection meeting is to come to a decision in a case in accordance with the official Directive between the PPO and the Tax Authorities. The prosecutor gave his approval for the administrative settlement of this case. In 2018, the administrative investigation was completed by means of a report and on the basis of this, additional assessments were imposed with regard to tax on company turnover and health tax.

### **C. Prosecution for predicate offence/tax offences**

Based on Articles 68 and 70 of the General National Tax Regulation, in 2016, 23 reports of suspects who had violated the tax code were filed with the PPO. Of these, 22 defendants were subpoenaed and convicted. One defendant was fined. In 2017, there were 16 reports of which all defendants were subpoenaed and convicted. In 2018, there were 4 convictions and for 1 suspect, a date has yet to be set for trial. In 2019, no suspects were registered at the PPO on the basis of the above Articles.

### **D. Administrative penalty/ Central Bank of Aruba**

In the evaluation period 2016 to 2019, in consultation with the Central Bank (the AML/CFT-supervisory authority) and the PPO, in two cases (a casino and a real estate developer) instead of conducting a criminal investigation for the offence of ML, an administrative fine was imposed by the Central Bank.

*Table 3.22. FIOT information / PPO investigations*

	2016	2017	2018	2019
<b>Total reports submitted by the FIOT</b>	<b>23</b>	<b>16</b>	<b>5</b>	<b>0</b>
<b>Convictions imposed by court</b>	<b>22</b>	<b>16</b>	<b>4</b>	<b>NA</b>
<b>Fined</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>NA</b>
<b>On-going</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>NA</b>

### Overall conclusion on IO.7

222. Aruba has demonstrated that within the assessment period it has strategically pursued several complex ML cases that have a nexus to corruption offences and has investigated, prosecuted and obtained convictions on matters involving stand-alone ML, self-laundering and third-party ML. The imposition of sanctions however is considered not to be effectively proportionate or dissuasive.
223. In 2017, the Aruban authorities made great strides in the investigations of both ML and predicate offences and should be commended for addressing the corruption issue both as a strategic and operational objective. There has since been a significant decline in ML investigations from 2018 to 2021 and this remains a concern for the assessors, based on the results of the ML NRA conducted in 2021. Additionally, the authorities have not pursued any ML investigations arising from foreign predicate offences which is considered a significant ML threat as identified in the 2021 NRA.
224. At the completion of the on-site visit, there were no national AML/CFT policies in Aruba. The PPO has developed policy guidelines for the investigation and prosecution of ML related matters. Inadequate human resources and limited training received by LEAs continue to have a negative impact on the PPO and LEA abilities to investigate and prosecute several ML cases to a greater extent despite using a targeted approach to maximise the use of resources. The deficiencies were considered and weighted by the assessors who concluded that major improvements are required.

**Aruba has achieved a moderate level of effectiveness for I.O 7**

### 3.4. Immediate Outcome 8 (Confiscation)

#### *3.4.1. Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective*

225. Aruban authorities recognised and have demonstrated to a large extent that the confiscation of proceeds and instrumentalities of crime is an integral part of the crime fighting process. A strong culture of confiscation exists in the jurisdiction among prosecutors, investigators, the FIU and the other operational agencies. Despite the successes achieved, there are still some

- improvements that are needed in the system. The assessors' findings are based on information submitted by the country, including data, numerous case examples, and interviews conducted by the assessors. Aruba has a robust legal regime that allows for the authorities to use provisional measures and confiscate proceeds of crimes and instrumentalities (see R.4).
226. The PPO is the agency responsible for the supervision of criminal investigations and confiscation. The PPO and the other agencies involved in the process value the importance of conducting parallel financial investigations and coordinate and cooperate with the FIU to obtain financial intelligence and relevant information to identify and confiscate assets. Most of the case examples provided by the authorities and reviewed by the assessors were investigations related to ML, associated predicate offences and international cooperation and had some elements of identification, tracing and confiscation of assets. The information provided to the assessors reflects the authorities' seriousness to recover the proceeds of crimes and proceeds intended for criminal conduct and only focusing on the investigation and prosecution of the offence.
227. The PPO has developed and implemented several policies and strategies that are geared towards ensuring that illegally obtained proceeds, assets and instrumentalities intended or derived from criminal conduct are traced, identified and confiscated. Policies that are in place are also applicable to ensure that criminal proceeds and properties of corresponding value are confiscated, as is evidenced by the various case examples reviewed by the assessors. The policies include (i) a Policy Letter seizure of cash at the airport, (ii) an Asset Recovery Policy and (iii) Asset Recovery Instructions. The authorities, especially the PPO, strongly believe and have demonstrated, to a significant extent, that addressing ML and associated predicates, where there is a financial benefit, includes an asset recovery or confiscation component. Therefore, where possible, the identification, tracing, seizure and confiscation of assets will form part of the investigations.
228. In 2017, the Asset Recovery Team (ART) was created as a special task force/inter-agency team to spearhead the effort into confiscation and the recovery of criminal linked proceeds and instrumentalities. The creation of the ART represents an important step and commitment by the PPO and other competent authorities (for instance the KPA, FIOT, BFO, Dutch Coast Guard, Customs, Criminal Investigation Team and the FIU which are all members of the team) to not simply investigate and prosecute for ML/TF and associated predicate offences but also to represent a statement of intent to recover the proceeds of crime and properties of corresponding value.
229. The ART is an agreement between the PPO, LEAs, the FIU and other key partners that are involved in financial investigations and confiscation and is designed to ensure that there is a coordinated approach to the identifying, tracing and confiscation of proceeds, instrumentalities and property of equivalent value. The ART executes its mandate by way of supporting criminal investigations to combat ML and other associated predicate offences. The PPO has developed a policy and strategic vision that includes the investigation of the money flows associated with the investigations of predicate offences and is used to also guide the work of the ART and other relevant competent authorities. The implementation and revision of the policies and formation of the ART are examples of the authorities' commitment and a demonstration of their attitude to identify, trace, seize and confiscate proceeds of crime and property of corresponding value. The importance of the ART and the outcomes achieved by the authorities are demonstrated in the significant amount/value of assets including precious metal (gold), real estate, motor vehicles and cash that were identified, seized and confiscated, all of which demonstrated that outcomes are being achieved in keeping with the objectives of IO 8.

230. Another aspect of the policy of the PPO and LEAs is to ensure that financial investigations form part of the investigations into predicate offences. The BFO within the KPA is responsible for investigations into financial crimes as well as the conduct of parallel financial investigations, as mandated by the PPO through the ART or any other interagency bodies. In 2013, a decision was taken by the authorities, which enabled the BFO to conduct investigations on financial/economic offences, in which case, the focus was on the confiscation of funds or recovery of assets derived from financial crimes such as fraud, ML and other criminalities.
231. Financial investigations are conducted in most instances, especially in complex ML/ predicate offences cases and those that are considered as high-risk, for example, corruption cases by the BFO. From the onset of a criminal investigation, competent authorities consider that proceeds, assets and valuables such as jewelry, cash and motor vehicles should be identified, traced and seized for confiscation purposes. During an investigation, the investigator also requests, via the prosecutor assigned to the case, information about the assets of the suspect, such as movable assets, bank, and real estate. Depending on the nature of the case, the assets can be seized pending the trial. This was also demonstrated through the meetings that are held among the competent authorities, including with the FIU.
232. The creation of the ART co-opted the resources of various competent authorities under one policy objective umbrella, working in unison to identify, trace and confiscate proceeds derived from or intended for criminal conduct and assets of corresponding value. The skills and expertise possessed by members provide for better targeted and integrated approaches into the confiscation/recovery of criminal proceeds, with guidance from a designated Public Prosecutor.
233. The objective of the ART is to recover criminal assets in an innovative and integrated manner, while sending a message to society that crime does not pay. The intention of the taskforce is to “hit criminals where it hurts most,” i.e., targeting their illicit gains and ensuring that they do not benefit from their criminal conduct. In keeping with the PPO’s strategic vision, prosecutorial priority is given to the offences of corruption, fraud, ML, drug offences and the confiscation of proceeds and instrumentalities. Other transnational crime/cross border crimes and their proceeds that are prioritised include, human trafficking/smuggling, cybercrime and terrorism/TF. The key impediments that prevent policy objectives and outcomes from being achieved at a greater level are the rate of staff turnovers at both the PPO and within the ART, lack of full time resources (two full-time investigators) dedicated to the ART, instances of lack of commitment by some members of the ART (focus given to other tasks within their functions that are outside of asset recovery) and inadequate training in asset recovery for some members of the team.

*Table 3.23. Cash Seizure 2017-2020 -Asset Recovery Team*

Year	No. of Seizures	Offence/Reason for Seizure	Aruba Florin	USD	Euro	Chilean Pesos
2017	15	ML	7,777.70	1,377,287.00	12,500.00	5,000.00
2018	05	ML	8,278.90	65,823.00	-	-
2019	11	ML& MLAT	4,901.00	212,256.00	827,250.00	
2020	01	-----	13,525.00	110.00	-	-
<b>Total</b>	<b>32</b>		<b>34,481.00</b>	<b>1,655,366.00</b>	<b>839,750.00</b>	<b>5,000.00</b>

*Table 3.24 Moveable Property seized and Proceeds recovered for the period 2017-2020*

Year	No. of Seizures	Types of Goods/Property	Offence	Value of Goods (Afl)	Proceeds recovered (auction)
2017	07	Motor Vehicles	Narcotics		17,004.00
2018	07	Motor Vehicles, Speedboat and watch	Narcotics and Firearm	90,640.00	51,750.00
	50 Kilos of Gold			Unknown/Case Pending	
2019	05	Motor Vehicles and speedboat	Narcotics	18,900.00	10,000.00
2020	02	Motor Vehicles		133,697.00	111,250.00
<b>Total</b>	<b>21</b>			<b>243,237.00</b>	<b>190,004.00</b>

234. Competent authorities demonstrated the completion of financial investigations into criminal cases involving associated predicate offences in keeping with institutional policy i.e., PPO and KPA and have pursued the confiscation of proceeds and instrumentalities of crime and properties of equivalent value to a large extent. During the period 2017-2020, the authorities have seized and confiscated a wide variety of assets, vehicles, go-fast vessels, jewelry, cash, real estate and precious metals (gold). Most of the seized items were properly managed to preserve their values, including by being auctioned and the proceeds obtained were placed in the Anti-Crime Fund. The period 2017 to 2020 resulted in the decline of a number of seizures and confiscation (see table 323). This decline was attributed to factors such as the closure of the border with Venezuela, the success of competent authorities in sending a deterrent message, criminals changing their modus operandi and more targeted investigations which are complex in nature. The assessors found that the framework and the enthusiasm of competent authorities are all in place to identify, trace, seize and confiscate proceeds of crime despite the decline. The overall value of the assets confiscated during the period is unknown to the assessors, as all of the information was not provided by the authorities or not provided in a manner that can be easily interpreted by the assessors. Nevertheless, based on the information provided, the assessors estimated that the authorities confiscated over Afl. 6 million (USD 3,352,000.00) in immoveable property.

#### ***3.4.2. Confiscation of proceeds from foreign and domestic predicates, and proceeds located abroad***

235. Aruba, to a large extent, has demonstrated that it has successfully implemented its policy and strategic objectives with regard to the confiscation of proceeds from domestic predicates, as reflected in the case examples and statistical information provided to the assessors. LEAs, the PPO, FIU and other members of the ART are focused on identifying, tracing and confiscating proceeds from targeted predicate offences. The success obtained in targeting proceeds from foreign and domestic predicates is far greater than targeting proceeds located abroad, as limited cases or data were provided that this has been done. Despite the absence of any significant number of cases demonstrating confiscating proceeds that may have been moved abroad, the assessors found that the mechanism and willingness of competent authorities, including through the ART, are in place to take such action.

#### ***Confiscation of proceeds from foreign predicates:***

236. The authorities have demonstrated that they have conducted investigations and analysis where assets were located in Aruba and were suspected to be derived from the commission of a foreign predicate offence. In those cases, the information was shared with foreign counterparts,

including the Netherlands, and investigations commenced, for example, case Bont, which resulted in a joint investigation (see IO 2). A significant number of the seizure and confiscation case examples that were provided to and reviewed by the assessors showed that the assets seized and or confiscated were suspected of being connected or were actually connected to the commission of a foreign predicate offence, especially those related to smuggling of cash, gold and other predicate offences.

237. Further, competent authorities have responded and taken action regarding requests from foreign counterparts involving cases where suspects were convicted for a foreign predicate offence and foreign jurisdictions requested of Aruba authorities to seize and confiscate assets located in Aruba. The authorities have also identified suspected cases in Aruba where individuals acquired wealth that was suspected of being derived from criminal offences and have contacted their foreign counterparts to conduct joint investigations. The identification, tracing and confiscation regime, including confiscating of assets derived from foreign predicates, has been impacted to some extent by inadequate resources of competent authorities and not necessarily an unwillingness to target criminal proceeds from such offences. Table 3.25 shows the number of seizures that took place as a result of the suspected commission of a foreign predicate offence. Several case examples were presented to the assessors to demonstrate the seizure of proceeds the commission of foreign predicate offences. Some of these cases are referred to in different sections of the report including IOs 6 and 7, for example, case “Tunis”. The case referenced in box 3.21 below represents another example of competent authorities’ seizing assets located in Aruba. The case example is also a demonstration of the work of the FIU to identify and trace assets, usefulness of the FIU’s analysis and spontaneous dissemination. As can be seen in the data presented, most of the confiscation cases are still pending before the Courts, as it is dependent on the outcome of the prosecution of the predicate offence in the foreign jurisdiction.
238. The qualitative and quantitative data provided to the assessors shows that the relevant competent authorities have demonstrated that there is a willingness and outcomes have been achieved in the tracing, identification, seizing and confiscation of assets resulting from the commission of a foreign predicate offence. The outcomes achieved are commensurate with the findings of the 2021 ML NRA which notes that some of the main ML threats to Aruba are external.

***Box 3.21. Case Example: Seizure of assets from the commission of a foreign predicate offence: Case: Cascabel***

The case involved investigators from the RST located in Curaçao travelling to Aruba and being sworn in as special agents to support the KPA in Aruba in the execution of an MLA request received from the Netherlands.

It involved unusual cash flow payments or receipts from non-transactional parties and money flows without relevant correspondence. The flow of money came from a jurisdiction that had bank secrecy information in place at the time and the cash flow did not originate from the country of the lender. The case also involved Panamanian and Surinamese companies and persons residing in the Netherlands. The case also involved spontaneous dissemination of information by the FIU Aruba to the FIU Netherlands involving four plots of undeveloped properties located in Aruba. The antecedents for persons residing in the Netherlands include convictions for importation of drugs and participation in a criminal organisation.

Outcome: Seizure of 4 plots of land on behalf of the Dutch investigation.

*Table 3.25 Seizure/Confiscation of proceeds from foreign predicates*

Case Name	Country	Seized	Year	Suspected Predicate Offence	Outcome
Cascabel	Netherlands	4x plot of land	2015/2016	ML/Drug trafficking	Confiscation proceeding MLA requests
Ventura	Netherlands	1x apartment complex	2016	ML	Pending
Pindar	Netherlands	1x home	2018	Drugs and weapon possession	Pending
Melia	Netherlands	1x business premises 2x homes 5x property and 1x bank account	2018	Forgery/scam, bribery	Ongoing
Bont	Netherlands	2x cars 3x expensive watch	2019	Drug/Corruption	Ongoing
Tunis/Chicken	Netherlands	Euro 2.640,340, Euro 60.000 and Euro 444.200 and AFL. 5.600.000		Drug Trafficking/ Smuggling	4 years imprisonment. Euro 2.640,340, -, Euro 60.000 and Euro 380.200 were confiscated
Bulk cash transport at Bacadera	Colombia	USD675,455.00	2017	Smuggling/Drug Trafficking	Confiscated
Bulk cash at Samurai (1)	-	USD111,860	2017	Smuggling/ML	Confiscated
Bulk cash at Samurai 2	-	USD19,860.00	2017	Smuggling/ML	Confiscated
Alpina	Venezuela, Curaçao, Belgium, Dubai, the Netherlands	50 kg of gold (USD2,100,000.00)	2018	Forgery/ML	Pending
Cash at airport		USD13,213.00			
Erba	Suriname, USA	Euro 827,000.00	2019	ML	Ongoing

239. The information represented in Table 3.25 shows that the authorities have seized a wide range of assets that are connected to the commission of foreign predicate offences. Most of these seizures were as a result of direct collaboration between Aruba authorities and foreign counterparts, primarily the Netherlands and is commensurate with the ML/TF risks that exists between to Aruba and the Netherlands (based on the nature of their relationship). The tabulated information is a demonstration that the authorities have the capability to seize and confiscate assets once located in Aruba and there is a nexus to a foreign predicate offence. In Aruba, provisions are made for restitution to victims, in the form of compensation for damage done

to them by the accused person. For example, restitution was given in the amount of Afl.56,128.38 (US\$31,356) in a criminal case of ML and robbery as the predicate offence. The total value of restitution made during the review period was not provided to the assessors. Asset sharing is also considered by the authorities on a case-by-case basis. No information was provided on the sums that would have been shared or received by Aruba.

***Confiscation of proceeds from domestic predicates:***

240. The authorities in Aruba have pursued the confiscation of criminal proceeds and instrumentalities using the various legislative and provisional tools that enable the tracing and identifying of these assets. The confiscation of proceeds and instrumentalities is an integral part of Aruba's fight against ML and is pursued based on institutional inter-agency operational and strategic policies. The authorities have demonstrated that they are seizing and confiscating proceeds and instrumentalities from domestic predicates. For the period, most of the seizures and confiscations were cash (USD and Euro) and motor vehicles. The period 2015-2017 saw a significant increase in the confiscation of assets, when compared to the subsequent years, which showed a lower number of confiscations which is due to high profile investigations into corruption activities. The data presented in Table 3.26 below demonstrates that the authorities are identifying, tracing, seizing and confiscating proceeds from domestic crimes to a large extent and in keeping with the ML/TF risks.

***Table 3.26. Overview of criminal assets seized, and the decision taken (2015-2020).***

<b>Year</b>	<b>Description of item/Value</b>	<b>Final action</b>
<b>2015</b>	USD 32.000, € 24.000	Forfeited: USD 32.000, € 24.000 deposited into the account of Aruba
	Afl. 1.329,80, USD 212, €150	Returned to suspect
	USD 3.961,75, Afl. 2.066,55	Paid to the State as a fine
	AFL 82,85, USD 2.000	<b>Not provided</b>
	Motor vehicle (Toyota 4Runner, Lexus LS460) (equivalent value of Afl. 55.000) and Robalo boat (equivalent value of Afl. 33.000)	Confiscated
	€ 60.000, € 380.200, € 2.640.430 and € 73.000	Confiscated
	3x Rolex watches, 1x Audemars Piquet watch, 1x Omega watch, Infinity Qx60 SUV (equivalent value of Afl. 53.497,50),	Forfeited: 3x Rolex watches, 1x Audemars Piquet watch
	USD 1.124.300 (Afl. 1.967.525)	Afl. 1.622.755 confiscated by tax authorities and the remaining amount approx. Afl. 344.700 confiscated
<b>2016</b>	€ 60.000 and € 2.640.340, -	Confiscated
	USD. 79.000	Confiscated (deposited into crime prevention fund)
<b>2017</b>	Motor vehicle (Hyundai Accent)	Forfeited
	Motor vehicle (Nissan Tida)	Forfeited
	Afl. 1.600 and USD 60	Paid as a transaction fine
	USD 675.455	Confiscated (deposited into crime prevention fund)
	USD 111.860	Confiscated (deposited into crime prevention fund)
	USD 14.840	Confiscated (deposited into crime prevention fund)
	Afl. 630 and USD 1.320	Confiscated (deposited into crime prevention fund)
	USD 4.865 and Afl. 6.580	Confiscated (deposited into crime prevention fund)
	AFL 252,80 and USD 2.812	Returned to suspect

Year	Description of item/Value	Final action
	USD 40.000	Returned to suspect
	USD 116.510	Returned to suspect
	USD 45.000	Confiscated (deposited into crime prevention fund)
	USD 109.700	Returned to suspect
	Afl. 315 and USD 40.476	Returned to suspect
<b>2018</b>		
	46 bars, 50kg of gold of an equivalent value of USD 2,100.000	Pending
	USD 550,00 & € 12.500,00	Confiscated (deposited into crime prevention fund)
	USD 19.960,00	Confiscated (deposited into crime prevention fund)
	USD 32.757,00 & 5000 Chilean pesos	Confiscated (deposited into crime prevention fund)
	USD 13.100,00	Confiscated (deposited into crime prevention fund)
	AFL 2.689,80 and USD 5.351,00	Confiscated (deposited into crime prevention fund)
<b>2020</b>		
	USD 32,815 and Afl. 7.130	Administrative settlement for outstanding debt at Tax Authority
	Hummer and UTV	Equivalent value of Afl. 12.000, and Afl. 5.600 sold at auction for Afl. 23.000 and Afl. 5.750 forfeited and deposited into crime prevention fund
	Two boats	Equivalent value Afl. 25.000 sold at auction for Afl. 15.000 and forfeited into crime prevention fund

241. Personnel of the FIOT, within the tax department, are also members of the ART and provide the expertise on tax related matters, including information on suspected persons' tax information. Should the need arise, the tax department provides an alternate measure of administrative sanctions and recovery where criminal offences are not pursued by the PPO, as identified in the Tables above. The case below is a representation of competent authorities' desire to pursue confiscation that may have derived from the commission of a domestic predicate offence as well as the value of the FIOT to the ART.

***Box 3.22. Case Example: Zaak Toppenborg (Elements related to the payment of tax argued by the defendant in the confiscation matter)***

The suspect was convicted in December 2015 for possession of firearms, possession, transport and provision of hemp, as well as ML and received a sentence of 36 months, six of which were suspended with a probationary period of two years. In addition, a number of monetary amounts and items of the person concerned were declared forfeited, including cash, a Toyota 4-runner passenger car, a Lexus LS460 passenger car, and a Robalo boat.

The public prosecutor filed a claim for confiscation in 2016 for a maximum amount of Afl. 633,594.00 (US\$353,963) which was later reduced to Afl. 557,001.15 (US\$311,174.82). The reduction was due to the fact that the monetary sums and the Toyota 4-runner, the Lexus car and the Robalo boat were forfeited and therefore had to be deducted from the initial claim amount filed. The defendant argued during the case although his income was never declared to the tax authorities, his income was from the purchase and sale of mostly passenger cars and the granting of loans for interest. The Court rejected the argument of the defendant and in February 2017 found that the defendant benefitted to the amount of Afl. 557,001.15 (US\$311,174.82). The defendant had appealed against the decision, but the appeal was withdrawn by the defendant. A conservatory order was obtained for assets, namely a car, a motorcycle, a claim by Afl. 91,250.00 (US\$53,676.00) and expensive

watches.

242. For the period 2017 to 2020, the ART deposited a total of Afl.172, 546.33 (US\$95,860.00) into the crime prevention fund by selling valuable assets by auction. For the period, three houses were auctioned for a total sum of Afl.993,988.16 (US\$552,221.00). Tables 3.27 and Tables 3.28 below illustrate seizure, confiscation and the return of cash by the ART during the same period (2017-2020). The establishment of the ART is a demonstration that Aruba has developed a proper system for the tracing, seizing and confiscation of assets as demonstrated in the confiscation effort. In instances where the authorities are unable to confiscate cash, the cash is returned.

*Table 3.27. Seizure of cash by the Asset Recovery Team for 2017-2020*

Florin	USD	Euros	Other Currencies
34,302.60	\$1,655,476.00	839,750.00	5,000.00

*Table 3.28. Cash confiscated and returned 2017-2020*

Florin	USD	Euros	Amount returned
14,590.80	1,298,730.00	20,6000.00	\$222,488.99 and Afl. 16,132.80

243. The authorities provide some evidence in the form of qualitative and quantitative data of tracing and pursuing confiscation cases involving proceeds moved abroad, albeit to a limited extent. The authorities that are involved in asset recovery communicated their willingness to pursue the proceeds of crime located abroad and this was confirmed by the assessors based on case examples provided by the authorities. For example, the case example referenced in Box 3.23 demonstrating the recovery of proceeds from cross-border drug trafficking. As stated in the analysis of I.O2, competent authorities have demonstrated that they are willing to coordinate and cooperate in the recovery and confiscation of assets involving foreign jurisdictions.
244. As a result of discussions held with competent authorities, the assessors concluded that the focus on identifying, tracing and confiscating assets that may have been moved abroad is not at the same level as assets located in Aruba. The focus is more on those assets that may be located in Aruba. The authorities attributed this limited focus due to lack of resources and the absence of such types of cases. The lack of outcomes and actions taken relative to this Immediate Outcome were weighted as moderate, as there is no indication that this is a significant factor based on Aruba's ML/TF risks and context, i.e., the main threats are from the commission of foreign predicates, which does not necessarily equate to those assets being moved abroad.

***Management of seized and confiscated assets:***

245. Aruba's legislation makes provision for the management of seized and confiscated assets (see analysis in R.4) and competent authorities have demonstrated that mechanisms to do so are being utilised pre (management) and post (enforcement) confiscation to preserve the value of the assets and satisfy a confiscation order issued by the Court. Prior to valuable items and/or real estate being sold at auction, a valuation report is prepared and the assets are sold to preserve their value. In an effort to reduce loss of value, efforts are made by the authorities to sell the

seized items as quickly as possible. Dependent on the final decision made by the Court, the value of the (amount received at auction) is paid to the affected person (s) or the State. Table 3.24 provides information on the items that were sold at auction and the value obtained.

### 3.4.3. Confiscation of falsely or undeclared cross-border transaction of currency/BNI

246. The smuggling of cash represents one of the major ML/TF risks according to the 2021 NRA. The smuggling of cash was one of the areas identified for enhanced focus by the assessors as Aruba's geographical location makes it susceptible for that type of activity. Cash and BNIs, whether declared or undeclared, that are being moved via legitimate ports in Aruba is the responsibility of the Customs Authority. Cash and BNIs seized by the Customs Authority are referred to the PPO/ART for further investigation. The authorities in Aruba have recognized the importance of addressing falsely or undeclared cross-border transactions of currency and BNIs and in 2017, the PPO issued a Policy Letter regarding seizing cash for Customs, the Border Police and the financial investigators of the KPA. The Customs, Border Police and the financial investigators are provided with specific instructions by the PPO regarding the seizure of cash, including which criminal offence is to be charged and the confiscation of assets. Under the Policy Letter, a certain threshold has been set for when the ART is to be informed and involved in the matter.
247. Additionally, in 2017, an instruction document from the Attorney General was released and provides guidelines in determining transaction fines in customs cases. These instructions were updated in 2020. The transaction penalty in case of violation of the reporting obligation with regard to the import and export of cash has remained the same. The transaction penalty provision reads as follows: "No or incorrect notification at more than Afl. 20,000 in cash. Violation of art. 2 (1) LMCG (abbr. for Landsverordening Meldplicht Contant Geld, translated: State Ordinance Import and Export Cash Money) and art. 7 paragraph 1 LMCG (maximum fine AWG 100,000, - or imprisonment 4 years)"

**Table 3.29. Seizure of non-declared/falsely declared cash and BNIs 2017-2020**

Year	No of Seizures	Reason for seizure	Amount/ Currency			
			(Flr)	USD	Euro	Chilean Pesos
2017	11	ML/Violation of Article 2 and 7 LVGM	315	1,268,560.00	12,500.00	5000.00
2018	2	ML/Violation of Article 2 and 7		33,060.00		
2019	08	ML/violation of Article 2 and 7 LVGM	20	201,563.00	827,250.00	
2020	04	ML/violation of article 2 and 7 LVGM	5.70	183,802.70		
Total	25		340,70.	1,686,985.70	839,750.00	5000.00

248. Table 3.29 above shows the number of cash seizures that were performed by competent authorities. Most of the seizures occurred at the country's airport and the sums were either falsely declared or undeclared. The decrease in the number of seizures related to cross-border transportation of cash and BNIs is noticeable from the information provided. The decrease in seizures for the assessment period has been attributed to the travel ban implemented on Venezuela due to the political situation in that country and the issuance of the Policy Letter by the PPO. The issuance of the Policy Letter led to an increase in surveillance by Customs at ports of entry and served as a deterrent to persons/criminals who wish to transport undeclared/falsely declared cash and BNIs. The information provided to the assessors shows that the authorities have a 90 percent success rate in confiscating cash that was seized, with the defendants in some instances waiving their rights to prosecution.

**Table 3.30. Fines for undeclared or false and non-declared cross border currency and BNI.**

Year	Number of Fines	Total value of Fine	Prosecution/ Forfeiture
2016	4	Afl 6000.00	Conviction ML and violation of Articles 2 and 7 LVMCG three months imprisonment and confiscation of \$79.000, deposited in crime prevention fund of Aruba in one matter
2017	7	-	Forfeiture of US\$126, 700.00. Two matters are pending
2018	6	Afl. 14,739.40	-
2019	7	Afl. 2006.35 US\$ 5225	Forfeiture of \$176,837.00
2020	7	Afl. 26,462.00	-

249. In Aruba, the Customs Authority is engaged with international partners in conducting continuous training and development programs for staff as it relates to its methods of detecting and intercepting the flow of bulk cash smuggling and other related trade-based offences. The Customs Authority has intercepted undeclared and falsely declared cash.
250. The Customs Authority utilises various techniques to include surveillance and the use of a K-9 Unit that is capable of detecting cash, ammunition, narcotics, among other items, at all ports of entry and exit. The K9 Unit assists in detecting cash, etc., transported via passengers and baggage from ships, aircraft, baggage controls, packages at the cargo freight services, packages at courier services and packages at the postal offices. The Custom Authority also utilises specially designed scanners in the conduct of its operations, for instance, it has equipment to scan containerised goods, however, these scanners were not operational at the time of the on-site visit. The authorities indicated that plans are in process to implement the use of the scanners and provide training to customs officers. In the fight against the physical cross-border movement of cash and BNIs, assistance and training are provided to customs officers by the United States Customs and Border Patrol (CBP) that has a base in Aruba. Despite having some resources in place to assist in their functions, the authorities advised the assessors that there is

a need for additional human resources. In that regard, the authorities advised that 18 new Customs Officers were expected to be recruited by September 13, 2021 (post on-site visit). The authorities have also indicated that consistent training is needed for customs officers and plans are being made with the Netherlands to provide such training.

*Photo: Aruba Customs Resources: K-9 in operation- cash and other illegal items*



#### ***3.4.4. Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities***

251. Aruba has clearly demonstrated its ability to confiscate assets in a wide cross section of predicate offences, consistent with its institutional policies and priorities, as well as in keeping with the risk profile to some extent. As can be seen from case examples referenced in IOs 6, 7 and 8, the majority of seizures and confiscations have a nexus to ML, drug trafficking, corruption, cash smuggling and fraud, which are identified in the NRA as being the predicate offences that generate criminal proceeds and are high risk offences for ML.
252. As indicated previously, the goal of the authorities, specifically the PPO, is to target those offences that are high risk, whilst identifying possible cases where confiscation is easy (low hanging fruits). Despite the efforts of the authorities to recover the proceeds of crime, there are some offences that are identified by the assessors where the authorities were unable to recover any significant amount of proceeds, for example, human trafficking and migrant smuggling. The authorities attribute the lack of success in recovering the proceeds from this offence to the fact that persons who are engaged in these types of activities reside outside of the jurisdiction and it is difficult to identify the trafficker who may have benefitted in some instances, hence the lack of international requests. Further, the lack of confiscation from human trafficking and migrant smuggling is due to the preventive measures that are in place, some of which are cited in IO 1.

*Table 3.31. Confiscation results based on ML/TF risks*

ML Threat	Amount Confiscated				
	Currency	Florin	USD	EURO	Chilean Peso
Drug Trafficking		189,683.85	34,060.00	24,000.00	-
Cash Smuggling		6580.00	963,871.00	12,500.00	5000.00
Smuggling		49,150.00	-	-	-
ML		1,373,479.59	1,323,614.00	3,213,630.00	-

253. The information in Table 3.31 shows that the authorities continue to confiscate various types of currencies related to the different predicate offences. The case examples and other data presented to the assessors, which are reflected in IOs, 6, 7 and 8, show that different types of assets, such as motor vehicles, vessels, gold, jewellery etc., were seized by competent authorities. The information presented in Table 3.31 above, however, does not provide a true picture of the situation that has taken place pertaining to confiscation. The PPO does not have databases that records the information in a manner that is needed to address the core issue. The assessors were advised that retrieval of the information will take a significant amount of time and resources, as it will require employees to examine each file. Therefore, the assessors to a great extent relied on the qualitative information provided which shows acceptable levels of confiscation results relative to the offences of ML, corruption, smuggling and drug trafficking, all of which are considered as the main threats to Aruba. The notable efforts of competent authorities pertaining to confiscation are recognised and encouraged.
254. Case example 3.23 further demonstrates that the authorities have to a large extent for the assessment period, identified traced and confiscated assets in line with the ML/TF risks, i.e., confiscation of assets related to predicate offences such as drug trafficking, smuggling and bulk cash transportation. The assessors have identified that although there are deficiencies in the human resource at various LEAs, the multiagency approach has resulted in a significant amount of assets being confiscated. The additional assistance of resources provided by the Netherlands has also contributed to the recovery of the proceeds of crime. Additionally, the case examples in Immediate Outcome 6 provide clear examples of the jurisdiction's efforts to confiscate the proceeds of crime.

***Box 3.23: Case Example: Confiscation of proceeds from cross-border drug trafficking***

Two suspects in Aruba were sentenced to prison for cross-border drug trafficking and were sentenced to 6 years imprisonment. Confiscation claims were brought against the defendants on 11 July 2016 and both suspects were mandated to pay separately an amount of € 754,000 as benefits obtained in Aruba. An appeal was lodged against these decisions in which the higher court is expected to give a decision on the matter. Seizures were made on real estate (plots and properties) in Curaçao, as well as bank accounts and balances with Dutch, Curaçao and Aruban banking institutions.

Outcome: Matter pending.

### Overall conclusion on IO.8

255. Aruba has demonstrated that confiscation is an integral part of its AML/CFT framework, especially in the pursuit of ML cases and those predicate offences that are considered as high risk. The authorities have demonstrated that they are pursuing confiscation of the criminal proceeds, instrumentalities and property of an equivalent value to a large extent. Aruba has demonstrated that its commitment to recovering the proceeds of crime, with the establishment of the ART and other policy initiatives. The work of the team is impacted by lack of dedicated resources and training related to confiscation. This was considered to be a moderate shortcoming, since the jurisdiction has developed other multi-agency approaches for confiscation and is often assisted with trained personnel from the Netherlands.
256. Aruba has demonstrated to a large extent that it has successes in seizure and confiscation and results are in line with ML/TF risks and priorities. For example, the authorities have demonstrated a clear policy to seize and confiscate proceeds that are connected with crimes such as smuggling, drug trafficking, ML and corruption. Results achieved thus far are reflective of all of the main threats that affect the jurisdiction and is aligned with the ML/TF risks. The lack of resources and training are factors which are mitigated by the taskforce approach to confiscation. The assessors weighted the deficiencies accordingly and concluded that moderate improvements are needed.

**Aruba is rated as having a substantial level of effectiveness for IO.8**

## Chapter 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

### 4.1. Key Findings and Recommended Actions

#### Key Findings

##### Immediate Outcome 9 (TF identification, investigation, prosecution and sanction)

- a) The competent authorities in Aruba are generally aware of the TF risk. There are institutional TF strategies or policies in place, such as the MTTP established by the FIU and the creation of the NCTVI to handle terrorism and TF related matters. Policies that were developed and awaiting implementation include a national AML/CTF/PF Strategy and a 2022-2025 counter-terrorism strategy.
- b) Aruba has not recorded any prosecutions for TF which is commensurate with the TF risk profile of the country. The PPO is the authority that is responsible for the prosecution of TF offences and has a dedicated prosecutor assigned to conduct this function. Investigations conducted by the PPO and other LEAs thus far have not unearthed sufficient evidence of TF, therefore, the perpetrators were subjected to other criminal justice measures such as prosecution for predicate offences and confiscation proceedings.
- c) Some of the prosecutors within the PPO and the LEAs have not been exposed to consistent training pertaining to TF investigations and prosecutions.
- d) Aruba has several mechanisms in place for the identification of TF, including intelligence sources. At the time of the on-site visit, potential TF cases were largely identified by the FIU through the analysis of UTRs received and disseminated in the form of financial intelligence reports to the PPO. The PPO is responsible for the supervision of the investigations conducted by the LEAs. Aruba has demonstrated a commitment to fighting TF and terrorism through the various mechanisms, laws and institutions, such as the NCTVI, that are in place. The NCTVI was created in 2018 as a dedicated agency that is responsible for, *inter alia*, the investigation of terrorism and TF. The NCTVI ensures that TF investigations are properly conducted in all instances and works closely with its Dutch counterparts and other international partners.
- e) Despite the resources and expertise challenges with regard to TF investigations and prosecutions, Aruba, by virtue of being a constituent of the Kingdom of the Netherlands and based on close working relationships between investigators, prosecutors, and other stakeholders, can solicit assistance from the Netherlands, should the need arise for additional resources and expertise in the event of complex TF investigations and prosecutions.
- f) Aruba has in place measures to disrupt TF and has utilised those measures in potential TF cases.

##### Immediate Outcome 10 (TF preventive measures and financial sanctions)

- a) Aruba has implemented its Targeted Financial Sanctions (TFS)-TF to give effect to UNSCR 1267/189 and 1373 through its legislative framework (Sanctions Ordinance and Sanctions Decree) and the establishment of the National Sanctions Committee that has responsibility for designations. The National Sanctions Committee which comprises several competent authorities as core members. The UN designations are published by the CBA on its website within three to five working days upon receipt of same by Aruba, which is not considered promptly or timely per the requirement of the FATF Methodology and the Sanctions Decree. All FIs and most DNFBPs nevertheless have access to commercial databases that have the UN designations and do not solely rely on the

publication of same by the CBA.

- b) The nature of the procedures adopted by the Netherlands and applicable to Aruba relative to the application of designation to the 1988 Committee, having received a request from Aruba for designation, is unclear.
- c) FIs and DNFBPs have a sound understanding of their obligations relative to TFS-TF and clearly communicated the actions that should be taken and the process that, should be followed should they identify assets or funds of persons and entities that have been designated by the UN. An understanding of the obligation to immediately freeze, followed by communicating the action to the FIU, was clearly communicated. The CBA, as part of its supervision regime (including inspections), demonstrated that it is ensuring that FIs and DNFBPs are complying with their obligations.
- d) The technical deficiencies identified in R.8 that exist vis à vis the oversight and other mechanisms related to NPOs, have a cascading impact on the effective implementation of measures related to NPOs. NPOs nevertheless were subject to some form of risk assessment to determine which NPOs are subject to abuse by terrorist and terrorist organisations. Some NPOs also have some measures in place to promote transparency and accountability, including conducting transactions through regulated FIs and keeping of records.
- e) The authorities have never deprived terrorists, terrorist organisations or terrorist financiers of assets and instrumentalities related to TF activities, as no such case was identified which is consistent with Aruba's risk profile. The requirements of the law and policies and procedures that are in place will allow the authorities to take such action should the situation arise. Overall, the measures that are in place are consistent with the overall risk profile of Aruba and include preventive and disruptive measures.
- f) The risk assessment conducted by FIU relative to NPOs' vulnerability and possibility of being misused for TF allowed for mitigating measures to be implemented, which included the amendment to CCA, Book 2. The recency of the amendments to the law and the absence of implementation and oversight mechanisms has a cascading impact on the effectiveness of the regime.

***Immediate Outcome 11 (PF Financial Sanctions)***

- a) Aruba implements TFS-PF through various pieces of legislation, such as the Sanctions Decrees for DKRP and Iran, the Amended Sanctions Ordinance, amended AML/CFT Ordinance and AML/CFT Handbook. The technical deficiencies highlighted in R.7 have a cascading effect on this IO, which includes the requirement to implement without delay.
- b) There is a system in place for the identification of funds or assets belonging to designated persons. The communication of the sanctions list is done by the CBA on its website within 3-5 days of its receipt of the designation. Nevertheless, all FIs and most DNFBPs communicated the use of screening/compliance systems/software which contains the names of persons and entities that have been designated by the UN and does not necessarily rely on the CBAs communication. The delay in the communication of sanction designations by the CBA can adversely affect the ability of DNFBPs that rely solely on the communication to freeze without delay funds and assets. At the conclusion of the on-site visit no assets were frozen or cases of potential breaches identified
- c) Due to the recent passage of the Sanctions Decree related to Iran, implementation thereof could not be assessed.
- d) The CBA has provided some guidance to FIs and DNFBPs on matters relative to PF, including via the AML/CFT Handbook, however, gaps remain, as the regulated entities

had a limited understanding of the PF requirements, which therefore suggests that there is a need for further guidance on the issue.

## Recommended Actions

### ***Immediate Outcome 9 (TF identification, investigation, prosecution and sanction)***

- a) Aruba should approve and implement the national AML/CFT Strategy and the 2022-2025 counter-terrorism strategy and ensure that the investigation of TF is integrated with and used to support counter-terrorism strategies in the latter.
- b) Aruba should ensure that adequate training and resources are provided to investigators and prosecutors, thereby ensuring that they are equipped with the relevant competencies to properly investigate and prosecute TF offences.
- c) Competent authorities receiving financial intelligence, relevant information and disseminations related to TF should provide feedback to the FIU on a more consistent basis.

### ***Immediate Outcome 10 (TFS-TF)***

- a) The CBA should ensure that the UN designations are communicated promptly or timely manner, in keeping with the FATF requirements and the requirements sets out in the Sanctions Decree.
- b) Technical compliance requirements relative to NPOs should be strengthened to allow for the application of risk mitigation measures, as well as the effective supervision, monitoring and outreach for those NPOs identified as being at risk for TF abuse.
- c) Actions should be taken by Aruba to ensure that the procedure adopted by the Netherlands for designation to the 1988 Committee following the submission of a request for designation is properly documented and clear.

### ***Immediate Outcome 11- TFS-PF***

- a) Aruba should address the technical deficiencies that exist in Recommendation 7 that have a cascading effect on this IO.
- b) Aruba should enhance the competencies (for example through guidance and training) of all relevant stakeholders (for example the CBA, FIU, Customs) in relation to the implementation of TFS PF including investigations and prosecutions of potential breaches.
- c) The CBA should ensure that a PF supervisory framework is implemented, and further training and/or guidance are provided more frequently to all FIs and DNFBPs, informing them of their obligations and emerging global trends and typologies. A mechanism is to be established by the jurisdiction to provide guidance to other persons or entities.

257. The relevant Immediate Outcomes considered and assessed in this chapter are IO.9-11. The Recommendations relevant for the assessment of effectiveness under this section are R. 1, 4, 5–8, 30, 31 and 39, and elements of R.2, 14, 15, 16, 32, 37, 38 and 40.

## 4.2. Immediate Outcome 9 (TF investigation and prosecution)

### 4.2.1. Prosecution/conviction of types of TF activity consistent with the country's risk-profile

258. Aruba has criminalised the acts of TF in line with the FATF Standards and other international instruments (see R.5). The authorities have conducted a robust risk assessment of TF, with input from various competent authorities, and found that the overall risk of TF is *Medium* (see IO 1 for more detailed information).
259. Aruban authorities demonstrated that they are aware of the TF risks identified by the TF/PF NRA (see analysis of IO.1) and have shown in some instances that TF offences and investigations are given priority, particularly by the FIU and the investigations conducted by the National Central Bureau for counter-terrorism, security and Interpol (NCTVI). Notwithstanding the limited number of investigations and lack of prosecutions for TF in Aruba, the FIU, PPO and the NCTVI have demonstrated the capacity to identify and to some extent investigate and prosecute TF, should such matters arise. The assessors nevertheless found that training for LEAs and prosecutors pertaining to TF investigations and prosecutions is limited. Between the period 2016-2021, two prosecutors from the PPO were provided with training in TF prosecution in 2019. The limited investigations initiated into potential TF related matters and the lack of prosecutions by the PPO presented challenges in assessing the full extent to which requirements of this Immediate Outcome.
260. Consistent with the findings of the NRA and the level of risks identified in Aruba, there have been no prosecutions or convictions for TF, however, should TF occur, the competent authority responsible for the prosecution of these matters is the PPO. Despite there being a mechanism in place to prosecute offenders for TF, it has not been tested. One of the main findings of the assessors was prosecutors do not have the necessary expertise or training to conduct TF prosecutions. Despite the lack of training, the authorities informed the assessors that assistance can be sought from and will be provided by the Netherlands to assist with prosecution of such matters, as Aruba is a constituent of the Kingdom of the Netherlands and prosecutors are seconded from the Netherlands to Aruba, as required. The assessors found that whilst Aruba can benefit from the expertise from the Netherlands, there is a need for expertise to be developed within Aruba. This deficiency was weighted moderate.

### 4.2.2. TF identification and investigation

261. TF and potential TF cases are identified via various sources in Aruba, including intelligence provided by the SSA, checks against the sanctions list (TF designations) by the FIU, analysis of UTRs by the FIU, international requests received from foreign authorities and proactive investigations by the KPA. At the time of the on-site visit, suspected TF related offences were largely identified by the FIU through its analysis, which was disseminated in the form of financial intelligence reports to various competent authorities and foreign counterparts, therefore, the report will largely focus on the actions taken by the FIU to identify offences.
262. The FIU system (MOTsys) allows the Unit to conduct checks of the information it received against UN designations to determine whether there are any reports of persons providing assistance to sanctioned organisations and entities. The system also allows for generation alerts which is sent to the TF analyst for further investigation and analyses. Thus far, there have been no alerts pertaining to persons providing support. The FIU has a dedicated analyst who focuses on TF related UTRs and gives priority to such reports, given the serious impact, such as loss of lives and property, which can be caused by TF. Upon receipt of a TF related UTR, MOTsys generates an alert. This alert is sent to the (work) e-mail of the TF-analyst, the head and acting heads of the analysis

department. These alerts are sent on a daily basis. Upon receipt of an alert, screening is conducted immediately (without delay) and taken into analysis, if required. In practice, the TF-analyst also conducts a daily check in the system for newly received UTRs regarding TF, prior to receiving the daily alert, in order to speed up the screening process.

263. LEAs in Aruba are equipped with relevant powers to conduct investigations with regard to TF as mandated by Recommendation 31. The authorities have demonstrated that there is a coordinated approach to any matter that could potentially have a terrorism or TF element, especially since the creation of the NCTVI, a dedicated agency that is responsible for TF investigations (see further information below). The FIU has disseminated financial intelligence reports, suspected of being connected to TF to the PPO who was generally responsible for assigning the matter to LEAs for investigation. The PPO and the LEAs nevertheless do not have the expertise to conduct TF investigations and the feedback received by the assessors from the FIU was that they were not aware of the extent of the investigations conducted, as no feedback was provided. The FIU has also taken a strategic decision to disseminate some of these intelligence reports to the SSA for intelligence purposes. Subsequent to 2018, the FIU disseminations were sent to the NCTVI for investigations. See further information related to the NCTVI in paragraphs 278--281.
264. The FIU's TF dedicated specialised analyst has received training pertaining to TF analysis and is supported by other analysts from the FIU in the event that there is a need for additional resources to conduct such analysis. All TF related UTRs are given priority and immediately analysed and the information disseminated to the relevant competent authorities where TF is identified. The FIU applies an adjusted threshold for the dissemination of TF reports, due to the threat and far-reaching global effect of terrorism. This means, when considering the circumstances of the case and there are sufficient red-flags indicating TF, the report will be disseminated to the relevant competent authorities. The FIU has adopted a preventive approach to TF (preventing TF from occurring) as opposed to traditional duties (investigations) of LEAs.
265. During the period 2013-2020, the FIU received 141 TF suspected related UTRs (see Table 4.1 below). Upon conducting its analysis and inquiries, most of these matters were not found to be true cases of TF, meaning that no link to TF was found. The analysis and inquiries conducted by the FIU resulted in eight suspected TF disseminations to the PPO for investigations. Despite the fact that there were only eight disseminations, these disseminations/financial intelligence reports contained information that was analyzed from one or more UTRs. The assessors were provided with copies of the disseminations for review and found the reports contained valuable information, along with requests for information via the Egmont Group.
266. The only shortcoming that was observed by the assessors, through no fault of the FIU, was the lack of response in some cases by foreign FIUs. The assessors nevertheless did not find any evidence of follow-up to those requests for information by the FIU. These disseminations did not result in a prosecution and the assessors were informed that the matters were investigated with no evidence of TF found. The authorities indicated that in some instances, the individuals were investigated and prosecuted for other predicate offences such as fraud and scams. In circumstances where the request was satisfied by foreign authorities, the information was used by the FIU to support its analysis and dissemination (subject to the approval of the foreign FIU providing the information) to LEAs. None of those responses to the requests revealed any TF activities.
267. Table 4.1 below shows that the FIU has continuously received UTRs from reporting entities suspected of having a nexus to TF. Most of the reports received were submitted by banks. The other sectors submitting reports include TCSPs, MTCs, casinos, lawyers, real estate and notaries.

Table 4.1. Overview of the types of suspected TF activities disseminated based on FIU's analysis

Year	Case Analysis	No. of cases	Subject
2016	<b>Raising funds for a religious foundation</b> Regular incoming (out of profile) transactions on the account of a religious foundation was identified and led to an in-depth analysis of financial transactions. It appeared that funds were generated through donations from members and/or followers from home and abroad.	2	Religious radicalisation
2016	<b>Real estate transaction with false identification by subject from conflict country</b> Subjects involved are from a conflict country.	01	Immigrants
2016	<b>Transactions to a conflict country</b> Beneficiary is from a conflict country.	01	Immigrants
2016	<b>Transaction from conflict countries with unknown relationship between subjects</b> Incoming transaction from a conflict country with unknown relationship between client and beneficiary.	01	Immigrants
	<b>Transactions to conflict countries and transactions that fall outside the customer profile</b> The transaction amount falls outside the customer profile and source of funds was not clear.	03	TF Scam Victim/ Scam by Immigrant
2016	<b>Money transfer to high-risk country, possibly linked to scams</b> Unknown relationship between initiator, beneficiary, and unknown source of fund.	01	TF Scam victim
2017	<b>Immigrant from a high-risk country in the region sending money transfers to conflict country</b> Reason for money transfer is purchase of airline ticket to a high-risk country for a family member living in a high risk country in the region.	01	Immigrant
2017	<b>Immigrant from a high-risk country in the region receiving funds from subject in a high-risk country</b> Relationship unknown.	01	Immigrant
2017	<b>Subject from a high-risk country entering Aruba with large amount of cash in US\$</b> Conflicting reasons given for source of funds and use of monies.	01	Immigrant
2018	<b>Numerous unusual bank transactions from Immigrant from a high-risk country who owns a local business</b> Related to religious foundation and misuse of business and personal account	02	Immigrant
2020	<b>Raising funds for a religious foundation</b> New young people appointed as directors come into the picture instead of the other directors, who do cash transactions for or on behalf of the Islamic foundation. Relationship between the people involved is unknown. Use of withdrawn funds is unknown. Funds received as charity by one of the new young directors, from a high-risk country. The high-risk country is known for the financing, under the disguise of charity, and spread of extremist ideology.	02	Religious radicalisation
2020	<b>Outflow of money to various subjects in various countries</b> Sender is a widow and elderly person who is retired Out of profile transactions	01	Scam Victim, TF

Year	Case Analysis	No. of cases	Subject
	No known relationship between sender and receiver Transactions to high-risk countries Incoherent statements for transactions by sender		
2020	<b>Outflow of money to various countries and a high-risk country</b> Unknown relationship between receiver and sender Inconsistent statements about relationship between receiver and sender Reason for transaction gives reason to suspect scams or fraud Sender makes out-going transactions because he is convinced to receive greater value in return Transactions to high risk country	02	Scam Victim, TF
2020	<b>Transactions to a high-risk country and to a person who became acquainted with the sender via internet</b> Modus operandi is similar to romance scam Receiver's name appears on the World Check list Transaction to high-risk country	01	Scam Victim, TF

268. For the review period (2016-2020), the FIU concluded 15 case analyses and disseminations related to raising funds for a religious foundation, a real estate transaction with false identification from a conflict zone, transactions to a conflict country and transactions from conflict countries with unknown relationship between subjects, transactions that fall outside the customer profile, money transfer to high risk countries with a possible link to scams, immigrants from high risks countries sending and receiving money transfers, immigrants from high risk countries entering Aruba with large amounts of cash and unusual bank transactions from immigrants who own locally established businesses.

*Table 4.2. Actions including analysis, dissemination and cooperation by the FIU relative to TF (2016-2020)*

Analysis	Year				
	2016	2017	2018	2019	2020
Analysis on own initiative	8	4	1	1	8
Request for information by LEA (national)	0	2	0	1	1
Spontaneous information sharing with LEA (national)	0	0	0	0	1
Request for information by foreign FIU (international)	0	3	0	2	0
Spontaneous Information with foreign FIU	0	2	0	2	0

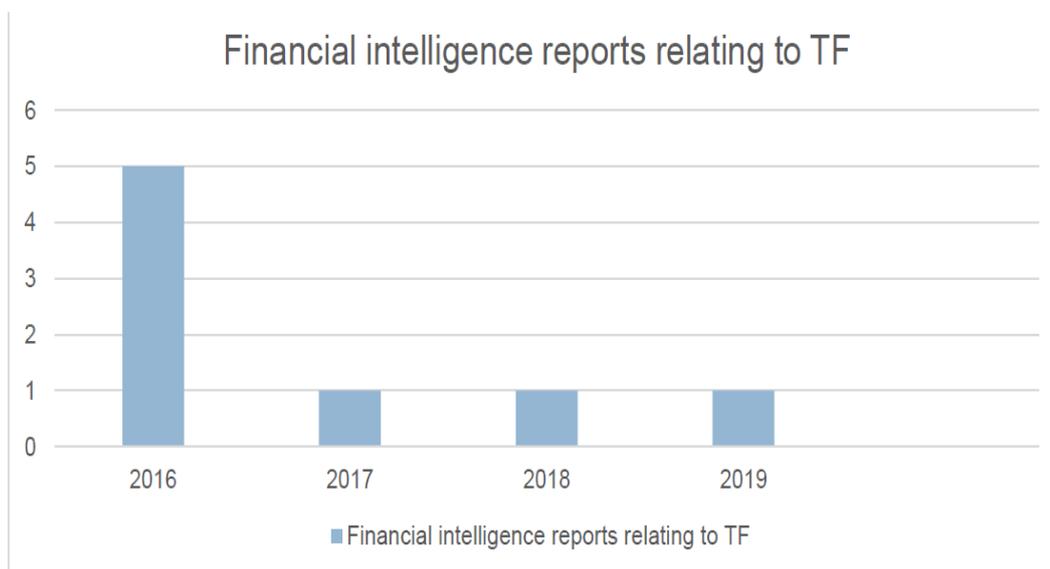
269. For the period under review (2016-2020), it was observed that the FIU, on its own initiative, analysed information received for the possibility of TF-related activities. It was also noted that the local and foreign requests in relation to TF activities are low.

270. Tables 4.1 and 4.2 provide some insight as to possible threats associated with TF, TF disseminations that have been provided to LEAs, and requests regarding suspected TF that the FIU sent to foreign FIUs. Table 4.1 also identifies the conclusions of the analysis

regarding the possible purpose of the funds that were gathered. The data in table 4.1 also shows that in all cases, the funds were generated in a foreign jurisdiction and were subsequently moved through Aruba to fund suspected TF activities/organisations in the foreign or ‘home’ (Aruba) jurisdiction. Furthermore, it specifies the suspected purpose of the funds, for example, involvement of immigrants or foreign students originating from high-risk or conflict countries who were investing in Aruba (e.g., real estate, business), studying in Aruba and transferring and/or receiving funds from or to these countries (foreign jurisdiction).

271. Consistent with the TF risk identified by Aruba, no MLA or other requests for assistance were received in relation to TF, however, the authorities have made requests relative to TF investigations and has spontaneously disseminated information to foreign counterparts. During the period 2016-2019, the PPO received a total of eight suspected cases of TF from the FIU. No other reports were received from other sources including the SSA, the KPA or the NCTVI. The information provided to the assessors shows that the number of reports related to TF suspicions declined from 2016.

**Graph 4.1: Number of Financial Intelligence reports disseminated to the PPO suspected of relating to TF**



272. As indicated above, there are three different agencies that received disseminations from the FIU relative to TF. A synopsis of the roles of the different agencies regarding TF and terrorism is set out in the paragraphs below.

### **PPO**

273. There is one dedicated personnel but no specialised department within the PPO to address TF. Given the risk associated with TF, the assessors did not consider this to be a major deficiency. The PPO also lacks the necessary expertise to effectively undertake proper oversight of investigations relative to TF. Due to the fact that Aruba is a constituent of the Kingdom of the Netherlands (‘the Kingdom’) and personnel from the PPO are seconded from the Netherlands, the PPO can easily access the resources within the Kingdom and its constituents, including Curaçao, to effectively conduct investigations and prosecutions. One of the resources available to the PPO is the RST (Dutch: *Recherche Samenwerkingsteam*), should the need arise.
274. Upon receipt of a dissemination report from the FIU or PPO or any other referral relative to TF, a prosecutor is assigned to the case. Consultations are held with different stakeholders including the Advocate General, the Chief Prosecutor, and the Rechercheofficier (assigned to investigate organised crime investigations and corruption cases), the SSA and the NCTVI.

275. The reports identified at Table 4.2 that were disseminated to the PPO did not result in any criminal prosecution as the PPO's finding was that there was insufficient evidence that criminal offences, specific to TF, were being planned or committed. In some instances, the PPO found that other criminal offences such as fraud and ML were committed and the offenders were prosecuted for those offences. Some cases were discarded as the investigations found that the money flow was legitimate and there were no grounds to initiate an investigation.
276. Despite the actions taken by the PPO and the positive outcomes reported in some cases, the assessors found that due to the lack of resources that are immediately available to the PPO and the skill-set of investigators, the investigations were not comprehensive in all circumstances. In some instances, the investigations only involved the interviewing of the sender of the monies. It should also be noted that despite the fact that financial flows in some instances may be from legitimate sources, one of the major differences between TF and ML is that TF can be facilitated by monies from legitimate sources.
277. The assessors also found that despite the close working relationship among the FIU, PPO and the other LEAs, feedback and follow-up, relative to the outcomes of a TF investigations, were not provided by the PPO to the FIU.

#### ***Security Service of Aruba (SSA)***

278. The SSA, as a national intelligence service, is responsible for the national security in Aruba and financial intelligence is therefore shared with the agency. As part of its national security mandate, the SSA also considers terrorism, including radicalisation, based on regional, global and domestic developments. The SSA does not specifically focus on TF. The SSA collaborates with the NCTVI, the police and the PPO to discuss any matter that represents a threat to national security. Should additional information or an explanation be needed by the SSA pertaining to a dissemination from the FIU, this can be facilitated at short notice.

#### ***National Central Bureau for Counter-Terrorism, Security and Interpol (NCTVI)***

279. The NCTVI was established in 2018 due to the need for having a dedicated unit to address matters related to terrorism and TF, and to support the work of the FIU and the PPO. As such, the NCTVI ensures that TF suspected cases are given more focus and dedicates resources are specifically available to address TF matters. The assessors recognised the importance of the establishment of the NCTVI as a dedicated agency that is responsible for the investigation of TF due to the lack of a dedicated agency with the necessary expertise that existed before its establishment.
280. The NCTVI is located within the National Central Bureau (NCB) which functions as the headquarters for Interpol. By virtue of being a part of Interpol, investigators can liaise with foreign counterparts on matters related to TF with ease. The NCTVI also works closely with its counterparts as the National Coordinator for Security and Counter-terrorism (NCTV) in the Netherlands. In the event of an act of terrorism or TF, resources and expertise are available to the NCTVI from its colleagues in the Netherlands. It should be noted that the Netherlands has some responsibility with regard to mitigating and addressing foreign threats that may affect constituents of the Kingdom, including Aruba. Regarding TF investigations related training, personnel at the NCTVI are trained to analyse TF information but do not have full expertise and training to conduct such types of investigations. The authorities recognised this is gap in the regime and advised the assessors that meetings were held with individual members of the team to determine their specific training needs. Budgetary allocation was requested to execute a training mandate. At the time of the on-site visit, Aruba had just held its general elections to elect a new government and the NCTVI was awaiting the approval of the newly appointed Minister of Justice so as to present its training plan and other plans to the Minister.

281. Regarding the suspected TF reports the NCTVI receives from the FIU, the investigations conducted by the NCTVI include disseminating the information to foreign counterparts through Interpol, requesting information on the recipient of the funds, conducting interviews of the persons sending the monies and, in some instances, as a preventive measure, providing guidance/advice to unsuspecting persons who are sending funds suspected of being linked to TF. The NCTVI also forwarded the information to the Fusion Center and shared/requested information from foreign counterparts including Ukraine, Afghanistan and Turkey. The actions/investigations taken by the NCTVI were detailed to the assessors and demonstrated a willingness to conduct robust investigation pertaining to TF. Table 4.3 represents the actions taken by the NCTVI following reports received of suspected TF.

*Table 4.3. Actions taken by the NCTVI pertaining to suspected TF reports.*

Year	Received (Spontaneous/ upon request)	Action	Dissemination by FIU	Action
2019	The NCTVI received one (1) dissemination report from the FIU providing operational support	NCTVI extended support to the National Central Bureau of KYIV (Ukraine)		
2020	The NCTVI received one (1) dissemination report from the FIU case providing operational support		Eight disseminations received pertaining to ML, associated predicate offences and TF	NCTVI shared intelligence from three of the reports to the NCB in Kabul (Afghanistan) and Interpol General Secretariat.
2021	One dissemination was received	NCTVI extended support to the NCB in Curaçao (pertaining to ML)	Four disseminations received pertaining to ML, TF and associated predicate offence	NCTVI shared intelligence with NCB in Ankara, Turkey

282. Based on the investigative actions taken by the NCTVI, the assessors are satisfied that Aruba was unable to establish any credible evidence to support TF. The intelligence gathered, where applicable, was largely provided to foreign counterparts. Based on interviews conducted and the synergy that exists among the FIU, NCTVI and other stakeholders, the assessors found that there is an overall willingness between the NCTVI and the FIU to identify and investigate TF matters.

#### 4.2.3. *TF investigation integrated with –and supportive of- national strategies*

283. Aruba does not have a national strategy with regard to TF and terrorism. The authorities have drafted a national AML/CFT/CPF Strategy based on the outcomes of the 2021 TF/PF NRA, which is awaiting approval of the Minister. One of the purposes of the national AML/CFT/CPF Strategy will be to develop a coordinated approach to reduce the threat of TF to Aruba. Further, the jurisdiction is also working towards approving and finalising/implementing the Counter-Terrorism Strategy (2022-2025). The main objective of the counter-terrorism strategy is to reduce the risk of terrorism and to limit the damage that may be created following an attack. The authorities have communicated their intention to incorporate TF investigations in the Counter-Terrorism Strategy. Despite the absence of a national TF strategy, some competent authorities have strategies in place and are working on developing their own departmental strategies, for example, the NCTVI and the FIU (see analysis of IO 1 pertaining to TF-related strategies). Some of the strategies that are in place are not documented since these strategies arise from interagency meetings and discussions held whilst others include the creation of institutions such as the NCTVI to address TF and terrorism issues that may arise.
284. To ensure that TF investigations are dealt with in a manner that is commensurate with the overall AML/CFT strategies, the NCTVI was established with the mandate to deal with cyber security, national infrastructure, crisis management which includes terrorist issues, and to develop the Counter Terrorism Strategy based on the Interpol's model. The NCTVI main objectives are to mitigate threats, including emerging ones and risks and to take appropriate preventive measures. The NCTVI is a creature of an institutional strategy that was implemented by government of Aruba and is responsible for coordinating the efforts of all parties in Aruba that have a role in both counter-terrorism and counter terrorist financing.
285. In 2018, the NCTVI undertook a review of policies, roles and responsibilities among the relevant agencies with a view to conducting a threat assessment. This assessment will assist in the development of a policy and incident response for the period 2022-2025 (Counter-terrorism Strategy). The NCTVI anticipates that the Counter-Terrorism Strategy will be finalised by the end of March 2022. The investigators are trained to analyse all information to include any instances of terrorism or its financing. Despite not having a documented strategy in place, the NCTVI continues to employ strategies such as (i) cooperation and coordination, which includes working closely with its direct counterparts in the Netherlands (National Coordinator for Security and Counter-Terrorism), the Counter-Terrorism Unit of Interpol and the FBI and (ii) raising awareness with stakeholders.
286. Despite not being an investigative body, in 2017, the FIU developed an action plan to prevent and combat TF in Aruba. The action plan included the establishment of a multidisciplinary team at an operational and strategic level, with responsibilities such as analysis, implementation of policy measures, intelligence gathering and information sharing. This team meets whenever the need arises. In an effort to support the analysis, the MOTsys has built-in filters and alerts which are triggered by TF indicators, sanctions list/designations and UTRs. The FIU has developed shorter lines of communication with key agencies such as the PPO, NCTVI and the SSA for the dissemination of the findings from the TF analysis and to provide feedback when required. There are four analysts within the FIU that are trained in TF. Other strategies employed by the FIU to tackle TF include: (i) meetings with the compliance officers of the various reporting entities; (ii), cooperation with the Kingdom of the Netherlands (FIU Meeting with the Netherlands and its constituent countries' FIUs); (iii) periodical meetings between the analyst of the FIU; (iv) training and internship for FIU analysts; (v) establishment of the MTTP; (vi) participating in the Egmont ISIL project; and (vii) inter-agency cooperation and coordination.

287. The PPO, as part of its strategy, despite not having a documented one, is to ensure that there is a dedicated prosecutor to address TF related matters and continue cooperation and coordination with the relevant LEAs and prosecutors in the Kingdom of the Netherlands should such a need arise.
288. In conclusion, despite not having overarching national policies pertaining to TF and terrorism, the actions implemented/taken by Aruba and competent authorities indicate that there is a strong will, despite the challenges, to combat TF and terrorism should such offences occur. At the Kingdom level, the authorities indicated that the Judicial Four Party Consultation forum at times addresses the issue of terrorism. Aruba has also established a Staff Large-Scale Special Operations comprising the most important LEAs which can be activated in the event of a terrorist act or such other activity. The assessors nevertheless found that there is a need to develop competencies specific to TF investigations in support of national strategies across all relevant agencies.

#### *4.2.4. Effectiveness, proportionality and dissuasiveness of sanctions*

289. There have been no TF prosecutions and convictions for the period under review, which is in line with Aruba's TF risk profile. Consequently, the assessors could not determine whether sanctions or measures available against natural and legal persons are effective, proportionate and dissuasive. However, it must be noted that appropriate sanctions exist under the CrCA legislative framework in accordance with the requirements of R. 5.

#### *4.2.5. Alternative measures used where TF conviction is not possible (e.g. disruption)*

290. The legislative framework in Aruba allows for alternative criminal justice or other measures where a TF conviction is not possible. This includes financial disruptions and other criminal, civil and administrative justice measures such as seizing, freezing and confiscation of criminal assets, pursuing other criminal charges, international cooperation and pursuing civil penalties. In investigating TF, the authorities can restrict the amount of cash in the possession of a subject, have access to communication devices and receive regular reports from service providers in relation to suspected TF transactions. Art. 28a of the AML/CFT State Ordinance allows the FIU to have all or part of the transaction data of service providers, of its own initiative or following a request from a foreign agency, the PPO, an investigative agency, the SSA or a comparable authority established in a country within the Kingdom of the Netherlands, if it can be reasonably suspected that the transaction is related to TF.
291. There are disruptive measures that are available to the authorities and which have been utilised in cases where TF was suspected. Some of the actions undertaken that can be deemed as disruptive include preventive measures, notification/spontaneous dissemination of foreign counterparts including foreign FIUs as can be seen in Table 4.2 as well as outreach and educating/advising suspected persons and entities on issues related to TF and its consequences. The recent amendments to the AML/CFT State Ordinance also provide the FIU with the power to authorise a service provider to suspend part or all of a transaction (Art.28) and serves as a disruption measure.
292. Case examples 4.1 and 4.2 are examples of the authorities utilising measures to disrupt potential TF cases. In case example 4.1, the foreign FIU requested additional information from the Aruba FIU and noted that the financial intelligence provided was useful. Case example 4.2 shows the use of preventive measures by reporting entities to disrupt potential TF.

#### **Box 4.1. Case Example: Spontaneous Sharing of Information**

**Competent authorities:** FIU, Foreign FIU, SSA and PPO

**Relevance:**

IO.2: International Cooperation

IO.9: TF identification, investigation and prosecution

**Summary:**

The FIU received an UTR relating to suspected TF from a reporting entity. This UTR contained information regarding two transactions that were conducted by a local subject to a foreign country. One of the transactions was sent to a city which is a known as a recruiting place for terrorists. This transaction did not concern a large amount of cash no clear reason(s) for the transaction was provided and there was no clear or logical relation between the local subject and the beneficiary. What was notable to the Aruban authorities, was that shortly thereafter, the country was struck by a terrorist attack in a city in proximity to the location to where the money was sent. The perpetrators were foreign terrorist fighters (FTF) in Syria that were affiliated with the Islamic State (ISIL) and had recently returned to the country of attack. The fact that the destination of the cash was sent to a city nearby the city where the attack occurred and that most of the perpetrators that had committed terrorist attacks in other countries came from that same area or were arrested there, were important red flags to the case at hand. Considering the high risk of terrorist attacks in that country, the FIU disseminated its financial intelligence to the relevant and competent authorities in Aruba and disseminated financial intelligence spontaneously to the foreign FIU.

