



CARIBBEAN FINANCIAL ACTION  
TASK FORCE



FINANCIAL ACTION TASK FORCE

# Mutual Evaluation Report – *Executive Summary*

Anti-Money Laundering and Combating the  
Financing of Terrorism

Aruba,  
Kingdom of the Netherlands

16 October 2009

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

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## MUTUAL EVALUATION REPORT OF ARUBA, KINGDOM OF THE NETHERLANDS

### EXECUTIVE SUMMARY

#### Background Information

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

#### Key Findings

- The level of criminality in Aruba is generally not high, but has increased considerably over the last 10 years. Due to its geographical location and travel facilities, money laundering is primarily linked to drug trafficking and risks have been identified for cross border movement of cash, in the real estate and jewellery sectors and through misuse of exempt companies. Terrorist financing has not been seen as a major risk to date.
- Aruba's economic system is currently largely based on tourism and oil refining; but the island has actively sought to diversify its economy, in particular by developing its off-shore activities, through the licensing of offshore banks, though in a limited number, and the development of offshore companies. However, the measures in company and other laws to ensure the transparency and integrity of these vehicles are inadequate. The introduction in February 2009 of the State Ordinance Supervision Trust Company Services Providers is aimed at regulating trust and company service providers, and this will help. However, there is still a significant weakness, as TCSPs are still not subject to basic AML/CFT requirements. Aruban corporate vehicles represent a substantial risk for misuse by launderers and other criminals, and rapid and significant progress is required.
- Aruba enhanced its ML offence in 2006, and has since taken effective prosecution action against money launderers. However, Aruba has chosen not to criminalise terrorist financing as required by SR. II, considering that terrorist financing activity can be adequately dealt with through existing provisions of the Criminal Code such as the ancillary offences of preparation or participation or complicity in a terrorist attack, or being a member of a terrorist organisation. This argument is rejected by the assessment team, and Aruba is strongly urged to urgently criminalise TF as a separate and independent offence. Similarly urgent action is needed to implement UNSCR 1267 and 1373.
- In general, Aruba's system of AML/CFT preventive measures is incomplete and lacks coherence and effectiveness. Aruba should urgently review the structure of the regime, including the

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

- There are many financial activities being performed by financial institutions that are neither regulated nor supervised. These financial institutions are not subject to AML/CFT requirements, which creates potential opportunities that could be misused by money launderers and other criminals.
- The basic preventive legislation for AML/CFT is set out in two state ordinances, one dealing with Customer Due Diligence requirements, and the other with the reporting obligations. However the legislative requirements have many gaps relative to the FATF standards, and this is exacerbated by a lack of clarity and consistency in the scope and the extent of the obligations. Aruba should rectify this, and should seriously consider preparing completely new and coherent legislation dealing with all the deficiencies and implement all the FATF requirements.
- The AML/CFT supervision of most of the FIs is currently handled by both the MOT (Aruban FIU) and the Central Bank of Aruba (CBA), which creates overlap and an inefficient use of already limited resources. The supervision should thus be reorganised and strengthened, including the introduction of a significantly more robust enforcement culture. It is logical that the CBA should supervise all types of financial institutions for all their AML/CFT obligations as this would result in a more consistent and better organised approach to supervision. The CBA should consult with the FIU on a regular basis.
- A basic system for international co-operation is in place, but Aruba should introduce a number of enhancements both at the judicial and administrative levels. Consideration should also be given to reviewing and updating the legislation.

### **Legal System and Related Institution Measures**

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

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

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

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

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

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

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

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

ML/TF. In this situation, customs officials inform the Public Prosecutor's Office which can launch an investigation.

### **Preventive Measures – Financial Institutions**

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

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

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

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

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

responsibilities of each institution and obtain the approval for senior management to establish this type of business relationship.

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

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

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

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

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

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

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

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

23. The supervision of the financial institutions covered by the SOIPS obligations is carried out by both the CBA and the MOT. The supervision of the financial institutions covered by the SORUT is solely carried out by the MOT. The CBA supervises banks, insurance companies and money transfer companies on the basis of sectoral State Ordinances and sectoral directives and guidelines. The MOT focuses its supervision functions on the SORUT obligations, but is also responsible for the financial institutions not regulated nor supervised by the CBA, such as life insurance brokers. These two supervisors have the power to conduct both off and on-site inspections. However, while the CBA is strengthening the AML/CFT aspects of its on-site inspection procedures for banks and MTCs, the procedures applicable for insurance companies are very poor. The MOT's procedures are also very light and there are concerns whether they are adequate to identify any deficiencies. The CBA has limited sanctions powers, which are not effective, proportionate and dissuasive, although amendments adopted in February 2009 have reinforced these sanctions, but still insufficiently *e.g.* there is no sanction available against directors and senior management of financial institutions. Equally, the MOT, which has conducted on-site inspections, has never applied any sanctions, even if some financial institutions report very few transactions. In addition, the MOT faces resource constraints that prevent it from effectively performing its supervisory functions. A number of steps need to be taken to improve the situation, such as further enhancing and applying the sanctions regime, but for this to be fully effective, it is also strongly recommended that there be a single supervisor

for all AML/CFT issues relating to financial institutions, which would logically be best carried out by the CBA, given that it is in the process of creating a new unit focussed on AML/CFT supervision. The CBA could then liaise as necessary with the MOT.

