



8TH FOLLOW-UP REPORT

Mutual Evaluation of Aruba, Kingdom of the Netherlands

February 2014





FINANCIAL ACTION TASK FORCE

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ACRONYMS

| | |
|----------------|---|
| AML/CFT | Anti-money laundering / Countering the financing of terrorism |
| CBA | Centrale Bank van Aruba |
| CCrPA | Code of Criminal Procedure of Aruba |
| CDD | Customer due diligence |
| CrCa | Criminal Code |
| DNFBP | Designated non-financial business or profession |
| FIU | Financial intelligence unit |
| LC | Largely compliant |
| MER | Mutual evaluation report |
| ML | Money laundering |
| MLA | Mutual legal assistance |
| MOT | <i>Meldpunt Ongebruikelijke Transacties</i> (the Aruban FIU) |
| MVTS | Money value transfer services |
| NC | Non-compliant |
| PC | Partially compliant |
| PEP | Politically exposed person |
| R | Recommendation |
| RBA | Risk-based approach |
| SOIPS | State Ordinances for CDD |
| SORUT | State Ordinances for STR |
| SR | Special Recommendation |
| STR | Suspicious transaction report |
| TCSP | Trust and company service provider |
| TF | Terrorist financing |
| UN | United Nations |
| UNSCR | United Nations Security Council Resolutions |

MUTUAL EVALUATION OF ARUBA, KINGDOM OF THE NETHERLANDS: 8th FOLLOW-UP REPORT

Application to move from regular follow-up

Note by the Secretariat

I. INTRODUCTION

1. The mutual evaluation report (MER) of Aruba was adopted by the Plenary in October 2009. Given Aruba's low level of compliance with the FATF Standards (13 PC/NC ratings with respect to core and key Recommendations; 25 PC/NC with respect to the other Recommendations), 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. In October 2010, Aruba reported substantial progress and was moved from enhanced to regular follow-up. In June 2012, Aruba indicated that it would apply for removal from follow-up in June 2013 and was asked to present an information report to the FATF Working Group on Evaluations and Implementation (WGEI) in February 2013 in order to get an early indication of the direction of its follow-up. In January 2013, Aruba indicated that it would seek removal from follow-up in October 2013, instead of June 2013 as initially agreed. In February 2013, Aruba was asked to provide an interim report to WGEI in June 2013 so as to confirm that the country remains on track for removal from follow-up in October 2013. In June 2013, Aruba submitted an interim report to WGEI and confirmed that it will be in a position to meet the criteria for exiting the regular follow-up process in October 2013. As per the Mutual Evaluation procedures, Aruba submitted a detailed report to the Secretariat in August 2013, two months prior to seeking exit from the follow-up process. However, on account of the lack of information in several areas and several remaining deficiencies, it was proposed that an interim report on Aruba's progress be tabled instead, and that Aruba should report back to the Plenary in February 2014 on the progress made on these deficiencies, as well as further progress made on all deficiencies identified as PC/NC. Should a satisfactory level of progress be made by Aruba, the request at that time should then be to exit regular follow-up.

2. This paper is based on the procedure for removal from regular follow-up, as agreed by the FATF plenary in October 2008 and subsequently amended¹. The paper contains a detailed description and analysis of the actions taken by Aruba in respect of the core and key Recommendations rated partially compliant (PC) or non-compliant (NC) in the mutual evaluation, and for information a set of laws and other materials (included as Annexes). The procedure requires that a country *"has taken sufficient action to be considered for removal from the process – To have taken sufficient action in the opinion of the Plenary, it is necessary that the country has an effective AML/CFT system in force, under which the country has implemented the core² and key³ Recommendations at a level essentially equivalent to a Compliant (C) or Largely Compliant (LC), taking into consideration that there would be no re-rating"*⁴. Aruba was rated PC or NC on the following Recommendations:

¹ Third Round of AML/CFT Evaluations Processes and Procedures, par. 41 <http://www.fatf-gafi.org/media/fatf/documents/process%20and%20procedures.pdf>

² The core Recommendations as defined in the FATF procedures are R.1, SR.II, R.5, R.10, R.13 and SR.IV.

³ The key Recommendations are R.3, R.4, R.26, R.23, R.35, R.36, R.40, SR.I, SR.III, and SR.V.

⁴ FATF Processes and Procedures par. 39 (c)

| |
|---|
| Core Recommendations rated NC or PC |
| R.5, R.13, SR.II, SR.IV |
| Key Recommendations rated NC or PC |
| R.3, R.23, R.26, R.35, R.36, R.40, SR.I, SR.III, SR.V |
| Other Recommendations rated PC |
| R.14, R.25, R.27, R.31, R.38 |
| Other Recommendations rated NC |
| R.6, R.7, R.8, R.9, R.11, R.12, R.15, R.16, R.17, R.18, R.21, R.24, R.29, R.30, R.32, R.33, SR.VI, SR.VII, SR.VIII, SR.IX |

3. As prescribed by the Mutual Evaluation procedures, Aruba provided the Secretariat with a full report on its progress. The Secretariat has drafted a detailed analysis of the progress made for Recommendations 3, 5, 13, 23, 26, 35, 36 and 40, and Special Recommendations I, II, III, IV and V (see ratings above). A draft analysis was provided to Aruba (with a list of additional questions) for its review, and comments received. Comments from Aruba have been taken into account in the final draft. During the process, Aruba has provided the Secretariat with all information requested.

4. As a general note on all applications for removal from regular follow-up: the procedure is described as a *paper based desk review*, and by its nature is less detailed and thorough than a mutual evaluation report. The analysis focuses on the Recommendations that were rated PC/NC, which means that only a part of the AML/CFT system is reviewed. Such analysis essentially consists of looking into the main laws, regulations and other material to verify the technical compliance of domestic legislation with the FATF standards. In assessing whether sufficient progress had been made, effectiveness is taken into account to the extent possible in a paper based desk review and primarily through a consideration of data provided by the country. It is also important to note that these conclusions do not prejudice the results of future assessments, as they are based on information which was not verified through an on-site process and was not, in every case, as comprehensive as would exist during a mutual evaluation.

II. MAIN CONCLUSIONS AND RECOMMENDATIONS TO THE PLENARY

CORE RECOMMENDATIONS

5. Aruba has made significant progress in addressing the deficiencies in its MER through the implementation of the State Ordinance for the Prevention and Combat of Money Laundering and Terrorist Financing (the AML/CFT State Ordinance), which entered into force on 1 June 2011. With regards to R.5, the AML/CFT State Ordinance imposes AML/CFT obligations on all financial services as defined in the FATF Glossary, and on all financial services providers and DNFBPs operating in Aruba. Sectoral Supervisory State Ordinances in the areas of credit institutions, insurance businesses, money transfer companies, and trust service providers, which govern the prudential regulation and supervision of these institutions, have been amended to support the implementation of the AML/CFT State Ordinance. A Supervisory State Ordinance and Decree for securities firms and insurance intermediaries respectively (previously considered “non-regulated financial services providers” for prudential purposes by the Centrale Bank van Aruba, or CBA) will be enacted in 2014, thereby establishing the basis for prudential regulation and supervision in these sectors.

6. With regards to R.13, Aruba has addressed most of the deficiencies in the MER, although progress still needs to be made in terms of expanding the limited scope of the ML offence through the new Criminal Code (CrCA) in 2014, and improving the implementation of the reporting obligation across the financial services sector.⁵ On SR.IV, deficiencies are addressed through the AML/CFT State Ordinance, as well as the criminalisation of TF as a separate and autonomous offence in section 140a of the CrCA. Introducing a standalone TF offence also addresses deficiencies identified in SR.II.

7. Overall, Aruba's compliance with R.5, R.13, SR.II and SR.IV has reached a level essentially equivalent to LC. Aruba has therefore reached a satisfactory level of compliance with all of the Core Recommendations.

KEY RECOMMENDATIONS

8. Amendments were made to the Code of Criminal Procedure of Aruba (CCrPA) in March 2012, although these do not fully rectify the deficiencies identified in R.3. While Aruba's compliance with R.23 was hampered chiefly by the lack of regulatory and supervisory coverage of securities firms and insurance intermediaries, the enactment and entry into force of State Ordinances for the supervision of securities firms (SOSST) and the State Decree on the Supervision of Insurance Agents in 2014 should substantially address this. Aruba addressed deficiencies in R.26 by ramping up resources to the Meldpunt Ongebruikelijke Transacties (MOT, the Aruban FIU), and revising the composition of its advisory committee to remove private sector participation. Satisfactory progress was observed on R.35, in particular with respect to the criminalisation of the terrorist financing offence. Aruba has also taken steps to enhance in its mutual legal assistance (MLA) regime in accordance with R.36. Aruba has further sought to address the deficiencies in R.40 and SR.V by enhancing the capabilities of the CBA and MOT to cooperate with their foreign counterparts, and by collecting and compiling detailed statistics on the level of international cooperation being undertaken. As concerns SR.I, and SR.III, and in accordance with S/RES/1267 and S/RES/1373, Aruba has implemented both a Consolidated List and a domestic Freezing List, as well as an accompanying framework for implementation.

9. Overall, Aruba has achieved satisfactory levels of compliance with R.3, R.23, R.26, R.35, R.36, R.40, SR.I, SR.III, and SR.V.

CONCLUSIONS

10. Overall, Aruba has addressed deficiencies relating to all the Core and Key Recommendations, and brought the level of technical compliance with these Recommendations to a level essentially equivalent to an LC. Aruba has therefore taken sufficient measures to be removed from the regular follow-up process.

⁵ Notably in the areas of securities firms and insurance intermediaries – see R.13.

III. MAIN CONCLUSIONS AND RECOMMENDATIONS TO THE PLENARY

A. OVERVIEW OF THE MAIN CHANGES SINCE THE ADOPTION OF THE MER

11. Since the adoption of the MER in 2009, Aruba introduced a separate and autonomous terrorist financing offence in the CrCA, which came into force on 4 March 2010. Aside from directly addressing the deficiencies identified in SR.II, this also contributed towards rectifying weaknesses in the implementation of conventions and UN instruments (R.35, SR.I, SR.III), CDD and STR reporting (R.5, SR.IV), law enforcement measures (R.27, R.28), freezing and confiscation (R.3, SR.III), and international cooperation (R.36, R.38, SR.V).