**Outcome:** Following the spontaneous dissemination, the foreign FIU submitted a request for additional information to which the FIU responded.

**Box 4.2. Case Example: Discontinuance of business relationship by FI****Competent authorities:** FIU, SSA, LEAs and PPO**Relevance:**

IO.4: Preventive Measures

IO.9: TF identification.

**Summary of Case:**

Between 2015 and 2016, intermediaries (individuals) conducted various transactions of relatively small sums of cash for individuals that are located in conflict areas and surrounding countries. Debit cards registered in Aruba were used to withdraw money from ATM machines. As the circumstances of the case fit all the typical red flags indicating that funds were possibly being provided to a FTF, the FIU disseminated a financial intelligence report to the competent authorities. Particularly notable in this case is that the reporting entity refused to execute several transactions due to their unusual nature and during a meeting with the FIU, it mentioned that it discontinued the services of the ATM card as it was used abroad and against the contractual agreements and policies of the reporting entity.

### Overall conclusions on IO.9

293. The TF risks to Aruba have been properly assessed and understood by competent authorities. Aruba, as part of its commitment to address TF and terrorism, established the NCTVI and is awaiting the implementation of the national AML/CFT/CPF Strategy and Counter Terrorism Strategy 2022-2025.
294. Aruba has not prosecuted anyone for the offence of TF but has conducted numerous investigations which is in keeping with the risk profile of the country. There are mechanisms place for the identification, investigation and prosecution of TF offence should such cases arise with support (resources and expertise) from the Kingdom of Netherlands, as demonstrated by the provision of specialised judges from the Netherlands to adjudicate on complicated and large-scale cases within the review period.
295. Notwithstanding the support that can be provided by the Kingdom of Netherlands on TF matters, only two prosecutors were trained during the assessment period in terrorism and TF matters.
296. Aruba has in place dissuasive and proportionate sanctions and mechanisms to disrupt TF and has demonstrated that such disruptive actions can be taken.
297. Considering the actions taken by Aruba, the assessors considered and weighed the deficiencies accordingly and concluded that major improvements were needed to the framework.

**Aruba is rated as having a moderate level of effectiveness for IO.9**

### 4.3. Immediate Outcome 10 (TF preventive measures and financial sanctions)

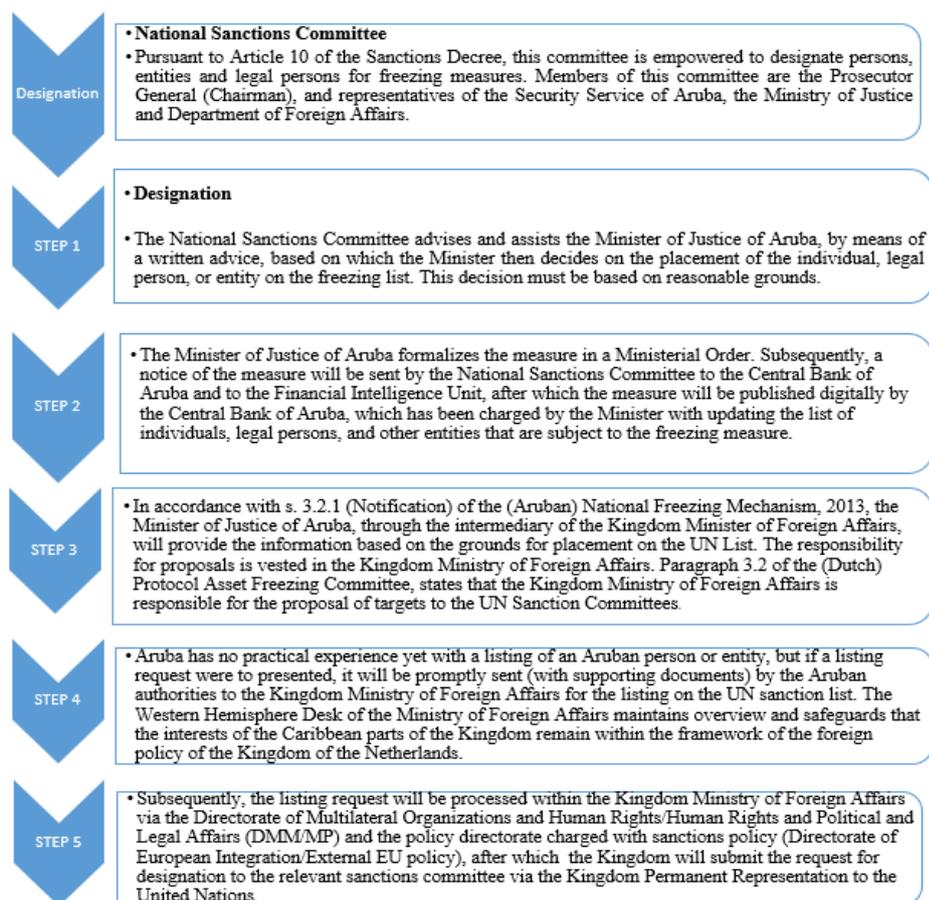
#### 4.3.1. Implementation of targeted financial sanctions for TF without delay

298. Aruba's legislative framework and systems allow for implementation of targeted financial sanctions (TFS) without delay to the extent described in R.6 within the context of United Nations (UN) designations 1267/1989, 1988 and 1373. Aruba has not frozen any assets of persons and entities designated by the UN (at the time the on-site concluded) as no such assets were identified nor proposals for designation/freezing was made by another country.

#### **Background and Context:**

299. Aruba is a constituent country of the Kingdom of the Netherlands and does not have a permanent representative at the United Nations. Foreign relations matters are considered Kingdom Affairs in accordance with Art. 3 of the 1954 Charter of the Kingdom of the Netherlands. The Ministry of Foreign Affairs of the Netherlands and the embassies, consulate and missions abroad work for the Kingdom and all its constituent parts. The foregoing means that Aruba does not directly receive the 1267/1989 designation from the UN and cannot propose designations directly to the UNSC. Figure 4.1 below provides an overview of Aruba's framework for identifying and proposing designations.

*Figure 4.1. Overview of Aruba's framework for identifying and proposing targets for designation in accordance with criterion 6.1. (Source: Aruba)*



**UNSCR 1267:**

300. The Minister of Foreign Affairs of the Netherlands is the competent authority for proposing persons and entities for designation on behalf of Aruba (s.3.2 B.V.O (asset freezing committee) protocols). For Aruba, pursuant to its Freezing Measures Terrorism procedural document, consultations take place within the National Sanctions Committee which can make a recommendation to designate based on sufficient indicators, which include persons who commit, or attempt to commit terrorist acts or participate in or facilitate the commission of terrorist acts; entities owned or controlled, directly or indirectly, by such persons; and persons and entities acting on behalf of, or under the direction of such persons and entities. The matter is then referred to the Minister of Foreign Affairs of the Netherlands who, according to the procedure, which is set out in the Asset Freezing Protocols, consults with the Kingdom's Asset Freezing Committee and decides whether the person or entity should be designated to the EU or UN. This process for designation at the UN involves taking measures against persons and entities that the Committee has deemed to be associated to Al Qa'ida (s.3.2.1 BVO). This process is therefore independent to Aruba.
301. Despite the independent mechanism that is set out and noted in the final sentence in the immediate paragraph above, the authorities have advised that should Aruba submit a request for designation to the Minister, the likelihood exists that Aruba would be consulted by the Minister of Foreign Affairs, as was done with other foreign policy matters that touch and concern Aruba. From a practical standpoint, frequent dialogue occurs between the Minister of Foreign Affairs, the Prime Minister of Aruba and the

Department of Foreign Affairs in Aruba on foreign relation matters. Further, dialogue is facilitated via the mechanisms that are established within the Kingdom of the Netherlands. The authorities advised that these mechanisms include a Minister that is located in the Netherlands who represents the Government of Aruba in the Netherlands and Europe, is part of the Kingdom Council of Ministers and takes part in its meetings. Further, Aruba also has a representative in Embassy of the Netherlands in Washington D.C. who fulfils a diplomatic position and is assigned to the Ministry of Foreign Affairs.

302. It is unclear however, the nature of the procedures that are adopted by the Netherlands for designation to the 1988 Committee, having received a request from Aruba for designation<sup>21</sup>.

***UNSCR 1373:***

303. Regarding UNSCR 1373, Aruba implements same by its own motion or by giving effect to the request of another country through its competent authority, who is the Minister of Justice, after consultation with the National Sanctions Committee.

***National Sanctions Committee/National Designation***

304. The National Sanctions Committee comprises the Prosecutor General, who is the Chairman, a representative of the Minister of Justice, a representative from the Department of Foreign Relations and a representative from the SSA. The National Sanctions Committee meets at least every six months or at an earlier date as appropriate. During the period 2020 to the first half of 2021, the Sanctions Committee's attention has mainly focused on gathering the information from reporting services such as the NCTVI, SSA and the KPA. The National Sanctions Committee is supported by key agencies such as the PPO, FIU, SSA, NCTVI, Bureau of Central Intelligence and the KPA which allows for intelligence gathering, information sharing and investigations. The criteria for designation as set out in the Freezing Measures Terrorism document includes circumstances where persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; entities owned or controlled, directly or indirectly, by such persons; and persons and entities acting on behalf of, or under the direction of such persons and entities. To date, no designations were made or proposed and/or freezing actions taken as a result of a request from a third-party, however, the FIU made a proposal for designation to the Sanctions Committee as a result of analysis conducted and suspicion of TF as is demonstrated in the case example 4.3.

***Box 4.3. Example of referral to the Sanctions Committee for consideration***

**Competent Authorities:** FIU, PPO and Sanctions Committee

**Relevance**

IO.6: TF related STR and use of financial intelligence and relevant information

IO.9: Investigation of TF

IO.10: Consideration for designation and application of TFS-TF

**Summary of Case:**

A reporting entity submitted an UTR indicating that a non-national living and working in Aruba who transferred monies to an individual living in a conflict zone. The transaction was analyzed by the FIU and deemed to have a potential nexus to TF. An intelligence report was disseminated to the PPO. In view of the nature of the report and the facts, the FIU deemed it was necessary to inform the Chairman of the Sanctions Committee to conduct further analysis, consider the facts and

<sup>21</sup> Whilst the Sanctions Act 1977 (Netherlands) speaks to implementation of all Resolutions, the Asset Freezing Protocol which sets out the procedure, only makes reference to Al 'Qaida.

determine whether it was necessary to designate the person.

The matter was considered promptly by the Sanctions Committee which decided that the case did not meet the evidential threshold to designate.

***Publication of UN Designations, Changes to the List/Designations and Notification to FIs and DNFBBs***

305. The CBA, the designated AML/CFT supervisor for FIs and DNFBBs, ensures the updating and publishing of the UN designations on its website<sup>22</sup>. UN designations are received by the Department of Foreign Affairs of Aruba immediately via email from the Minister of Foreign Affairs in The Hague and are immediately forwarded (within the day or no more than 24 hours of receipt) to the CBA for implementation. FIs and DNFBBs are advised by the CBA, via emails, of changes to the UN designations after the changes have been received from the Department of Foreign Affairs. The UN designations are published on the CBA's website within three to five working days, which is not in keeping with the FATF requirement of "promptly" or "timely" as stipulated in the Sanctions Decree. Notwithstanding the notification by CBA, during the on-site, the FIs and DNFBBs indicated that they use several automated software to ensure that they receive the UN designations and changes to same, as this is a mandate under the AML/CFT State Ordinance.

***Implementation of TFS-TF by FIs and DNFBBs:***

306. FIs and DNFBBs are required to keep abreast of the content of the UN designations and all changes thereto pursuant to the requirements AML/CFT State Ordinance and AML/CFT Handbook and the CBA ensures compliance with same. The CBA ensures that the FIs and DNFBBs are aware of their obligations under this mechanism through the information contained in the AML/CFT Handbook, outreach and the issuance of guidance, which was confirmed by the FIs and DNFBBs during the on-site visit. Further, the CBA's annual AML/CFT surveys to all FIs and DNFBBs contain questions related to assessing compliance with UN designation. The surveys include questions on whether screenings are conducted against the UN, EU, OFAC designations and at what point such screenings are done. As such, compliance with screening against UN designations is also subjected to a desk-based review by the CBA. Letters are also provided to FIs and DNFBBs of their obligations based on the feedback received from the surveys. These letters provide a certain measure of guidance as to the actions that should be taken pertaining to TFS-TF. This includes ensuring that checks are conducted of their customer databases and against the UN designations to determine whether there are any terrorist assets in their possession. All FIs and most DNFBBs (95%) during interviews demonstrated a strong understanding of their obligations under the Sanctions Decree in relation to the identification, freezing and immediacy in communicating with the CBA through the required reporting form (found on the CBA website) and the FIU if a person or entity who is designated is found within their database. The assessors are of the view that this understanding exhibited by the FIs and DNFBBs is as a result of the outreach and guidance by the CBA and FIU.

307. Whilst the CBA informs the FIs and DNFBBs of the UN designations and/or changes to the same via its [website](#), the FIs and most DNFBBs interviewed advised that they also have the responsibility to ensure that they are in possession of the UN designations and the requisite screening takes place for both onboarding of customers and as part of ongoing CDD requirements. All FIs and the majority of DNFBBs interviewed indicated that they utilise databases and compliance/risk-based screening software which scan new and existing customers against the UN, EU and OFAC designations. Other DNFBBs

<sup>22</sup> [www.cbaruba.org/cba/home.do](http://www.cbaruba.org/cba/home.do)

indicated that they rely on CBA's correspondence. The assessors found that Aruba adopts multiple approaches for the communication of UN designations. The direct approach taken by the CBA to provide a direct link to the UN designations on its website is considered without delay, whilst the time taken for the official correspondence, which is relied upon by some DNFBPs, namely within 3-5 working days, does not constitute without delay and may affect the timely identification of assets belonging to designated persons. The assessors found that the official communication within 3-5 working days is a minor deficiency as CBA provides the direct link to the UN designations and the majority of FIs and DNFBPs have software for this purpose.

308. No definite period is set out for reporting requirements by FIs and DNFBPs related to their obligations. FIs and DNFBPs are aware of the requirement to freeze, without delay, assets and funds of persons and entities that have been designated by the UN. Interviewees from the various sectors clearly communicated the procedure that should be followed (freeze without delay, followed by communicating the actions to the FIU). FIs and DNFBPs all have a good working relationship with the FIU and communicated that some FIU staff are accessible outside of normal working hours. The CBA ensures compliance by the FIs and DNFBPs with these obligations through desk reviews and the conduct of on-site examinations. The CBA utilises the desk-based review process to also inform their on-site examinations. The CBA's supervision found that there is a strong sanctions screening mechanism among FIs, namely banks (100 percent), life insurance companies (100 percent), finance companies (75 percent), pawn shops (75 percent) and MTCs (67 percent). As indicated previously, some DNFBPs, such as TCSPs and notaries (100 percent) based on survey (with strong response from respondents) conducted by the CBA also have strong sanction screening mechanisms in place.

#### *4.3.2. Targeted approach, outreach and oversight of at-risk non-profit organisations*

309. Aruba's NPO sector includes foundations and associations. As of 2019, when the NPO risk assessment was conducted by the FIU, the sector consisted of 1,847 legal entities (1629 Foundations and 218 Associations) that were operating as NPOs in the jurisdiction. Six foundations in Aruba were considered by the authorities to be likely at risk for TF based on their characteristics and activities (see R.8). The measures implemented by the Aruban authorities apply to all NPOs and the focus is not solely on those NPOs that are likely at risk for TF abuse. The legislation governing NPOs, including its oversight is limited and does not address fully the requirements that are mandated by the FATF (see R.8). Aruba's NPO sector is relatively small and entities are mainly engaged in domestic charitable work, such as providing food and clothing. Funding is generally provided by local donors and through activities such as raffles and sale of food and other items. The authorities, except for the FIU and the CBA, have given little to no attention to the work of NPOs. As a result, there are some gaps in the registered information of NPOs and the nature and purpose of NPOs.
310. An assessment of the vulnerability of the NPO sector to assess which NPOs are likely to be misuse by terrorist and terrorist organisations was conducted by the FIU based on the FATF requirements. The NPO risk assessment team collected and analysed a wide variety of information, including all cross-border wire transfers from the NPO sector during the period 2013-2018, NPO related UTRs and dissemination, FIU Strategy Reports and the 2016 TF survey, prosecutions and convictions related to NPOs, intelligence/information from LEAs and intelligence agencies, the NPO register from the CoC and government subsidies received by NPOs and its purpose. Despite the jurisdiction conducting a risk assessment of the NPO sector, there is no evidence to show that measures mandating periodical reassessment of the sector's potential vulnerabilities to TF to ensure effective implementation of measures are in place. Based on the conduct of the activities of the NPOs interviewed by the assessors, the use of the financial system by NPOs and the activities of

LEAs in respect to TF disseminations, it was found that the mitigating measures utilised were adequate.

311. The findings of the NPO risk assessment concluded that there was no evidence of abuse of NPOs for TF found in Aruba. On the other hand, the evidence shows that NPOs are at risk for ML (see IBIS case referred to in IO 6). The authorities also concluded that religious NPOs are at higher risk for potential TF abuse due to the nature of their objectives, activities and operations. The NPO assessment indicated that some of the donations that were received by religious NPOs in the form of incoming transactions were from individuals located in a high-risk country in which the initiator of the financial transaction was unknown. Some of the jurisdictions from which donations were received include Bermuda, Barbados, Virgin Islands (British), Germany, India and Hong Kong, China. Some of the countries where monies were sent via transfers included New Zealand, Norway, Portugal, Trinidad and Tobago, Belgium and Pakistan.
312. The TF/PF NRA 2021 incorporated the assessment done on NPOs to some extent. The TF risk was assessed as medium. One of the main findings in the TF NRA was that no FI was misused for TF, however, FIs should monitor and scrutinise international wire transfer transactions involving NPOs. The NRA also highlighted the lack of supervision of the NPO sector. All NPOs are required to be registered with the CoC. The assessors found that the methodology used to conduct the TF risk assessment was reasonable and captures the requisite information, despite the data collection gaps.
313. Notwithstanding the technical deficiencies that exist, the assessors' findings, based on feedback from the NPOs and competent authorities interviewed during the on-site, are that the administration of the NPOs is done in a transparent manner which promotes accountability by the keeping of financial records and in some instances are published. Transactions are conducted via the formal banking channels and in some instances, due diligence is conducted on its donors. Some persons operating or are associated with NPO are aware of the requirements and the potential risk of being abused as a result of their employees' own knowledge and the sharing information with them by close associates with knowledge of same. NPOs viewed the risk to them as low, since the FIs conducting the transaction, provide a level of protection to them. For example, banks will request copies of financial reports. The mitigating measures applied to the NPOs by banks and MTCs in particular were confirmed by the survey conducted by the CBA in 2020. The assessors found, based on the responses given by the NPOs interviewed and the fact that they were not aware of the risk assessment conducted by the FIU, that there is need for significant outreach to NPOs and donors to raise awareness of potential vulnerabilities to TF, TF risk and the measures that should be undertaken to protect themselves from such abuse.

#### *4.3.3. Deprivation of TF assets and instrumentalities*

314. Aruba has a legislative framework in place to address the deprivation of TF assets and instrumentalities both in relation to TF investigations and TFS through seizure and confiscation of assets (see R.4 analysis). Further, the authorities are able to use investigative techniques in order to identify TF assets and instrumentalities (see analysis R.31). Competent authorities such as the PPO and the FIU all have policies in place regarding confiscation and proceeds that may be related to TF including the MTTP within the FIU (see IO 6, 8 and 9). Therefore, should TF assets and instrumentalities be identified, a mechanism exists to ensure that terrorist and terrorist organisations can be deprived of such assets.

#### *4.3.4. Consistency of measures with overall TF risk profile*

315. The actions taken by Aruba are consistent with the TF risk profile of the country. The measures are designed to be preventive and disruptive and should any act of TF or terrorism occur. Competent authorities can take the necessary actions, including investigations,

prosecutions, convictions, freezing without delay and confiscation. The focus is not only on TF but also terrorism. The actions taken to prevent and disrupt TF and terrorism also considered the external threats (regional and international) of TF and terrorism and the impact of such activities on Aruba. Aruba's TF NRA reflects an overall threat level for TF risks as medium-low. There have been several investigations relating to TF, none of which have resulted in any prosecutions which is commensurate with the country's risk profile. The authorities have taken the opportunity to submit one individual to the sanctions committee for designation, however, this was not advanced due to insufficient information to suggest that TF is involved. The legislation criminalising TF and those related to the implementation of TF provide a good platform for the authorities to combat TF. Given the risk of TF to the jurisdiction and taking into consideration that Aruba is not a financial or company formation center, the measures that have been taken thus far by the authorities are moderate. Nevertheless, shortcomings still remain, including the need to further strengthen the TFS-TF mechanism.

#### Overall conclusions on IO.10

316. Subject to the minor technical compliance deficiencies that exist with regard to R. 6, Aruba has a legislative framework, an operational National Sanctions Committee and appropriate competent authorities to facilitate compliance with obligations to impose targeted financial sanctions pursuant to UNSCR 1267 (and its successor resolutions), 1988 as well as UNSCR 1373. Aruba has not had cause to designate any terrorist, terrorist organisation or terrorist financier. Whilst Aruba has mechanisms in place for designations, it is unclear what procedure is adopted by the Netherlands upon receipt of a request for designations from Aruba relating to the 1988 Committee.
317. UN designations are communicated to the CBA, PPO, FIU via the Department of Foreign Affairs of Aruba which distributes the designations within one day of receipt. However, CBA informed that it takes approximately 3-5 days to inform the FIs and DNFBPs of the UN designations and any changes thereto (through publication) which is not within the definition of promptly or timely. Most FIs and DNFBPs nevertheless do not solely rely on the publication of the UN designations by the CBA, as they have their own commercial database(s) with access to the UN designations.
318. Aruba has conducted a TF risk assessment which incorporated the risk assessment of the NPO sector. Significant gaps remain in the technical compliance mechanism related to oversight of NPOs that may be higher risk for TF. All deficiencies were considered and weighted accordingly by the assessors who concluded that major improvements were required.

**Aruba is rated as having a moderate level of effectiveness for IO.10.**

#### 4.4. Immediate Outcome 11 (PF financial sanctions)

##### *4.4.1. Implementation of targeted financial sanctions related to proliferation financing without delay*

319. In June 2021, Aruba assessed its proliferation financing risks as medium. Aruban authorities considered the proliferation threat to Aruba as low but noted that due to its geographical location, the jurisdiction can be targeted as a transshipment center for dual-use goods, proliferation-sensitive items or military goods. Aruba considered the proliferation vulnerability as high, due to the lack of a national counter proliferation strategy, the need for criminalisation of proliferation in the criminal code, and the need for

training of stakeholders, including FIs and DNFBPs, to raise awareness on PF typologies and activities amongst others.

320. The technical compliance requirements that exist in law contains several deficiencies that have a cascading impact on effectiveness of the system and the extent to which outcomes are achieved. TFS-PF is implemented through the Sanctions Decree North Korea (2017), Sanctions Decree Iran (August 2021) and the Amended Sanctions Decree of 2006. The Sanctions Decrees define ‘designations’ by reference to United Nations Security Council designations for DPRK and Iran, meaning that such designations are automatically and immediately legally effective in Aruba. Similar to IO 9, Aruba relies on its National Sanctions Committee to assist with the implementation of the designations. The amended AML/CFT State Ordinance and the Handbook place an obligation on reporting entities in relation to the implementation of TFS-PF. Reporting entities must assess the proliferation risks as part of its business risk assessment (Article 46 b of Amended AML/CFT Ordinance and Chapter 3.3.3 of the Handbook), conduct due diligence or enhance due diligence on customers, report unusual transactions (Article 3, 11, 20 of Amended AML/CFT State Ordinance) and apply measures in accordance with the requirements in the Sanctions Decree and where applicable in accordance with Chapter 11.1.2, Section 5.3 of AML/CFT State Ordinance.
321. The CBA on its website provides direct access via a link on its website to the EU designations in relation to DKRP and Iran. As it relates to the UNSCRs designations, the CBA receives same from the Department of Foreign Affairs of Aruba. The Department of Foreign Affairs receives the UN designations or resolutions through The Hague. The Department of Foreign Affairs transmits the information (via email within the day or one day after receipt) to relevant agencies such as the CBA, FIU and Legal Affairs. The CBA has indicated that it takes 3-5 working days to alert the regulated entities in relation to the designations and any changes thereto via official correspondence. At the time of the on-site, Aruba sent out correspondence in relation to DPRK only, as the Sanction Decree that relates to Iran was only enacted on September 2, 2021. CBA issued correspondence to all regulated entities<sup>23</sup> alerting them that the designations were published in accordance with the legislation.<sup>24</sup>
322. Whilst the CBA publishes the UN designations and any changes thereto within 3-5 working days, the regulated entities have the responsibility of ensuring they are abreast of any changes to the designations, as part of their obligations under the amended AML/CFT Ordinance. The regulated entities’ representatives the interviewed understood their screening obligation. All FIs and the majority of DNFBPs’ representatives interviewed indicated that they utilise databases and compliance/risk-based screening software which scan customers against the UN, EU and OFAC designations. Other DNFBPs indicated that they rely on the CBA’s correspondence. The assessors found that Aruba adopts multiple approaches for the communication of the designations, however, the 3-5 days taken by CBA to distribute the UN designations is not considered without delay. Notwithstanding, the software used by all FIs and most DNFBPs assist them in accessing UN designations in real time.

#### ***4.4.2. Identification of assets and funds held by designated persons/entities and prohibitions***

323. Communications of the UN designations are done by CBA as previously referenced. The FIs and majority of the DNFBPs have indicated that they utilise various databases to screen against the UN designations in order to identify assets and funds held by designated persons/entities. However, those entities (the minority) which rely on the CBA’s

<sup>23</sup> Letter to the regulated entities dated September 16, 2021.

<sup>24</sup> Letter to the regulated entities dated September 16, 2021, which is after the on-site.

communiqué can adversely impact the identification of assets and funds held by designated persons/entities. All regulated entities representatives during the interview indicated that there is need for more outreach by the supervisory authority as it relates to TFS- PF. No funds or other assets were frozen pursuant to Aruba’s TFS-PF framework at the time of the conclusion of the on-site visit, which contributed to the assessors being unable to determine whether the obligations could be implemented without delay. The recency of the enactment of the Sanctions Decree (Iran) (September 2, 2021), the limited guidance offered to the FIs and DNFBPs, the lack of outreach/guidance to other persons or entities about their TFS-PF obligations and the lack of supervision all have an impact on the authorities’ ability to achieve an acceptable level of effectiveness.

324. As identified in the PF risk assessment conducted by Aruba, there is need for training of all stakeholders in relation to TFS-PF, strengthening of national cooperation and the need for the customs authorities to establish a list of dual-use goods in order to control the export, transit and brokering of these goods. During the on-site, it was noted that there were varying levels of understanding in relation to TFS-PF which is in alignment with the conclusions of the risk assessment conducted.

#### *4.4.3. FIs, DNFBPs and VASPs’ understanding of and compliance with obligations*

325. The AML/CFT Ordinance and the AML/CFT Handbook as of January 1, 2020 were amended to include implementation of TFS-PF requirements in line with FATF Recommendations. The legislation requires FIs and DNFBPs to identify, assess and take effective action to mitigate their ML, TF and PF risks. VAs and VASPs are captured under the AML/CFT State Ordinance as amended (see analysis of R.15). It is to be noted that at the time of the on-site, the authorities informed that there were no VASPs operating within Aruba, consequently only the FIs and DNFBPs are being referenced. During the interviews, all FIs and DNFBPs had some understanding in relation to the implementation of TFS-PF obligations but have indicated that there is need for training by competent authorities so that they can gain a better understanding on the requirements as outlined in the AML/CFT Handbook.
326. In July 2021, the CBA published a Guidance Note on PF. The Guidance Note was issued to raise awareness among FIs and DNFBPs of the risks and vulnerabilities posed by proliferation and its financing, as well as to provide guidance to these institutions regarding the actions that should be taken to comply with international standards and obligations (e.g., TFS-PF), red flags for the identification of PF and measures that should be undertaken by reporting entities should they identify potential instances of PF. During the on-site, the FIs and DNFBPs indicated that they are aware of the PF guidance. Most indicated that they have incorporated it or are in the process of incorporating it into their policies. However, a small percentage of the FIs and DNFBPs found that it was difficult to discern its applicability to their particular industry.
327. Notwithstanding the foregoing, all FIs and DNFBPs were aware that they have an obligation in relation to freezing funds of any person or entity that have been designated by the UN. designations. The authorities have indicated that they adopt the same TF survey in relation to PF to determine on-site activities, however, at the conclusion of the on-site, there were no indications that surveys were sent to FIs and DNFBPs pertaining to TFS-PF and any resulting on-site inspections. The assessors are of the view that the lack of supervision in relation to the implementation of these measures contributed to the varying degrees of understanding of applicability of TFS-PF to the industry and resulting obligations thereunder. All FIs and DNFBPs acknowledged that there is need for further training in this area and a better understanding on how to incorporate it into their respective policies. The assessors found that there were no mechanisms implemented by Aruba to raise awareness or give guidance to other persons or entities relative to their obligations. It was therefore concluded that there is a need for outreach to the FIs and other persons or entities including DNFBPs on TFS-PF implementation.

#### 4.4.4. Competent authorities ensuring and monitoring compliance

328. The CBA has incorporated TFS-PF in its annual AML/CFT supervisory plan for 2020 and is responsible for supervision of the entities' compliance with obligations relating to the implementation of TFS-PF. On July 16, 2021, the CBA informed the management of all FIs and DNFBPs of the publication of the Guidance Notes and urged them to assess the adequacy of their practices, procedures and internal controls to deter PF. However, due to the recency of the legislation and Guidance Notes issued, there is no evidence that the regulated entities are supervised and monitored for implementation of TFS-PF. As mentioned for TFS-TF, which is also applicable to TFS-PF, the CBA, during on-site examinations, ensures that regulated entities are implementing TFS-PF. Further, the CBA communicated to the assessors its intention to conduct a yearly survey amongst the FIs and DNFBPs as it relates to their compliance with AML/CFT and most recent PF obligations as is done for TFS-TF. The assessors are of the view that due to the recent amendment of the AML/CFT Ordinance to include PF, not all entities are subjected to a yearly on-site that focuses on TFS-PF and there is a greater need by the CBA to ensure and monitor entities' compliance with their obligations.
329. The Customs authorities have the mandate of monitoring import and exports. The Automated System for Customs Data (ASYCUDA) system flags prohibited items including dual purpose goods.

#### Overall conclusion on IO.11

330. Aruba has established a framework for the implementation of TFS-PF through, inter alia, the issuance of Decrees, amendment to the AML/CFT Ordinance and the AML/CFT Handbook and the PF Guidance issued by CBA. However, major gaps exist in the technical compliance requirements that have a cascading impact on the extent to which effectiveness is achieved.
331. The CBA has provided guidance to FIs and DNFBPs, however, there is a need for greater outreach and training to the sectors on the issue of TFS-PF and to ensure that the sectors have a greater understanding and appreciation of the issue. There are no mechanisms in place to provide guidance to other persons or entities relative to TFS-PF implementation. All deficiencies were considered and weighted accordingly by the assessors who concluded that fundamental improvements were required.

**Aruba is rated as having a low level of effectiveness for IO 11.**

## Chapter 5. PREVENTIVE MEASURES

### 5.1. Key Findings and Recommended Actions

#### Key Findings

- a) Aruba does not prohibit the operation of VASPs, however, no VASPs were found to be operational in Aruba at the completion of the on-site visit. Aruba implemented legislation in September 2021 to ensure that VASPs are required to implement preventive measures. Nevertheless, some deficiencies remain in the legislation (see. R. 15).
- b) There is a good understanding of ML/TF risks among all FIs and most DNFBPs, especially among the sectors that are considered to be higher risk categories (casinos, TCSPs and notaries). The understanding of ML/TF risks is largely based on individual risk assessments conducted and participation/findings of the NRAs. FIs and DNFBPs clearly articulated the areas within their operations that are high and low risk and the reasons for such. There has been a positive improvement in the conduct of ML/TF risk assessments by the Credit Unions and DNFBP sector and only a small percentage of entities (tax advisors and accountants, real estate) some of which are in the lower risk category are yet to conduct ML/TF risk assessments. Trends and typologies, internal information such as client risk profile, CDD information, open sources of information as well as information and guidance provided by the FIU and the CBA has increased the level of understanding of ML/TF risks among FIs and DNFBPs.
- c) FIs and most DNFBPs especially those that are considered to be higher risk (casinos, TCSPs and notaries) have implemented policies and procedures and taken action to mitigate same commensurate with the risk within the sector. Credit Unions have engaged the requisite Compliance Officers, MLROs and consultants to assess their inherent and residual risk, while implementing systems and controls to mitigate the same. The real estate, jewellers, tax advisors and accountant sectors, the latter two being low risk have all demonstrated continuous improvement and higher levels of compliance in the implementation of AML/CFT policies and procedures across the sectors but are not yet fully compliant. Some FIs and DNFBPs are in the process of updating policies and procedures based on the findings of the NRAs.
- d) Most FIs and DNFBPs, especially the larger and high risk entities, have demonstrated a clear understanding of CDD, EDD and record keeping requirements. All FIs, in addition to some DNFBPs, particularly, casinos, realtors and notaries apply EDD controls through the use of screening software that performs daily PEP and sanctions screening. All FIs and DNFBPs require either the Board of directors and/or senior management's approval prior to establishing a relationship with PEPs or their associates. Record keeping requirements and procedures for both FIs and DNFBPs (casinos, realtors and notaries) are embedded in the PP&M and are also covered in training sessions conducted by the various sectors. Despite demonstrating a clear understanding of CDD requirements it should be noted that most of the sanctions taken by the CBA against FIs and DNFBPs were for CDD breaches.
- e) FIs and DNFBPs, especially the larger and high-risk entities are aware of their reporting and tipping off obligations which forms part of their compliance manual. The level of awareness and understanding among some sectors such as notaries, lawyers etc. have

evolved over time and has resulted in the increase of submission of UTRs among sectors as a result of backlog filing by (lawyers, notaries, TCSPs etc.). The awareness of reporting and tipping off obligations is based on training provided by the FIU and internal training.

- f) FIs including banks and MTCs have demonstrated that they have and apply good internal control and procedures, including internal and external auditors and appointment of compliance officers. Casinos and TCSPs have in place good internal policies and procedures including compliance officers and internal and external auditors, especially those that are members of financial group. Other DNFBPs such as real estate and jewellers have in place basic internal controls and procedures including compliance officers. Some DNFBPs such as the real estate sector have noted that the appointment of internal and external auditors is an expensive process. Nevertheless, recruited external AML/CFT consultants provide advice and training and other related AML/CFT assistance.

### Recommended Actions

Aruba and the Supervisors should

- a) Correct the technical deficiencies that underpin the implementation of effectiveness related to VAs and VASPs.
- b) Ensure that there is a sustained effort to allow for a greater level of compliance by DNFBPs (especially for entities operating in the higher risk sector) and credit unions that have not completed their ML/TF risk assessments and implemented policies and procedures to mitigate the ML/TF risks identified. Further FIs and DNFBPs should continue to review their policies and procedures based on the findings of the NRAs.
- c) Ensure that there is a sustained effort to keep FIs and DNFBPs aware of CDD, EDD and record keeping obligations. Further, continuous training and outreach should be provided to FIs and DNFBPs to ensure that there is a good understanding of reporting obligations and ensure that UTR filings are commensurate with ML/TF risks to avoid previous circumstances where some FIs and DNFBPs did not fully understand their reporting obligations which resulted in a backlog of UTR filings.
- d) Ensure that there is a sustained effort in fostering financial inclusion in the context of the existing AML/CFT framework, and to mitigate any potential ML/TF risks resulting from same.

- 332. The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The Recommendations relevant for the assessment of effectiveness under this section are R.9-23, and elements of R.1, 6, 15 and 29.

#### **5.2. Immediate Outcome 4 (Preventive Measures)**

- 333. Aruba is not considered a regional financial centre. The products and services offered by FIs and DNFBPs are geared mainly to nationals and persons residing and working in Aruba. The AML/CFT State Ordinance and the AML/CFT Handbook are the main tools used to conduct supervision and ensure effective implementation of preventive measures. The CBA is the sole

AML/CFT supervisor. Most FIs and DNFBPs, especially the larger and the higher risk entities, adopt the necessary preventive measures including internal controls and procedures. The implementation of these measures is due to the supervisory risk-based framework and robust approach to supervision by the CBA. The assessors' findings are based on interviews conducted with the CBA and a cross-section of FIs and DNFBPs that were identified/scoped as high, medium or lower risk and information provided by competent authorities and private sector officials.

334. In weighting the importance of the various FIs and DNFBPs sectors in Aruba, the assessors considered the size of the sectors, extent of cross-border activities, customer profiles, number of entities in the sector, cash intensity of transactions and the ML/TF risks of the various sectors. The weighting assigned to the different elements was considered in the overall rating that was assigned by the assessors.
335. Considering the materiality and risk in Aruba's context, the implementation of preventive measures was weighted most heavily for commercial banks, MVTs (MTCs), real estate, casinos and notaries. Other FIs, mortgage banks, finance companies, life insurance companies, TCSPs, jewellers and dealers in precious metal and stones, lawyers and tax advisors were weighted as moderately important. Pension funds, credit unions and accountants were weighted as less important.
336. VAs and VASPs are not prohibited in Aruba. The AML/CFT State Ordinance was amended in September 2021, to capture the activities of VASPs, however there are deficiencies in the legislative framework (see analysis and conclusion in R.15). No VASPs were identified as operating in Aruba at the time of the on-site visit and this was confirmed by the assessors during their interviews. VAs and VASPs were given very limited focus during the assessment of IOs 3 and 4 due to factors such as materiality (no entities were identified as operating in Aruba at the completion of the on-site visit) and no implementation of the amendments to the legislation. Tables 5.1 and 5.2 set out the number of FIs and DNFBPs as per year end 2019.

*Table 5.1. Financial Sector Type, Number of Entities and Weight*

Financial Sector Type	Number of Entities	Sector Weight
Banks	07	Highly Important
MTCs	03	Highly Important
Finance Companies	03	Moderately Important
Life Insurance Companies	06	Moderately Important
Pension Funds	08	Less Important
Securities	0	Less Important
Credit Unions	02	Less Important

*Table 5.2. DNFBP Sector Type, Number of Entities and Weight*

DNFBP Sector Type	Number of Entities	Sector Weight
Real Estate/Realtors	193	Highly Important
Casinos	13	Highly Important
Notaries	06	Highly Important
Trust and Company Service Providers	10	Moderately Important
Jewellers and dealers in precious metal and stones	39	Moderately Important
Lawyers	59	Moderately Important

DNFBP Sector Type	Number of Entities	Sector Weight
Tax Advisors	37	Moderately important
Accountants	54	Less Important

337. For further information on the reasons for the rating assigned to the different sectors, see Chapter 1.

### *5.2.1 Understanding of ML/TF risks and AML/CFT obligations*

338. Overall, the assessors found there is a good and comprehensive understanding of ML/TF risks and AML/CFT obligations by FIs (save for credit unions) whilst, most DNFBPs demonstrated a good understanding, namely, TCSPs, casinos, realtors and notaries. The understanding of risk is based on the NRAs conducted by Aruba, risk assessments conducted by the individual entities, and trends and typologies information presented by the FIU. The understanding of AML/CFT obligations is based on the FIs' and DNFBPs' interactions with the CBA and FIU through training, meetings and publications, such as the "AML/CFT Handbook" and "Indicators by the FIU" (see R.34). The AML/CFT State Ordinance requires all FIs and DNFBPs including TCSPs to periodically conduct ML/TF risk assessments, also referred to as business risk assessment (BRA) for the purpose of identifying and assessing the threat and their vulnerability to ML/TF. The AML/CFT Handbook offers comprehensive guidance for such institutions on how to conduct ML/TF risk assessments in order to implement measures that are proportionate.
339. The CBA has the responsibility of gathering data obtained from the reporting entities in the course of its supervisory remit, such as questionnaires received from their desk-based reviews, on-site examinations and information sessions. The 2021 NRA further demonstrates that FIs have sufficient understanding of their ML/TF risks and obligations. Most DNFBPs have a good understanding of ML/TF risks and subsequent obligations to combat threats and mitigate vulnerabilities. The understanding of ML/TF risks by DNFBPs is gradually improving due to measures implemented to increase the awareness and knowledge of ML/TF risks.

### *FIs*

340. Further to questionnaires that were sent out to FIs between the period of 2017-2020, it was concluded that for the most part, the FIs have identified and demonstrated a strong understanding of their risk exposure to ML/TF, save the credit unions that only received their questionnaires in 2020 and have not formalised an enterprise-wide or AML/CFT risk assessments. Given the risk attributed to the credit unions that only offer basic services to its qualifying members, the CBA has given a deadline to the credit unions to complete their risk assessments. While the deadline has passed without adherence to the same during the time of the on-site assessment, and no sanctions or penalties were levied, the CBA confirmed that it was aggressively working with this sector to ensure compliance with the completion and submission of the risk assessments.
341. During the on-site visit, the FIs interviewed, including the larger ones and classified as higher risk such as banks and MTCs, were able to clearly articulate and provide reasons for their understanding by comprehensively explaining the process for conducting client risk assessments and the formulation of client risk profiles that take into account the geographical location of the client, where they primarily conduct business, the potential transactional activity of the account, the products and services being offered and whether there was any red flag that would raise alerts. They were further able to explain the Policies, Procedures and Measures (PP&M) in place that assist with identifying, combating and mitigating both inherent and residual risks. There was further indication from the banks, MTCs, pension funds

and insurance companies that their risk assessments are updated at a minimum every 2-3 years, or as the need arose.

342. Table 5.3 below shows that most FIs, including banks and MTCs, have conducted ML/TF risk assessments and are aware of the risks that impact their entities, despite the deficiency identified in credit unions not conducting risk assessments. This deficiency was not considered as egregious, taking into consideration that the credit union sector was considered as least important and factors of risk (NRA considered credit unions as medium to low risk), materiality, products and services offered and customer base. It was also noted that credit unions have finalised the appointment of a MLCO/MLRO and engaged external consultants to assist with the AML/CFT training and the drafting of internal policies and procedures, of which one has been completed.

*Table 5.3. Entities and ML/TF risk assessments in place*

Entities	ML/TF Risk Assessment in Place
Banks	100 %
Life Insurance Companies	100 %
Money Transfer Companies	100 %
Pension Funds	100 %
Credit Unions	50 %

343. Interviews were conducted with each FI sector (including banks and MTCs), and the interviewees all confirmed participation in the 2021 NRA and the receipt of guidance issued by the CBA, which assisted them and gave them a greater appreciation for understanding their risks and the measures that require implementation to mitigate the same.
344. Further to a thematic investigation conducted with five commercial banks in 2017 on topics such as corruption and conflicts of interest, it was noted that the CBA after review of the policies and procedures in place and feedback received, required an enhancement of the risk assessment framework on the relevant topics. It was further noted that the same was being conducted with commercial banks and MTCs on TF.
345. Most FIs, including banks and MTCs and most of the larger FIs are knowledgeable of AML/CFT obligations and have provided regular live and online training to their staff to ensure that there is an awareness of the same. However, in contrast to most FIs, credit unions are unaware of their AML/CFT obligations but have confirmed their commitment to becoming compliant with the requirement to understand their risks and implement policies, procedures and systems to mitigate their risk exposure. Evidence of their commitment with regard to this deficiency is that during the on-site assessment it was noted that one of the two credit unions had already engaged a consultant that has expressed an interest to conduct the required risk assessment and provide the necessary training to ensure the awareness of AML/CFT obligations to staff and in the sector.
346. Regardless of disparateness' and compliance of their AML/CFT obligations, the CBA has the power to exercise enforcement actions against those that breach the AML/CFT State Ordinance pertaining to their obligations.
347. In addressing the issue of financial inclusion and Aruba's ability to understand and mitigate ML/TF risk regarding the lack thereof, the CBA confirmed its continued efforts to obtain data through a one-month national survey conducted during November through to December 2018. The survey obtained valuable information to assist in determining the level of access

and usage of financial services and products nationally. The data informed the necessary regulatory framework with respect to fostering financial inclusion and the impact on Aruba's current AML/CFT framework. During the on-site assessment, the CBA confirmed its continued efforts in analyzing the data received and drafting the necessary policies and procedures to foster a financial environment of inclusion and compliance. Other actions taken by the CBA related to financial inclusion includes a working paper published in 2019 titled "*Strengthening Digital Financial Inclusion in Aruba*". Admittedly, this was a challenge for the CBA, however, the assessors were advised of the numerous initiatives being undertaken to address this issue, namely, by fostering a light touch approach to the establishment of accounts with FIs to facilitate the payment of utilities.

#### **DNFBPs**

348. The DNFBPs sector understanding of ML/TF risk is similar to those factors that informed FIs' understanding of ML/TF risks. For example, risk assessments conducted by the individual entities and the findings of the NRAs. Most of the entities in the DNFBPs sector, especially the casinos, real estate (despite reservation by one agent on the risk ranking assigned to the real estate sector and the position that the sector should be risk rated as medium), lawyers and those in the higher risk bracket clearly articulated their understanding of ML/TF risks and the factors that contributed to their understanding of such. The assessors were nevertheless satisfied with the risk rating assigned to the real estate sector in the NRA, taking into consideration the sources of information and the reason for rating the sector as high. All DNFBPs are required to be registered for AML/CFT purposes with the CBA and a public register of all DNFBPs is available on its website. Further, the input by DNFBPs, including TCSPs, casinos and real estate towards the NRA, whether through Associations or by entity, as well as guidance from the CBA, have contributed to an increased awareness and understanding of ML/TF risks across the sectors.
349. The CBA, as part of its supervisory regime, conducts off-site examinations in the form of questionnaires and has indicated that not all DNFBPs have undertaken a ML/TF risk assessment to further understand their ML/TF risks. In such instances, overall guidance and individualised feedback is communicated with the entity. Risk assessments are reviewed as part of the CBA's on-site examinations process.
350. Compliance with AML laws and regulations is moderate and improving among some within the entities operating in the real estate sector. Some real estate companies/agents and project developers have not implemented policies and procedures, or existing policies and procedures are not tailored to their specific businesses. There have been significant improvements with regard to AML/CFT obligations by other sectors such as accountants, tax advisors and jewellers. Not all DNFBPs have conducted business ML/TF risk assessments, nevertheless the improvements that have been made in conducting ML/TF risk assessments during the period is commendable. The understanding of ML/TF risks and associated obligations by real estate agents who also engage in project development varies and one interviewee expressed disagreement with the risk ranking (high risk for ML) that is assigned to the sector. The real estate sector noted that due to the fact that the financial transactions are handled via notaries and FIs is grounds for the sector not being risk rated as high. Some of the ML risks that have been identified by the sector include most of the clients being non-residents of Aruba with challenges in identifying source of wealth and funds. Realtors like many other DNFBPs have recruited AML/CFT consultancy firms to assist and provide technical advice in the implementation of their AML/CFT functions.
351. The threat level for notaries operating in Aruba is high due to the fact that they conduct/process transfers of titles to the real estate sector (agents) which is a vehicle used in the integration stage of ML. Notaries have all conducted ML/TF risk assessments and the level of

understanding of ML/TF risks and AML/CFT obligations across the sector is commendable. The sources used to conduct ML/TF risks assessment by the notaries include the organisations compliance with the AML/CFT State Ordinance, open sources of information and publications from international organisations. The highest ML/TF risk pertains to the real estate transactions, as the price of properties is generally high in Aruba and transactions are mostly conducted by foreign nationals and in some instances non-face-to-face customers (at the commencement of the transaction). Notaries review ML/TF risks on an ongoing basis. Notaries interviewed during the on-site did not directly participate in the NRA, however, were represented by the Civil Law Notary Office who would have contributed information obtained from notaries towards the process. There is no indication that notaries take into consideration ML/TF risks in the development of new products which was not considered to be a serious deficiency as the sector is not engaged in new products and technologies. Notaries procedural manuals are consistent with the guidelines issued by the CBA, the AML/CFT State Ordinance and FATF Standards. Extensive research is also conducted and documented to educate staff on trends and applying sound CDD measures.

352. The risk to the real estate sector is largely due to its types of clients (significant number are foreign nationals, mainly North America). Nevertheless, the real estate sector interviewee communicated that financial transactions take place via regulated FIs and notaries. In the conduct of their risk assessment, the real estate sector took into consideration information on their customer risk profile, open sources of information and guidance provided by the CBA and the FIU including the AML/CFT Handbook. Casinos have comprehensively identified some of the ML/TF risks affecting the sector as a result of ML/TF risk assessments that are conducted annually. Casinos communicated that risk assessments are also conducted during the introduction of a new product or service. Some of the risks identified within the sector include credit fraud, use of counterfeit bills, aggregate cash advance and credit card advances. For TCSPs, the greatest risk lies in the identification of PEPs and identification of UBOs in complex structure. TCSPs conduct their risk assessment annually and have utilised various sources of information similar to casinos and realtors (including review of client risk profiles, open sources of information and information from the FIU and CBA).
353. There are 59 lawyers and two legal practitioners registered with the CBA. The understanding of ML/TF risks and AML/CFT obligations by legal practitioners is sound. Lawyers noted that their risk also lies in the conduct of transactions that involve real estate. Lawyers conduct reviews of their risks every six months, however, AML/CFT risks are also reviewed prior to six months, based on client's behaviour. On the contrary, the level of understanding of ML/TF risks and AML/CFT obligations amongst jewellers, tax advisors and accountants is gradually increasing.
354. Table 5.4 shows that not all entities operating within the DNFBPs conducted ML/TF risk assessments in 2020. The sectors (casinos, real estate, notaries) that were considered as highly important have conducted ML/TF risk assessments to a large extent, with all of the casinos conducting risk assessments. DNFBPs that did not conduct ML/TF risk assessments, for instance some realtors and accountants, received general as well as individualised feedback from the CBA. The feedback emphasised the requirement and the importance of conducting risk assessments. Such DNFBPs (realtors, jewellers and accountants) were also sent follow-up questionnaires to ensure that the deficiencies that were identified were remediated. Redacted emails, questionnaires and other documents provided to the assessors show an increase and improvement in the quality of the risk assessments from 2019 to 2020. The improvement in quality includes expanding the scope of the risk assessments and a more tailored approach respective to the particular DNFBPs sector as opposed to a "one size fits all" approach and the use of more data and information in the conduct of risk assessments

based on the guidance set out in the AML/CFT Handbook. This has been credited to the attention and guidance given by the CBA as a supervisor, the amendments to the AML/CFT Handbook and engagement of consultancy businesses by DNFbps. The CBA also organised information sessions which highlighted the importance of thorough risk assessments. Where the text “not asked” appears in Table 5.4 below, this means that no questionnaires were sent out and/or no questions were asked regarding the ML/TF risk assessments, because of the high level of compliance vis-à-vis the AML/CFT compliance questionnaire of 2019. The questionnaire generated significant response from entities operating in the sector.

*Table 5.4. Risk Assessments conducted by DNFbps*

Sector	ML/TF risk assessment in place 2019	ML/TF risk assessment in place 2020
Accountants	50%	70%
Casinos	100%	Not asked
Dealers in precious metals and stones (jewellers)	42%	60%
Lawyers	77%	Not asked
Notaries	100%	Not asked
Real Estate/Realtors	39%	62%
Tax advisors	65%	67%
TCSPs	100%	Not asked

### 5.2.2 Application of risk mitigating measures

355. Regulated entities supervised by Aruba’s AML/CFT regime are required to have policies and procedures to mitigate the ML/TF risks. The depth and application of such risk mitigation vary across sectors.
356. The AML/CFT State Ordinance sets out the AML/CFT obligations for regulated entities to have in place written PP&M. The CBA’s AML/CFT Handbook has been updated with effect from January 1, 2020 and provides extensive guidance for both FIs and DNFbps on risk management of ML/TF risks and the effective implementation of PP&M. Further Article 46, paragraph 2 of the AML/CFT State Ordinance requires that the inclusion of policies and procedures regarding the internal organisation and internal control of the service provider, change of position, the recruitment process, education, background, application of CDD and EDD measures, record keeping processes regarding internal decision making, guidance, ongoing training, and the reporting of UTRs be documented in the PP&M. Additionally, in furtherance of the ML/TF risk assessment required by service providers, the Board of Directors and Senior Management have the ultimate responsibility for effective management of the FIs and TCSPs through the establishment and implementation of appropriate measures to prevent ML/TF. The PP&M must take into account the size and nature of the service provider and must be communicated to all personnel.
357. Larger FIs, especially the banks and MTCs have extensive internal controls and procedures to address the risk of ML/TF to include on-boarding, on-going account monitoring, particularly of high-risk accounts and record keeping, etc. Smaller FIs have appointed dedicated compliance staff and in cases of the larger FIs, particularly commercial banks, it was noted that there has been an establishment of an entire compliance department dedicated to mitigation of inherent ML/TF risk factors. Similarly, it was noted that smaller FIs typically engage external auditors, while the larger FIs generally have both internal and external

auditors to provide assurance of adherence to policies and procedures and review of the institutions' implementation of risk management measures. At the time of the on-site, the risk mitigation measures that were implemented by both FIs and DNFBPs were based on the conduct of their own risk assessments. The sectors were unable to effectively implement risk mitigation measures based on the recently concluded NRA findings. Nevertheless, some measures exist to address some of the ML/TF risks that were also identified in NRA, as the NRA consists of information contained in the sectoral risk assessments and risk assessments conducted by FIs.

### ***DNFBPs***

358. Discussions held with DNFBPs including the sectors that are considered to be high-risk, have implemented policies and internal procedures that are proportionate in order to mitigate the ML/TF risks including those identified within their sectors. Examinations conducted by the CBA concluded that casinos, lawyers and notaries have developed comprehensive policies and internal controls that are proportionate, in order to mitigate their risks. To mitigate the risks, they have adopted an AML/CFT programme to ensure that KYC procedures are documented and available to employees. Casinos have implemented robust KYC programmes, staying below the threshold as stipulated by the law and conducting EDD for higher risk scenarios. Some of the risk mitigation measures employed by notaries include continuous education of staff on AML/CFT risks and related matters, conducting robust CDD and EDD measures as well as ensuring that source of funds and wealth forms are completed. Some ML/TF risk mitigation measures proportionate to risk were also implemented by the TCSPs and the real estate sector and are similar to those that are required in the law. The real estate sector often-times also relies on FIs (banks) and notaries to assist in mitigating the risk in the real sector when payment is involved as transactions are conducted via regulated FIs and the notaries.
359. The implementation of AML/CFT measures is not fully evident and/or proportionate across the jeweller and realtor sectors and therefore not in line with this requirement. However, there is progress being made to ensure that these entities become compliant with the requirements. Such efforts are being made through increased and enhanced supervision, guidance and information sessions and the DNFBPs' involvement in the ML/TF NRA.
360. Responses to the CBA's 2019 and 2020 questionnaires pertaining to PP&M to mitigate risk show that there was very significant progress with regard to the CBA's supervisory efforts in respect of having PP&M in place. In the case of "not asked," this means that not all of the DNFBPs receive follow-up surveys due to their high level of compliance in the 2019 survey. Similar to FIs, there is a need for DNFBPs, including casinos, real estate and TCSPs, to update their risk mitigation measures based on the findings in the 2021 ML/TF NRAs.

***Table 5.5. DNFBPs PP&M measures in place 2019-2020***

<b>Sector</b>	<b>AML/CFT PP&amp;M in place 2019</b>	<b>AML/CFT PP&amp;M in place 2020</b>
Accountants	66%	83%
Casinos	100%	Not asked
Dealers in precious metals and stones (jewellers)	61%	63%
Lawyers	87%	Not asked
Notaries	100%	Not asked

Sector	AML/CFT PP&M in place 2019	AML/CFT PP&M in place 2020
Real Estate/Realtors	51%	71%
Tax advisors	74%	86%
TCSPs	100 %	Not asked

### 5.2.3 Application of CDD and record-keeping requirements

361. There is a strong understanding of the requirement to apply CDD measures and record keeping requirements among most FIs, including banks and MTCs. This understanding is based on the guidance and training provided by the CBA, including that contained in the AML/CFT Handbook. Further to the on-site examinations conducted during the period 2016 to 2019, along with off-site examinations and desk-based reviews (questionnaires) conducted by the CBA, and the ML/TF NRA, it was noted that the various FIs including banks, insurance companies, lending institutions, MTCs and money exchangers have implemented adequate CDD and record keeping procedures to include BO information and ongoing monitoring. These were the findings during interviews conducted with the private sector. CDD and record keeping procedures conducted by DNFBNPs differ among the various sectors. In the main, basic CDD and record keeping procedures are implemented. A number of DNFBNPs, including casinos and notaries, interviewed by the assessors noted that they conduct CDD and maintain records for 5-10 years. Business relationships are rejected and have been rejected due to incomplete CDD (including lack of BO information) by both FIs and DNFBNPs.
362. It was further noted, that while there are several FIs, particularly banks that are subsidiaries of international banks and/or companies, the FIs have confirmed that there is no reliance on third parties to conduct CDD on their behalf. All CDD measures are conducted by the local subsidiaries/branches.
363. The CBA conducted a comprehensive AML/CFT questionnaire in 2018 as part of its risk-based approach to supervisory oversight. The questionnaire addressed topics related to the products and services being offered by the FIs, the types of customers, the CDD and EDD measures, sanctions, transaction monitoring, UTRs and the AML/CFT business risk assessment. The questionnaire received a compliancy rating of 100 percent by the five commercial banks. The questionnaire assessed the FIs' compliance with AML/CFT requirements namely, the identification and verification of customers, the ongoing CDD on business relationships, ownership and control structure of clients, identification and verification of UBOs, written procedures in cases of incomplete CDD, sanctions screening conducted, establishing ML/TF risk profile of customers, regular review and update of CDD information and the establishment of source of funds and wealth of the customer. Larger FIs, such as banks, also have in place customer acceptance policies and utilise a risk rating methodology.
364. From the information compiled, it was confirmed that between the period of January to December 2017, four banks exited 28 retail customers, while three banks exited 10 corporate clients. Further, during the same period, business was refused to 16 retail clients by two banks, while 33 corporate clients were refused service by four banks during the customer acceptance process. Customers are rejected based on different factors, such as lack of documentation, for example source of wealth being absent, dubious reputation and heightened risk due to the geographical location of the clients, etc. Regarding BO information, customers of larger FIs such as banks are required to provide the shareholders' register. For complex structures, the person who has control is considered. The group structure is required to be submitted,

including all of the persons who have voting rights.

365. Despite there being a strong understanding of CDD and record-keeping requirements in accordance with legislative provisions, most of the sanctions (administrative fines and/or penalties) that were applied by the CBA to FIs and DNFBPs were for breaches mainly related to ineffective implementation and application of those CDD requirements (see Table 6.8-Chapter 6- sanctions).
366. Training of staff is one of the most important AML/CFT components for FIs, including banks and MTCs, apart from credit unions. The larger FIs, especially banks, MTCs and those that are considered most and moderately important ensure that all members of staff, including new staff, senior managers and board members received AML/CFT training. AML/CFT training, inclusive of CDD requirements, is presented to staff, including frontline and directors. Challenges were experienced in 2020 pertaining to delivery of training as a result of the COVID-19 pandemic which resulted in these entities implementing strict measures to prevent the spread of the virus, such as social distancing. Training was nevertheless provided to those members of staff who were deemed to urgently require same.

#### ***DNFBPs***

367. Although some controls are in place for some entities in the DNFBPs sector, the CBA has identified a number of areas of concerns amongst all entities. In 2019, the questionnaires were disseminated to all registered DNFBPs. Overall, there has been a significant response rates amongst the DNFBP sectors. Casinos and notaries were the only sectors where the response rate was 100 percent. Significant responses were also received from lawyers, tax advisors and TCSPs with 90 percent, 82 percent and 89 percent, respectively. The response rate from the real estate sector was 67 percent which is in part due to a number of realtors registered with the CBA that were noted to the assessors to be inactive. The Association of Aruban Realtors estimates that its 19 members are responsible for approximately 80 percent of real estate transactions conducted by the sector. Of the 19 members, 17 completed CBA questionnaires. During the on-site examinations conducted by the CBA between the period of 2016-2019, it was noted that there were breaches in relation to CDD among most of the DNFBP sectors, except for jewellers.
368. In relation to casinos, during the on-site examination conducted on five casinos between 2016-2019, there were concerns as to limited transaction monitoring as well as improper client risk profiles. Follow-up on-site examinations noted that no CDD related breaches were identified. Casinos interviewed during the on-site visit indicated that they have a solid understanding of their CDD and record keeping obligations, with systems in place to monitor transactions. This was evidenced from the survey conducted by the CBA which showed that casinos were 100 percent compliant in the identification and verification of customers. The main weakness related to casinos was the identification and verification of BO for which there was a 46 percent compliance rate in 2019. The legal threshold is Afl. 5,000.00 (US \$2,793.00) however in practice, some casinos apply, as a trigger moment for the CDD process, a threshold of Afl.2,500.00 (US\$1,396.00). Trigger moments and thresholds are also applied to wire transfers. EDD will depend on the source of the cash and whether the person involved is a PEP and/or non-resident. There are instances when casinos have rejected or discontinued a business relationship. The boxes below (Box 5.1 and Box 5.2) refer to the rejection and discontinuation of a business relationship in the casino and the TCSP sector, respectively. A business relationship is generally rejected when insufficient information is presented to facilitate the conduct of CDD.
369. Between 2016-2019, the on-site examinations of a total of eight realtors were conducted. The examination revealed as areas of concerns that in some cases, CDD was improperly conducted

and inadequate before the start of the business relationship (for example, inadequate establishment of the customer risk profile, lack of source of funds and lack of identification and verification of UBO) including inadequate ongoing client/transaction monitoring. The results of the on-site examination were communicated to the respective realtors by letter, which included a deadline to remedy the determined breaches of the AML/CFT requirements. Most of the realtors confirmed the remediation of the breaches before the deadline through the submission of a signed letter from their management. Follow-up on-site examinations with two entities noted that only one of them made substantial progress. The purpose of the follow-up on-site examinations was to verify whether sufficient actions had been taken to fully remediate all identified violations during the 2017 on-site examinations. Whilst the follow-up on-site visit evidenced substantial progress for one of the realtors, the other realtor did not sufficiently comply with the AML/CFT requirements, which led to further supervisory actions being taken by the CBA.

370. Real estate agents are required to conduct CDD prior to getting into relationships with clients. The potential purchaser is required to provide all of the relevant information prior to the commencement of the business and a risk profile of the client is created. CDD measures also include screening against the PEP list, of which some real estate agents are in possession. The transaction will not be completed should the client not provide all the information needed to complete CDD measures. Regarding the identification and verification of the BO, some real estate agents rely on the client to provide original documents. As indicated previously, due to the fact that the realtor does not accept payments on behalf of their clients for the transaction, reliance is placed on FIs and notaries to ensure that this is done. Realtors, however, are still required to perform CDD measures. Both of these sectors, FIs and notaries, provide an additional layer to ensure that BO information is properly collected and that the BO is properly identified. Between 2019-2020, based on data provided to the assessors by the CBA, there was notable improvement in the identification of BO (84 %) and source of wealth (60%) by the real estate sector.
371. In relation to notaries, transactions are received through an intake of client existing networks, realtors and email requests.. This information is reviewed to ensure that same is complete and correct and if additional information is required, then further requests are made to ensure that CDD information meets the standard of the notaries and those set out by the CBA. Transactions are generally not rejected by notaries, as realtors have an obligation to ensure that they are compliant with the requirements. A client will be rejected or transaction cancelled if the client fails to provide the relevant information. Regarding BO information, the information is requested from the client, including articles of incorporation, shareholder registry, extract from the CoC, certificate of incumbency, copy of passport and address verification of every natural person holding more than 25 percent stake in the company. Notaries interviewed indicated that they will not conduct business with an individual when they are unable to conduct CDD. Notaries generally do not rely on third parties to conduct CDD but will obtain documents from the realtors to conduct the necessary CDD. The notaries interviewed all indicated that training is provided to staff and in some instances is provided on a quarterly basis. Evidence of notaries' actions in conducting CDD include the identification and verification of BO and sources of funds and wealth reviewed by the assessors. The 2019 survey conducted by the CBA recorded 100 percent compliance for CDD including identification of UBO and establishing source of funds and wealth. TCSPs and lawyers also had strong levels of compliance and this was evidence from the surveys conducted.

#### *Box 5.1. Case Example – Casino*

A Patron with Venezuelan identification documents was denied further play in the casino due to being un-cooperative when prompted for further CDD verification documents by the compliance officer. The Patron triggered enhanced CDD procedures when the total buy-in during a specific period of time exceeded USD 100,000, the trigger for being considered as a ‘high-roller’. In order for the Patron to proceed with gaming activities, a second identification document was requested, as there were doubts of the authenticity of the document originally collected.

A source of funds declaration was also requested. The Patron was un-cooperative and refused to provide the requested information, stating that his lawyers advised him not to. Further screening of the Patron revealed additional red flags which increased customer and transaction risks even further. The Patron was sent an official letter barring him from the casino and essentially refusing to onboard him as a ‘high roller.’ The consideration on whether to report him to the FIU was also documented.

#### *Box 5.2. Case Example: Trust and Corporate Service Providers: Rejected/ Declined transaction*

A TCSP registered and operating in Aruba received a request from an administrator in Cyprus informing it that they were administrating three Aruban registered companies that were incorporated by an existing trust company in Aruba. The administrator requested that the TCSP take control of the three companies and act as the legal representative for the companies. The TCSP communicated its interest to act on behalf of the new client but indicated that CDD had to be performed and requested the reason for the resignation from the previous trust company that represented the individuals before initiating the formal due diligence process.

Communication received by the TCSP in Aruba indicated that the previous agent that acted on behalf of the three companies, considered them as high risk. The TCSP requested further information as to why the companies were classified as high risk and the information was not forthcoming from the administrator in Cyprus. The TCSP subsequently received communication from a compliance officer indicating that two of the companies were classified as high risk as a result of their background. The TCSP in Aruba conducted further checks using a commercial compliance database, followed the protocol in its internal policies and procedures, including looking for red flags, and identified some red flags including that the UBOs were from jurisdiction that are considered as high risk in Aruba.

Following its CDD and background checks the TCSP rejected the client.

#### *5.2.4 Application of EDD measures*

372. In Aruba, all registered entities once existing under the remit of the AML/CFT State Ordinance are required to carry out EDD in instances where the same is applicable, in accordance with Article 11. This Article outlines specific circumstances in which the application of EDD is required, particularly prior to the establishment of a business relationship and on a consistent basis throughout the lifecycle of the account that presents as high risk. Some of the instances which EDD must be applied include conducting business with PEPs and customers from higher-risk countries.
373. During the on-site visit, the FIs, (particularly the banking sector and MTCs) as well as DNFBPs (particularly realtors, notaries and casinos) abilities to identify and understand risk

factors that may be indicative of a high-risk situation or relationship, both through oral representation and documented policies and procedures, became evident. FIs and DNFBPs confirmed a clear understanding of instances when EDD ought to be applied, either at the commencement of a business relationship, during a business transaction, and/or throughout the lifecycle of an account, and evidenced the additional enhanced measures that would and have been implemented during such instances. There was a level of comfort amongst the interviewees, for both FIs and DNFBPs, when required to explain their process and the respective institutional policies and procedures. Particularly, most of the banks and MTCs as well as realtors, notaries and casinos were equipped with and would utilise compliance screening software. EDD was performed daily by screening the transactions of PEPs, customers from Venezuela and clients that appeared on the monitoring list as high-risk clients. Additionally, file reviews are conducted annually while transaction monitoring is conducted on an ongoing basis in the banks on the aforementioned client types.

374. It was further noted, that upon review of the data derived from on-site examinations and the desk-based reviews (questionnaires) conducted by the CBA, as well as the NRA, EDD was performed in cases involving domestic and foreign PEPs, in correspondent banking relationships, establishment of new technologies, wire transfers, application of TFS measures, and when transacting business with a country identified and listed as high risk by the FATF.
375. The EDD measures amongst FIs were relatively similar in that more due diligence information was requested to establish identification and the relationship of individuals that may be related to PEPs or other high-risk clients. The same applies for the DNFBPs sector, for example, casinos noted that the conduct of EDD takes into consideration ML/TF risks, types of services being offered and customer involved which will trigger requirements such as source of funds, on-going monitoring and senior management approval of the customer. Further, for FIs, information is sought to confirm the source of funds and wealth from either the client or from independent sources such as the internet and public or commercially available sources. Upon receipt of the same, additional steps are taken to verify the veracity of the information to be legitimate and reliable, such as commissioning reports from independent experts, requiring high level approvals from senior management or compliance and due diligence committees, particularly in the banks. Across the FI sectors, more frequent reviews of the accounts and clients were being conducted as well as setting different monitoring thresholds for transactions with a nexus to the identified high-risk client. The same was not proven for credit unions, however, as aforementioned, given the level of risk, materiality to the sector, and the work that commenced while conducting the on-site examination by the engagement of consultants and compliance personnel, the deficiency was not considered egregious. It was also noted that the client base of the credit unions consisted of government employees and credit facilities were only offered in instances where salary deductions were utilised for repayment purposes.
376. Particularly for further guidance, the AML/CFT Handbook at Chapter 5 provides comprehensive guidance notes on the application and circumstances when EDD should be applied in business relationships and/or transactions. The DNFBPs also benefitted from AML/CFT information sessions and a brochure on how to protect your business against ML/TF in five steps.
377. Following a survey conducted in 2018 as part of the CBA's risk-based approach, banks had a full compliant rating for documenting their policies and procedures related to the overall risk and measures as to how domestic and international PEPs, high-risk jurisdictions and non-face-to-face transactions would be treated and assessed. Given the risk associated with the persons and countries involved or the nature of the business transactions, EDD was applied, requiring the banks to take additional measures to mitigate the TF risk. More in-depth analysis of the source of wealth and its origin was conducted, requiring possibly the production of financial

documents such as statements and conducting additional intelligent database checks on the individual and/or corporate entity. DNFBBPs interviewed indicated to the assessors that they monitor designations such as the UN and the EU designations. The CBA also emails such designated entities and persons to supervised entities. However, entities noted that they are proactive and do not wait for the communication of the designations from the authorities.