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

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

### **Preventive measures – Designated Non-Financial Businesses and Professions**

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

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

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

### **Legal Persons and Arrangements & Non-Profit Organisations**

29. There are several types of legal persons in Aruba, characterised by their nature, functions and legal status. Traditionally, N.V companies have been used primarily as the corporate vehicle used by local businesses, although a limited percentage were also used for offshore business. Until January 1<sup>st</sup> 2006, A.V.V companies were aimed solely at the offshore market, and thereafter could be used domestically. In January 2009, a new type of limited liability company (V.B.A) was introduced which allows a lot of

flexibility regarding its structure, but which has some improved transparency requirements, as compared to the other forms of companies. The measures in place to ensure adequate transparency concerning the beneficial ownership and control of legal persons in Aruba are inadequate, though it appears that the new VBA company and the recent introduction of supervision of TCSPs represents some progress.

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

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

### **National and International Co-operation**

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

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

and UNSCR 1373, Aruba has still many important steps to take to implement the requirements of the Terrorist Financing Convention.

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

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

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

**Table 1: Ratings of Compliance with FATF Recommendations**

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (na).

Forty Recommendations	Rating	Summary of factors underlying rating
<b>Legal system</b>		
1. ML offence	LC	<ul style="list-style-type: none"> <li>The ML offence does not adequately cover all designated categories of predicate offences (TF, counterfeiting and piracy of products, insider trading and market manipulation, environmental crime, fraud).</li> <li>The full range of ancillary offences are not provided for as neither conspiracy nor association to commit are applicable to ML.</li> <li>There is a lack of a clear, unequivocal provision pursuant to which Aruba can prosecute ML based on foreign predicate offences.</li> </ul>
2. ML offence – mental element and corporate liability	LC	<ul style="list-style-type: none"> <li>Due to the lack of data on ML sentencing, is not possible to assess whether natural and legal persons are subject to effective, proportionate and dissuasive sanctions for ML.</li> </ul>
3. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> <li>No power to confiscate or take provisional measures in relation to terrorist financing (unless the criminal activity also amounts to a terrorist offence) or several predicate offences for ML (see R.1).</li> <li>No clear provision to allow the confiscation of property derived indirectly from the proceeds of crime, such as income and other benefits.</li> <li>Inability to take action against property held in the name of third parties under the special confiscation powers.</li> <li>Lack of evidence of effective implementation of the powers to confiscate and take provisional measures</li> </ul>
<b>Preventive measures</b>		
4. Secrecy laws consistent with the Recommendations	LC	<ul style="list-style-type: none"> <li>It is unclear whether MTC's are able to exchange information according to the requirements of SR VII.</li> <li>Although financial institutions are allowed to share information with the CBA by State Ordinance, Article 286 of the Criminal Code criminalises the fact of revealing secret information.</li> </ul>
5. Customer due diligence	NC	<ul style="list-style-type: none"> <li>The full scope of financial services is not covered by the CDD obligations: <ul style="list-style-type: none"> <li>Consumer credit and loans provided by financial institutions not falling under the definition of credit institutions</li> <li>Financial guarantees and commitments performed by non-credit institutions;</li> <li>Issuing and managing of means of payment</li> <li>Trading in money market instruments, foreign exchange transactions, exchange, interest rate and index instruments and</li> </ul> </li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating
		<p>commodity future trading</p> <ul style="list-style-type: none"> <li>○ Participation in securities issues and provision of financial services related to such issues</li> <li>○ Individual and collective portfolio management</li> <li>○ The investing, administering and managing of funds, money on behalf of other persons (including the companies pension funds)</li> <li>○ Foreign currency exchange transactions, except where conducted by credit institutions</li> </ul> <ul style="list-style-type: none"> <li>● Certain categories of financial service providers are not covered by the scope of the SOIPS: <ul style="list-style-type: none"> <li>○ Intermediaries operating on the stock exchange market of Aruba, which is neither regulated or supervised</li> <li>○ Life insurance agents</li> <li>○ Currency exchange transactions performed by other entities than credit institutions</li> </ul> </li> <li>● Money and currency change performed by banks is covered only below the threshold of AWG 20 000</li> <li>● There is no clear obligation to identify customers in situations of occasional transactions covered by SRVII</li> <li>● There are no obligations in law or regulation to identify the client when the financial institutions have doubts about the veracity or adequacy of previously obtained identification data</li> <li>● Financial institutions are not required to identify the client in situation where there is a suspicion of ML or TF</li> <li>● Identification of legal persons is based on potentially inaccurate documents and financial institutions are not obliged to verify the identity of the directors of legal persons</li> <li>● There are no provisions on the identification of customers that are foreign trusts or other similar legal arrangements</li> <li>● There is no obligation to identify legal person in circumstances when a legal person is acting on behalf of another person</li> <li>● Financial institutions are neither required to understand the ownership and control structure of the legal person/legal arrangement customer nor obliged to determine who are the beneficial owners (i.e. natural persons that ultimately own or control the customer)</li> <li>● There are no requirements to obtain information on the purpose and nature of the business relationship</li> <li>● There are no requirements to conduct ongoing monitoring on the business relationship and transactions</li> <li>● There are no requirements to apply enhanced due diligence for high risk business relationships</li> <li>● There are no requirements for financial</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating
		<p>institutions to consider making suspicious transaction report when they fail to identify and verify the identity of customer</p> <ul style="list-style-type: none"> <li>• There is no obligation to apply CDD requirements to existing customers on the basis of materiality and risk</li> </ul> <p>The effective implementation of the requirements that exist is undermined by factors such as:</p> <ul style="list-style-type: none"> <li>• The definition of financial services subject to AML/CFT obligations is vague, thus making it unclear for financial institutions if they are subject to AML/CFT requirements</li> <li>• The SOIPS and the SORUT are inconsistent in terms of the scope of the services they cover</li> <li>• The SOIPS does not allow financial institutions to complete the verification of the identity of their customers and beneficial owners during the course of establishing a business relationship, while in practice some financial institutions have recourse to this practice</li> <li>• The provisions of the AML/CFT directive for the banking and insurance sectors to a certain extent contradictory with the provisions of the SOIPS</li> <li>• Although financial institutions are not permitted to apply reduced or simplified CDD where there are lower risks, the directives, which are not enforceable means, allow it, thus leading to a lack of clarity and some implementation problems.</li> </ul>
6. Politically exposed persons	NC	<ul style="list-style-type: none"> <li>• There are no requirements to apply any additional CDD requirements vis-a-vis PEPs.\</li> </ul>
7. Correspondent banking	NC	<ul style="list-style-type: none"> <li>• There are no AML/CFT requirements vis-a-vis cross-border correspondent banking.</li> </ul>
8. New technologies & non face-to-face business	NC	<ul style="list-style-type: none"> <li>• There are no requirements to safeguard against misuse of technological developments.</li> </ul>
9. Third parties and introducers	NC	<ul style="list-style-type: none"> <li>• There are no provisions to make reliance on third parties subject to the requirements of Recommendation 9, even though reliance on third parties is applied in practice by financial institutions, including banks, based on provisions set out in the CDD directive for banks issued by the CBA.</li> </ul>
10. Record keeping	LC	<ul style="list-style-type: none"> <li>• The full scope of financial services is not covered by records keeping requirements.</li> <li>• No specific requirements for financial institutions to record transactions in a manner to permit reconstruction of individual transactions, in particular for occasional customers.</li> <li>• No requirement to make this information available on a timely basis to competent authorities.</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating
11. Unusual transactions	PC	<ul style="list-style-type: none"> <li>• The full scope of financial services is not covered by requirements with respect to Recommendation 11.</li> <li>• There is no specific requirement to monitor all complex, unusual large transactions unless they meet the indicators of unusual large transactions that must be reported to the FIU.</li> <li>• There is no explicit requirement to examine the background and purpose of these unusual transactions and to set forth the findings in writing.</li> <li>• There is no requirement to keep a record of financial institutions' findings in relation to complex, unusual large or unusual patterns of transactions.</li> </ul>
12. DNFBP – R.5, 6, 8-11	NC	<p><u>Casinos:</u></p> <ul style="list-style-type: none"> <li>• The threshold for the identification requirement is too high (AWG 20 000 or USD 11 000).</li> <li>• Internet casinos are not prohibited but they are not subject to AML/CFT obligations.</li> <li>• Cruise ship based casinos are not covered by CDD requirements.</li> </ul> <p><u>Other DNFBPs:</u></p> <ul style="list-style-type: none"> <li>• TCSPs – the definition of “trust company” is not fully in line with FATF requirements.</li> <li>• AML/CFT requirements as set out in the SOIPS and SORUT do not apply to them, and the identification requirements in the new legislation are inadequate.</li> <li>• Real estate agents are not required to perform CDD in relation to both the purchasers and the vendors of immobile properties.</li> <li>• Deficiencies identified in Recommendation 5 also apply to DNFBPs.</li> <li>• Obligations in Recommendations 6, 8, 9 and 11 are not applied to DNFBPs.</li> <li>• Deficiencies identified for Recommendation 10 also apply to DNFBPs.</li> <li>• Lawyers and notaries are not subject to CDD requirements for their activities relating to the legal status of a client, his legal representation or defence, the giving of advice before, during and after a legal case or the giving of advice on the start or avoidance of a legal case.</li> <li>• Professional secrecy rules should not be applied to create CDD and record keeping exemptions.</li> </ul> <p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> <li>• Low level of effectiveness of the new provisions of the revised SOIPS as they have not been subject to proper consultation by the industry.</li> </ul>