12. Aruba also enacted a key piece of legislation, the State Ordinance for the Prevention and Combat of Money Laundering and Terrorist Financing (AML/CFT State Ordinance), which merges and updates the various AML/CFT obligations previously set out under the State Ordinances for CDD (SOIPS) and STR (SORUT). The AML/CFT Ordinance came into force on 1 June 2011, and remedies many important deficiencies in relation to preventive measures under R.5-12, R.13-16 and R.26, as well as SR.IV, VI and VII. The Ordinance also addresses inconsistencies concerning the allocation of supervisory duties to the CBA and MOT, by consolidating all AML/CFT supervisory functions under the CBA (R.23), and extending the scope of coverage to non-regulated financial institutions as well as DNFBPs (R.12, R.16 and R.24). Pursuant to this Ordinance, the CBA established an Integrity Supervision Department tasked with the conduct of on-site AML/CFT supervision of institutions under its remit. The CBA also issued an AML/CFT Handbook (see Annex 6) on 1 June 2011 for regulated financial institutions and trust service providers, to assist them in meeting their legal obligations under the AML/CFT Ordinance. Guidance Notes on risk-rating existing customers and the upgrading of databases to levels required by the AML/CFT Ordinance were issued on 30 June 2011 to financial institutions and DNFBPs previously not supervised by the CBA.

13. To handle the sharp increase in the number of entities subject to AML/CFT supervision, the CBA has enhanced its capabilities to conduct risk-based supervision via an electronic system that calculates entities' risk exposures and assigns individual risk weightings. To complement this, the CBA launched a new Onsite Procedures Manual in 2011 that sets out a framework of procedures, tasks, responsibilities and timelines for the conduct of onsite supervision. Since 2011, the CBA has also commenced conduct of focused AML/CFT onsite examinations, and has taken enforcement actions where AML/CFT breaches were identified.

14. The AML/CFT Ordinance also clarified the function of the MOT a "pure" FIU⁶, and prescribed additional powers for the MOT deemed lacking at the time of Aruba's mutual evaluation. To fulfil its new role, the MOT adjusted the composition of its advisory committee to rectify concerns over its lack of operational independence. The MOT also made significant advancements in terms of its resources and capabilities, including the hiring of new staff, the implementation of new online STR reporting mechanisms, the re-drafting of indicators for STR reporting, and the conduct of training sessions to banks and money service businesses. To enhance the effectiveness of the sharing and

⁶ As the national centre for the receipt and analysis of unusual transaction reports as well as other forms of information concerning money laundering, associated predicate offences and terrorist financing; and for the analysis and dissemination of results to the relevant national authorities.

use of financial intelligence, the MOT participates in bi-monthly meetings of the Financial Investigations Group, which comprises representatives from the Public Prosecutor's Office, various police branches, and Customs. The MOT also signed MOUs for cooperation and exchange of information with the CBA, Public Prosecutor's Office and the Immigration Service.

15. Aruba has sought to implement UNSCR 1267 and 1373 through the State Decree Combating Terrorism and Terrorist Financing, which entered into force on 25 June 2010 and which regulates the freezing of funds and other assets of persons and institutions deemed to be related to terrorism and terrorist financing, on the basis of the relevant UN resolutions. To operationalise the State Decree, Aruba published the Consolidated List on the website of the CBA, and advisory notices were sent by the CBA to supervised institutions. Aruba also enacted a domestic Freezing List on 20 November 2013, and introduced mechanisms for the establishment and maintenance of a domestic Freezing List.

16. Aruba also conducted an AML/CFT National Risk Assessment in the second half of 2012. This effort was spearheaded by the CBA with assistance from the Dutch Central Bank (DCB), and key agencies were also involved in developing the final report which was approved by the AML/CFT Strategy Group chaired by the Prime Minister on 30 May 2013. For this report, Aruba has provided a copy of the National Risk Assessment which may be found in Annex 2.

B. THE LEGAL AND REGULATORY FRAMEWORK

17. The legal system of Aruba is based on the Dutch legal system with some modifications based on the local or regional circumstances. The responsibility to develop an AML/CFT framework primarily rests with the government of Aruba, whereas the judiciary is linked into the Kingdom of the Netherlands. The judiciary is in the hands of independent judges who are appointed by the Monarch upon recommendation of the Common Court of Justice of Aruba, Curacao, Sint Maarten and of Bonaire, Sint Eustatius and Saba. Cases are heard in first instance by the Court in First Instance of Aruba, but appeals are made before the Common Court of Justice, which serves as an appeal court for Aruba, Curacao and Sint Maarten and for Bonaire, Sint Eustatius and Saba. Further appeal is possible for penal and civil cases to the Supreme Court of the Netherlands. As a result, the CrCA is very close to the Criminal Code used in the islands of the former Netherlands Antilles and more generally to the Criminal Code of the Netherlands, and the jurisprudence based on Dutch penal cases also has a direct impact on the Aruban penal system. However, the CCrPA, as with Civil and Tax procedure Laws, need to be consistent with that of Curacao and Sint Maarten because they share a common court and appeal system. As a result, recommendations requiring amendments to the CCrPA have taken longer to adopt.

18. Aruba has made substantive progress in updating its legal and regulatory framework. Since the adoption of the MER in 2009, Aruba has completed the following key AML/CFT legislative steps:

- Amendments to the CrCA to designate terrorist financing as an independent offence were enacted on 1 February 2010, and entered into force on 4 March 2010.
- Merging of the SOIPS and SORUT under the new AML/CFT State Ordinance, which was enacted and entered into force on 1 June 2011.

- To effect the obligations set out under the AML/CFT State Ordinance, the following State Decrees and Ministerial Regulations were introduced:
 - To align the legal framework with the AML/CFT State Ordinance, a State Decree on Wire Transfers was enacted on 1 June 2011 to establish the rules for dealing with originator information. Ministerial Regulations were issued on: Recognized Introduction Countries (enacted 18 October 2011) to designate the countries from which clients may be introduced, subject to compliance with requirements under the AML/CFT State Ordinance; on Recognized Stock Exchanges (enacted 24 October 2011) which specifies CDD measures for customers involved in stock exchange activities; and on the Verification of Documents (enacted on 29 February 2012) which prescribes verification procedures for customers and ultimate beneficial owners, and sets out a list of documents that may be relied on for these purposes. Amendments were also made to the Code of Commerce on 1 February 2012 prohibiting the issuance use of bearer shares by limited liability and exempt companies, as well as to introduce mandatory deposition requirements on yearly accounts and updated shareholder registers at the Chamber of Commerce.
 - The State Decree on Principles for Administrative Enforcement, which specifies the CBA's sanctioning powers where breaches of AML/CFT obligations are detected, was enacted on 1 Jan 2012. Pursuant to this, amendments were made on 1 January 2013 (via the Amending State Ordinance) to the State Ordinances on the Supervision of the Credit System, the Insurance Business, Money Transfer Companies, and Trust and Company Services Providers. These amendments entered into force on 1 January 2013, and effect AML/CFT obligations under the AML/CFT State Ordinance by broadening and enhancing the scope of supervision by the CBA on these institutions, such as through the strengthening of licensing requirements, bringing the sanctions system to the level of the AML/CFT State Ordinance, and expanding the range of national and international cooperation possibilities.
- The Sanctions State Decree to Combat Terrorism and Terrorist Financing was introduced on 24 June 2010. The Decree refers to the Consolidated List issued by the UN Al Qaeda and Taliban Sanctions Committee, and thus provides for the direct implementation of UNSCR 1267. The Decree also provides for the establishment of a domestic freezing mechanism as required under UNSCR 1373. Further amendments were passed to the State Decree to reflect the latest developments on the Consolidated List for Al Qaeda and the Taliban, and came into effect on 15 September 2012.

IV. REVIEW OF THE MEASURES TAKEN IN RELATION TO THE CORE RECOMMENDATIONS

RECOMMENDATION 5 –RATED NC

R5 (Deficiency 1): The full scope of financial services is not covered by the CDD obligations.

19. Aruba has addressed this deficiency through the enactment of the AML/CFT State Ordinance, of which Articles 1 and 6 extend CDD obligations to the full scope of financial services designated under the FATF Glossary. The AML/CFT State Ordinance entered into force on 1 June 2011. This deficiency has been addressed.

R5 (Deficiency 2): Certain categories of financial service providers are not covered by the scope of the SOIPs.

20. The categories of financial service providers identified in the MER as not being subject to CDD obligations are now covered in the scope (Art.1) of the AML/CFT State Ordinance, and are subject to CDD obligations under Art.6. This deficiency has been addressed.

R5 (Deficiency 3): Money and currency change performed by banks is covered only below the threshold of AWG 20,000

21. The AML/CFT State Ordinance removes this provision which was previously set out in Art.1 paragraph a of the State Decree 1996 (SDFIR), issued pursuant to SOIPS Art.1 paragraph b sub 6. This deficiency has been addressed.

R5 (Deficiency 4): There is no clear obligation to identify customers in situations of occasional transactions covered by SR.VII

22. Transfers of money or value are covered under Art.1 of the AML/CFT State Ordinance, and a definition of money transfer activities is set out in Art. 1 of the State Ordinance on the Supervision of Money Transfer Companies. Under Art. 6 of the AML/CFT State Ordinance, a clear obligation exists to conduct CDD on customers involved in wire transfer activities. Aruba has confirmed that the CDD requirements extend to all wire transfers, including situations of occasional transfers covered by SR.VII; and that no threshold is applied for the conduct of CDD. Section 4 of the AML/CFT Handbook issued by the CBA elaborates further on the specific CDD requirements for wire transfer activities, in a manner consistent with the requirements under SR.VII. This deficiency has been addressed.

R5 (Deficiency 5): 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.

23. An explicit obligation regarding the identification of clients should financial institutions experience doubts concerning the veracity or adequacy of previously obtained identification data may be found in Art.6 paragraph 1 sub e of the AML/CFT State Ordinance.

24. This deficiency has been addressed.

R5 (Deficiency 6): Financial institutions are not required to identify the client in situations where there is a suspicion of ML or TF

25. Art.6 paragraph 1 sub f of the AML/CFT State Ordinance requires that CDD be conducted “if the risk of involvement of an existing client in money laundering or terrorist financing gives reason to do so”. This deficiency has been addressed.