### ***Politically Exposed Persons (PEPs)***

378. In practice, it was noted across FIs and DNFBBP sectors that management approval was required prior to the establishment of a relationship with persons and/or accounts that were classified as either being a PEP or having close ties to one, while for FIs accounts classified as high risk, either due to the involvement of a PEP or other risk factors, required approval by a compliance/on-boarding committee and/or senior management.
379. All FIs and some DNFBBPs including casinos, TCSPs, notaries and realtors interviewed by the assessors are knowledgeable of the EDD requirements for PEPs as outlined in the AML/CFT State Ordinance and have put in place various measures to screen clients' names to identify PEPs during the establishment of a business relationship. However, this understanding varies across the DNFBBPs sector.
380. FIs, specifically banks and MTCs, the larger entities and those that are considered to be highly and moderately important have in place policies and procedures pertaining to the onboarding and monitoring of PEPs. Information such as source of wealth is required and the activity on the account is subject to ongoing monitoring. All PEPs are classified as high risk by these FIs. The measures implemented by the FIs, especially those that are considered as highly and moderately important, are in line with the requirements that are set out in the AML/CFT State Ordinance and the Handbook.
381. Information obtained from surveys conducted by the CBA in 2018, noted that the majority of DNFBBPs, namely casinos and realtors, have a limited number of PEPs as customers or have not rendered any services to PEPs within a full calendar year. FIs and some DNFBBPs, particularly realtors and notaries, indicated that CDD documents are regularly maintained and updated for PEPs as part of their EDD procedures, as PEPs are automatically deemed as having a high ML risk. All FIs and some DNFBBPs noted that PEPs are also monitored on a daily basis or in real-time using various screening tools across sectors, internet searches as well as publications by the CBA. Most DNFBBPs including casinos, notaries, TCSPs and real estate, utilised technology/compliance screening software to identify foreign PEPs. Domestic PEPs are easily identified by DNFBBPs as the jurisdiction is relatively small and persons who are categorised as PEPs are known to most persons. Some entities such as TCSPs, casinos, notaries and real estate also require customers, as part of the CDD process, to declare whether they are PEPs by completing the necessary forms. Some entities in the real estate sector also utilise a "Dutch list of PEPs" open sources of information such as Google, Panama and Paradise papers to identify potential PEPs. The challenge for some DNFBBPs such as casinos is identifying the close associates of PEPs. File reviews are conducted annually and transaction monitoring is conducted on an ongoing basis.
382. Following review and further analysis of the surveys, on-site examinations were conducted by the CBA on the real estate sector. The CBA in its examination identified some areas of concern regarding inadequate EDD on non-residents customers, customers connected to high-risk countries (source of funds was not established) and minimal screening against sanctions and PEP lists in a limited number of cases. Follow up inspections were conducted by the CBA to ensure that the deficiencies identified were corrected.

### ***Correspondent Banking***

383. Only the banking sector in Aruba is allowed to engage in or conduct correspondent banking.. Banks in Aruba do not offer correspondent banking services but make use of correspondent banks outside of the jurisdiction (predominantly in the USA and The Netherlands). In 2019, the CBA took a similar approach with surveying its banking sector regarding correspondent banking relationships as it did with the relationship and mitigation factors pertaining to PEPs. The survey was an assessment of the industry by gathering information regarding correspondent banking relationships, any new developments and any de-risking practices being noticed or experienced in the industry. Given the size and nature of the financial services industry in Aruba, correspondent banking relationships are seen as fundamental to the economic, social and financial stability of the country. The results produced from this survey evidenced some changes since the last survey was conducted in 2016. It was noted that two commercial banks had expanded their number of correspondent banks, one had lost its relationship in 2017, while there was a maintenance of relationship with the same correspondent banks by the two remaining commercial banks.
384. After analysis of the data received from the survey, the CBA conducted a meeting with compliance officers in the banking sector, advising them of the regional trends regarding de-risking practices in the banking sector. At such time, it was confirmed by all commercial banks that a business contingency plan was implemented in the event of any disruption to its operation by account restriction or termination by the banks with which they held corresponding banking relations. There was also a demonstration of the implementation of extensive AML/CT policies and procedures to satisfy requirements by correspondent banks, as all banks act solely as respondent institutions.

***New Technologies, Emerging Risks, Wire Transfers***

385. Wire transfers and new technology are generally conducted by FIs, primarily banks and MTCs and do not involve the DNFBPs sector. The CBA in its efforts to ensure compliance with the provisions of FATF's Recommendations 15 and 16, disseminated surveys to the five commercial banks in 2020, requesting information on their compliance with the recommendation related to new technologies, VAs, VASPs and wire transfers.
386. After review and further analysis of the surveys, it was noted that four of the five banks had not implemented new technology instruments in the establishment of business relationships and/or transactions where the client was not physically present in Aruba, while one bank had implemented new technological instruments. The new technological instrument allowed new customers to initiate the account opening process from the bank's website, while existing customers could perform the same function via their on-line banking portal if they wanted to initiate additional account opening services. However, both required that verification of the customers' identity be made face to face upon completion of the account opening process. With the implementation of this new technological instrument, the bank was able to evidence sound understanding of the inherent risks associated with this new service, by conducting a risk assessment prior to and post the implementation and implementing smart machines and systems to mitigate emerging ML/TF risk, threats and vulnerabilities by performing the necessary on-boarding and screening processes.
387. Additionally, three of the five banks confirmed the implementation of policies and procedures to address the prevention of the misuse of new technological developments and instruments for ML and TF purposes.
388. At the time of the on-site examination, Aruba confirmed that there were no regulated entities in existence that acted as VASPs and no evidence of such was found by the assessors.
389. Further, analysis from the survey conducted regarding wire transfers demonstrated that FIs

were ensuring that complete information regarding the verification of address, national identity number and identification, date and place of birth of the payer and beneficiary in transfers above the threshold of USD/EUR 1000/Afl. 1790.00 were being obtained. Additionally, it was noted that FIs, specifically the banks and MTCs were conducting CDD and EDD measures when required, which included the verification of customer information where there was a suspicion of ML/TF. The FIs that conduct these functions, specifically the banks and MTCs, all have reported that transactions will not be conducted once the necessary CDD requirements cannot be conducted or verified.

### ***Higher-Risk Countries***

#### ***FIs***

390. Effective and proportionate enhanced measures are implemented by FIs including banks and MTCs when on-boarding or conducting business with customers that are either domiciled and are nationals or connected to high-risk countries or territories as identified by the CBA. Particularly for banks and MTCs, following the 2020 questionnaire that was disseminated by the CBA, it was noted that such businesses had automated monitoring models that facilitated both name screening and transaction monitoring. Additionally, the high-risk list of countries was built into their respective systems and risk-rating framework which was factored in during the overall risk rating profile of the client. FIs, particularly banks and MTCs, take into consideration the list of high-risk countries identified by the FATF that is disseminated by the CBA, following the conclusion of the FATF Plenary. FIs communicated that once clients from those countries are identified, the relevant EDD and countermeasures will be applied. Some FIs communicated that they also utilised the Transparency International Index and EU designations as part of their screening mechanism. Smaller FIs communicated that their business is small and their clients are domestic with commercial customers representing the greater risk. The same was not evidenced in the case of credit unions which indicated the absence of performing sanctions or PEP screening before establishing a business relationship or conducting a transaction. Further, it was also noted that no additional mitigating measures were taken in instances where customers originated from higher risk countries or jurisdictions.
391. The risk rating is embedded in the client profile from the commencement of the relationship until the termination of the relationship. The banks confirmed that they had alerts that were created to make them aware and monitor the relationship of clients whose country nationality or residency was within a high-risk jurisdiction and would conduct EDD throughout the relationship, if it were approved by senior management and/or the compliance committee for on boarding, all of which are tested by the CBA during on-site examinations.
392. The EDD measures that were conducted encompassed the requirement for additional CDD information to independently confirm the source of one's wealth and funds, commissioning independent due diligence reports from independent experts to confirm the veracity of the information obtained and requesting approval from higher levels of management that was commensurate with the risk appetite of the entity regarding acceptance.

#### ***DNFBPs***

393. DNFBPs, especially TCSPs, notaries, and casinos have a good knowledge of the requirements that are applicable to countries that do not or insufficiently implement the FATF requirements. DNFBPs rely on the list of higher risk countries that is prepared by the FATF and circulated by the CBA and website of international organisations such as the EU, which publishes their own listing. Reliance on implementation of the measures for higher risk countries by DNFBPs is also placed in the requirements that are contained in the AML/CFT Handbook. The DNFBPs sector representatives clearly articulated to the assessors that EDD measures will be conducted

once they are conducting business with someone from a higher risk country. Most DNFBBs reported that due to the nature of their business activity, they do not have clients from higher risk countries. DNFBBs such as casinos and TCSPs that are more exposed to customers from higher risk countries, conduct CDD measures at the time of onboarding a client and also conduct monitoring when the list is disseminated by the CBA. See Box 5.2 regarding action taken by a TCSP.

### ***Targeted Financial Sanctions***

#### ***FIs***

394. In 2018, following the completion of a comprehensive survey, there was a compliant rating of 100% across the banking sector in relation to TFS. It was noted that sanctions screening was conducted on prospective and existing clients of the banks against national and international sanctions designations as part of their transaction monitoring systems and procedure. During the ongoing supervisory review of its registered entities, in 2020, the CBA conducted a review of the PP&M of its commercial banks regarding the requirements and framework for combating TF. It was noted that the banks were also fully compliant with their obligation with regards to the implementation of mitigating measures, along with ensuring that its staff was aware of the risk and had the necessary training to mitigate the TF risk exposure on the bank.
395. It was further noted that risk screening and transaction monitoring against the OFAC, EU, UN, (C)FATF list of high-risk individuals and countries formed part of their daily obligations in their efforts to detect potential TF exposure, threats and vulnerabilities. The larger FIs, such as banks and MTCs, and those sectors that are considered as highly or moderately important, all have in place the necessary measures to conduct screening against the names of persons and entities that have been designated by the UN. In addition to these FIs received the sanctions designation from the CBA, commercial compliance databases/ software are used to conduct sanction screening. These FIs are aware of their obligations and the need to freeze funds immediately and report the matter to the FIU. The assessors were informed that the FIU is always available to take such reports via phone.
396. Further details regarding the application of TFS-TF/PF are contained at Chapter 4 of the report.

#### ***DNFBPs***

397. Most DNFBBs (specifically those that are more at risk such as casinos, real estate and notaries) have knowledge and understanding of the requirements in relation to TFS and have various compliance and automated systems to conduct checks of person who are featured on the UN, EU and in some cases OFAC designations. The majority of entities operating in the DNFBBs sector (especially those that deal with foreign clients) are aware of what actions to take once a designated person or entity has been identified (freeze and immediately report to the FIU). DNFBBs noted that they have a good relationship with the FIU and can contact staff of the FIU to inform them of any development should a designated person or entity be identified in their database. Some DNFBBs such as notaries reported that the scans are conducted every 24 hours to determine whether they have assets in their possession or customers.
398. Further, casinos when onboarding, utilise different commercial databases to screen customers against the different designations by the UN and other organisations such as the EU and high-risk jurisdictions. Screening is also done when the transaction involves a wire-transfer and credit checks. Outside of the UN designations, casinos like many other DNFBBs also conduct screening against the OFAC designations. There is a constant surveillance and screening process in place by casinos.

399. Surveys conducted by the CBA evidenced that there is a good application of sanction measures across the sectors. The CBA received a high percentage response from the sectors to the survey conducted in 2019 and also for 2020 in the case of the real estate sector. Table 5.6 provides some insight as to the level of the implementation of TFS.

**Table 5.6. Implementation of TFS by DNFBPs**

Sectors	Rate of Compliant (%)
Casinos	92
Notaries	100
TCSPs	100
Lawyers	80
Real Estate/Realtors	59 (2019) and 78% (2020)

### 5.2.5 Reporting obligations and tipping-off

400. Legislative requirements prohibit tipping-off (see R.21). It was noted by way of interviews conducted during the on-site visit that service providers, particularly FIs, including banks and MTCs are aware that there is a legislative prohibition against disclosure regarding the filing of a UTR or related information with the FIU. FIs especially banks and MTCs are also aware of the imposition of personal criminal sanctions such as fines, penalties and imprisonment that can be levied for failing to comply with their legislative obligations. FIs, including banks and MTCs, that are in the higher risk category have also provided training to staff including Board Members and front-line staff (customer service representative) on their obligation related to tipping-off and the identification and reporting of UTRs to the FIU. This is part of an ongoing process among FIs. In 2016-2017, there was a lack of understanding by one entity operating within the offshore sector relative to reporting obligations. This was nevertheless remedied by the FIU and the CBA through the provision of training (see IO. 6 for more details).
401. Service providers are also mandated to ensure that provisions regarding tipping-off are stipulated in the internal policies and procedures of the organisation. In usual circumstances, the MLRO is the person designated to manage the business relationship of the client post reporting to the FIU to ensure confidentiality of the report and to mitigate the risk of disclosure to any third party. The MLRO also acts as the liaison point between the FIU and the CBA with regard to any third-party ML/TF enquiries. To date, there have been no incidents resulting in sanctions being imposed for violation of the tipping-off provisions.
402. Both the FIU and the FIs have confirmed the consistency of monthly and quarterly meetings with the Compliance Officers and industry participants where topics such as the reporting of UTRs and Tipping-Off are discussed. The purpose of the meetings is to improve the quality of reports, to provide feedback and guidance and to exchange information on trends and typologies regarding risk exposure. FIs have reported that there is a good working relationship with the FIU and guidance is readily available related to the submission of UTRs and challenges experienced with the technology to submit UTRs.
403. FIs are consistently submitting UTRs to the FIU based on objective and subjective indicators. The submission is commensurate with the ML/TF risk exposure of the various FIs. While the number of objective UTRs remained consistent with banks, there has been an increase in subjective reporting (increase from 5% in 2016 to 12% in 2019). During the period of 2016-2019, lending businesses, primarily finance companies filed 35 UTRs, most of which were submitted between 2018/2019 by one finance company based on a subjective indicator. Further, 11 UTRs were filed with the FIU by two pension fund providers. Seven of the 11 filed were based on the subjective indicator of a suspicious transaction, while four were based

on the objective test of reasonability. There was also one finance company that did not submit any UTRs during the period in review. In contrast, there has been no reporting of UTRs by the credit unions between the periods of 2016-2020. Although the sector was deemed to be low risk, it does not mean that it is exempted from filing of UTRs. The assessors nevertheless did not place significant weight on the issue in arriving at a conclusion and rating, due to the nature of the risk within the sector.

404. It was noted that there was an increase of UTRs filed by MTCs as a direct result of the economic and financial situation in Venezuela and Aruba being a tourism-based destination. There was an increase in funds being sent to Venezuela to aid and support family and friends of those resident in Aruba on a more frequent basis and remittance by foreign workers in the tourism sector. Given the risk which led to border closures, implementation of EDD and later the ban to prohibit services, the number of filings made were related to the perceived risk of the service providers. Further, it was noted that in 2017, there was one new MTC offering services that contributed to the increase in filings. The decrease in 2018 was also attributed to a greater understanding of the risk by the sector, in addition to one of the MTCs ceasing operation. The assessors have not attributed this finding to the lack of internal control to identify UTRs or lack of awareness of reporting obligations, as no evidence of such was found (see Table 3.7- IO. 6).
405. In 2018 there was a backlog of reporting of UTRs by an off-shore bank. The FIU took action including inviting the entity to a meeting and information sessions, however, the entity refused the invitation. This resulted in the FIU working in conjunction with the PPO to institute criminal proceeding against the entity. Following the institution of criminal proceedings, the entity submitted the UTRs to the FIU and ceased operation in Aruba.

#### ***DNFBPs***

406. DNFBPs, including casinos, real estate, notaries and TCSPs are required to file UTRs with the FIU and have demonstrated that they are doing such. The entities interviewed demonstrated a strong knowledge of the requirement to file UTRs (and do so within a timely manner) and the tipping-off obligations. Casinos, real estate, TCSPs and notaries appropriately communicated the process for the identification of UTRs which begins at the point of conducting CDD (client onboarding). DNFBPs including casinos, real estate, TCSPs and notaries reported that UTRs (based on subjective indicators) are generally submitted within two to five days to the FIU. DNFBPs, including casinos, real estate and notaries communicated that this timeline allows compliance officers to formulate the reason for suspicion and obtain all relevant information prior to submission to the FIU. The foregoing is in keeping with the guidance provided by the FIU which indicated that reporting entities are required to submit UTRs promptly but not later than five days.
407. The submission of UTRs based on the timelines is also dependent on the nature of the business activity conducted by the sector. Information provided to the assessors by the FIU shows that a significant amount of the DNFBPs including real estate, casinos, notaries and TCSPs have been utilising the maximum five-day period to report UTRs to the FIU. The information also shows that casinos, real estate, notaries, lawyers and the other sectors have consistently made efforts as of 2017 to lower the number of days in which UTRs are reported. For example, 37 percent of casinos reported UTRs in five days (2017) when compared to 18 percent in 2018 and 68 percent of realtors reported UTRs in five days in 2020 when compared to 20 percent in 2021.
408. The understanding of the requirement to properly identify UTRs with the FIU by some TCSPs and lawyers was lacking prior to 2016. This was nevertheless addressed by the FIU and CBA

through training and outreach sessions and resulted in the submission of UTRs, including backlogs by TCSPs in 2016 and lawyers in 2017.

409. Internal training on the obligations is also provided to key employees within the sector by staff with the knowledge or independent compliance entities. The number of UTRs filed by the real estate, casino and notary sectors have increased over the years, which is in part due to the increased supervision, awareness and information sessions conducted by the CBA (further explanation to the increase and decrease across the various sectors is identified in the penultimate paragraph before Table 3.7). Equally, since 2018, the FIU has conducted frequent compliance meetings with MLCOs of casinos. There is also a slight increase in other less important sectors such as in the jeweller sector.
410. The outreach sessions have led to the increase in reporting as well as an improvement in the quality of the reports. Reporting entities are obligated to report UTRs to the FIU promptly. During the on-site, various entities operating within the DNFBPs sector noted that UTRs are generally reported to the FIU “without delay” which meant immediately. A small number of DNFBPs reported that in instances where further enquiries were required to form the basis of suspicion and facilitate comprehensive and quality reporting (reasons for suspicion and all accompanying documents are enclosed) to the FIU, they were allowed up to five working days pursuant to the FIU regulation of April 2014, to make the relevant report. The assessors did not find that the delay in reporting in some instances had an impact on the FIU’s ability to conduct its functions, as the additional checks conducted contributed to the quality of the reports. Reporting and provisions on tipping off are considered to be fundamental and are documented in the policies and procedural documents of DNFBPs which are used to guide and train staff on the obligations. Most of the entities interviewed further elaborated on the electronic systems that are in place which identify breaches or go above the thresholds determined by the entity.
411. DNFBPs including the higher risk sectors such as casinos, realtors and notaries were provided with training by the FIU on UTR reporting and tipping-off provisions. The entities reported that there is a good relationship with the FIU and guidance is often provided by the FIU once requested.
412. The information presented in Table 3.7 in IO.6, shows that there has been an increase in reports among most of the sectors over the years. Given the size of the banking sector and the ML/TF risks to the banking, MTC and casino sectors, the assessors found that these entities are identifying and reporting UTRs that are commensurate with their risks. The information at table 3.7 in IO. 6 shows that there is an increase in UTR filings across most of the sectors for the period 2016-2020. Regarding the number of UTRs filed by realtors, the assessors took into consideration the number of registrants in the sector as well as factors specified in paragraph 67 (b) of Chapter 1, which indicated that a significant number of realtors are inactive or conduct a small amount of transactions, real estate transactions are conducted via notaries, FIs (banks) who are also supervised and are required to submit UTRs and that 23 realtors control an estimated 80 percent of the market at the time of the on-site visit.. The increase in reporting by the sectors is credited to the outreach, seminars and guidance provided by the FIU and CBA. The assessors also considered that the filing of UTRs by entities in the DNFBP sector is commensurate with the ML/TF risks, materiality and in the context of Aruba. In April 2017, a seminar was held specifically for lawyers, notaries, tax advisors, and TCSPs. The aim of the seminar was to provide information to reporting entities on their reporting obligations including the manner in which specific provisions of the AML/CFT State Ordinance should be interpreted.

### *5.2.6 Internal controls and legal/regulatory requirements impeding implementation*

413. Most FIs (including banks and MTCs) and DNFBPs (including casinos and TCSPs) in Aruba have internal AML/CFT policies and procedures that govern their operations, however, the quality of these controls varies among sectors. In the instances of larger institutions, it was noted that a dedicated team of compliance professionals, forms part of a department, the primary obligation of which is the vetting of prospective clients, during the on-boarding process and monitoring of existing clients during the life cycle of the account. The team is also dedicated to the monitoring of AML/CFT trends for threats and vulnerabilities, the application of CDD and EDD measures as well as the review and updating of compliance manuals, policies, procedures and training. Further, in cases where the institution is of a smaller scale, the same functions are carried out, even though there may be a designated individual(s) with such responsibilities. Most of the FIs, especially the larger ones that are considered highly and moderately important, have in place internal and external auditors to ensure that compliance with AML/CFT functions is properly mandated. Internal and external audits are conducted on a yearly basis.
414. FIs are also mandated to document and implement incident reporting to the CBA, should the need arise. The onus is on the FI to ensure that any incidents relating to financial crime and/or AML/CFT concerns are reported immediately. Additionally, the CBA is made aware of any audit conducted, whether internal or external and have direct access to the report. Most FIs especially the banks and those entities that are considerably most important and moderately important and most at risk for ML/TF have dedicated staff and resources to address AML/CFT matters. These persons are well qualified and have received certification from various international organisations. The larger FIs, such as banks and MTCs also utilised AML/CFT technology to support staff in their functions.

#### ***DNFBPs***

415. Some casinos, TCSPs, accountants and tax advisors that form part of a larger international organisation<sup>25</sup> including associations, have implemented a robust framework and have a dedicated compliance officer or department in place. Some of these organisations have also noted that they have internal audit staff. All DNFBPs are required to appoint an MLRO and the assessors found that there is compliance with this measure. Notaries also have internal policies and controls in place. Casinos, real estate, lawyers, TCSPs, tax advisors and accountants have all appointed an MLRO who has control of files prior to the completion of the transaction and where required, additional information is requested to complete the transaction. For some smaller DNFBPs including some realtors and lawyers' compliance functions are conducted by members of staff that have other ancillary functions. For some casinos especially the larger ones, compliance departments are created and persons are solely employed to address compliance. Internal reviews by auditors for DNFBPs such as casinos and TCSPs include a review of compliance material. DNFBPs such as casinos and TCSPs and the larger sectors also have in place external auditors to conduct review of compliance to ensure that they are in compliance with AML/CFT requirements. Internal audits are generally conducted on a yearly basis whilst external audits are conducted every three years. Some sectors (especially smaller entities) such as real estate and jewellers communicated that audit exercise coupled with compliance is costly and they are yet to commence such action.
416. The CBA identified realtors and jewellers that have basic controls and procedures in place, which is typically the case for the single-owned and small DNFBPs. Most DNFBPs have appointed a senior staff member as a compliance officer and/or hired an external compliance

<sup>25</sup> The number of such entities is unknown to the assessors and the country.

consultant to act as a compliance officer. In some instances, assessors noted during the on-site that entities have hired external compliance consultants. The AML/CFT Handbook provides guidance and regulatory requirements as to the extent of this provision.

417. Most of the DNFBPs such as casinos, notaries and TCSPs have adequate resources in place to undertake AML/CFT functions. For those that do not have the expertise and necessary resources such as some real estate agents, external consultants are recruited to assist with compliance functions. These consultants also provide AML/CFT training to those members of staff.

#### Overall conclusions on IO.4

418. There is a strong regulatory framework in place for the implementation of the FATF requirements (preventive measures). The implementation of these measures by most FIs and the DNFBPs sectors, especially those sectors that are considered as important and moderately important is commendable. Most FIs and DNFBPs demonstrated a good understanding of the ML/TF risks affecting their sectors and have policies and procedures to address them. There is a need to update policies and procedures based on the findings of NRAs. This was nevertheless considered to be a minor deficiency.
419. There was an increase in the level of compliance from 2019 to 2020 by FIs and DNFBPs in the implementation of preventive measures including CDD, EDD, policies and procedures and TFS. However, in the real estate which is considered as highly important and having a high risk for ML some implementation gaps remain. The deficiencies or gaps that exist within the sector were treated as moderate deficiencies by the assessors due to a large percentage of entities operating within the sector having measures in place.
420. FIs and DNFBPs have demonstrated a strong understanding of the requirement to identify and report UTRs to the FIU and have demonstrated that they are so doing. The understanding of the requirement by some sectors such as lawyers and TCSPs to identify and submit UTRs was not always present and this resulted in the backlog of UTRs being submitted to the FIU by some sectors such as lawyers and TCSPs. This was remedied as a result of training and outreach provided by the FIU and the CBA. FIs and DNFBPs are submitting UTRs in a prompt manner in any event within five days. The assessors weighted the deficiencies that exist within the framework and concluded that moderate improvements were required.

**Aruba is rated as having a substantial level of effectiveness for IO.4.**

## Chapter 6. SUPERVISION

### 6.1. Key Findings and Recommended Actions

#### Key Findings

- a) The CBA has demonstrated a comprehensive approach to the implementation of a Risk Based Approach (RBA) framework pertaining to the supervision of its FIs and DNFBPs sectors and is appropriately staffed to conduct its functions. The RBA is driven by information derived from participating in the NRA Working Groups, results from prior on-site examinations, the completion and submission of surveys/questionnaires by FIs and DNFBPs, along with the assessment of open and closed sources and other triggering events. The desk-based reviews facilitate the understanding of the risk of individual FIs and DNFBPs, while assisting in the determination of the frequency and scope of which on-site examinations will be conducted. The RBA is applied across the sectors, is commensurate with the ML/TF risks identified and the materiality of the sectors.
- b) Aruba has a robust licensing regime in place for FIs and TCSPs, which assesses the reliability (integrity) and the suitability (fitness) of the directors, shareholders, and key personnel of applicants and is conducted by the CBA. The CBA's system acts as a deterrent against criminals, holding senior management positions, becoming significant shareholders and/or exercising a controlling interest in FIs and TCSPs. Lawyers, notaries, accountants and casinos are subject to legal requirements and are subjected to the same requirements as FIs, with the first three subject to good and ethical conduct governing their profession. Although there are measures to prevent criminals and their associates from holding controlling interest in the real estate sector, they do not fully comply with the FATF requirement for fit and proper tests.
- c) Despite the existence of the legal requirements to prevent criminals from beneficially owning a significant or controlling interest or holding a management function in casinos, the authorities have not fully implemented the requirements of the Gaming Ordinance. For example, the Board of Directors of the Gaming Authority which has responsibility for the implementation of the requirements in the legislation, including licensing was not operational at the time of the on-site visit.
- d) There is a strong compliance culture among most FIs and DNFBPs. The increase in the compliance level among FIs and DNFBPs, especially between 2019-2020, is credited to the actions taken by the CBA and supported by the FIU. This includes training, provision of guidance, on-site and desk-based examinations, remedial actions and application of proportionate and dissuasive sanctions for breaches. Further, the CBA, in collaboration with the FIU, has ensured that there is a good understanding of ML/TF risks among most of the FIs and DNFBPs, however, the findings of the sectoral risk assessments are not shared with the sectors.

### Recommended Actions

- a) Although there is a strong approach to risk-based supervision, the CBA is advised to implement a structured approach as to when FIs and DNFBBs will be subjected to on-site examinations, outside of triggering events and reliance on data analysed in the course of conducting prior on-site examinations, desk-based reviews and participation in the NRA Working Groups.
- b) Aruba should address the shortcomings that exist in relation to fit and proper tests for jewellers and realtors, to prevent criminals and their associates from holding or being the beneficial owner of a significant or controlling interest or management function within the real estate and jewellers' sector. Further, the Aruban authorities should ensure that the Gaming Board is properly implemented and operationalised and the necessary fit and proper checks are conducted to prevent criminals and their associates from holding (or being the BO of) a significant controlling interest or holding a management function in an organisation.
- c) The CBA should sustain its efforts in the implementation of the RBA, ensuring that it continues to promote a clear understanding by FIs and DNFBBs of their AML/CFT obligations and ML/TF risks. The CBA should ensure that the findings of the sectoral risk assessments are shared with the different sectors, thereby ensuring that the findings of the sectoral risk assessments contribute towards the understanding of ML/TF risks by the FIs and DNFBBs.
- d) The CBA should also ensure that feedback, guidance, and the report on post on-site examinations are provided to the FIs and TCSPs in a more timely manner, as it was noted that prior to 2017, it took, in some instances, more than six months, and in a few cases up to almost two years and since 2018, it takes approximately three months to provide a formalised response or report, despite an internal report being prepared and circulated to management for review and commentary.

421. The relevant Immediate Outcome considered and assessed in this Chapter is IO.3. The Recommendations relevant for the assessment of effectiveness under this section are R.14, 15, 26-28, 34, 35 and elements of R.1 and 40.

## 6.2. Immediate Outcome 3 (Supervision)

422. Aruba has a robust licensing and registration process, with only moderate deficiencies, and AML/CFT supervision is conducted using a risk-based approach. The assessors arrived at the findings based on interviews conducted with both the private and public sectors, documents provided to the assessors and a review of information, such as samples of on-site examinations conducted by the CBA. The assessors took into consideration the ML/TF risks, importance and materiality of the different sectors (FIs, DNFBPs and VASPs) in drafting and assigning a rating to the Immediate Outcome. The supervisory and licensing/registration measures on banks, MTCs, real estate, casinos and the notary sectors were given more scrutiny by the assessors than the other sectors, as a result of the factors identified in previous sections of this report (see Chapter 1 for further information). There is no prohibition against VASPs operating in Aruba. The legal framework for supervision and registration of VASPs by the CBA is in place with moderate shortcomings (see. R.15). However, this was treated as a minor deficiency in the context of effectiveness, based on the factor of materiality (no VASPs were found to be operational in Aruba during the on-site visit) (see Chapter 1).

### 6.2.1. Licensing, registration and controls preventing criminals and associates from entering the market

423. The CBA is an independent organisation that is the supervisory authority in Aruba with respect to the financial sector. The CBA's supervision seeks to safeguard confidence in the financial system of Aruba by promoting the (financial) soundness and integrity of the supervised sectors and institutions. In this respect, the CBA, pursuant to sectoral supervisory State Ordinances, is responsible for the regulation and supervision of, *inter alia*, the credit institutions, insurance companies, MTCs and companies that fall under the scope of the State Ordinance on the Supervision of Securities Business.
424. The CBA is also appointed the AML/CFT supervisor in the AML/CFT State Ordinance. The AML/CFT State Ordinance applies to all service providers (FIs and DNFBPs). The list of service providers that are supervised for AML/CFT purposes conforms with those covered in the FATF Standards (Glossary). With the exception of TCSPs, the CBA's role pertaining to AML/CFT supervision of the DNFBPs sector does not include licensing and the conduct of fitness and propriety checks.
425. Heightened scrutiny and due diligence processes of directors, senior management, qualifying shareholders and beneficial owners are conducted by FIs in order to secure the CBA's authorisation of these individuals to carry out key functions within the sectors.
426. The CBA, in its capacity as the sole supervisor, as well as the licensing and registration authority, has strict licensing and registration policies for credit institutions (which include commercial banks), insurers, insurance brokers, securities businesses, MTCs and TCSPs. Banks and insurance companies, for the most part, belong to financial groups that perform independent due diligence vetting to ensure that the individuals being presented for approval and licensing are suitable (fit) and have integrity (propriety). The applicant is also required to submit pertinent and detailed information, including that related to confirming/evidencing their legal address, source of funds/wealth and disclosure of any previous regulatory sanctions imposed either

within Aruba or within another jurisdiction.

427. Within the CBA, there is a segregation/separation of departments in accordance with the entities and/or sectors. The departments include the Integrity Supervision Department (ISD), which is staffed with nine employees and supervises the AML/CFT framework for FIs and DNFBPs, including conducting on-site examinations and off-site supervisory activities; the Prudential Supervision Department consisting of 10 employees with functions that include fit and proper testing of nominated key persons for *inter alia*, banks and insurance companies; the Enforcement and Market Entry and Legal Advisory Department consisting of three employees, with responsibility for advising on enforcement measures for AML/CFT breaches; and the Legal Services Department consisting of three employees responsible for the preparation of legal documents. Applications submitted to the CBA for review and approval are either approved absolutely or denied within 13 weeks of receiving a complete submission. There is no regime for conditional approvals to allow for the applicant to be approved pending the imposed condition being satisfied.
428. Upon review of an application, if it is noted that the same has been submitted as incomplete, a letter is sent to the applicant identifying and outlining the deficiencies in the submission and providing the applicant with a reasonable time to cure the same. The prescribed timeframe for compliance and submission of the outstanding information is stated in the deficiency letter to the applicant. The applicant is also made aware of the application being held in abeyance until such time as the application is made complete, or for a maximum period of two years from the date of submission, in which case, the final letter is sent to the applicant advising that the CBA will no longer continue with the processing of the application.
429. The CBA has a tiered approach to the licensing of shareholders. In the absence of legislation that addresses how persons holding 10% or less interest in a financial institution should be treated, the CBA has implemented a less stringent and basic test than that of those holding a greater interest. The test being applied to such individuals is the screening of identity through open sources and search engines such as Google.
430. The suitability (fit) and integrity (proper) test is applied on persons intending to enter the market, either as a shareholder with a greater interest of 10% or more in a financial institution, any person authorised to make policy-making decisions on behalf of the applicant or one expressing control or influence of a structure. The scope of testing is the fitness, appropriateness and reliability of the applicant. As previously stated, the fit and proper checks concern all persons who are authorised to (co-) determine the policy of the applicant, including but not limited to managing directors and members of supervisory boards. The actions undertaken by the CBA are not only of suitability testing but also integrity as highlighted below. The assessments include but are not limited to evaluating whether they have the requisite knowledge and skill to effectively operate an institution and understanding the inherent risks thereof. The applicant must also hold the requisite academic qualifications in the area for which they require approval and provide financial and professional references. Such applicants are also subject to the completion of a questionnaire that requires full and frank disclosure regarding any antecedents, unresolved tax matters, and/or bankruptcy or insolvency declarations. This information from persons domiciled in Aruba is confirmed by the CBA by obtaining the relevant information from the Tax Authority (bankruptcy/insolvency filing) and the PPO (antecedents) respectively, along with assessing the candidate's integrity and suitability against the references provided on behalf of the applicant, searches conducted via open sources, an interview with the candidate and the performance of a World-Check review.
431. In instances where the applicant has confirmed its registration in another jurisdiction, or there is an indication that perhaps they have been registered and/or licensed elsewhere, the CBA

- also relies on international co-operation in sending due diligence request to ensure that the applicant meets its fit and proper criteria for registration and/or licensing (*see Chapter 8 for further analysis on International Cooperation*).
432. Upon successful licensing of FIs, the CBA communicates the approval to the applicant by way of written communication and by updating the licensees register on its website for public viewing. FIs are also required to update the CBA on any material changes to the institution post approval.
  433. In order to prevent criminals and their associates from holding a significant or controlling interest in supervised institutions, the CBA conducts Integrity and Suitability (I&S) tests on all proposed candidates for key positions. This concerns all persons who are authorised to (co-) determine the policy of the applicant, including the managing director(s) and members of the Supervisory Board. Furthermore, the integrity of all persons who have a qualifying holding in the applicant will be assessed. In the event a holder of a qualifying holding in the applicant is a legal entity, the integrity of the natural persons who (co-)determine the policy of that legal entity will also be assessed.
  434. The CBA conducts I&S testing in cases: of new licensing or registration applications; proposed policy makers (I&S) and persons who want to acquire a qualifying holding (integrity testing only); and re-evaluation of existing policy makers and persons that have a qualifying holding (e.g. due to a change in position within the organisation or conspicuous information that in the view of the CBA justifies a re-evaluation, such as incidents and integrity related information derived from open sources, etc.). Applicants are required to submit a personal questionnaire (PQ) of the proposed candidate to the CBA, including supporting documents. PQs are initially reviewed for completeness and if the application is deemed complete, the CBA will proceed with the I&S testing of the proposed candidate.
  435. Integrity is tested by reviewing all facts and circumstances which are relevant to assess if a candidate can duly perform his/her work with the highest integrity. As such, in the PQ, the candidate must inform the CBA, amongst others, if he/she has legal, financial, supervisory, fiscal, and/or other antecedents. Suitability is tested by assessing the candidate's knowledge, experience and professional conduct.
  436. In order to be able to perform adequate I&S testing, applicants are requested to provide at least the following information regarding the candidate: Certified copy of the passport; Extract of the Civil Registry; Declaration of good conduct or an equivalent declaration (obtained from the relevant judicial authority from the country where the candidate is domiciled), not older than three months; Curriculum Vitae; Qualifications; Educational background; Applicant's position profile; and Institution's recruitment and selection policy, in addition to the decision making process. To further assess the candidate's integrity and suitability, the following activities are performed: Reference checks (a minimum of two different persons); Search in open sources (e.g., internet); and World-Check.
  437. The CBA also seeks information from the PPO regarding convictions and/or any outstanding criminal matters of local candidates. The Aruban Tax Authority is also requested to provide information regarding the candidate's fiscal standing (e.g., outstanding fines and/or outstanding tax-related matters). As well, as of April 1, 2020, a declaration of good standing from the Tax Authority (*In Dutch: Verklaring van fiscaal gedrag*) of the country where the candidate is domiciled (Aruba or abroad to the extent that the particular jurisdiction issues similar declarations) must be provided. Additionally, in case the candidate fulfills or has fulfilled positions as a (co-)policy maker at (a) foreign financial institution(s), the CBA will contact the foreign regulator(s), requesting to be informed if there are any concerns with regard to the fitness or appropriateness of the proposed candidate. Table 6.1 below shows the number

of I&S tests, approvals and rejections by the CBA during the period 2016-2020.

438. Regarding VASPs, there is no legal or regulatory framework to conduct fit and proper checks. Although the risk associated with the sector is unknown, due to the absence of a risk assessment, on the basis of materiality (no VASPs were found to be operational at the completion of the on-site visit), the assessors considered this deficiency to minor.

*Table 6.1. Integrity and suitability testing approved (AP) and rejected (RE) by the CBA 2016-2020*

Sector	2016		2017		2018		2019		2020	
	AP	RE								
Credit institutions	9	0	14	0	8	0	11	0	5	0
Insurance companies	15	0	18	0	20	0	6	0	12	0
Company pension funds	9	0	4	0	7	0	7	0	5	0
Money transfer companies	10	0	0	0	0	0	3	0	3	0
Trust service providers	4	0	2	0	1	0	0	0	3	0
Insurance brokers	18	0	7	0	0	0	0	0	0	0
<b>Total</b>	<b>65</b>	<b>0</b>	<b>45</b>	<b>0</b>	<b>36</b>	<b>0</b>	<b>27</b>	<b>0</b>	<b>28</b>	<b>0</b>

439. Case examples 6.1 and 6.2 are related to the withdrawal and denial of a license by the CBA whilst case example 6.3 shows that the authorities have taken efforts to identify unregistered MTCs.

**Box 6.1. Case Example: Denial of registration**

On January 23, 2015, the CBA received the filled-out application form with supporting documentation from a company that intended to register as a Money Transfer Company (MTC) pursuant to Article 4, paragraph 1, of the State Ordinance Supervision of Money Transfer Companies (AB 2003 no.60) (SOSMTC).

Article 4 of the SOSMTC contains the registration requirements for MTCs. An applicant must, among other criteria - demonstrate that it will be able to comply with the requirements laid down by or pursuant to the SOSMTC and the Sanctions State Ordinance 2006 (AB 2007 no. 24). The applicant must also demonstrate that it will be able to comply with the requirements laid down by or pursuant to the State Ordinance for the Prevention and Combating of Money Laundering and Terrorist Financing (AB 2011 no. 28) (AML/CFT State Ordinance), including the requirements set forth in the Handbook for the prevention and detection of ML and CFT for financial and trust services providers (AML/CFT Handbook) issued by the CBA and the Sanction Decree Combat Terrorism and Financing of Terrorism (AB 2010 no. 27).

Based on the information submitted by the company, it was concluded that the application was not in compliance with some of the requirements set forth in the abovementioned State Ordinances, State Decree and the AML/CFT Handbook. The CBA requested additional information regarding the source of funds for the financing of the company's capital but did not receive this information. The decision to not approve the sole UBO as member of the Board and to deny the application to register as a MTC was primarily based on the result of the integrity and suitability test conducted on the sole UBO. Furthermore, information requested from the local tax authorities indicated that the UBO was not in compliance with the payment of taxes with regard to the 11 companies related to him for the years 2012 up to 2014. Also, the information provided in the application did not comply with requirements set forth in the AML/CFT Handbook with regard to the outsourced compliance and internal audit functions.

The applicant was made aware of the CBA's intention not to register the company as an MTC on July 7, 2017. The applicant filed an objection to the CBA's intention on August 4, 2017, however, the objection filed did not change the CBA's decision. By letter dated October 3, 2017, the CBA informed the applicant of such and that the MTC will not be registered.

#### ***Box 6.2. Case Example -Withdrawal of registration application***

In August 2013, the CBA received the filled-out application form with supporting documentation from a company that intended to register as an MTC. The information submitted with the application was incomplete and was re-submitted in September 2014, October 2015 and again in March 2016. The CBA requested missing and additional information during 2016 and 2017. The applicant submitted additional but incomplete documents on August 26, 2016, December 5, 2016, and February 28, 2017.

The incomplete documents and information were related to the business plan, AML/CFT policies and procedures, policies and procedures related to sound business operations, and non-compliant outsourcing agreements.

On September 11, 2017, the CBA submitted another information request to the applicant. Subsequently, by letter of November 17, 2017, the applicant informed the CBA of its wish to discontinue the application process to be registered as an MTC. The CBA confirmed the discontinuation of processing the application by letter dated December 6, 2017.

#### ***Box 6.3. Case Examples: Identification of two unregistered MVTS***

##### ***Case Example 1***

In October 2020, the CBA found that an entity was operating on the Aruban market for foreign money transfers (including Venezuela) without having the required registration pursuant to Articles 2 and 3 of the SOSMTC. This entity was therefore not authorised to conduct the business of a money transfer company in Aruba. Pursuant to Article 29 of the SOSMTC, conducting money transfer activities without the required registration is punishable by law. The CBA made three attempts to get in contact with the entity, urging it to immediately cease its money transaction activities directed towards the Aruban market and to delete all advertisements on Facebook stating that it is providing such services in Aruba. Subsequent to the CBA's immediate request for the entity to cease its activities, the entity informed the CBA that it was in the process of terminating all money transfer activities in and from Aruba, including removing all advertisements and references to money transactions activities on its Facebook pages.

On October 19, 2020, the CBA published a public warning on its website urging the public not to

conduct money transfers through this entity which was illegally active on the Aruban market and also emphasising the financial risks of conducting money transfers through entities not regulated by the CBA. Subsequently, the CBA filed an official report with the PPO. Pursuant to the latest information provided by the PPO, the entity ceased its activities and is no longer active in Aruba.

### **Case Example 2**

In January 2021, the CBA received signals regarding an illegal MTC operating in Aruba without registering pursuant to articles 2 and 3 of the SOSMTC. The CBA contacted the entity in question, informing it that conducting money transfer activities without registration with the CBA is prohibited and urged the entity to cease its activities immediately. The entity requested further information as to how to comply with all requirements to register with the CBA. The CBA provided the requested information for registration, but eventually the entity terminated its activities.

### **DNFBPs**

440. DNFBPs are required, pursuant to Article 50 of the AML/CFT State Ordinance, to be register with the CBA, with the exception of TCSPs and casinos, which are required to be licensed. Registration of DNFBPs takes into consideration relevant information such as the name and addresses of managers and policymakers. A public register of all DNFBPs can be found on the CBA's website and is updated, at a minimum, on a monthly basis. DNFBPs are also mandated to inform the CBA of any changes to information obtained during the registration process. The CBA, as part of its examination process, also compels and reviews the organisational chart, corporate structure including management and UBO information. TCSPs, by law, are subject to fit and proper checks by the CBA and such checks are conducted whilst accountants, notaries and lawyers are subject to professional, industry and ethical requirements by law to prevent criminals and their associates from holding or being the BO in respective DNFBPs. For instance, notaries must obtain a declaration of good conduct issued by competent authorities prior to their appointment. Doing business in Aruba also requires the obtaining of a business license. Documents that are required to be provided include a certificate of good character which must be obtained from the PPO. This requirement also applies to real estate agents.<sup>26</sup>
441. Casinos are required to be licensed in accordance with the National Ordinance on the Supervision of Games of Chance, 2021 that was gazetted on September 10, 2021, just prior to the completion of the on-site visit and which strengthened the existing fit and proper checks that exist in the Tightened Policy on Operations of Casinos (In Dutch: *Verscherpt beleid casinowezen*) (see R.28). Some aspects of the Games of Chance Ordinance, such as the operationalising of the Board of Directors of the Gaming Authority, were not fully implemented as at the end of the on-site visit. The appointment and operationalising of the Board of Director will pave the way for the implementation of the Gaming Authority, including the recruitment of staff and ensuring that the requirements of the Gaming Ordinance are implemented including fit and proper checks. The Tightened Policy on the Operation of Casinos required casinos to be licensed with the Departamento di Asunto pa Casino (DAC) and submit all relevant information including that related to directors and UBOs. The applicant was also required to submit a certificate of good conduct (for natural persons) and a certificate of no objection (for legal person) from the PPO, along with all relevant documents prior to the application of a license. The CBA, as part of its supervisory functions, also obtains information on lease agreements from casinos (in the event gambling activities are leased to third parties). A casino license is granted to hotels with 500 rooms and more, typically the ones that form

<sup>26</sup> <https://www.government.aw/document.php?m=76&fileid=9586&f=b0b7cf126aaa12a619d5c4c816a2d5c2&attachment=0&c=12703>

part of a chain. As such, licenses to operate casinos are granted with some conditionality and are also subject to fit and proper checks. Further, the authorities have advised that five casinos operating in Aruba are operated by multinationals and are subject to robust due diligence process and is therefore highly unlikely that criminals can gain influence in certain/key positions.

442. Although some action is taken by the CBA pertaining to, *inter alia*, the ownership structure, UBO related to DNFBPs, without prejudice to the information stated in paragraphs 439 and 440 above, the CBA does not conduct fit and proper checks of DNFBPs (with the exception of TCSPs), comparable to FIs, due to the absence of legislative requirements. Though the legislation does not fully capture the full scope of fit and proper requirements, some checks and balances exist to prevent criminals from holding controlling and BO interest in the real estate and jewellery sectors. Particularly for the real estate sector, it was noted that 23 real estate companies are members of the Association of Aruban Realtors (AAR) in which its members account for 80% of the real estate transactions within the sector. Further, 40 individual agents registered as realtors work with recognised and renowned international brand companies that ensure integrity assessments are carried out on their realtors, and that the realtors receive adequate and comprehensive annual AML/CFT training. The authorities also rely on the fact that DNFBPs conducting business generally do same via registered FIs which are required to conduct CDD including on the BO as a measure to prevent criminals and their associates from holding controlling interests in DNFBPs. Further, without prejudice to the weight assigned to the risk and importance of the real estate sector, the assessors in weighting the deficiency also considered the size of the sector (materiality, sales and contribution to GDP- see Chapter 1), products and services offered, clients and cross-border risk of ML when compared to the mainstream FIs such as banks and MTCs.
443. The CBA is informed, due to the coordination and cooperation of competent authorities such as the PPO and the FIU, of businesses that are operating without being registered or acquiring the requisite license. Social media and other open sources are also used in order to inform the CBA of businesses that are in breach of their obligations. There have only been a few cases where the CBA was informed by the FIU of such activities and immediate action was taken by the CBA.
444. In 2020, the CBA sent notifications to all banks and notaries emphasising the requirement for all realtors to report to the CBA as well as to not render services to such businesses if they are not listed on the public DNFBPs register. Online searches were also conducted in 2020 and where the CBA suspected that there were entities (that fall under the categories of DNFBPs) that were operating but not registered with the CBA, the CBA dispatched letters to the respective businesses with a deadline for the submission of information regarding the business. The CBA has also sent out warning letters to all lawyers regarding illegal trust activities and to notaries regarding unauthorised TCSPs.
445. During on-site examinations of notaries and tax advisors, the CBA noted two cases of potential illegal TCSP activities. The parties identified were immediately contacted and they (parties) subsequently suspended the activities after conversations and correspondence with the CBA. There were no formal sanctions taken against the parties as the same was not considered necessary.

### **6.2.2. Supervisors' understanding and identification of ML/TF risks**

446. The CBA has evidenced a clear and good understanding of the ML/TF risks identified with FIs and DNFBPs. The CBA uses a variety of sources to assess the ML/TF risks associated with the institutions under its supervision. These include ML/TF risk assessments, information

from the FIU, results of on-site examinations, in-depth analysis of AML/CFT questionnaires, information from the PPO, reports from international organisations including the IMF and the FATF, incidents and complaints reported to the CBA and open sources of information. Those sources of information also provide the CBA with an understanding of the ML/TF risks of the entities under its supervision. The CBA also assesses and understands the inherent ML/TF risks by examining elements such as the nature of the business, geographical reach, products and services, distribution channels, customer base and types of transactions.

447. The CBA also understands that inherent ML/TF risk is commensurate with a well-developed financial sector, which is taken into account, along with the compliance culture, sectoral risk classification, mitigating controls, resources and residual risk, to assist with conducting on-site and off-site examinations. The CBA's understanding of the inherent ML/TF risk is driven by the implementation of a risk-based approach to supervision that requires the collation and submission of data by FIs in the form of a survey and/or questionnaire. The survey and/or questionnaire informs the CBA of the identified risk and the implemented mitigating measures. This information and data received are subjected to a desk-based review which assists the CBA with its risk-rating methodology, either institution-specific or sector-wide, along with determining the likelihood and frequency of on-site examinations. The CBA's risk-based approach is contained in the "ML/TF risk assessment- CBA Methodology" which is used to guide the conduct of risk assessments and the risk-based approach to supervision.
448. Sectoral risk assessments under the supervision of the CBA are conducted annually and are also used to determine the supervisory agenda for the following year. In 2018, the CBA conducted its first sectoral risk assessment. The main sources of information included the ML/TF NRAs that commenced in 2018, information from the FIU, results of AML/CFT on-site examinations and in-depth analysis of questionnaires. In conducting sectoral risk assessments, the CBA identifies the ML/TF risks by taking into consideration the inherent ML/TF risks and the quality of AML/CFT controls. The results of the risk assessment conducted on the sector were placed in a matrix based on the opinion of the ISD with regard to the likelihood and the impact of ML/TF occurring within the sector. Besides assessing the risk profile of each sector and institution, a sectoral weight is also assigned to each individual sector to determine the (overall) impact of the sector or institution as compared to other sectors. The weight assigned was derived from the 2021 NRAs that commenced in 2018 and is based on the size of the sector (contribution to GDP), interconnectedness with other sectors, as well as the transaction volume and transaction value within the sectors. Commercial banks are assessed separately and weight is assigned on their asset size and client volume.
449. The sectoral risk assessments conducted by the CBA are robust and the findings are reasonable based on the review conducted by the assessors. These sectoral risk assessments provide a solid platform towards the understanding and identification of risk. The sectoral risk assessment resulted in the following overall risk classification of the sectors for 2019 and 2020.

*Table 6.2. Sectoral risk assessment classification*

Sector	Findings/ risk classification 2019	Findings/ risk classification 2020
<b>FIs</b>		
Commercial banks	Medium High	Medium High
Money transfer companies	Medium High	Medium High
Life insurance companies incl. sales agents	Medium Low	Low

Sector	Findings/ risk classification 2019	Findings/ risk classification 2020
Credit Unions <sup>27</sup>	There was no risk assessment conducted	
<b>DNFBPs</b>		
Lawyers	Medium Low	Medium Low
Accountants	Medium High	Medium High
Jewellers	Medium High	Medium High
Pawnshops	Medium Low	Medium High
Tax advisors	Medium High	Medium High
Casinos	Medium High	Medium High
Trust and Company Service Providers	Medium High	High
Notaries	Medium High	Medium High
Real Estate	Medium High	Medium High

***Thematic projects:***

450. The CBA has utilised thematic studies as part of its risk-based supervision approach. Given the size of some entities within the FIs and DNFBPs sectors, and the nexus between the same, a sectoral and thematic approach has proven to have more effect in the CBA's approach to AML/CFT risk-based supervision. The CBA also focuses on the prime areas of ML/TF concerns (themes/topics) as well as specific institutions. The themes/topics are based on multiple sources of information including the ML/TF NRAs, information from the FIU and open sources, information on ML investigations, prosecutions and convictions such as the "Hamburg Case," information from questionnaires, inspections, and professional judgments from triggering events of the CBA experts. Themes/Topics are determined during multiple discussions between the CBA ML/TF experts and the management team. Identified commonalities overarching the different sectors are incorporated into the thematic projects. The projects are executed in different ways, for example, through off-site questionnaires, on-site examinations and information sessions. Examples of themes and topics conducted by the CBA include ML/TF risks related to the Panama papers and Bahamas leaks vis-à-vis the banking and TCSP sectors, raising awareness with FIs on TF, prevention of human trafficking awareness, training and transaction monitoring by the banking and MTCs sectors, corruption and the preventive measures in the banking sector. Overall, the assessors found that the thematic studies and engagements by the CBA are prioritised by addressing the risk to which FIs and DNFBPs are exposed. For example, the purchase/sale of real estate to non-resident clients from higher-risk countries (see Table 6.3).

***Table 6.3. Thematic Projects 2019-2020***

Year	Theme/Topic	Status
2019	Purchase / sale of real estate by non-resident clients coming from high-risk countries	Completed
	Money flows / underground banking related to illegal activities of smaller supermarkets	Completed
	Inadequate unusual transaction reporting by tax advisors	Completed

<sup>27</sup> Credit Union were rated a low risk based on the findings of the 2020 sectoral risk assessment conducted by the CBA and 2021 NRA (see chapter 1 for more details).

Year	Theme/Topic	Status
	Non-compliance casino sector	Incomplete
	Free-zone	Completed
	Transaction monitoring banks	Completed
	TF	Rolled over to 2020
2020		
	Non-compliance casino sector (project started in 2019)	Postponed and rolled over to 2022 due to COVID-19.
	Project development (real estate)	Work in progress. Due to Covid-19, some on-sites related to this project were moved to 2021.
	Illegal activities / Unauthorised business	Completed
	Enhance (ML/TF) information position with respect to lease companies, life insurance companies and pawn shops	Project lease companies completed. However, projects related to life insurance and pawn shops were postponed due to Covid-19.
	AML/CFT framework of: jewellers	Completed
	Human trafficking	Completed
	TF and PF (TF project continued, commenced in 2019)	<p>Project TF is a work in progress. The TF related on-site at 5 commercial banks and 2 MTCs were conducted across 2020 and 2021 due to Covid-19. The last schedule of the on-site for the theme is still to be executed. Documentation of the results is pending upon completion of on-sites.</p> <p>PF project resulted in the publication of PF guidelines by the CBA for all supervised entities.</p>

### 6.2.3. Risk-based supervision of compliance with AML/CFT requirements

451. The CBA commenced risk-based supervision in 2017 (moving away from rules-based approach) and has continuously taken measures to refine and strengthen its framework. The CBA encompasses both on-site and off-site examinations to assess an entity's level of effectiveness with regards to their obligations. Since 2017, there has been a significant increase in the number of on-site examinations conducted by the CBA, which was achieved due to, *inter alia*, staff training courses with respect to conducting on-site examinations, adding one staff member to the ISD, focusing on the on-site examinations on specific issues of concern, as well as an increased level of experienced staff members. Risk-based supervision is primarily guided by the information of the CBA methodology as amended in 2020, which is implemented and utilised by the CBA's employees. The CBA employees also rely on the

2020 Manual On-site Examination Procedures which was reviewed by the assessors and found to be robust. This document provides guidance to examiners (employees) on conducting on-site inspections including practical structural framework for conducting on-site examinations and the use of professional judgement when preparing for and conducting examinations. The staff of the ISD which is responsible for risk-based supervision is adequately trained and has wealth of experience in the area. Staff turnover within the department and the CBA on a whole is low, thereby resulting in the retention of a significant wealth of experience and expertise in the area of supervision including the risk-based approach.

452. The frequency of the on-site and off-site examination is based on the following factors: the ML/TF risks (inherent) present, the mitigation of the identified risk to include the quality of the AML/CFT systems and controls associated with each sector and implementation by respective institution commensurate with their ML/TF risk profile, identified triggering events either through the completion of desk-based questionnaires or adverse media, the findings of the ML/TF risk assessments as well as the characteristic and risk profile of sectors and individual entities that operate in those sectors. Additionally, the CBA considers, *inter-alia*, the following sources, information from the PPO and the Police, reports from international organisations, open sources and information derived from incidents reported to or complaints received by the CBA. Taking into consideration the foregoing factors, Table 6.2 represents the classification of the different sectors and banks based on the ML/TF risks. The risk scores for the trust and life insurance sectors were adjusted based on the findings of the NRA. The assessors found that the overall strategy of the CBA is to focus on those entities/ sectors that pose the highest risk, whilst giving adequate coverage to the lower risk sectors/entities. The frequency, intensity, nature and focus of the CBA is largely based on the ML/TF risks identified.
453. The supervisory AML/CFT examination schedule, plan and/or agenda is determined based on the aforementioned risk-based methodology and the position of the sector/institution (based on the Tables above) are used by the CBA to determine what the (prima facie) AML/CFT supervisory approach will be (e.g. on-sites, information sessions, letter/guidance, off-site). The schedule, plan and/or agenda is not static, as various risk factors (transaction, client information, red flags, international and national developments, and information deduced from surveys and/or questionnaires) can contribute and lead to such adjustments. The supervisory priorities (themes, topics and trends) are determined and developed annually, and address any supervisory AML/CFT concerns. Overall, the objective of the CBA is for a more intensive AML/CFT supervision and allocation of resources to sectors where the risk presented is higher as opposed to the sectors where the risk is lower. For example, banks, MTCs, casinos and the real estate sectors were the subject of more frequent off-site and on-site inspections when compared to sectors such as tax advisors and accountants (see also Tables 6.4 and 6.7).
454. Upon determining the annual supervisory priorities, a designated project leader is tasked with the creation of a plan to execute the themes and topics identified to be addressed. The plan is reviewed and approved by way of management's signature and subsequently executed by the project team. The plan and risk rating would assist with determining the course of action, given the risk identified, to include off-site supervision (through surveys and/or questionnaires) informative sessions with industry participants, and/or on-site examinations.
455. Prior to an on-site examination, entities are required to provide the CBA with relevant information and documentation such as the ML/TF risk assessment and the AML/CFT policies and procedures, etc. which are scrutinised prior to the on-site. The CBA would also request from the FIU, via a formal letter, information on the reporting behavior of the institution over the past few years. The supervisory on-site examinations as well as documents provided prior

to the on-site facilitate a review and a practical in-person analysis of the FIs' and DNFBBPs' compliance with AML/CFT requirements. It allows the CBA to review PP&M implemented, along with the review of procedures to include how CDD and EDD are carried out, the reporting of UTRs, the assessment of enterprise and AML/CFT risk and the formal documentation of the same as required by all FIs and DNFBBPs, and the systems and controls in place to mitigate such risk. During 2017-2018, the examination of banks revealed serious deficiencies in the area of transaction monitoring, while it also became apparent that there was too little awareness of TF. These are clear examples of the data, information and analysis generated from on-site examinations, and the importance thereof. Table 6.4 shows the number of on-site examinations conducted between the period 2015-2020.

*Table 6.4. On-site examinations conducted on FIs and DNFBBPs*

<b>AML/CFT On-Site Examinations</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
<b><i>FIs Sectors</i></b>						
Banks	1	2	8	4	6	3
Money Transfer Companies (MTC)	2	0	0	2	0	1
Life Insurance Companies	0	1	0	0	0	1
Insurance Brokers	0	0	0	0	0	1
<b><i>DNFBPs</i></b>						
Real Estate	0	0	2	2	4	3
Accountants	0	0	0	4	0	0
Tax advisors	0	0	2	0	2	0
Lawyers	0	0	1	3	2	1
Jewellers, & Pawn Shops	1	0	0	2	0	2
Casinos	0	3	1	2	3	1
TCSPs	1	1	5	2	2	0
Notaries	1	0	0	2	2	0
<b>Total on-site examinations</b>	<b>6</b>	<b>7</b>	<b>19</b>	<b>23</b>	<b>21</b>	<b>13</b>

456. The information reflected in Table 6.4 above evidences an increase in the number of on-site examinations conducted by the CBA from 2015-2020, with a decline in 2020, due to the COVID-19 global pandemic which affected the work of the CBA as a result of measures implemented to mitigate the spread of the virus. The number of on-site examinations conducted in the banking sector was a direct result of the CBA's approach to risk-based supervision following a sectoral risk assessment that confirmed the classification of four banks being rated as medium-high and one as high. Albeit the apparently minimal number of on-site examinations conducted on the real estate sector when compared to the actual number of registrants, the CBA's risk-based approach to supervision of this sector was the assessment of active realtors in comparison to those that were inactive. Additionally, focus was placed on the larger sized real estate companies and project developers with higher volume of transactions and high-risk clients. It was also noted that while there were 193 realtors

registered with the CBA, many of the real estate companies were incorporated for a one-off transaction but maintained their registration only to afford them the opportunity to engage in future potential real estate transactions and did not conduct real estate activities on a structural basis. Further the assessors noted that the CBA adopted a pragmatic risk-based approach to supervision through the strengthening of their off-site monitoring programme that included the implementation of annual thematic reviews, on-going monitoring thematic studies, sanctioning regime, industry and sectoral training and outreach programmes. As part of the on-site examination, and depending on the scope thereof, the actions undertaken by the CBA include interviews with relevant staff members including members of the Board, MLROs and MLCOs, audit staff and front desk staff; review of AML PP&M, file reviews (CDD, EDD etc.); testing of transaction monitoring systems; review/sample check of transactions reported to the FIU (for timeliness and completeness); and review of AML/CFT training manuals.

457. Based on the CBA's AML/CFT risk-based approach and areas of concern identified, the remote examinations in 2020 focused, *inter alia*, on ongoing monitoring, UTR reporting and CDD. Most examinations are conducted by a team of two to four persons but is generally dependent on different factors, such as the scope of the assessment. The scope of the assessment will also determine the time period for conducting the examination. On-site examinations typically take one to six days, excluding preparational time (2-4 days) and the writing of the report.
458. The objective of the CBA is to complete 20 on-site examinations per annum, targeting the institutions and individual sectors that posed a higher risk for ML/TF. The information clearly shows that between 2018-2019 the CBA achieved this objective. The information in Table 6.4 also shows that conducting on-site inspections is targeted towards the sectors such as banks, casinos, TCSPs and real estate which are considered in the higher risk category. Based on sample materials of inspections conducted by the CBA and a review of the same by the assessors, it was found that the on-site inspection was robust and satisfactory. As part of the assessment process, files of AML/CFT on-site examinations conducted by the CBA were reviewed by the assessors. The assessors found that the examinations were detailed, concise and robust. Some of the areas covered include transaction monitoring, processes and procedures used to identify activities and transactions.
459. Following the completion of the on-site inspection, the preliminary findings are presented and explained to the CBA's management team and the next steps are discussed. Subsequently, the information is shared orally with the inspected institution so as to provide the institution with an opportunity to comment on the findings. The result of the on-site inspection is then formally communicated to the reporting entity. It was noted during the assessors' review of letters/files for the period 2015-2017, that there were some instances of delays by the CBA in sharing the written findings with the institutions in 2015. The written findings evidenced in some instances that 12-18 months had elapsed before the written findings were provided to the FIs. This finding of delayed reporting was supported by information received from the FIs and DNFBPs interviewed during the process. However, during the period of 2018-2020, the response time was averaged at a little over three months from the time the exit meeting took place to sending the on-site letter to the institution (see Table 6.5 below on average response time) and was accepted by the assessors as reasonable. The information in the Table also shows that the CBA's exit meetings took place an average of approximately one month following the on-site visit and on-site letters were issued on average three months after the exit meetings. It was further noted by the CBA that communication will be sent to the institution promptly following the exit meeting if severe deficiencies are identified, with a request for immediate remediation, oftentimes prior to the on-site letter being sent to the institution. The communication provides a prescribed deadline for remediation and a written

statement from the institution confirming that the breaches have been addressed accordingly.

*Table 6.5. Timelines of exit meetings and on-site feedback letters*

2018		2019		2020	
Exit meeting	On-site letter	Exit meeting	On-site letter	Exit meeting	On-site letter
48 days	105 days	29 days	78 days	36 days	115 days

460. The supervisory off-site examination is similar to that of the on-site but takes a more informal approach as to how issues and concerns are addressed and is used to monitor the different sectors and institutions' compliance with the AML/CFT requirements. Off-site supervision includes (but not limited to) AML/CFT questionnaires, hosting of meetings with the sectoral associations and individual institutions, letters to the sectors and handling of incidents and complaints. The off-site supervision serves as a useful tool for the CBA to monitor all institutions, including those in the lower risk bracket, for example credit unions. As part of the off-site inspection, it was noted that for credit unions there were no due diligence policies or procedures evidencing the implementation and practice of CDD, EDD or any other AML/CFT framework and requirements. Despite the absence of such a measure, the assessors considered this to be a minor deficiency, taken into consideration the low risk and level of importance that is assigned to the sector, along with its materiality (sector is relatively small). The CBA nevertheless instructed both credit unions to implement the requisite requirements including effective PP&M commensurate with risk, with one entity thus far taking significant actions to implement the measures based on the instructions.
461. Table 6.6 shows the number of off-site inspections conducted by the CBA using different tools whilst table 6.7 shows the number of questionnaires and the entities within the sectors that were the recipients of questionnaires from the CBA.

*Table 6.6. Desk-based/ Off-site examinations*

Sector	Actions	2016	2017	2018	2019	2020
<b>FIs &amp; DNFBPs</b>	AML/CFT questionnaires	05	03	02	13	05
	Meetings with sectoral associations	0	1	2	2	0
	Handling of incidents	9	12	10	10	8
	Handling of complaints	9	16	9	6	11
	Integrity and suitability testing	65	45	36	27	28

*Table 6.7: AML/CFT Questionnaires sent by CBA for the period 2016-2020 (x-represents a questionnaire sent)*

Sectors	2016	2017	2018	2019	2020 (March)
<b>FIs</b>					
Banks	x	x (2x)	x (2x)	x	x
MTCs				x	
Life Insurance				x	
Insurance Brokers				x	
Credit Unions				x	
<b>DNFBPs</b>					
Casinos	x			x	
Real Estate/Realtors		x		x	x
Notaries				x	

Lawyers		x		x	
TCSPs	x			x	
Jewellers		x		x	x
Accountants	x			x	x
Tax Advisors	x			x	x

462. Most of the AML/CFT questionnaires that form part of the desk-based review process, and which are also used as one of the sources of information for the preparation of the on-site process, were sent to banks and other entities that are considered as most important and represent a higher risk for ML/TF as described in Chapter 1. Questionnaires also covered areas such as the *Panama Papers*, de-risking (financial inclusion-banks), VASPs and new technologies, corruption and monitoring of supermarket businesses. AML/CFT questionnaires were sent to all entities within the sectors and with significant levels of compliance among the sectors in completing the questionnaires (see also analysis in paragraph 366). Sectoral meetings, handling of incidents and complaints and integrity and suitability testing also form part of the CBA's off-site examination process. Overall, the CBA has demonstrated a risk-based approach to supervision based on the actions taken, for instance, a significant number of the on-site and off-site examinations and other actions, such as thematic studies, were targeted at the sectors and individual institutions based on their risks and importance, such as banks, MTCs, casinos, notaries, real estate and TCSPs. Apart from the information referenced in Table 6.6 and 6.7 above, the issuance of warning letters also serves as a useful tool to the sectors to make them aware of the specific areas of concerns by the CBA.
463. The CBA has identified several breaches as a result of its inspections and have taken actions against the entities to include penalties and administrative fines. Table 6.8 shows that most of the breaches identified were related to CDD. The CBA ensures that breaches identified are corrected by the supervised entities as letters are sent to examined FIs and DNFBPs with timelines for addressing the identified breaches. The CBA monitors the correction of those breaches, via, amongst other things, follow-up on-site examinations. Overall, the assessors found that the CBA has demonstrated a strong understanding and application of the RBA across the various sectors, especially those sectors that are considered as most important and high risk.