13. Suspicious transaction reporting	PC	<ul style="list-style-type: none"> <li>• The scope of the ML predicate offences for STR reporting does not satisfy all the FATF standards.</li> <li>• The scope of SORUT is unclear, but the whole range of financial activities is not covered.</li> <li>• The scope of the SORUT and the SOIPS are</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating
		<p>not harmonised, which would in some cases undermine the quality of the information reported.</p> <ul style="list-style-type: none"> <li>Lack of indicators to identify suspicious transactions for a number of financial services, which de facto exclude them from the reporting regime.</li> </ul> <p>Effectiveness:</p> <ul style="list-style-type: none"> <li>In general, there are some concerns about the effectiveness of the reporting system, in particular regarding TF related transactions, and also due to inconsistency regarding the nature and the number of reports made by reporting entities.</li> </ul>
14. Protection & no tipping-off	PC	<ul style="list-style-type: none"> <li>Protection of financial institutions from penal and civil liability for breach of rules of confidentiality is not sufficiently assured since Article 286 of CrCA is not included in the same harbour provision.</li> <li>The safe harbour provision does not apply when it is made plausible that the reporting entity should not have proceeded to making the report in reason – the threshold is higher than good faith.</li> <li>The civil safe harbour provision does not apply to employees of the reporting entity</li> <li>Public access to information provisions in SORUT can undermine the effectiveness of the prohibition on tipping-off.</li> </ul>
15. Internal controls, compliance & audit	NC	<ul style="list-style-type: none"> <li>The scope issues identified for Rec. 5 also apply.</li> <li>There are no provisions in law, regulation or other enforceable means that require financial institutions to establish and maintain internal procedures, policies and controls to prevent ML and TF;</li> <li>There are no provisions in law, regulation or other enforceable means that require financial institutions to develop appropriate compliance management, or at least to designate a compliance officer;</li> <li>There are no provision in law, regulation or other enforceable means that require financial institutions to maintain an adequately resourced and independent audit function;</li> <li>There are no provisions in law, regulation or other enforceable means that require financial institutions to establish an ongoing employee training programme and to put in place screening procedures to ensure high standards when hiring employees.</li> </ul>
16. DNFBP – R.13-15 & 21	NC	<ul style="list-style-type: none"> <li>No AML/CFT measures apply to TCSPs.</li> <li>The scope of the predicate offences for STR reporting does not satisfy all the FATF standards.</li> <li>The effectiveness of the unusual transactions</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating
		<p>reporting regime is as yet untested, except for casinos where it is low.</p> <ul style="list-style-type: none"> <li>• DNFBPs are not obliged to establish and maintain internal procedures, policies and controls to prevent ML and TF, to maintain an adequately resourced and independent audit function to test compliance, to establish ongoing employee training on ML and TF techniques and risks, nor to put in place screening procedures to ensure high standards when hiring employees.</li> <li>• DNFBPs are not required to pay special attention to transactions with countries which do not or do not adequately implement the FATF Recommendations.</li> <li>• The limitations in Recommendation 14 as applied to financial institutions also apply to DNFBPs.</li> </ul>
17. Sanctions	NC	<ul style="list-style-type: none"> <li>• The scope issues identified in the preamble of section 3 of this report also apply.</li> <li>• The range of sanctions of the CBA and the MOT, although expanded under the new law, are not broad enough and are not effective, proportionate and dissuasive.</li> <li>• There are no sanctions available against directors and senior managers of financial institutions.</li> <li>• The level of fines, which may be issued, is low, in particular for credit institutions and insurance companies.</li> <li>• There are no sanctions available for securities firms as they do not fall under the scope of the AML/CFT obligations.</li> <li>• No procedures in place as yet to impose sanctions.</li> <li>• Effectiveness of sanctions regime still to be tested.</li> </ul>
18. Shell banks	NC	<ul style="list-style-type: none"> <li>• The facts show that there has been no effective implementation of the Policy rule.</li> <li>• There is no explicit requirement to withdraw a licence granted to a credit institution that would later become a shell-bank.</li> <li>• There is no prohibition in law, regulation or other enforceable means on financial institutions from entering into or continuing correspondent banking relationships with shell banks</li> <li>• There is no obligation to require financial institutions to satisfy themselves that correspondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.</li> <li>• Effectiveness: Despite there being 2 licensed banks with mind and management and records outside of Aruba, no real supervisory action has been taken for more than 10 years.</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating
19. Other forms of reporting	C	<ul style="list-style-type: none"> <li>The criteria are fully met.</li> </ul>
20. Other NFBP & secure transaction techniques	LC	<ul style="list-style-type: none"> <li>Although Aruba has been taking steps to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering, its economy is still cash based and authorities encourage customers to use both the Aruban Florin and the US dollar, which potentially increases ML/TF risks.</li> </ul>
21. Special attention for higher risk countries	NC	<ul style="list-style-type: none"> <li>The scope issues identified for Rec.5 also applies to R. 21.</li> <li>There are no provisions in relation to DNFBPs.</li> <li>There is no requirement in law, regulation or other enforceable means for financial institutions to pay special attention to business relationship and transactions with jurisdictions, which either do not or insufficiently apply the FATF Recommendations.</li> <li>In case where transactions with such jurisdictions have no apparent or visible lawful purpose, financial institutions are not required to examine them and set forth their findings in writing.</li> <li>Financial institutions are not required to implement any specific counter-measures to mitigate the increased risk of transactions with such jurisdictions.</li> <li>Aruba has no mechanism to implement counter-measures against countries that continue not to apply or insufficiently apply the FATF Recommendations.</li> </ul>
22. Foreign branches & subsidiaries	NA	<ul style="list-style-type: none"> <li>The Recommendation is not applicable since Aruban financial institutions have no branches or subsidiaries abroad.</li> </ul>
23. Regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> <li>The scope issues identified in section 3.2 also apply.</li> <li>Securities and investment sector is not licenced, regulated nor supervised.</li> <li>Absence of licensing or registration requirements for insurance intermediaries.</li> <li>Absence of licensing or registration requirements for persons that carry on currency exchange activities.</li> <li>There are no provisions in place to prevent criminals or their associates from holding or being beneficial owners of a significant or controlling interest or holding a management function in a credit institution or an insurance company.</li> <li>The fit and proper tests are performed on the basis of information provided by the licence applicants, but the CBA does not sufficiently check this information.</li> <li>Lack of ongoing checks of the fitness and properness of credit institutions, insurance</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating
		<p>companies and money transfer companies.</p> <ul style="list-style-type: none"> <li>• Lack of effectiveness with regard to the supervision of the MOT.</li> </ul> <p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> <li>• The division of the scope of the supervision powers of the CBA and the MOT is not appropriate and undermines the overall effectiveness of the supervision of financial institutions.</li> <li>• The communication between the 2 supervisory bodies that supervise the same financial institutions for AML/CFT purpose needs to be strengthened.</li> <li>• The resources and training of staff of the CBA and the MOT are not adequate.</li> </ul>
24. DNFBP - regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> <li>• Aruba has not taken any measures vis-à-vis Internet casinos.</li> <li>• Trust and company service providers are not regulated or supervised for AML/CFT purpose.</li> <li>• Although most DNFBPs are now included within the scope of the SOIPS and the SORUT, no effective supervision, except for casinos, is currently taking place.</li> <li>• The range of sanctions available against casinos and other DNFBPs is not effective, proportionate and dissuasive.</li> <li>• There are no effective measures in place to prevent criminals or their associates taking control of a casino.</li> <li>• Lawyers, civil notaries, tax advisors and accountants can refuse to cooperate with the MOT as a supervisory body, if there is a legal or otherwise established secrecy obligation, even if it concerns a service they perform that falls within the scope of the identification and reporting obligations.</li> <li>• The MOT lacks resources to effectively monitor DNFBPs subject to AML/CFT requirements.</li> </ul>
25. Guidelines & Feedback	PC	<p>MOT (as a FIU):</p> <ul style="list-style-type: none"> <li>• The FIU does not issue feedback on ML/TF methods and trends nor sanitised cases. <ul style="list-style-type: none"> <li>○ Of the range of DNFBPs, only casinos have been given any feedback or guidance;</li> <li>○ The guidance issued to casinos is limited to quarterly newsletters, compliance officers sessions and liaison.</li> </ul> </li> </ul> <p>MOT (as a supervisor)</p> <ul style="list-style-type: none"> <li>• The MOT has not issued any guidelines to assist FIs or DNFBPs to comply with their respective AML/CFT requirements.</li> </ul> <p>CBA</p> <ul style="list-style-type: none"> <li>• The AML/CFT directives for banks and insurance companies, although very useful, are limited to CDD requirements and do not establish links with reporting obligations.</li> <li>• The scope of the Operational and AML/CFT</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating
		<p>guidelines for money transfer companies is too narrow and does not really address AML/CFT provisions.</p> <ul style="list-style-type: none"> <li>The scope of this guidance does not clarify the scope of financial activities subject to AML/CFT requirements.</li> </ul>
<b>Institutional and other measures</b>		
26. The FIU	PC	<ul style="list-style-type: none"> <li>The composition of the FIU Advisory Committee (presence of private sector members) gives the appearance of compromising the autonomy and independency of the MOT in terms of determination of its budget and staff policy.</li> <li>Since its creation in 1999, the MOT Aruba has published only one report covering typologies.</li> <li>The reporting entities are not required to give all the identification data of a legal person involved in an unusual transaction report, except when the MOT asks for further information.</li> <li>The MOT faces resource constraints that impact its effectiveness, as shown by the recent decrease of reports made to the Public Prosecutor upon its own initiative.</li> <li>The staff of the MOT are not sufficiently trained for receiving and analysing TF reports.</li> <li>The MOT deploys the larger part of its investigative capacity on cash and wire transfer transactions, and less on more complex ML/TF schemes and methods which impacts its overall effectiveness.</li> </ul>
27. Law enforcement authorities	PC	<ul style="list-style-type: none"> <li>No authority to investigate TF (as TF is not an offence), unless the activity is otherwise criminalised.</li> <li>Low level of effectiveness in investigating ML, caused by lack of sufficient resources in both police services and prosecution, lack of sufficient training, little use of disseminated reports from the MOT.</li> </ul>
28. Powers of competent authorities	LC	<ul style="list-style-type: none"> <li>Law enforcement competent authorities have no power with respect to TF as it is not an offence, unless the activity is otherwise criminalised.</li> </ul>
29. Supervisors	NC	<ul style="list-style-type: none"> <li>Supervisors have no power of enforcement and sanction against directors and senior management of financial institutions.</li> <li>The level of requirements of the off-site inspections carried out by the MOT is very low.</li> <li>The scope of the on-site inspections carried out by the CBA for banks and money transfer companies needs to be strengthened, across a wider range of regulated institutions and in more details.</li> <li>The State Decree on the standardisation of regulatory powers could undermine the</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating
		<p>authorisation of supervisors to obtain all the information needed.</p> <p>Effectiveness:</p> <ul style="list-style-type: none"> <li>• The CBA has not exercised its power to supervise off-shore banks.</li> <li>• The MOT has not exercised its powers to supervise life insurance companies and intermediaries and off-shore banks.</li> </ul>
30. Resources, integrity and training	NC	<p><u>In relation to the FIU:</u></p> <ul style="list-style-type: none"> <li>• The composition of the MOT Advisory Committee (presence of private sector members) gives the appearance of compromising the autonomy and independency of the MOT in terms of determination of its budget and staff policy.</li> <li>• The MOT faces resources constraints that impact its effectiveness.</li> <li>• The MOT has not conducted any analysis on terrorist financing and its staff have not been trained in analysing such reports.</li> </ul> <p><u>In relation to the law enforcement authorities and prosecution authorities:</u></p> <ul style="list-style-type: none"> <li>• Low level of effectiveness in investigating ML, caused by lack of resources in both police services and prosecution.</li> <li>• Budgetary constraints affecting all government services have limited the possibilities of the relevant personnel of the Public Prosecutor's Office and the Police to participate in AML/CFT training courses and programs.</li> </ul> <p><u>In relation to the supervisory authorities:</u></p> <ul style="list-style-type: none"> <li>• The MOT's supervisory unit is not sufficiently staffed and resourced, particularly since February 2009 as the same staff are also responsible for the supervision of all the DNFBPs and all other non-financial businesses and professions.</li> <li>• The MOT does not provide training to its staff in relation to supervisory functions and methods.</li> </ul>
31. National co-operation	PC	<ul style="list-style-type: none"> <li>• No proactive and coordinated AML/CFT policy making at a jurisdictional level.</li> <li>• Lack of operational level coordination between MOT and the CBA, and also with other agencies.</li> <li>• Lack of effective implementation in the mechanisms used for AML/CFT coordination and cooperation in Aruba.</li> </ul>
32. Statistics	NC	<p><u>Review of the effectiveness of the AML/CFT system:</u></p> <ul style="list-style-type: none"> <li>• There is no information to suggest that Aruba has conducted comprehensive reviews which were intended to result in an enhancement of</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating
		<p>the AML/CFT system.</p> <p><u>Collection of statistics:</u></p> <ul style="list-style-type: none"> <li>• In relation to mutual legal assistance: no statistics on requests, their nature and on whether they were granted or refused and the time to respond.</li> <li>• In relation to extradition: no statistics available.</li> <li>• In relation to administrative co-operation: no statistics available for the law enforcement and the CBA. The statistics made available by the FIU do not detail the number of requests granted or refused, nor the time to respond.</li> </ul>
33. Legal persons – beneficial owners	NC	<ul style="list-style-type: none"> <li>• There are inadequate requirements to collect or make available information on beneficial ownership and ultimate control of legal persons;</li> <li>• The system in place does not provide access to adequate, accurate and current information on beneficial ownership and ultimate control in a timely manner;</li> <li>• The measures to ensure transparency as to the shareholders of companies that have issued bearer shares are inadequate.</li> </ul>
34. Legal arrangements – beneficial owners	NA	<ul style="list-style-type: none"> <li>• Trusts are not recognised under Aruban law. There are no other legal arrangements similar to trusts that exist in Aruba.</li> </ul>
<b>International Co-operation</b>		
35. Conventions	PC	<ul style="list-style-type: none"> <li>• Lack of implementation of the Terrorist Financing Convention in relation to terrorist financing.</li> <li>• No implementation of UNSCR 1267 and 1373.</li> <li>• Several failings regarding implementation of the Vienna and Palermo Conventions.</li> </ul>
36. Mutual legal assistance (MLA)	PC	<ul style="list-style-type: none"> <li>• Aruba is party to only 5 bilateral MLA agreements, only one with a country in the region. This limits Aruba's capacity to effectively and efficiently provide the widest range of MLA.</li> <li>• As dual criminality is required for mutual legal assistance, the lack of a TF offence impacts on the extent and effectiveness of mutual legal assistance provided by Aruba in TF matters.</li> <li>• The limitations regarding the predicate offences for money laundering also limit the ability to assist in relation to ML based on such predicates.</li> <li>• The requirement that non-treaty based requests must be "reasonable" (undefined), combined with a discretion, which is unclear, as to when such requests will be actioned, is an unreasonable and disproportionate condition on providing MLA.</li> <li>• The deficiencies that exist in relation to assistance for seizure and confiscation of illegal proceeds (see R.38) also impact on</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating
		R.36. <ul style="list-style-type: none"> <li>• The lack of data on the MLA requests means that it has not been demonstrated that Aruba can handle MLA requests in a timely and effective manner.</li> </ul>
37. Dual criminality	C	<ul style="list-style-type: none"> <li>• Criteria are fully met.</li> </ul>
38. MLA on confiscation and freezing	PC	<ul style="list-style-type: none"> <li>• As dual criminality is required for mutual legal assistance, the lack of a TF offence impacts on the extent and effectiveness of mutual legal assistance provided by Aruba in TF matters.</li> <li>• The limitations regarding the predicate offences for money laundering also limit the ability to assist in relation to ML based on such predicates.</li> <li>• The seizure assistance that can be provided does not extend to all proceeds, nor to instrumentalities or intended instrumentalities, nor is it clear that it applies in relation to property of corresponding value.</li> <li>• There is a lack of clarity in the provisions that provide the Aruban authorities or judiciary with the ability to register, recognise or enforce a foreign confiscation order.</li> <li>• Assistance cannot be provided concerning property held in the name of third parties.</li> <li>• Aruba should consider arrangements for co-ordinating seizure and confiscation actions with other countries.</li> </ul>
39. Extradition	LC	<ul style="list-style-type: none"> <li>• Aruba is party to only 4 bilateral extradition agreements, only one with a country in the region. This limits Aruba's capacity to effectively and efficiently provide extradition to likely partner jurisdictions.</li> <li>• The limitations regarding the predicate offences for money laundering also limit the ability to extradite in relation to ML based on such predicates.</li> </ul>
40. Other forms of co-operation	PC	<p><u>Law enforcement authorities:</u></p> <ul style="list-style-type: none"> <li>• There are no statistics available to suggest that exchange of information with foreign law enforcement authorities is effective.</li> </ul> <p><u>CBA:</u></p> <ul style="list-style-type: none"> <li>• the capacities of the CBA to co-operate and exchange information with foreign counterparts are limited by:               <ul style="list-style-type: none"> <li>○ the scope issue;</li> <li>○ the fact that the CBA only supervises the compliance with the CDD requirements;</li> <li>○ the deficiencies identified in relation to the preventive measures;</li> <li>○ the broadly defined safeguards and controls;</li> </ul> </li> <li>• Regarding the banking and insurance sectors, the CBA can only exchange information that is</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating
		<p>already in its possession, but it cannot conduct inquiries on behalf of foreign counterparts.</p> <ul style="list-style-type: none"> <li>• Regarding the TCSPs, since they are not subject to AML/CFT requirements, the CBA cannot exchange information related to ML, TF or predicate offences.</li> </ul> <p><u>The MOT as a supervisory body:</u></p> <ul style="list-style-type: none"> <li>• The MOT as a supervisory body, cannot co-operate and exchange information with its foreign counterparts.</li> </ul> <p><u>The MOT as a FIU:</u></p> <ul style="list-style-type: none"> <li>• The capacities of the MOT to exchange information are limited by the need to have a MOU.</li> <li>• The MOT can only provide information that is already in its possession but it cannot conduct inquiries on behalf of foreign counterparts.</li> <li>• The MOT cannot search other databases to which it have direct or indirect access to answer to the request of a foreign FIU.</li> </ul> <p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> <li>• There are no statistics to suggest that cooperation between supervisors and their counterparts in AML matters is effective and is provided in line with the FATF standards.</li> </ul>