R5 (Deficiency 7): 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

26. The MER observed that the SOIPS makes a clear distinction between legal persons established within the Kingdom of Netherlands and legal persons established without. As regards foreign-domiciled legal persons, it was further observed that financial services providers were not required to verify the identities of directors or persons authorised to act on behalf of legal persons; that it was unclear from the legislation whom these authorised persons were; and that the expectation on financial services providers to rely on either a deed of incorporation or extract from the Aruban Chamber of Commerce was insufficient, owing to their outdated and potentially inaccurate nature, as well as their inability to constitute a document regulating the power to bind the legal person.

27. Aruba has rectified these deficiencies by introducing identification and verification obligations for legal persons, including foreign-domiciled legal persons, in the AML/CFT State Ordinance. Broadly, Art.5 now requires service providers to determine if natural persons purporting to act on behalf of legal persons are so authorized, and to establish and verify the identities of those persons before providing any services. Art.5 also specifies the need for service providers to take reasonable measures to understand the ownership and actual control structure of the legal person in question. On a more specific note, Art.19 states that “if a client is a foreign legal person which is not domiciled in Aruba, its identity shall be verified based on reliable and internationally accepted documents, data, or information, or on the basis of documents, data, or information that have been recognized by the law in the state of origin of the client as a valid means of identification”. Similar obligations exist in Art.19 concerning the identification and verification of ultimate beneficiaries of legal persons. Further details on the types of information to be maintained by service providers is set out under sections 3.6.2.1 and 3.6.2.2 of the AML/CFT Handbook.

28. On this basis, this deficiency has been addressed.

R5 (Deficiency 8): There are no provisions on the identification of customers that are foreign trusts or other similar legal arrangements

29. Text of Art.5 and 19 of the AML/CFT State Ordinance states that the obligations under these Articles are equally applicable to trustees and ultimate beneficiaries of the trust. This deficiency has been addressed.

R5 (Deficiency 9): There is no obligation to identify a legal person in circumstances when a legal person is acting on behalf of another person

30. Art.4 of the AML/CFT State Ordinance sets out obligations on service providers for the treatment of clients who act on behalf of third parties, and states that where a client who is a legal person acts for the benefit of a third party, the service provider only need establish the identity of that third party, and verify its identity. This suggests that a lacuna may exist with regards to existence of an explicit obligation on service providers to identify the legal person, in circumstances when a legal person acts on behalf of a third party. While Aruba has advised that Art.3 (scope of the CDD obligation) and Art.5 (treatment of clients who are legal persons or arrangements) would apply under these circumstances, neither article deals specifically with the treatment of legal persons acting on behalf of third parties. This deficiency therefore appears to be unaddressed, and Aruba is recommended to make it explicit in the AML/CFT State Ordinance that legal persons acting on behalf of a third party are also subject to CDD requirements.

R5 (Deficiency 10): 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).

31. Art.5 of the the AML/CFT State Ordinance imposes an obligation on service providers, including financial institutions, to undertake reasonable measures to understand the ownership and actual control structure of a client that is a legal person or a legal arrangement. Sections 3.6.2 and 3.6.4 of the AML/CFT Handbook, issued pursuant to the AML/CFT State Ordinance, provide further clarity on the extent of identification and verification measures for ultimate beneficial owners of legal persons and legal arrangements. This deficiency has been addressed.

R5 (Deficiency 11): There are no requirements to obtain information on the purpose and nature of the business relationship.

32. Art.3 paragraph 1 sub c of the AML/CFT State Ordinance requires all service providers to, as part of CDD measures, establish the purpose and intended nature of the business relationship. Further guidance on the types of information to establish purpose and nature of business relationships are set out under section 3.7.1 of the AML/CFT Handbook, issued pursuant to the AML/CFT State Ordinance. This deficiency has been addressed.

R5 (Deficiency 12): There are no requirements to conduct ongoing monitoring on the business relationship and transactions.

33. Art.3 paragraph 1 sub d of the AML/CFT State Ordinance requires all service providers to, as part of CDD measures, exercise ongoing monitoring of the business relationship and the transactions carried out during the course of relationships, in order to assure that they correspond with the knowledge service providers have of their clients, of the ultimate beneficiary(s), and of their risk profile. Further guidance on the conduct of ongoing monitoring is set out in section 5 of the AML/CFT Handbook, issued pursuant to the AML/CFT State Ordinance. This deficiency has been addressed.

R5 (Deficiency 13): There are no requirements to apply enhanced due diligence for high risk business relationships.

34. Art.11 of the AML/CFT State Ordinance now requires enhanced due diligence to be carried out both prior and during the business relationship (or transaction), in any case of the following situations:

- When a client is not a resident of Aruba, respectively not established in Aruba;
- When a client is not physically present for identification;
- When it concerns private banking;
- With legal persons, trusts and comparable entities that are intended as private assets holding vehicles;
- With limited liability corporations and comparable entities that have bearer shares or the shares are kept by nominee shareholders;
- With natural persons, legal persons, trusts and comparable entities that originate from countries or jurisdictions which do not or insufficiently apply the internationally accepted standards for the prevention and combating of money laundering and terrorist financing;
- With politically exposed persons;
- When entering into correspondent bank relations;
- Other situations to be determined by regulation of the Minister.

35. However, the limitative nature of this list runs the risk of fostering a “check-box” approach in terms of when enhanced due diligence should be conducted. If so, this conflicts with the principle of Art.11 which calls for service providers to perform enhanced due diligence “if and when a business relationship or a transaction by its nature entails a higher risk of money laundering or terrorist financing”; as well as section 3.12.5 of the AML/CFT Handbook, which explains that enhanced CDD measures may be applied “depend[ing] on the circumstances of the business relationship or transaction and the factors leading to the customer being considered to be higher risk” (these circumstances may be found in section 3.8.1 of the Handbook). Although this deficiency appears to be addressed, Aruba should consider clarifying Art.11 of the AML/CFT State Ordinance to oblige service providers to conduct enhanced due diligence as and when they determine a client poses higher risks of money laundering or terrorist financing.

R5 (Deficiency 14): There are no requirements for financial institutions to consider making suspicious transaction reports when they fail to identify and verify the identity of the customer.

36. The MER noted that Aruba’s AML/CFT regime does not foresee the possibility of a financial institution commencing a business relationship or conducting a transaction without first completing identification and verification measures on a client. However, where such situations arise (e.g. if a financial institution has already commenced the business relationship but has subsequent doubts

about the veracity and adequacy of previously obtained information), there is an absence of obligations on financial institutions to terminate the relationship, or to consider filing STRs. An exception to this rule appeared to exist in the AML/CFT Directive for insurance companies, which specified that insurers should consider filing an STR when discontinuing activities with a client. However, the MER also pointed out a disjunct between this obligation and the SORUT criteria for financial institutions to file STRs, which neglected mention of this scenario and focused on other types of criteria (such as experiencing an unusual offer of terms, or when accounts are being opened for and on instructions of non-residents).

37. Aruba has sought to address inconsistencies within its AML/CFT laws by enacting the AML/CFT State Ordinance, which serves as a “master standard” combining and updating the AML/CFT obligations previously under the SOIPS and SORUT. In this regard, Art.9 of the AML/CFT State Ordinance now imposes an obligation on *all* financial institutions and DNFBPs on the treatment of scenarios whereby CDD on new clients is not satisfactorily completed (to not enter into the business relationship, or refrain from conducting those transactions), or CDD on existing clients is not satisfactorily established (service providers should terminate the business relationship). While the AML/CFT State Ordinance does not explicitly require that service providers should consider filing an STR under such circumstances, there is a supervisory expectation in section 6.3 of the AML/CFT Handbook that regulated entities should do so. Under section 1.2, failure to comply with provisions of the AML/CFT Handbook may be considered by the CBA in the execution of its supervisory tasks pursuant to the Supervisory Laws, for which the penalties for non-compliance include the issuance of directions, penalty charge orders, administrative fines, publication of the aforementioned, silent receivership, a revocation of license or removal from the registry, and criminal prosecution where appropriate.

38. This deficiency has been addressed on a technical level.

R5 (Deficiency 15): There is no obligation to apply CDD requirements to existing customers on the basis of materiality and risk.

39. The MER observed an absence of legal, regulatory or other enforceable means to compel application of CDD requirements to existing customers on the basis of materiality and risk, although it was noted that the CBA’s CDD directives for insurers and banks, which are not other enforceable means, did contain such advice to a certain extent. Aruba has since transposed the respective CDD requirements into the AML/CFT State Ordinance, which constitutes law or regulation under the 3rd round FATF Recommendations. Consequently, CDD obligations on existing customers on the basis of materiality and risk may be found in the following Articles:

- Art.6 paragraph 1 sub f, which requires CDD to be conducted if a service provider assesses there to be risks of involvement of an existing client in money laundering or terrorist financing;
- Art.3 paragraph 1 sub d, which requires ongoing monitoring in order to assure that activity corresponds with the knowledge the service provider has of the client and the ultimate beneficiary, and of their risk profile, including, where appropriate, an investigation into the source of funds; and

- Art.11, which obliges service providers to perform enhanced CDD during the course of the business relationship, if higher risks of money laundering or terrorist financing are assessed to be present.

40. The requirements regarding materiality and risk are further elaborated upon in Section 3.8 of the AML/CFT Handbook (on “Risk Profile”), and transitional provisions concerning the application of CDD to existing customer bases may be found in Art.2 of Aruba’s Enactment State Ordinance, as well as section 9.3.1 of the AML/CFT Handbook.