*Table 6.8. Breaches identified following on-site inspections*

Year	CDD (incl. EDD and SDD)	Reporting of UTRs	Client & Transaction Monitoring	Framework (RBA, P&Ps)	Not registered with the CBA	Appointment of MLRO/MLCO	Record Keeping
<b>2016</b>							
<b>FIs</b>							
Banks	1	1	2	1			
Life Insurance Companies	1	1		1			
<b>DNFBPs</b>							
TCSPs	1	1	1				
Casinos	2	3	3	3			
<b>2017</b>							
<b>FIs</b>							
Banks	3	3	3				
<b>DNFBPs</b>							
TCSPs	4						

Year	CDD (incl. EDD and SDD)	Reporting of UTRs	Client & Transaction Monitoring	Framework (RBA, P&Ps)	Not registered with the CBA	Appointment of MLRO/MLCO	Record Keeping
<b>Entities</b>							
Realtors	2	2	2	2			
Lawyers	1	1	1	1	1		
Casinos	1	1	1	1			
Tax Advisor	1	1		1			
<b>2018</b>							
<b>FIs</b>							
Banks		1	2	1			
MTCs	1	2	1	2		1	
<b>DNFBPs</b>							
Realtors	2	2	2	2			
Accountants	2	1	1	4		1	
Lawyers	3	1	1	3			
Jewellers				2			
Casinos		2	1	2			
Notaries	2	2	1	2			
<b>2019</b>							
<b>FIs</b>							
Banks	3	2	3				1
<b>DNFBPs</b>							
Realtors	4	3	2	4	1	2	
Tax Advisors	2	1	2	2			
Lawyers	1	1					
Casinos	2	3	3	3		1	1
Notaries	2	1	2	1			1
TCSPs	1	2	2				1
<b>Total</b>	<b>42</b>	<b>38</b>	<b>36</b>	<b>38</b>	<b>02</b>	<b>05</b>	<b>04</b>

#### 6.2.4. Remedial actions and effective, proportionate, and dissuasive sanctions

464. The CBA has enforcement powers to impose sanctions that are proportionate and dissuasive as outlined in its enforcement policy. Following the conduct of an inspection, oral feedback is provided to the Board of the institution which is afforded the opportunity to provide a response and additional information, followed by documented findings on the assessment. The documented correspondence also contains the breaches identified and the deadline for remedying those breaches. In addition, formal measures are taken, as demonstrated in Table 6.9 by the CBA and a follow-up on-site inspection is undertaken.
465. Upon breaches of the Supervisory State Ordinances, the ISD and PSD of the CBA drafts the necessary memorandum outlining a summary of material facts and supporting documents, the identified breaches and/or deficiencies, and the recommended enforcement actions to be submitted to the EML Department for review and further action. The EML Department takes into consideration the information received from the ISD and PSD in their memorandum and advise the CBA's executive management team of the recommended actions. Legal personnel from the department will also review the breaches and/or deficiencies and also prepare its advice. If the breach or deficiency is considered sufficiently serious, the CBA will advise the licensee of its intention to impose a fine or sanction and allow the licensee to respond. The response from the licensee will be considered and the CBA will determine whether any

enforcement action (fine or sanction) will be levied. Overall, when deciding on the measure that should be imposed and if so, which remedial and/or punitive measure(s) should be taken, the department takes specific factors into consideration, such as the CBA's enforcement policy, previous violations committed by the entity, the duration of the violation and the profit gained by means of the violation.

466. The sanctions that can be imposed by the CBA on supervised entities for the violation of the AML/CFT State Ordinance include formal directives, penalty charge orders and administrative fines. AML/CFT State Ordinance violations are also criminal offences and may be reported to the PPO. A formal directive is issued after an on-site inspection where breaches are identified and the entity is required to comply with the instructions of the CBA within a specified timeframe. The penalty charge order, on the other hand, institutes a financial penalty of up to Afl. 1,000,000.00 (US\$558,659.00). An administrative fine can be imposed, alongside formal directives and penalty charge orders.
467. The information presented in Table 6.9 is evidence that the CBA has effectively implemented strong sanctions, largely comprising administrative fines against FIs and DNFBPs for various breaches, the main one being CDD. The sanctions applied were based on the nature and seriousness of the breach. Case examples were also provided to demonstrate sanctions taken. During the period 2017-2020, financial penalties amounting to Afl.7,918,175.00 (US\$4,423,561.00) including a penalty charge order of Afl.5,500,000 (US\$3,072,626.00.7 million) were levied by the CBA for breaches relating to CDD, the AML/CFT framework and MLRO/MLCO functions as examples. Most of the fines were leveraged against the real estate sector, which is considered to be high risk and is an indication of the scrutiny given to the sector by the CBA.

*Table 6.9. Formal Measures and types of breaches by FIs and DNFBPs*

Sector	Date on-site	Enforcement measure	Date enforcement measure	Amount
TCSP	March 3, 2016	Administrative fine	August 25, 2017	Afl. 150.000
Bank	October 20 & 21, 2016	Administrative fine	February 14, 2018	Afl. 500.000
Casino	November 21-25, 2016	Formal directive	May 31, 2017	-
<b>2017</b>				
Bank	April 10 – 21, 2017	Formal directive Administrative fine	June 20, 2018 May 22, 2019	- Afl. 50.000
TCSP	May 15-19, 2017	Penalty charge orders	January 21, 2019	Afl. 25.000 (forfeited)
Casino	November 16-21, 2017	Administrative fine	June 3, 2020	Afl. 422.500
Real Estate	November 27, 2017	Administrative fine	November 28, 2019	Afl. 3.125
Real Estate	December 4, 2017	Administrative fine	August 22, 2019	Afl. 78.750
Lawyer	December 18, 2017	Administrative fine	July 8, 2019	Afl. 87.425
<b>2018</b>				
Lawyer	January 8, 2018	Administrative fine	July 4, 2019	Afl. 1.250
Bank	March 6-12,	Administrative	April 2, 2020	Afl. 350.000

Sector	Date on-site	Enforcement measure	Date enforcement measure	Amount
	2018	fine		
Real Estate	April 16-18, 2018	Administrative fine	November 22, 2019	Afl. 18.750
Accountant	May 28 & 30, 2018	Administrative fine	May 11, 2021	Afl. 45.000
Real Estate	August 23-24, 2018	Administrative fine	November 28, 2019	Afl. 75.750
Real Estate	September 11-13, 2018	Administrative fine	June 22, 2020	Afl. 105.000
Bank	September 24-28, 2018	Formal directive	June 10, 2019	-
Notary	October 17-23, 2018	Administrative fine	October 26, 2020	Afl. 200.000
<b>2019</b>				
Accountant	January 30-February 1, 2019	Administrative fine	June 25, 2020	Afl. 153.750
TCSP	May 14 & 17, 2019	Administrative fine	April 12, 2020	Afl. 1.875
Real Estate	May 27-28, 2019	Administrative fine	February 2, 2020	Afl. 150.000
Real Estate	September 16, 2019	Penalty charge orders	November 2, 2020	Afl. 5.500.000 (forfeited)
<b>Total</b>	<b>2016-2019</b>		<b>2017-2021</b>	<b>Afl.7,918,175.00</b> <b>(US\$4,423,561.00)</b>

#### **Box 6.4. Sanctions**

##### **A. Administrative Fine**

In 2018, the CBA conducted on-site examinations at two lawyers' offices to determine if these lawyers comply with the requirements of the AML/CFT State Ordinance. The on-site examinations revealed multiple violations of the AML/CFT State Ordinance, mainly related to the fact that the lawyers did not establish a proper AML/CFT framework (risk assessment, policies and procedures). Also, customer due diligence was insufficiently conducted on the clients vis-à-vis the requirements of the AML/CFT State Ordinance. Further to the violations, the CBA imposed an administrative fine in both cases.

In 2019, a follow-up on-site examination took place to determine if both lawyers had improved their compliance with the AML/CFT State Ordinance. The follow-up on-site examinations revealed that both lawyers indeed complied.

##### **B. Revocation of license:**

In its AML/CFT supervision, the CBA has continuously scrutinised the TCSP sector, taking into consideration the inherent high risks that come with rendering TCSP activities. This supervision was even more enhanced, following the Panama Papers and Paradise Leaks. Hence, in the period 2016-2019, multiple supervisory activities have been carried out with respect to the TCSP sector, such as carrying out a number of on-site examinations, sending out questionnaires, imposing formal measures following breaches of the AML/CFT requirements and organising multiple information sessions for the TCSP sector.

The CBA has frequently communicated to the TCSP sector that it will continue to scrutinise the sector for compliance with the AML/CFT requirements and that non-compliance will not be tolerated. This supervisory approach has led to the following effect: the CBA has detected over the last two years more awareness and enhanced compliance within the sector.

In two separate cases, following an on-site visit examination, the CBA established that there were various breaches of the AML/CFT requirements. Subsequently, the CBA met with the Board of each individual TCSP to discuss the breaches and make clear that either the TCSP has to enhance the level of compliance significantly (including additional compliance staffing) or severe enforcement measures would be taken by the CBA. A direct effect of the CBA's supervisory actions was that both TCSPs decided to terminate their business activities in Aruba, because they considered themselves to be unable to meet the Aruban AML/CFT standards and the CBA's expectations in that respect. Hence, the CBA revoked the licenses on their respective request.

### **C. Referral to PPO for Criminal Investigation**

Casinos are subjected to the supervision of the CBA with regard to compliance with the AML/CFT State Ordinance.

In November 2017, the CBA conducted an on-site examination at a casino which was focused on:

- a) the adequacy of the monitoring procedures to identify unusual and higher risk activities and transactions pursuant to Article 3, paragraph 1 and Articles 11 & 12 of the AML/CFT State Ordinance; and
- b) the adequacy of the reporting procedures in line with Article 46 in conjunction with Article 26 of the AML/CFT State Ordinance.

The CBA determined that the casino was non-compliant with Articles 3, 11, 25 and 26 of the AML/CFT State Ordinance. Furthermore, considering the severity of the findings, the CBA decided to share the findings, without mentioning the name of the casino, with the District Attorney's Office (DAO) (In Dutch: *Openbaar Ministerie*) to assess the possibility and willingness to prosecute the casino. In the event the DAO decides to prosecute the casino, the CBA is not allowed to issue an administrative fine to the casino based on the same findings ("una via principle").

The CBA provided the information to the DAO on June 4, 2018. The DAO informed the CBA on April 15, 2019, that the "*Recherche Samenwerkingsteam*" ("*RST*") is willing to investigate the casino but does not have the required (personnel) resources to investigate the case at that time due to other priorities (two embargo cases).

Subsequently, the CBA decided to impose administrative sanctions against the casino based on the findings of the on-site examination. On June 3, 2020, the CBA imposed an administrative fine of Afl. 722,500 on the casino license holder (the hotel) for the breach of Article 3, paragraph 1, subsection d, Article 6, paragraph 2, subsection e, in conjunction with Article 8, paragraph 1, Article 11, subsection a, and Article 26, paragraph 1 of the AML/CFT State Ordinance.

On July 15, 2020, the casino license holder submitted an objection against the decision of the CBA to impose the administrative fine. The objection was handled by the "*Bezwaaradviescommissie LAR*" on March 30, 2021, and on May 18, 2021, the *Bezwaaradviescommissie* issued its advice to declare the objection justified only with respect to the amount of the fine. On June 1, 2021, the CBA decided that the objection was justified only with regard to the quantum of the administrative fine imposed and lowered the amount of

the fine to Afl. 605,250.00 (US\$336,250.00). The remainder of the objection was declared unjustified. The casino license holder appealed the CBA's decision and the Court's decision is pending.

#### **D. Referral to the PPO for criminal investigation and prosecution**

On September 16, 2019, the CBA conducted an on-site examination at a Real Estate and Property Developer (REPD). The on-site examination focused primarily on the verification of the adequacy of: (1) the client files, (2) the transaction monitoring system and procedures, (3) the unusual transaction reporting procedures and the effectiveness of the AML/CFT policies, procedures and measures. The CBA determined that the REPD was non-compliant with regard to Articles 3, 5, 6, 8, 11, 12, 19, 26, 46, 47 and 50 of the AML/CFT State Ordinance. Based on the seriousness of the breaches of the AML/CFT State Ordinance and also the signals of suspicious activity and possible facilitation of ML, (e.g. (i) the purchase of building materials in Canada for the majority of the condominium units by the prospective condominium buyers of Canadian nationality with Italian background, (ii) existence of two purchase agreements for the same condominium unit with different natural/legal persons as buyers for some of the condominium units, and (iii) inability of a buyer of a condominium to submit evidence of the source of wealth provided. The CBA considered imposing formal measures against the REPD and to transfer this case to the PPO.

Subsequently, in accordance with the "covenant" between the CBA and the PPO and Article 32 of the AML/CFT State Ordinance respectively, the CBA met with the PPO on October 31, 2019, and November 5, 2019, as well as with the FIU on November 11, 2019, to discuss the case. On January 7, 2020, the CBA transferred the case file to the PPO. The Public Prosecutor notified the CBA on April 24, 2020, that it was not able to investigate the case, mainly due to lack of resources. On May 18, 2020, the file was transferred to the EML Department to assess the possibility of issuing a penalty charge order and imposing an administrative fine on the REPD.

On June 5, 2020, the EML Department was requested to assess the possibility of imposing a formal measure against the REPD specifically for its negligence in responding to the CBA's information requests regarding the required follow-up on the on-site letter issued. The EML Department was also requested to consider the possibility of imposing formal measures against the Managing Directors of the REPD for the breaches of the AML/CFT State Ordinance. By letter of August 18, 2020, the CBA informed the REPD of its intention to impose penalty charge orders against the REPD for non-compliance with Articles 3, 5, 11, 12, 19, 26, 35, 46, 47 and 50 of the AML/CFT State Ordinance. On September 16, 2020, the REPD provided its written response to the CBA's on-site examination findings and the CBA's letter of August 18, 2020.

By letters of September 29, 2020, and November 2, 2020, the CBA imposed the penalty charge orders for non-compliance with Articles 3, 5, 11, 12, 19, 26, 35, 46, 47 and 50 of the AML/CFT State Ordinance. The REPD provided a response via a letter from its lawyer on October 23, 2020. By letter dated February 2, 2021, the CBA notified the REPD of the total sum of Afl. 5,500,000.00 (US\$3,072,625.69) due for forfeited penalty charges. The Managing Directors were charged a sum of Afl. 500,000.00 (US\$279,329.60) due for forfeited penalty charges. The Managing Directors of the REPD informed the CBA via letter of September 16, 2020, that the company was not active since mid-2018 and that they are not in charge of the management of the condominiums. The CBA noted however, that the REPD is still registered as an active company in the business register of Chamber of Commerce and Industry of Aruba.

### 6.2.5. Impact of supervisory actions on compliance

468. Training, guidance and other supervisory actions of the CBA have resulted in a good level of compliance by most FIs and DNFBPs. The breaches identified and actions taken by the CBA have substantially decreased between 2018 and 2019 and is a demonstration of FIs and DNFBPs complying with AML/CFT requirements. In 2019, the CBA conducted off-site examinations by way of questionnaires, which sought to inform itself on the compliance of the various DNFBPs. The information was then analysed and the findings of the CBA's analysis were reported back to the various entities. It was recorded that there was a high level of compliance among the casinos, lawyers, TCSPs and notaries. Regarding the real estate sector which is considered to be of a high risk and does not have a similar level of compliance as the other sectors, the supervisory actions taken by the CBA have resulted in an increase in the number of actions taken by the sector. As demonstrated in Table 6.9 below, there was a significant improvement in the level of compliance in the sector. FIs and DNFBPs that fail to comply with their obligations were sent letters and enforcement action taken, as seen from the penalties highlighted in Table 6.9. The information clearly shows that the CBA supervisory actions had a positive impact on the level of compliance on the DNFBP sector.

*Table 6.10. Level of compliance by the Real Estate Sector*

AML/CFT requirement	2019: compliant (%)	2020: compliant (%)
ML/TF risk assessment	39%	62%
AML/CFT policies and procedures in place	51%	71%
Registered with FIU	53%	75%
MLRO appointed	52%	62%
MLCO appointed	53%	65%
AML/CFT staff training	46%	65%
Identification and verification of UBO(s)	69%	84%
Establishing ML/TF risk profile of customer	74%	74%
Screening of customer against designations	59%	78%
Establishing source of wealth of customer	45%	60%
Establishing source of funds of customer	64%	83%

469. Similar to FIs, the CBA, in its AML/CFT supervision of DNFBPs, places strong emphasis on the importance and timely reporting of UTRs. As a result, there were information sessions with the sector and the application of formal measures by the CBA for non-compliance. Feedback was provided following questionnaires and through the issuance of a brochure for DNFBPs titled "How to protect your business against ML/TF in five steps," whereby the CBA emphasised the importance of the (timely) reporting of UTRs. The actions of the CBA have resulted in better awareness and compliance by DNFBPs in the submission of UTRs. For example, there was a notable increase in the filings of UTRs to the FIU by sectors such as casinos, real estate, notaries and accountants.
470. The CBA, in its AML/CFT supervision of commercial banks, placed emphasis on transaction monitoring during the periods of 2016-2018. It was noted that three commercial banks evidenced breaches and operational deficiencies related to ongoing monitoring of clients' transactions in accordance with the AML/CFT requirements. Those breaches and/or operational deficiencies included but were not limited to system gaps, limited resources and capacity to properly identify risk factors and red flags, and inordinate back logs that made real

time scrutiny impractical. The breaches were officially communicated to the banks and in some instances fines and/or sanctions were imposed. To remedy the breaches and deficiencies, some of the recommended and/or implemented actions were the purchasing of more sophisticated software and systems and the implementation of more stringent controls, along with engaging more human capital/resources to assist with the compliance functions. The implementation of these measures assisted in commercial banks' level of compliance based on the findings of follow-up inspection conducted by the CBA in 2019.

471. Overall, there was an increase in the level of compliance by FIs and DNFBPs. Apart from the information mentioned above, this was supported by information which shows that there was a decline in breaches related to CDD issues by service providers such as casinos, real estate and banks and implementation of AML/CFT measures such as policies and procedures (see example referenced in Table 6.10 related to the real estate sector).

#### ***6.2.6. Promoting a clear understanding of AML/CFT obligations and ML/TF risks***

472. The promotion of a clear understanding of the AML/CFT obligations and ML/TF risks in relation to FIs and DNFBPs is conducted through the issuance of public warnings, issuance of AML/CFT information brochures for DNFBPs, the assembly of sectoral associations (Bar/Legal, Accounting and Realtors, etc.), initiation of public private cooperation on topics such as TF, the timely communication and dissemination of (C)FATF statements, providing feedback to supervised institutions (despite a need to ensure that this is done consistently in a timely manner at all times (pre 2016)), organising information sessions, and publishing guidelines on AML/CFT. The CBA has confirmed that feedback is provided on the analysis of AML/CFT questionnaires and provided evidence in the form of sample feedback letters, despite some reporting entities informing the assessors that no feedback was provided.
473. The information below at Table 6.11 shows that there was an increase in the number of information sessions held by the CBA with FIs and DNFBPs, including 2019 and 2020, despite the impact of the COVID-19 pandemic. The training conducted by the CBA and the FIU focused on several different areas including risk assessments, CDD, identification, transaction monitoring, UTR, verification of BO and AML/CFT supervision. Apart from the training represented in Table 6.11 below, the sectors also received annual sector specific AML/CFT training facilitated by an independent organisation, which was sponsored by the CBA.
474. The AML/CFT Handbook issued by the CBA and other guidelines published by the FIU have significantly enabled FIs and DNFBPs to have a clear understanding of AM/CFT obligations, as they are comprehensive. Findings of the ML/TF risk assessments conducted by the jurisdiction were also shared with the FIs and DNFBPs and most have demonstrated a clear understanding of the ML/TF risks affecting the jurisdiction and their sectors. In an effort to have an understanding of ML/TF risks, the FIU also shares with FIs and DNFBPs, trends and typologies globally and within Aruba. The assessors however found that the results of the ML/TF sectoral risk assessments conducted by the CBA were not shared with the sectors. This was considered to be a minor deficiency as the sectoral risk assessments were incorporated into the ML/TF NRAs.
475. During interviews held with representatives from some FIs and DNFBPs, the assessors also noted that it was purported by a few interviewees that there is some level of difficulty for individual entities to meet with the CBA outside of training and outreach sessions to obtain guidance. The CBA noted and confirmed that it meets on a periodic basis with the sectors and supervised institutions and that there are no barriers of communication between themselves and institutions. The CBA provided evidence to demonstrate that information sessions were

conducted with sectoral associations as aforementioned (for instance the Bar Association) to further assist them with their AML/CFT obligations. Outside of the actions taken by the CBA, the FIU has also taken measures to ensure that FIs and DNFBPs are aware of obligations and the AML/CFT risks. These actions include meetings with the different reporting entities, publications and providing feedback. Some of these actions are detailed in IO. 6 and Recommendation 34. Additionally, the FIU, on a monthly basis, provides updates and has quarterly meetings with MLROs/MLCOs to discuss emerging trends observed. It was further noted that the FIU is very responsive to their questions and queries and prioritised any issues they may have with reporting. The entities interviewed found that the guidance provided by the CBA and the FIU, especially the AML/CFT Handbook, to be useful in the conduct of their functions.

476. As part of the off-site inspection process, sectoral meetings were held bi-annually with the Aruba's Bankers Association and the Insurance Association of Aruba. The CBA also held meetings with the Realtors Association in 2018 and 2019, the Aruba Casino Association in 2017, the Aruba Lawyers Association in 2019) and the Aruba Tax Association in 2018, to discuss matters including AML/CFT requirements and compliance by their members.

*Table 6.11. Information sessions that were held by the CBA from 2016-2020: (x- denotes that a session was held)*

AML/CFT information sessions	2016	2017	2018	2019	2020 (postponed due to COVID-19)
Accountants				x	
Lawyers		x		x	
Pawn Shops			x		x
Banks	x		x	x	
Tax advisors		x		x	
Casinos		x	x (2x)		x
Money Transfer Companies					x
Jewellers			x		x
Real Estate		x			x
Notaries			x		x
TCSPs		x	x	x	
Life Insurance Companies	x				x

### Overall conclusion on IO.3

477. The CBA is the sole AML/CFT supervisory authority for FIs, VASPs and DNFBPs operating in Aruba. The CBA has demonstrated a strong knowledge and understanding of the risks to the sector it supervises and applies a risk-based approach

to supervision.

478. All FIs are subject to a robust licensing and registration regime by the CBA, which includes conducting fit and proper checks of key persons including BOs. Lawyers, notaries, TCSPs and accountants are also subjected to strict requirements to ensure that criminals and their associates do not own or have a controlling interest. Regarding casinos, the legislation relating to fit and proper tests was strengthened with some aspect of the new legislation still to be implemented at the conclusion of the on-site visit. Some fit and proper tests exist for realtors and other sectors, however, it does not capture the full scope of the requirements for IO.3/R.28.
479. The CBA and the FIU have provided training and outreach to the various reporting entities, thereby promoting a clear understanding among the different FIs and DNFBBs of AML/CFT risks and their AML/CFT obligations. The authorities are encouraged to sustain their efforts in providing training for the sectors.
480. The CBA has taken a strong approach to the application of sanctions that are proportionate, dissuasive and effective. Sanctions and other regulatory actions taken by the CBA have a positive impact on the level of compliance among FIs and DNFBBs.
481. The deficiencies were considered and weighted, accordingly by the assessors who concluded that moderate improvements were required.

**Aruba is rated as having a substantial level of effectiveness for IO.3.**

## Chapter 7. LEGAL PERSONS AND ARRANGEMENTS

### 7.1 Key Findings and Recommended Actions

#### Key Findings

- a) Aruba has mechanisms that identify and describe the different types, forms and basic features of legal persons and arrangements. The information pertaining to the creation of legal persons is publicly available on the website of the Chamber of Commerce (CoC) and the Department of Economic Affairs (DEZHI).
- b) Aruba has implemented a multi-level approach regarding the maintenance of basic and BO information on legal persons. Basic and BO information is kept by FIs and DNFBPs (including notaries whose services are required in company formation) and is mostly relied upon by competent authorities. Basic and shareholders' information are kept by the CoC and the company itself. The basic, BO and shareholder information accessed by competent authorities are provided in a timely manner and are found to be adequate and accurate.
- c) There is some level of the understanding of ML/TF risks that are associated with legal persons among some competent authorities. This understanding is based on the findings of the NRA, which looked at some legal persons, and the knowledge of competent authorities. The country has applied some risk mitigation measures based on known ML/TF risks; however, the authorities have not assessed the ML/TF risks associated with all types of legal persons.
- d) The CoC does not have the necessary resources to properly undertake its functions and ensure that there is proper oversight of legal persons.
- e) Sanctions for breaches by legal persons are proportionate and dissuasive, however, the CoC has not applied any sanctions for breaches. The assessors were therefore unable to determine whether the sanctions are effective and proportionate from an effectiveness standpoint.

#### Recommended Actions

- a) The country should ensure that its legal framework allows for the identification of natural persons who have ultimate control and ownership of legal persons in all instances and not simply the shareholders, who may be different from the BO (in cases where the information is held by CoC and the companies themselves).
- b) Aruba should undertake a risk assessment of all types of legal persons and arrangements and implement risk mitigation measures commensurate with the risks identified.
- c) Aruba should ensure that the CoC is provided with adequate human and technical resources to conduct its oversight functions, including identification of breaches by legal persons.
- d) Sanctions should be applied in a proportionate and dissuasive manner where breaches are identified.
- e) Aruba should address the technical compliance deficiencies related to legal arrangements.

482. The relevant Immediate Outcome considered and assessed in this Chapter is IO.5. The Recommendations relevant for the assessment of effectiveness under this section are R.24-25, and elements of R.1, 10, 37 and 40.

## 7.2 Immediate Outcome 5 (Legal Persons and Arrangements)

### 7.2.1 Public availability of information on the creation and types of legal persons and arrangements

483. Aruba’s legislation recognises over 10 different types of legal persons ranging from corporations to sole proprietorships. The numbers and different types of legal persons are found in Table 1.6 located in Chapter 1 of the report. The CoC is responsible for the incorporation and maintenance of records related to legal persons. The majority of legal persons registered in Aruba are corporations and sole proprietorships with 7,289 and 6198 being active, respectively. On January 1, 2021, National Ordinance for the Introduction of Book 2 of the Civil Code of Aruba (*in dutch Boek 2 Burgerlijk Wetboek van Aruba*) entered into effect. The National Ordinance on the Introduction of Book 2 on the Law of Legal Persons (hereinafter referred to as “CCA, Book 2”) contains the legal requirements pertaining to various forms of legal persons in Aruba and allows for a more flexible approach in their incorporation. The new legislation also aims to phase out AVVs that were deemed to be vulnerable to misuse for ML. Although the new legislation addressed some of the technical requirements that are specified in Recommendation 24, there remain gaps in the legislation (see analysis and conclusion of R.24). As of January 2022, the number of legal persons included in the CoC’s Register amounted to 19,311, of which 132 were foreign companies which equates to 0.68 percent of the total number of companies. The CCA, Book 2 mandates that a legal person cannot be formed or incorporated in the absence of a deed signed by a civil law notary domiciled in Aruba.
484. The assessors, in assessing IO.5, also took into consideration that the law was amended in 2021 and therefore allowed for a short time to demonstrate effective implementation. The conclusion and findings in this section of the report are based on interviews conducted during the on-site visit with competent authorities and private sector officials along with a review and analysis of materials provided by the country.
485. The information pertaining to the creation of legal persons is available on the [website of the CoC](#) and the [Department of Economic Affairs \(DEZHI\)](#). The information contained therein provides guidance to the public on the requirements for the creation of legal persons and conducting transactions. It also provides basic information such as the name of the company, the address, directors, shareholders and whether the company is active or inactive. In most instances, the creation of a legal person requires the assistance of a notary, except in the cases of associations that can also be formed by multilateral legal act<sup>28</sup>. The notary is required to ensure that all of the documentation collected from the registrant is submitted to the CoC. The CoC is responsible for the registration of these companies and keeping the registers. The public can apply for an account called ‘mychamber’ to access basic information related to the legal persons and companies and can use this system to file the relevant information. At the time of the conclusion of on-site visit, the CoC was staffed with two persons and the authorities indicated that efforts were being made to recruit two additional persons. Considering the number of legal persons registered with the CoC, the assessors concluded that the CoC is inadequately staffed to conduct its oversight functions regarding legal persons.
486. Aruban law does not allow for the formation of trusts. TCSPs may act as trustees for foreign trusts and in those instances, are required to comply with the requirements of the SOSTSP Ordinance. Trusts that are operational are required to keep information on the identity, assets

<sup>28</sup> A multilateral legal act (in Dutch: “meerzijdige rechtshandeling”) is a declaration of intent of at least two persons, aimed at producing legal consequences, such as the conclusion of a marriage or of a contract-creating agreement (creating an obligation or of a cooperation agreement, such as the establishment of an association or a limited liability company).

and background of the UBO and identity of the settlor. The CBA, as the designated supervisor of TCSPs, issues the license and also keeps a list of these entities on its website, in addition to their status. There was a total of 10 TCSPs registered and operating in Aruba as of June 2021. At the time of the on-site visit, the core business of TCSPs did not involve acting as trustee but rather, acting as managing director and granting domicile to companies doing businesses in Aruba of which the UBO or investor is not an Aruban national.

### 7.2.2 Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

487. Aruba has not undertaken any comprehensive assessment that was geared towards the identification and understanding of ML/TF risks and vulnerabilities of legal persons. However, the 2021 ML NRA assessed entities such as notaries who are involved in company formation, accountants and lawyers who work closely with legal persons and considered the impact of such relationships. For example, the NRA found that one of the main ML threats to lawyers was the services offered in relation to AVVs. Competent authorities, especially LEAs, the PPO and the FIU, to some extent, are aware of the ML/TF risks that affect legal persons in Aruba as a result of expertise gained through the conduct of their functions. The CBA has evidenced a clear understanding of AML/CFT risks identified with FIs, DNFBPs and TCSPs (see details at IO.3). Whilst the CBA conducted a sectoral risk assessment, this did not address the extent to which the legal entities, save for the TCSPs, who may facilitate the misuse of legal arrangements (trusts) for ML/TF.
488. The 2021 ML NRA identified the trust sector as being a medium-high risk for ML. The findings were based on factors such as a review of criminal prosecutions and MLA which show illicit money being laundered by investment in local real estate and/or leasehold land. The real estate and/or leasehold land is often registered in the name of locally or offshore incorporated companies managed by local TCSPs. AVVs were identified as one of the entities that can be misused for ML activities, however, as of January 1, 2021, these types of companies were prohibited and the existing companies were given a 3-year phasing out period, thereby mitigating the risks.
489. The authorities have assessed the ML/TF risks associated with NPOs which are considered to be legal persons. The risk assessment was geared toward an assessment of TF and the risk of misuse of NPOs by terrorist and terrorist organisations. The risk assessment also found that associations and foundations are likely to be misused for ML. The findings were based on the number of ML investigations, prosecutions and convictions involving associations and foundations, for example, “*Case Ibis*” referenced in IO.6.
490. Notwithstanding the foregoing, as stated previously, some competent authorities, especially LEAs, the PPO, the FIU and private sector officials who were interviewed during the on-site, were aware of the risks posed by legal persons and arrangements and the need to identify the natural person behind the structures. The level of understanding is based on the number of cases that have been investigated and prosecuted involving legal persons as well as participation in the NRA exercises, which identified the vulnerabilities in the systems and resulted in subsequent amendment to the law to introduce mitigating measures, which are identified in the immediate paragraphs below. The CBA’s understanding is as a result of the conduct of sectoral risk assessments, on-site and off-site examinations, mitigating measures applied and increased compliance culture. The private sector officials, during the on-site, noted that they have conducted their own internal risk assessment where it is shown the need for scrutiny to be applied to legal entities and that all natural persons behind these entities are identified. It was concluded that there was some level of understanding by competent authorities, especially the FIU, LEAs and the PPO regarding ML/TF risks posed by legal

persons and arrangements operating within Aruba.

### *7.2.3 Mitigating measures to prevent the misuse of legal persons and arrangements*

491. Despite not having conducted a comprehensive risk assessment pertaining to legal persons and arrangements, the authorities, to a moderate extent, understand the ML risk associated with some legal persons, largely due to investigations and prosecutions where legal entities were involved. The authorities, to some extent, have implemented or are in the process of implementing some mitigating measures to prevent the misuse of legal persons and arrangements. The CBA, as part of its supervision mandate, has measures in place to prevent the misuse of legal persons and TCSPs that can act as trustees. These measures include issuance of guidance, off-site and on-site examinations and levying of sanctions for breaches identified (See Immediate Outcome 3 - Impact of Supervisory actions on compliance).
492. Upon incorporation, a notarial deed must be submitted, which ensures the identification of the persons involved in the company, proof of naturalisation and address, establishment permit if required and shareholders' information pursuant to the CCA, Book 2. In the registration process, companies must provide basic information on shareholders and ultimate holding companies which is required to be updated during the life of the company. Notaries in preparation of the notarial deed must also have regard to the AML/CFT State Ordinance where it is mandated that they must identify and verify the UBO regardless of whether the UBO is an Aruban or foreign national. Such updates must be sent to the CoC within eight months after the end of the financial year.
493. The AML/CFT framework also places obligations on service providers (FIs and DNFBPs) to assist in mitigating the misuse of legal persons and arrangements for ML/TF. The obligations on the service providers mean that legal persons and arrangements undergo CDD/EDD and provide BO information when dealing with these regulated sectors, which allows for verification and accuracy of the information provided.
494. The authorities took the decision to abolish AVVs as of January 1, 2021, based on findings in the 2021 ML NRA and other international reports such as Organisation for Economic Co-operation and Development (OECD) Global Forum. The findings showed that AVVs had a risk of being misused, to obscure funds for launderers.
495. The issuance of bearer shares for AVV and Limited Liability Companies (NVs) was repealed in 2012 and companies were granted a grace period until February 1, 2015, to legally convert existing bearer shares into registered shares or make them immovable (managed by a custodian such as TCSPs) as a result of an amendment to the Code of Commerce on February 1, 2012. Bearer shares and its prohibition are further regulated by the information contained the CCA, Book 2 which prohibits legal persons from issuing bearer shares by ensuring that all shares are registered. During the on-site, the authorities confirmed that the legislation (CCA, Book 2) was amended to ensure that all shares issued by legal persons are registered and the information kept in the shareholders' register is maintained by the Board of Directors. With regard to nominee shareholders, TCSPs can act as nominees, must be licensed and are subjected to supervision by the CBA. Licensed TCSPs are required to keep information concerning the identity of the nominator, assets and background of UBOs as stipulated by Art 8 of the TCSP State Ordinance. They are also mandated to conduct EDD when dealing with nominees. However, there was no indication that there is the required supervision in relation to the accuracy and currency of information that is kept by the TCSPs. There is a general prohibition for a person to carry out this type of service without a license (Art 2 of SOSTSP). Any person found in violation of this provision is subjected to administrative sanctions such

as a penalty charge order and fines not exceeding Afl. 1,000,000.00 (US\$555,555.00) per separate violation.

496. Further, another risk mitigation measure that was established by the authorities was the creation of a Screening Committee as a function of the NCTVI. In response to the 2021 NRA, it was decided by Ministerial Decree in January 2021, to establish a Screening Committee. The objective of the Screening Committee will be to screen and prevent the potential misuse of permits issued by the Government of Aruba or bids on a public purpose in an effort to prevent same from being used for criminal purpose and mitigate the risk of misuse by legal persons for ML. The foregoing will be only applicable to legal persons who are engaged in activities such as applications for work permits and public/government contracts. The Screening Committee was not operationalised at the time of the on-site visit.

#### ***7.2.4 Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons***

497. Aruba utilises a combination of measures to ensure that basic and BO information on legal persons is available in a timely manner and the information is accurate and up-to-date. The Trade Register Ordinance, CCA, Book 2 and the AML/CFT State Ordinance makes provision for the CoC, the company itself and FIs and DNFBPs to maintain basic and BO information. This section of the report will highlight the roles of the foregoing entities in the maintenance of basic and BO information. A significant number of the case studies provided by the jurisdiction demonstrated to some extent that the authorities, specifically LEAs and prosecutors can access and have been accessing basic and BO information to conduct their functions and render international corporation (see analysis in Chapter 8). BO information is generally accessed by LEAs, PPO and the FIU within a matters of hours and at a maximum, a day following a request for the information.

#### ***BO information held by FIs and DNFBPs***

498. Competent authorities can access basic and BO information on legal persons and arrangements from FIs and DNFBPs which demonstrated during the interview an understanding of their CDD, EDD and UBO requirements (See Chapter 5 IO. 4). This information can be accessed in a timely manner. FIs and DNFBPs, as part of their CDD measures are required to keep UBO information on legal entities which are their customers (see R.10). LEAs can obtain information from FIs and DNFBPs through the PPO which has wide access powers under the CCrPA. Competent authorities such as the CBA and FIU have access directly through their respective legislation and the AML/CFT State Ordinance. The assessors found that LEAs and the PPO demonstrated that they have no difficulties in obtaining the required information from the FIs and DNFBPs and this information is reliable, accurate and up-to-date. The authorities noted that the information is readily available within 24 hours of a request to access same. The information will nevertheless only be applicable to legal persons which are customers/clients of the FI or DNFBP. Case examples 7.1, 7.2 and 8.6 (international cooperation) provide good context and demonstrate competent authorities' ability to obtain BO information from reporting entities in a timely manner.

#### ***Shareholders (BO) information held by the Chamber of Commerce:***

499. Competent authorities can access basic and shareholders' information from the CoC in a timely manner. The CoC's website contains basic information, which is accessible to the public. The CoC acts as the central registry for the maintenance of information required to be kept by companies which includes shareholder information. The information held by the CoC is frequently utilised by competent authorities. The CCA, Book 2 mandates the relevant legal

persons to submit all correct shareholders' information, changes and accompanying document(s) to the CoC which maintains the trade register. LEAs and the PPO access this information during investigations and for rendering assistance to their counterparts. The information that is captured by the CoC is only limited to shareholders' information and does not fully capture all instances of BO information (i.e. the natural person who owns or controls the legal person) as the shareholder does not necessarily have to be the BO. Although some competent authorities interviewed expressed concerns about the accuracy of the information available at the CoC by indicating that the legislation does not allow for the verification of the information, the legislation does make provision for the Board of Directors of the companies to verify the shareholders information using independent and reliable sources (see R.24).

500. Companies are required to submit factual and complete information on shareholders to the CoC, including changes to shareholders. The CoC relies heavily on notaries who are involved in company formation and are subject to AML/CTF verification, to conduct some level of verification and Board Directors to ensure that the information submitted is factual. Despite some competent authorities expressing concerns about the extent to which verification of BO information is being conducted, based on interviews conducted with competent authorities (primarily the CBA) and regulated sector (primarily banks and notaries) and documents received and reviewed, the assessors found and were satisfied that verifications are conducted by the notaries and some other service providers, such as banks and this is reflected in the work undertaken by the CBA during its supervision. Based on the CBA's AML/CFT Supervision of the sector, notaries are 100 percent compliant with their requirement to maintain accurate and update BO information as required by the provisions contained in the AML/CFT State Ordinance (see paragraph 370-IO4- Chapter 5). Notwithstanding the lack of on-site inspection of notaries in 2020 due to the COVID-19 Pandemic, the assessors found that the robustness of CBA's supervision of this sector allowed for a determination that the information collected by the notaries were verified. Further, it is to be noted that only six notaries were operational in Aruba at the time of the onsite and the CBA, based on their previous onsite inspections and desk reviews conducted, was able to verify that the notaries are in compliance with the requirements. The definition of UBO in the AML/CFT State Ordinance is in keeping with the FATF's definition of BO. The work of the CoC to address the foregoing issue and to ensure that all information is submitted within the stipulated time period is impacted by inadequate human resources as, at the time of the on-site, there were only two persons assigned to the CoC. Aruba's authorities recognised that the CCA, Book 2 does not fully capture the BO information as defined by the FATF and have communicated their intention to amend the Trade Register Ordinance to ensure the ultimate BO of legal persons are kept in the register maintained by the CoC (UBO Registry). The time period for the amendment of the law and implementation of the UBO registry was not communicated by the authorities.
501. There are penalties for not providing accurate and up-to-date information to the CoC in accordance with the CCA, Book 2 and the Trade Register Ordinance (see R.24). Obligations for providing accurate information are placed upon the Board of the company and also the notary who is involved in the company formation. Notwithstanding the criminal sanctions that can be applied for failing to regularly update the company's register and depositing same with the CoC, the assessors, based on interviews and their analysis, found that there is the likelihood that persons are circumventing this requirement, due to the fact that the CoC does not have the necessary human resources to ensure compliance with the law. The assessors determined that whilst the legislation does not mandate the CoC to verify the information, the CCA, Book 2 and the AML/CFT State Ordinance place the obligation on the Board of the legal persons, the FIs and DNFBPs respectively to verify such information using independent sources and there is a penalty for non-compliance. This provides some safeguard against inaccurate

information being submitted to the CoC. Due to the combined approach utilised by Aruba, the lack of verification by the CoC is treated as a minor deficiency within the system as the framework is largely in place.

***Shareholders (BO) information held by the legal persons***

502. LEAs can access information from legal entities through the PPO, which has the power to request information from any person. The Board of Directors of legal persons is required to obtain information on corporations and limited liability companies are required to obtain and maintain information on the shareholders and utilise independent and reliable sources of information to verify the shareholders. In Aruba, a legal person can be the shareholder of another legal person with no requirement for the Board of Directors to determine the natural person who owns or controls the legal person. The assessors found that the requirement is only applicable to shareholders and is therefore not in alignment with the definition of a BO as outlined in the FATF Standards (Glossary), in all cases. Despite the shortcomings that exist in the legal framework and on the basis of interviews conducted, information provided including case examples and feedback from the global network related to Aruba's ability to render international cooperation including providing BO information, the assessors are satisfied and found that LEAs and other competent authorities are able to identify the BO(s) of legal persons. The assessors also took into consideration the circumstances, context and factors that exist at the time of the completion of the on-site to arrive at its conclusion. Some of these factors include size of the jurisdiction (Aruba is a small country), most of the legal persons registered in Aruba are domestic companies, the case examples that were provided and the existence of a good working relationship exists between the regulated entities including notaries and TCSPs and the competent authorities, especially the FIU. The challenge identifying the BO will arise in some instances where the legal person is a foreign company.
503. The Board of Directors of companies has a statutory obligation to ensure that the shareholder and other relevant information is updated and correct information is submitted to the CoC within the time stipulated in the legislation. The information must be submitted to the PPO once requested in a timely manner and there are sanctions that can be applied for failure to produce the required information. From the information submitted by the LEAs, requests for information were made (pursuant to their powers under the Criminal Code) to the CoC, MTCs, banks and notaries for investigations into various offences such as forgery, embezzlement, fraud, bribery, scams and human trafficking. The information was found to be useful and accurate and was supplied within 1-3 weeks. The assessors found that there is no guarantee that the information is being kept by the legal person as the CoC does not have the human resources and capacity to ensure that legal persons are complying with the law.

***Case Example 7.1: Obtaining BO information from reporting entity***

**Competent authorities**

Reporting Entities, MOT (FIU-Aruba), the Supervisory Authority, the PPO and a foreign FIU

**Relevance for FATF Immediate Outcomes:**

IO.2 International cooperation  
 IO.4 Preventive measure applied by FIs and other reporting entities  
 IO.5 Prevention of misuse of legal persons and arrangements  
 IO.6 Financial intelligence

### Summary of the case

An established legal entity (A) in Aruba is owned by another legal entity (B) in a jurisdiction in the American region. Years after the establishment of entity (A), the owners of entity (B) were designated on a ML-sanction list of a third jurisdiction. The reasons for the designation were the convictions for drugs trafficking and partaking in a criminal organisation.

The service provider, who represents entity (A), reported the designation of these owners to FIU-Aruba and shared that entity (A) had funds in Aruba.

Additionally, the service provider (providing financial services) reported the designation of these UBOs, to FIU-Aruba, as well.

These 2 UTRs were analysed. The FIU confirmed the information regarding the UBOs with the Chamber of Commerce and the designation on the sanction list with the foreign FIU from the involved jurisdiction. Additionally, the FIU requested additional information from both reporting entities, pursuant to Art. 27 of the AML/CFT-State Ordinance.

Although the ML-sanctions list of the third jurisdiction only has effect in the jurisdiction FIU-Aruba deemed it important to provide the information to this jurisdiction and to explore possibilities for a local criminal investigation/prosecution. Consult-meetings were held with the FIU of this third jurisdiction and with the local prosecutor.

Upon conclusion of the analysis, FIU-Aruba shared the intelligence with the foreign FIU (in the third jurisdiction). Consent was given to disseminate the intelligence to the domestic competent authorities (incl. the local justice and tax department).

1. Process used to access the information: Pursuant to Article 5 of the AML/CFT-State Ordinance, the involved service providers have a CDD-obligation regarding their client, entity (A). Subsequently, the service providers have a reporting obligation, when there are grounds to suspect that the transaction (the services provided) is related to ML/TF. All relevant documentation must be provided to the FIU with the UTR. Moreover, pursuant to Article 23 of this Ordinance, FIU-Aruba accessed the registry of the Chamber of Commerce.
2. Time period: One UTR was filed promptly and the other one was filed late. The supervisory authority was informed by the FIU regarding the tardiness. However, although the late reporting, the information was still relevant, in order to take the required actions. To access the registry of the Chamber of Commerce, the FIU made a courtesy call to the designated person at the CoC before the on-site visit to consult their registry. The information was obtained within the hour. At that time, FIU-Aruba was located across the street of the CoC.
3. Usefulness of the information; the information was accurate and useful: Because of the obligation to have current information about entities and their UBOs, the reporting entities could identify the designation on the sanction list and subsequently report them. The unusualness of the transaction is that it presumed a link to ML. Additionally, the information initiated actions by the relevant competent authorities.

*NB: Elaboration is currently not opportune, due to the ongoing status of the case.*

*Case Example 7. 2: Obtaining BO information*

**Competent authorities**

Reporting Entity, Supervisory Authority, FIU-Aruba and foreign FIUs

**Relevance for FATF Immediate Outcomes:**

IO.2: International cooperation

IO.4: Service providers apply preventive measures

IO.5: Availability of UBO information for competent authorities

IO.6: Use of financial intelligence

IO.10: Prevention of moving and raising funds and abusing NPOs.

***Summary of the case***

It was mentioned in an article that a foreign NPO, which had ties with a terrorist group, had assets in Aruba.

The reporting entity which provides services for the legal arrangement and is owned by this NPO immediately conducted its CDD-procedures and was in close contact with the supervisory authority and the FIU. Before the conclusion of the CDD-process, the reporting entity filed an UTR (based on the subjective indicator) with the FIU for precautionary reasons.

FIU-Aruba conducted its own analysis and took the following in consideration:

- The UTR contained information that the NPO, mentioned in the article was owner of a legal arrangement in Aruba;
- The legal arrangement had property in its name;
- A potential board member for this NPO was a member of the terrorist group;
- Although no current evidence of participation in this terrorist group was found, the NPO declined this person as a board member; and
- The assets registered in Aruba were used for the designated community, which is within the objectives of the NPO.

The reporting entity received (additional) information from a legal advisor of the foreign NPO, which was forwarded to the FIU.

Other (foreign) FIUs were approached for their respective views. FIU-Aruba was referred to a public report regarding an investigation conducted by a government agency in the jurisdiction where the NPO was established.

FIU-Aruba concluded that there was no (prosecutable/criminal) link between the assets and the terrorist group.

- a) Process used to access the information: The analyst went to the land registry department to obtain the information regarding the UBOs of the assets. The

information is available digitally but is not obtainable off-site. A courtesy call is made to the land registry department to inform that a FIU-analyst would visit the office to obtain information.

- b) Time period: Due to the urgency of this case and the high priority given to terrorist/terrorist financing cases, the analyst went the following day to retrieve the information about the legal arrangement in Aruba, owned property and its UBOs.
- c) Usefulness of the information: The information was accurate and useful and therefore the information of the reporting entity was immediately available and easy to verify.

### *7.2.5 Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements*

#### *Legal arrangements (Trusts)*

504. Aruban law does not allow for the formation of domestic trusts, however, TCSPs can act as trustees for foreign trusts which are required by law to keep information on the identity, assets and background of the UBO and the identity of the settlor. There are currently no TCSPs in Aruba that have foreign trusts as clients or acts as trustees for foreign trusts. The State Ordinance pertaining to the Supervision of Trust Services Provider (SOSTSP) makes provision for annual reporting by TCSPs to the CBA, submission of financial statements and the identification of assets and background of UBOs. Further, TCSPs are subject to AML/CFT requirements under the AML/CFT State Ordinance including those specified at Arts. 4 and 5 related to the maintenance and verification of UBO information. TCSPs have demonstrated that they are 100 percent compliant with the maintenance of BO information (see paragraph 370- Chapter 5). Compliance with the requirement is ascertained through the CBA's supervision of the sector which includes annual reporting by TCSPs regarding their client base, AML/CFT framework, CDD procedures and reporting. The information is verified by the CBA who also conducts on-site inspections to confirm compliance. The AML/CFT State Ordinance places an obligation on the TCSP to ensure that the UBO and the settlor of the trust are identified. This information held by the TCSP can be accessed by competent authorities. Overall, the legislative requirement relative to the operation of TCSPs that operate as Trustees contains gaps that impact the effectiveness of the system. Given the size of the sector, the medium-high risk associated therewith and the presence of a solid supervision regime relative to TCSPs, the assessors determined that the deficiencies identified are minor in nature.

### *7.2.6 Effectiveness, proportionality and dissuasiveness of sanctions*

505. A person can be held liable to a term of 3 years imprisonment or a fine of Afl 5.000.00 (US\$2,793.00) for failure to comply with an order issued or a formal request made under statutory regulation by any person charged with any supervisory tasks or detection and investigation of a criminal offence. A person can be liable for not providing registers to the CoC which contain basic and beneficial ownership information and for failure to file annual returns (Arts. 116, 120, 171 of CCA, Book 2). The CoC can also apply to the court for the dissolution of a legal person if the requirements are not complied with by the entity (Art 25 of the CCA, Book 2). Directors can also be suspended or dismissed by the court if they improperly perform their duties or for any other reason (Art. 140).
506. For the period under review, there is no evidence that the CoC has levied sanctions against legal persons or arrangements for failure to comply with their obligations under the CCA, Book 2. The CBA, as the supervisory authority for TCSPs, levied administrative fines against TCPs for AML/CFT breaches (see IO.3) which were proportionate and dissuasive. The non-application of sanctions by the CoC is not an indication that legal persons are not committing

breaches but may be due to the lack of resources at the CoC to conduct oversight and to identify breaches and apply the necessary sanctions.

#### Overall conclusion on IO.5

507. There is publicly available information on the creation and types of legal persons. Aruban law does not allow for the formation of trusts, however, TCSPs can act as trustees for foreign trusts and are required to maintain all relevant information. Basic and BO information is maintained by the companies, CoC, FIs and DNFBPs and are available to competent authorities in a timely manner. Companies and the CoC are only required to keep shareholders information and this represents a deficiency within the system as shareholders information in all instances does not equate to BO information. The CoC as supervisory authority for legal persons lacks the relevant resources to conduct its functions.
508. Despite not fully conducting a ML/TF risk assessment of all legal persons, competent authorities, to some extent, are aware of the ML/TF risks affecting the sector and have taken some form of risk mitigation measures.
509. LEAs and other competent authorities can access accurate and up-to-date BO information in a timely manner to conduct their functions, including rendering international cooperation despite the deficiency that exist with BO information held by the CoC and companies. The deficiencies in Aruba's system were all considered and weighted, accordingly by the assessors who concluded that major improvements were needed.

**Aruba is rated as having a moderate level of effectiveness for I.O. 5.**

## Chapter 8. INTERNATIONAL COOPERATION

### 8.1. Key Findings and Recommended Actions

#### Key Findings

- a. Competent authorities have demonstrated, to a large extent, that they are actively responding to formal international cooperation requests for ML, associated predicate offences and the provision of basic and BO information in a timely manner. In this regard, the country has received mostly positive feedback from the global community concerning the quality and timeliness of assistance provided. Competent authorities have also demonstrated to a moderate extent that they are seeking international cooperation via formal and other means of cooperation to assist in their functions, including investigations and prosecution of ML, TF and supervision, nevertheless, some improvement is needed relative to the seeking international cooperation regarding the identification, tracing, seizing and confiscation of assets that have been moved or located abroad.. Requests for assistance is largely sought in line with ML/TF risks.
- b. Aruba has a robust technical compliance framework to facilitate international cooperation via both the formal and other means of cooperation. The PPO has primary responsibility for MLA and extradition. MLA requests are given priority based on the timeliness identified in the request and the nature of the request. There is, however, no documented procedure for the handling of MLAs. The extradition legislation and standard operating procedures thereto streamline the process by outlining specific timelines, thereby making it efficient.
- c. Aruba has a case management system in place regarding MLA and extradition. The case management system, nevertheless, does not make provision for tracking, feedback or follow up to be consistently undertaken. However, this is not detrimental to Aruba as the volume of requests received from foreign counterparts is not significant and is manageable. Further, the feedback from the Global Network does not show any difficulties in Aruba's provision of international cooperation. The responses received show that the jurisdiction responded to requests in a timely manner.
- d. Statistics pertaining to the number of requests for information/cooperation sent by some LEAs, are not properly maintained and does not fully reflect the extent to which LEAs are seeking international cooperation related to ML and associated predicate offence (specifically high risk offences). The inability of some LEAs to provide comprehensive statistics to demonstrate that they are seeking other forms of cooperation, pertaining to the tracing and identification of assets and to investigate ML and other predicate offences to a greater degree, was considered as a minor deficiency, given the existence of qualitative data in some instances.

### Recommended Actions

- a. The PPO should enhance its case management system to ensure that information is maintained on the timely processing of requests, follow up done and feedback provided, which will also assist in the monitoring of risks on an ongoing basis and facilitate an effective case management system.
- b. The PPO should establish documented procedures for the handling and tracking of MLAs.
- c. Competent authorities, specifically LEAs, are encouraged to make more use of measures that exist to facilitate international cooperation in the conduct of their functions, especially when pursuing ML investigations that are cross-border in nature and identifying and tracing assets that may have been moved abroad.
- d. LEAs, specifically the KPA, should ensure that statistics pertaining to seeking and providing international cooperation and using other forms of cooperation, are accurately and consistently maintained.

510. The relevant Immediate Outcome considered and assessed in this Chapter is IO.2. The Recommendations relevant for the assessment of effectiveness under this section are R.36-40 and elements of R.9, 15, 24, 25 and 32.

## **8.2. Immediate Outcome 2 (International Cooperation)**

511. International cooperation is critical in Aruba's context given its geographical location and the risks it faces as a destination country for foreign proceeds and foreign predicate offences. The technical compliance framework (R.37-40) that exists is sound and allows competent authorities to actively make and respond to requests for international cooperation, which is assisted by its own network and that of the Kingdom of the Netherlands. Competent authorities are also involved in other forms of cooperation through various channels, such as the Egmont Group, CCLEC and the International Criminal Police Organisation (Interpol). Statistics on international cooperation are generally maintained in some instances at an agency level, however, there is a need for the maintenance of comprehensive statistics by all competent authorities. Among the Netherlands, Curaçao, Sint Maarten and Aruba (the Kingdom), there are different legal requirements that determine how cooperation between the countries should take place, including the sharing of information and rendering assistance with regard to ML, associated predicate offences and TF.
512. Due to its Constitution and foreign policy, Aruba is bound by several treaties and agreements through the Kingdom of the Netherlands, which provide a basis for MLA between countries and the Netherlands. Examples of some of these treaties include those that were concluded with the United Kingdom and the Netherlands.

### ***8.2.1. Providing constructive and timely MLA and extradition***

513. Aruba has a sound legal basis to provide and seek a range of MLA and extradition in relation to ML/TF and associated predicate offences. Its legal framework for MLA and extradition is set out in the CCrPA, the Extradition Decree and the different treaties, the provisions of which are largely consistent with the requirements of the FATF Recommendations (see R.37-39).
514. Aruba has provided assistance across the range of MLA and extradition requests in a constructive and timely manner. This is based on an analysis of the processes in place, interviews with the relevant authorities, statistics on the provision of assistance and review of case examples which showed valuable cooperation experiences and feedback from the FATF Global Network. The feedback received from the FATF Global Network reflected that the information was provided in a timely manner and was useful in enhancing investigations and prosecutions. Cooperation is done to a large extent with the Netherlands and the USA.

#### ***MLAs***

515. The PPO is designated by the CCrPA as the Central Authority for MLA requests pertaining to criminal matters in Aruba and the execution thereof is largely done by the Chief Prosecutor with some delegation to the appointed prosecutor who is responsible for ensuring execution by the relevant agencies. There are two dedicated persons (a prosecutor and legal assistant) who manage the processing of MLA requests and both individuals demonstrated their knowledge in the processing of MLA requests. MLA requests are given priority, based on the timelines contained in the requests and the nature of the request, to ensure timely execution thereof. The responses from the Global Network reflected that Aruba responds in a timely manner. The PPO maintains a case management system, whereby all incoming requests are registered and scanned within the system, detailing the date received, requesting country, timelines and case prosecutor assigned. The confirmation of receipt is sent to the requesting country and passed

to the prosecutor to action. All requests are sent to the relevant competent authority for execution within a week.

516. The case management system that exists allows the PPO to effectively manage the handling and processing of MLAs. Despite there being no documented procedures in place for tracking, feedback and follow up on MLA requests, the process is seamlessly managed by the PPO as the volume of requests that is received is minimal. Most MLA requests are processed based on urgency, as may be stipulated in the request and in any event within three months, which is an indication that such requests are handled in a timely manner. The timeline for handling the request is also dependent on the type and volume of information being requested and the availability of the information.
517. The processing of the requests is largely done by the Infodesk on instructions of the PPO. The Infodesk is a department within the KPA that acts as the liaison for all international and domestic requests and coordinates the registration and execution of the requests. All persons designated to handle such requests are required to maintain confidentiality. Prior to the sending of a MLA request, countries are encouraged to engage with the different competent authorities, such as the police, to determine issues such as to whom the request should be addressed, the structure of the request and whether the information is available in Aruba. The foregoing allows the relevant agencies to gather the information prior to the sending of the request and facilitate the timely processing of the request. The assessors found that this process is often utilised between Aruba and foreign counterparts, especially the Netherlands and the USA.
518. The mandatory and voluntary grounds for refusing to provide assistance are set out clearly in the CCrPA and appear to be reasonable and justified. Aruba has recorded no refusals for the period under review. The authorities in Aruba, namely the PPO and the KPA, are able to seize, at the request of a foreign state, for several purposes including sanctions involving the payment of money aimed at the deprivation of unlawfully obtained gains or proven to be such, which may be imposed by a foreign state.

*Table 8.1. Incoming requests for period January 2015-May 31 2020*

Year	2015	2016	2017	2018	2019	2020
MLA requests received	36	40	35	42	30	45

519. The PPO received a total of 183 requests between January 2015 and May 2020 from over 19 jurisdictions. The majority of the requests received by Aruba were sent by the Netherlands and the USA and is indicative of the cross-border threats that exist between the countries. The requests for the years 2015-2019 related to ML and predicate offences such as drug trafficking, fraud, forgery, firearms trafficking, embezzlement, laundering of gold, scams and theft under aggravating circumstances. Most of the requests were to use investigative measures such as providing data, identifying legal entities, taking witness statements and providing information.
520. Cooperation also involved searches and seizures, to identify moveable assets that may have been registered in Aruba and to confiscate those assets. For example, requests were made by the USA, Colombia, Chile and the Netherlands for the seizure of assets believed to held by FIs and other assets such as cars, houses and land as well as other valuables such as watches. In some instances, assets were found and seized on behalf of these foreign counterparts. There were no TF related MLA requests during the period under review and the requests received in 2020 did not relate to ML. On timeliness, case records between 2015-2020 revealed that the PPO usually acknowledges receipt of the MLA, requests clarification from the jurisdiction if required and responds to the substantial request once completed. The PPO maintains close

contact through emails and telephone calls with the KPA which executes the requests. The information is usually provided within a satisfactory timeframe, which is evident from the statistics provided that showed 90% of the requests were executed within three months. Close contact is maintained with the requesting party through point of contacts via emails, telephone and conference calls during the execution of an MLA, especially those in the USA, Curaçao and the Netherlands.

#### ***Box 8.1. Case Example- MLA Requests***

The Department of Fiscal Intelligence and Fraud (FIOD) in the Netherlands carried out an investigation into acts of ML by a suspect residing in Aruba. A request for assistance was received on July 19, 2019 and a further follow-up request on October 11, 2019, in relation to locating, identifying, confiscating and sharing of intelligence and information relating to the suspect. Several raids and searches were conducted on October 29, 2019, simultaneously in the Netherlands, Aruba and Germany, which identified assets for confiscation.

#### ***Box 8.1 (a) Case Example: Domestic Coordination and International Cooperation (Case Bont)***

Competent authorities involved: FIU, Bureau of Financial Investigation (BFO), KPA, PPO, Aruba Tax Authorities and Customs (All form part of the Asset Recovery Team)

#### ***Impact on FATF Immediate Outcomes:***

- 1: Cooperation and Coordination among domestic competent authorities
- 2: International Cooperation
- 6: Use of Financial Intelligence
- 7: ML Investigations
- 8: Confiscation

#### ***Case Summary:***

The ART (AfpakTeam) received information in 2018, about an ongoing financial criminal investigation conducted by the authorities in a foreign jurisdiction. One of its primary targets was suspected to be a facilitator for laundering drug money. The ART ascertained that this primary target frequently visited another continent but officially lived in Aruba. The ART, through its investigations, located several assets and shared this information with its foreign counterparts who found that the information was useful. Following the sharing of the information, the foreign authorities followed up by sending MLA requests in 2018 and 2019. A third MLA request was received by Aruban authorities from the foreign authorities requesting that permission be granted to search the suspect's premises for evidence, as well as, to confiscate goods of value. Subsequent to the receipt of the MLA request, a number of searches were conducted simultaneously in different places in several countries, including Aruba. The foreign authorities also sent investigators to Aruba to work with the ART. The result of this combined effort was that search warrants were executed on two places, allowing for the seizure of evidence and assets for the repatriation of illicit proceeds. No suspects were apprehended. This was deemed preliminary action to gather evidence and to confiscate goods of value.

*Outcome of case:* The investigation is still ongoing by the foreign authorities.

521. Aruba is also able to provide MLA related to confiscation and adopt other provisional measures. The legal requirement for such is set out in Recommendation 38 and the country has demonstrated that it can provide the required level of assistance. Examples of cooperation pertaining to such requests were provided in the numerous case examples that were provided by Aruba, including Chicken Cash/Tunis Case, Case Bont, Case Sky and Case Erba. These cases are reflected in IOs 2, 6, 7 and 8, where in some instances, such as the *Tunis* case, assets were confiscated and repatriated to the Netherlands. Reference is also made to Table 3.25 with regards to the seizure and confiscation of proceeds from foreign predicates. MLA requests have also been granted in cases involving the seizure and confiscation of assets and parallel financial investigations as is demonstrated in the case study in Box 8.1.

### *Extradition*

522. Aruba's extradition procedures are laid out in the Extradition Decree of Aruba, Curaçao, Sint Maarten which governs the extradition of persons to and from Aruba. The extradition regime of Aruba is supported by the extradition treaties signed by the Kingdom of Netherlands and extended to its constituent countries. Extradition requests are processed through diplomatic channels, namely from the Department of Foreign Affairs in the Hague to the Department of Foreign Affairs in Aruba for onward transmission to the PPO. If the extradition is supported, court proceedings are initiated by the PPO and an official will request the court to issue a warrant for an arrest to be executed by the police. The court determines whether the person is eligible for surrender and the decision is then communicated to the Governor who in turn ensures that there is compliance with the decision of the court. There may be instances where the person waives his rights to formal extradition proceedings (extradition treaties between Netherlands and the USA, Netherlands and Canada). There is precedent that this can be done as, in May 2011, an individual waived his rights to formal extradition proceedings and was extradited in June 2011 (Case reference number RHV030/2011). In urgent cases, the Prosecutor General can issue a provisional arrest warrant pending the formal extradition request pursuant to the Extradition Decree. In this instance, the wanted person must be before the Attorney General within 24 hours after his arrest, according to the CCrPA.
523. All extradition requests follow the internal standard operating procedures developed by the PPO which detail the process and timelines. Timeliness is also reflected in the extradition treaties, for example, the treaty between Aruba and the USA which identifies that a provisional arrest warrant is valid for 60 days, whereas the treaty between Aruba and Australia is valid for 45 days. The information in the extradition request is registered by the legal and policy advisor within the PPO who is responsible for monitoring the request and is supported by another member of staff. These individuals demonstrated their knowledge of the processes involved and timeliness required by the standard operating procedures.
524. Extradition requests are prioritised based on the nature of the crime and the timeline indicated by the Requesting State and as stipulated by the specific treaty (where applicable). For example, upon receipt of the request, copies are made to ensure that the court, prior to the hearing of the matter, already has the file. Extradition requests are executed within 3-4 months and any delays within the process are communicated immediately to the requesting state by emails, teleconference, liaison officers or where applicable, formal correspondence through

diplomatic channels. Based on information received from the Global Network and cases presented, requests are generally considered and executed in a timely manner.

525. For the period 2015-2020, Aruba received a total of five requests for extradition from Canada, the USA and Australia. These requests related to predicate offences for ML such as drug trafficking and murder. There was no extradition request in relation to TF offences. Aruba has not recorded any refusal of extradition requests for the period. One of the pending extradition requests is awaiting the outcome of the criminal trial that is being conducted by Aruba, whilst in another instance, the suspect is a fugitive and has not been located on the island. The assessors noted that all requests were processed and there was no backlog in the system.
526. Aruban law does not permit the extradition of its nationals except where, in the opinion of the Governor, it is guaranteed that the national is sentenced to a non-suspended prison term and can serve his sentence in Aruba. Nevertheless, Aruba also has the option of taking over the prosecution of its nationals following a request from a foreign jurisdiction. Although, dual criminality is required, Aruba considers the totality of the conduct and it is immaterial that the acts or omissions are categorised or named differently, or the constituent elements of the offence differ.

***8.2.2. Seeking timely legal assistance to pursue domestic ML, associated predicates and TF cases with transnational elements***

527. Aruban authorities request MLA to the extent needed to build its cases and identify other targets in a timely manner and this was demonstrated in the case examples provided by the jurisdiction to the assessors. Outgoing MLA requests are prepared and handled by the PPO, following similar procedures as incoming requests. Aruba's legal and operational framework allows for execution of MLA requests in a timely manner. Assigned case prosecutors from the PPO work closely with investigators from the KPA, thereby ensuring that MLA requests are processed in a timely manner. For example, please refer to the Alpina case (Box 3.17, page 98), IBIS Case (Box 3.4. Case Hamburg (Box. 3.5) pages 66/67, Sealand and Case Tunis (Box 3.18,). The case prosecutor is responsible for preparation of the MLA request with all the relevant information such as contact detail which will enable the requested country to make contact should the need arise. A review of cases submitted by Aruba and the dates MLA requests were sent, clearly demonstrates that MLAs are being sought in a timely manner. The assessors found that there are no impediments within the MLA framework which prevents the PPO and LEAs from seeking MLA in a timely manner to pursue investigations, prosecutions and confiscations. The PPO also follows up on the request through liaison officers. Most requests originated from LEAs, which demonstrated a high level of understanding and commitment to requesting assistance when needed and there are procedural mechanisms in place that function to a large extent. These LEAs have conducted investigations into cases of forgery, tax fraud, drug trafficking, bribery and corruption as is demonstrated in Table 8.3. These offences were considered high risk in the 2021 NRA. MLA requests are dispatched via priority mail or through diplomatic channels.

***Table 8.2. Outgoing MLA requests for the period January 2015-May 31, 2020***

	2015	2016	2017	2018	2019	2020
MLA requests sent	19	21	18	15	10	13

528. As demonstrated in Table 8.2, the authorities have sent a total of 96 MLA requests between 2015-2020. The information also shows that there was a decline in the number of MLA

requests from Aruba to foreign jurisdictions between 2016 and 2019. The authorities noted that one of the reasons for the decline in the requests sent, is that in the past year, Aruba had two major corruption cases which started in the year 2016 and occupied its resources, therefore, requests for assistance were specifically targeted to these cases. The underlying offences, vis à vis outgoing MLAs, infringed on the national regulation on MTCs (underground banking), embezzlement, forgery, ML and tax fraud. The purpose was to obtain information on, for instance, shareholding companies, witness statements, bank transactions and transfers and obtained information on legal and beneficial owners. In relation to TF cases, there have been no MLA requests made to foreign jurisdictions.

529. The authorities provided limited evidence to demonstrate that international cooperation is being sought to identify, trace, restraint and confiscate assets that may have been moved abroad. The case example represented in Box 3.23, nevertheless demonstrates that the authorities have sought international cooperation in that regard. As mentioned in the analysis of IO.8, competent authorities in Aruba have communicated and demonstrated a willingness to pursue proceeds of crime located abroad, if and when required or the situation arises. The assessors considered the foregoing deficiency to be moderate having weighted same, taking into consideration the risk and context of the jurisdiction. The authorities communicated that investigations have been impacted largely due to a lack of human resources within the competent authorities to investigate multiple cases simultaneously and the decision was therefore taken to focus on targeted cases (corruption) for the period 2017-2020. Between 2015-2020, Aruba made no restraint requests or forfeiture requests to foreign jurisdictions, however, for that same period, requests were made and received by the PPO, as illustrated in Table 8.3.