Nine Special Recommendations	Rating	Summary of factors underlying rating
SR.I Implement UN instruments	NC	<ul style="list-style-type: none"> <li>• Lack of implementation of the Terrorist Financing Convention in relation to terrorist financing.</li> <li>• No implementation of UNSCR 1267 and 1373.</li> </ul>
SR.II Criminalise terrorist financing	NC	<ul style="list-style-type: none"> <li>• No separate and independent offence of terrorist financing as required by SR.II, and reliance solely on ancillary offences to existing criminal offences committed with a “terrorist intent” as defined.</li> <li>• Existing offences inadequate due to insufficient coverage of the types of property(funds) to be provided, non-coverage of financing individual terrorists, the set of “terrorist felonies” to be covered is too narrow, and there is a need in some cases to prove that specific terrorist act actually took place.</li> <li>• It is not clear that all ancillary offences would be applicable given that certain combinations of ancillary offence are not possible. Additionally, neither conspiracy nor association would be available.</li> <li>• Terrorist financing is not an offence and thus is not adequately a predicate offence for money laundering.</li> <li>• It is not clear that in all cases persons in Aruba financing foreign terrorist groups will be</li> </ul>

Nine Special Recommendations	Rating	Summary of factors underlying rating
		committing an offence. <ul style="list-style-type: none"> <li>The penalties for having engaged in terrorist financing activity are not clearly effective, proportionate and dissuasive.</li> </ul>
SR.III Freeze and confiscate terrorist assets	NC	<ul style="list-style-type: none"> <li>Overall, since the Draft Sanctions State Decree has not yet been adopted, Aruba does not have effective laws, regulations and procedures to give effect to freezing designations in the context of S/RES/1267 and S/RES/1373, and in effect has no measures in place to implement SR.III.</li> <li>The State Ordinance does not provide for a national mechanism to designate persons in the context of S/RES/1373, nor a comprehensive mechanism in place to examine and give effect to actions initiated under the freezing mechanisms of other jurisdictions.</li> <li>Aruba does not have effective laws and procedures to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions.</li> <li>Aruba does not ensure that the confiscation of assets also apply to terrorist assets.</li> </ul>
SR.IV Suspicious transaction reporting	PC	<ul style="list-style-type: none"> <li>The scope of SORUT is unclear, but the whole range of financial activities is not covered.</li> <li>The scope of the SORUT and the SOIPS are not harmonised, which would in some cases undermine the quality of the information reported.</li> <li>The scope of the reporting obligation does not cover the financing of individual terrorist.</li> <li>Lack of effectiveness: only one transaction related to TF has been reported to the MOT.</li> </ul>
SR.V International co-operation	NC	<ul style="list-style-type: none"> <li>Terrorist financing is not an offence, and as dual criminality is a requirement for MLA, this means that assistance cannot be provided.</li> <li>The other limitations that are set out in Recommendations 36-38 apply equally to terrorist financing activity.</li> <li>As dual criminality is required for extradition, the lack of a TF offence means that, in effect terrorist financing is not an extraditable offence.</li> </ul> <p><u>Law enforcement authorities:</u></p> <ul style="list-style-type: none"> <li>It is unclear if the law enforcement authorities can cooperate with their foreign counterparts since TF is not an offence.</li> <li>No statistics available to suggest that exchange of information with foreign law enforcement authorities is effective.</li> </ul> <p><u>CBA:</u></p> <ul style="list-style-type: none"> <li>The capacities of the CBA to co-operate and exchange information with foreign counterparts are limited by:                             <ul style="list-style-type: none"> <li>the scope issue;</li> <li>the limited number of MOUs it has entered into;</li> </ul> </li> </ul>