41. This deficiency has been addressed.

R5 (Deficiency 16): That effective implementation of the requirements that exist is undermined by factors such as:

- **The definition of financial services subject to AML/CFT obligations is vague, thus making it unclear for financial institutions if they are subject to AML/CFT requirements;**
- **The SOIPS and the SORUT are inconsistent in terms of the scope of the services they cover;**
- **The SOIPS does not allow financial institutions to complete the verification of the identity of their customers and beneficial owners during the course of establishing a business relationship, while in practice some financial institutions have recourse to this practice;**
- **The provisions of the AML/CFT directive for the banking and insurance sectors to a certain extent contradict with the provisions of the SOIPS;**
- **Although financial institutions are not permitted to apply reduced or simplified CDD where there are lower risks, the directives, which are not enforceable means, allow it, thus leading to a lack of clarity and some implementation problems.**

42. The issuance of the AML/CFT State Ordinance to replace the SOIPS and SORUT has rectified inconsistencies between these legislations and clarified the scope of financial services and service providers subject to AML/CFT obligations. The AML/CFT State Ordinance also contains provisions which address the verification of identity over the course of a business relationship (Art. 8) and clarify areas where simplified CDD may be applied (Art. 10). Consequently, it may be said that enactment of the AML/CFT State Ordinance has significantly strengthened the foundations for Aruba’s AML/CFT preventive framework.

43. As regards implementation, Aruba advises that the CBA has conducted numerous on-site examinations to assess the effective implementation of requirements under the AML/CFT State Ordinance, especially in the area of monitoring and implementing a risk-based approach; and that where cases of non-compliance were detected, the CBA has taken enforcement measures (see paragraph 98). Nonetheless, it is not possible to analyse whether the requirements of the AML/CFT State Ordinance have been effectively implemented without the conduct of an on-site assessment.

RECOMMENDATION 5, OVERALL CONCLUSION

44. Aruba has made significant progress in improving its compliance with R.5. A number of technical deficiencies were addressed with the entry into force of the AML/CFT State Ordinance. However, a gap remains regarding a lack of specific requirements to conduct CDD on legal persons acting on behalf of third parties. It is also recommended that Aruba clarify two irregularities within the AML/CFT State Ordinance, although these should not compromise Aruba's level of technical compliance with R.5: inconsistencies in the provisions for conduct of enhanced CDD, and the Articles relating to service providers' reporting obligations when failing to identify and verify the identity of the customer.

45. Aruba has addressed 14 of the 16 deficiencies identified in the MER, and its overall compliance with R.5 may therefore be assessed at a level essentially equivalent to LC.

RECOMMENDATION 13 –RATED PC

R13 (Deficiency 1): The scope of the ML predicate offences for STR reporting does not satisfy all the FATF standards.

46. During Aruba's mutual evaluation, the assessment team was of the view that STR obligations for money laundering under the SORUT were tied to the money laundering offence as defined under the CrCA. Consequently, scope deficiencies identified under R.1 (insufficiently broad range of predicates and excluding such offences as terrorist financing, counterfeiting and piracy of products, insider trading and market manipulation, environmental crime, and fraud) were deemed to impact Aruba's compliance with R.13.

47. Amendments to the CrCA to designate terrorist financing as an independent offence entered into force on 4 March 2010, and Aruba has advised that it intends to introduce a new CrCA to rectify the remaining R.1 deficiencies. However, its enactment was held back by the need to develop a State Ordinance for implementing the new CrCA, which is currently at Parliament. Aruba has further advised that concurrent enactment of both the CrCA and the related State Ordinance will take place in 2014. In the interim, Aruba has provided excerpts of some of the draft CrCA provisions (see Annex 3), and has conveyed that efforts are ongoing to ensure the CrCA addresses the deficiencies identified under R.1.

48. Until the new CrCA is enacted, this deficiency is partially addressed. Aruba should provide updates on the enactment and entry into force of the new CrCA, once this is done.

R13 (Deficiency 2): The scope of the SORUT is unclear, but the whole range of financial activities is not covered.

49. The AML/CFT State Ordinance, which replaces the SORUT and SOIPS, extends AML/CFT obligations to all FATF designated financial activities. This deficiency has been addressed.

R13 (Deficiency 3): The scope of the SORUT and the SOIPS are not harmonised, which would in some cases undermine the quality of the information reported.

50. The AML/CFT State Ordinance replaces the SORUT and SOIPS, and extends AML/CFT obligations (including STR reporting obligations) to all FATF designated financial activities. This deficiency has been addressed.

R13 (Deficiency 4): Lack of indicators to identify suspicious transactions for a number of financial services, which de facto exclude them from the reporting regime.

51. In the 2009 MER, the reporting obligation for financial services providers was set out under the SORUT and based on a combination of objective and subjective indicators. However, the indicators themselves were listed under separate Ministerial Regulations, and the assessment team found that Aruba had opted to designate sector-specific indicators, rather than adopting general criteria relevant for all types of financial services covered under the SORUT. Furthermore, only two Ministerial Regulations (the RISFP and the RIIS) were issued to prescribe indicators for the following four categories: banks, money transfer companies, life insurance companies, and brokers. As a result, financial services theoretically covered by the SORUT were effectively excluded from reporting obligations unless they belonged to one of the aforementioned categories of providers.

52. The introduction of the AML/CFT State Ordinance clarified the scope of financial services and financial service providers subjected to STR reporting obligations. Further, Aruba introduced a new set of reporting indicators that entered into force on 1 April 2013 and replaces all previous sectoral sets of indicators. This new indicator regulation (AB 2012 No.47) contains broadly-scoped objective and subjective indicators for all reporting entities, as follows:

Objective indicators:

- Transactions that have been reported to the police or Public Prosecutor's Office;
- Transactions carried out by or for the benefit of a natural person, legal person, group or entity established in countries or territories mentioned on a list pursuant to the Sanctions State Ordinance 2006 or on a list designated by the Head of the MOT;
- All money transfers valued at Aruban Florin 500 000 (approximately USD 280 000) or more, or their equivalent in foreign currency;
- All cash transactions valued at Aruban Florin 25 000 (USD 14 000) or more, or their equivalent in foreign currency; with the exception of casinos which have a lower threshold set at Aruban Florin 5 000 (USD 2 800).

Subjective indicators:

The only subjective indicator regards intended or executed transactions to which there is reason to assume that they might be related to money laundering or terrorist financing.

53. Aruba further advised that all reporting institutions have commenced reporting under these new indicators.

54. The deficiency has been addressed.

R13 (Deficiency 5): Effectiveness – in general, there are some concerns about the effectiveness of the reporting system, in particular regarding TF related transactions, and also due to inconsistencies regarding the nature and the number of reports made by reporting entities.

55. The MER observed the following concerns regarding the effectiveness of Aruba's STR reporting system: first, that reports received from life insurers were few in number and life insurers brokers had not submitted any STRs, which suggested that the reporting obligation was not being adhered to across all types of financial services providers; second, that a significant proportion of STRs (e.g. 90.7% in 2008) were being filed based on objective criteria, which implied ineffective implementation of the obligation to detect and report subjective suspicious transactions, in favour of overemphasis on automatic submissions on entirely objective grounds; and third, that only one TF-related report had been submitted to the MOT at the time of evaluation.

56. For this follow-up report, Aruba has submitted statistics indicating that reporting by the life insurance sector has improved. A low number of STRs filed by offshore and mortgage banks persists, although Aruba has explained that this accrues to (a) the 2009-2010 Venezuelan banking crisis which significantly reduced the volume of financial services provided by the offshore banks (which deal primarily with Venezuelan clients); and (b) that only one mortgage bank operates in Aruba, and is concerned with what appears to be generally low-risk activities (e.g. the provision of social housing, mortgages and loans for low to middle-income households). The majority of STRs continue to rely on objective rather than subjective indicators (with the exception of money transfer companies⁷) which suggests that uneven implementation of the reporting obligation persists to some degree, although efforts are being undertaken to improve this (as indicated in the graph provided by Aruba below).

Table 1: Number of unusual transaction reports per sector

| | 2010 | 2011 | 2012 | Jun-2013 |
|--------------------------|-------|-------|-------|----------|
| Financial Sector | | | | |
| Commercial Banks | 4 151 | 4 510 | 4 207 | 4 913 |
| Money transfer companies | 1 169 | 2 032 | 4 570 | 1501 |
| Life Insurers | 67 | 41 | 53 | 24 |
| Offshore Banks | 31 | 38 | 46 | 23 |

⁷ According to Aruba, MTCs file more STRs on the basis of the subjective indicator as the objective indicators (e.g., monetary thresholds) are generally irrelevant – MTCs are required under CBA guidelines to limit the daily maximum amount per individual transaction to AWG 5 000, or its equivalent in foreign currency.

| | 2010 | 2011 | 2012 | Jun-2013 |
|---|--------------|--------------|--------------|--------------|
| Mortgage Banks | 0 | 1 | 1 | 1 |
| Other Banks | | | 14 | 34 |
| <i>Subtotal Financial Sector</i> | 5 418 | 6 622 | 8 891 | 6 496 |
| Non-Financial Sector | | | | |
| Casinos | 10 | 26 | 50 | 135 |
| Dealers in valuable goods | 92 | 86 | 60 | 19 |
| Gatekeepers | 9 | 6 | 4 | 12 |
| <i>Sub total Non-Financial Sector</i> | 111 | 118 | 114 | 166 |
| Importers and Exporters of cash and bearer instruments* | 838 | 1 103 | 985 | 512 |
| Total | 6 367 | 7 843 | 9 990 | 7 174 |

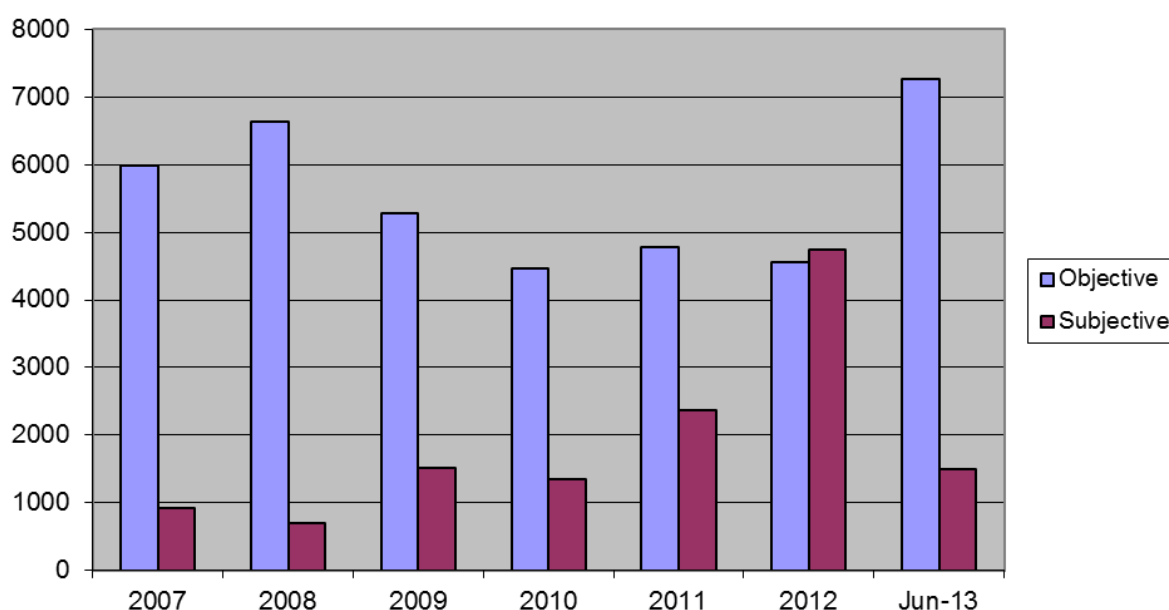
* July 2010 bearer instruments to be reported