*Table 8.3. Criminal activities identified in outgoing MLA requests from 2015-2020*

Year	Suspected Criminal Activity -Outgoing requests	Suspected Criminal Activity - Incoming requests
2015	Drug Trafficking, Forgery, ML, Tax Offences	Drug Trafficking, Forgery, ML, Fraud
2016	Drug Trafficking Forgery, ML, Fraud	Drug Trafficking Forgery, ML, Fraud
2017	Corruption, ML, Drug Trafficking	Drug Trafficking Forgery, ML, Fraud
2018	Smuggling, ML, Drug Trafficking	Drug Trafficking Forgery, ML, Fraud
2019	ML, Forgery, Fraud, Drug Trafficking	Drug Trafficking Forgery, ML, Fraud
2020	Fraud, Forgery Corruption, ML	Drug Trafficking Forgery, ML, Fraud

### *Extradition*

530. The process for outgoing extradition requests is governed by the Extradition Decree of Aruba, Curaçao and Sint Maarten and the standard operating procedures are similar to those of incoming requests, with the PPO providing assistance to all LEAs throughout the process. In determining whether to make a request for extradition, several factors are considered, including the seriousness of the offence, likely sentencing and the location of individuals.
531. For the period 2015-2020, Aruba recorded one outgoing extradition request which was made to Venezuela in 2015, pursuant to the United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances. In January 2016, the PPO received information

through diplomatic channels that the court rejected the request on the basis that the person was Venezuelan and Venezuela assured that it will take over the prosecution of the individual. The authorities indicated that during this period, apart from the one extradition request that was sent to Venezuela, they had no reason to seek extradition in relation to other cases being investigated and prosecuted.

### *8.2.3. Seeking other forms of international cooperation for AML/CFT purposes*

532. Aruba actively engages in other forms of international cooperation and is achieving results from successful cross-border cooperation. Competent authorities regularly seek forms of cooperation from their foreign counterparts to properly undertake their functions. Competent authorities also actively participate in various international AML/CFT networks, which contributes to the solidification of the informal cooperation, exchanging information and supporting operational activity with foreign counterparts.
533. **Aruba Police Force (KPA):** The KPA communicates and exchanges information with foreign counterparts through emails, telephone calls or meetings. These contacts have been established with the Dutch Royal Police Force KLPD (KLPD) through both formal and informal means. There is a KLPD representative who acts as a liaison with the Financial Investigations Bureau of the KPA and coordinates with counterparts in Curaçao and on matters related to the offences of fraud and ML related money transfers from the Netherlands to Aruba and South America. The criminal investigators of the KPA also maintain contact with the Investigation Unit of the Dutch Tax Department as well as with the authorities in the USA such as the DEA and Homeland Security. The KPA, through KLPD channels, maintains contact with Venezuela, the Dominican Republic and Colombia. The coordinator of the Financial Investigations Bureau is a member of the ARIN-CARIB, which allows for the sharing of information on AML/CFT matters. Membership with ARIN-CARIB has resulted in requests from countries such as Anguilla, Barbados, Bermuda and the Czech Republic. Requests were made regarding the gathering of information for ongoing fraud investigations with possible ML links. Furthermore, the KPA has received positive feedback from the countries to which they have provided information.
534. The Infodesk within the KPA acts as liaison and provides the link to various international and domestic agencies. The KPA is also a member of Interpol and utilised that mechanism to seek other forms of cooperation. The information provided by the authorities does not show that any of the requests sent via Interpol had a nexus to ML/TF or the tracing and identification of assets. As can be seen in Table 8.8, a limited number of requests was recorded as being sent by the police. The BCI exchanged criminal intelligence on a police-to-police level with its foreign counterparts. This cooperation is based on reciprocity and “gentleman’s” (informal) agreement ensuring that the information is not used except for the purpose it was intended.
535. The assessors found that the data may not reflect the true extent of requests for information sent and relied on the case examples presented which showed that the KPA sought international cooperation when investigating predicate offences and ML (See Table 8.3 and case examples in Tables 3.14, 3.15, 3.17 and 3.18-IO.7). From these case examples, the assessors concluded that international cooperation channels have been used, to a large extent, with successful outcomes.
536. The case example in Box 8.3 demonstrates the good use of other forms of cooperation by the KPA to advance its investigations. The inability of the KPA to provide statistics (due to lack of proper maintenance) in a more comprehensive manner to demonstrate effectiveness was weighted as moderate, as qualitative data (case examples) was provided to demonstrate that the KPA does seek and make use of other forms of cooperation in the conduct of its functions.

*Table 8.4 Outgoing Requests for assistance KPA 2016- 2020*

Country	2016	2017	2018	2019	2020
Colombia		02			
The Netherlands			03		
Czech Republic				01	
Turkey					01

537. **Other Competent authorities:** The NCTVI, in furtherance of its main objectives with regard to counter-terrorism and transnational crime, contributes indirectly to the fight against ML and TF. The main objectives of the NCTVI are to mitigate (emerging) threats and risks and to take appropriate preventive measures, therefore, the NCTVI collaborates and cooperates closely with other LEAs on AML/CFT matters. The NCTVI has two Divisions: the Policy & Strategy Division and the Executive/Operational Division. The Executive/Operational Division has staff with investigative powers, pursuant to the CCrPA. The National Central Bureau of Aruba (NCB Oranjestad), which represents Interpol and executes the Interpol tasks, is embedded in the Executive/Operational Division of the NCTVI. In this regard, the NCB Oranjestad shares and collaborates with partners on information sharing, awareness campaigns and capacity building programs provided by the Interpol AML and the CFT units.
538. The KPA and other competent authorities such as the NCTVI have demonstrated the use of other forms of cooperation through the submission of various case examples, as demonstrated in Boxes 8.2 and 8.3. The case examples highlight the effective use of international cooperation channels.

#### **Box 8.2. Other Forms of Cooperation-KPA**

##### **Summary of Case**

The Aruban Coast Guard sighted a foreign registered vessel. This vessel was found in the past to carry a significant amount of cash on board. It was suspected that the suspect engaged in ML. After mooring at the harbour in Aruba, the Coast Guard conducted an on-board inspection. A large amount of cash was present on board the vessel.

Following the counting of the money, it was determined that the involved subject had a total amount of US \$ 675,455.00 in his suitcase. This sum of money was divided into several packages with names and other information recorded on them. Contact was made by the relevant persons within the KPA with the liaison officer in the foreign jurisdiction. The liaison officer brought the Aruban LEA in contact with the ML investigation team in the foreign jurisdiction, after which a request for mutual assistance was sent to investigate the origin of the money.

#### **Box 8.3 Other Forms of Cooperation**

##### **Competent Authorities involved:**

NCTVI (Interpol); KPA; Coordination Center of Human Smuggling and Trafficking (CMMA), Customs, Immigration Department, PPO, the Coast Guard and the Dutch Marine Corps, Europol, United Nations Office on Drugs and Crime (UNODC), International Organisation for Migration (IOM), and the AIRCOP Project.

For IO.2, the case demonstrates that the NCTVI seeks international cooperation, along with national collaboration, by initiating operations.

##### **Summary of the Case**

Interpol's Turquesa and White Sands operations were aimed at developing (regional) member

countries' response to migrant smuggling and connected crimes, such as trafficking in human beings and ML. The purpose of these operations was to conduct simultaneous and synchronised actions to impact the criminal organisations engaged in the smuggling of migrants and other related financial crimes.

Both operations sought the successful international collaboration among member countries under the coordination of the Interpol. In addition, strategic partners such as the UNODC, the AIRCOP Project, Europol and the IOM also supported the operations from their respective competencies. Operation Turquesa had a global scope while Operation White Sands focused specifically on the migrant smuggling routes flowing from Venezuela to Aruba, Curaçao, and Trinidad & Tobago. Both operations were coordinated in Aruba by the NCB Oranjestad together with the Coordination Center of Human Smuggling and Trafficking (CMMA) and were aimed at increasing and strengthening controls and surveillance at coastal areas on land and at sea. These efforts were focused against the clandestine transportation of illegal migrants by sea from Venezuela into Aruba.

These operations required multiagency cooperation and was carried out by the KPA, CMMA, Customs, Immigration Department, PPO the Coast Guard, and the Dutch Marine Corps. Based on gathered information prior to the operations, clandestine debarkation hotspots and modus operandi were identified, and joint operational plans were made accordingly. After the evaluation of the operations, it was clear that alignment in the multi-agency cooperation and procedures was urgently needed. It was also concluded that there is a lack of available and actual information and/or intelligence needed to effectively conduct HS-HT investigations and to prosecute HS-HT suspects.

539. Based on the above case example and other relevant information, migrant smuggling was considered medium risk in the national risk assessment of Aruba and detailed in Chapter 1 of the report. Therefore, this case along with others referenced throughout the report (IOs 6, 7 and 8) pertaining to ML and other high risk predicate offences demonstrate that the initiative in seeking international cooperation was in alignment with the ML/TF risks identified.
540. **Customs Authority:** The Customs Authority can exchange information via CCLEC. The information shared on this platform relates to the illicit movement of goods, trade-based offences, customs and excise offences and drug related seizures. The legislative basis for sharing information is the Customs Administrative Assistance Act signed by the Kingdom of the Netherlands. As demonstrated at Table 8.5 below, there was an increase in outgoing requests for assistance by customs authorities. The country did not provide any information as to the reason for this increase, nevertheless the information is a positive demonstration of customs authorities accessing relevant information via other forms of cooperation.

*Table 8.5. Outgoing Requests via CCLEC*

Year	Number of Requests
2017	3
2018	1
2019	10
2020	8
2021	39
Total	61

541. **FIU:** The FIU, in fulfilling its analytical functions and to assist competent authorities in their functions, requests information from foreign FIUs through the Egmont Group via the Egmont

Secure Website (ESW). The FIU also has the ability to seek information from FIUs that are non-Egmont Group members. A total of 70 requests were sent for the period 2016-2020, as is demonstrated in Table 8.6. The information shows a consistent increase in requests by the FIU via the ESW. The type of information requested from foreign FIUs includes details of the persons or companies (subjects); whether these subjects appear in any databases (commercial/public/law enforcement) of the foreign FIU; detailed bank account information related to subjects and associates (i.e. identification of all signatories on the account(s) and bank account activity/inactivity); identification and detailed information regarding any business associated with the subjects (i.e. when the business was formed, the objectives of the business, names and other information of the director(s) and information about the ultimate beneficial owners); criminal records of the subjects in the requested country; and any information about the subjects and associates identified by the foreign FIU that could be relevant for the investigation conducted by the FIU or the domestic competent authority on whose behalf the information was requested. Information received is often shared in the form of reports to the PPO and or the CBA as required.

542. A request for information is made on a case-by-case basis and when analysed, reflects a connection to a foreign jurisdiction. In 2019, the FIU analysed several corruption and potential TF cases with a nexus outside of the jurisdiction, hence the increase in the number of requests from the FIU. The requests received from the various regional and international FIUs are related to various suspected offences including ML, corruption and drug trafficking, which are line with the ML/TF risks of Aruba.

*Table 8.6. Requests for Information by the FIU*

Year	Number of Requests
<b>2016</b>	<b>10</b>
2017	05
2018	07
2019	24
2020	24
Total	70

543. **CBA:** The CBA, as the sole supervisor, seeks and provides international cooperation through various channels. The CBA's requests concern mostly fit and proper testing pertaining to BOs, managers, shareholders etc., as part of its licensing and registration requirement under IO.3. Requests for information were sent mainly to the Netherlands and Curaçao. During the period of 2015-2019, there were 42 international request for information sent to the CBA. Any request received by the CBA is usually dealt with within 2-4 weeks. The CBA has recorded 13 requests sent for the period 2015-2019. Feedback from the Global Network revealed that the information provided by the CBA was useful and timely. CBA also utilises the informal channels for any further information and/or follow-ups.

*Table 8.7. Outgoing requests by the CBA*

Year	Number of Outgoing Request
2015	02
2016	02
2017	05
2018	02

2019	02
2020	00
<b>Total</b>	<b>13</b>

#### 8.2.4. Providing other forms international cooperation for AML/CFT purposes

544. Competent authorities regularly provide forms of international cooperation, other than via MLA or extradition, to exchange relevant information in an appropriate and timely manner with foreign counterparts through various mechanisms such as the Egmont Group, Interpol and the treaties that exist. To demonstrate the effective provision of information to competent authorities, the authorities provided case examples and data where available. The FIU is the only competent authority that seeks feedback from competent authorities on the usefulness of the information it provides to competent authorities.
545. **KPA:** For the assessment period, the departments within the KPA have provided other forms of international cooperation to foreign counterparts. These forms of international cooperation have been both formal and informal. For example, the criminal investigators of the KPA also maintain contact with the Investigation Unit of the Dutch Tax Department as well as with the authorities in the USA such as the DEA and Homeland Security. The KPA, through KLPD channels, maintains contact with foreign counterparts. Aruba is a member of the ARIN-CARIB and is represented by a representative from the BFO, which allows for the sharing of information on AML/CFT matters. The Infodesk within the KPA acts as liaison and provides information to various international and domestic agencies. Table 8.8 provides information on the number of requests for information received and processed by the KPA for 2019. Requests for information were received via different mechanisms, including ARIN-CARIB. The authorities advised that requests for cooperation were also received by the BFO, who addressed same and received positive feedback from foreign authorities. No information was provided to the assessors to prove or disprove the statement from the authorities.

*Table 8.8. International Cooperation provided by the KPA following informal contacts (2019)*

Requesting Country	Amount	Offence
Anguilla	01	ATM- Card Skimming
Barbados	01	Criminal offences/ML
Bermuda	01	Criminal offences/ML
Curaçao	01	ML
Czech Republic	05	Criminal offences and ML
Netherlands	03	Criminal offences/ML
Ukraine	01	Fraud/ML
<b>Total</b>	<b>13</b>	

**Box 8.4. Request for information cooperation-Other forms of cooperation**

Competent authorities: KPA, Foreign LEAs

Relevance: Establishing contact on an informal basis between Aruban and foreign LEAs prior to submitting formal MLAs.

**Case Summary:**

As part of an ongoing investigation in the Czech Republic, authorities identified that a suspect owned real estate in Aruba. However, it is a challenge for the Czech authorities to commence a ML investigation against a suspect from the Czech Republic living in Aruba because the Czech legislation does not provide for such an investigation, given that the crime (predicate offence) is unknown to them.

This information was shared on a police-to-police level. Aruban LEAs will request that the Czech Republic provides mutual assistance in this matter

**Outcome:** Investigations continue.

546. The Infodesk has responded to requests and made requests for cooperation with foreign jurisdictions in regard to cases of ML, drug trafficking and other predicate offences. Most of the cooperation requests were with the Netherlands and the USA. Table 8.9 below provides information on both incoming and outgoing requests for cooperation between the Infodesk and other authorities in foreign jurisdictions.

**Table 8.9. Incoming and Outgoing requests for cooperation registered by the Infodesk**

Department/Authority	2016	2017	2018	2019	2020	Total
LO Belgrado- Liaison Serba & Montenegro					1	1
LO Canada – Liaison Canada		1	1	8	6	16
LO Colombia- Liaison Colombia	1		0	1	0	2
LO Australie - Liaison Australia			0	0	3	3
LO Engeland – Liaison England			0	3	0	3
LO Duitsland –Liaison Germany	1		0	2	1	4
LO USA – Liaison USA			0	3	1	4
LO Nederland – Liaison Netherlands	17	34	22	38	13	124
LO Suriname –Liaison Surinam		3				3
LO Panama – Liaison Panama		1				1
LO Spanje - Liaison Spain	2					2
LO Venezuela- Liaison Venezuela		3				3
FBI – Federal Bureau of Investigation	4	3	6	4	0	17

Department/Authority	2016	2017	2018	2019	2020	Total
Riec Bon – Regional Information coordination & Expertise Centrum Bonaire		4	4	3	0	11
RST CUR - Curaçao	3	2	1	0	0	6
RST BES - Bonaire		0	1	1	0	2
Politie VS – Police Department USA		1				1
Politie NL – Police Department Netherlands		0	1	0	0	1
Politie Spanje – Police Department Spain		0	1	0	0	1
KPC- Police Force Curaçao	17		1	1	0	19
Buitenland – International			0	16	2	18
Consul VS - United States Consulate General in Curaçao	1		0	14	5	20
DEA - Drug Enforcement Administration			0	4	2	6
Infodesk KPC – Information coordination Department Curaçao Police Force	8	8	40	2	1	59
Infodesk BON- Information coordination Department Bonaire Police Force	1					1
Infodesk SXM - Information Coordination Department St Martin Police Force		3	0	1	0	4
<b>TOTAL PER YEAR</b>	<b>55</b>	<b>63</b>	<b>78</b>	<b>101</b>	<b>35</b>	<b>332</b>

547. **Customs Department:** Customs authorities, as illustrated at Table 8.10, have demonstrated that the department received and processed information from foreign counterparts. The information provided to foreign counterparts specifically relates to customs and excise offences. Although the Customs Authority in Aruba has no investigative powers, officers are able to provide information to foreign counterparts after having sourced information by utilising domestic cooperation mechanisms.

*Table 8.10. No. of requests received and processed by customs authorities*

Year	Number of Incoming Requests
2017	00
2018	02
2019	04
2020	13
2021	15
<b>Total</b>	<b>34</b>

548. The FIU, being a member of the Egmont Group of FIUs, has provided information to counterpart FIUs under the Egmont principles for sharing information. For the assessment period, the FIU has provided information to other FIUs, having fulfilled 76 requests, in addition to 13 spontaneous disseminations. The FIU also provided qualitative information in the form of case examples demonstrating its ability to spontaneously share information with foreign counterparts including on suspected TF matters (see case example 4.1).

*Table 8.11. Incoming requests and spontaneous disseminations*

Year	Number of Incoming Requests	Number of Spontaneous disseminations
2016	22	05
2017	23	05
2018	10	03
2019	21	00
2020	00	00
<b>Total</b>	<b>76</b>	<b>13</b>

549. As reflected in Table 8.12, the CBA has provided other forms of international cooperation to other foreign counterpart agencies. For the assessment period, 42 requests for information were made to the CBA. There was no request that was refused. There is no standard follow up procedure for information requests submitted to the requesting authority. The authorities advised that if the requested state has additional questions, it will submit a request for further information to the CBA. Feedback from the Global Network indicates that the CBA exchanges information in a timely manner.

*Table 8.12. Incoming requests by the CBA*

Year	Number of Incoming Requests
2015	03
2016	09
2017	11
2018	13
2019	06
2020	00
<b>Total</b>	<b>42</b>

#### *8.2.5. International exchange of basic and beneficial ownership information of legal persons and arrangements*

550. Although Aruba has not implemented an UBO registry, basic and shareholders' information on all legal persons is available from the CoC upon request by competent authorities. The information is also accessible on the CoC's website utilising the *mychamber* account. Competent authorities are able to access basic and shareholders' ownership information from the companies. The shareholders information held by the CoC and companies in some instances contain BO information, given that Aruba is not a large and complex company formation jurisdiction. BO information is accessed from service providers (FIs and DNFBPs) who mandated by law to keep such information (see IO5, paragraph 497 and case examples 7.1 and 7.2). There are no impediments within Aruba's system relative to the accessing and provision of basic and BO information from/to foreign counterparts except with regard to the deficiencies cited in IO.5 (as in the case of information held by the CoC and companies

(shareholder information is not equivalent to BO information and there are challenges that exist with regard to access to BO information by the Tax Authority).

551. During the period under review, competent authorities such as the PPO, FIU, the CBA and the Tax Authority provided and responded to foreign requests for cooperation in identifying and exchanging basic and beneficial ownership information on legal persons. This was done through MLA requests, requests from foreign FIUs and supervisory counterparts. Within the review period, the FIU received seven requests from foreign FIUs with follow ups for further information in relation to same. The FIU sent five requests for information regarding legal persons and arrangements, inclusive of BO information, to the PPO and law enforcement on behalf of foreign FIUs.
552. The PPO received eight requests for BO information. The purpose of the requests was to use investigative acts to identify those persons with controlling interest of legal entities, location of assets and corporate shares that companies may have registered in Aruba as well as to provide copies of shareholder documents and witness statements. Some of the offences being investigated include fraud, forgery, ML and drug trafficking. Aruba sent five requests on behalf of domestic competent authorities. The purpose of these requests included provision of shareholders and UBO documents, to obtain additional information on legal entities and the natural persons operating these entities. Offences being investigated include scams, bribery, fraud, habitual ML, drug trafficking and corruption.
553. Competent authorities (CBA, PPO and FIU) can effectively exchange basic and beneficial ownership information to its foreign counterparts. From the case examples presented, the information provided was useful and had successful outcomes.

***Box 8.5. Case Example: Request for additional BO information from a service provider by FIU on behalf of a foreign FIU***

FIU received a request from a foreign FIU regarding the ultimate beneficiary of possible share transfers for a hotel in Aruba. In order to respond to the request for information, the FIU requested additional BO information from two service providers. The response from the service provider was communicated to the FIU via telephone and subsequently in writing.

This case illustrates the short communication line that exists between the FIU and the service providers. It further illustrates that apart from obtaining the information at the CoC, the FIU communicated directly with the service providers.

554. The comments from the Global Network indicated that members are satisfied with the timeliness and the quality of the information produced by the competent authorities in respect to BO information. The assessors weighted heavily the review received from the Global Network and the supervisory framework for FIs and DNFBPs, particularly as it relates to their obligation to maintain basic and beneficial ownership information.
555. The Tax Authority is the only competent authority within Aruba with some impediments in obtaining BO information on behalf of a foreign counterpart, as there is no legal basis for the Tax Authority to request BO information from third parties. Third parties are not required to disclose this information to the Tax Authority, however, in practice, the information has been obtained by the Tax Authority, although there have been a few refusals by third parties. The authorities have recognised that this is a major issue in the sharing of information in relation to tax matters.

### Overall conclusions on IO. 2

556. Overall, Aruba has the characteristics of an effective system in the area of international cooperation, with minor shortcomings. For the assessed period, Aruban authorities provided MLA, with 90 percent, being completed. In the facilitation of extradition, there were no outstanding requests noted and Aruba has exchanged information in a constructive and timely manner to a large extent.
557. Aruba proactively seeks international cooperation based on the cases being investigated or prosecuted by the PPO and informal cooperation mechanisms are utilised by LEAs in the investigation of predicate offences and ML/TF related matters. Nevertheless, LEAs are encouraged to increase their use of international cooperation, given the risk profile of Aruba.
558. Feedback from the Global Network related to Aruba's provision of international cooperation was all positive and competent authorities have demonstrated that they are using the formal and other forms of cooperation to obtain information related to ML, suspected TF and associated predicate offences, on a case-by-case basis.
559. Aruba has demonstrated its ability to exchange basic and beneficial ownership information in a timely manner thereby rendering effective cooperation to its foreign counterparts with no impediments.
560. The deficiencies were considered and weighted, accordingly by the assessors who determined that moderate improvements are required to the international cooperation mechanism.

**Aruba is rated as having a substantial level of effectiveness for IO.2.**

## TECHNICAL COMPLIANCE

1. This section provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerical order. It does not include descriptive text on the country situation or risks and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.
2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 2009. This [report](#) is available on the FATF website.

### One Kingdom- Four Countries

3. Art.3 of the Charter of the Kingdom of the Netherlands specifies which areas are considered as Kingdom Affairs and includes foreign relations, defence and Dutch Nationality. Consequently, there is one Minister of Foreign Affairs who has ultimate responsibility for foreign relations of the Kingdom as a whole and for incorporating the interest of all four autonomous countries in the Kingdom's foreign policy to the best extent. The Ministry of Foreign Affairs and embassies, consulates and missions abroad work for the Kingdom as a whole and all its constituent parts. Taking into consideration the foregoing, the assessors were required to consider the constitutional framework in assessing R.6 and 36-39.

### Laws and Explanatory Notes

4. In assessing TC, the assessors took into consideration the different laws (State Ordinances and Decrees), guidance and procedures etc. that were in place at the time of the completion of the on-site visit. In this section of the report, significant amount of reference is made to the Explanatory Notes/Memorandum, given Aruba's unique legal system. The assessors thought it important that an explanation be given to the reader as to what the Explanatory Notes represent. In Aruba, all legislation is accompanied by an Explanatory Memorandum (In Dutch: *Memorie van Toelichting*) or also called Explanatory Note aimed at providing a better understanding of the legislation. The content of the Explanatory Memorandum summarises the context of the proposal, consideration(s), its background, budgetary implications and an explanation per Article. A National Ordinance (In Dutch: *Landsverordening*), a National Decree (in Dutch: *Landsbesluit, houdende algemene maatregelen*) and Ministerial Regulation (In Dutch: *Ministeriële Regeling*) are mostly accompanied by an Explanatory Memorandum. The civil servants of the Department of Legislation and Legal Affairs are responsible for drafting the text of a Bill and an accompanying legislative Explanatory Memorandum. They explain in detail why the new law is deemed necessary and its contents.

### Recommendation 1 – Assessing risks and applying a risk-based approach

This recommendation was issued in February 2012 and is being evaluated for the first time during this mutual evaluation. R.1 requires countries to assess and apply a risk-based approach (RBA).

**Criterion 1.1:** Art. 44b of the AML/CFT State Ordinance (2011 and subsequent amendments) and the Explanatory Note to Art. 44b make provision for Aruba to conduct ML/TF/PF risk assessments at the national level. Further, in accordance with section I (1) of the revised Ministerial Order 2019, the requirement is explicitly set out for the country to identify and assess its ML/TF risks. Aruba has identified and assessed its ML/TF risks. The authorities conducted three NRAs, with the first NRA focusing on ML/TF in 2011-2012. This assessment was largely based on professional judgement. The second NRA, which began in 2018 and was

finalised in February 2021, was undertaken with support from the World Bank Tool through the usage of its data and analytical driven methodology, focusing solely ML. The NRA involved participants from both the public and private sectors. The third NRA focused on TF/PF risks and was completed in June 2021.

**Criterion 1.2:** The AML/CFT Steering Group Aruba is the designated authority to coordinate actions and assess ML/TF risks (Ministerial Order of May 21, 2010 revised in 2017-Section I (6)). The Steering Group comprises persons representing several key AML/CFT agencies including Law Enforcement Authorities (LEAs), prosecutorial, FIU and the Central Bank of Aruba (CBA-the sole AML/CFT supervisor).

**Criterion 1.3:** The Explanatory Note to Art.44b states that the basic principle is to conduct an NRA periodically, in principle, once every five years. Aruba has conducted three NRAs to date and has therefore demonstrated that ML/TF risks are regularly reviewed. The first ML/TF NRA was published in 2012, the second ML NRA in February 2021 and the TF/PF NRA in June 2021. The consistent updating of the risk assessments has shown, to some extent, that Aruban authorities have demonstrated the ability to update and review the country's ML/TF risk assessment. The authorities have also given an undertaking that the NRAs will be updated on an ongoing basis to reflect changes in existing threats and vulnerabilities, as well as new threats and vulnerabilities as they emerge.

**Criterion 1.4:** The results of the risk assessment conducted in 2012 were provided to all entities that participated in the NRA and were also published on the CBA's website (<https://www.cbaruba.org/cba/readBlob.do?id=2899>). Further, the FIU presented the results to the relevant reporting entities (FIs and DNFBPs) during the regular information and compliance sessions and published the sanitised version of the NRA on its website. A summary of the findings of the 2021 ML NRA was shared via several mediums including press releases<sup>29</sup>, newspaper publications and the [CBA website](#). Further, the private sector was informed of the findings of the NRA by members of the NRA team lead. A summary of the findings of the 2021 TF/PF risk assessment was shared and is publicly available<sup>30</sup> and is also available on the [CBA website](#).

**Criterion 1.5:** Aruba's AML/CFT Steering Group is responsible for ensuring the availability of resources, personnel and expertise at the agencies responsible for preventing and combating ML/TF/ PF (Section I (5) of the Ministerial Order 2017). However, the allocation of resources is not based on a risk-based approach, having regard to the risks identified in the NRAs of 2012 and 2021<sup>31</sup>. The Ministerial Order, 2017 further requires the AML/CFT Steering Group to develop a strategy for addressing the ML/TF risks identified. An AML/CFT Strategy has been drafted based on the findings of ML/TF/PF NRAs and is pending approval. Further, as evidenced in the analysis in IO.1 (2.2.2), some competent authorities have in place measures to mitigate and address some of the ML/TF risks identified in the NRA.

**Criterion 1.6:** All FIs and DNFBPs are subjected to FATF Recommendations.

**Criterion 1.7:** (a) Art. 11 of the AML/CFT State Ordinance requires FIs and DNFBPs to perform EDD, if and when a business relationship or a transaction by its nature entails a higher risk of ML/TF. They are mandated to conduct EDD prior to the commencement of the business relationship or transaction and during the business relationship. FIs and DNFBPs must take

<sup>29</sup>[https://www.government.aw/news/news\\_47033/item/summary-report-money-laundering-national-risk-assessment\\_56214.html](https://www.government.aw/news/news_47033/item/summary-report-money-laundering-national-risk-assessment_56214.html)

<sup>30</sup>[https://www.government.aw/news/news\\_47033/item/aruba-completes-its-terrorist-financing-and-proliferation-financing-national-risk-assessment\\_56936.html](https://www.government.aw/news/news_47033/item/aruba-completes-its-terrorist-financing-and-proliferation-financing-national-risk-assessment_56936.html)

<sup>31</sup> The authorities have indicated that this will be addressed in the AML/CFT strategy that is being drafted and completed by August 2021.

measures to mitigate those risks. Section 5.2 of the AML/CFT Handbook elaborates in further detail on how to perform enhanced CDD (regulatory requirements and guidelines). (b) FIs and DNFBPs are required to ensure that the information required by the sub-criterion is incorporated into their risk assessments (s.3.3.3 of the AML/CFT Handbook). Among the requirements is that a service provider with a high-risk profile (for example, clients with a high inherent risk or provides products with a high risk for ML/TF) will also have to devote extra attention to this in the business risk assessment.

**Criterion 1.8:** FIs and DNFBPs may apply simplified measures with respect to the requirements set out in Arts. 3 (basic CDD), 4 (transaction on behalf of 3<sup>rd</sup> parties) and 5 (acting on behalf of a third party) in circumstances including (1) a service provider domiciled in Aruba, provided it is supervised by the Bank (CBA) or another public legal person; (2) a financial service provider with domicile outside Aruba, provided it is subject to the internationally accepted standards for the prevention and combating of ML/TF, and it is supervised effectively for compliance with these standards; (3) public limited companies and comparable entities, which are subject to statutory disclosure requirements, and the shares of which are traded on recognised stock exchanges as designated by regulation of the Minister; (4) public limited companies of which all shares are held by the State; (5) the State and other public legal persons established in Aruba; and (6) public legal persons established and active in other parts of the Kingdom (Art. 10 of the AML/CFT State Ordinance and Explanatory Note thereto). Art. 10 (3) mandates that the application of simplified measures to the foregoing are not applicable if the customer, business relationship or transaction carries a higher risk of ML/TF or there is indication that the customer is involved in ML/TF. The foregoing therefore suggests that the FIs and DNFBPs should undertake some form of ML/TF risk assessment prior to the application of simplified measures. Further, section 5.1 of the AML/CFT Handbook sets out guidance on situations where simplified measures may be applied, including at s.5.1.3 which states that in cases of low risk, simplified due diligence may be performed.

**Criterion 1.9:** The CBA is the supervisory authority for service providers (FIs and DNFBPs) pursuant to Art. 35 of the AML/CFT State Ordinance. The CBA is mandated to supervise compliance with the provisions laid down in the State Ordinance, including their obligations under R.1, as also explained in Recommendations.26 and 28.

**Criterion 1.10:** Service providers (FIs and DNFBPs) are required to conduct regular evaluations to assess if and to what extent they are vulnerable to ML/TF/PF due to their activities and operations (Art.46a (5) of the AML/CFT State Ordinance). When assessing the ML/TF risks referred to in the foregoing referenced Article, and determining the policies, procedures and measures to be implemented, the service provider must take into account the factors relating to the customer, products, service, transaction, supply chain and geographical areas. Section 3.3.3 of the AML/CFT Handbook mandates that the Money Laundering Reporting Officer (MLRO), Money Laundering Compliance Officer (MLCO), management and Board of Directors have knowledge and understanding of ML/TF risks. Regarding the sub-criterion:

- a) document their risk assessment (Art. 46a (7) of the AML/CFT State Ordinance and Explanatory Note thereto);
- b) consider all the relevant risk factors before determining the level of overall risks and appropriate level and type of mitigation to be applied; (Art. 46a (6) of the AML/CFT State Ordinance and Section 3.3 of the AML/CFT Handbook);
- c) keep the risk assessments up to date (Art. 46a (5) of the AML/CFT State Ordinance and Section 3.3 of the AML/CFT Handbook); and

- d) have appropriate mechanisms to provide risk assessment information to competent authorities and SRBs. (Art. 46a (8) of the AML/CFT State Ordinance and Explanatory Note, Section 3.3.2 of the AML/CFT Handbook).

**Criterion 1.11:** FIs and DNFBPs are required to:

- a) have policies, controls and procedures which are approved by the person in charge of the service provider's overall management to enable them to manage and mitigate the risks that have been identified, either by the country or by the FIs or DNFBPs (Art. 46a (1)(4) of the AML/CFT State Ordinance and Explanatory Note thereto);
- b) monitor the implementation of those controls and to enhance them if necessary; (Section 3.4 of the AML/CFT Handbook stipulates an independent audit function to test the effectiveness of the policies, controls, and procedures); and
- c) take enhanced measures to manage and mitigate the risks where higher risks are identified. (Art. 11 of the AML/CFT State Ordinance, Section 3.4 of the AML/CFT Handbook).

**Criterion 1.12:** Aruba allows simplified due diligence measures to be applied where low risk has been identified (see analysis of c.1.8). Simplified due diligence is not permitted whenever there is a suspicion of ML/TF (see Art. 10 of the AML/CFT State Ordinance and Explanatory Note thereto). It mandates whenever there is a suspicion of ML/TF, CDD obligations are to be fully applied.

#### ***Weighting and Conclusion***

Aruba has substantially addressed the requirements of the Recommendation. There is a deficiency that pertains to the lack of allocation of resources based on ML/TF risks. This deficiency was considered to be minor in nature, taking into consideration that the Steering Group has the authority to allocate same. Additionally, only some competent authorities have in place measures to mitigate and address some of the ML/TF risks identified in the NRA. **R.1 is rated LC.**

#### **Recommendation 2 - National Cooperation and Coordination**

This recommendation (formerly R.31) was rated PC in the 3rd Round MER due to no proactive and coordinated AML/CFT policy making at a jurisdictional level, lack of operational level coordination between the FIU and the CBA, and also with other agencies and lack of effective implementation in the mechanisms used for AML/CFT coordination and cooperation in Aruba.

**Criterion 2.1:** The 2012 and 2021 ML NRAs have not resulted in the development of any detailed AML/CFT policies at the national level that focus on all risks identified. However, at the agency level, entities such as the FIU, CBA, the Public Prosecutor Office (PPO) and the Aruba Police Force (Dutch: "*Korps Politie Aruba*," KPA) all have ML/TF policies in place to address some of the risks identified in the 2011-12 and 2021 ML/TF NRAs including areas of high risk. For example, there are the PPO's Strategic Vision 2018-2022, PPO's AML/CFT policies and strategies developed on an agency level as a result of the 2012 NRA, KPA's Annual Plans and the PPO's Policy on Cash Seizure etc. In most instances the policies are sufficiently informed by identified ML/TF risks. The FIU conducts annual reviews of its policies. The CBA conducts reviews of its own policies, as needed, based on factors such as ML/TF risks. However, there are no documented measures for the review of policies and procedures.

**Criterion 2.2:** Section I (2) and (4) of the Ministerial Order of September 19, 2017, appoints

and tasks the AML/CFT Steering Group, as the primary coordination mechanism for AML/CFT policies, to develop policy proposals for the prevention and combating of ML/TF/PF as well as to coordinate and manage the implementation of the policy proposals. This Steering Group is chaired by the Minister of General Affairs who is the Honorable Prime Minister and is supported by the Department of Legislation and Legal Affairs which operates as the Secretariat of the Steering Group and Lead Agent with respect to AML/CFT affairs.

**Criterion 2.3:** Aruba has mechanisms in place to coordinate and implement AML/CFT policies both at the policymaking and operational levels.

- i. **Strategic level:** Art. 44c of the AML/CFT State Ordinance makes provision for the creation of an AML/CFT Steering Group that is charged with preparing and implementing policies and monitoring and coordinating compliance with the FATF Recommendations. Further, the Ministerial Order of September 19, 2017, which establishes the AML/CFT Steering Group, outlines the role of the Group including those specified by the FATF Methodology in R.2 with regard to cooperation, coordination and exchange of information at the policymaking level in relation to ML, TF and PF. The AML/CFT Steering comprises all the major competent authorities and is chaired by the Prime Minister who is also the Minister of General Affairs and include the Ministers of Justice and Finance. The AML/CFT Steering Group operates at the strategic level and is responsible for co-operation, co-ordination and exchange of information domestically with each other concerning the development and implementation of AML/CFT policies and such activities at the policy making level. At a strategic level, Arts. II and VII of the Ministerial Decree of September 19, 2017 specify that the Group consisting of high-level officials includes all the competent authorities and other relevant authorities such as the FIU, the CBA and the PPO. The Steering Group has established a technical committee, based on Art. IX of the said Ministerial Order, which is responsible for examining the bottlenecks identified in the evaluation and follow up process, monitor the latest developments in the areas of prevention and combating of ML, TF and the financing of proliferation of weapons of mass destruction and making proposals to the Steering Committee. The Technical Committee comprises the Secretariat, the FIU, CBA and PPO. The Technical Committee meets whenever the need arises.
- ii. **Operational Level:** Co-ordination, cooperation and the exchange of information pertaining to ML, TF and PF at the operational level takes place through different measures including consultation, meetings, trainings MOUs, liaison officers (such as the special persons identified within the PPO to address matters related to fraud) and meetings. Operational co-operation and co-ordination are further manifested through the formation of the Asset Recovery Team (ART) which comprises several LEAs and the PPO, in addition to a fusion center.

**Criterion 2.4:** The AML/CFT Steering Group is responsible for co-operation and where appropriate, provides the coordination mechanism for combating the financing of proliferation of weapons of mass destruction pursuant to Art. 44c of the AML/CFT State Ordinance, 2011 and subsequent amendments and Art. VI of the Ministerial Order of September 19, 2017. The AML/CFT Steering Group exists in practice and is supported by a Secretariat. For further information pertaining to the work of the AML/CFT Steering Group, see analysis in IO.1.

**Criterion 2.5:** Data protection and privacy rules are compatible with AML/CFT requirements and do not inhibit co-operation and co-ordination. Data protection rules are covered by several pieces of legislation (Art. I.16 of the Constitution-fundamental right of privacy, Art. 9 (1) and (4) of the said Ordinance stipulates instances under which the data can be provided to a third party), for instance, data can be provided to a third party if required pursuant to a statutory regulation or takes places with the consent of the subject and Article 11 of the National State

Ordinance on Personal Records, Arts. 62 and 63 of the State Ordinance Material Civil Service Law, Art. 45 of the Code of Criminal Procedure of Aruba and MOUs signed between the domestic authorities) which regulate the obligation to keep information confidential unless there is a legal requirement that allows for disclosure of the information. Art. 2 of the National State Ordinance indicates that the Ordinance does not apply to personal data registers kept pursuant to Art. 22 of the National Ordinance on the Prevention and Combating of ML/TF. Co-operation and coordination among the relevant authorities take place at the strategic and operational levels via the AML/CFT Steering Group, the ART and other mechanisms. For further details pertaining to co-operation and coordination with regard to the implementation of the FATF Recommendations, see analysis in C. 2.2 and 2.3 as well as IOs 1, 6, 7 and 8.

### ***Weighting and Conclusion***

Aruba has in place several AML/CFT policies which address some of the ML/TF risks that were identified in the two NRAs, including some of the high-risk areas. These policies have been developed and implemented by different competent authorities. There is no single national or detailed ML/TF policy document arising from the NRAs. There is no documented requirement for policies to be reviewed regularly, nevertheless, policies and procedures of the CBA and FIU are reviewed based on changes to ML/TF risks. The AML/CFT Steering Group is responsible for coordination and cooperation amongst competent authorities, including for PF. Aruba has mechanisms in place to facilitate cooperation and coordination at the strategic and operational levels. Data protection and privacy rules are compatible with AML/CFT requirements and do not inhibit cooperation and coordination. The deficiencies were weighted as minor as the assessors considered that the most fundamental aspects of the recommendation were addressed. **R.2 is rated LC.**

### **Recommendation 3 - Money laundering offence**

This Recommendation was formerly R.1 and R.2, both of which were rated “LC” in the 3<sup>rd</sup> round MER. The following deficiencies were identified: the ML offence did not cover all categories of predicate offences; the ancillary offences of conspiracy and association to commit were not provided for as neither was applicable to the offence of ML; no provision to prosecute ML based on foreign predicates; and lack of data to assess whether natural or legal persons are subject to effective, proportionate and dissuasive sanctions for ML. The 8<sup>th</sup> Follow-Up Report identified that amendments were made to the Code of Criminal Procedure of Aruba to address these deficiencies in R.1 and R.2.

**Criterion 3.1:** The offence of ML has been criminalised based on Art. 3(1) (b) & (c) of the Vienna Convention and Art. 6(1) of the Palermo Convention. The Criminal Code of Aruba (CrCA) by Arts. 2:404, 2:405 and 2:406 criminalised ML.

**Criterion 3.2:** The offence of ML is applicable to any proceeds obtained directly or indirectly from the commission of any crime (Arts. 2:404 and 2:406 of the CrCA). This applies to all of the designated categories of offences listed in the glossary of the FATF Methodology as all of the offences are criminalised in Aruba. Aruba therefore does not apply a threshold or combined approach.

**Criterion 3.3:** Aruba applies an all-crimes approach with regard to predicate offences to ML, including all serious crimes (see analysis in 3.2).

**Criterion 3.4:** The CrCA extends the crime of ML to any type of property that directly or indirectly represents the proceeds of crime. Art. 2:406, paragraph 1 states that any person who hides or conceals the real nature, the source, the location, the transfer or the moving of an object or hides or conceals the identity of the person entitled to an object or who has in his possession, while he has reasonable cause to suspect that the object proceeds directly or

indirectly of any crime, is guilty of ML. Art. 2:406 (paragraph 2) defines objects as all property of any description, whether corporal or incorporeal.

**Criterion 3.5:** It is not necessary for a person to be convicted of predicate offence when proving that property is the proceeds of crime, as demonstrated in case law. According to the Supreme Court HR September 28, 2004, NbSr 2004/399 (ditto: HR September 27, 2005, LJN AT4094), under certain circumstances, the Supreme Court accepts, among other things, the conclusion that it ‘cannot be anything other than that’ the object is derived from any crime (Supreme Court HR September 28, 2004, NbSr 2004/399; HR September 27, 2005, NJ 2006/473; HR July 13 2010, NJ 2010/456. The judgement of Tweede Kamer, vergaderjaar 1999-2000 27 159 nr.3 page 16 also relied upon.

**Criterion 3.6:** The predicate offence of ML extends to conduct that occurs in another country and would constitute a predicate offence had it occurred domestically. The criminal law of Aruba is applicable to any Dutch national or any foreign national who has a permanent place of residence or resides in Aruba who, outside the territory of Aruba, commits an offence which is considered as a serious offence under the criminal law of Aruba and is punishable under the law of the country where it was committed (Art. 1:6 (c) of the CrCA).

**Criterion 3.7:** Based on the laws of Aruba, ML offence applies to the person who commits the predicate offence as described under Art. 2:404 of the CrCA. However, if an object derives from a serious offence and the person that possesses this object has also committed that (predicate) offence, a conviction for ML will not be possible if the object is only hidden or concealed (Art. 405 paragraph 1 CrCA). Once the object has been sold or the money spent, a conviction for ML is possible.

**Criterion 3.8:** In Aruba, it is possible for intent and knowledge to be inferred from objective factual circumstances to prove ML based on established case law. In the case of: NL:OGEEA:2020:207<sup>32</sup> (Aruba’s Court) the Judge concluded that facts and circumstances are such that a reasonable suspicion arose that the suspect had committed ML. The Netherlands, which serves as common jurisprudence for Aruba, also has demonstrated that ML can be proven via factual objective circumstances as identified in the case NL: GHAM: 2020:1556.

**Criterion 3.9:** The CrCA makes provision for sanctions for the different types of ML offences with regard to natural persons convicted for the offence. The sanctions are in line with those that are available for other similar types of serious offences such as theft, fraud and robbery. Sanctions are considered to be proportionate and dissuasive. The sanctions are as follows:

- i. Intentional ML (Art.2:404 CrCA) - 8 years imprisonment or a fine of Aruban Florin (Afl.) 100,000 (approximately US\$56,000.00);
- ii. Habitual ML- 9 years imprisonment or a fine of Afl. 100,000.00 (approximately US\$56,000.00); and
- iii. Negligent ML- 4 years imprisonment or a fine of Afl. 25,000.00 (approximately US\$14,000.00).

**Criterion 3.10:** Art. 1:127 CrCA states: (1) Criminal offences can be committed by natural persons and legal persons. (2) If a criminal offence is committed by a legal person, criminal proceedings may be instituted and such punishments and measures as prescribed by law, where applicable, may be imposed on (a) the legal person; (b) those persons who have ordered the commission of the criminal offence, and those persons who actually directed the unlawful

<sup>32</sup> <http://deeplink.rechTCSPraak.nl/ui/TCSPraak?id=ECLI:NL:OGEEA:2020:207>

acts; or (c); persons referred to in (a) and (b) jointly. In the application of the preceding sections, the following are required to be considered as equivalent to legal persons: unincorporated companies, partnerships, the shipping companies and the special purpose fund (*funds allocated for a special purpose either with legal personality foundation or without funds*). The sanctions available are legislated and application lies in the judgement of the judge. In Aruba's context, the sanctions for natural persons are the same for legal persons, with the exception that legal persons cannot be subject to imprisonment. Therefore, the mind and management of the legal person can be subject to imprisonment. The sanctions that are applicable for legal persons in all instances are not proportionate and dissuasive.

**Criterion 3.11:** The ancillary offences to ML are covered under Arts. 1:47, 1:119, 1:1120, 2:79, 2:80, and 2:55 of the CrCA.

### ***Weighting and Conclusion***

The offence of ML is criminalised in accordance with the relevant UN conventions and includes all of the relevant ancillary offences. The crime of ML is applicable to all predicate offences and extends to those conducts that occur outside of the jurisdiction and which will constitute a predicate offence in Aruba. ML can be established from factual objective circumstances based on precedent (case laws) that is applicable to Aruba. Self-laundering is not fully criminalised in the jurisdiction. The penalties for natural persons convicted for ML are proportionate and dissuasive, however, uncertainties remain regarding the proportionality and dissuasiveness of penalties for legal persons convicted of ML. Given the risk and context of the jurisdiction, the deficiencies identified are considered to be minor in nature as the most fundamental aspects of the recommendation were addressed taking into consideration the ML risks and context of Aruba. **R.3 is rated LC.**

### **Recommendation 4 - Confiscation and provisional measures**

R.4 (formerly R.3) was rated PC in the 3<sup>rd</sup> round MER. The deficiencies included lack of evidence of effective implementation of the powers to confiscate and take provisional measures in relation to TF offences and several predicate offences for ML. Aruba substantially addressed the major deficiencies cited in the MER in its FUR and was considered to have a rating essentially equivalent to LC. The remaining deficiency was for the legal framework to make it clearer on the handling of property derived indirectly from the proceeds of crime legislation. There were no revisions to R.4.

#### **Criterion 4.1:**

- a) The CrCA and the CCrPA are the principal enactments governing confiscation proceedings pertaining to objects held by criminal defendants and third parties (Art.1:68 of the CrCA). In Aruba, confiscation can be issued by conviction of any criminal offences (Art.1:67 (1) of the CrCA). Object is defined as all corporeal property and all property rights (Art.177 of the CrCA). Laundered property can be confiscated upon conviction pursuant to Arts. 1:68 and 1:74 of the CrCA which, among other things, include objects belonging to the convicted person and those in relation to which the offence was committed and are liable for confiscation. Objects in the name of third parties can be confiscated pursuant to Art. 1:68 (3 (a) (b) (4) of the CrCA.
- b) Proceeds of (including income or other benefits derived from such proceeds) or instrumentalities used or intended for use in ML and relevant predicates can be seized and subsequently confiscated pursuant to Arts 119a and 1:68 of the CCrPA and the CrCA, respectively. Income and benefits derived from an unlawful conduct can be confiscated as a person convicted of a criminal offence may be ordered to pay a monetary amount to the State in order to deprive him of unlawfully obtained gains (Art. 1:77 of the CrCA). Further,

susceptible to confiscation are any objects (including proceeds) (entirely or largely), which have been obtained by means of or from the proceeds of crime (Art.1:68 of the CrCA). Instrumentalities intended for use in a ML or predicate offence is liable for confiscation in accordance with Art. 1:68 (e) of the CrCA, as the section mandates that objects belonging to the convicted person, manufactured or intended for the commission of the crime, are liable for confiscation.

- c) TF is a criminal offence in Aruba (see analysis in Recommendation 5), therefore, any object derived or intended for this offence and the items outlined under this sub-criterion can be confiscated, based on the provisions of Art. 1:67 (1) of the CrCA. Further, property that is the proceeds of, or used in or intended for use in terrorism offences can be confiscated under the provisions contained at Art. 1:68 CrCA as confiscation proceedings are applicable to criminal offences, including proceeds from and objects used in the commission or preparation of the offence. Art.1:77 of the CrCA sets out the process for confiscation. Art.119 CCrPA allows for the seizure of all objects as referred to Art.1:77 of CrCA and those for which confiscation has been ordered.
- d) Property of corresponding value can be confiscated. Objects belonging to the convicted person can be confiscated (Art.1:68 (1) of the CrCA). Art 1:68 mandates that objects referred to in a-e, inclusive of objects obtained entirely or largely from criminal conduct and to which the defendant has real or personal rights can be confiscated. Further, Art. 1:71 allows for the confiscation of property of correspondent value to the State as objects not surrendered (seized) shall, in the event of confiscation, be assessed at a specific monetary amount in judgement. In such cases, the objects shall be surrendered, and their assessed value paid to satisfy a monetary judgement of a confiscation order.

**Criterion 4.2:** The ART, a multi-stakeholders agency comprising representatives from several LEAs, namely, the Coast Guard, Criminal Investigation Cooperation Team (RST), FIU, Fiscal Intelligence and Investigation Service (FIOD Netherlands) and the PPO is the agency that is primarily responsible for taking actions related to the requirements under this criterion.

- a) The PPO can also obtain information from various agencies to ascertain items for confiscation. In the interest of an investigation, the PPO can demand that any person who possesses data provide such for the purpose of an investigations (Art. 177s CCrPA. Further investigative powers such as undercover operations, seizure of records, search warrants, recording of confidential information/wiretapping that are covered by Arts. 177l to 177z of the CCrPA can be utilised to identify, trace and evaluate assets that are subject to confiscation.
- b) Art. 119a CCrPA allows for seizing and freezing of objects to prevent any dealing, transfer or disposal of the property subject to confiscation. These measures are subjected to authorisation by a judge-commissioner (investigative judge) pursuant to Art. 129a CCrPA. Property owned by, or at the disposal of the suspect may be seized when there is a suspicion of a crime or indications of a terrorist crime and there are grounds to believe that the property should be confiscated or is needed to cover fines or repayment of ill-gotten gains (pre-judgment seizure). Similar rights exist to seize property held by third parties.
- c) Objects seized in accordance with Art.119a CCrPA is done for safekeeping and to ensure confiscation with the right to recourse. The authority to take the object into custody of the State prevents any actions that may prejudice the authorities' ability to confiscate. Security rights such as mortgage or lien do not prohibit confiscation in the context of a criminal investigation. However, a confiscation in the context of a criminal investigation does not (vice versa) affect an earlier security right established in good faith by a third party.

- d) Investigative measures are available to addressing the requirement of R.4 (See analysis Rec 31).

**Criterion 4.3:** The rights of *bona fide* third parties are protected, as property (objects) referred to in Art. 1:68 of the CrCA that does not belong to the convicted person can only be confiscated in specific circumstances, for instance, where the person in whose name the asset is registered is aware that the acquisition was by means of a criminal offence or it cannot be identified to whom the property belongs. The foregoing therefore suggests that the confiscation provisions do have mechanisms for the protection of *bona fide* third parties. Further, measures for the protection of *bona fide* third-party rights are provided for by Art. 150 of the CCrPA that provides for interested parties to file a written complaint about the seizure, use of the seized objects and failure to issue an order to return the objects (Arts. 127, 128, 140). The third party has 3 months since the prosecuted case was closed to file such complaint. In cases where prosecution has not been instituted, the complaint shall be filed with the Office of the Court within 3 years after the seizure or inspection of the object and the third party is given an opportunity to be heard by the Court. In circumstances where the confiscated item was lawfully disposed of, destroyed, given away or is designated to be used for a purpose other than an investigation, the party is liable to receive the price that item should have reasonably fetched when sold by him (Art.145(2) of the CCrPA).

**Criterion 4.4:** There are mechanisms in place for managing and disposing property frozen, seized or confiscated. The PPO, pursuant to Art. 3 of the National Ordinance on the Public Prosecution Service, is the authority for ensuring enforcement of judgments and orders and has issued asset recovery instructions with respect to managing and disposing seized/confiscated property. The CCrPA allows for the disposal of objects and the funds and cash equivalent paid into the deposit fund or account of the State designated for that purpose (Art. 142). The assets seized or confiscated can also be auctioned. The monies are delivered to the Caribbean Mercantile Bank via night deposits and the money is credited to the account of the depositary (Court in First Instance) the day after the seizure. The proceeds, once conviction is obtained, are transferred to the Crime Prevention Fund where the ART ensures the actual and legal settlement of the seizure and confiscation of criminal assets. The properties seized and confiscated are managed by a custodian who must certify the date of seizure, the name of the person from whom the objects have been seized with a short statement of the contents. The Custodian in Art. 141 (2) CCrPA is appointed by the Registrar of the Court in the first instance.

### ***Weighting and Conclusion***

**R.4 is rated C.**

### **Recommendation 5 - Terrorist financing offence**

In the 3<sup>rd</sup> Round Mutual Evaluation, Aruba was rated NC with SR II, with the main deficiency being that TF was not criminalised as an independent offence. According to its last FUR of the 3<sup>rd</sup> Round, Aruba substantially improved its compliance with the requirements to a level of LC, as a result of amendments to the CrCA. Current R.5 was revised in 2015 and 2016 to cover “funds or other assets”, in order to have the same scope as R.6, and to address the threat posed by foreign terrorist fighters (FTFs).

**Criterion 5.1:** Aruba has criminalised TF on the basis of Art. 2 of the International Convention for the Suppression of the Financing of Terrorism (TF Convention). Further, Art 1.4 (n) of the CrCA states that the criminal law of Aruba shall apply to any person who commits a terrorist crime or any of the crimes defined in various Articles, including Art. 2:55 (terrorist financing) insofar as it falls under Art 2 of the TF Convention and either the offence

is committed against a Dutch national or the suspect is in Aruba. Art. 2:55 of the CrCA criminalises the provision, collection, receipt and invitation to provide funds or other property, directly or indirectly, for the purposes of committing terrorist offences. It is also an offence to collect from or provide funds directly or indirectly to any person or to support organisations in the commission of the offence of terrorism. *Funds* are obtained in any case, as well as all matters and capital rights, and the documents and data carrier, in any form or capacity, from which ownership or entitlement for the use of money, business or capital rights appears, including, but not limited to, bank loans, travellers' cheques, bank cheques, money orders, shares, securities, bonds, bills and letters of credit. "*Person*" means natural or legal persons, group of natural or legal persons and organisations (Art. 2:55 CrCA (2)). Art. 1:203 CrCA defines "terrorist intent" as intention of causing fear in the population or a part of the population of a country, or unlawfully compelling a public authority or international organisation to act or to refrain from certain acts or to tolerate certain acts, or of seriously disrupting or destroying fundamental political, constitutional, economic or social structures of a country or an international organisation.

**Criterion 5.2:** TF offences extend to any person who wilfully provides or collects funds or other assets by any means, directly or indirectly with the unlawful intention or knowing/having knowledge that the funds or assets will be used in whole or in part for the commission of a terrorist offence or for the support of persons or organisations which commit or seek to commit terrorist acts or for the commission of a crime in preparation or facilitation of a terrorist offence (Art. 2:55 CrCA). The Explanatory Note to Art. 2:55 of the CrCA notes that knowledge implies unconditional knowledge and no causal link between the omission and commission of the crime is required for criminalisation. It is therefore a criminal offence to provide or collect funds or other assets in support of a terrorist or terrorist organisation in the absence to a specific terrorist act or acts.

**Criterion 5.2 bis:** Art. 2:55 (a) and (b) of the CrCA specify that a person is guilty of TF if he directly or indirectly provides funds for committing a terrorist offence or supporting persons or organisations to commit such an offence or gathering for the preparation or facilitation of terrorist offences, whether the funds will be partly or entirely used to commit such an offence. This provision is sufficiently broad to capture financing the travel of individuals to other states for the purposes of perpetration, planning or participation in terrorist acts or providing or receiving terrorist training.

**Criterion 5.3:** TF offences extend to any funds or other assets. Funds are defined as "money and all objects and all property, however acquired, and the documents and data carriers, in any which form or quality, that can reveal ownership or right to this money, objects or property, including but not limited to bank loans, travellers' checks, bank checks, postal/money orders, stocks and shares, securities, bonds, bills of exchange and credit letters". (Art. 2:55 (2) of the CrCA). This definition is sufficiently broad to capture funds or other assets, whether from a legitimate or illegitimate source.

**Criterion 5.4:** (a) & (b)- In Aruba, TF offences do not require that funds or other assets be actually used to carry out or attempt a terrorist act or be linked to a specific terrorist offence.

**Criterion 5.5:** The intent and knowledge required to prove the offence can be inferred from objective factual circumstances based on the Supreme Court's jurisprudence (Hoge Raad case-NJ 2003, 552),

**Criterion 5.6:** Natural persons found guilty of a terrorist offence can be sentenced to a term of imprisonment for a maximum of eight years or a fine of Afl.100,000.00 (approximately USD55,866.) (Art.2:55 CrCA). In addition to sentencing for a term of imprisonment or a fine, confiscation proceedings can be pursued pursuant to Art 1:67 of the CrCA and disqualification

pursuant to Art. 256 of the CrCA. A person convicted of a TF offence can be disqualified from rights under Art 1:64 CrCA, which includes holding certain offices and positions. The combination of measures that can be taken, when compared to other similar type of financial offences, is deemed to be dissuasive and proportionate.

**Criterion 5.7:** Criminal liability applies to legal persons pursuant to Art. 1:127 of the CrCA. Criminal offences mean all offences (felonies and misdemeanours) which include TF. In the criminalisation of terrorist offences, the term ‘another person’ is defined to include legal persons (Art. 2:55 CrCA). Penalties can be applied to the legal person and the persons who ordered the commission of the offence or directed the unlawful acts (Art. 1:54 CrCA). Fines can be up to Afl. 1,000,000.00 (approximately US\$558,659.00). Further, all illegally obtained funds are subjected to seizure and confiscation and the legal entity can be struck off the Register of the CoC. The range of sanctions that are available is sufficiently dissuasive.

**Criterion 5.8:** It is an offence to attempt to (a) commit a TF offence (Art. 1:19 CrCA); (b and c) participate as an accomplice in TF or attempted TF offence and to organise or direct others to commit the TF or attempted TF offence (Art. 1:47 CrCA); and (d) intentionally contribute to the commission of one or more TF offences or attempted offences, by a group of persons acting with a common purpose (Arts. 2:55 and 2:80 of the CrCA).

**Criterion 5.9:** TF offences are considered serious offences and are therefore predicate offences for ML (Art 2:404, 2:405, 2:406 of the CrCA).

**Criterion 5.10:** Aruba’s TF offences apply regardless of whether the defendant was in the same country or a different country from the one in which the terrorist or terrorist organisation is located or where the terrorist act occurred or will occur (Art. 1:6 CrCA).

### *Weighting and Conclusion*

**R.5 is rated C.**

### **Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing**

Aruba was rated NC in the 3<sup>rd</sup> Round MER regarding SR.III. The deficiencies included: (i) no effective laws, regulations and procedures were in place to give effect to freezing designations in the context of S/RES/1267 and S/RES/1373, and there were no measures to implement SR.III, (ii) the State Ordinance did not provide for a national mechanism to designate persons in the context of S/RES/1373, or a comprehensive mechanism to examine and give effect to actions initiated under the freezing mechanisms of other jurisdictions, (iii) no effective laws and procedures were available to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions and (iv) there was no requirement to ensure that the confiscation of assets also applied to terrorist assets. Aruba addressed most of the technical compliance deficiencies cited in the MER in its 8<sup>th</sup> FUR to a level of LC.

#### **Criterion 6.1:**

- a) The Dutch Foreign Minister is the competent authority responsible for proposing designations (Art. 2 of the Sanctions Act, 1977). Matters pertaining to Aruba’s foreign policy, including designation to the UN, is the responsibility of the Kingdom of the Netherlands. S.3.2 of the BVO (asset freezing committee) Protocols identify the Dutch

Minister of Foreign Affairs<sup>33</sup> as the competent authority for proposing persons and entities for designation as per the requirement of this sub-criterion. In Aruba, the process for submitting names of persons and entities for designation to the UN via the Dutch Minister of Foreign Affairs is outlined at s.3.1 of the Freezing Measures Terrorism.

- b) Aruba has never proposed designations pursuant to the relevant UNSCRs. The National Sanctions Committee, pursuant to Art. 10 of the Sanctions Decree Combat Terrorism and Terrorist Financing (hereinafter referred to as “Sanctions Decree”) (in Dutch: *Sanctiebesluit bestrijding terrorisme en terrorismefinanciering*), is the mechanism that is responsible for identifying targets and referring same to the Aruba Minister of Judicial Affairs for transmission to his Dutch counterpart. The National Sanctions Committee comprises the key law enforcement, intelligence and prosecutorial agencies. The work of the National Sanctions Committee is further articulated in the procedures contained at s.3.1 of the Freezing Measures Terrorism. All requests for designation must be submitted to the Dutch Ministry of Foreign Affairs (see analysis in 6.1). The requirements for designation include natural persons involved in the commission of one or more terrorist crime or crimes to prepare or facilitate one or more terrorist crimes including attempt and preparation (Art.2 of the Sanctions Decree). The foregoing is applicable to legal persons and other entities, directly or indirectly controlled by the natural and legal persons acting or behalf of the suspected individual (s.2.2.1 of the Freezing Measures Terrorism). The requirements comply with the criteria set out by the UNSC and specified in INR6 .
- c) Requirements for designation at the UN level by the Netherlands via the Dutch Minister of Foreign Affairs, is not conditional upon a conviction based on the measures that are set out in sections 3.2 and 4.2 of the BVO (asset freezing committee) Protocol. In Aruba, identifying persons, entities and organisations prior to making a recommendation to the Dutch Foreign Affairs Minister, does not require a conviction and is based on the factors of reasonable grounds/reasonable basis and on the requirements specified at Art. 2 of the Sanctions Decree and s.4.2 of the Freezing Measures Terrorism.
- d) In accordance with s. 3.2.1 (Notification) of the National Freezing Mechanism, 2013, the Minister, through the intermediary of the Minister of Foreign Affairs, will provide the information to the 1267 Committee based on the grounds for placement on the UN designations. The fact that Aruba is required to submit the information in conformity with the grounds set out by UN is interpreted by the assessors to mean all requirements established by the Committee for designation must be followed, including the completion and submission of the relevant forms.
- e) In drawing up the list for designation and for possible submission to the UNSC through the Dutch Minister of Foreign Affairs, Aruba is required to take into consideration the natural persons, legal entities and other entities shall be described by means of the name, including all known aliases and fictitious names, the address, the place of residence and other relevant data (Art. 2 (3) of the Sanctions Decree). All relevant data

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<sup>33</sup> All references to the Ministry of Foreign Affairs in this report, including for the analysis of Recommendation 6, are in relation to the Dutch Ministry of Foreign Affairs. The Dutch Ministry of Foreign Affairs in the Netherlands has overall responsibility for foreign relations related to Aruba, Curaçao, Sint Maarten, the Netherlands and BEC.

is sufficiently broad to capture as much details as possible for the designation despite the requirement in the provision making no explicit reference to the statement of case. Further, the foregoing is supported by the requirements specified at s.3.2.1 of the National Freezing Measures which mandates that the Minister of Justice in Aruba provides a description of the grounds to the 1267 Committee when requesting freezing measures be taken.

**Criterion 6.2:**

- a) (Aruba implements designation as set forth in UNSCR 1373 on its own motion or by giving effect to the request of another country through its competent authority, who is the Minister of Justice, after consultation with the National Sanctions Committee (Art. 10 and 11 respectively of the Sanctions Decree). The designation criteria are similar to those identified at section E (c), INR6 and include any person who commits or intends to commit a terrorist act or who participates in or facilitates the commission of a terrorist act as per Art. 2 of the Sanctions Decree. Aruba can also designate based on a request from another country pursuant to Art. 11 of the Sanctions Decree. The Minister is authorised to make such designation, having consulted with the National Sanctions Committee. The designation will be made once it can be assumed, in the reasons provided by the country, that the natural person or legal entity or organisation in question is involved in the commission of a terrorist crime or TF.
- b) The mechanism described in the analysis in c.6.1 (b) applies for the identification of targets based on the designation criteria set out in UNSCR 1373 as per the information set out at Art. 2 of the Sanctions Decree. At the time of the completion of the on-site visit, Aruba had not designated any entity or persons of its volition, or on behalf of another country.
- c) Upon receipt of a request from another jurisdiction, a meeting is convened with the National Sanctions Committee to decide on freezing measures, if there is reasonable suspicion that the natural person, legal entity or organisation is involved in committing terrorist offences or TF (Art. 11 Sanctions Decree). Art. 11 mandates that the Minister promptly places the entity on the list of designation referred to in Art. 2 (1) of the Sanctions Decree. Art. 2 (1) captures the requirements of the UNSCR 1373 as identified in INR. 6, Section E pertaining to the entities that should be placed on the list (i.e. designated).
- d) Following a request received from another State, the Minister can designate a person, entity or organisation if it can be assumed in reason that the person, entity or organisation in question is involved in the commission of a terrorist crime or TF<sup>34</sup> (Art.11 of the Sanctions Decree). The mechanism in the Decree is supported by the guidance set out in s.2.2.1 (proactive listing) of the Freezing Measures Terrorism. By virtue of the pre-requisite of assumption in reason prior to an immediate designation, it means that a conviction is not necessary for designation and designation can be done on the basis of reasonable grounds/reasonable basis.
- e) Aruba has never requested designation by another country. Regarding requests for the European Union (EU) to designate on behalf of Aruba, the information is required to be forwarded to the Dutch Minister of Foreign Affairs who will be required to conform with the EU's procedures (s.3.2.1 of the Freezing Measures Terrorism). The foregoing

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<sup>34</sup> Art. 1 of the Sanctions Decree defines terrorism and TF as offences committed in the CrCA. TF and terrorism are properly defined in CrCA.

therefore means that Aruba will have to follow the EU requirements for designation. Regarding non- EU countries, the process that should be followed is unknown.

**Criterion 6.3:**

- a) The National Sanctions Committee is the competent authority that is responsible for collecting and soliciting information on persons and entities on the basis of reasonable grounds that meet the criteria for designation. The National Sanctions Committee comprises the PPO and the Aruba Security Agency (SSA) which are equipped with powers under R. 31 to conduct investigations into TF and other associated predicate offences, including terrorism. In accordance with Art. 3 of the State Ordinance Security Service, the SSA is authorised to collect information pertaining to the security of Aruba, including criminal offences. Further, section 2.2.1 of the Freezing Measures Terrorism reflects that consultative, investigative and advisory activities take place prior to the Minister making a designation decision. The information collected can be used to identify persons and entities for designation and the procedures to obtain the information are set out in the various laws and ancillary mechanisms.
- b) The authorities are permitted to implicitly operate *ex parte* against entities or persons who have been identified and whose designation is being considered, as the Sanctions Decree does not indicate that a person or entity must be present or consulted prior to designation. The Minister is only required to consult with the National Sanctions Committee prior to designation or making changes to the list of entities and persons designated.

**Criterion 6.4:** The implementation of TFS-TF (UN Designation) takes immediate effect following a designation by the UNSC. The foregoing is made possible by virtue of Aruba's enactment of the Sanctions Decree in accordance with Art. 2 of the Sanctions Ordinance, as amended. Art. 2 of the Sanctions Ordinance makes provision for the implementation of measures, without delay, where the international decree requires Aruba to do such. Further, additional guidance provided at s. 3.1 of the Freezing Measures Terrorism reflects that the UN 1267/1373 designations automatically extends to Aruba to ensure effectiveness of the system. The Sanctions Decree, Sanctions Ordinance and the provisions contained in the Freezing Measures Terrorism ensure that no further actions or procedures, such as a court process or gazetting, are required for transposing UNSC designation into law. Breaches for failure to comply with sanctioning requirements, including the Sanctions Decree, are contained at Art. 17 of the Sanctions Ordinance, 2006, as amended.

Regarding domestic designations and requests by other countries, these are required to be promptly included on the "Sanctions List" (Arts.11). Prior to including the person on the list, the Minister must consult with the National Sanctions Committee. The Freezing Measures Terrorism provides further guidance and mandates that the Minister promptly consults with the National Sanctions Committee. Neither the Sanctions Decree nor the Freezing Measures Terrorism defines "promptly". Taking into consideration the dictionary meaning of promptly, the assessors consider the requirement for implementation of designation measures to mean without delay.