Nine Special Recommendations	Rating	Summary of factors underlying rating
		<ul style="list-style-type: none"> <li>○ the fact that the CBA only supervises the compliance with the CDD requirements;</li> <li>○ the deficiencies identified in relation to the preventive measures;</li> <li>○ the broadly defined safeguards and controls.</li> </ul> <ul style="list-style-type: none"> <li>• Regarding the banking and insurance sectors, the CBA can only exchange information that is already in its possession, but it cannot conduct inquiries on behalf of foreign counterparts.</li> <li>• Regarding the TCSPs, since they are not subject to AML/CFT requirements, the CBA cannot exchange information related to ML, TF or predicate offences.</li> </ul> <p><u>The MOT as a supervisory body:</u></p> <ul style="list-style-type: none"> <li>• The MOT as a supervisory body cannot cooperate and exchange information with its foreign counterparts.</li> </ul> <p><u>The MOT as a FIU:</u></p> <ul style="list-style-type: none"> <li>• The capacities of the MOT to exchange information are limited by the fact that Aruba has signed MOUs with a limited set of jurisdictions.</li> <li>• The MOT can only provide information that is already in its possession but it cannot conduct inquiries on behalf of foreign counterparts.</li> <li>• The MOT cannot search other databases to which it have direct or indirect access to answer to the request of a foreign FIU.</li> </ul> <p><u>Effectiveness:</u></p> <ul style="list-style-type: none"> <li>• There are no statistics to suggest that cooperation between supervisors and their counterparts in FT matters is effective and is provided in line with the FATF standards.</li> </ul>
SR VI AML requirements for money/value transfer services	NC	<ul style="list-style-type: none"> <li>• The deficiencies regarding the fit and proper test described in section 3.10 of this report also apply: there are no measures in place to prevent criminals and their associates to be beneficial owner of a money transfer company and the CBA does not undertake an independent check on the information provided by the registration applicants.</li> <li>• The requirements and their implementation for Recommendations 5, 6, 7, 8, 9, 10, 13, 15, and 22 in the MTCs sector suffers from the same deficiencies than those that apply to other financial institutions and which are described in section 3 of this report.</li> <li>• The range of sanctions available is not sufficiently effective and proportionate and does not apply to MTC's directors and senior management.</li> <li>• The assessment team had serious concern regarding the existence of remaining informal remitters.</li> </ul>
SR VII Wire transfer rules	NC	<ul style="list-style-type: none"> <li>• There is no explicit requirement to obtain and maintain address and account number or</li> </ul>