Table 2: Number of indicators used in unusual transaction reports per sector

| | 2010 | | 2011 | | 2012 | | Jun-2013 | |
|----------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|-------------|
| | Obj. | Subj. | Obj. | Subj. | Obj. | Subj. | Obj. | Subj. |
| Financial Sector | | | | | | | | |
| Commercial Banks | 4 259 | 178 | 4 590 | 325 | 4 217 | 263 | 6 875 | 123 |
| Money transfer companies | 6 | 1 163 | 5 | 2 027 | 135 | 4 435 | 136 | 1365 |
| Life Insurers | 70 | 2 | 41 | 0 | 60 | 3 | 22 | 5 |
| Offshore Banks | 31 | 0 | 38 | 0 | 44 | 2 | 33 | |
| Mortgage Banks | 0 | 0 | 0 | 1 | 0 | 1 | | 1 |
| Other Banks | 0 | 0 | 0 | 0 | 0 | 14 | 32 | 2 |
| <i>Subtotal Financial Sector</i> | 4 366 | 1 343 | 4 674 | 2 353 | 4 456 | 4 718 | 7 098 | 1496 |
| Non-Financial Sector | | | | | | | | |
| Casinos | 10 | 0 | 23 | 10 | 33 | 20 | 130 | 5 |

| | 2010 | | 2011 | | 2012 | | Jun-2013 | |
|---------------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|-------------|
| | Obj. | Subj. | Obj. | Subj. | Obj. | Subj. | Obj. | Subj. |
| Dealers in valuable goods | 91 | 1 | 86 | 0 | 60 | 2 | 19 | |
| Gatekeepers | 0 | 9 | 0 | 6 | 3 | 1 | 12 | |
| <i>Sub total Non-Financial Sector</i> | 101 | 10 | 109 | 16 | 96 | 23 | 161 | 5 |
| Total | 4 467 | 1 353 | 4 783 | 2 369 | 4 552 | 4 741 | 7 259 | 1501 |

Figure 1: Indicator use in UTRs (numbers)



57. As regards statistics on the number of TF-related reports filed since the time of the MER, Aruba has provided the following figures which point to an increase in the filing of TR-related STRs:

Table 3: Number of STRs filled on basis of TF-related indicators

| 2008 | 2009 | 2010 | 2011 | 2012 | Aug-2013 |
|------|------|------|------|------|----------|
| 1 | 8 | 7 | 2 | 0 | 0 |

58. It is noted that the above figures relate to ML and TF-related STRs filed by regulated financial service providers, and that Aruba did not provide statistics on the number of STRs received from prudentially non-regulated providers (e.g. securities firms, insurance intermediaries) even though these entities are theoretically subject to the reporting obligation under the AML/CFT State Ordinance. This raises some concerns regarding implementation of the reporting obligation in these sectors, and Aruba should provide further information to this effect in future updates.

59. Overall, Aruba has demonstrated improvements to the effectiveness of its STR reporting system. While inconsistencies persist on the nature and number of reports being filed, these are currently being addressed. Moreover, Aruba expects the introduction of the new objective and subjective indicators system to have positive bearings on reporting, although the short time in which it has been implemented, along with the desk-based nature of this review, prevents thorough analysis of whether this has indeed had positive impacts on the filing of STRs by financial service providers. In sum, Aruba has taken a number of steps to enhance the effectiveness of the system, and is making progress in this regard. In the context of a desk-based review it is not possible to determine the degree to which this deficiency has been addressed. Aruba is requested to provide updates on the implementation and effectiveness of the new indicator system, as well as data on whether the non-regulated financial services providers are complying with their reporting obligations.

RECOMMENDATION 13, OVERALL CONCLUSION

60. The entry into force of the AML/CFT State Ordinance, coupled with the redesignation of objective and subjective indicators under the new Regulations for Relevant Indicators, have gone towards addressing several deficiencies identified in the MER. Effectiveness of the reporting system has also improved, although progress still needs to be made with regards to greater reliance on subjective indicators across all financial services providers. Data should also be collected on STRs filed by securities firms and insurance intermediaries. Overall, the deficiencies identified in the MER have been largely addressed, although there remains a technical deficiency in terms of the inadequate coverage of money laundering predicate offences under the CrCA, at least until the new CrCA is enacted and enters into force.

61. In light of these considerations, Aruba's overall compliance with R.13 may be assessed at a level essentially equivalent to LC.

SPECIAL RECOMMENDATION II – RATED NC

SR.II (Deficiency 1): 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.

62. On 6 March 2010, a separate and independent terrorist financing offence was introduced in Art.140a of the CrCA. Art.140a removes the requirement for “terrorist intent”, and is consistent with essential criteria II.1 of the FATF Methodology on SR.II. This deficiency has been addressed.

SR.II (Deficiency 2): 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 acts actually took place.

63. Art.140a CrCA implements the following:

- Broadening the definition of *funds* to cover “money, as well as all objects and all property rights, however acquired, and the documents and data

carriers, in any form or capacity, evidencing title to, or interest in the money, the objects, or property rights, including, but not limited to, bank credits, travelers' checks, bank checks, money orders, shares, securities, bonds, drafts, and letters of credit.”

- Extending the scope of terrorist financing offences to any person who directly or indirectly, wilfully provides or collects funds for himself or another, or provides or makes available funds to another, for the commission of a terrorist offence, or for the support of persons or organizations that commit or intend to commit terrorist offences, or an offense to prepare or facilitate a terrorist offence, or to support persons or organizations that commit or intend to commit terrorist offences.
- Further, extending the scope of terrorist financing offences to any person who directly or indirectly collects funds for himself or for another, in the knowledge that these funds are to be used (in full or in part) for the commission of a terrorist offence, or for the support of persons or organizations that commit or intend to commit terrorist offences, or an offence to prepare or facilitate a terrorist offence, or to support persons or organisations that commit or intend to commit terrorist offences.

64. Consequently, Art.140 directly addresses this deficiency by aligning the coverage of the types of property (*funds*) with the Terrorist Financing Convention, and broadening the definition of the terrorist financing offence to align with SR.II essential criteria II.1. This deficiency has been addressed.

SR.II (Deficiency 3): 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.

65. The introduction of a separate and autonomous terrorist financing offence in the CrCA removes the need to rely on ancillary offences in order to pursue terrorist financing in Aruba. However, Aruba has not provided updates on whether the ancillary offences of conspiracy or association have been introduced into the CrCA, or will be introduced the new CrCA in 2014. In the absence of further information, it would appear that this deficiency has been partially addressed. Aruba should provide updates on the enactment and entry into force of the new CrCA, once this is done.

SR.II (Deficiency 4): Terrorist financing is not an offence and thus is not adequately a predicate offence for money laundering.

66. The Aruban money laundering offence covers all felonies, most of which are listed in the Second Book of the CrCA. The criminalisation of terrorist financing as an offence in the Second Book automatically renders it a money laundering predicate. This deficiency has been addressed.

SR.II (Deficiency 5): It is not clear that in all cases persons in Aruba financing foreign terrorist groups will be committing an offence.

67. In the MER, Aruba explained that Art.4 of the CrCA extended Aruban jurisdiction to a wide range of offences committed outside Aruba where the criminal act is aimed against a Dutch national, or where crimes are committed with the intent to prepare or facilitate a terrorist felony. Based on Supreme Court jurisprudence, it was also possible to prosecute a person in Aruba for preparatory acts committed outside Aruba, if the criminal offence took place in Aruba. However, the Methodology requires for a terrorist financing offence to apply regardless of whether the person alleged to have committed the offence is in the same country or a different country from the one in which the terrorist / terrorist organisation is located, or where the terrorist act will occur. The assessment team thus noted that, should a terrorist financing operation occur in Aruba for a terrorist act or organisation located abroad, it was unclear if Aruba could prosecute the offence of terrorist financing in all cases (e.g. if not targeted at Dutch nationals).

68. Aruba has since introduced a separate and independent terrorist financing offence in Art.140a of the CrCA. Aruba explains that while Art.4 of the CrCA continues to apply to crimes against the security of the state, against Government officials, organisations, destruction of public or vital works, hijacking, manslaughter, and murder; it does not apply to the new terrorist financing offence, although the legal basis for this interpretation is unclear from Art 140a. Aruba has advised that it intends to clarify this in the new CrCA, which will be enacted and brought into force in 2014. Aruba should provide updates on this with the enactment and entry into force of the new CrCA, once this is done.

SR.II (Deficiency 6): The penalties for having engaged in terrorist financing activity are not clearly effective, proportionate and dissuasive.

69. Art.140a prescribes that persons found guilty of a terrorist financing offence are liable to a prison sentence not exceeding eight years, or a fine not exceeding 100 000 florins (approximately USD 56 000/EUR 42 000). This is a step up from the previous regime where a reliance on ancillary offences to prosecute terrorist financing activity meant that penalties were tied to the primary offences, and it was unclear whether these sanctions were effective, proportionate and dissuasive. Imprisonment for up to eight years appears to be an effective, proportionate and dissuasive sanction.

70. No prosecutions or convictions for terrorist financing activities have taken place in Aruba, and it is therefore not possible to assess the amount and types of sanctions applied in practice.