**Criterion 6.5:**

- a) All natural and legal persons in Aruba are required to freeze, without delay, the funds or other assets of designated persons in accordance with Art. 4 (1) of the Sanctions Decree. Service providers are not required to provide service and shall not perform any acts that lead to or can allow the designated person to access in any way to the funds and shall promptly take measures to prevent the transfer, conversion, relocation and

availability of the funds (Art. 4 (3) (4) of the Sanctions Decree). A service provider is defined as “each person who provides a service as a profession or trade” (Art. 1 of the Sanctions Decree). Art. 1 defines a service as “an activity relating to a fund or asset”. The term ‘person’ includes both natural and legal person who provide a service related to funds. The Explanatory Note to the Sanctions Decree provides additional information on service providers and includes examples. Anyone who contravenes the requirements of the Sanctions Decree is subject to penalties identified at Art. 17 of the Sanctions State Ordinance. Although the requirements call for the freezing of funds and assets without delay, there is no requirement to freeze without prior notice in the law. However, the Freezing Measures Terrorism (which is not enforceable) calls for freezing measures to be implemented without prior notice.

- b) In accordance with Art. 4 (2) of the Sanctions Decree, the freezing of funds and assets extends to those which directly or indirectly belong to the designated person or to which the designated person is entitled. The foregoing is equally applicable to:
- i. funds or assets that directly or indirectly and together with others belong to or are administered by the designated person, persons that are suspected of one or more terrorist crimes or were convicted thereof, and persons and organisations that finance terrorism and terrorist organisations;
  - ii. funds or assets proceeding from or produced by funds or other assets that belong to or are administered by the designated person(s) that are suspected of one or more terrorist crimes or were convicted thereof, persons and organisations that finance terrorism and terrorist organisations;
  - iii. funds or other assets derived from or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities (Art 4 (1) and Art 1-meaning of funds or assets);
  - iv. natural persons, legal entities and other entities that act on behalf or on instruction of the designated person and entities, as such persons and entities can also be subject to designation (Art. 2(1) (c) in conjunction with Art. 4 of the Sanctions Decree).

(Art.1 of the Sanctions Decree defines funds or other assets as “*property obtained in any way, as referred to in Art. 1 of Book 3 of the Civil Code of Aruba, all documents and data carriers in whatever form or quality, evidencing full or partial ownership or entitlement as regards property, and products or increases in value of property*”.

- c) Art. 4 (3) of the Sanctions Decree prohibits service providers from providing services and performing any acts that lead to a designated person gaining access in any way to the funds or other assets frozen as identified in sub-criterion (b) above. The provision of service in Art. 4(3) of the Sanctions Decree applies to any act and not just the definition of service in Art. 1 (Explanatory Note to the Sanctions Decree). Art. 2:55 of the CrCA makes it an offence to provide funds or other assets to persons and organisations for the support of persons or organisations that seek to commit etc., a terrorist offence. The Article further notes that it is an offence to provide funds to another medium (intermediary). The measures in the CrCA complement those under R.6 and apply to all natural and legal persons. Additionally, section 11.1.1 of the AML/CFT Handbook further complements the requirements in the Sanctions Decree and mandates FIs and DNFBPs to take appropriate measures to ensure that the designated person does not gain access to the funds or assets frozen.

- d) The CBA is required to ensure that service providers implement the regulations of the State Decree that are applicable to them. The CBA is responsible for the timely and digital publication of the freezing list (Art. 3 of the Sanctions Decree). Although timely is not defined in the Decree, Aruba noted that timely is interpreted by the authorities to mean “promptly” and this was accepted by the assessors. Digital publication includes communication with the service providers via emails/letters and publication of the UN designations on its website. The CBA and the FIU render assistance to service providers in individual cases with regard to consultation of the freezing list (Arts. 1 and 3 of the Sanctions Decree). Further details regarding the communication of UN designations by the CBA and the FIU and actions to be taken by the Minister are outlined at s.2.2.3.1 of the Freezing Measures Terrorism. Guidance on TFS-TF and the actions that should be taken by service providers are contained throughout several sections of the AML/CFT Handbook, including section 11, which provides in-depth information. Section 11.1.2, paragraph 4 of the AML/CFT Handbook (which is enforceable) also places a direct obligation on FIs and DNFBPs to adopt adequate measures to ensure that they are kept informed of the contents and changes to UN designations in a timely and adequate manner. The assessors confirmed during the on-site visit that most FIs and DNFBPs have mechanisms in place to inform them of changes to UN and EU designations and do not solely rely on the CBA. The finding is supported by the survey/questionnaires conducted by the CBA.
- e) Service providers are required to promptly inform the CBA and the FIU of any frozen funds or assets in their custody (Art 4 (4) of the Sanctions Decree). A service provider is required to report each request for the provision of service in which a designated person acts as the other party or is involved in any way, to the FIU (Art. 8 of the Sanctions Decree). The requirement of Art. 8 implicitly requires service providers to report attempted transactions.
- f) The bona fide rights of third parties are protected in accordance with the requirements that are set out at s.2.1 and 2.2.3 of the Freezing Measures Terrorism.

**Criterion 6.6:**

- a) De-listing measures specific to the 1267 UN Sanctions Committee are contained in the Freezing Measures Terrorism. Section 3.2.2 outlines the process for de-listing that should be followed by a designated individual or organisation including the submission of a request to the independent UN Ombudsman who will advise the UN Sanctions Committee of the request. Aruba, on its own accord, can also submit a de-listing request in accordance with the de-listing procedure contained at s.4.2 of the Freezing Measures Terrorism. These measures outlined at s.4.2 are specific to the 1267 Sanctions Committee. The [CBA website](#), which is accessible to the public provides access to the relevant links to the UN website, where information pertaining to delisting is available. The access link provides immediate access to the relevant information.
- b) Legal protection and safeguards have been created for parties concerned about a designation. The affected party can lodge an appeal against freezing measures to the independent Administrative Court which is authorised to assess whether the designation was lawful. Further, a concerned party can always ask for reconsideration of the designation decision<sup>35</sup> (s.2.1 of the Freezing Measures Terrorism). Aruba has also advised that termination takes place by Ministerial Order on the advice of the National Sanctions Committee. It is noted that the Sanctions Committee meets every 6 months

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<sup>35</sup> The decision of the Minister of Justice on the request for consideration can also be submitted to the Court.

and consults the list of persons and entities designated to determine whether the persons/entities identified should remain on the list. The foregoing procedure is not publicly known.

- c) A designated person can lodge an appeal to the independent Administrative Court, which will assess whether the designation is lawful (s.2.1 of the Freezing Measures Terrorism). This procedure is not publicly known.
- d) Although not directly publicly available on any website or in any publication in Aruba, designated persons and entities can access the relevant information on the UN website via the link that is available on the [CBA website](#). The access link on the CBA's website takes the designated person and entities directly to the information.
- e) An individual or organisation designated by UN (1267) may submit a request for delisting to the independent ombudsman established pursuant to UN Security Council Resolution 1904 pursuant to (s.3.2.2 of the Freezing Measures Terrorism). The access link to the UN website to obtain this procedure is available on the [CBA website](#) which is publicly available. Designated persons and entities can access the relevant information relative to delisting.
- f) Art. 12 of the Sanctions Decree, which is publicly available document makes provision for the unfreezing of funds or other assets of persons or entities with similar names as designated persons or entities, by the Minister, after consultation and on the advice of the National Sanctions Committee. Detailed guidance pertaining to the procedure that should be followed as per Art. 12 is contained at s.2.2.3.4 of the Freezing Measures Terrorism, though not publicly available makes reference to double identity and the actions that should be followed.
- g) The CBA, pursuant to Arts. 3 and 4 (5) of the Sanctions Decree, is responsible for timely and digital publication of designations and any amendments thereto. If there is a change in a freezing list and an existing freezing of funds or other assets has to be lifted, the CBA and the FIU respectively shall inform the service providers and natural persons concerned thereof, and they shall see to it that this shall take place. The Sanctions Decree does not provide a definition of timely. Aruba and the assessors interpreted timely to mean promptly. Section 5 of the Freezing Measures Terrorism mandates that the CBA promptly announce the lifting of freezing measures. The Minister is responsible for notifying the individuals and entities concerned thereof in writing to the extent that it is practicable. See analysis in 6.5 (d) as the same process is applicable.

**Criterion 6.7:** Art. 13 of the Sanctions Decree authorises access to frozen funds or other assets for the payment of certain types of expenses as set out in UNSCR 1452. The Minister may grant special authorisation for the use of frozen assets to cover necessities of life of individuals on the Aruban Lists (designation). This is done after consultation with and advice of the National Sanctions Committee.

### ***Weighting and Conclusion***

Aruba has in place a mechanism for the implementation of TFS-TF without delay. The deficiencies that exist were considered to be minor taking into consideration that most important requirements related to the overall implementation of TFS-TF without delay are in place. These deficiencies include the absence of a process that should be followed including the submission of sufficient identification information and specific designation information when requesting designations by a non-EU county; the requirement of c.6.5 (a) is not fully addressed; there are no public procedures to delist and unfreeze funds and assets of designated

persons and entities under UNSCR 1373; and there is no public procedure to unfreeze funds or assets of designated persons and entities who are inadvertently affected by a freezing order. **R.6 is rated as LC.**

### Recommendation 7 – Targeted financial sanctions related to proliferation

This is a new Recommendation and therefore not assessed in the 3rd Round MER.

**Criterion 7.1:** Aruba has a specific framework to implement UNSCR 1718 (2006) on DPRK and its successor resolutions 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016) and 2356 (2017) (*Arts. 2, 3, 5, and 7-12 of the Sanctions Decree North Korea (Statutory Gazette: AB 2017 no. 42) and Annex I of the Interim State Decree on Priority Sanctions Regimes (Statutory Gazette: AB 2019 no. 47)*). The Sanctions State Decree, as it relates to Iran and which was passed on August 31, 2021 makes provision for the implementation of UNSCR (2231) and successor resolutions. (Art.2). The Sanctions Decree on North Korea and Sanctions State Decree Iran do not contain provisions requiring that such implementation be done without delay.

**Criterion 7.2:** The CBA, pursuant to Art. 2 of the AML/CFT amended State Ordinance, is the authority responsible for implementing and enforcing TFS according to the relevant UNSCRs on DPRK and Iran: *Arts. 3 and 5 of the Sanctions Decree North Korea (Statutory Gazette: AB 2017 no. 42) and Arts. 3 and 5 of the Interim State Decree on Priority Sanctions Regimes (Statutory Gazette: AB 2019 no. 47)*, Arts. 2 and 4 of the Sanctions State Decree (Iran).

- a) In accordance with Art. 2(1)(a) and (c) of the Sanctions Decree North Korea and Art. 2, 4 and 5 of the State Decree (Iran), there is an obligation on both natural and legal persons to freeze promptly all funds or other assets in Aruba of designated persons and entities related to the DPRK and Iran nuclear programme; however, there are no provisions that allow for this to be done without prior notice.
- b) The freezing obligations applicable to DPRK and Iran designated persons and entities extend to the funds and other assets indicated in sub-criteria 7.2(b)(i) and (ii). *Art. 2, paragraph 1, of the Sanctions Decree North Korea (Statutory Gazette: AB 2017 no. 42), Art. 2 and 5 Sanctions State Decree (Iran)*. There are no provisions that cover sub-criterion 7.2(b)(iii). Regarding sub-criterion 7.2(b)(iv), there are no provisions setting out the freezing of funds and other assets of persons and entities acting at the direction of designated persons or entities, but only on their behalf: *Art. 2(2) of the of the Sanctions Decree North Korea (Statutory Gazette: AB 2017 no. 42) and Art. 2 and 5 of the Sanctions State Decree (Iran)*.
- c) Aruban legislation prohibits anyone from providing services or performing acts that can lead to a designated person or entity's access to funds or assets (Sanctions Decrees North Korea and Iran Article 4). It also allows access to the funds or other assets available to or for the benefit of designated persons or entities, only if authorised by the Minister charged with financial matters, after having obtained the consent from the 1718 Sanctions Committee: *Art. 2(4) of the Sanctions Decree North Korea (Statutory Gazette: AB 2017 no. 42) and Article 2 (4) of the Sanctions State Decree (Iran)*.
- d) The CBA must publish the current texts of Annexes I, II and III to Decision 2016/849 in their digital versions, which also reflect the designations made under the relevant UNSCRs on DPRK: *Art. 3 of the Sanctions Decree North Korea (Statutory Gazette: AB 2017 no. 42) and Art. 3 of the Interim State Decree on Priority Sanctions Regimes (Statutory Gazette: AB 2019 no. 47) and Art. 3 of the State Sanctions Decree (Iran)*. The

CBA receives the list from the Ministry of Foreign Affairs who transmits same to CBA within 24 hours via email. The CBA then publishes same on its website and informs FIs and DNFBPs via formal correspondence within three to five days. Guidance has been provided to FIs and DNFBPs regarding their obligations in taking freezing mechanisms (section 11.1.2 of the AML/CFT Handbook). Guidance has been offered to FIs and DNFBPs in relation to PF (Art 11.1.1 and Art 11.1.2 of the AML/CFT Handbook) and one Proliferation Guidance document issued by the CBA.

The FIU also communicates designations to FIs and DNFBPs and provides guidance to these entities in respect of their freezing obligations (See Chapter 11 of AML/CFT Handbook). Communication is done through publications on its website and emails to all reporting entities. There are no mechanisms in place for providing guidance to other persons and entities and on their obligation to take freezing actions.

- e) FIs and DNFBPs must inform the CBA (those entities that fall under their supervision) and the FIU of any assets frozen or actions taken in compliance with the prohibited requirements of the relevant UNSCRs, including attempted transactions of designated persons and entities: *Art. 2(1)(b) of the Regulation Indicators Unusual Transactions (AB 2011 No. 28)*; *Art. 5 (2) and (3) of the Sanctions Decree North Korea (Statutory Gazette: AB 2017 no. 42)*; *Art. 5 (2) and (3) of the Sanctions State Decree (Iran), and Art. 5(3) of the Interim State Decree on Priority Sanctions Regimes (Statutory Gazette: AB 2019 no. 47)*.
- f) There are no provisions in relation to the protection of bona fide third parties acting in good faith when implementing the obligations under Recommendation 7.

**Criterion 7.3:** The CBA, pursuant to Art. 2 of the amended AML/CFT State Ordinance, has the responsibility for supervising and enforcing compliance with the Sanction Decrees. CBA can enforce administrative fines up to \$1,000,000 (Art. 38). No information was available on the measures that are adopted by the CBA to monitor and ensure compliance by FIs and DNFBPs with the obligations reflected in R.7. Criminal sanctions can be applied to any person for non-compliance with sanctions' decisions by an international law organisation, which, by way of interpretation, covers the UNSCRs on the prevention of the proliferation of WMD and their financing: *Arts. 17 and 18 of the Sanctions Ordinance 2006 (AB 2007 no. 24)*. Penalties can be 1-6 years of imprisonment.

**Criterion 7.4: (a-d)** No information was available on procedures to submit de-listing requests to the Security Council according to the relevant UNSCRs.

**Criterion 7.5: (a) and (b)** No information was available regarding the manner in which Aruba treats with contracts, agreements or obligations that arose prior to the date on which accounts became subject to targeted financial sanctions.

### ***Weighting and Conclusion***

Aruba has the legal authority to implement TFS in compliance with the UNSCRs relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing. The CBA however publishes the list within three to five days, which is not considered without delay. There was also no information available in respect of the procedures to for delisting (DPRK and Iran) requests to the Security Council, how Aruba treats contracts, agreement or obligations that arose prior to the date on which accounts became subject to targeted financial sanctions, the protection of *bona fide* third parties, freezing without prior notice and mechanisms used to monitor and ensure compliance by FIs and DNFBPs in respect to their obligations reflected in Rec.7. There are no mechanisms in place to provide guidance

to other persons or entities relative to their obligations in taking action under the freezing mechanisms. The assessors considered the deficiencies to be moderate in nature, taking into consideration the context of Aruba. **R.7 is rated PC.**

### Recommendation 8 – Non-profit organisations

This Recommendation was formerly SR. VIII and was rated NC in the 3<sup>rd</sup> MER. In June 2016, R.8 and its Interpretive Note were significantly amended to better align their implementation with the risk-based approach and to clarify the subset of NPOs which should be made subject to supervision and monitoring.

#### Criterion 8.1:

- a) Aruban authorities have identified Foundations and Associations as organisations that meets the definition of NPOs. As of 2019, the NPO sector consisted of 1847 entities (1629 Foundations and 218 Associations) (Summary Report- National Review of the NPO Sector- pages 1-2). However, the authorities have advised that not all NPOs falls within the sub-set<sup>36</sup> of organisations that meets the FATF definition of NPOs. Based on the TF risk conducted by Aruba, the authorities have advised that six foundations' characteristics and activities (ethnicity, religious background, low volume of transaction) were considered likely at risk of TF abuse.
- b) Aruba has assessed the risk of TF and has also considered possible vulnerabilities of the NPO sector during the period 2016-2019. The risk assessment considered various sources of information including all cross-border wire transfers from the NPO sector for the period 2013-2018, Unusual Transactions Reports (UTRs) and disseminations that have a nexus to NPOs, prosecution and conviction related to NPOs, intelligence from LEAs and information from the Registrar of NPOs and other government bodies. The FIU conducted this assessment. A summary of the findings includes that NPOs with international transfers and foreign donors related to high-risk countries may pose a risk to the jurisdiction.
- c) Aruba has reviewed the laws and regulations to ensure that NPOs are properly regulated, supervised and are not misused for TF. In January 2021 Aruba amended its Civil Code (Second Book) to address measures relating to all NPOs including Associations. The new requirement mandates that associations be registered with the CoC.
- d) Despite the jurisdiction conducting a risk assessment of the NPO sector as identified in c.8.1 (b) above, there is no evidence to show that Aruba has measures mandating the periodical reassessment of the sector's potential vulnerabilities to terrorist activities to ensure effective implementation of measures.

#### Criterion 8.2:

- a) From a contextual standpoint and the assessment conducted, most associations and foundations in Aruba are subsidised by the government of Aruba and are therefore required to follow strict policies. Some of the requirements needed to ensure that government funding can be provided include the income and expenditure or profit and loss statement for the past and current year and the names of persons who supported the NPOs through regular monetary contributions and total of their contributions (State Decree LB 17 February 2016, No.51 and Handbook, Government Subsidies Aruba 2017-2017). Through these measures, there will be some level of accountability,

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<sup>36</sup> The total number of NPOs that fall within this sub-set was not provided by the jurisdiction

integrity and public confidence in the administration of NPOs that receive funding from the government. The percentage of the number of subsidised NPOs is unknown to the assessors.

- b) Aruba has not conducted any detailed and significant outreach and educational programmes with NPOs and donors to raise awareness about potential vulnerabilities to TF, TF risk and the measures NPOs should take to protect themselves against such abuse.
- c) Aruba has not provided any information to demonstrate that it is working with NPOs to develop and refine best practices to address TF risk and vulnerabilities and thus protect them from TF abuse.
- d) NPOs have not been encouraged to conduct transactions through regulated financial channels where feasible.

**Criterion 8.3:** Foundations that are subsidised by the government are supervised and monitored by government officials designated by the Minister of Finance and are required to be registered by the COC. This supervision requires monitoring the compliance with the Subsidy Ordinance AB 1990 and the requirements attached to the approval of the subsidy. Art. 6 of the Subsidy Ordinance entails that specific information must be presented with the application for a subsidy, such as a list, including the names of those who supported the institution in the past year through their periodic financial contributions, and the sum contributed by each of them; and a report on the activities of the institution over the past year, which report must state everything that can provide an assessment of the functioning of the institution. From January 1, 2019, the National Ordinance on Foreign Exchange of the CBA required a foreign exchange license for exceptionally large gifts (donations) and inheritances, including those to non-profit institutions to finance gross fixed capital formation (such as costs of building) to be considered capital transactions. No information was available on NPOs which do not receive government subsidies. Aruba has not demonstrated a risk-based application of measures to NPOs that are at risk for TF abuse.

**Criterion 8.4:** (a) Aruba does not monitor the compliance of NPOs with the requirements of this Recommendation and ensure that risk-based measures being applied to them under criterion 8.3. Although NPOs subsidised by the government are supervised by the Coordination Office Government Subsidy (CBOS), this supervision is not geared towards combating and preventing TF but to a greater degree to ensure that NPOs are not misused for other purposes. (b) There are no measures available for the imposition of sanctions on foundations, board members and persons acting on behalf of the foundation. Such sanctions include nullifying and voiding foundations for violations. By virtue of being a legal person, NPOs are also subject to criminal sanctions in accordance with Art 1:127 of the Penal Code of Aruba. The sanctions that are available are not proportionate.

**Criterion 8.5:**

- a) The Secretary of the CoC is obligated to give access to all registered annual reports to designated agencies in order to perform their legal duties (Art. 21 of the Commerce Register Ordinance). The functions of the designated authorities include both cooperation and coordination. The authorities have also provided a case example – “IBIS case” which involved the use of an NPO - as means of demonstrating cooperation and coordination efforts.
- b) The investigative expertise and capability to examine NPOs suspected of being exploited or actively supporting terrorist activities or organisations is present with the FIU, the PPO

and other LEAs such as the NCTVI. The FIU has established a multi-disciplinary team to address the issue of TF, including that which may have a nexus to NPOs.

- c) Both foundations and associations that are under the supervision of the CBOS are required to provide their annual financial reports, invoices and other documents in order to be subsidised by the government. The FIU can further access the records from the CBOS and also from the notary, as they are utilised for the establishment of NPOs and also from the commercial bank where the NPO holds an account. The LEAs and the PPO can also obtain records from the CBOS pursuant to Article 177b and 177s of the CCrPA. However, it is unclear if such records are available for the other NPOs that are not subsidised by government.
- d) The FIU has provided guidance to notaries, commercial banks and other entities during information sessions about terrorism and the risks of TF. Both entities are integral in the operations of NPOs. The information sessions focused on possible transactions that could be related to TF.

**Criterion 8.6:** The FIU and PPO are in charge of handling international requests concerning NPOs. Where the international requests are in relation to financial transactions, the FIU is the designated authority. Arts. 20 (1) (f) and 22 of the AML/CFT State Ordinance as well as Arts. 6 and 7 of the State Decree Register FIU 2013 provide that the FIU is charged with the exchange of information with foreign FIUs. The Head of Operational Analysis is responsible for handling the requests and the Head of the FIU is ultimately responsible for answering the requesting party. If the international requests concern MLA requests, the responsible authority is the PPO.

#### ***Weighting and Conclusion***

Aruba has identified the sub-sector of NPOs that meets the FATF definition. The jurisdiction has identified to some extent the nature of the threat posed by terrorists to NPOs through the risk assessment conducted by the FIU. There has been some revision of the laws to ensure that NPOs are properly supervised and are not misused by terrorists. For NPOs that received government funding, there is some level of accountability, transparency and oversight however the number of NPOs not receiving funding is unknown. Outside of the foregoing measures, there is no mechanism to monitor the compliance of NPOs with the requirements of this Recommendation, resulting in major shortcomings in the regime. As NPOs are not supervised for TF purposes, it is unclear to what offences the sanctions can be imposed. **R.8 is rated as PC.**

#### **Recommendation 9 – Financial institution secrecy laws**

This Recommendation (formerly R.4) was rated “LC” in the 3<sup>rd</sup> Round MER. Factors that were taken into consideration in the rating included service providers’ ability to share information with the CBA, albeit the criminalisation of revealing secret information further to Art. 286. It was also noted that it was undistinguishable whether money transfer companies were subject to the exchange of information requirements of SR V.

**Criterion 9.1:** There is no legislative or other mechanism that prohibits the sharing of information or facilitates financial secrecy that hinder the implementation of the FATF Recommendations. The various sectoral Ordinances in Aruba prohibit financial secrecy and allow the exchange of information among competent authorities and with foreign counterparts (Chapter IV, State Ordinance on Supervision of Credit System, Chapter 2, State Ordinance Supervision of Insurance Business, Chapter 7 State Ordinance on the Supervision of Securities Business and Chapter 6, State Ordinance Supervision of Money Transfer Companies). Pursuant to various Articles (including 36 and 45) the AML/CFT State

Ordinance competent authorities are empowered to access information in the execution of their duties. Similarly, the sharing/disclosure of information by and between competent authorities is facilitated. There are no hindrances to the sharing of information between service providers (FIs and DNFBPs) as required for correspondent banking, wire transfers and reliance on third parties.

### ***Weighting and Conclusion***

**R.9 is rated C.**

### **Recommendation 10 – Customer due diligence**

R.10 (formerly R.5) was rated “NC” in Aruba’s 3<sup>rd</sup> Round MER. A total of nine deficiencies were identified and included the full scope of financial services not being covered by CDD obligations in numerous instances and the lack of a clear obligation to identify customers in situations of occasional transactions. Aruba substantially addressed most of the deficiencies in its 2014 FUR to the level of LC, largely through the enactment of the AML/CFT State Ordinance and the AML/CFT Handbook. The remaining technical deficiency was that there was no obligation to identify legal persons in circumstances when a legal person is acting on behalf of another person.

**Criterion 10.1:** Art. 3 (in tandem with its Explanatory Notes<sup>37</sup>) and Art. 6 of the AML/CFT State Ordinance<sup>38</sup> require service providers (FIs and DNFBPs) to perform CDD to identify its clients and verify their identities. The Explanatory Notes to the State Ordinance cite the prohibition against keeping and/or maintaining anonymous accounts or accounts that appear in obvious fictitious names by service providers (FIs and DNFBPs).

**Criterion 10.2:** (a) Subject to Art. 6 of the AML/CFT State Ordinance, service providers (FIs and DNFBPs) are mandated to perform CDD measures on the establishment of a business relationship in or from Aruba (Arts. 6.1(a) of the AML/CFT State Ordinance (and Explanatory Notes); (b) while carrying out an occasional transaction above the prescribed threshold of at least Afl 25,000.00 (US\$13,966.00) (Art. 6.1(b) of the AML/CFT State Ordinance; (c) carrying out occasional wire transfer transactions in accordance with Rec. 16 (Arts. 1 and 3 of the State Decree Wire Transfers); (d) on the suspicion of ML/TF (Art 6 1(d) and (f) of the AML/CFT State Ordinance) and (e) where doubt arises as to the veracity or reliability of information and data received from a client in the course of conducting an identification or verification exercise, or in the course of the business relationship (changes in the client profile or business relationship are considered unusual) (Art 6 (1 (f) of the AML/CFT State Ordinance

**Criterion 10.3:** Arts. 3 and 19 of the AML/CFT State Ordinance require service providers (FIs and DNFBPs) to undertake the identification of their clients and the verification of their identities. The Explanatory Notes for Art. 19 outline the identification and verification measures that must be undertaken using reliable and independent source documents, data or information for the prevention and combatting of ML/TF, while transacting business (permanent or occasional) with natural and legal persons, and legal arrangements.

**Criterion 10.4:** Subject to the provisions of Art. 4(1) and 5(1) of the AML/CFT State Ordinance, service providers (FIs and DNFBPs) are required to verify that persons purporting

<sup>37</sup> The Explanatory Notes are not laws. The Explanatory Notes are accompanied by draft legislation to the Parliament to provide an explanation as to reason for the legislation and different clauses. The Explanatory Notes seek to provide some information on the spirit/intent of the legislation.

<sup>38</sup> A law is called a National/State Ordinance in Aruba. A National Ordinance is a decree that contains generally binding regulations, taken jointly by the government and Parliament, by procedure as described in the Constitution of Aruba.

to act on behalf of a customer are authorised to do so, and the identity of the person purporting to act is adequately verified.

**Criterion 10.5:** Arts. 3(1)(b) and 19(5) of the AML/CFT State Ordinance require service providers (FIs and DNFBPs) to take reasonable steps to identify and verify the identity of the Ultimate Beneficial Owner (UBO) using information or data obtained in the course of transacting business or from a reliable source. CDD measures should be conducted in a manner which ensures that the service providers are made certain of the identity of the UBO, in the prevention and combatting of ML/TF risk and vulnerabilities. UBO is defined in the Ordinance as “the natural person who ultimately owns or exercises control over a customer, including a natural person who exercises effective control of a legal entity or legal structure, or the natural person at whose expense a transaction or activity is carried out. The definition in the Ordinance conforms with that in the FATF Glossary.

**Criterion 10.6:** Art. 3(1) of the AML/CFT State Ordinance requires service providers (FIs and DNFBPs) to perform CDD measures, which consist of the establishment of the purpose and intended nature of the business relationship with the client. The Explanatory Note to Art. 3 states that the obligation to determine the purpose and intended nature of the business relationship is included in order to enable service providers to assess any risk involved in entering into such a relationship with the customer. Further, in accordance with s.4.11.3 of the AML/CFT Handbook, in gathering the information about the purpose and intended nature of the business relationship, the service provider will be able to estimate any risk that may arise from the provision of service to the customer. The requirements in the AML/CFT Handbook<sup>39</sup> mandate that service providers are required to understand the purpose and intended nature of the business relationship.

**Criterion 10.7:** (a) Art. 3(1)(d) of the AML/CFT State Ordinance requires service providers (FIs and DNFBPs) to conduct ongoing due diligence on the business relationship to include scrutinising transactions undertaken throughout the course of the business relationship, and to ensure that the transactions are consistent with the customer’s business and risk profiles, as known of the customer by the FI. (b) Art. 7 of the AML/CFT State Ordinance, coupled with the Explanatory Notes, requires that service providers (FIs and DNFBPs) ensure that documents, data or information collected under the CDD process is current and relevant, by undertaking reviews of existing records, particularly those which relate to clients, ultimate beneficiaries or business relationships that pose a higher risk of ML or TF.

**Criterion 10.8:** The CDD requirements for legal persons and arrangements as per Art. 3(1)(c) of the AML/CFT State Ordinance require service providers (FIs and DNFBPs) to perform the necessary CDD measures, which consist of the establishment of the purpose and intended nature of the business relationship with the client. See analysis of c.10.6 for an explanation/analysis regarding understanding the purpose and intended nature of the business relationship. Art. 5 of the AML/CFT State Ordinance requires FIs to take reasonable measures which may be deemed necessary in acquiring an understanding of the ownership and the actual control structure of the customer.

**Criterion 10.9:** (a), (b) and (c). Service providers (FIs and DNFBPs) are required under Art. 19 (2)(3) of the AML/CFT State Ordinance to identify the customer and verify its identity in instances where the customer is a legal person or forms part of a legal arrangement. Art. 1(2) of the Regulation Verification Documents AML/CFT State Ordinance refers to the documents

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<sup>39</sup> The AML/CFT Handbook is based on Art 48 of the AML/CFT State Ordinance which authorises the CBA to issue directives and provide information regarding the application of Chapters 2,3,4 and 6 of the AML/CFT State Ordinance. Arts. 37 and 56 make provisions for the application of administrative and criminal sanctions for breaches to Art. 48 of the AML/CFT State Ordinance, thereby making the AML/CFT Handbook enforceable.

and information sources that can be used in the identification and verification process, which include the procurement of corporate documents (certificate of incorporation and/or a similar document, confirming the name, legal form and proof of the existence of the legal entity); a trade register to assist in identifying either the beneficial owner, the relevant directors and/or officers of the legal entity or arrangement; or a deed or statement issued by a civil law notary. Further guidance on “legal entities” and “documents that can be used in the verification of identity process” is outlined in s 4.6.3. of the AML/CFT Handbook, including the powers to bind and regulate the legal persons and those who hold senior management functions.

**Criterion 10.10:** Art. 1(1) of the AML/CFT State Ordinance provides the legal definition of an ultimate beneficiary to be that of a person holding an interest of more than 25 percent of the capital interest or has the ability to exercise either more than 25 percent of the voting rights in the shareholders’ meeting or actual control of a customer or can in another way exercise actual control over such a customer. Art. 3 (1)(b) of the AML/CFT State Ordinance and s 4.9 of the AML/CFT Handbook require a service provider to identify the UBO and take the necessary steps to sufficiently satisfy the service provider of the verification of the UBO’s identity. In instances where the identification of the natural person has not been or cannot be identified, s 4.9.2 of the AML/CFT Handbook specifically requires the establishment of the identity of the relevant natural person holding a senior managing official position within the legal entity.

**Criterion 10.11:** (a) and (b) As noted in the analysis of c10.10, Art.1 of the AML/CFT State Ordinance addresses the requirement for service providers to take reasonable measures in the identification and verification of UBO for customers that are legal arrangements. As for trust structures or arrangements, Art. 1(2) of the AML/FT State Ordinance requires CDD measures to be performed to ascertain the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries (of 25 percent or more of the assets), and any other natural person exercising ultimate effective control over the trust (including through a chain of control/ownership). Further requirements on the identification and verification of UBOs of other types of legal arrangements where the legal personality is separated from the assets of the customer are detailed in s 4.9 of the AML/CFT Handbook.

**Criterion 10.12:** (a), (b) and (c) CDD for life insurance and other investment related insurance policies is addressed under the general provisions of Art. 8 (b) of the AML/CFT State Ordinance (and the relevant Explanatory Notes) and requires the usual performance of CDD measures upon the designation of the beneficiary (a) as a specially named natural person and (b) by characteristics of class. Art. 8 requires service providers to identify and verify the identity of the beneficiary before the engagement of a business relationship or incidental transaction; after the business relationship has been entered into, so long as the same is performed prior to the collection of payment; or on or before the beneficiary wishes to materialise his interest or exercise his right arising from the policy. Section 4.3 of the AML/CFT Handbook provides further details and guidance on the CDD measures to be taken by service providers on the engagement of business relationships involving life insurance policies and other investment related insurance policies.

**Criterion 10.13:** The provisions of s.4.3.2 of the AML/CFT Handbook permit service providers to conduct CDD measures shortly after the commencement of a life insurance business relationship, so as to not provide any interruption to the business operations. Further, it is expressly stated that this permission only extends to relationships where the risk is

identified as low, the CDD is performed and completed shortly after commencement of the service and prior to the payment of any funds from the life insurance policy or account.

**Criterion 10.14:** Service providers are required in accordance with Art. 8(2) of the AML/CFT State Ordinance to verify the identity of the customer and beneficial owner before, during and after the establishment of a business relationship, or on transacting business for an occasional customer, so long as (a) the service provider completes the verification process as soon as practicable after contact is first established and (b) the same is crucial for the continuance and non-interruption of conducting business on behalf of the customer, and that the ML/TF risk is identified and effectively managed. Details of timing of verification and identification are prescribed in s.4.3 of the AML/CFT Handbook.

**Criterion 10.15:** Section 4.3.2 of the AML/CFT Handbook states that where the verification of the identity of the client or the UBO takes place after the establishment of a business relationship, the service provider must have taken appropriate and effective measures to manage the risk arising from the delay and establishing that it is not a high-risk relationship. Additionally, a service provider, being a bank, can open an account, before the identity of the customer can be verified, provided it guarantees that the account cannot be used before verification has taken place.

**Criterion 10.16:** The Enactment State Ordinance for the Prevention and Combating of Money Laundering and Terrorist Financing ('the Enactment State Ordinance') contains transitional arrangements to allow FIs a maximum period within which to upgrade the information required. It explicitly requires that an FI to conduct a risk assessment of its existing customer base based on the information that it holds at the time that it conducts the review and then progresses through the transitional arrangements in line with the timetables set out in the Enactment State Ordinance. Pursuant to Article 2 of the Enactment State Ordinance, FIs must apply CDD measures that are in line with the provisions in the AML/CFT State Ordinance applicable to that relationship. The CDD work must be completed no later than within the timescales set out in the transitional provisions in the Enactment State Ordinance. There is however no requirement for FIs to conduct CDD measures for existing customers on the basis of materiality. This was however, considered by the team to be a minor deficiency as more weight was given to the issue of ML/TF risks.

**Criterion 10.17:** Art. 11 of the AML/CFT Ordinance requires service providers to perform EDD when a business relationship or transaction by its nature entails higher risk of ML and TF.

**Criterion 10.18:** Art. 10 of the AML/CFT State Ordinance requires service providers to conduct a risk assessment on a continual basis to assess ML/TF risks. This provision also allows for the application of simplified due diligence (SDD) measures by service providers (FIs and DNFBPs) where prior to, and during the establishment of a business relationship or transaction, the risk of ML/TF is identified as being lower. Art. 10 further outlines the requirements that should be satisfied prior to the application of simplified measures, while s 5.1. of the AML/CFT Handbook provides further guidance and instances in which simplified CDD is permitted.

**Criterion 10.19:** The provisions of Art. 9 of the AML/CFT State Ordinance forbids service providers from entering into business relationships or carrying out a transaction in instances where the relevant CDD measures have not been performed, where it is no longer possible to perform the same, or where the results of the information received does not yield positive results. Further, in instances where a business relationship has been established and the service provider is no longer able to comply with its regulatory obligations as stated in Art. 9 pertaining to the procurement of CDD, the service provider is required to terminate the

business relationship immediately. There is a further requirement on service providers in accordance with s4.5.2 of the AML/CFT Handbook, to consider making and filing a suspicious transaction report to the FIU in relation to the customer, if warranted.

**Criterion 10.20:** In accordance with Art. 3b of the AML/CFT State Ordinance, a service provider who believes that a transaction or business relationship involves ML/TF/PF contrary to the CDD requirement in Art. 3, it may in exceptional cases be allowed not to perform CDD or to perform part thereof insofar as performing full CDD may seriously impede the discovery of ML/TF/PF. The AML/CFT State Ordinance further mandates the service provider to immediately submit a UTR to the FIU and inform the supervisory authority. Whilst the foregoing does not explicitly state that this must be done in circumstances when conducting CDD may lead to tipping off, exceptional circumstances is interpreted to include avoiding tipping off.

### ***Weighting and Conclusion***

Aruba has addressed most of the requirements that are required in Recommendation 10. The deficiency that remains is minor and only relates to no requirement to conduct CDD on existing customers on the basis of materiality as the FIs are required to conduct CDD based on risk which is an important requirement. The fundamental requirements related to conducting of CDD by FIs are in place. **R. 10 is rated LC.**

### **Recommendation 11 – Record-keeping**

Recommendation 11 (formerly R.10) was rated PC in the 3<sup>rd</sup> Round MER based on the deficiencies, such as the full scope of the financial services was not covered and there were no specific requirements to monitor complex and unusual large transactions unless it was a transaction that met the indicators to be reported to the FIU. There was also no requirement for FIs to keep record of such transactions.

**Criterion 11.1:** Service providers are required, as outlined in Art. 33 of the AML/CFT State Ordinance, to maintain all necessary records on transactions both domestically and internationally for a period of at least ten years after the date of termination of the business relationship or ten years after carrying out the transaction in question. The AML/CFT Handbook refers to a record retention period and other requirements pertaining to record keeping (Chapter 8).

**Criterion 11.2:** Art. 33 of the AML/CFT State Ordinance places the requirement on service providers to keep all records obtained through CDD in relation to business relationships and occasional transactions for at least 10 years following termination of the relationship and for at least 10 years from the completion of a transaction in question. Equally, Art. 33 mandates that service providers (FIs and DNFBPs) maintain adequate records that include information obtained through CDD measures, account files and the nature of the transactions. This is further supplemented by information contained in Chapter 8 of the AML/CFT Handbook.

**Criterion 11.3:** Art. 33 of the AML/CFT State Ordinance makes it mandatory for record keeping to occur in a manner where separate transactions can be reconstructed at any given time so as to provide, where necessary, evidence for prosecution of criminal activity. This is further supplemented by information contained in Chapter 8 of the AML/CFT Handbook.

**Criterion 11.4:** Service providers, as noted in Art. 33 of the AML/CFT State Ordinance are required to ensure that all CDD information and transactions are made available immediately upon request when lawfully required by competent authorities of Aruba. This is further supplemented by information contained at Chapter 8 of the AML/CFT Handbook.

## *Weighting and Conclusion*

### **R. 11 is rated C.**

#### **Recommendation 12 – Politically exposed persons**

This Recommendation, formerly Recommendation 6, was rated as NC in the 3rd Round MER because there was no additional CDD information required for PEPs.

**Criterion 12.1:** Aruba applies the same standards to both domestic and foreign PEPs and therefore has in place a higher standard required by the FATF in some instances especially for domestic PEPs. Corruption, including that by PEPs, has been flagged as a high-risk issue in the NRA and the scoping note. The measures that are applicable to PEPs are outlined in Art. 12 of the AML/CFT State Ordinance and the Explanatory Note to Art. 12. These measures take into consideration: (a) the requirement for service providers to establish policies that entail risk-based procedures in order to determine whether a potential client or an ultimate beneficiary is a PEP (Art. 12 (1)), (b) the requirement to obtain senior management’s approval prior to the establishment of a business relationship or continuing a business relationship with a PEP (Art. 12 (2) and (3)), (c) the need to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners that are identified as PEPs (Art. 12 (1) and the Explanatory Notes) and (d) the exercise for continuous ongoing monitoring of such relationships involving PEPs (Art. 12(2)(b)). Further CDD measures that are applicable to PEPs are contained in s.5.5 of the AML/CFT Handbook. PEPs are required to be subject to EDD measures at all times in Aruba, including continuous monitoring (Art.12(3)(b) of the AML/CFT State Ordinance).

**Criterion 12.2:** A PEP is defined as a person who holds or held a prominent public position, as well as direct family members and direct associates of such a person. There is no differentiation in the application of the measures between the different types of PEPs in Aruba. Aruba applies a higher threshold than what is required by the FATF for domestic PEPs and persons who have been entrusted with prominent functions within an international organisation. Therefore, the measures contained in the law and other documents apply equally to all types of PEPs, including domestic PEPs. (a) Service providers are required to identify all PEPs, including domestic PEPs and those from international organisations (see c.12.1 (a)). (b) The measures in c.12.1 (b) to (d) apply.

**Criterion 12.3:** Service providers are required to apply the measures and procedures previously outlined to family members and close associates of all types of PEPs (see c.12.2 for definition of PEPs). Section 5.5.2 of the AML/CFT Handbook also provides guidance to service providers on the application of measures to all PEPs, inclusive of their close friends and associates and provides a definition of family members and close associates. Unlike the definition of family which states “includes” and is quite broad, the Handbook’s definition of close associates begins with the word “means” and does not capture everyone who can be associates. Therefore, the definition of associates appears to be limited in nature in the Handbook. However, the deficiency is mitigated as Explanatory Note to Art. 1 which indicates that close associates (pertaining to PEPs) may include, first of all, a natural person with specific status and functions. This definition is therefore considered to be broad and not limited.

**Criterion 12.4:** In accordance with Art. 12 of the AML/CFT State Ordinance, a service provider must have adequate policies and risk identification procedures in place to determine whether a customer, potential customer, UBO, beneficiary of life insurance or the beneficiary’s UBO is a PEP. If a beneficiary of a life insurance contract or that beneficiary UBO is a PEP, the service provider must ensure that management is informed prior to the

payment under the life insurance contract. EDD is required to be performed with respect to the entire transaction. The service provider is also required to submit a UTR to the FIU in accordance with s.26 of the Ordinance.

### *Weighting and Conclusion*

**R.12 is rated C.**

### **Recommendation 13 – Correspondent banking**

This Recommendation (formerly R.7) was rated “NC” in the 3<sup>rd</sup> Round MER. There were no AML/CFT requirements vis-a-vis cross-border correspondent banking.

**Criterion 13.1: (a)** This criterion is met by the provisions of Art. 17 (1) (a) of the AML/CFT State Ordinance. FIs, specifically banks (the “correspondent bank”) which have established or intend to establish a correspondent banking relationship with a respondent institution (the “respondent”) from a country or territory other than Aruba, and for the purpose of processing transactions or executing orders for and on behalf of the correspondent bank, are required to gather sufficient information about a respondent institution to understand fully the nature of the respondent’s business, and to determine from publicly available information the reputation of the respondent institution and the quality of its supervision, including whether it has been subject to a ML/TF/PF investigation or regulatory action as per c.13.1(a). This provision also enables the gathering of information with regard to supervisory measures taken regarding a respondent institution.

The following sub-criteria are also addressed in the provisions of Art. 17 as aforesaid:

- i. **13.1(b):** With regard to an assessment of the respondent institution’s AML/CFT controls – Art. 17(1) of the AML/CFT State Ordinance permits the assessment of adequacy and efficiency of procedures and measures for the prevention of ML/TF/PF of respondent banks. Further, the AML/CFT Handbook mandates that the bank assess the respondent bank’s AML/CFT procedures and measures, ascertains that they are adequate and effective and record, in writing, the respective AML/CFT responsibilities of each bank (s.5.6 of the AML/CFT Handbook).
- ii. **13.1 (c):** Art. 17(2) prohibits the establishment of a new correspondent banking relationships by FIs without the prior approval by members of senior management, of which such a decision will be communicated to the FI.
- iii. **13.1(d):** There is a requirement to clearly understand the respective AML/CFT responsibilities of each institution. Art. 17(1)(c) requires FIs to understand the area of prevention and combating of ML and TF of both banks, and that the same is recorded in writing. Only banks are required to enter in a correspondent banking relationship (Art. 17 of the AML/CFT State Ordinance and s.5.6.1 of the AML/CFT Handbook).

**Criterion 13.2:** Art. 17(3) of the AML/CFT State Ordinance requires that where a correspondent banking relationship entails the use of payable-through accounts, the FI, specifically a bank, should satisfy itself that the respondent bank would have performed the requisite CDD obligations and provided CDD information (per c.13.2(a) and (b)) on its customers that have direct access to the accounts of the correspondent bank; and that the same is made available upon the request of the correspondent bank.

**Criterion 13.3:** The criterion is met by the provisions set out in Art. 18 of the AML/CFT State Ordinance which state (a) that it is forbidden for a bank to enter into or maintain a correspondent banking relationship with a shell bank and (b) the bank must take appropriate

measures to ensure it has not entered into or continued to maintain a correspondent banking relationship with a bank which is known to permit its accounts to be used by a shell bank.

### ***Weighting and Conclusion***

**R.13 is rated C.**

### **Recommendation 14 – Money or value transfer services**

This Recommendation (formerly SR.VI) was rated NC in the 3rd Round MER due to the deficiencies regarding the fit and proper tests as there were no measures in place to prevent criminals and their associates from being the beneficial owner of a money transfer company. Equally, the sanctions that were available were not effective and proportionate and did not apply to directors and senior management.

**Criterion 14.1:** Pursuant to Arts. 1 and 2 of the State Ordinance containing regulation on the Supervision of Money Transfer Companies (SOSMTC), natural and legal persons who conduct MVTS are required to be registered.

**Criterion 14.2:** The CBA is responsible for the registration and supervision of MVTS operating in and from Aruba. Pursuant to Art. 23 of the SOSMTC, the CBA may impose administrative sanctions against the offender if they neglect to register as a MVTS. The administrative fine may be up to Afl. 1,000,000.00 (approximately US\$ 558,659.00) per violation. The penalties are considered to be proportionate and dissuasive in the context of Aruba, taking into consideration other administrative penalties for similar supervisory breaches. The CBA has issued [public notices and warnings](#) regarding the operations of unregistered MVTS in Aruba on its website and in newspapers as part of the process to identify unregistered MVTS.

**Criterion 14.3:** MVTS in Aruba are subject to monitoring for AML/CFT compliance by the CBA pursuant to Arts. 1 and 35 of the AML/CFT State Ordinance, Art. 12 of the SOSMTC.

**Criteria 14.4 and 14.5:** Aruba has not implemented the use of agents for MVTS providers. There are local providers that carry out this service and the CBA has not permitted the use of sub-agents by local providers. Requests were made to the CBA and were denied.

### ***Weighting and Conclusion***

**R. 14 is rated C.**

### **Recommendation 15 – New technologies**

This Recommendation (formerly R. 8) was rated “NC” in Aruba’s 3<sup>rd</sup> Round MER, on the basis that there were no mechanisms or requirements to safeguard against the misuse of technological developments. R. 15 was significantly revised by the FATF in 2019 to provide for virtual assets (VAs) and the activities of virtual asset service providers (VASPs).

**Criterion 15.1:** There is no explicit requirement for the country to conduct risk assessments, taking into consideration the requirement of c.15.1, however, the CBA, as the supervisor for FIs, in conducting sectoral risk assessments took into consideration elements such as distribution channels, nature of the business, products and services, customer base and types of transactions (ML/TF risk assessment- CBA Methodology). New technology also forms part of the risk assessments. FIs are required to assess the ML/TF risks that may arise from the development of new products or services and business practices, including new supply channels and the use of new of developing technologies, relating to both existing and new products (Art.46 b(1) of the AML/CFT State Ordinance).

**Criterion 15.2:** In accordance with Art. 46b of the AML/CFT State Ordinance, service providers are required to take actions as mandated in accordance with the criterion. Further, pursuant to s 5.4.2 of the AML/CFT Handbook, a service provider is required to ensure an assessment of its business risk has been conducted and identified prior to the adoption or launch of a new or developing technology. This assessment is required on new or pre-existing products and must comprise the inherent risk and vulnerabilities related to ML/TF on the adoption and/or launch of new and/or developing technology, so as to ensure that the relevant mechanisms to manage the risk and the mitigating controls are implemented.

***Virtual Assets (VAs) and Virtual Asset Service Providers (VASPs):***

Aruba has not prohibited the use and operations of VAs and VASPs, therefore, the jurisdiction was assessed for all the relevant criteria. Some of the requirements for VAs and VASPs, as detailed below in the analysis of the different criteria, are covered in the AML/CFT State Ordinance that was revised in September 2021, under the definition of custodian wallet provider. Aruba treats VASPs as a DNFBP (see Art.1 of the AML/CFT State Ordinance) and as all DNFBPs and FIs are largely considered as service providers in Aruba, the laws/other measures that are applicable to service providers are applicable to VASPs.

A custodian wallet provider is defined as a provider of services to safeguard, on behalf of its customers, private cryptographic keys which hold, store and transfer crypto assets. This does not cover the full definition of VASPs, i.e., exchange between virtual and fiat currency, exchange between one or more forms of virtual assets and participating in, and provision of financial services related to an issuer's offer and/or sale of VAs.

The assessors did not place significant weighting on the criteria addressing VAs and VASPs in arriving at the overall conclusion and rating for R.15 having taken into consideration the factors of risk and materiality. Based on the information submitted by the jurisdiction, there are no known (registered/licensed) VASPs operating in the jurisdiction. In assessing this recommendation, the deficiency in the definition of custodian wallet provider (VASP) was also considered and had an impact on most of the criteria.

**Criterion 15.3:**

- a) Section I (1) of the Ministerial Order of September 19, 2021, makes provision for the AML/CFT Steering Group to conduct ML/TF risk assessments in Aruba. Further, Art. 44b of the AML/CFT State Ordinance directs that the Minister General Affairs and Minister in charge of Justice will jointly publish from time-to-time a report on the national risk of ML, TF and PF and other related threats that have been identified, analysed and assessed. The Explanatory Note to Art. 44b notes that under the new Article, the Minister in charge of General Affairs and Minister in charge of Justice will periodically conduct joint analysis of national ML, TF and PF risks. Whilst the mandate to conduct the risk assessment is in place, the jurisdiction has nevertheless not conducted any risk assessment of the sector as is required by the criterion.
- b) Section I (1) of the Minister Order of September 19, 2021, makes provision for the AML/CFT Committee to develop strategies for mitigating ML/TF risks identified as a result of any ML/TF risks identified. As a result of not identifying and assessing any ML/TF risks pertaining to VASPs and VAs, the authorities have not applied a risk-based approach to ensure that measures exist to prevent or mitigate ML/TF with the risk identified.
- c) The measures that are applicable to service providers are applicable to VASPs, therefore VASPs are required to take appropriate steps to identify, assess, manage and mitigate their ML and TF risks and all measures as required in c.10 and 1.11 (Art.

46 of the AML/CFT State Ordinance and AML/CFT Handbook). See analyses of c.1.10 and 1.11 for which Aruba is fully compliant. The deficiency in the definition of custodian wallet provider (VASP) nevertheless has a cascading effect.

**Criterion 15.4:**

- a) VASPs are required to be registered with the CBA, which is the supervisory authority. The registration must be accompanied by data and information regarding the identity, trade name and address of the persons who are responsible for the management and the policy of the VASP. The CBA determines the model of registration. (Art.50 of the AML/CFT State Ordinance).
- b) There are no legal or regulatory measures to prevent criminals and their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a VASP.

**Criterion 15.5:** Aruban authorities have taken some actions to identify whether legal and natural persons are operating as VASPs without the necessary registration. The authorities advised the assessors that an assessment was conducted with banks in order to gather information on the presence of VASPs. The authorities advised that the assessment concluded that there was no presence of VASPs. The actions taken by the authorities are limited and not comprehensive to identify unregistered VASPs.

**Criterion 15.6:** (a) In accordance with Art. 2 of the AML/CFT State Ordinance, the CBA is required to conduct supervision of service providers in a risk-based manner to ensure compliance and to ensure that supervision is aimed at preventing and combatting ML/TF/PF based on identified risks. Further, the CBA's AML/CFT Risk-Based Methodology outlines the CBA's approach to risk-based supervision (see R.26). (b) In accordance with the AML/CFT State Ordinance, the CBA is authorised to conduct inspections (Art.35 (1) (b) (c)), compel the production of information (Art. 35(1) (a)) and impose a wide range of financial sanctions on VASPs (Arts.37-40). There is no provision to withdraw, restrict and suspend the license of VASPs.

**Criterion 15.7:** The CBA and the FIU are permitted to issue guidelines to service providers, including VASPs, in accordance with Arts. 48 and 55a (CBA) and 28 (FIU) of the AML/CFT State Ordinance. The AML/CFT Handbook, which has been issued in accordance with Art. 48, is applicable to all service providers including VASPs. No feedback has been provided to VASPs as the authorities have not licensed or registered any such activities.

**Criterion 15.8:** (a) and (b) A wide range of proportionate and dissuasive sanctions are available to deal with VASPs that fail to comply with AML/CFT requirements. Sanctions are applicable to directors and senior managers (See analysis in Recommendation 35- VASPs are classified as DNFBPs in Aruba). The deficiency in the definition of VASPs nevertheless has a cascading effect.

**Criterion 15.9:**

- a) VASPs as service providers are required to comply with the requirements of Recommendations 10 to 21. Further, VASPs are only required to conduct CDD requirements in circumstances when exchanging virtual currency and fiduciary currency and carrying out cash transactions with a value of Afl.1,750.00 (approximately US\$977.65) or more in or from Aruba and when providing custodian wallets in or from Aruba (Art.6 (2)(f) (g) of the AML/CFT State Ordinance). Custodian wallet provider is defined as provider of services to safeguard, on behalf of its customers, private cryptographic keys which hold, store and transfer crypto

assets (Art.1 of the AML/CFT State Ordinance). The deficiencies that exist in R.10 and 19 that were considered to be minor are applicable to VASPs. The requirement is only limited to the provision of custodian wallets and does not fully conform with the requirements of the sub-criterion.

- b) VASPs are subject to the requirements of R.18. The AML/CFT State Ordinance, State Decree on Wire Transfers and the AML/CFT Handbook are the legal and enforceable means provided by the country to demonstrate compliance with the requirements of R.16. The foregoing are all applicable to service providers, including VASPs. The State Decree was created to implement Art. 6 of the AML/CFT State Ordinance which is applicable to VASPs. The deficiency in the definition of VASPs nevertheless has a cascading effect on this criterion.

**Criterion 15.10:** By virtue of the definition of service providers in the Sanctions Decree (Art.1) and VASPs being subject to supervision, the requirements that Aruba have in place to address TFS-TF/PF, specifically those pertaining to c.6.5, (d and e), 6.6 (g) 7.7.2(d and e), 7.3 and 7.4 are applicable to this type of activity. The deficiencies identified in the analysis of those criteria are also applicable here (see analysis of the applicable criteria in R. 6 and 7).

**Criterion 15.11:** The requirements of R.37-39 are applicable to VASPs in circumstances where such activities are connected to ML, an associated predicate offence or TF. The CBA has the ability to exchange information internationally, including information held by its supervised VASPs, and co-operate with counterparts (Art.36 of the AML/CFT State Ordinance). LEAs are also able to share information relating to VAs. The analysis and conclusions made under R.40 are applicable here.

### ***Weighting and Conclusion***

Aruba covers VASPs as a service provider that is subject of AML/CFT requirements, however, the definition of VASPs does not fully comport with the FATF definition of VASPs. Aruba has not conducted any ML/TF risk assessment of VASPs and therefore has not implemented any risk mitigation measures that are commensurate with the risk. Some measures have been taken by the jurisdiction to identify unlicensed and unregistered VASPs that may be operating in the jurisdiction, however, the measures taken are limited and do not allow the authorities to comprehensively identify unregistered VASPs. The requirements that are applicable to most service providers are applicable to VASPs. The deficiency in the scope of the definition of VASPs has a cascading impact on the other criteria. The deficiencies were considered to be moderate in nature taking into consideration the factor materiality. **R.15 is rated as PC.**

### **Recommendation 16 – Wire transfers**

This recommendation (formerly SRVII) was rated “NC” in Aruba’s 3<sup>rd</sup> Round MER. The main deficiencies identified during the evaluation process were the lack of explicit requirements for the procurement of client information pertaining to their address, account number, or a unique identifier; the absence of a requirement on service providers to provide full originator details with the wire transfer instructions; there were no obligations on service providers (intermediary or beneficiary) in the payment chain to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer; and there were no requirements for FIs to implement and adopt an effective risk based approach to assist with identifying and handling wire transfers that are not accompanied by the requisite originator information.

**Criterion 16.1:** Art. 6 (4) of the AML/CFT State Ordinance and Art. 3 of the State Decree Wire Transfers make provisions for the payer’s service provider to ensure that all wire transfers above the threshold of USD/EUR 1000/Afl 1,790.00 are accompanied by complete

information on the payer and beneficiary in accordance with Chapter 10 of the AML/CFT Handbook as follows: (a)(i) the name of the payer (a)(ii) an account number of the payer or in the absence of the same, a unique transaction reference number of the payer, (a)(iii) the payer's address, or national identity number, or customer identification number, or date and place of birth; along with (b)(i) the name of the beneficiary; and (b)(ii) an account number of the beneficiary where such account is used to process the transaction or in the absence of an account, a unique transaction reference number which permits traceability of the transaction. The payer's service provider is required to verify the completeness of the payer's documents, data and information obtained, prior to the transfer of funds.

**Criterion 16.2:** Pursuant to Art. 4 of the State Decree Wire Transfers and Chapter 10 of the AML/CFT Handbook, service providers are required in cross-border batch file wire transactions to ensure that batch files consist of accurate payer information (to include the originator's account number or a unique identification code in the absence of the account number being provided), full beneficiary information, and that the same is fully traceable within the country of the beneficiary.

**Criterion 16.3:** Art. 3 (4) of the State Decree Wire Transfers and Chapter 10 of the AML/CFT Handbook provide a regulatory requirement for funds transfer under the USD/EUR1000/Afl1,790.00 to include the originator and beneficiary information as follows: (a)(i) the name of the payer (a)(ii) an account number of the payer, or in the absence of the same, a unique transaction reference number of the payer; (b)(i) the name of the beneficiary; and (b)(ii) an account number of the beneficiary where such account is used to process the transaction or, in the absence of an account, a unique transaction reference number which permits traceability of the transaction.

**Criterion 16.4:** Art 3 (4) of the State Decree Wire Transfers states that service providers are required in accordance with Chapter 10 of the AML/CFT Handbook to conduct CDD measures which include verifying the customer information where there is a suspicion of ML/TF. This provision also confirms that the requirements of c. 16.3 do not require verification, once the funds transfer is under the threshold unless there is a suspicion of ML/TF.

**Criterion 16.5:** Pursuant to Art. 3 (3) of the State Decree Wire Transfers, for domestic wire transfers, service providers are only required to provide the account number or a unique identification code that enables the tracing of the transaction back to the payer, in instances where an account number is not available for the payer. Upon the beneficiary's payment and service provider's request, the payer's payment service provider is further required to furnish the beneficiary's payment service provider with the complete information about the payer within three working days of the request.

**Criterion 16.6:** Art. 3(3) of the State Decree Wire Transfers complies with the requirements of this criterion. In instances where the payer's payment service provider is required to produce information to the payment service provider of the beneficiary, the ordering service provider need only be required within three working days to include the account number or a unique identification code, if an account number is unavailable. Art. 177s of the Code of Criminal Procedure confirms the authority of LEAs, particularly the PPO, to compel the immediate production of such information.

**Criterion 16.7:** The requirements of this criterion are satisfied by numerous legislative provisions, which require the service provider to retain records of full originator information on the payer and the beneficiary for a period of at least 10 years after the date of termination of the business relationship or at least 10 years after carrying out the transition in question

(Arts. 33 and 34 of the AML/CFT State Ordinance, Arts. 5-7 of the State Decree Wire Transfer and Chapter 8 of the AML/CFT Handbook).

**Criterion 16.8:** Art. 6 (2) of the State Decree Wire Transfers prohibits a service provider from executing a wire transfer if it is not in receipt of the required payer and beneficiary information. Service providers are required to refuse the transfer until the requisite information is received.

**Criterion 16.9:** Art. 7 (1) of the State Decree Wire Transfers requires intermediary service providers to ensure that all information received about the payer and beneficiary, which accompanies a transfer, is kept together with the transfer.

**Criterion 16.10:** Art. 7 (2) of the State Decree Wire Transfers states that if it is not possible to comply with the first paragraph (provision of all originator and beneficiary information by the intermediary payment service provider) due to technical limitations, the intermediary payment service provider shall retain all information received on the originator and the beneficiary accompanying the wire transfer, in an accessible and retrievable manner in Aruba, for a period of ten years as of the date of the wire transfer. Chapter 10 of the AML/CFT Handbook provides that where a service provider is experiencing technical limitations and therefore cannot retain the payer and/or beneficiary information, the service provider is required to make a record and retain the same for at least five years from the date of the transaction.

**Criterion 16.11:** Art. 7 (3) of the State Decree Wire Transfers and Chapter 10 of the AML/CFT Handbook require service providers to take reasonable measures to identify cross-border wire transfers that lack the required payer and/or beneficiary information. The reasonable measures must be consistent with straight-through processing.

**Criterion 16.12:** Art. 7 (4) of the State Decree Wire Transfers and Chapter 10 of the AML/CFT Handbook require intermediary service providers to establish risk-based policies, procedures and measures to determine when to execute, reject, or suspend a wire transfer lacking the requisite payer and/or beneficiary information. The requirement is that the risk-based policies, procedures and measures must include appropriate follow-up actions.

**Criterion 16.13:** Art. 6 (1) of the State Decree Wire Transfers and Chapter 10 of the AML/CFT Handbook require a service provider of the payee to take reasonable measures, including post-event or real-time monitoring, to identify transfers lacking the requisite payer and/or beneficiary information.

**Criterion 16.14:** Art. 6 (4) of the State Decree Wire Transfers and the provisions of Chapter 10 of the AML/CFT Handbook require service providers, on wire transfer transactions of or above the threshold, to verify the identity of the beneficiary if the identity has not been previously verified and maintain the retention period in accordance with FATF Recommendation 11.2.

**Criterion 16.15:** Art. 6 (2) of the State Decree Wire Transfers and Chapter 10 of the AML/CFT Handbook require beneficiary service providers to establish risk-based policies, procedures and measures to determine when to execute, reject, or suspend a wire transfer

lacking the requisite payer and/or beneficiary information. The requirement is that the risk-based policies, procedures and measures must include appropriate follow-up actions.

**Criterion 16.16:** This criterion is satisfied, as service providers (MTCs) are subject to the provisions of Art 9 of the State Decree Wire Transfers, of which the relevant requirements are applicable, whether they operate directly or through an agent.

**Criterion 16.17:** Art. 9 of the State Decree Wire Transfers and Chapter 10 of the AML/CFT Handbook require the service provider (MTC) that controls both the ordering and beneficiary side of the money transfer to consider all information in their possession for both the ordering and beneficiary side, to take reasonable measures to determine whether a UTR requires filing, and where it is determined that the relevant filing has to be made with the FIU, the service provider is required to file an UTR in any country affected by the transfer, and also make the relevant transaction information available to the FIU.

**Criterion 16.18:** The provisions of Art. 4(1) of the Sanction Decree Combat Terrorism and Financing Terrorism and the Freezing Measures Terrorism require service providers to carry out freezing actions and comply with the prohibitions against conducting transactions with designated persons and entities either directly or indirectly as per the relevant obligations (see analysis in R.6).

### *Weighting and Conclusion*

**R. 16 is rated C.**

### **Recommendation 17 – Reliance on third parties**

This recommendation (formerly R.9) was rated as “NC” in Aruba’s 3<sup>rd</sup> Round MER. The identified deficiency was the lack of prescriptive measures to require reliance on third parties subject to the requirements of Recommendation 9, despite the same being applied in practice by service providers, based on provisions set out in the CDD directive for banks issued by the CBA.

#### **Criterion 17.1:**

- a) Art. 15 of the AML/CFT State Ordinance permits FIs’ reliance on the performance of CDD measures conducted by third-party FIs operating in Aruba. Notwithstanding this permitted reliance, the same is restricted to measures related to customer identification, identification of BOs and the understanding of the nature of business being established, notably in deviation of Arts. 3 and 9 that require FIs to independently conduct the said CDD and prohibit the establishment of a business relationship in the absence of the same being conducted. (a) Aruba has explicitly addressed, in accordance with criterion 17.1, the requirement for FIs to promptly obtain the necessary information as it relates to customer identification, identification of BO and the understanding of the nature of business as set out in Rec 10. and pursuant to Art. 15(a) of the AML/CFT State Ordinance (AB 2011 no.28).
- b) The requirements of sub-criterion 17.1 (b) have been satisfied by Art. 15 1(a) and (b) of the AML/CFT State Ordinance which permit service provider reliance, provided that the service provider takes the necessary steps to ensure that copies of all data and information regarding to CDD is made available promptly by the third-party to FIs and DNFBPs upon the request of the service provider. Additionally, the service provider has to take the necessary steps to ensure that the procedures and measures established and conducted by the third party allow for the performance of CDD and record keeping in an accessible way for a period of at least ten years after the date of

termination of the business relationship, or at least ten years after the execution of the respective transaction.

- c) When relying on an introducer, service providers are required to take into consideration the risk posed by the introducer by assessing the adequacy of the AML/CFT framework and the AML/CFT supervisory regime in place where the introducer is based and the adequacy of the AML/CFT measures in place at the introducer (s.4.14.3 of the AML/CFT Handbook). The foregoing requirement is sufficiently broad to capture the requirement of the sub-criterion.

**Criterion 17.2:** Art. 16 of the AML/CFT State Ordinance provides that service providers may accept clients introduced by non-resident service providers, as long as the non-resident service provider is established and operating in a country or jurisdiction designated by ministerial order. The Explanatory Note to Art. 16 of the AML/CFT Ordinance specified that when designating countries and jurisdictions, as currently included in the Regulation, as well as designated introduction countries, particular attention must be paid to the quality of their AML/CFT systems assessed by the FATF, World Bank, IMF or the regional sister organisation of the FATF. When relying on an introducer, a service provider is required to take into consideration the risk posed by the introducer by assessing specific factors including the AML/CFT framework and the AML/CFT supervisory regime in place in the jurisdiction in which the introducer is based (s.4.14.3 of the AML/CFT Handbook). Aruba has prescribed the names of five countries of which introduction of clients may be acceptably made to service providers, based on the level of country risk identified. These include The Netherlands, Curaçao, Sint Maarten, Canada and the USA (Ministerial Regulation of October 18, 2011).

**Criterion 17.3:** There are no restrictions that inhibit service providers from relying on a third party of the same financial group. Further to Arts. 15 and 16 of the AML/CFT State Ordinance, section 4.14.3 of the Handbook provides for reliance on the third party in circumstance (a) in accordance with FATF's Rec 10, 12 and 18, so long as the group applies CDD and record-keeping requirements and programmes against ML/TF (b) and where the introducer is registered or otherwise authorised in another country and the conduct of the introducer's business is subject to supervision for compliance with group AML/CFT requirements. In instances where the group introducer is foreign to Aruba, the same is acceptable and the conditions considered met where the foreign group introducer is registered and authorised in another country, and the business of which they are conducting is subject to supervisory remit for compliance with the group AML/CFT requirements. In accordance with criterion 17.3 (c), the AML/CFT Handbook specifies the requirement for adequacy, using a risk-based approach when assessing the AML/CFT procedures of an introducer. Where same is determined to be of a higher country risk than that of Aruba's, the AML/CFT Handbook provides periodic sample testing of the AML/CFT policies and procedures to mitigate any potential risk.

### *Weighting and Conclusion*

**R. 17 is rated C.**

### **Recommendation 18 – Internal controls and foreign branches and subsidiaries**

This recommendation (formerly Recs. 15 and 22) was rated “NC” in the 3<sup>rd</sup> Round MER. Key deficiencies identified during the evaluation process were the absence of legislative, regulatory and enforcement provisions requiring service providers to establish and maintain internal

procedures, policies and controls, and the ongoing employee training and screening programme.

**Criterion 18.1:** Arts. 46 and 47 of the AML/CFT State Ordinance and s. 3.4.1 of the AML/CFT Handbook address the requirement of FIs to assess the ML/TF risks and the nature and size of the business in line with the internal policies, procedures and controls. The legislative provisions require service providers to conduct periodical evaluations for the assessment of vulnerabilities and ML/TF threats. (a) According to Art. 47 of the AML/CFT State Ordinance, service providers are required to appoint at least one person within their organisation to assist with the monitoring and management of compliance systems within the internal communication of such policies and procedures. The designated person is required to be employed at a senior managerial level as the compliance officer and has the responsibility for the internal receipt and assessment of potential reports and filings with the FIU. (b) The regulatory requirements in accordance with s 3.4.2 of the AML/CFT Handbook require FIs to implement adequate policies and processes for the screening of prospective and existing employees to ensure high ethical and professional standards. (c) Procedures must be in place for the ongoing training of relevant staff (Art. 46 (2) of the AML/CFT State Ordinance and s3.4.2). (d) Periodical evaluations must be carried out by an independent audit function in order to assess if and to what extent they are vulnerable to ML/TF as a result of their activities and operations (Art.46 (3) of the AML/CFT State Ordinance and section 3.4.2 of the AML/CFT Handbook).