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		<p>unique reference number of the customer.</p> <ul style="list-style-type: none"> <li>• There are no requirements to accompany the wire transfer with full originator information;</li> <li>• There are no requirements to include in the message or payment form accompanying domestic wire transfers information on the originator;</li> <li>• There are no requirements for each intermediary or beneficiary financial institution in the payment chain to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer;</li> <li>• There are no requirements for financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information;</li> <li>• The identified shortages regarding sanctions under Recommendation 17 equally apply in the context of the obligations pertaining to wire transfers.</li> </ul>
SR.VIII Non-profit organisations	NC	<ul style="list-style-type: none"> <li>• There has been no review of the NPO sector and no identification of its vulnerabilities for terrorist financing.</li> <li>• Authorities do not conduct outreach or provide guidance on terrorist financing to the NPO sector.</li> <li>• The Foundation register is not kept to-to-date and the information on the association with legal personality, in particular on the persons who control the association are not kept registered.</li> <li>• Foundations can control wholly or partially other legal person, without any registration obligation.</li> <li>• There is no supervision or monitoring of the non-profit sector.</li> <li>• Foundations and associations with legal personality cannot be revoked in case of ML or TF.</li> <li>• There is no effective domestic co-operation or coordination amongst authorities that would eventually have information on NPOs.</li> <li>• The system for obtaining information on NPOs, in particular in case of international request, is weakened by the overall lack of accuracy of information maintained in the Foundations Register and the lack of information on the beneficial ownership of association with legal personality.</li> <li>• It is not clear as to whether Aruba can exchange information with foreign counterpart regarding particular NPOs that are suspected of TF.</li> </ul>
SR.IX Cross Border Declaration & Disclosure	NC	<ul style="list-style-type: none"> <li>• The Declaration system is limited to bank notes above a threshold of AWG 20 000, but does not apply to other means of payments nor to</li> </ul>