SPECIAL RECOMMENDATION II, OVERALL CONCLUSION

71. The designation of a separate and independent terrorist financing offence by Aruba largely addresses the deficiencies identified in the MER. As a result, Aruba's overall compliance with SR.II may be assessed at a level essentially equivalent to LC.

SPECIAL RECOMMENDATION IV – RATED PC

SR.IV (Deficiency 1): The scope of the SORUT is unclear, but the whole range of financial activities is not covered.

72. The AML/CFT State Ordinance, which replaces the SORUT and SOIPS, extends AML/CFT obligations to all FATF designated financial activities. This deficiency has been addressed.

SR.IV (Deficiency 2): The scope of the SORUT and the SOIPS are not harmonised, which would in some cases undermine the quality of the information reported.

73. The AML/CFT State Ordinance replaces the SORUT and SOIPS, and extends AML/CFT obligations (including STR reporting obligations) to all FATF designated financial activities. This deficiency has been addressed.

SR.IV (Deficiency 3): The scope of the reporting obligation does not cover the financing of individual terrorists.

74. In imposing reporting obligations on service providers, the AML/CFT State Ordinance specifically references the terrorist financing offence under Art.140a of the CrCA, which in term covers terrorist financing activity involving “natural persons, legal entities, groups of natural persons or legal entities, and organizations”. Consequently, the scope of the reporting obligation now extends to the financing of individual terrorists, and this deficiency has been addressed.

SR.IV (Deficiency 4): Lack of effectiveness – only one transaction related to TF has been reported to the MOT.

75. Since the time of the MER, Aruba has reported an increase in the number of TF-related reports filed (see Table 3, page 19). Aruba has further advised that TF-related STRs are investigated with priority by the MOT and disseminated to the relevant law enforcement authorities. Information supplied by Aruba indicates that 3 disseminations of such investigations have taken place to date: 2 in 2010 and 1 in 2011. More TF reports have been filed and some investigations have occurred, but it is not possible to determine in the context of a desk-based review the degree to which effectiveness has improved.

SPECIAL RECOMMENDATION IV, OVERALL CONCLUSION

76. Aruba has addressed the technical deficiencies identified in SR.IV through the enactment of the AML/CFT State Ordinance and the designation of terrorist financing as a separate and independent offence in the CrCA. Aruba’s overall compliance with SR.IV may therefore be assessed at a level essentially equivalent to LC.

V. REVIEW OF THE MEASURES TAKEN IN RELATION TO THE KEY RECOMMENDATIONS

RECOMMENDATION 3 –RATED PC

R3 (Deficiency 1): 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).

77. The criminalisation of terrorist financing in the CrCA has enabled confiscation and provisional measures to be applied in relation to terrorist financing . However, Aruba has advised that the enactment of a new CrCA addressing Aruba’s R.1 deficiencies will only take place in 2014 (see paragraph 47). Until the new CrCA is enacted, this deficiency is partially addressed. Aruba should provide updates on the enactment and entry into force of the new CrCA, once this is done.

R3 (Deficiency 2): No clear provision to allow the confiscation of property derived indirectly from the proceeds of crime, such as income and other benefits.

78. The MER recognized that the CrCA and CCrPA provided a sound legal basis for the conduct of seizure and confiscation, but observed that the legal framework did not clearly provide for the confiscation of property derived indirectly from the proceeds of crime. Aruba clarified that the regime could in practice be applied towards the confiscation of illegally obtained advantages and profits. To this effect, the MER suggested that “[Aruba’s laws] *could* provide more explicitly that property derived indirectly from the proceeds of crime... should be subject to confiscation.”

79. Since the time of the MER, Aruba reports that amendments were undertaken to Art.119a of the CCrPA on 16 March 2012 to address the deficiencies in R.3. However, these amendments go principally towards addressing deficiency 3 concerning the seizure and confiscation of property held in the name of third parties (see paragraph 80 and Annex 4), and do not make explicit the powers concerning property derived indirectly from the proceeds of crime. This deficiency therefore appears to be unaddressed, although it is recognized Aruba has interpreted the framework to allow for the confiscation of such property, and that the deficiency is therefore a minor technical one.

R3 (Deficiency 3): Inability to take action against property held in the name of third parties under the special confiscation powers.

80. Amendments to Aruba’s CCrPA include an extension of Art.119a to incorporate a new provision allowing for the seizure of out-placed properties with the purpose of confiscation, if the properties were derived from illegal activities and out-placed with the purpose of preventing their seizure and the third party could have perceived the illegal origin of these properties (Art.119a paragraphs 3 and 4 – see Annex 4). As such, this deficiency has been addressed.

R3 (Deficiency 4): Lack of evidence of effective implementation of the powers to confiscate and take provisional measures.

81. Aruba advised that law enforcement agencies (e.g. the Aruban Police Force, the Bureau for Financial Investigations, the Special Police Task Force, the Special Projects Team, the National Internal Investigations Department, etc.) have conducted 97 ML or ML-related investigations since 1 January 2012, which in turn led to the seizure of 19 properties, 14 boats, 14 vehicles, bank accounts, cash amounting to approximately AWG 825,000 (around USD 460,000), jewellery, and other objects, under Art.119a of the CCrPA. Aruba also advised that 27 ML convictions were obtained pursuant to these investigations, and that a total of 10 cars and vessels, as well as one property and cash amounting to approximately AWG 400,000 (EUR 164,000) were confiscated.

RECOMMENDATION 3, OVERALL CONCLUSION

82. Aruba has criminalised terrorist financing in the CrCA and undertaken amendments to the CCrPA that partially address the deficiencies in R.3. While Aruba's legal framework could be clearer on the handling of property derived indirectly from the proceeds of crime legislation, Aruba overall possesses a strong legal basis for applying confiscation and provisional measures. It is therefore assessed that Aruba has addressed the major deficiencies in R.3, and may therefore be considered as having achieved a level essentially equivalent to LC.

RECOMMENDATION 23 –RATED NC

R23 (Deficiency 1): The scope issues identified in section 3.2 (scope of financial services subjected to AML/CFT obligations) also apply.

83. Aruba has rectified this through the enactment of the AML/CFT State Ordinance, which extends AML/CFT obligations to the full scope of financial services designated under the FATF Glossary. The Ordinance also addresses inconsistencies concerning the allocation of supervisory duties to the CBA and MOT, by consolidating all AML/CFT regulatory and supervisory functions under the CBA. This deficiency has been addressed.

R23 (Deficiency 2): Securities and investment sector is not licensed, regulated nor supervised.

84. The enactment of the AML/CFT State Ordinance extends AML/CFT obligations (including registration obligations, under Art.50) and AML/CFT supervision by the CBA to the securities and investment sector. However, the State Ordinance for the Supervision of the Securities Trade (SOSST) – which forms the basis for conducting supervision on investment brokers, stock exchanges, and collective investment schemes – will only be enacted and entered into force in 2014. Aruba has provided a draft of the SOSST (Annex 5) which the Secretariat has reviewed and determined to be satisfactory basis for the CBA to conduct AML/CFT supervision of the securities and investment sector.

85. This deficiency is therefore partially addressed, but may be fully addressed once the SOSST enters into force in 2014. Aruba should provide updates on the enactment and entry into force of the SOSST, once this is done.

R23 (Deficiency 3): Absence of licensing or registration requirements for insurance intermediaries.

86. Insurance intermediaries are defined in Art.27a of the Amending State Ordinance as “insurance agents”, i.e. “anyone who, other than on account of an employment contract, acts as an intermediary in the conclusion, surrender or payment of a life insurance contract or a nonlife insurance contract”, and are designated as non-regulated financial services providers by the CBA. Registration requirements for insurance agents are set out under Art.50 of the AML/CFT State Ordinance, whereas licensing obligations may be found in the State Decree on the Supervision of Insurance Agents, which was enacted and brought into force on 1 February 2014. The Amending State Ordinance of January 2013 also introduces within the SOSIB the *possibility* of bringing insurance intermediaries under the supervision of the CBA, in accordance with the requirements levied by the SOSIB on life insurance and general insurance businesses. It is further noted that Art.27b of the revised SOSIB forbids insurance intermediaries from undertaking the conclusion, surrender or payment of an insurance policy with a life or general insurance company, unless that company is licensed by the CBA for the conduct of the respective insurance activity.

87. This deficiency has been addressed.

R23 (Deficiency 4): Absence of licensing or registration requirements for persons that carry on currency exchange activities.

88. Art.7 of the State Ordinance Foreign Exchange Transactions (SOFET) authorizes the CBA to grant a license to operate an exchange office, which Aruba interprets as an obligation on persons who intend to conduct currency exchange activities to seek licensing from the CBA. Further, it is the CBA’s longstanding policy to only authorize commercial banks to conduct foreign exchange transactions; and that to date, no foreign exchange licenses have been granted to entities other than commercial banks. Aside from these interpretations, no changes have been made to the regime since the time of the MER.

89. It is noted that the above interpretations are inconsistent with the text of the SOFET, which translates into a continued absence of explicit obligation on persons conducting currency exchange activities to register and seek licensing from the CBA. Aruba has advised that the CBA in 2013 issued letters to all casinos to stress the licensing expectation under Art.7 of the SOFET, and that the CBA is also contemplating the drafting of a State Ordinance that includes a clear prohibition on entities other than licensed foreign exchange banks to conduct currency exchange activities. Aruba is encouraged to clarify in law, regulation, or other enforceable means, the obligations for persons conducting currency exchange activities (whether through said State Ordinance or otherwise). Until then, this deficiency remains unaddressed.

R23 (Deficiency 5): 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.

R23 (Deficiency 6): 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.

R23 (Deficiency7): Lack of ongoing checks of the fitness and properness of credit institutions, insurance companies and money transfer companies.

90. The Amending State Ordinance of 1 January 2013 prescribes uniform requirements within the various sectoral supervisory State Ordinances for financial institutions to implement clear policies, procedures, and measures to prevent any direct or indirect involvement in criminal offences or other violations of the law by the institution or its employees, amongst others. The Amending State Ordinance also enhances the policies and procedures for fit and proper testing of executive and supervisory directors of and holders of qualifying holdings (shareholdings of ten per cent or more) in supervised institutions. Coverage of these policies and procedures extends to credit institutions (covered under the SOSCS), insurance companies (SOSIB), and money transfer companies (SOSMTC). It is noted however that these enhancements do not apply to non-regulated financial services providers (i.e. securities firms and insurance intermediaries) as these sectors have yet to come under prudential supervision (through the enactment of respective supervisory State Ordinances), which will be done in 2014.