**Criterion 18.2:** (a) (b) and (c)-FIs are required to implement group-wide AML/CFT programmes which are applicable to all branches and majority owned subsidiaries of financial groups, insofar as this policy, procedures and measures comply with regulation(s) set by or pursuant to the AML/CFT State Ordinance (Art. 46 of the AML/CFT State Ordinance). The AML/ CFT State Ordinance mandates the following:

- i. A service provider ( FIs and DNFBPs) must designate a person who is in charge of the service provider’s overall management, who will bear responsibility for compliance with laws and regulations on the prevention and combatting of ML/TF and PF. Taking into consideration its nature and size, a service provider must at least have one person in charge of an independent and effective compliance function aimed at monitoring compliance with laws and regulations on the prevention and combating of ML/TF/PF and procedures set out in Art. 46(1) of the AML/CFT State Ordinance (Art. 47 of the AML/CFT State Ordinance).
- ii. Service providers must have adequate policies and written procedures in place aimed at combatting ML/TF and PF (Art. 46a (1) of the AML/CFT State Ordinance). The policies and procedures referred to in the foregoing also apply to the screening of employees before they are hired and regular screening during their employment, change of position, background and education etc (Art.46a (3)).
- iii. Policies and procedures applicable to guidance and ongoing training of the relevant staff (Art. 6a (3) of the AML/CFT State Ordinance).
- iv. Policies and procedures applicable to regular evaluation of the effectiveness of procedures and measures (Art. 6a (3) of the AML/CFT State Ordinance).

**Criterion 18.3:** The requirements of this criterion are met by Art. 45 of the AML/CFT State Ordinance which requires service providers to ensure that its branches and subsidiaries located abroad adopt AML/CFT measures consistent with Aruba’s requirements, in instances where Aruba’s requirements are deemed to be more stringent than that of the host country. This should be applied only to the extent that the same is permitted by the host country, and in

instances where it is not, then financial groups should conduct additional AML/CFT measures to mitigate and manage the risk, while informing the CBA. The requirements of group compliance are further clarified and detailed in the provisions set out at s 3.6 of the AML/CFT Handbook. While this criterion is met, Aruba has advised that there are no FIs in Aruba with foreign branches and/or subsidiaries.

### *Weighting and Conclusion*

**R. 18 is rated C.**

### **Recommendation 19 – Higher-risk countries**

Aruba was rated NC for R.19 (formerly R.21) in the 3<sup>rd</sup> MER. Some of the shortcomings identified included (i) no requirement in law, regulation or other enforceable means for FIs to pay special attention to business relationships and transactions with jurisdictions which either do not or insufficiently apply the FATF Recommendations; (ii) in cases where transactions with such jurisdictions have no apparent or visible lawful purpose, FIs were not required to examine them and set forth their findings in writing; (iii) FIs were not required to implement any specific counter-measures to mitigate the increased risk of transactions with such jurisdictions; and (iv) Aruba had no mechanism to implement counter-measures against countries that continued not to apply or insufficiently applied the FATF Recommendations.

**Criterion 19.1:** Art. 13 of the AML/CFT State Ordinance requires service providers to pay special attention to business relationships and transactions with natural or legal persons and trusts originating from countries or jurisdictions that do not, or insufficiently comply with the internationally accepted standards for the prevention and combating of ML and TF. Although the requirement does not explicitly mention the FATF, the provision is sufficiently broad to capture calls by the FATF. Further, Aruba has consistently advised FIs to take actions against countries when called for by the FATF (see analysis in c.19.3). The requirements in the AML/CFT State Ordinance and Handbook mandate that EDD be conducted proportionate to risk.

**Criterion 19.2:** Service providers are required to apply countermeasures such as ongoing CDD, ongoing monitoring, EDD and scrutinising of business transactions against countries that do not or insufficiently comply with the FATF Recommendations (Art. 13(1) of the AML/CFT State Ordinance and s. 6.1.1 of the AML/CFT Handbook). There are other countermeasures specified in the AML/CFT Handbook that service providers are required to take in high-risk situations including actions related to introducers (including not relying on such services) and group supervision/compliance. The countermeasures contained in the AML/CFT Handbook do not fully capture the full gamut of the examples of countermeasures specified in INR 19. Further, there is no requirement for countermeasures to be taken proportionate to ML/TF risks.

- (a) Service Providers (FIs and DNFBPs) are required to take countermeasures when called upon by the FATF. Service providers are required to treat countries and jurisdictions listed in the FATF Statement (circulated by the CBA) as countries that do not sufficiently apply the FATF requirements or countries which are subject to international countermeasures as higher risk countries (s.5.3.2 of the AML/CFT Handbook). At the time of conclusion of t of the on-site visit, the Democratic Republic of Korea (DPRK) and Iran were the only two countries that the FATF had requested countries to take countermeasures against. Despite the countermeasures in the AML/CFT State Ordinance and Handbook being limited, countermeasures identified in the Sanctions Decree at Art. 11 are wide ranging and include not entering into business relationships and correspondent banking with entities from North Korea and refraining from the opening of bank accounts, branches and offices. These countermeasures coupled with

those in the AML/CFT State Ordinance and Handbook fully capture the scope of the examples of countermeasures in INR6 but are only applicable to DPRK.

- (b) Service providers are required to apply the countermeasures (first paragraph) to all countries and jurisdictions that do not or insufficiently comply with internationally accepted AML/CFT Standards (high-risk countries) (s. 5.3.1 of the AML/CFT Handbook). The AML/CFT Handbook also provides sources of information for high-risk countries independent of calls from the FATF, including the EU. Implicitly, the foregoing suggests that FIs and DNFBPs are required to apply countermeasures independent of calls from the FATF.

**Criterion 19.3:** Aruba has consistently taken measures to advise FIs of countries with weaknesses in their AML/CFT systems, including the CBA's circulation of the FATF Public Statement on countries and jurisdictions that do not or insufficiently apply the internationally accepted AML/CFT Standards or which are the subject of international countermeasures, as countries and jurisdictions that do not or insufficiently apply the internationally accepted AML/CFT Standards (*s.5.3.2 of the AML/CFT Handbook*). Further, the AML/CFT Handbook provides several links to websites, including that for the FATF, which service providers can access to determine the risk level of a country. Moreover, CBA also notifies its supervised entities about the lists published after each FATF and CFATF Plenary detailing jurisdictions that have strategic deficiencies and those that are high risk. The letters informing the institutions of these countries are available on the CBA's website.

### ***Weighting and Conclusion***

Measures are in place to apply EDD to business relationships and transactions from countries when called upon by the FATF to do so. The CBA and the FIU disseminate the FATF "High-risk jurisdictions, call to action" notification to service providers for the relevant actions to be taken. The countermeasures contained in the AML/CFT Handbook are limited and those identified in the Sanctions Decree North Korea, though detailed, are only limited to that jurisdiction. The deficiencies identified include the countermeasures specified in the AML/CFT Handbook do not capture the full gamut of the examples of countermeasures specified in the INR19 and there is no requirement for the application of countermeasures proportionate to ML/TF risks, with the exception of EDD. The deficiencies were considered minor as the main requirements/intent of Recommendation 19 are addressed and there is evidence of the CBA communicating to service providers the requirement to apply countermeasures. **R.19 is rated LC.**

### **Recommendation 20 – Reporting of suspicious transaction**

R.20 (formerly R.13 and SR. IV) was both rated "PC" in the 3<sup>rd</sup> round MER. The main factors underlying the rating were the effectiveness issues, the scope of the ML predicate offences for STR reporting did not satisfy all of the FATF Standards, the scope of the State Ordinances for CDD (SOIPS) and STR (SORUT) not harmonised and undermined the quality of the information reported and lack of indicators to identify suspicious transactions for a number of financial services. Aruba in its 2014 FUR significantly addressed most of its technical deficiencies cited in the MER to a level of LC, through the enactment of the AML/CFT State Ordinance. The sole remaining technical deficiency related to the inadequate coverage of ML and predicate offences under the CrCA.

**Criterion 20.1:** Art. 26 of the AML/CFT State Ordinance mandates that service providers (FIs and DNFBPs) must submit a report to the FIU of an unusual transaction carried out or intended, as soon as the unusual transaction has become known to it. The Explanatory Notes to Art. 26 notes that unusual transactions must be reported immediately after the unusual nature of the transaction has become known to the service provider. The AML/CFT Handbook

(which is enforceable) notes that an attempted transaction can be considered as one that the customer intended to conduct with the service provider (s.7.1.3 of the AML/CFT Handbook). In support of the legislative requirements cited in the foregoing, the Ministerial Regulation AB 2012 No. 47 makes provision the types of unusual transactions that should be filed by reporting entities and include those related to objective and subjective indicators inclusive of transactions that give reasons to assume that they can be related to ML/TF including transactions performed or intended. Art. 25 of the AML/CFT State Ordinance authorises the Minister to make such Regulations.

**Criterion 20.2:** Art. 26 of the AML/CFT State Ordinance requires service providers to report an unusual transaction carried out or intended to the FIU, as soon as the unusual nature of the transaction becomes known to it. The assessors' interpretation of the use of the word "intended unusual action" equates to the same as attempted transaction from a legal standpoint.

### ***Weighting and Conclusion***

**R. 20 is rated C.**

### **Recommendation 21 – Tipping-off and confidentiality**

R. 21 (formerly R.14) was rated "PC" in Aruba's 3<sup>rd</sup> round MER. One of the key deficiencies identified was the lack of protection for service providers and their employees from penal and civil liability for breach of rules of confidentiality, where in the course of carrying out their duties there is a requirement for such persons to disclose sensitive and/or confidential information to the competent authority, that may lead to the investigation and or prosecution of person suspected of ML/TF related criminal offenses. In February 2018, an amendment was made to R.21 to clarify that the requirement of sharing information related to unusual or suspicious transactions within financial groups, and interaction of these with tipping-off provisions.

**Criterion 21.1:** Arts. 29 and 30 of the AML/CFT State Ordinance indemnifies service providers and their staff from any criminal and civil liability based on the requirements set out in R.21. Art. 29 grants protection to service providers and their staff from criminal investigation or prosecution on the suspicion of ML and TF or as evidence of a charge in this respect as a result of data or information provided to the FIU in good faith, in accordance with the provisions of Arts. 26 and 27 of the aforesated State Ordinance (For clarity on how the Arts. address the requirement, see the Explanatory Notes to Art. 29). Art. 30 provides protection to service providers and their staff from civil liability for damages suffered by third parties in the fulfilment of their legislative obligation to report an unusual or intended unusual transaction without delay.

The Explanatory Notes to Art. 29 provide that in principle, the respective person(s) would be guilty of ML and/or TF by their involvement in the execution and/or the intended execution of an unusual transaction. The Explanatory Notes reflect that the second paragraph of Art. 29 provides special criminal immunity in the event that the report would lead to a breach of professional duty of confidentiality or business secrecy. This immunity in both instances is available to such person(s), even if they are precisely unaware of the underlying criminal offence, or regardless of the occurrence of an illegal activity. The Explanatory Note to Art.30 notes that the Art. contains the civil law immunity laid down in the preceding Art. The first paragraph grants the reporter immunity from civil liability from civil liability, if it is made in good faith pursuant to Art. 26.

**Criterion 21.2:** Art. 31 of the AML/CFT State Ordinance (AB 2011 No. 28) mandates that directors, officers, compliance officers and employees of service providers who submit a UTR pursuant to Arts. 26 and 26a or who provides further data or information pursuant to Art. 27

(2) are obligated to observe confidentiality with regard to the data and information. Art. 31 of the AML/CFT State Ordinance further notes that the obligation to observe confidentiality is not intended to obstruct the sharing of information in accordance with Art 46 (addresses the requirement of R.18). Therefore, the tipping off provision does not inhibit information sharing under R.18.

### *Weighting and Conclusion*

**R.21 is rated C.**

### **Recommendation 22 – DNFBPs: Customer due diligence**

Aruba was rated NC with the requirements (formerly R.12) in the 3<sup>rd</sup> Round MER based on the fact that the threshold for the identification requirement for casinos was relatively high compared to that outlined in the FATF Methodology and cruise ship-based casinos were not covered in the CDD requirements. These requirements are outlined in Art. 6 of the State Ordinance. DNFBPs are required to comply with the CDD requirements of Recommendation 10.

**Criterion 22.1:** Art. 6, paragraph 2 of the AML/CFT State Ordinance (AB 2019 No.26) requires DNFBPs as meant in 1 and 2 of the definition of 'designated non-financial services provider' to conduct CDD and captures those activities designated in the FATF Glossary.

- a) Pursuant to Art. 6, para 2 (e) of the AML/CFT State Ordinance, casinos are required to conduct CDD measures during the performance of cash transactions with the value of Afl. 5000.00 (US\$ 2,793.30) or more. The requirement in the law does not fully address the requirement as is set out in the sub-criterion, as CDD is only required for the purpose of cash transactions whilst requirement of the sub-criterion mandates that CDD must be conducted for financial transactions of a specific value and is much broader in scope than cash transaction. The assessors considered the deficiency to be minor, taking into consideration the context of Aruba (largely cash based society) and other types of transactions will be subject to due diligence, for example, transactions conducted using banking service, for example, transactions involving cheques. Further, the situation that obtains in Aruba at the conclusion of the on-site visit indicate that some casinos are conducting CDD for all transaction, including below the stipulated amount specified in the law (see IO.4).
- b) Real estate agents are required to conduct CDD when involved in transactions for a client concerning the buying and selling of real estate. (Art. 6, para 2 of the AML/CFT State Ordinance.).
- c) Dealers in precious metals and dealers in precious stones are required to conduct CDD when engaged in any cash transaction with a value of Afl. 25,000.00 (approximately USD\$13,966.00) (Art 6 (2) (f) of the AML/CFT State Ordinance).
- d) Lawyers, notaries, other independent legal professionals and accountants are required to conduct CDD when they prepare for, or carry out, transactions for their client concerning the following specified activities— buying and selling real property; managing of client monies, securities and other assets; management of bank, savings or securities accounts; organisation of contributions for the creation, operation or management of companies; creation, operation or management of legal persons or arrangements, and buying and selling business entities (Art 6 (2) of the AML/CFT State Ordinance).
- e) TCSPs when they perform such services as: forming companies or other legal persons; acting as (or arranging for another person to act as) a director or secretary of

a company, a partner of a partnership, or a similar position in relation to other legal persons; providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement; acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement; or acting as (or arranging for another person to act as) a nominee shareholder for another person (Art. 6 (2) of the AML/CFT State Ordinance).

**Criterion 22.2:** DNFBPs are required to comply with the same record-keeping requirements as FIs as set out in Recommendation 11, as the provisions apply to all service providers including DNFBPs (see analysis in R.11).

**Criterion 22.3:** The requirements of R.12 apply to all service providers including DNFBPs.

**Criterion 22.4:** DNFBPs are required to comply with the same new technologies requirements as FIs in R.15 (see analysis of R.15, specifically c.15.1 and 15.2).

**Criterion 22.5:** DNFBPs are required to comply with the same reliance on third parties as FIs in Recommendation 17.

### ***Weighting and Conclusion***

DNFBPs are required to comply with the requirements set out in the AML/CFT State Ordinance. The deficiency that exists is minor in nature considering the issue of risk and materiality. The deficiency relates to casinos not being legally required to conduct CDD requirements for all types of transactions as CDD requirement is only conducted limited cash transactions. The deficiency was considered as minor, taking into consideration the factor of ML/TF risks. **R. 22 is rated LC.**

### **Recommendation 23 – DNFBPs: Other measures**

In its 3rd round MER, Aruba was rated ‘NC’ for R. 23 (formerly R.16). The identified deficiencies were numerous and included (i) AML/CFT measures did not apply to TCSPs and most of the requirements did not apply to DNFBPs. Aruba through its various FUR addressed the deficiencies cited in the MER.

**Criterion 23.1:** Art. 26 AML/CFT State Ordinance requires service providers (DNFBPs) to comply with the STR requirements set out in R.20 a) Lawyers, notaries, other independent legal professionals and accountants – when, on behalf of, or for a client, they engage in a financial transaction in relation to the activities described in criterion 22.1(d). b) Dealers in precious metals or stones – when they engage in a cash transaction with a customer equal to or above USD/EUR 15,000.00 as described in criterion 22.1(c). c) TCSPs – when, on behalf or for a client, they engage in a transaction in relation to the activities described in criterion 22.1(e).

**Criterion 23.2:** DNFBPs are required to comply with the same internal control requirements as FIs under R.18 (see analysis of R.18).

**Criterion 23.3:** DNFBPs are required to comply with the higher risk countries requirements as set out in R.19 (see analysis in R.19).

**Criterion 23.4:** DNFBPs are required to comply with the same tipping-off and confidentiality requirements as FI (see analysis of R.21).

### ***Weighting and Conclusion***

Deficiencies identified in R. 19 (limited countermeasures) apply to this Recommendation. The deficiencies are minor in nature. **R.23 is rated LC.**

## Recommendation 24 – Transparency and beneficial ownership of legal persons

This Recommendation (formerly Recommendation 33) was rated NC in the 3<sup>rd</sup> round MER. The technical deficiencies were inadequate requirements to collect or make available information on beneficial ownership and ultimate control of legal persons; the system in place does not provide access to adequate, accurate and current information on beneficial ownership and ultimate control in a timely manner; and the measures to ensure transparency as to the shareholders of companies that have issued bearer shares are inadequate. No information is available in the FURs pertaining to the progress made by Aruba in correcting the deficiencies.

**Criterion 24.1:** (a) Aruba has mechanisms that identify and describe the different types, forms and basic features of legal persons in the country based on the provisions contained in State Ordinance amending the CCA, Book 2 (Arts. 50-58, 70-89, 90-99, 100-144, 150-187 of the CCA). These legal persons are also registered by type/form in the registry of the CoC. (b) The process for the creation of legal persons and recording of basic and shareholder information is included in the CCA, Book 2 and the Commercial Register Ordinance, which are publicly available. The register is kept by the Chamber of Commerce (CoC) and contains basic information such as personal information and list of directors, owners or partners of legal persons, proprietorships, partnerships and companies, proof of incorporation, legal form and status and address of registered office, which are publicly available. The information in the CCA, Book 2 only covers shareholder information and does not cover those who may control or own legal persons via other means including the ultimate beneficial owner.

**Criterion 24.2:** Aruba assessed the ML risk of the different types of service providers (FIs and DNFBPs) and the TF risk associated with NPOs which are different types of legal persons. The 2021 ML NRA also took into consideration the ML/TF risks posed by specific types of legal persons such as Aruba Exempt Companies (AVVs). Aruba has however not conducted an in-depth ML/TF risk assessment of all types of legal persons operating in Aruba.

**Criterion 24.3:** Aruban law requires legal persons to be registered with the CoC pursuant to Arts. 2 and 2a of Commerce Registry Ordinance (CRO). The CCA, Book 2 requires all legal persons to keep information on the company's name, proof of incorporation, legal form and status, address of the registered office (Arts. 50-51 (foundations), Art. 71 (Associations), Art. 90 (Cooperation and Mutual Insurance Association), (Arts.100-102-Corporations), (Art.155-Limited Liability Companies). The CoC records the name of the company, proof of incorporation, legal form and status, the address of the registered office, basic regulating powers, and a list of directors. The information is publicly available on its website.

**Criterion 24.4:** Companies are required to maintain the information set out in 24.3 and also a register of their shareholders or members, containing the number of shares held by each shareholder and categories of shares (Art. 109 CCA, Book 2). Art. 109 also mandates the board of the company to deposit a copy of the register, including the changes over the previous financial year with the CoC within eight months after the end of the financial year. The register contains, *inter alia*, names, copy of documents establishing the identity and addresses of all holders of shares, stating the class of share, the voting rights attached thereto, the amount paid or shown as having been paid thereon, any payment obligations, if there is a transfer the date of transfer and particulars relating thereto. The CCA, Book 2 at various Articles mandates that the relevant information be held at the registered office in Aruba. For example, Art. 187 mandates that companies are required to have legal representatives (in specified cases) with a registered office in Aruba. The legal representative is mandated to keep the information specified in Art.165 including a copy of the shareholders' register.

**Criterion 24.5:** Art. 109 (2) of the CCA, Book 2 mandates the board of the company to keep a register containing the information referred to in criteria 24.3 and 24.4 and ensure it is

regularly updated and deposited with the CoC. The Board is also responsible for keeping a copy of the document used for establishing the identification and addresses of the shareholders. Art. 109 of the CCA, Book 2 further mandates that the Shareholders registry must be updated regularly with the date of each change entered. Further, the cited Article provides for shareholders and others whose data shall be entered in the register to provide the Board with the necessary information in a timely manner. Copies of the documents are required to be entered into the register. Art. 5 of the CCA, Book 2 mandates that the notary is required to ensure that all supporting documents are attached to the notarial deed and filed with the office of the trade register which is kept by the CoC in accordance with Art. 1 of the Trade Register Ordinance. Art. 20 of the Trade Register Ordinance mandates that the information submitted to the trade registry (CoC) is factual and correct. This therefore requires the company or its agent (notary) that is submitting the information to ensure that it is correct.

**Criterion 24.6:** Aruba uses a combination of mechanisms in this respect.

- a) Arts. 109 (6), 165 (7) of the CCA, Book 2 mandate Corporation and Limited Liability Companies to file a copy of the Shareholders' register, including changes with the CoC eight months after the end of the financial year. Arts. 155 and 165 of the CCA, Book 2 (Limited Liability Companies (VBA)) have a similar position. AVVs were abolished, consequently, these types of legal persons cannot be formed or operate in Aruba.
- b) Companies are mandated to maintain a copy of the share register along with all documents used to establish the identity and addresses of shareholders. The register is required to be updated regularly and information provided in a timely manner by the shareholders (Arts.109 and 155 of the CCA, Book 2).

In the case of the two foregoing requirements, shareholders of companies can be legal persons. There is no requirement to hold up-to-date information on the natural person who exercises control or ownership of the legal person. The concept of Beneficial Owner (BO) is not defined in the legislation (CCA, Book 2) and the mechanism that exists does not ensure that shareholders in all instances are indeed the BO.

- c) FIs and DNFBPs are required to maintain BO information related to their customers as part of the CDD process. This information is available to the relevant competent authorities (see analysis of c.10.10, 10.14.10.15 and c.22.1). Further, TCSPs that conduct business on behalf of legal persons are required to maintain information on the UBO (Art. 8 of the SOSTCP). Competent Authorities have access to the information contained in the CoC register and can utilise their powers (see analysis of Rec 31) to obtain information held by companies which is specific to shareholder information and BO information held by FIs and DNFBPs in a timely manner (see IO5 analysis).

**Criterion 24.7:** Arts. 109 and 165 of the CCA, Book 2 mandate the company to keep updated shareholders information. As stated in the analysis in c.24.5, copies of documents required to be provided by shareholders and those whose names are entered in the register are required to submit the relevant documents which are required to be entered in the register and the information is factual. Further information that must be kept in the register include that related to the usufructuaries and pledgees and all accompanying documents regarding those persons. Arts. 104, 108 and 157 of the CCA, Book 2 mandate that share certificates should not be issued until the identification of the person in whose name the share is issued has been verified using reliable and independent sources of information. Further, Art. 7 of the AML/CFT State

Ordinance requires service providers to ensure that the data collected through the CDD process, which relates to clients, their relationships and ultimate beneficiaries are relevant and kept up to date (see analyses of c. 10.10, 10.14 and 10.15 which are applicable to service providers (FIs and DNFBPs). The deficiency in relation to identification of the ultimate beneficial ownership as stated in c.24.6 cascades into this criterion.

**Criterion 24.8:** In accordance with Art. 187 of the CCA, Book 2 a company is required to be represented by a legal representative incorporated under Aruban law and having a registered office in Aruba. Should the foregoing not be applicable, the company is required to have one or more natural persons, who are resident of Aruba as directors or a legal person as director which directly or indirectly has one or more person residing in Aruba. The Board of Directors of the company is mandated to cooperate with competent authorities in the provision of basic and beneficial ownership information (Arts. 109 and 165 of the CCA). Further, Art. 187 mandates that companies also have a legal representative who is required to cooperate with the authorities, inclusive of the filing of documents with the CoC. Moreover, Art. 33 of the AML/CFT State Ordinance mandates service providers cooperate with competent authorities to produce the information collected by these providers which includes information provided by legal persons during the CDD process which includes UBO information at the first request of the competent authority.

**Criterion 24.9:** Art. 33 of the CCA, Book 2 mandates the keeping of books, documents and other data of the legal persons after it is dissolved or otherwise ceases to exist for 10 years after the date the company has dissolved. Art. 33 of the AML/CFT Ordinance, service providers (legal persons included) shall keep the data and information required under CDD for a period of at least ten years after carrying out the transaction in question.

**Criterion 24.10:** Competent authorities including law enforcement (PPO, Financial Investigation Bureau), FIU and the CBA have timely access (see analysis in IO 5 for timelines) to basic and beneficial information held by relevant parties. Basic information is publicly available on the CoC website and can be accessed by all competent authorities. Access to the filed annual reports and share registers which in some instances contain BO information are granted to competent authorities in the conduct of their functions, upon request (Art.21 of the Trade Register Ordinance). The PPO and the police have access to BO information held by any person in conduct of their functions based on the provisions set out in Arts. 177, 177a, 177b and 177s. CBA's access is contained in Arts. 33 and 35 of the AML/CFT Ordinance, Arts. 8 and 28 of the SOSTCSP and Art. 21 of the Trade Register Ordinance. The FIU has access to BO information based on the requirements contained in Arts. 23 and 27 of the AML/CFT State Ordinance. Competent authorities indicated that the information is generally provided within a matter of hours or a day of a request.

**Criterion 24.11:** (a)- (e) The Code of Commerce which was amended in 2012 prohibits the issuance of bearer shares by AVV and Limited Liability Companies (NVs) (Arts. 51, 155i, II, IV). Bearer Shares were further regulated by the provision contain in the CCA, Book 2, which prohibits bearer shares. Art. 100 (1) of the CCA, Book 2 mandates that the corporation is a legal person and shares must be registered with the company by the Board of Directors who are required to file same with CoC.

**Criterion 24.12:** Aruba advised that nominee shareholders and directors are prohibited by law, however, no such legislative provision was provided evidencing same. In Aruba, usufructuaries and pledgees are required to provide the relevant information to the Board and the information maintained in the register (see analysis in c.24.7). Companies (TCSPs) acting as legal representatives are required to be licensed and fall under the supervision of the CBA (Art. 2, State Ordinance on the Supervision of TCSPs) and can act as nominees and in that

case, are subjected to CDD requirements. TCSPs are required to keep information concerning the identity of its nominator, assets, background of UBOs pursuant to Art 8, section 1 of State Ordinance TCSP which are held by the CBA (Art. 20. of the State Ordinance TCSP). Service providers under Art.11 (e) of AML/CFT State Ordinance are mandated to conduct enhanced due diligence in these instances.

**Criterion 24.13:** Art. 2:137 of the CrCA makes a person liable to a term of 3 months imprisonment or a fine of Afl. 5.000.00 (US\$2,793.30) if he/she fails to comply with an order issued or formal request made under statutory regulation by any person charged with any supervisory tasks or detection and investigation of a criminal offence. Arts. 109 and 165 of the CCA make a person liable to a fine in the second category if he/she does not comply with his legal obligation to provide a copy of the register to the CoC. The same penalty applies for failure to file annual accounts at the office of the trade register (Arts. 116, 120 and 171 of the CCA, Book 2). Art. 25 of the CCA also provides for dissolution of a legal person by the court on the application of CoC if they have not complied with the requirements of filing registers, financial statements or other documents such as director information.

561. A director can also be suspended or dismissed by the Board without limitation (Art 140 of the CCA, Book 2) and the supervisory director (board) can be suspended or dismissed by the court for improperly performing his duties or for other reasons (Art. 142). Other reasons are wide enough to cover the obligations hereunder. Further, Art. 20 of the Trade Register Ordinance makes provision for breaches, including not providing accurate information, failure to submit a statement for registration, failure to submit a copy of the share register and failure to submit annual reports. The penalties include a fine of Afl.25,000.00 (US\$13,966.00) - intentional failure to submit accurate information and a fine of Afl.5000.00 (US\$2,793.00)-submission of inaccurate information due to his own fault (unintentional), failure to submit a share register and submit annual reports. The sanctions are proportionate and dissuasive.

**Criterion 24.14:** Aruba can provide international cooperation pertaining to basic and beneficial ownership information.

- a) Basic information is publicly available on the website of the CoC, therefore, foreign authorities can freely access the information.
- b) The CoC is required to provide access to the information as recorded in its registry to different competent authorities in the performance of their statutory duties. Competent authorities including the police, FIU, PPO and CBA are permitted to share information (with no limitation) with foreign counterparts using formal and other forms of cooperation (see R.37 and 40). The CBA, FIU, PPO and other LEAs also have access to the information that is held by FIs and DNFBPs.
- c) LEAs can obtain information, including that related to BO on behalf of foreign counterparts in accordance with Art. 177s. Further, as indicated above, the CoC is required to provide access to the information to different competent authorities, including the police who can share that information in accordance with the measures outlined in R.40.

**Criterion 24.15:** The FIU's policy requires it to provide feedback when it receives information. The FIU also applies the guidance as provided by the Egmont Group regarding feedback between FIUs. The feedback provided is in relation to the usefulness and utilisation of all information exchanged regarding the analysis conducted by the FIU. No information was provided in respect to the monitoring of quality of assistance in respect to basic and BO information received by other competent authorities such as the PPO or request for assistance in locating BO residing abroad.

### ***Weighting and Conclusion***

Aruba, in accordance with its law, can establish various types of legal persons and provide processes for the creation of those legal persons and for obtaining and recording of basic and BO information, which is publicly available, accurate and up to date. The deficiencies that exist have been treated as moderate taking into consideration the framework that exists in Aruba. These deficiencies include the jurisdiction has not fully assessed its ML/TF risks associated with all types of legal persons, Only shareholder information is required to be held by the CoC and companies themselves and does not fully capture the BO. However, BO information is maintained by FIs and DNFBPs as part of their CDD requirement. Although the authorities noted that nominees are prohibited, the measure allowing such prohibition is not clear and there is no feedback mechanism by competent authorities, besides the FIU, to monitor quality of assistance related to basic and beneficial ownership information **R.24 is rated PC.**

### **Recommendation 25 – Transparency and beneficial ownership of legal arrangements**

Aruba in its 3<sup>rd</sup> MER was rated not applicable with these requirements (formerly R.34) as it was concluded that trusts are not recognised under Aruban law and there are no other legal arrangements similar to trusts that exist in Aruba. The changes made to R. 25 require a country to apply minimum transparency requirements, even if it does not legally recognise trusts.

**Criterion 25.1:** (a) and (b) Aruba’s law does not allow for the formation of trusts. Nevertheless, TCSPs are required to be trustees of a trust (Art. 1 of the State Ordinance pertaining to the Supervision of Trust Service Providers hereinafter referred to as SOSTSP). TCSPs are required to have in their possession, at all times, the identity, background and assets of the UBO and the settlor (Art.8 of the SOSTSP). In accordance with the AML/CFT State Ordinance (s. 3,4,7) and AML/CFT Handbook (paragraph 4.9.3), TCSPs and other service providers are also required to maintain information on those persons who are connected with or having control over the trust affairs including the settlor(s), trustee(s) and protector(s). Art. 33 (1) (d) of the AML/CFT State Ordinance requires trusts and other legal arrangements to keep documents used to verify the UBO. (c) TCSPs are operating within the jurisdiction, as such criterion 5.1(c) applies. Whilst Art 8, section 3 of the SOSTSP requires that information be kept for 10 years from the time TCSP started its activities on behalf of the UBO, there is no provision which stipulates the retention of records after their involvement when the trust ceases. The information to be kept for 10 years includes the identity, assets and background, assets of UBO, trustees, protectors and the settlor.

**Criterion 25.2:** Art. 33 (1) (d) of the AML/CFT State Ordinance places an implicit obligation on TCSPs to ensure that the information in its possession is accurate as it requires trustees to store data and information including “documents used to verify the identity of the UBO of the trust”. TCSPs and other service providers are required to ensure that BO information is relevant and up-to-date (Arts. 3, 4 and 7 of the AML/CFT State Ordinance). Further, guidance is provided in the AML/CFT Handbook (which is enforceable) and states in the context of trust and legal arrangements, BO include those having control over the trusts’ affairs, including settlor(s), trustee(s) and protector(s) (s. 4.9.3 of the AML/CFT Handbook), TCSPs are required to keep accurate and up-to-date information on settlor(s), trustee(s) and protector(s). The AML/CFT Handbook explicitly mandates service providers to maintain accurate and up-to-date information on the UBO at s.4.9.3. TCSPs and all service providers (FIs and DNFBPs) are required to ensure that the foregoing information is updated in a timely manner including in higher risk situations (s.4.1.13 and 5.3.3 of the AML/CFT Handbook).

**Criterion 25.3:** Art.5 of the AML/CFT Ordinance requires service providers to determine whether the natural person purporting to act on behalf of the client is so authorised and record

information on the legal status prior to performing services for that client. The information must lead to the UBO and the settlor of the trust. Art 8, section 1 of the AML/CFT Ordinance mandates service providers to perform CDD when entering into a business relationship or before carrying out an occasional transaction. Nevertheless, there is no requirement for trustees to disclose their status to FIs and DNFBPs.

**Criterion 25.4:** There is nothing in the laws or any other enforceable means that prohibit trustees from providing BO information to competent authorities and FIs and DNFBPs. Annually and before July 1, a TCSP is required to provide a report to the CBA which includes financial statement, identity, assets and background of the UBO (Arts. 7 and 8 of the SOSTSP). The measures outlined in the analysis of c.24.10 also applies to this criterion. CDD requirements contained in the AML/CFT State Ordinance allow FIs and DNFBPs to obtain information to verify the customer and BO. Art 5, paragraph 2 of the AML/CFT Ordinance requires service providers to take reasonable measures to understand the ownership and control structure of the customer, which includes the identity of the UBO (see also 4.10-4.10.3 of the AML/CFT Handbook).

**Criterion 25.5:** Competent authorities, including law enforcement (PPO, Financial Investigation Bureau, CBA, FIU) have timely access to basic and beneficial information held by FIs and DNFBPs. The PPO can access information pursuant to Art. 177 of the CCrPA and provides support for access by other LEAs (Art. 177s). Financial Investigative Bureau pursuant to Arts. 177a, 177b, 177s of the CCrPA. CBA's access is contained in Art. 33 and 35 of the AML/CFT Ordinance and Arts. 8 and 28 of the SOSTSP. FIU's access is contained in Arts. 23 and 27 of the AML/CFT State Ordinance.

**Criterion 25.6:** Aruba has a robust regime related to rapidly rendering international cooperation (R.37 and R.40).

- a) No information provided with regard to this sub-criterion.
- b) The measures identified in the analysis of c.24.10 and the actions that can be taken by competent authorities are also applicable to information that is held pertaining to trusts (with the exception of access to the register)
- c) The investigative measures cited in the analysis of c.24.10 are applicable with regard to the obtaining of BO information from service providers, including TCSPs on behalf of foreign counterparts.

**Criterion 25.7:** TCSPs who fails to comply with the stipulations as out in SOSTSP are liable to imprisonment of maximum of six years and a criminal or administrative fine up to Afl.1,000,000.00(US\$555,555.00) (Arts. 11, Section 1 and 2, Art 31, Section 1 of SOSTSP). These sanctions are proportionate and dissuasive.

**Criterion 25.8:** Pursuant to Art. 2 of SOSTSP it is prohibited to conduct business of a TCSP in or from Aruba without a licence for that purpose issued by the CBA. A person who contravenes this provision is liable to a fine not exceeding Afl. 1,000,000.00 (US\$ US\$555,555.00) and may also apply a penalty charge order. Failure to grant competent authorities access to information are contained in the CCrPA and the AML/CFT State Ordinance. The penalty contained in the AML/CFT include administrative fine not exceeding Afl.1,000,000.00 (US\$555,555.00\_ by the CBA. The sanctions are considered to be proportionate and dissuasive. Refer to criterion 25.1 which has a cascading effect on this criterion.

### ***Weighting and Conclusion***

Foreign TCSPs are permitted to operate in Aruba as the law does not permit the formation of domestic trusts. Whilst Art. 8 of the SOSTSP mandates the keeping of identity, assets and background on the UBO and settlor it does not mandate keeping the identity of the protector (if any). However, the requirement to keep accurate and up-to-date information on the settlor, trustees and protectors and all persons connected to the trust are found in the AML/CFT State Ordinance and Handbook which apply to TCSPs. The information that is kept by TCSPs mandates the keeping of the records from the date the activities on behalf of the trust started, whilst the requirement is for after the TCSPs involvement with the trust ceases. No information was provided in relation to sub- criterion 25. 6 (a). These criteria apply to all countries, notwithstanding their domestic law does not allow for the formation of trusts. In deciding the rating that should be assigned, the assessors considered that the deficiencies identified are moderate, given the risk and context of Aruba. **R. 25 is rated PC.**

### **Recommendation 26 – Regulation and supervision of financial institutions**

This recommendation (formerly R.23) was rated as “NC” during the 3<sup>rd</sup> Round MER. There was a myriad of deficiencies, however, of note was the absence of licensing, regulation or supervision of the securities and investment sector and for persons carrying on currency exchange business and activities and the lack of provisions that prohibited 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. Aruba substantially addressed most of the deficiencies to an acceptable standard of LC. The deficiencies that remained were effectiveness related and are assessed under IO.3.

**Criterion 26.1:** Pursuant to the Art. 35 of the AML/CFT State Ordinance , the CBA has supervisory and regulatory responsibility for monitoring the implementation and compliance with the AML/CFT requirements by service providers (FIs and DNFBPs).

#### **Market Entry**

**Criterion 26.2:** The requirements of this criterion are addressed respectively:

#### **Credit or Electronic Money Institutions**

A credit institution is defined as “an enterprise or institution whose business is to receive funds from the public, whether or not payable in the future and to grant credit for its account” and therefore includes banks. Companies or institutions pursuant to Art. 4 of the SOSCS are prohibited from engaging or conducting business of a credit institution or electronic money institution in the absence of the procurement of the requisite authorisation from the CBA. Similarly, companies or institutions resident outside of Aruba will require the requisite bank license prior to conducting business of a credit institution or electronic money institution nature.

#### **MTVS & Money or currency changing service**

In accordance with Arts. 1, 2 and 3 of the SOSMTC, the CBA requires the registration of MVTS (MTCs) and money or currency changing services prior to conducting business of this nature.

#### **Securities brokers**

Art. 5 of the SOSSB requires the licensing or application for an exemption from licensing by securities brokers, asset managers, investment institutions, custodians, and stock exchanges in operation of securities related business activities in or from within Aruba. Similarly, in order

to facilitate a public offering, a prospectus must be submitted to the CBA for review and approval prior to the same.

### **Insurance companies**

Art. 5 of the SOSIB requires the procurement of a license to operate an insurance business in or from within Aruba and confirms whether the license will be granted to facilitate the engagement in life or general insurance business.

### **Shell banks**

Art. 6 (3) of the SOSCS prohibits the operation of shell banks, or institutions that cannot evidence an intention to operate a legitimate or an active credit or electronic money institution from within Aruba. The Explanatory Note to Art.6 provides further guidance pertaining to the interpretation of the law. The Explanatory Note states that while the Art. 6(3) makes the granting of a license to conduct the business of a credit institution via so-called-called “shell banks” impossible, the character of a shell bank is that mind and management are not present in the licensing country and is not affiliated with a (financial) group that is subject to an effective form of consolidated supervision. This prohibition implements the FATF Recommendation (R.18 at the time) which does not permit the establishment of, and therefore the granting of a license to a shell bank. The requirement also has a nexus to the requirement of Art.18 which explicitly prohibits entering into correspondent banking relationship with shell banks.

**Criterion 26.3:** FIs are required to obtain the necessary authorisation, registration, licensing or approval by the CBA prior to engaging in any business practice or market entry that may fall under the supervisory remit of the CBA. The CBA is required to take the necessary legal or regulatory measures, including the requirement of information, documents and data from reliable sources or on application to the CBA, for the purpose of assessing the suitability, fitness and propriety of market participants, and in the prevention of criminals or their associates from being a beneficial owner, or holding a significant or controlling interest, or a management function in a financial institution (Credit Institutions - see Arts. 4, 5, 6, and 9 of the SOSCS; MVTS – see Arts. 3 and 5(2) of the SOSMTC; Insurance Brokers – see Art. 17 of the SOSIB; Securities Business – see Arts. 11 and 61(1) of the SOSSB. Arts. 1 and 2 of the Directive on Sound Business Operations further details the integrity screening measures performed in determining the fitness of the relevant person.

### **Risk-based approach to Supervision and Monitoring**

**Criterion 26.4:** (a) and (b) On 25<sup>th</sup> September 2008, Aruba was assessed by the IMF on the Basel Core Principles for Effective Banking Supervision. A copy of the said report is published on the [IMF's website](#) and evidence Aruba's compliance, having being rated as largely compliant, with a vast number of the relevant AML/CFT principles, including the application of consolidated group supervision for AML/CFT purposes. FIs are regulated and supervised in line with the principles set by the BCBS, IOSCO and IAIS. In the instance where Aruba was required to improve its compliance with the core principles by core principles institutions and other FIs the deficiencies were addressed as a result of the implementation of Art. 45 of the AML/CFT State Ordinance and Chapter 3.6 of the AML/CFT Handbook which outlines the statutory and regulatory requirements of service providers with a branch or subsidiary resident outside of Aruba to maintain internationally recognised and accepted standards, and as further set out in the State Ordinance.

The application of internationally accepted standards and the provisions of the AML/CFT State Ordinance is particularly required in the absence of a robust AML/CFT framework within the foreign jurisdiction. In contrast, Aruba requires the application of more rigorous

AML/CFT requirements where the service provider has a branch or subsidiary outside of Aruba, and the requirements are more stringent than the provisions of the AML/CFT State Ordinance . Other FIs such as MVTs, or money or currency changing services are required to apply a risk-based AML/CFT approach to regulation and supervision.

**Criterion 26.5:** In accordance with section 1.1 of the CBA AML/CFT Risk-Based Supervision Methodology, AML/CFT supervision is mainly carried out via both off-site and on-site inspections. The CBA applies a risk-based approach to supervision. The frequency and intensity of the inspections is determined, inter-alia, on the basis of

- a) The ML/TF (inherent) risks present and the quality of the AML/CFT controls, AML/CFT policies and procedures and internal controls associated with the sector and/or institutions ML/TF risk profiles;
- b) ML/TF risk risks present in Aruba (based on the NRA); and
- c) The characteristics of and risk profiles of sectors and individual entities that operate in these sectors.

**Criterion 26.6:** The CBA has remit of reviewing the assessment of the ML/TF risk profiles of FIs or groups of FIs pursuant to the AML/CFT State Ordinance (Art. 46a(8)). This review is conducted bi-annually and triggered by major events and material developments within the FI or group. The review is prepared by the respective ML/TF supervisor and subsequently discussed and challenged by other supervisors within the Integrity Supervision Department of the CBA. Management ultimately signs off on the ML/TF risk profiles. If needed, changes are subsequently made to risk-based agenda. This was also reviewed by the assessors during the on-site visit and found to be in place. The foregoing information is available in the CBA ML/TF risk assessment Methodology, 2020.

### ***Weighting and Conclusion***

**R.26 is rated C.**

### **Recommendation 27 – Powers of supervisors**

This Recommendation (formerly R.29) was rated “NC” in Aruba’s 3rd Round MER. The main deficiencies identified were that supervisors did not possess powers of enforcement and sanctions against the Board of Directors and senior management of a service provider; low compliance with the off-site inspections carried out by the FIU; scoping issues were identified with regards to the on-site inspections carried out by the CBA on their service providers, among other things.

**Criterion 27.1:** The CBA has supervisory and regulatory responsibilities and power to monitor and ensure compliance with AML/CFT requirements by service providers (Art. 35 of the AML/CFT State Ordinance . The CBA’s scope encompasses the regulation of banks, credit unions, lending facilities, insurance companies, money transfer and exchange companies, pawn shops and security businesses.

While the AML/CFT State Ordinance establishes the regulatory and supervisory scope of the CBA, Aruba has established and enacted numerous sectoral state ordinances that governs the regulation and supervision of respective FIs, particularly the Supervision of Credit Systems (SOSCS) , Supervision of Insurance Businesses (SOSIB) , Supervision of Money Transfer

Companies (SOSMTC) , State Decree Supervision Insurance Brokers , Supervision of Securities Businesses (SOSSB) , and the Supervision of Trust Service Providers (SOSTCSP).

**Criterion 27.2:** The CBA has authority pursuant to Art.35 of the AML/CFT State Ordinance and explanatory notes to conduct on-site inspections and to demand the examination of books, records, documents and other data carriers of regulated service providers (FIs).

**Criterion 27.3:** Similar to the provision of criterion 27.2, Art. 35 of the AML/CFT State Ordinance authorises the CBA to compel the production of any information relevant to monitoring the compliance of FIs, and its employees with the AML/CFT requirements, in the absence of a court issued directive.

**Criterion 27.4:** Arts. 37(1) and (2) of the AML/CFT State Ordinance makes provision for the CBA to impose penalty charge orders (in Dutch: *last onder dwangsom*) and administrative fines (in Dutch: *bestuurlijke boete*) respectively. According to the Articles, the CBA can impose an order subject to a penalty for violation of the regulations laid down by several different Articles in the legislation. A review of these Articles shows that they cover several of the preventive measures including CDD breaches. The law makes provision for the CBA to impose administrative fines not exceeding Afl.1,000,000.00 (US\$555,500) for separate violations. Further, Art. 38 states that if violation occurs within five years of an administrative fine having been imposed on the licensee for the same violation, the amount referred to in Art. 37 will be doubled for each separate violation. Art 38 (2) further authorises the CBA to set the amount of the administrative fine at a maximum of twice the amount of the advantage the licensee gained by the violation if his advantage exceeds Afl.1,000,000.00 ( US\$555,500.00). The AML/CFT State Ordinance also makes provision for the CBA to issue formal directives (in Dutch: *aanwijzing*) (Art. 48(3) of the AML/CFT State Ordinance.

Apart from the supervisory sanctions that are contained in the AML/CFT State Ordinance, sanctions are available to the CBA under the different Ordinances as demonstrated in the table below. These include revocation and withdrawal of licenses. Aruba has demonstrated that it has also taken actions such as issuance of warning letters and penalty charge orders against service providers for breaches (see IO 3 for more details).

Legislation/ Decrees	Powers of supervisors to impose penalties
Supervision of Credit System	Art. 11 provides for the withdrawal of authorisation.  Chapter VIa- Application of administrative sanctions including fines of Afl.1,000,000.00 (US\$555,500.00) per violation.
Supervision of Insurance Businesses	Art 8: Provides for the revocation of license  Section 2: Application of administrative sanctions including fines of Afl.1,000,000.00 (US\$555,500.00) per violation.
Supervision of Money Transfer Companies	Art 7: Provides for the cancellation of entry in the register of the MTC and imposition of administrative fine not exceeding Afl.1,000,000.00 (US\$555,500.00) per separate violation
Supervision of Securities Business	Art 6: Provides for the change and/or withdrawal in

	<p>whole or in part or place further restrictions on or attached further conditions to a license or exempt granted.</p> <p>Art 7. Revocation of license</p> <p>Art.99: Application of administrative sanctions including fines of Afl.1,000,000.00 (US\$555,500.00) per violation</p>
Supervision of TCSPs	<p>Section 4: Application of administrative penalties including maximum fine of Afl.1,000,000.00 (US\$555,500.00) per violation.</p> <p>Art.17: Provides for instructions to follow a specific line of conduct particularly in relation to subjects to be indicated, in order to ensure that rules are complied with within the period specified by the bank.</p> <p>Art.18. Revocation of license</p>

### *Weighting and Conclusion*

**R. 27 is rated C.**

### **Recommendation 28 – Regulation and supervision of DNFBPs**

This Recommendation, formerly R.24, was rated NC in the 3<sup>rd</sup> Round MER of Aruba. There were deficiencies relating to Aruba not taking adequate measures to monitor and supervise internet casinos, trust and company service providers were not regulated or supervised for AML/CFT purposes. Also, there were no measures in place to prevent criminals and/or their associates from holding a significant or controlling interest in a casino.

#### **Criterion 28.1:**

- a) Casinos are required to be license in accordance with Art. 4 of the National Ordinance on the Supervision of Games of Chance, 2021. Art. 4 mandates that a casino license shall only be granted to a legal entity established in Aruba that holds a hotel license.
- b) The National Ordinance on the Supervision of Games of Chance, 2021 makes provision for the conduct of fitness and propriety checks on all relevant persons (applicants of the license, operator, supervisory board or body of the applicant which has task similar to the supervisory board, those who holds qualifying participation in the applicants and other persons who determine or co-determine the policy of the applicant) so as to prevent criminals or their associates from holding a significant or controlling interest or holding management function or being the operators of casinos (Arts. 5 and 6). With reference to “other persons who determine or co-determine the policy,” the Explanatory Note states the following: “other persons who determine or co-determine policy” depending on their policy making influence could include senior management as well as those who are directly or indirectly authorised to

appoint and to discharge directors. In the context of the Explanatory Note, the assessors interpret this to include BO.

- c) Pursuant to Art. 1 of the AML/CFT State Ordinance, casinos fall under the scope of the AML/CFT State Ordinance and are supervised for AML/CFT purposes by the CBA in accordance with Art. 35 of the AML/CFT State Ordinance.

**Criterion 28.2:** The CBA by virtue of the provision sets out at Art. 1 of the AML/CFT State Ordinance is the designated competent authority responsible for the AML/CFT supervision of DNFBPs.

**Criterion 28.3:** The CBA is responsible for the monitoring and supervision of all DNFBPs with regards to AML/CFT requirements pursuant to Art. 35 of the AML/CFT State Ordinance.

**Criterion 28.4:**

- a) The CBA is the designated competent authority authorised to monitor compliance and impose sanctions for non-compliance with AML/CFT requirements. Powers to conduct supervision are available pursuant to Arts. 35 and 36 of the AML/CFT State Ordinance. Reference is also made to the Arts. 3, 4, 5, 5a, 6 and 28 of the SOSTCSP (requiring fit & proper testing of directors, members of the supervisory board and other decision-making persons of TCSPs. In addition, prior approval by the CBA for their appointment is required, including for any change in holders of a qualifying holding.
- b) There are measures to prevent criminals and their associates from holding a significant or controlling interest or hold a management function in TCSPs but same is not as detail for the other DNFBPs. Arts 3, 4, 5, 5a and 6 of the SOSTCSP requires fit & proper testing of directors, members of the supervisory board, BO (those who holds qualifying holding in the enterprise or institution) and other decision-making persons of TCSPs which is conducted by the CBA. Accountants are required to submit a declaration of conduct issued by the competent authorities (Art. 38 of the Law on Accounting Profession and similarly for notaries (Art.8 of the State Ordinance regarding notaries, In Dutch: *Landsverordening op de Notarisambt*). Lawyers can be disbarred or receive disciplinary action for unlawful conduct (Art. 2 of the State Ordinance regarding lawyers: In Dutch: *Advocatenverordening*). Realtors and jewellers are required to obtain a business license to conduct business in Aruba. Part of the application requirements include submission of a certificate of character (natural person) and good standing (for the legal person). The foregoing nevertheless does not fully capture the full gamut of fit and proper requirements. Taking into consideration that the absence of robust fit and proper measures for the real estate sector that was considered to be high-risk and on the basis of materiality, the assessors considered that the deficiencies to be moderate in nature.
- c) Section 4 of the SOSTCSP refers to administrative sanctions and license revocation (Arts. 11, 11a, 11b, 11c, 12, 13, 13a, 14, 15, 16, 16a, 16b). Art. 11 of the SOSTCSP provides for administrative sanctions in case of a violation of the provisions of the SOSTCSP by a TCSP. The CBA can administer maximum fines of Afl.1,000,000.00 (US\$555,555.00) for breaches to the SOSTCSP. Art.56 of the AML/CFT State Ordinance makes provision for application of sanctions by the CBA (see analysis in R.35) Regarding lawyers, a lawyer can be disbarred or receive disciplinary measures for unlawful behaviour. Pursuant to Art. 2, item 2, sub c, of the *Advocatenverordening* (PB 1959, 177) (State Ordinance regarding lawyers), an applicant will not be registered as a lawyer in case there is doubt whether the applicant

will comply with the regulations applicable to lawyers and/or the applicant will harm the honour of the profession. Regarding notaries, by virtue of the Landsverordening op de Notarisambt (AB 1990 no. GT 69) (State Ordinance regarding notaries).

**Criterion 28.5:** Pursuant to Art. 2 of the AML/CFT State Ordinance, the CBA is responsible for conducting supervision in a risk-based manner. Supervision is guided by the CBA AML/CFT Risk-Based Supervision Methodology, 2020. The CBA applies a risk-based approach (RBA) to supervision, in which the main focus lies on the areas of concern or with respect to institution(s)/sector, such as real estate, casino-sector, insufficient reporting to the FIU etc. In case “themes/ topics” have been determined, the supervisory approach will be further determined based on the compiled risk profile of the different institutions and sectors (e.g., on-site, off-site, information session, questionnaire, letter etc.).

Aruba further noted that different sources are taken into consideration when applying the risk-based approach (e.g., FIU-reporting, information from prosecutor and police, questionnaires, incidents, on-site findings, off-site findings, reports/signals/complaints from third parties, public sources, periodic meetings with sectors and 2012 and 2021 NRAs). All of the foregoing information is contained in the CBA AML/CFT Risk-Based Methodology, 2020. (b) The RBA is updated yearly. The frequency and intensity of supervision as well as the risk profile criteria are outlined in the CBA AML/CFT Risk Based Supervision Methodology 2020.

### ***Weighting and Conclusion***

There are provisions in order to supervise and monitor DNFBBs, including risk-based supervisions and for the requirement of casinos to be licenced. However, the measures to conduct fit and proper checks for the entities operating in the real estate and jeweller sectors are not robust. On the basis of materiality and context, the deficiency related to the real estate sector was taken into consideration and deemed to be moderate. **R.28 is rated PC.**

### **Recommendation 29 - Financial intelligence units**

Aruba was rated PC for R.29 (formerly R.26) in its 3<sup>rd</sup> MER. The deficiencies underlying the ratings were that the composition of the FIU Advisory Committee consisted of private sector members which gave the appearance of compromising the autonomy and independence of the ‘Meldpunt Ongebruikelijke Transacties’ “FIU” in terms of budget and staff policy. Also, the reporting entities were not required to give all the identification data of legal persons involved in a UTR except when the FIU asks for further information. Other deficiencies concerned inadequate typology reporting and resource constraints impacting its effectiveness. Aruba in its FUR substantially addressed the major technical deficiencies cited in the MER to an acceptable level of LC. Effectiveness issues have been addressed under IO.6 in this MER. The main revision to R.29 was the explicit requirement to conduct strategic analysis.

**Criterion 29.1:** Art. 20 of the AML/CFT-State Ordinance establishes the FIU that is tasked with the responsibilities of receiving, analysing, and disseminating information related to ML, TF and other criminal offences.

#### **Criterion 29.2:**

- i. Art. 26 of the AML/CFT-State Ordinance mandates service providers to report “carried out and intended unusual transactions” to the FIU. Article 3 of the Ministerial Regulation Indicators of Unusual Transactions provides for reporting to the reporting centre (FIU) of any transaction intended or performed assume to be related to ML or TF.
- ii. Ministerial Regulation Indicators Unusual Transaction identifies the following objective indicators of suspicious activity which comprise various threshold-based

transactions required to be reported to the FIU: all (giro)non- cash transactions valued at Afl. 500,000.00 (US\$277,777.00), or the counter value thereof in foreign currency, or more; all cash transactions valued at Afl. 25,000.00 (US\$13,888.00), or the counter value thereof in foreign currency, or more; For casinos: all cash transaction valued at Afl. 5,000.00 (US\$2,777.00), or the counter value thereof in foreign currency, or more. Art. 3 of the State Ordinance Obligation Import and Export Cash Money requires that cross border cash transportations mandated under Art. 2 are managed by the FIU. Art. 6 of the State Decree Reporting Obligation Import and Export cash money also mandates that FIU receives cross-border cash transport declarations/disclosures through the Custom Department.

**Criterion 29.3:** (a) Art. 27 of the AML/CFT-State Ordinance provides the FIU with the authority to obtain additional data and information from service providers. This Art. further strengthens the authority of the FIU, due to the fact that it also gives the Head of FIU the authority to take measures (formal instruction and enter the premises to retrieve the data and information) should a service provider choose not to deliver the requested data or information. (b) Art. 23 the AML/CFT-State Ordinance authorises the FIU to have access to all relevant databases held by other agencies/departments. FIU has signed MOUs with specific departments/agencies to formalise certain operational and logistical aspects of the collaboration. FIU has direct access to various databases.

**Criterion 29.4:**

- a) Operational analysis: Art. 20, (1) (a, b, c, e, f) of the AML/CFT-State Ordinance dictates FIU's existence, operations and how it uses available and obtainable information and disseminates information and intelligence.
- b) Strategic analysis: The different types of strategic analysis are conducted by FIU has its legal basis and are set out in the requirements of the AML/CFT State Ordinance at Art. 20, section 1, sub d, e, g and h. Strategic analysis reports including development of red flags, ML/TF-related trends, patterns, reporting behaviour and typologies have been conducted and disseminated by the FIU.

**Criterion 29.5:** Art. 24 of the AML/CFT State Ordinance provides the FIU with the authority to disseminate information and intelligence on its own discretion and upon request to relevant and competent authorities. The FIU has adopted and used secure mechanisms and procedures to protect and disseminate information and results of its analysis.

**Criterion 29.6:**

- a) Arts. 3, 4, 9 and 10 of the State Decree Register FIU 2013 (AB 2 provides for rules governing access to, storage of, protection of and dissemination of information by the FIU. FIU has a Security Manual (handbook) based on the ISO 27001 guidelines containing all relevant rules.
- b) Art. 15 and 16(3) of the State Ordinances Aruba Secret Agency and Art. 2 and 12 of the State Decree Position involving Confidentiality (AB 2006 No.4,) allows for screening of staff. FIU internal procedures and mechanisms governs handling of information etc.
- c) Policy and procedures with respect to access to the facilities and information systems of FIU are elaborated upon in the Security Manual. The building that housed the FIU is properly secured with the relevant security mechanisms and controlled access with information technology.

**Criterion 29.7:** The FIU operational independence and autonomy is provided for in accordance with Art. 20, (2) and 22 of the AML/CFT-State Ordinance and Arts. 3 of the State Decree Register FIU 2013.

- a) The FIU is a department of the Government of Aruba and falls directly under the purview of the Minister of Finance whose functions are parliamentary in nature and do not have direct bearing on the FIU's operation. The FIU is a separate and independent part of the Ministry (Art. 20(2) AML/CFT-State Ordinance) and is able/authorised to perform its tasks independently, autonomously and with no influence whatsoever of any individual. Art. 22 of the AML/CFT State Ordinance stipulates that the Head of FIU is the custodian of the data-register and determines authorisation regarding the access to the data. Between the Minister of Finance and the Head of FIU there is an Advisory Committee. This committee has a specific function, which is to safeguard and prevent any undue political influence. The appointment and dismissal of the Head and other staff members can only occur after the Advisory Committee has provided its opinion pursuant to Art. 20 (3) of the AML/CFT-State ordinance.
- b) Pursuant to Art. 23(3) AML/CFT-State Ordinance, the Head of FIU has the authority to independently enter into agreements concerning the exchange of information with domestic authorities. The authority to engage foreign counterparts is conveyed by Art. 22(3) of the AML/CFT-State Ordinance and Arts. 6(1) and 7 of the State Decree Register of FIU 2013.
- c) FIU is a separate and independent part of the Ministry of the Minister (Art. 20(2) AML-CFT State Ordinance) The core functions of FIU are distinct from the Ministry as described in previous sub-criteria (a) above, Art. 20 (4) of the AML/CFT-State Ordinance ensures that this distinction is made and exempts the FIU from adherence to Arts. 25 and 26 of the Government Accounts Ordinance 1989 (AB 1989 No. 72) pertaining to the allocation of work, supplies and services for the FIU.
- d) The FIU is required to submit annually a budget proposal for the following fiscal year to the Ministry of Finance. It is the responsibility of the Ministry of Finance to compile one national budget proposal for the approval of Parliament. The law requires the government to submit the national budget proposal to the Advisory Council and the Committee for Financial Supervision (both independent and autonomous functioning entities within the Aruban public sector), prior its approval request to Parliament. The FIU has consistently experienced an increase in its financial and other type of resources to conduct its functions, including attendance at training and meetings with the Director responsible for deploying the resources in a manner that is free from undue political, industry and government influence.

**Criterion 29.8:** FIU has been an active member of the Egmont Group since June 1997.

#### *Weighting and Conclusion*

**R. 29 is rated C.**

#### **Recommendation 30 Responsibilities of law enforcement and investigative authorities**

Aruba was rated "PC" for R. 30 (formerly R.27). The deficiencies identified were that Aruba had no designated authority to investigate TF since TF was not an offence at that time, lack of sufficient training and limited use of report disseminated by the FIU. These were compounded by low level effectiveness in investigating ML caused by lack of resources at the police service and prosecution.

**Criterion 30.1:** Art. 184 of the CCrPA identifies the competent authorities in Aruba that responsible for investigating criminal offences including ML, associated predicate offences and TF. In Aruba, there are several designated law enforcement authorities (LEAs) that have responsibility for ensuring that ML, TF and predicate offences are properly investigated. These authorities include the Financial Investigations Bureau (BFO) of the Aruba Police Force (KPA). The BFO specialises in financial investigations, including TF and ML investigations. In addition, it provides support and expertise to other departments of the KPA that investigate predicate offenses and also work in partnership with agencies such as the Criminal Investigation Cooperation Team that investigate cross-border crimes including ML that occurs between the Netherlands, Aruba, the Caribbean Netherlands (Bonaire, Saba and Sint Eustatius), Curaçao and Sint Maarten. Art. 183 CCrPA provides a role for the Public Prosecutor Office (PPO) including the supervision of criminal offences, inclusive ML and TF . The National Internal Investigations Department (In Dutch: *Landsrecherche*: LR) investigates long-term and complex (corruption) cases in Aruba.

**Criterion 30.2:** Art. 177a CCrPA provides the basis for conducting parallel financial investigations. Pursuant to Art. 177a of the CCrPA, in case of suspicion of a criminal offence, which in accordance with the legal definition, is punishable by imprisonment for a term not exceeding four years or more, or an offence by which a benefit of some significance capable of being expressed in money, is acquired, a criminal financial investigation can be instituted in accordance with the provisions of this Title. Aruba has also demonstrated that the conduct of parallel financial investigations is taking place among the different departments of the KPA and supervised by the PPO through the numerous case examples provided in IO.7.

**Criterion 30.3:** The ART (a multi-agency task force), BFO, Criminal RST and the LR have the ability to identify, track and seize potential criminal assets including under the collaborative approach using the ART covenant. The FIU powers under the AML CFT State Ordinance allows it to provide information on suspected proceeds of crime to the Public Prosecutor. The policies of the Tax Department of Aruba have as an objective the confiscation of movable and immovable property in cases when taxpayers do not comply with payment of their tax debts. This is being done through administrative tax laws. Furthermore, under the CCrPA, the KPA have the power to investigate criminal offences and to identify, seize and freeze assets (see analysis of criterion 4.2). The Customs is empowered to identify and to keep in custody assets for investigations by the police. Pursuant to Art. 129a and Art .130(1) of the CCrPA, an authorisation of the Examining Magistrate is necessary to freeze assets for a longer period.

**Criterion 30.4:** In Aruba, there are no other competent authorities which are not law enforcement authorities per se that have the responsibility for pursuing financial investigations of predicate offences under R.30.

**Criterion 30.5:** There are no designated anti-corruption authority in Aruba. Art. 184 CCrPA provides that the police officers working at the LR are responsible for the investigations of criminal offences to include corrupt activities and have the powers to identify, trace, and initiate freezing and seizing of assets. In accordance with Art. 2:344 of the CrCA the LR in principle conduct the investigation in the event of public official corruption (Dutch: “*ambtelijke corruptie*”). Any non-official form of corruption (such as the taking of bribes as referred to in Arts. 2:312 and 2:313 CrCA can be investigated by a general criminal investigation unit (in Dutch: “*algemene recherchedienst*”).

### ***Weighting and Conclusion***

**R. 30 is rated C.**

### Recommendation 31 - Powers of law enforcement and investigative authorities

Aruba was rated “LC” for R. 32 (formerly R.28) at the time the sole main factor underlying the rating was that law enforcement competent authorities had no powers to investigate TF since the activity was not criminalised. This recommendation has not undergone any significant changes since the publication of Aruba’s 3<sup>rd</sup> Round MER.

**Criterion 31.1:** The CCrPA and the AML/CFT State Ordinance provides the basis for the competent authorities conducting investigations of ML, associated predicate offences and TF to obtain access to all necessary documents and investigation, inclusive of the use compulsory measure for:

- a) ***Production of records by FIs, DNFBPs and other natural and legal persons:*** Arts. 177s of the CCrPA- In the interest of an investigation, the Public Prosecutor may demand that the person who qualifies for this in reason and who processes data other than for personal use, provides certain data stored or data recorded of a person. The demand may be related to data that have already been processed on the date of the demand, or that are processed after the date of the demand if, (a) if there is suspicion of a crime for which pre-trial detention is allowed and (b) there are indications of a terrorist crime. A demand as referred to in the first paragraph shall be issued in writing and state: if known, the name or otherwise an as accurate a description as possible of the person or persons about whom data are demanded. Further, Arts. 121, 122, 130, 136 and 139 CCrPA and the requirements in of the AML/CFT State Ordinance provide for the production of records held by FIs, DNFBPs and other natural or legal persons.
- b) ***Search of persons and premises:*** Arts. 78, 121, 122, 136 and 139 of the CCrPA provide for the search of premises and persons. Arts. 122 of the CCrPA provides for the search of premises and seizure of any objects contain therein. Arts. 155-163 of the CCrPA arrange entry into dwellings if the resident does not give permission to enter. An authorisation of the Examining Judge (rechter-commissaris) is required if the resident does not give permission. Arts. 155(4) provides that an authorisation is not required for the prosecutor or the assistant prosecutor where, for the purposes of the detection of crimes, search for the seizure of property or the search of a dwelling for the apprehension of a suspect in cases where it cannot be waited until he has authorisation.
- c) ***Taking of witness statement:*** Arts. 177b of the CCrPA provides for the taking of witness statements for use in criminal investigations and for prosecution by an investigating officer.
- d) ***Seizing and obtaining evidence:*** Art.177s as mentioned in 31.1(a) applies. Further Art. 119 and 119a- Art. 140 of the CCrPA provides for the seizing and obtaining of evidence. Art. 132 of the CCrPA states that anyone who received the order has an obligation to comply with it. Nevertheless, provisions are made pursuant to Arts. .251,252 and 253 for valid reasons for refusal on the basis of the right of confidential privilege or danger of criminal prosecution.

**Criterion 31.2:** In Aruba, the wide range of investigative techniques are covered pursuant to Art. 177h-177z Code of Criminal Procedure of Aruba (CCrPA) and applies to all criminal offences including ML, associated predicate offences and TF.

- a) Undercover operations are permitted in accordance with Art. 177l which provides for systematic surveillance, Arts. 177m covers undercover infiltration, Art. 177n

covers undercover purchases, Art.177o covers undercover systematic information retrieval, Art. 177p undercover in an enclosed place.

- b) The authority to conduct for the intercepting communication is found in Arts. 177q and 177r of the CCrPA.
- c) The provision for accessing computer systems is found in Arts. 177s and 177t of the CCrPA. Arts. 177u,177v,177w and 177x of the CCrPA provide for supporting powers and assisting in these types of criminal investigations.
- d) Controlled delivery is permitted by 177y of the CCrPA. The Art. states that the investigative officer is obligated to exercise the powers of seizure granted to him by law, if, during the criminal investigation, he becomes aware of the location of objects the presence or possession of which is prohibited by law because of their harmfulness to health or their danger to safety. Postponement of seizure shall only be allowed in the interest of the investigation with the intention of proceeding to do so on a later date. Postponement of seizure shall only take place after prior order of the Public Prosecutor. The order shall be laid down in writing and state: a. the objects to which it is related; b. the manner in which the order is to be executed; c. the date on which or the period during which the order applies.

**Criterion 31.3:** There are provisions in place to ensure that LEAs can identify whether natural or legal persons hold or control accounts and to do so without prior notification of the owner.

- a) LEAs (incl. PPO) are permitted to request information from the FIU (Art. 24 of the AML/CFT-State Ordinance). The FIU is authorised to conduct enquiries and access the information from FIs and DNFBPs on behalf of LEAs (see analysis in R.29). Further, the FIU is a member of the ART (comprising of various LEAs) an inter-agency taskforce that can be used to access and share information in a timely manner (see analysis of R.4-c.4.2).
- b) Pursuant Arts. 31 and 49 of the AML/CFT- State Ordinance, service providers have a strict confidentiality obligation. This prohibits service providers from informing the account owner or others about reported UTRs to FIU (Art. 26) or additional information provided to FIU, (Art. 27 of the AML/CFT-State Ordinance). Regarding the information from other government databases accessed by FIU: all government employees have a confidentiality obligation. If FIU cannot obtain the relevant information anonymously, FIU contacts the head or director of the department/agency in question. All heads or directors of a department or government agency fulfil a confidential function and have special security clearance from the Security Service of Aruba (Secret Service of Aruba) (see R.29 for more details).

**Criterion 31.4:** Pursuant to Art. 24 of the AML/CFT State Ordinance when requested or on its own initiative, the FIU shall provide data to the agencies and civil servants charged with the detection and prosecution of criminal offenses.