Nine Special Recommendations	Rating	Summary of factors underlying rating
		<p>bearer negotiable instruments.</p> <ul style="list-style-type: none"> <li>• The declaration requirements do not apply to import of cash with the sole purpose of direct transit.</li> <li>• The competent authorities cannot stop or restrain currency or bearer negotiable instruments where there is a suspicion of ML or TF.</li> <li>• Absence of adequate co-ordination among customs, immigration and other relevant authorities on issues related to the implementation of SRIX.</li> <li>• International co-operation and assistance is limited to co-operation between FIUs which the MOT has concluded MOUs with – No possibility to co-operate or exchange information between customs services.</li> <li>• In practice, the Customs Department does not have law enforcement powers to investigate false declaration or failure to declare.</li> <li>• Procedures used by Police to investigate a case of false declaration or failure to declare seem to be bureaucratic and slow.</li> <li>• Regarding false declarations offence, the right of prosecution expires by voluntarily complying with the condition set by the authorized official of the Public Prosecutor's Office.</li> <li>• Absence of assets freezing measures applicable to currency or bearer negotiable instruments that are related to terrorist financing.</li> <li>• Lack of effectiveness of the declaration system: <ul style="list-style-type: none"> <li>○ Lack of effectiveness of the declaration system for import and export of cash via shipping cargos.</li> <li>○ Lack of training of Customs officials.</li> <li>○ Insufficient number of dedicated AML/CFT staff at the borders.</li> <li>○ Customs checks are made on an arbitrarily basis, which undermines their effectiveness.</li> </ul> </li> </ul>