91. Further, the Amending State Ordinance introduces new requirements and strengthens existing ones within the supervisory State Ordinances:

- New uniform requirements for ensuring sound business operations, which oblige financial institutions to implement clear policies, procedures, and measures to, inter alia: prevent conflicts of interest; prevent ML and TF; comply with the AML/CFT State Ordinance and other AML/CFT laws and regulations; prevent any direct or indirect involvement in criminal offences or other violations of the law by the institution or its employees; prevent involvement with clients or other business relationships that may affect trust in the supervised institutions; and prevent any acts contrary to generally accepted standards in a way that might affect trust in the supervised institutions.
- Enhanced sanctions for violations of the SOSIB and other supervisory State Ordinances, as well as new possibilities for imposing administrative penalties on individuals who carry responsibility for violation of the legislative or regulatory requirements.

92. On 1 May 2011, the CBA issued a new and far more comprehensive Personal Questionnaire for financial institutions, in order to enhance its capability to conduct ongoing fit and proper monitoring of senior management members. This Personal Questionnaire has since been updated in conjunction with the Amending State Ordinance of January 2013, and a copy of the revised questionnaire may be found in Annex 7. The CBA also established enhanced internal procedures to ensure effective and efficient operation regarding independent checks on the quality of the information provided by the licence applications, including the conduct of fit and proper tests at both the market entry stage, as well as during the movement of staff into different key positions, or where certain facts or circumstances arise which may impact prior decisions about the fit and properness of those persons. To reinforce the CBA's conduct of fit and proper testing, amendments were also made in 19 January 2010 to the legislation on judicial record keeping to enable the CBA to access the judicial documentation register, which include criminal records, via the Prosecutor-

General. Moreover, the CBA is authorized to receive information from the Tax Authorities. In previous follow-up reports, Aruba has also advised that the CBA relies on other independent third-party sources for verification of such tests, such as Worldcheck or through internet searches on candidates.

93. On these grounds, the deficiencies identified in the MER have been addressed. However, Aruba should ensure that the current regime is applied evenly across all financial services providers and not just those which are presently subject to prudential oversight.

R23 (Deficiency 8): Lack of effectiveness with regard to the supervision of the MOT.

R23 (Deficiency 9): Effectiveness – The division of the scope of the supervision powers of the CBA and the MOT is not appropriate, and undermines the overall effectiveness of the supervision of financial institutions.

R23 (Deficiency 10): Effectiveness – The communication between the two supervisory bodies that supervise the same financial institutions for AML/CFT purposes needs to be strengthened.

94. It was noted in the MER that the division of supervisory duties between the CBA and MOT was ineffective, in particular due to the lack of exchange of information between the two supervisory bodies, and the lack of link between the CDD requirements and reporting obligations. It was hence proposed that Aruba consider assigning full supervisory responsibilities to a single supervisor (e.g. the CBA). This has been achieved via the AML/CFT State Ordinance of 1 June 2011.

95. This deficiency has been addressed.

R23 (Deficiency 11): Effectiveness – The resources and training of staff of the CBA and the MOT are not adequate.

96. Following the consolidation of all AML/CFT supervisory duties under the CBA, a standalone Integrity Supervision Department was established in January 2011, which now comprises eight dedicated AML/CFT specialists and is tasked with the conduct of AML/CFT supervision (aided where necessary by staff of the CBA's Prudential Supervision Department). This represents a significant increase in focus on AML/CFT supervision as compared to the time of the onsite visit, where it was noted that the entire Supervision Department of the CBA, tasked with the supervision of all regulated financial institutions, had comprised just ten staff members supported by one secretary.

97. A key concern identified in the MER was the CBA's supervisory approach being predicated on the application of supervisory controls which are general in nature (i.e. supervisors were only required to determine whether an institution's AML/CFT procedures "are in accordance with" the provisions set out in different CBA AML/CFT directives). Consequently, it was difficult to assess whether CBA staff had sufficient technical resource and expertise on AML/CFT policies and measures, to thoroughly conduct AML/CFT supervision of regulated entities. The CBA has addressed this by ensuring that staff of the Integrity Supervision Department attend various training courses and conferences, which include: AML/CFT training and workshops organised by private AML/CFT consultants Sator (on AML/CFT supervisory controls, in February 2011); by the

Dutch Institute for Banking and Securities in May 2011; by the Aruban foundation for financial education in November 2011; by GAFISUD and CFATF in October 2011 and May 2012, on DNFBPs and the revised FATF recommendations, respectively; by the Central Bank of Curacao and Sint Maarten (an investment business workshop conducted in January 2013); and an AML/CFT seminar organised by the Association of Supervisors of Banks in the Americas, under technical instruction from the Board of Governors of the Federal Reserve System (in August 2013). The CBA has also sought and received ample AML/CFT training and technical assistance from supervisory counterparts within the Kingdom of the Netherlands, including: the Central Bank of Netherlands, the Netherlands Authority for Financial Markets, the Dutch Ministry of Finance, and the Bureau of Financial Supervision.

98. Given the desk-based nature of this review, it is not possible to fully assess the impact of training on the supervisory approach undertaken by the CBA's Integrity Supervision Department. However, it is noted that concurrent with the increase in training and resources, the CBA has enhanced its capabilities to conduct risk-based supervision, and launched a new Onsite Procedures Manual setting out a framework of procedures, tasks, responsibilities and timelines for the conduct of onsite supervision. Since 2011, Aruba advises that the CBA has also conducted an increasing number of focused AML/CFT onsite examinations, including onsite inspections (i) at all commercial and offshore banks (some more than once); (ii) at all MTCs; (iii) at the largest insurance companies; and (iv) by end-2013, at all licensed trust service providers. Enforcement actions have also been taken where AML/CFT breaches were identified, including the conduct of normative conversations, and the issuance of directions, administrative fines, and penalty charge orders. Taken together, these would suggest that the increase in training and resources has enhanced the CBA's ability to conduct effective AML/CFT supervision. It is noted however that supervision of the non-regulated financial services providers (i.e. securities firms and insurance intermediaries) has not taken place, as these sectors have yet to come under prudential supervision (through the enactment of respective supervisory State Ordinances).

Table 4: AML/CFT On-site inspections carried out by the CBA over the period 2008 to December 2013

| Institutions | Total | Number of on-site inspections | | | | | |
|--------------------------|-------|-------------------------------|------|------|------|------|------------------------------------|
| | | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 (up to December) ⁸ |
| Banks | 6 | 4 | 2 | 4 | 4 | 4 | 2 |
| Life insurers | 7 | 1 | 1 | 1 | 1 | 1 | 0 |
| Money transfer companies | 3* | 4 | 4 | 2 | 3 | 3 | 0 |

⁸ Aruba advises that the low number of inspections in 2013 accrues to the focus of the CBA in following up on the findings of the AML/CFT inspections conducted in 2012.

| Institutions | Total | Number of on-site inspections | | | | | |
|--|--------|-------------------------------|----------|----------|-----------|-----------|------------------------------------|
| | | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 (up to December) ⁸ |
| Trust service providers | 13** | 0 | 0 | 1 | 1 | 4 | 2 |
| DNFBPs and non-regulated financial service providers | 155*** | - | - | - | - | 1 | 4 |
| Total | | 9 | 5 | 9 | 10 | 13 | 8 |

* Previously 4 money transfer companies.

** Previously 15 trust service providers.

*** 131 DNFBPs and 24 non-regulated financial service providers registered at the CBA.

Table 5: **Enforcement measures taken by the CBA due to non-compliance with AML/CFT laws and regulations during the period January 2012 to December 2013**

| Institutions | Number of institutions per November 30, 2013 | Number of formal measures imposed | |
|--|--|-----------------------------------|----------|
| | | 2012 | 2013 |
| Banks | 6 | 1 | 0 |
| Life insurers | 7 | 2 | 0 |
| Money transfer companies | 3* | 1 | 1 |
| Trust service providers | 13** | 0 | 0 |
| DNFBPs and non-regulated financial service providers | 155*** | 0 | 0 |
| Total | | 4 | 1 |

* Previously 4 money transfer companies.

** Previously 15 trust service providers.

*** 131 DNFBPs and 24 non-regulated financial service providers registered at the CBA.

99. This deficiency relates primarily to the effects of resource and training constraints on the effectiveness of the CBA's AML/CFT supervision, and Aruba has undertaken significant steps to address this by increasing training efforts and enhancing its capabilities to conduct risk-based supervision. However, Aruba should ensure that the supervisory efforts are applied evenly across all financial services providers, and not just those which are presently subject to prudential oversight.

RECOMMENDATION 23, OVERALL CONCLUSION

100. Aruba has made significant progress in strengthening the AML/CFT supervision of regulated financial institutions since the time in the MER, although gaps remain in the licensing, regulation and supervision of non-bank persons conducting currency exchange activities. While the CBA has yet to conduct supervision of securities firms and insurance intermediaries, Aruba expects the respective supervisory State Ordinance and State Decree to be enacted in 2014, thus facilitating the commencement of supervision in these sectors. Aruba has also undertaken efforts to enhance the effectiveness of the CBA. Overall, Aruba's compliance with R.23 has reached a level essentially equivalent to LC.

RECOMMENDATION 26 –RATED PC

R26 (Deficiency 1): 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.

101. Art.21 of the AML/CFT State Ordinance adjusts the composition of the Advisory Committee by ending the participation of private sector representatives in the Committee, although representatives from the business and professions categories may still be invited on executing certain tasks – namely, to share knowledge and expertise with the MOT, and to advise on the setup and implementation of the reporting obligation, as well as the adoption of STR indicators in specific sectors. This change addresses the concern in the MER regarding the influence of private sector participation over the MOT's conduct, budget and/or staff recruitment efforts, and therefore addresses this deficiency.

R26 (Deficiency 2): Since its creation in 1999, the MOT Aruba has published only one report covering typologies.