### ***Weighting and Conclusion***

**R. 31 is rated C.**

### **Recommendation 32 – Cash Couriers**

This recommendation (formerly SR IX) was rated NC in the 3rd Round MER. The deficiencies included: as it relates to the Declaration system, the competent authorities cannot stop or restrain currency or bearer negotiable instruments where there is a suspicion of ML or TF, absence of adequate co-ordination among customs, immigration and other relevant authorities

on issues related to the implementation of SRIX, absence of assets freezing measures applicable to currency or bearer negotiable instruments that are related to TF and insufficient number of dedicated AML/CFT staff at the borders.

**Criterion 32.1:** Aruba applies a declaration system for incoming and outgoing cross-border transportation of currency (Art. 2 of the (In Dutch: *Landsverordening meldplicht in- en uitvoer contant geld*) State Ordinance Reporting Obligation Import and Export of Cash Money (LVMCG). This requirement is applicable to all physical cross border transportation of cash and BNI whether by travellers or through mail and cargo. Art. 1 defines money as local and foreign bank notes, and securities issued to bearer as designated by the Landbesluit meldplicht in- en uitvoer contant geld (LMCG)/ State Decree on the import and export of cash money. For the purpose of Art. 1 of the LVMCG (definition and application section) BNIs are defined and included in the legislation (Art. State Decree, June 34, 2010 regarding an addition of the LVMCG).

**Criterion 32.2:** Aruba has a written declaration system for currency or negotiable instruments more than Afl. 20,000.00 (US\$11,111.00) (Art. 3 and 4 of the LMCG). Sub-criteria (b) and (c) are not applicable to Aruba.

**Criterion 32.3:** Aruba has employed a written declaration system.

**Criterion 32.4:** Art. 4 of the LVMCG mandates that government officials in the execution of their duties can inter alia, (i) request all information and (ii) enter all places (except homes without the express consent of the inhabitant accompanied by persons appointed by them). Further, government officials are authorised to conduct searches on the body and clothing of persons moving to and from the vessel or aircraft upon written authorisation from the identified authority in the legislation (Art.4 (4) of the LVMCG). There is no limitation as what can be seized by the authorities during the search. The assessors interpreted this to mean that competent authorities can conduct searches to obtain additional information regarding the origin and intended purpose of the currency and BNIs. Further, in accordance with Art. 7 of the LVMCG, it is criminal offence for failure to declare which therefore allows the Public Prosecutor and other LEAs to question the suspect pursuant to the provisions contained in the CCrPA, including Art. 177b.

**Criterion 32.5:** Failure to declare the import or export of money or the making of a false declaration shall be punished with a prison sentence of up to 4 years and a maximum fine of Afl. 100,000.00 (US\$55,555.00) pursuant to Art.7 of the LVMCG. The penalties are proportionate and dissuasive.

**Criterion 32.6:** All declaration forms are sent to the reporting centre (FIU) which administers the information accordingly pursuant to AML/CFT State Ordinance Arts. 2 and 3 (paragraph 2b) of the LVMCG.

**Criterion 32.7:** Art. 4 of the LVMCG makes provision for coordination amongst officials (Customs and Chief of Police Force). Art. 5 of the LMCG makes provisions for consultation to be held between officials as well as regarding the general way of duty fulfilment and cooperation between the officials meant in Article 4, First Section of the State Ordinance. There is the Financial Investigators Forum in which all financial investigators and relevant persons; including the customs department participate to discuss matters including to coordinate efforts in relation to the cross-border movement of cash and BNIs. Further, when there is a breach of Art. 7 of the LVMCG, depending on the instruction of the PPO, customs officials are required to transfer the matter to the police officials stationed at the points of entry and exit that are responsible for the further investigation.

**Criterion 32.8:** (a) and (b) The failure to declare or disclose cash and BNI is a criminal offence. Aruba has an all-crimes approach pertaining to ML (see analysis of R.3) which therefore means the failure to declare or false declaration are predicate offences for ML. In any cases involving the commission of a criminal offence including where there is a suspicion that the cash or BNI is associated with ML, associated predicate offences or TF, the restraint mechanism cited in the analysis of c.4.2 (b) applies.

**Criterion 32.9:** All information is retained in respect to the declarations and are sent to the FIU who can then share this information with its foreign counterparts. The information that is retained includes the name, address, profession and other identification information and the amount of cash being imported or exported, the currency and the denomination (Art. 4 of the LMCG). The FIU is permitted to disseminate the results of its analysis and exchange information obtained pursuant to its responsibilities under Art. 49 of the AML/CFT State Ordinance. Art. 3(3) of the LVMCG provides for the FIU to share information in the prevention and combat of ML and TF to third parties to include counterparts and competent authorities abroad in accordance with Recommendations 36 to 40 once the requirements of Arts. 22-24 of the State Ordinance are satisfied. Customs is a member of the Caribbean Customs Law Enforcement Council (CCLEC) and have treaties with other countries (see Rec 40) and is authorised to share all pertinent information with the members of that organisation and countries including those located in the Caribbean, Latin America, North America and Europe.

**Criterion 32.10:** Aruba ensures that strict safeguards exist to ensure proper use of the information collected through the declaration system. Art. 6 of the LVMCG prohibits anyone who carries out or has carried out any task within the framework of the application of the State Ordinance, to further or otherwise use, or to give further or other knowledge to information and data received by him pursuant to this state ordinance other than prescribed for the execution of his task or by the law. Further, Arts. 62 and 63 of the State Ordinance Material Civil Service Law place an obligation on a civil servant who possesses the information as a result of his/her office to hold such information confidential. Furthermore, Art. 5 of the LMCG mandates the safe keeping of the report form that is handed over to the FIU and prohibits the making of copies of the report unless it is necessary for the execution of functions under the Ordinance. (Arts. 5 and 6 of the LMCG). See also analysis in Rec.29 regarding the obligation to maintain confidentiality by FIU staff. The reporting requirements of the declaration system does not restrict trade payments between countries for goods and services or freedom of capital movements.

**Criterion 32.11:** A person who intentionally does not report the import and export of money (including BNIs) or intentionally makes an incorrect report can be subject to a prison term of a maximum four years and a maximum fine of Afl. 100,000.00 (US\$55,500.00) (Art.7 (1) of the LVMCG). Further, a person who does not report the import and export of money (including BNIs) or makes an incorrect report is subject to a prison term of one year and a fine of Afl. 25,000.00 (US\$13,888.00). Art. 9 of the LVMCG states that the offences are considered felonies (See analysis in c. 3.2- all serious offences are predicate offences for ML). Therefore, a person transporting cash and BNIs suspected of having a nexus to ML/TF can be charged for ML/TF offence and the relevant sanctions may be applied. (See analysis in Recs. 3 and 5). The deficiency pertaining to the proportionality and dissuasiveness of sanctions with respect to legal persons for ML offences has a cascading impact on this analysis. Confiscation and freezing measures which are comprehensive and can be applied in circumstances involving physical cross-border movement of cash and BNIs suspected of having a nexus to ML/TF (See analysis in R.4 ).

### *Weighting and Conclusion*

Aruba has implemented a declaration system for incoming and outgoing cross-border transportation of cash and BNIs. The ability to stop or restrained currency or BNIs to ascertain whether there is evidence of ML/TF or other predicate offences may be found is clearly stipulated in the legislative framework. The penalties available for submitting a false declaration/disclosure and in cases where the cash or BNI is suspected to related to ML are sufficiently proportionate and dissuasive except in cases where the cash or BNI has a nexus to ML and the offence is committed by a legal person. Cross-border cash declarations can be shared by the FIU and customs with their foreign counterparts. There are sufficient safeguards in place for maintaining confidentiality of the information. The deficiencies were considered to be minor in nature given the risk and context of Aruba. **R. 32 is LC.**

### **Recommendation 33 – Statistics**

This Recommendation (formerly R. 32) was rated NC in the 3rd Round MER. The main deficiencies were that statistics were not maintained as it relates to mutual legal assistance, extradition, administrative co-operation. Further, the statistics maintained by FIU did not detail the number of requests granted or refused, nor the time to respond. The 7<sup>th</sup> follow-up report detailed that some progress has been made by Aruba to collect and compile detailed statistics on international cooperation.

**Criterion 33.1** – Aruba maintains statistics on:

- a) STRs, received and disseminated: Art. 20, section 1 (a)-(h) of the AML/CFT State Ordinance mandates the FIU to keep these statistics. Evidence of these statistics being maintained can be found on the FIU’s website<sup>40</sup> in the Annual Reports and in the analysis of IO 6.
- b) ML/TF investigations, prosecutions, and convictions: statistics on ML prosecutions and convictions are maintained by the PPO through its IT Unit. No information presented to show that ML statistics are kept by the other LEAs. No information as to the agency responsible for keeping TF related statistics.
- c) Property frozen; seized and confiscated: Aruba has demonstrated that statistics are being kept pertaining to requirement of the sub-criterion (see analysis of IO 8). This information is kept by the PPO.
- d) MLA requests made and received, are kept by PPO. Statistics on requests made and received are also kept by the FIU. No information that the other agencies are keeping comprehensive statistics on requests received and made.

### *Weighting and Conclusion*

Some agencies such as the PPO and the FIU have demonstrated that they are keeping statistics to some degree. However, there is no evidence that other competent authorities such as the KPA are maintaining comprehensive statistics on information that may be within their area of activity. Statistics are not maintained in a comprehensive manner by the PPO and the KPA as was reflected in the analysis of IOs 2,7 and 8 (international cooperation, ML investigations and prosecutions and confiscation, respectively). **R. 33 is rated PC.**

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<sup>40</sup> <https://www.fiu-aruba.com> (annual reports on the website only exist up to 2015. Nevertheless, annual reports for the other periods are available)

### Recommendation 34 – Guidance and feedback

This Recommendation (formerly R.25) was rated PC in the 3<sup>rd</sup> round MER. The deficiencies highlighted included: (i) The FIU does not issue feedback on ML/TF methods and trends, (ii) the FIU did not issue any guidelines to assist FIs or DNFBPs to comply with their respective AML/CFT requirements, (iii) the AML/CFT directives for banks and insurance companies were limited to CDD requirements and do not establish links with reporting obligations and (iv) the scope of the operational and AML/CFT guidelines for money transfer companies was too narrow and did not address AML/CFT provisions.

**Criterion 34.1:** The CBA is the sole AML/CFT supervisory authority in Aruba. Arts. 48, 55a of the AML/CFT State Ordinance makes provision for the CBA to provide guidelines to service providers. Art. 28 of the AML/CFT State Ordinance authorises the FIU to issue guidelines pertaining to the manner in which reports should be submitted. The guidelines have been issued are available on the [FIU website](#). Apart from the requirements that are established in the law, the CBA and the FIU have consistently provided guidance and feedback to FIs and DNFBPs as is demonstrated in the information provided below.

#### **CBA Guidance:**

- i. On June 1, 2011 (revised in 2020), the CBA issued a Handbook for the prevention and detection of ML and TF. The AML/CFT Handbook applies to all services providers. The AML/CFT gives guidance on the implementation of the different AML/CFT legislation including the AML/CFT State Ordinance. Information contained in the AML/CFT Handbook include guidance on conducting ML/TF risk assessment and specific risk indicators per sector. The AML/CFT Handbook is publicly available on the [CBA website](#).

#### **FIU**

- i. Regulation Indicators Unusual Transactions: The FIU issued an Indicators Handbook in 2013 (revised in 2018). This document provides detailed information on relevant concepts, indicators and threshold for the prevention and detection of ML and TF.
- ii. The FIU maintains on its [website up-to-date guidelines, information and red flags per service providers](#).
- iii. Publication of local anonymised cases in the annual reports, with the objective of keeping service providers abreast of the development. The best AML/CFT cases of the Egmont Group are also shared with service providers.
- iv. Quarterly group meetings with compliance officers at which ML/TF risks are discussed and general feedback on the quality of UTR reporting is provided. In the event of a specific concern regarding the quality of UTR of an individual entity, individual meetings are held.
- v. Other Guidance issued by the FIU are found on the agency website including guidance to accountants, lawyers, tax advisors, casinos, dealers in goods of great value, pawn shops, TCSPs and MVTS/MTCs

#### **Weighting and Conclusion**

**R. 34 is rated C.**

### Recommendation 35 – Sanctions

This Recommendation (formerly R.17) was rated NC in the 3<sup>rd</sup> round mutual evaluations. The deficiencies highlighted included the range of sanctions of the CBA and the FIU (supervisors),

are not broad enough and are not effective, proportionate and dissuasive, there were no sanctions available against directors and senior managers of FIs, the level of fines, which may be issued, is low, in particular for credit institutions and insurance companies, there were no sanctions available for securities firms as they do not fall under the scope of the AML/CFT obligations and no procedures in place as yet to impose sanctions. In addressing the deficiencies CBA was designated the supervisor for FIs and DNFBPs. and no procedures in place as yet to impose sanctions. In addressing the deficiencies CBA was designated the AML/CFT supervisor for FIs and DNFBPs.

**Criterion 35.1:** A wide range of sanctions (criminal and administrative) are in existence in Aruba and are applicable to natural or legal persons who fail to comply with the AML/CFT requirements that are set out in Recommendations 6, and 8-23. Regarding the application of criminal sanctions, Art. 1:127 of the CrCA clearly stipulates that criminal offences can be committed by natural and legal persons. The provision in the CrCA further stipulates that should a criminal offence be committed by a legal person, criminal proceedings may be instituted against, and the punishments and measures provided for in the relevant statutory regulations where applicable and may be imposed on: (a) the legal person; or (b) those who gives the order for the criminal offence to be committed etcetera; or (c) the persons referred to in (a) and (b). In accordance with Art. 37 (3) of the AML/CFT State Ordinance, and the other ancillary legislation listed below, the CBA can apply sanctions to both natural and legal persons. Art. 37 (3) notes that Art. 1:127 of the CrCA applies by analogy where the violation is committed by a legal or natural person.

- i. **Targeted Financial Sanctions (R.6):** Art. 17 of the Sanctions Ordinance 2006 imposes a penalty of imprisonment for 6 years and a fine of Afl. 250,000.00 (US\$138,889) for breaches to the Sanctions Ordinance. The Sanctions Decree also allows for the immediate freezing of assets belonging to persons and entities as registered by UN-1267 designations and the National Aruba list (designation) enacted in November 2013. A person who unintentionally violate the legal provisions is liable to imprisonment of 1 year and a fine of Afl. 50,000.00 (US\$27,770). Art. 1:54 of the CrCA stipulates that a person who has been sentenced to pay a fine shall be required to pay the amount set to the State within the period of time set by the PPO charged with the enforcement of the punishment order or the judgment or appeal judgment. National Aruba list (designation): A person who unintentionally violate the legal provisions is liable to imprisonment of 1 year and a fine of Afl. 50,000.00 (US\$27,770). Art. 1:54 of the CrCA stipulates that a person who has been sentenced to pay a fine shall be required to pay the amount set to the State within the period of time set by the PPO charged with the enforcement of the punishment order or the judgment or appeal judgment. The sanctions for breaches are TFS-TF are proportionate and dissuasive giving the context of the jurisdiction and sanctions that are available for other similar offences.
- ii. **NPOs (R.8):** The sanction that is available for NPOs is not considered to be proportionate (see analysis of c.8.4).
- iii. **Preventive Measures and Reporting (R.9-23)41:** The AML/CFT State Ordinance mandates financial service providers to conduct CDD (Arts. 3 and 6). Service Providers are subjected to record keeping requirements (Art. 7), PEP safeguard system (Art. 11), transaction analysis (Art. 13), corresponding banking (Art. 17), AML/CFT programs (Art. 46) and reporting of suspicious transactions (Art. 26). A violation of these provisions carries a penalty of 6 years imprisonment and a fine of Afl.1,000,000.00 (US\$555, 500.00) if committed intentionally and 1 year

imprisonment and a fine of Afl. 500,000.00 (US\$277,779.00) if committed unintentionally (Art. 56).

The CBA is authorised to impose administrative sanctions including revocation of licenses or registrations (Art. 11, paragraph 1 (g) of the SOSCS, Art. 8, paragraph 2 I of the SOSIB, Art. 4, paragraph 2 of the State Decree Supervision Insurance Brokers, Art. 7, paragraph 2(f) of the SOSMTC and Art. 6, paragraph 1(l) of the SOSSB. CBA also has the power to issue formal directive (Art. 20 of SOSCS, Art. 15 of SOSIB, Art. 4 paragraph 3 and 5 of the State Decree Supervision Insurance Brokers Art. 16 of the SOSMTC, Art. 17 of the SOSTCSP, Art. 95, paragraph 1 and 2, Art. 96 SOSSB), impose a penalty charge order, impose an administrative fine (of max Afl.1,000,000.00 (US\$555,000.00) per separate violation), appoint a silent receivership if the formal directive is not complied with (Art. 20 paragraph 3 of SOSCS, Art. 15 SOSIB, Art. 96 SOSSB). The CBA may also pursue criminal action in conjunction with the PPO as violations of the certain requirements of the AML/CFT State Ordinance are criminal offences based on the provision set out at Art. 56 of AML/CFT State Ordinance (i.e., breaches to Arts. 3-6, 7,8,9,10, 11-19, 26-28, 31, 33-35, 45-48). The penalties under the AML/CFT State Ordinance include imprisonment up to 6 years with a fine of Afl.1,000,000.00 (US\$555,000.00). For additional information on the CBA powers see analysis under c.27.4. The sanctions available for breaches to the preventive measures (9-23) are proportionate and dissuasive.

**Criterion 35.2:** Sanctions are applicable to directors and senior management by virtue of the provisions that are set out at Art. 1:127 and 37 (3) of the CrCA and the AML/CFT State Ordinance, respectively and other ancillary legislation mentioned in the analysis of c.35.1. The application of sanctions to both natural and legal persons captures both directors and senior management.

### ***Weighting and Conclusion***

The CBA has a wide range of sanctions that can be applied against its FIs and DNFBPs, including license revocation and other administrative penalties. Criminal sanctions are also applicable to FIs and DNFBPs for breaches and are applicable to directors and senior management. Sanctions for breaches to TFS-TF and preventive measures are proportionate and dissuasive. The single deficiency in the sanctioning regime pertains to the sanctions for NPOs not being considered as proportionate. This was considered to be minor deficiency taking into consideration, the risk associated with NPOs and Aruba's context. **R.35 is rated LC.**

### **Recommendation 36 – International instruments**

562. Recommendation 36 (formerly R. 35 and SR. I) was rated PC and NC respectively in Aruba's 3<sup>rd</sup> MER due to lack of implementation of the TF Convention in relation to TF, no implementation of UNSCR 1267 and 1373 and several failings regarding implementation of the Vienna and Palermo Conventions. Aruba in its 8<sup>th</sup> FUR addressed most of the deficiencies cited in the MER for both Recommendations to an acceptable standard consistent with that of a LC rating.

**Criterion 36.1:** Aruba is a semi-autonomous part of the Kingdom of the Netherlands and cannot by itself enter into treaties, conventions and other international agreements with other countries and international organisations. Treaties are entered into by the Kingdom of the Netherlands and during the ratification process, Aruba can indicate if it wants the treaty to be applicable to it. The following treaties are applicable to Aruba:

- i. The Palermo Convention- 18 January 2007.

- ii. The Vienna Convention- 10 March 1999.
- iii. The Terrorist Financing Convention- 23 March 2005.

The United Nations Convention Against Corruption (UNCAC)/Merida Convention has not been extended to Aruba.

**Criterion 36.2:** The relevant Articles of the Vienna and Palermo Conventions that are applicable to Aruba are implemented in the different pieces of legislation, primarily the CrCA and the CCrPA. Whilst the Merida Convention has not been extended to Aruba, the CrCA and CCrPA contain provisions that addressed various Articles of the Merida Convention. Aruba has implemented several of the preventive measures to address corruption (Arts. 5 and 6 of the UNCAC) with the establishment of the Bureau of Integrity and the National Investigations Department and having in place an independent judiciary and prosecution service. Aruba has not implemented Arts. 7,8,9 and 10 (public sector, code of conduct for public officials, public procurement and management of public finances and public reporting, respectively). The existing deficiencies were weighted to be minor by the assessors, taking into consideration that other important aspects of the UNCAC, for example criminalising corruption are implemented. Further among the measures implemented by Aruba include domestic and international cooperation and coordination, freezing and confiscation, return and disposal of assets and establishment of an FIU.

#### ***Weighting and Conclusion***

Aruba is a constituent country of the Kingdom of the Netherlands and is not permitted to independently sign and ratify the relevant Conventions. Except for the UNCAC, all relevant Conventions have been extended to Aruba. Aruba has implemented the Palermo, Vienna and Terrorist Financing Convention primarily through the provisions contained in the CrCA and the CCrPA. Despite the absence of the UNCAC being extended to Aruba, various Articles of the Convention are contained within the domestic law. The deficiencies that exist relative to the Articles that have not been implemented were weighted and considered as minor by the assessors. **R.36 is rated LC.**

#### **Recommendation 37 –Mutual legal assistance**

Recommendation 37 (formerly R. 36 and SR V) was rated PC and NC respectively in the 3<sup>rd</sup> Round MER. The main deficiencies highlighted were Aruba's inability to provide the widest range of MLA effectively and efficiently, TF offences were not criminalised, limitations existed with respect to ML predicate offences which impacted the effectiveness of MLA can be rendered and lack of data on MLA requests so the timeliness and effectiveness could not be ascertained. Aruba has since criminalised the offence of TF and has made progress in enhancing its MLA regime (7<sup>th</sup> follow-up report). Aruba also made progress in addressing the deficiencies cited in the MER pertaining to SR. V in its 8<sup>th</sup> FUR to the extent of a rating of LC.

**Criterion 37.1:** Aruba's legal basis for the provision of the widest range of MLA is set out at Arts. 555-558 of the CCrPA. Art. 555 which is the introductory Article states that the Articles of the title shall apply to requests for legal assistance in connection with a criminal case (ML, TF and associated predicate offences are all criminalised in Aruba). Art. 557 of the CCrPA requires that the public prosecutor promptly decide on the actions to be taken when an MLA request is received.

**Criterion 37.2:** The PPO is the designated central authority for the transmission and execution

of MLA relative to criminal matters including ML and TF (Arts. 556 and 557 of the CCrPA). The legislation mandates that all requests be addressed promptly by the PPO. Most MLA requests received in Aruba are registered and completed within 3 months. The procedure for the handling and prioritisation of MLA requests is well known by the authorities, however, it is not documented. MLA requests are prioritised based on the timelines that are specified in the request by the requesting country and the nature of the offence. The PPO maintains a spreadsheet to track and monitor the progress of requests. The assessors considered the use of the spreadsheet to be reasonable given the limited number (see analysis of IO2) of requests received by Aruba.

**Criterion 37.3:** Aruba does not subject MLA requests to any unreasonable or unduly restrictive conditions. Insofar as a request is based on a treaty, the actions requested are taken as much as possible. In cases where the request is reasonable and is not based on a treaty and in circumstances where granting the request is not mandatory, the request shall be complied with unless granting the request violates statutory regulations or on instructions of the Minister of Justice<sup>41</sup> (Art.558 of the CCrPA). Other legal grounds to refuse a request are contained in Art. 559 of the CCrPA and include prosecution based on political beliefs, race and religion, double jeopardy and the suspect will be deprived of his liberty in a manner that is contrary to the principles of international laws or otherwise unlawful. The assessors determined that none of the grounds for refusal are unreasonable and restrictive and are in keeping with the acceptable grounds to refuse a request. In specific circumstances where the request is refused, the Ministers of General Affairs and of Justice are required to contact the requesting party through diplomatic channels and give notification of the refusal of the request (Art.559 (2) of the CCrPA). In circumstances where there are grounds to believe that the request is based on political prosecution, the request is required to be submitted to the Minister of Justice, hence the reason approval or instructions from the Minister as referenced in the second sentence above.

**Criterion 37.4:** (a) Aruba does not refuse a request for MLA on the sole ground that an offence is also considered to involve fiscal matters. Art. 560 of the CCrPA stipulates that in instances where the request is in respect to fiscal matters (retributions, taxes, customs or currencies) such that the request could have consequences for the Aruba Tax Department or the CBA or information is present at the CBA or the Tax Department, the requests shall not be granted unless authorisation has been obtained from the Minister of Justice. (b) Except in circumstances involving legal professional privilege, there are no secrecy and confidentiality requirements that prevent the authorities from rendering MLA assistance. Art. 177 CCrPA empowers the PPO to obtain existing or future information from both FIs and DNFBPs.

**Criterion 37.5:** Aruban authorities are required to maintain confidentiality related to MLA requests. All persons involved in executing a request are obliged to keep the information confidential pursuant to Art. 45 CCrPA. In accordance with Art.45, any person who, while being involved in the implementation of the CCrPA, gains access to information which he knows or should reasonably assume to be confidential and who is not already bound by secrecy with regard to such information by virtue of his office, profession or any statutory provision, shall be required to keep secret such information.

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<sup>41</sup> The role of the Minister is limited, and primacy is hand of the judicial bodies. The role of the minister is limited in cases involving factors such as request solely based on political circumstances such as political prosecution

**Criterion 37.6:** Dual Criminality is not a condition for refusing to render assistance related to MLA requests that does not involve coercive actions (Art. 559 of the CCrPA). Some of the grounds for refusal of rendering assistance are identified in c.37.3 and do not include dual criminality.

**Criterion 37.7:** It is not required that both countries place the offence within the same category of offence, rather, the authorities will consider the facts of the case in determining whether the underlying criminal conduct would constitute criminal offence had the offence been committed in Aruba (Art. 559 of the CCrPA).

**Criterion 37.8:** (a) & (b) The investigative powers that are available to the PPO and LEAs as identified in the analysis of Recommendation 31 are also available to be used in rendering MLA in accordance with Arts. 561 and 562 of the CCrPA. The request in such instances must be handled by the examining magistrate who will have various powers. The request will have the same legal effects as an application for instituting a preliminary judicial investigation, as regards to several factors including the power of the public prosecutor.

### ***Weighting and Conclusion***

Aruba has a robust regime that allows for the rendering of MLA. The PPO is the Central Authority responsible for the transmission and execution of MLA requests related to criminal matters. The deficiencies that exist are the absence of a documented procedure for the handling, tracking and prioritisation of MLA requests. These were considered as a minor deficiency given the authorities knowledge of the process (based on interviews conducted by the assessors) and the limited number of requests received and processed. **R.37 is rated LC**

### **Recommendation 38 – Mutual legal assistance: freezing and confiscation**

Aruba was rated “PC” for R.38 in its 3<sup>rd</sup> MER. The deficiencies identified were: (i) 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, (ii) dual criminality was required for mutual legal assistance, (iii) lack of TF offence impacts on the extent and effectiveness of mutual legal assistance provided by Aruba in TF matters, (iv) limitation regarding the predicate offences for ML as limits the ability to assist in relation to ML based on such predicates, (v) assistance cannot be provided concerning property held in the name of third parties, (vi) seizure assistance that can be provided does not extend to all proceeds nor to instrumentalities or intended instrumentalities and it is not clear that it applies in relation to property of corresponding value. The new requirements for the revised R.38 are outlined at c. 38.2, 38.3(b) and 38.4.

**Criterion 38.1:** (a) (b) (c) (d) and (e) Based on measures in the CCrPA, Aruba can take expeditious actions in response to requests by foreign countries to identify, freeze, seize and confiscate properties and instrumentalities and property of corresponding value based on the requirements of the sub-criteria (Arts.579a-579f and Arts.119 and 119a).

**Criterion 38.2:** Rendering assistance for non-conviction-based confiscation proceedings and related provisional measures is permissible in Aruba in circumstances where a treaty signed by the Netherlands and extended to Aruba permits. The authorities advised that the authority for granting assistance related to non-conviction based confiscation was established by a verdict of the Supreme Court of the Netherlands in 2013 (ECLI:NL:HR:2013:586) and also a request for confiscation based on the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, November 8, 1990) which was extended to Aruba. Arts. 15 and 16 of the Convention allows the authorities in Aruba to undertake

provisional measures in respect of investigations by members of the Council of Europe and other States signatories.

The Agreement between the Government of the Kingdom of the Netherlands and the Government of the USA which has been extended to Aruba and addresses mutual cooperation in the tracing, freezing, seizure and forfeiture of proceeds and instrumentalities of crime makes provision for asset freezing and temporary confiscations on the basis of MLA requests in non-conviction-based confiscation cases. Regarding taking provisional measures such as identification, seizing and freezing a conviction is not required for Aruba to undertake such actions. The action that is required is an established treaty and a criminal financial investigation. Taking into consideration the significance of ML/TF risks and context and the relation between the USA, Europe and Aruba, the deficiency (Aruba cannot render non-conviction based confiscation with all countries due to absence of treaties) was considered to be minor.

**Criterion 38.3:**

- (a) There is a mechanism in place that allows for co-ordination of seizures and confiscation actions with other countries. Pursuant to Art. 564 of the of the CCrPA, if, when complying with a request for legal assistance, the cooperation of foreign judicial and police officers within their own territory is permitted, their activities shall take place under the actual direction and responsibility of the competent authorities for this purpose. There is nothing in the law or otherwise that prevents the coordination of seizure actions between Aruba and other countries. As demonstrated by the various cases submitted to the assessors including “*Bont*”- Immediate Outcome 2- Chapter 8, Aruban authorities can undertake such actions. Further, the Treaty between the Kingdom of the Netherlands and the USA on mutual legal assistance in criminal matters and extended to Aruba makes provision for joint investigation.
- (b) Aruba has in place mechanisms for the management and disposal of property/objects as outlined under R. 4. MLA requests for the management and disposal of properties/objects are handled by the ART. In accordance with Art. 579d of the CCrPA based on the powers vested in him within the confines of the law and powers granted, the Attorney General is authorised to take actions related to Art.142 of the CCrPA (management and disposal of assets) based on a treaty request. Art.141 of the CCrPA also addresses the requirement to manage assets. Further, Art. 7 of the Agreement between the Kingdom of the Netherlands and the United States of America regarding Mutual Cooperation in The Detection, Seizure and Confiscation of Proceeds and Resources in Committing Crimes and the Distribution of Confiscated Objects makes provision for managing and when necessary, disposing of property frozen, seized or confiscate.

**Criterion 38.4:** There are no comprehensive mechanisms in place that allows for the sharing of assets. However, he treaties that in force between the Kingdom of the Netherlands and other jurisdictions and are applicable to Aruba in some instances allow for the sharing of assets. For example, Art. 7 of the agreement between the Kingdom of Netherlands and the USA regarding Mutual Cooperation in the Detection, Seizure and Confiscation of Proceeds and Resources in Committing Crimes and the Distribution of Confiscated Objects. The authorities have advised that Aruba can also share assets on an ad-hoc (*case by case*) basis, based on agreement established. In practice, as soon as the authorities receive a request from the foreign State, a determination and an agreement is made in principle for the sharing of asset, equally (50/50) or taking into consideration the nature of request (for example, cases involving restitution). Cases “*Erba*” and “*Bont*” were referenced by Aruba as examples of asset sharing.

### *Weighting and Conclusion*

Aruba has in place measures to freeze, seize and confiscate objects, including instrumentalities intended for use in criminal conduct. The measures also allow for the management and disposal of assets. Measures exist for Aruba to render non-conviction-based confiscation but only in circumstances where the treaties exist. The authorities referenced case examples and the treaty that exists with the USA as means of rendering non-conviction based confiscation. This deficiency was considered to be minor given the fact that the USA is one of Aruba's main international cooperation partners and the ML/TF risks that exist between these jurisdictions. Aruba can share assets with foreign counterparts on an ad hoc/case by case basis or where the agreement permit such . Taking into consideration the factors of risk and context, the assessors considered to the deficiencies to be minor. **R. 38 is rated LC.**

### **Recommendation 39 – Extradition**

This Recommendation was rated LC is the 3<sup>rd</sup> round MER. The deficiencies highlighted were Aruba's limited capacity to provide extradition effectively and efficiently as Aruba was a party to only four bilateral extradition agreements, and the limitations regarding the predicate offences for ML also limited its ability to extradite in relation to ML based on such predicates. TF was not an independent and separate offence so it was concluded that Aruba could not provide full extradition assistance. The revised FATF Standards require an adequate legal framework for extradition with no unreasonable or unduly restrictive conditions when assessing and rendering extradition requests, clear and efficient process to facilitate the execution of extradition requests, and the progress should be monitored by a case management system.

**Criterion 39.1:** Aruba has the ability to execute ML/TF extradition without undue delay.

- a) ML and TF are extraditable offences, as any offence that is criminalised, and carries a sentence of more than one year is considered as extraditable offences (see R.3 and 5 for the penalties for ML and TF offences) (Art.2 of the Extradition Decree of Aruba, Curaçao and Sint Maarten). Extradition is done on the basis of signed treaties by The Netherlands and extended to Aruba including the European Convention on Extraditions. Due to the fact that extradition is not extended to all countries, a deficiency remains. This was nevertheless considered as minor taking into consideration that most of the countries including the USA with whom Aruba have good international relations and where the risk of ML/TF is great are represented.
- b) The Central Authority (PPO) has a case management system and clearly documented processes for the timely execution and prioritisation of requests. The case management system is a computerised system that captures all important information, and the process is governed by a Standard Operating Procedures (SOPs).
- c) Aruba does not place unreasonable and unduly restrictive conditions on the execution extradition requests. The CCrPA contains a number of mandatory restrictions from which no actions should be taken pertaining to a request (including extradition). These include investigations, prosecutions and sentencing of the suspect based on his religious and political beliefs, his race or group of the population to which he belongs (Art.559)

**Criterion 39.2:**

- a) Aruba is not permitted to extradite its own nationals (Art 4 (1) of the Extradition Decree of Aruba, Curaçao and Sint Maarten). However, this does not apply if the extradition that is being requested, in the opinion of the Governor, it is guaranteed that if the perpetrator is sentenced to a non-suspended prison sentence in the requesting State on

account of the offences for which the extradition may be granted, he may undergo this punishment in his own country (Aruba) (Art 4 (2)).

b) Despite not being able to extradite its own nationals until the specific guarantees are given, Aruba will, if requested by a country seeking extradition, take over the prosecution of its nationals (Art. 1:6 CrCA) for offences committed outside its territory. No treaty is required, and the prosecutor will treat the matter as a local case and all local criminal procedures will apply. The procedure adopted by Aruba to accept the request via email enables the PPO to deal with the request in a timely manner.

**Criterion 39.3:** Dual criminality is required under the Extradition Decree. Extradition only be granted if the suspected person committed an offence under the laws of the both the requesting State and Aruba (Art.2 (1) (a)) of the Extradition Decree of Aruba, Curaçao and Sint Maarten). An offence punishable under the laws of Aruba shall also include an offence as a result of which the legal order of the requesting State has been violated, whilst the same violation shall be punishable under the laws of Aruba (Art.2 (2) of the Extradition Decree of Aruba, Curaçao and Sint Maarten). The foregoing shows that the violation is the focus of the proceedings and further shows that the approach concerns the offence and the underlying conduct, and not whether the requesting state uses the same terminology and/or category used in the CrCA. For example, the treaty between the Kingdom of Netherlands and Canada and between the Kingdom and Australia clearly specifies that the extradition is permitted for conduct which under the law of both countries provides for a criminal offence threatened with imprisonment of one year.

**Criterion 39.4:** There are simplified measures in place to facilitate extradition (Art.8 of Extradition Decree). Further, there are measures in place for simplified extradition where the individual waived his rights to a hearing and consent to the extradition (Art.16 of the Extradition Treaty with the USA and Canada). There is precedent that this can be done as in May 2011 when an individual waived his rights to formal extradition proceedings and was extradited in June 2011 (Case reference number RHV030/2011).

### *Weighting and Conclusion*

563. Aruba has in place a relatively robust extradition framework. The single deficiency is that extradition is dependent on treaties which have not been signed with all countries. Nevertheless, the deficiency was considered to be minor, taking into consideration ML/TF risks and context (most of the countries with whom treaties are signed represent posed ML/TF risks to Aruba and vice versa). **R. 39 is rated LC.**

### **Recommendation 40 – Other forms of international cooperation**

564. This Recommendation was rated PC in the 3<sup>rd</sup> Round MER as there were no statistics available to suggest that exchange of information/cooperation with foreign law enforcement authorities and supervisors were effective and in line with FATF standards. Aruba's 8<sup>th</sup> follow-up report noted that the capabilities of the CBA and the FIU to cooperate with their foreign counterparts were enhanced and Aruba has collected and compiled detailed statistics on the level of international cooperation being undertaken.

### *General Principles*

**Criterion 40.1:** The competent authorities in Aruba that this section applies to are the KPA, FIU, CBA, Customs and Tax Authorities. Although the PPO was identified as a designated competent authority by the assessors and the jurisdiction, requests for information are generally channelled through the different competent authorities such as the KPA for processing, with the PPO having to give consent if the matter is related to criminal

investigations including ML and TF. Requests for information are generally processed by competent authorities in a timely manner and within the timeline stipulated in the request. The requirements that provide for the competent authorities to share information are as follows:

- i. **FIU:** The FIU is a member of the Egmont Group (EG) and can share information via the Egmont Group Secured Website (ESW). Information can also be shared with non- EG Member via the various MOUs (46) signed with foreign FIUs. The FIU can exchange information with other FIUs or other agencies with similar tasks to the FIU within the Kingdom of Netherlands, outside of the Kingdom, Egmont members and non-members. Information can also be shared spontaneously and upon request in accordance with the AML/CFT State Ordinance and the State Decree FIU Register 2013 (Arts. 20 (1) (f) and 22 (3), 24 of the AML/CFT State Ordinance and Art. 6 (1) and 7 (1) of the State Decree FIU Register 2013).
- ii. **Police (KPA)-** Arts. 555-565 of the CCRPA allow the police to exchange information with their foreign counterparts. The request can be directly sent to the police if no investigative acts are required to obtain this information. The KPA is also member of the Asset Recovery Network of the Caribbean (ARIN-CARIB) and Interpol and is therefore authorised to share information spontaneously and upon request via those mechanisms based on the agreements. Further, via the different liaison officers from different agencies and jurisdiction such as the US Homeland Security, the KPA can share information.
- iii. **Tax Authority-** The Aruban tax authorities are permitted to share information with foreign authorities including for AML/CFT purpose in accordance with the various provisions that are set out in the National Ordinance for International Tax Assistance Matters (Dutch: *Landsverordening internationale bijstandsverlening belastingen*) (AB 2017 No.74). The information can be shared both spontaneously and upon request.
- iv. **Customs:** Customs Aruba is a member of the Caribbean Customs Law Enforcement Council (CCLEC) and is permitted to share information via this network with other customs authorities. Further, customs authorities are permitted to share information with other customs organisations pursuant to the Customs Administrative Act. Moreover, customs can also share information via treaties established with 18 countries related to administrative assistance.
- v. **CBA:** The CBA is permitted to share information spontaneously and upon request via the various legislation including the AML CFT State Ordinance (Art. 36 of the AML/CFT State Ordinance, Art. 34a of SOSCS (credit unions) and Art. 24 of SOSIB (Insurance Business), Art. 4 paragraph 5 of the State Decree Supervision Insurance Brokers, Art. 89 of the SOSSB SOSTCSP 19 of the SOSMTC (MTCs/MVTS). The CBA has signed M(M)OUs with other CBAs, Group of International Financial Center Supervisors and Regulatory authorities within the Caribbean Region, the Dutch Authority on the Financial Markets regarding supervision in Aruba.

**Criterion 40.2:**

- a) All competent authorities have a lawful basis for providing cooperation (see analysis in c.40.1).
- b) Nothing in law or otherwise prevents the competent authorities from utilising the most efficient means to cooperate. Aruban authorities indicated that this can be done via telephone or email.

- c) **FIU:** The FIU has the following secure channels for the transmission and execution of requests: the ESW; “FIU-Net” to exchange information with other FIUs within the Kingdom; and the MOTsys software to register information requests. **CBA:** The CBA uses sealed envelopes delivered by international couriers and secured e-mail connections to respond to co-operation requests. **Police:** Interpol (I-24/7) and ARIN-CARIB provides secure channels for the exchange of information. **Customs:** CCLEC offers a secure means of channel for transmission of information by customs. **Tax Authority:** Pursuant to several Articles including Art. 4 contained in National Ordinance for International Tax Assistance Matters, tax authorities are permitted to exchange information electronically via secure mechanisms.
- d) In practice, requests are prioritised on a case-by-case basis by all competent authorities including the FIU, customs, police, tax authorities and CBA. Some of the factors that would be considered for prioritisation include, the nature of the request and timelines provided by the requesting country. Apart from the FIU, most of the competent authorities do not have guidelines or procedures for handling of request. **CBA:** International requests are handed by the Integrity Supervision Department (ISD) of the CBA and are given priority. The CBA has received very minimal number of requests as noted in IO 2 and have addressed them in a relatively short time period. Therefore, the absence of guidelines or procedures was considered by the assessors to be a minor deficiency. **Police:** In practice, requests received by the KPA are immediately reviewed and are prioritised based on the following elements, the indicated urgency by the requesting country, availability of resources with the department and the availability of the information requested. Close contact is maintained between the investigators in Aruba processing the request and their foreign counterparts. The KPA utilise Infodesk which is used to prioritised and ensure that requests are processed in a timely manner.

**FIU:** In practice, responses to requests by foreign FIUs are addressed in a timely manner in conformity with the Egmont Group “Principles for Information Exchange” and “Best practices for the improvement of Exchange of Information Between FIUs.” The response time to request can vary depending on the complexity of the case and request. The process followed by the FIU to prioritise requests include acknowledgement of the request and ensuring that requests with deadlines or an urgency are given priority. Responses to requests are provided within 30 days of receipts (unless the requesting FIU in its request indicate that the request is urgent or provided a time period in which a response should be provided).

**Tax Authority:** The Tax Authority prioritise and execute request in a timely manner by utilising a case management called “DECOS JOIN”. The use of this system began in 2020.

- e) The FIU utilised MOTsys to ensure that the information it has is secured. Staff of the FIU is also required to maintain confidentiality (see analysis of R.29). Only designated members of staff at the CBA have access to information obtained via a request. The CBA, FIU and other competent authorities are bounded by confidentiality as a result of duty performed under the AML/CFT State Ordinance. Further, the State Ordinance, Material Civil Service Law (Arts 62 and 63) prohibits the authorised disclosure of information by civil servants including police officers, tax authorities, customs, CBA employees and FIU employees.

**Criterion 40.3:** Competent authorities do not need bilateral agreement to share information with their foreign counterparts. Competent authorities have signed and negotiated bilateral agreements with their foreign counterparts in a timely manner where such exists.

**Criterion 40.4:** Pursuant to paragraph 19 of the Egmont Group Principles for Information Exchange, the FIU is required, upon request, to provide feedback relating to the timeliness of

the response, the quality of the response and to what end the information was useful to that FIU and other competent authorities. Further, the FIU can provide feedback to non- Egmont Group Members, in which case the FIU applies the Egmont Group Principles for Information Exchange. In both instances, the FIU can spontaneously provide feedback. The BFO of the KPA provides feedback informally to its foreign counterparts on the usefulness of the information and whether such would have led to arrest etc. There is nothing in law or otherwise which prevents or restricts the CBA from providing feedback to foreign authorities. No information was provided by customs and tax authorities on whether feedback can be provided when requested. This deficiency is considered to be minor taking into consideration, the main competent authorities (FIU, CBA and the police) do provide feedback and can provide feedback without any impediments.

**Criterion 40.5:** (a) Competent authorities do not prohibit or place unduly restrictive condition on the provision of exchange of information or assistance on the grounds specified in sub-criteria 40.5 (a) to 40.5 (d) as long as the request fall within their purview.

**Criterion 40.6: FIU:** Arts. 6 (2) and 7 (3) and (4) of the State Decree FIU Register stipulates that the Egmont principles should be taken into consideration with regard to the terms and conditions of information exchange with other FIUs. Paragraph 32 of the Principles of Exchange stipulates that the exchanged information should be used for the purpose for which it was sought. Any dissemination to other authorities or third parties or the use of the information beyond that originally approved, should require prior consent by the requested FIU. **Police:** As it relates to the police the exchange of information is subjected to Interpol rules. **CBA:** Art. 24 2 (f) and 3 of the SOSIB, Art. 4 (5) of the State Decree Supervision Insurance brokers, Art. 34a 2 (f) and paragraph 3 of the SOSCS; Art. 23 paragraph 2 (f) and paragraph 3 of the SOSMTC, Art. 19, paragraph 2 (f) and paragraph 3 of the SOSTCSP and Art. 89, paragraph 2 (f) and paragraph 4 of the SOSSB all of which applies to the CBA, mandate that information must be utilised for the purpose for which it was provided. **Customs:** Customs are required to conform with the rules of CCLEC. Nevertheless, uncertainty remains as to whether such rules address control and safeguard of information to ensure that the information is used for the purpose it was provided or sought. **Tax Authority:** The tax authority utilisation of the case management tool “DECOS JOIN” which is configured to conform the standards set by the Organisation for Economic Co-operation and Development (OECD). Art. 15 of the National Ordinance on International Assistance in Tax Mutual Assistance Matters contains the requisite safeguards for the use of the information exchanged and requires consent if the information is to be used for the purpose other than requested.

**Criterion 40.7:** The FIU, CBA, police, customs and tax authorities are required to comply with the requirements of criterion 40.7 pursuant to Arts. 62 and 63 of the State Ordinance Material Civil Service Law. Confidentiality requirements are also contained in State Decree FIU Register (Art. 3 (1)) and the AML/CFT State Ordinance (Art. 49). The CBA can refuse the exchange of data and or information if the confidentiality of the data or information has not been sufficiently guaranteed by the foreign requesting authority (Art. 24 paragraph 2 (d) of the SOSIB, Art. 4, paragraph 5 of the State Decree Insurance Brokers, Art. 34a paragraph 2 (d) of the SOSCS, Art. 23, paragraph 2(d) of the SOSMTC, Art. 19 paragraph 2 (d) of the SOSTCSP and Art. 89, paragraph 2 (d) of the SOSSB). Regarding Tax Authorities, information obtained from a Minister or a competent authority is subject to confidentiality requirements pursuant to Art. 22 of the National Ordinance on International Assistance in Tax Matters. The Minister or the tax authorities can refuse to provide such information if confidentiality is not adhered to (Art. 14).

The sharing of by the PPO and the KPA are subjected to the legal rules and fundamental rights of “privacy.” Therefore, the sharing of information must comply with legal rules as it can

constitute a violation of the person's privacy. Exchange of information with EU member states are governed by the privacy legislation through the EU and its Directive (2016/690) on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences, of the execution of criminal penalties and on the free movement of data.

**Criterion 40.8:** The FIU and the CBA can conduct inquiries on behalf of their foreign counterparts and exchange all information that is obtainable by them if such inquiries were being carried out domestically (Arts. 23 (1)-(3), 36 of the AML/CFT State Ordinance, respectively. Further, the CBA in accordance with Art. 34a paragraph 2 of the SOSCS, Art. 24, paragraph 2 of the SOSIB, Art. 4, paragraph 5 of the State Decree Supervision Insurance Brokers, Art. 23, paragraph 2 of the SOSMTC, Art. 19, paragraph 2 of the SOSTCSP, Art. 89, paragraph 2 of the SOSSB. The police can conduct inquiries on behalf of its foreign counterparts and exchange information that is available by them if such inquiries are conducted domestically, based on principles of Interpol. In circumstances where the information ( requires the use of coercive measures) is required for prosecutorial purposes, an MLA will be required. Customs can conduct inquiries and exchange information with foreign counterparts based on the protocols established by CCLEC and established treaties. There is nothing preventing the Tax Authority by virtue of the National State Ordinance on International Assistance in Tax Matters and through the Fiscal Intelligence and Investigation Team (FIOT) by virtue of being a member of the ART from conducting inquiries and exchanging information.

#### *Exchange of Information between FIUs*

**Criterion 40.9:** Art. 20(1)(f) AML/CFT-State Ordinance authorises the FIU to exchange of information with other FIUs. Pursuant to Art. 22(3) of the AML/CFT-State Ordinance, the FIU is authorised to share information from its register, relating to ML, TF and associated predicate offences with agencies that have a similar task to that of FIU within the Kingdom of the Netherlands and other foreign FIUs. There is no limitation on the types of information that can be shared by the FIU This was therefore interpreted by the assessors to include the widest range of co-operation. In addition, Arts. 6(1) and 7(1) of the State Decree FIU Register 2013 provide a legal basis for FIU to cooperate with foreign FIUs, including FIUs that are not a member of the Egmont Group.

**Criterion 40.10:** Based on paragraph 19 'Principles for information exchange of the Egmont Group, feedback requests received from foreign FIUs are registered with FIU and a response is provided. Feedback includes information regarding the usefulness of the information provided and the outcome of the analysis conducted. See analysis of c.40.4 for further information regarding feedback, including to non- Egmont Group Members.

**Criterion 40.11:** The FIU is permitted to share the widest range of information including those specified by the requirements of this criterion. Section 20 (1) (f) authorises the FIU to maintain contact and exchange information with foreign FIUs whose task is similar to that of the FIU Aruba.

#### *Exchange of information between Supervisors.*

**Criterion 40.12:** The CBA has signed and executed several M(M)OUs to render co-operation with their foreign counterparts. The M(M)OUs are consistent with the applicable international standards for supervision pertaining to the exchange of supervisory information related to or relevant to AML/CFT. This is further supported by the provisions that are set out at Art. 36 of the AML/CFT State Ordinance (AB 2011 no.28) and the relevant sectoral Ordinances including credit institutions (Art- 34a of SOSCS), insurance businesses (Art. 24 of SOSIB),

insurance brokers (Art. 4 (5) of the State Decree Supervision Insurance Brokers), securities brokers (Art. 89 of the SOSSB), TCSPs (Art. 23 of the SOSTCSP); and MTCs (Art. 19 of the SOSMTC).

**Criterion 40.13:** Pursuant to Art. 36 of the AML/CFT State Ordinance, Art. 34a of the SOSCS, Art. 24 of the SOSIB, Art. 4 of the State Decree Supervision Insurance brokers, Art. 23 of the SOSMTC, Art. 19 of the SOSTCSP and Art. 89 of the SOSSB, the CBA is authorised to exchange information obtained or domestically available to it with foreign authorities that have similar functions. This includes information requested and obtained from service providers (FI and DNFBP) pursuant to Art.36 (2) of the AML/CFT State Ordinance.

**Criterion 40.14:** Art. 36 of the AML/CFT State Ordinance allows the CBA to share: (a) information on the regulatory system and general information on the financial sectors; (b) prudential information inclusive of the service provider's business activity, beneficial ownership structure, and the fit and proper information on management and staff (reference is also made to Art.34a of the SOSCS; Art.24 of the SOSIB; 19 of the SOSMTC; Art. 23 of the SOSTCSP and Art. 89 of the SOSSB); and (c) AML/CFT information, such as internal AML/CFT procedures and policies of FIs, CDD information, customer files, samples of accounts and transaction information.

**Criterion 40.15:** Art. 36(2)(5) of the AML/CFT State Ordinance and other aforementioned Ordinances (reference is made to Art. 35 of the SOSCS, Art. 24b of the SOSIB; Art. 4(5) of the State Decree Supervision Insurance Brokers; Art. 21 of the SOSMTC, Art. 25 of the SOSTCSP and Art. 90 of the SOSSB) enables the CBA to conduct inquiries on behalf of foreign counterparts and, where necessary, to facilitate or authorise for said enquiries to be conducted by the foreign counterpart themselves in Aruba for the purpose of facilitating effective group supervision. There are no restrictive legislative or otherwise provisions that prohibit a foreign counterpart from conducting its own inquiries.

**Criterion 40.16:** The CBA is required to ensure that it has authorisation of the requested authority prior to the dissemination of information exchanged, or use of that information for supervisory and non-supervisory pursuant to the various pieces of legislations that apply to specific sectors (Art. 36 (1) of the AML/CFT State Ordinance, Art.34a (3) of the SOSCS, Art. 24 (3) of the of the SOSIB, Art.19 (2) of the SOSMTC, Art. 23 (2) of the SOSTCSP and Art. 89 (3) of the SOSSB). The foregoing requirements only applies to requests regarding the supervision of the entities such as MTCs covered under those legislation. Nevertheless, the assessors considered the deficiency to be minor given the risk and materiality of the sectors to which the requirements apply.

#### *Exchange of information between law enforcement authorities*

**Criterion 40.17:** The KPA is authorised to exchange information pertaining to the provisions that are identified in c.40.1.

**Criterion 40.18:** The KPA is authorised to conduct inquiries and obtain information on behalf of our foreign counterparts using investigative techniques domestically available to the police. This is done based on mutual agreements through bilateral/multi-lateral arrangements, such as with the USA and the investigations and inquiries on request within the Interpol. See c.40.8 for more information.

**Criterion 40.19:** In Aruba, there is a joint effort to combat transnational crimes. Consequently, the law enforcement community conducts joint investigations with foreign counterparts, such as with the other Dutch territories through the Criminal Investigation Cooperation Team (RST). The local Public Prosecutor Office heads this task force. Joint investigations is also permissible with agencies such as FIOT, NCTVI, Customs

Investigations Department (In Dutch: “Douane Recherche”), depending on the nature of the crimes. The PPO has also signed MOUs with the Fiscalía General de Colombia and the Procuraduría General de Colombia regarding the exchange of information and other related matters including the conduct joint investigations. Participation in joint investigations is also permissible in accordance with Art.564 of the CCrPA. LEAs through the provision of information provided including case examples have demonstrated that they can conduct joint investigations with foreign counterparts.

### *Exchange of information between non-counterparts*

**Criterion 40.20:** Exchange of information with non-counterparts can occur both direct diagonally and indirectly. The FIU can indirectly exchange information with non-counterparts based on the provisions contained in Art. 24 of AML/CFT State Ordinance and Arts. 6(1) and 7(1) of the State Decree FIU Register. The KPA and the PPO can also indirectly exchange information with non-counterparts via the FIU. By virtue of being a member of the ARIN-CARIB, the mechanism allows for indirect exchange of information between competent authorities via the KPA on request pertaining to investigations and prosecution of ML, TF, associated predicate offences and confiscation. There is no provision that prohibits the CBA from indirectly sharing information with non-counterparts and the authorities have indicated that this can be done. By virtue of being members of the ART, customs and tax authorities can share information with non-counterparts via that taskforce. Further, the CBA, customs and tax Authorities can share information using the indirect method. For example, request for tax and customs information can be requested via the FIU by its foreign counterpart. The FIU can then request that information from the tax and custom authorities and share same with the foreign FIU with no impediments.

### *Weighting and Conclusion*

Aruba has demonstrated to a large extent that there are measures in place to facilitate other forms of cooperation by competent authorities. Given that the main competent authorities such as the FIU, police and CBA are compliant with most of the measures that are required under R.40 and taking into consideration the risk and context of jurisdiction, the deficiencies were considered and weighted by the assessors and found to be as minor. The deficiencies identified include, with the exception of the FIU, competent authorities do not have guidelines or policies in place for the handling of request, customs and tax authorities are not authorised to provide feedback and uncertainty regarding whether customs has mechanisms in place to ensure that the information will be used for the purpose it was provided or sought. **R.40 is rated LC.**

*Summary of Technical Compliance – Key Deficiencies*

**Annex Table 1. Compliance with FATF Recommendations**

Recommendations	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	LC	<ul style="list-style-type: none"> <li>• No requirement to allocate resources based on the ML/TF risks identified.</li> <li>• Not all competent authorities have in place measures to mitigate and address the ML/TF risks identified in the NRAs.</li> </ul>
2. National cooperation and coordination	LC	<ul style="list-style-type: none"> <li>• No overarching national AML/CFT policies based on ML/TF risks identified.</li> <li>• No documented requirement for ML/TF policies to be reviewed regularly.</li> </ul>
3. Money laundering offences	LC	<ul style="list-style-type: none"> <li>• The offence of self-laundering is not fully criminalised.</li> <li>• The sanctions that are applicable to legal persons are not proportionate and dissuasive in all instances.</li> </ul>
4. Confiscation and provisional measures	C	<ul style="list-style-type: none"> <li>• All criteria are met.</li> </ul>
5. Terrorist financing offence	C	<ul style="list-style-type: none"> <li>• All criteria are met.</li> </ul>
6. Targeted financial sanctions related to terrorism & TF	LC	<ul style="list-style-type: none"> <li>• Besides the EU, there is no requirement for Aruba to provide as much identifying and specific information as soon as possible when requesting another country to give effect to freezing actions.</li> <li>• There is no requirement for natural and legal persons to lawfully freeze funds and assets of designated persons and entities without prior notice.</li> <li>• The procedures in 6.6 (b) (c) and (f) are not publicly available and are therefore not publicly known.</li> </ul>
7. Targeted financial sanctions related to proliferation	PC	<ul style="list-style-type: none"> <li>• It is unclear whether TFS are implemented without delay.</li> <li>• It is unclear whether freezing action is taken without prior notice to designated persons and entities.</li> <li>• Freezing obligations do not extend to the funds or other assets of persons and entities acting at the direction of designated persons or entities.</li> <li>• There are no provisions in relation to the protection of bona fide third parties acting in good faith when implementing the obligations under Recommendation 7.</li> <li>• No information was available on the measures that are in place to monitor and ensure compliance by FIs and DNFBPs with the obligations reflected in R.7.</li> </ul>

Recommendations	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> <li>• No information was available on procedures to submit de-listing requests to the Security Council according to the relevant UNSCRs.</li> <li>• No information was available regarding how Aruba treats with contracts, agreements or obligations that arose prior to the date on which accounts became subject to targeted financial sanctions are treated.</li> </ul>
8. Non-profit organisations	PC	<ul style="list-style-type: none"> <li>• Policies to provide accountability, integrity and public confidence in the administration and management of NPOs are not clear and comprehensive and the measures in place do not extend to all NPOs.</li> <li>• There is no requirement mandating the periodical re-assessment of the NPO sector potential vulnerabilities to terrorist activities to ensure effective implementation of measures by reviewing new information.</li> <li>• Aruba has not conducted any detailed and significant outreach and educational programmes with NPOs and other known donors to raise awareness about potential vulnerabilities to TF, TF risk and the measures NPOs should take to protect themselves against such abuse.</li> <li>• Aruba has not provided any information to demonstrate that it is working with NPOs to develop and refine best practices to address TF risk and vulnerabilities and thus protect them from TF abuse.</li> <li>• NPOs have not been encouraged to conduct transactions through regulated financial channels where feasible.</li> <li>• No information was available on the supervision of NPOs which do not receive government subsidies. Aruba has not demonstrated a risk-based application of measures to NPOs that are at risk for TF abuse.</li> <li>• NPOs are currently not supervised in accordance with the requirements of R.8, i.e. to ensure that they are not misused for TF.</li> <li>• There are no measures in place to address criterion 8.2 (d).</li> <li>• There are no measures in place to address criterion 8.5 ©.</li> </ul>
9. Financial institution secrecy laws	C	<ul style="list-style-type: none"> <li>• All criteria are met.</li> </ul>
10. Customer due diligence	LC	<ul style="list-style-type: none"> <li>• No requirement to conduct CDD on existing customers based on materiality.</li> </ul>
11. Record keeping	C	<ul style="list-style-type: none"> <li>• All criteria are met.</li> </ul>
12. Politically exposed persons	C	<ul style="list-style-type: none"> <li>• All criteria are met.</li> </ul>

Recommendations	Rating	Factor(s) underlying the rating
13. Correspondent banking	C	<ul style="list-style-type: none"> <li>All criteria are met.</li> </ul>
14. Money or value transfer services	C	<ul style="list-style-type: none"> <li>All criteria are met.</li> </ul>
15. New technologies	PC	<ul style="list-style-type: none"> <li>The definition of VASP does not fully align with the FATF definition of VASPs.</li> <li>Aruba has not conducted a ML/TF risk assessment of VAs and VASPs and have not taken measures to prevent or mitigate the ML/TF risks associated with VAs and VASPs.</li> <li>There is no requirement to conduct fit and proper tests to prevent criminals and associates from holding, or being the beneficial owner of a significant or controlling interest, or holding a management function in VASPs.</li> <li>Actions taken to identify unlicensed and unregistered VASPs are not comprehensive.</li> <li>There is no provision to suspend or revoke licenses of VASPs.</li> <li>Guidelines and feedback are not provided to VASPs.</li> <li>Deficiencies identified in R. 10 and 19 and apply to R. 15.</li> <li>Deficiencies identified in the relevant criteria of R.6 and 7 and that would be applicable to VASPs have a cascading impact.</li> </ul>
16. Wire transfers	C	<ul style="list-style-type: none"> <li>All criteria are met</li> </ul>
17. Reliance on third parties	C	<ul style="list-style-type: none"> <li>All criteria are met</li> </ul>
18. Internal controls and foreign branches and subsidiaries	C	<ul style="list-style-type: none"> <li>All criteria are met</li> </ul>
19. Higher-risk countries	LC	<ul style="list-style-type: none"> <li>Countermeasures specified in the AML/CFT Handbook do not capture the full gamut of the examples of countermeasures specified in the INR19.</li> <li>There is no requirement for the application of countermeasures proportionate to ML/TF risk, with the exception of EDD.</li> </ul>
20. Reporting of suspicious transaction	C	<ul style="list-style-type: none"> <li>All criteria are met</li> </ul>
21. Tipping-off and confidentiality	C	<ul style="list-style-type: none"> <li>All criteria are met</li> </ul>
22. DNFBPs: Customer due diligence	LC	<ul style="list-style-type: none"> <li>Casinos are only required to conduct CDD on cash transaction of Afl. 5,000.00 (US\$2,777.80) and not all transactions.</li> </ul>

Recommendations	Rating	Factor(s) underlying the rating
23. DNFBPs: Other measures	LC	<ul style="list-style-type: none"> <li>Deficiencies identified in Recommendation 19, have a cascading impact on R.23</li> </ul>
24. Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> <li>Aruba has not identified and assessed the ML/TF risks associated with all different types of legal persons.</li> <li>The information that is legally required to be held by the company registry and companies is only limited to shareholders information and does not in all instances capture BO information.</li> <li>The requirement prohibiting the use of nominees is unclear.</li> <li>Except for the FIU, Aruba (competent authorities) do not have mechanism in place to monitor the quality of assistance received from other countries in response to request received for basic and BO information or request for assistance in locating BO.</li> <li></li> </ul>
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> <li>There is no provision which stipulates the retention of records after the TCSP's involvement with the trust ceases.</li> <li>No information was provided to demonstrate the ability to provide international co-operation by facilitating access by foreign competent authorities to basic information held by trusts and other legal arrangements c.25.6 (a) and (c).</li> </ul>
26. Regulation and supervision of financial institutions	C	<ul style="list-style-type: none"> <li>All criteria are met.</li> </ul>
27. Powers of supervisors	C	<ul style="list-style-type: none"> <li>All criteria are met.</li> </ul>
28. Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> <li>The fit and proper requirements that exists for real estate and jewellery sectors are not robust and does not conform with those that are required by the FATF Standards. .</li> </ul>
29. Financial intelligence units	C	<ul style="list-style-type: none"> <li>All criteria are met</li> </ul>
30. Responsibilities of law enforcement and investigative authorities	C	<ul style="list-style-type: none"> <li>All criteria are met</li> </ul>
31. Powers of law enforcement and investigative authorities	C	<ul style="list-style-type: none"> <li>All criteria are met</li> </ul>
32. Cash couriers	LC	<ul style="list-style-type: none"> <li>The sanctions that are applicable to a legal person who failed to declare cash and BNI that have a nexus to ML is not proportionate and dissuasive.</li> </ul>

Recommendations	Rating	Factor(s) underlying the rating
33. Statistics	PC	<ul style="list-style-type: none"> <li>• With regard to ML investigations, except for the PPO, no information was presented regarding the maintenance of ML statistics by other LEAs.</li> <li>• There is no information with regard to the agency responsible for maintaining TF related statistics.</li> <li>• There is no information with regard to the maintenance of statistics on other international requests for co-operation by agencies aside from the PPO.</li> </ul>
34. Guidance and feedback	C	<ul style="list-style-type: none"> <li>• All criteria are met.</li> </ul>
35. Sanctions	LC	<ul style="list-style-type: none"> <li>• Sanctions for breaches committed by the NPO sector are not proportionate.</li> </ul>
36. International instruments	LC	<ul style="list-style-type: none"> <li>• The United Nation Convention Against Corruption (UNCAC)/Merida Convention has not been extended to Aruba.</li> <li>• Some Articles of the UNCAC have not been implemented into domestic law by Aruba.</li> </ul>
37. Mutual legal assistance	LC	<ul style="list-style-type: none"> <li>• No documented measure(s) in place for handling and prioritisation of requests.</li> </ul>
38. Mutual legal assistance: freezing and confiscation	LC	<ul style="list-style-type: none"> <li>• Non-Conviction based conviction can only be rendered based on treaties. There is one treaty signed by Aruba to render such type of assistance.</li> </ul>
39. Extradition	LC	<ul style="list-style-type: none"> <li>• Extradition is treaty-based and has not been extended to all countries.</li> </ul>
40. Other forms of international cooperation	LC	<ul style="list-style-type: none"> <li>• Apart from the FIU, competent authorities (KPA, CBA, Customs and Tax Authorities) do not have guidelines in place pertaining to the handling of requests.</li> <li>• No information provided to show whether customs and tax authorities are authorised to provide feedback</li> <li>• Uncertainty as to whether customs authorities have in place measures to ensure that information will be use for the purpose provided or sought.</li> <li>• The CBA is not required in all circumstances to have prior authorisation of the requested supervisor prior to dissemination of information exchanged (c.40.16).</li> </ul>

*Glossary of Acronyms<sup>42</sup>*

Acronyms	DEFINITION
AB	Afkondigingsblad
AFC	Aruba Financial Center
Afl.	Aruban florin (currency)
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
ART	Asset Recovery Team
Aruba Police Force	Dutch : Korps Politie Aruba : KPA
AVV	Aruba Vrijgestelde Vennootschap (Aruba Exempt Corporations)
ARIN-CARIB	Asset Recovery Inter-Agency Network for the Caribbean
BES (Islands)	Bonaire, St Eustatius and Saba Islands (Special municipalities of the Kingdom of the Netherlands)
BFO	Bureau of Financial Investigations
BIV	Bureau Interne Veiligheid
BNI	Bearer Negotiable Instruments
BO	Beneficial Owner
CBA	Centrale Bank van Aruba (Central Bank of Aruba)
CBOS	Coordination Office Government Subsidy
CCA	Civil Code of Aruba
CCLEC	Caribbean Customs Law Enforcement Council
CCrPA	Code of Criminal Procedure of Aruba
CDD	Customer Due Diligence
CMMA	Coördinatie centrum Mensenhandel en Mensensmokkel Aruba (Coordination Center on Human Trafficking and Migrant Smuggling Aruba)
CoC	Chamber of Commerce and Industry
CrCA	Criminal Code of Aruba
DT	Drug Trafficking
EDD	Enhanced Due Diligence
ESW	Egmont Group Secure Website
EU	European Union
FATF	Financial Action Task Force
FCA	Fusion Center of Aruba
FIOT	Fiscale Inlichtingen en Onderzoeken Team (Fiscal Intelligence and Investigation Team)
FIU	Financial Intelligence Unit (In Dutch: <i>Meldpunt Ongebruikelijke Transacties</i> )
FTF	Foreign Terrorist Fighters

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Acronyms already defined in the FATF 40 Recommendations are not included into this Glossary.

FZA	Free Zone Aruba N.V
GDP	Gross Domestic Product
HT	Human Trafficking
Human Smuggling	HS
KPA	Korps Politie Aruba (Aruba Police Force)
LEA	Law Enforcement Agency
LMCG	Landbesluit meldplicht in- en uitvoer contant geld. (State Decree Import and Export Cash Money).
LR	National Internal Investigations Department <i>((In Dutch : de Landsrecherche</i>
LWTF	Landsverordening voorkoming en bestrijding witwassen en terrorismefinanciering (AML/CFT State Ordinance)
MER	Mutual Evaluation Report
MLCO	Money Laundering Compliance Officer
MLRO	Money Laundering Reporting Officer
MLA	Mutual Legal Assistance
MLAT	Mutual Legal Assistance Treaty
MS	Migrant Smuggling
MTC	Money Transfer Company
MTPP	Multi-disciplinary Team Terrorism-Financing and Proliferation Financing
NCTVI	National Central Bureau Counterterrorism, Safety and INTERPOL
NPO	Non-Profit Organisation
NV	Naamloze vennootschap (Limited Liability Company/Corporation)
NRA	National Risk Assessment
OECD	Organisation for Economic Co-operation and Development
OFAC	Office of Foreign Assets Control, US Department of the Treasury
PPO	Public Prosecutor's Office
RST	Recherche Samenwerkingsteam (Special Investigation Task Force)
REPD	Real Estate and Property Developers
SDSIB	State Decree on the Supervision of Insurance Brokers
SOSCS	State Ordinance on the Supervision of the Credit System
SOSIB	State Ordinance on the Supervision of the Insurance Business
SOSSB	State Ordinance on the Supervision of the Security Business
SOSTCSP	State Ordinance on the Supervision of Trust Service Providers
UBO	Ultimate Beneficial Owner
UNCAC	United Nations Convention Against Corruption
UTR	Unusual Transaction Report
VDA/SSA	Security Service of Aruba (Dutch: de Veiligheidsdienst van Aruba)



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July 2022

## Anti-money laundering and counter-terrorist financing measures – Aruba *Mutual Evaluation Report*

In this report: a summary of the anti-money laundering (AML) / counter-terrorist financing (CTF) measures in place in Aruba as at the date of the on-site visit from 30 August, 2021 to 10 September, 2021. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Aruba's AML/CTF system, and provides recommendations on how the system could be strengthened.