102. Aruba has advised that significant changes have been made to enhance the overall quality of MOT annual reports, including the introduction of an additional typologies chapter, and that the 2013 annual report (which is based on the new format) will be published in the first quarter of 2014. Further, the MOT recently launched a new website (www.fiu-aruba.com) that provides general information to entities on their reporting obligations, red flags, information about sanction lists, news and (inter) national AML/CFT legislation, amongst other things. All MOT guidance papers and manuals are also published on the website, including an indicator guidance note which sheds further light on information about red flags. The MOT also conducts regular meetings with the compliance officers of banks (on a monthly basis) and money transfer companies (on a biannual basis), which covers the sharing of sanitised case studies, typologies, risks, trends and methods of money laundering information.

103. On the basis of the above considerations, this deficiency has been addressed.

R26 (Deficiency 3): 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.

104. Art.26 of the AML/CFT State Ordinance now requires STRs submitted by service providers to include “as much as possible” a prescribed set of data, which includes inter alia the identity of the client, and the nature and number of the identity document of the client. This requirement appears to be independent of whether the client is a natural or legal person. This deficiency has been addressed.

R26 (Deficiency 4): 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.

105. During the mutual evaluation, Aruba advised that the decreasing number of spontaneously disseminated STRs across 2006-2008 accrued to closer cooperation with law enforcement agencies that resulted in a higher number of information requests submitted to the MOT. However, the assessment team opined that while this was a positive development, it should not displace the disclosures that the MOT makes upon its own initiative, based on its own analysis of information that it is the only agency to receive. It was determined that the lack of spontaneous dissemination was a product of resource limitations experienced by the MOT.

106. Since the MER, the MOT has undertaken efforts to hire additional staff in order to perform its functions of receipt, analysis and dissemination of STRs, in an effective way as envisaged with R.26. To date, a new FIU Head was hired (in February 2013), as was a Policy and Legal advisor (February 2011) and two Financial Analysts (one in February 2011 and another in April 2013). A third Analyst was appointed on 1 September 2013, and a further request for staff reinforcement (consisting of an IT expert and a policy advisor) was approved by the Ministerial Council on 20 August 2013, which would bring the total headcount of the MOT to 15. In Aruba’s view, the hiring of these additional staff in combination with the transfer of supervision to the CBA enables the MOT to perform its functions effectively.

107. Further, the MOT also participates in regular bi-monthly meetings of the Financial Investigations Group (comprising representatives from the Public Prosecutor’s Office, various branches of the Aruban police, and the Customs authorities), of which the mandate of this group is partly the assessment of the effectiveness of the AML/CFT regime, in particular how the value of intelligence can be increased. Aruba reports that as a result of these bi-monthly meetings, the receipt of feedback has been improved considerably, resulting in frequent and quick sharing of relevant information in order to further support AML/CFT investigation processes. Further, the MOT has entered into Memoranda of Understandings with various government agencies (the Public Prosecutor’s Office, the CBA, and the Immigration Service), and meets, consults and cooperates with these agencies to exchange information and generate heightened awareness.

Table 6: Number of STRs disseminated spontaneously

| No. of STRs disseminated spontaneously (time of MER) | | | Number of STRs disseminated spontaneously (since the MER) | | | |
|--|------|------|---|------|------|------|
| 2006 | 2007 | 2008 | 2010 | 2011 | 2012 | 2013 |
| 19 | 21 | 5 | 11 | 7 | 9 | 4 |

Table 7: Total number of disclosures

| | 2010 | | | 2011 | | | 2012 | | | 2013 | | |
|-----------------------------|-------|---------------------|--------------|-------|---------------------|--------------|-------|---------------------|--------------|-------|---------------------|--------------|
| | Total | Upon own initiative | Upon request | Total | Upon own initiative | Upon request | Total | Upon own initiative | Upon request | Total | Upon own initiative | Upon request |
| Investigations disseminated | 25 | 11 | 14 | 11 | 7 | 4 | 12 | 9 | 3 | 13 | 4 | 9 |

108. However, the post-MER statistics supplied by Aruba suggests that these recent initiatives have yet to translate into increases in the number of spontaneous disseminations, or overall disseminations (including on-request disseminations) for that matter. Aruba explains that the decreasing figures across 2010-2013 accrue to the time taken to increase MOT resources since the MER, and the absence (till April 2013) of a modern and efficient reporting/analysis system.

109. Given the desk-based nature of this review, it is not possible to assess the degree to which the new initiatives positively impact the MOT's abilities to disseminate (both spontaneously and upon-request) analyses of the intelligence it receives. The deficiency relates primarily to the effects of resource constraints on the MOT's effectiveness, and Aruba has undertaken significant steps to address this by increasing MOT resourcing and implementing cooperation mechanisms between the MOT and other government agencies.

R26 (Deficiency 5): The staff of the MOT are not sufficiently trained for receiving and analysing TF reports.

110. The MER observed that at the time of the mutual evaluation, the MOT had thus far analysed just one case of TF, targeted as such by the reporting entity, and disclosed the case to law enforcement agencies. It was determined that this single TF case formed insufficient basis to establish the MOT's expertise in detecting and analysing TF issues among the thousands of STRs received.

111. Aruba has provided statistics for the period of 2008 (time of the MER) – 2011, on the number of TF STRs received and disseminated to law enforcement agencies and/or the public prosecutor, as follows:

Table 8: **Number of TF STRs received and disseminated**

| | TF-related STRs received | TF-related STRs disseminated |
|------|--------------------------|------------------------------|
| 2008 | 1 | 1 |
| 2009 | 8 | 3 |
| 2010 | 7 | 2 |
| 2011 | 2 | 1 |

112. The figures above represent an increase from the data provided at the time of Aruba's mutual evaluation, and suggests that more emphasis is being placed by the MOT to ensure the analysis and dissemination of TF-related STRs. Aruba highlights that all TF reports are investigated with priority by the MOT and disseminated (where appropriate) to the relevant agencies. It is further noted that Aruba reports that one of the outcomes of the bi-monthly Financial Investigations Group meetings is the analysis and dissemination of more complex cases to the police and public prosecutor, and that these cases were possible related to terrorist financing (amongst others).

113. While a desk-based review is not equipped to assess whether the staff of the MOT are now satisfactorily trained to handle TF-related STRs, statistics provided by Aruba suggest that improvements have been made in this area. Coupled with additional efforts by Aruba to facilitate greater cooperation between the MOT, law enforcement, and public prosecutor with regards to the processing of TF-related cases, this deficiency appears to be addressed.

R26 (Deficiency 6): 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.

114. Aruba reports that the establishment of the Financial Investigations Group, comprising representatives from the MOT, the Public Prosecutor's Office, various branches of the Aruban police, and the Customs authorities, has aided in enhancing the effectiveness of the AML/CFT regime, in particular by examining how the value of intelligence can be increased. To this effect, Aruba had reported that the MOT was analysing and disseminating more complex cases to the police and public prosecutor as a result of these meetings with the Financial Investigations Group, and that these cases could relate to trade-based money laundering, terrorist financing, narcotics smuggling, real estate fraud, and loan back schemes.

115. Further, the MOT in April 2013 introduced a new online reporting system for financial institutions which enables further improvements in the quality of strategic analysis. Aruba reports that this new system will enable the MOT to develop a tailor-made business intelligence model for gathering, storing, analyzing and providing access to date to deter and detect more complex money laundering and terrorist financing schemes. However, it is not possible to assess the impacts of the new reporting system owing to its recent implementation, and Aruba has not provided any

information on when the aforementioned business intelligence model will be completed and implemented by the MOT.

116. Notably, while the MOT has sought to enhance its capabilities in dealing with more complex ML/TF schemes, the data in paragraph 109 suggests that these efforts have not yet translated into tangible results. Aruba has explained that the increased number of subjective STRs filed since the time of the MER indicates an increased awareness by reporting entities of more complex ML/TF schemes (see analysis of R.13), in which case the concomitant decreasing number of analyses being disseminated suggests that the MOT could be experiencing difficulties in analysing and disseminating these complex cases. While recent increases in headcount and the implementation of a new reporting system are forecasted to redress any such issues, it is not possible at this moment (and given the desk-based nature of this review) to conclude whether more complex ML/TF schemes will be better handled by the MOT going forward.

RECOMMENDATION 26, OVERALL CONCLUSION

117. Aruba has made significant progress in addressing the deficiencies identified under R.26, although it is difficult to establish the effectiveness of the recently-introduced measures via a desk-based review. Nevertheless, the progress made by Aruba is sufficient to bring the overall compliance of R.26 to a level essentially equivalent to an LC.

RECOMMENDATION 35 – RATED PC

R35 (Deficiency 1): Lack of implementation of the Terrorist Financing Convention in relation to terrorist financing.

118. On 6 March 2010, a separate and independent terrorist financing offence was introduced in Art.140a of the CrCA, consistent with the requirements of the Terrorist Financing Convention. This deficiency has been addressed.

R35 (Deficiency 2): No implementation of UNSCR 1267 and 1373.

119. To operationalise the State Decree, Aruba published the Consolidated List on the website of the CBA, and advisory notices were sent by the CBA to supervised institutions. Aruba also enacted a domestic Freezing List on 20 November 2013, and introduced mechanisms for the establishment, implementation and maintenance of a domestic Freezing List. A detailed explanation may be found under the section on SR.III (see paragraphs 154-158). This deficiency has been addressed.

R35 (Deficiency 3): Several failings regarding implementation of the Vienna and Palermo Conventions.

120. The MER identified a minor technical deficiency owing to the exclusion of several money laundering predicate offences in the CrCA, as well as a lack of clarity over foreign predicates. Aruba has advised that it intends to enact a new CrCA to rectify these deficiencies. The concurrent enactment of a new CrCA and an accompanying State Ordinance will take place in 2014 (see paragraph 47).

121. Until the new CrCA is enacted, this deficiency remains unaddressed. Aruba should provide updates on the enactment and entry into force of the new CrCA, once this is done.

RECOMMENDATION 35, OVERALL CONCLUSION

122. Aruba has addressed a key deficiency through the criminalisation of the terrorist financing offence. While a minor implementation gap remains owing to the lack of certain ML predicate offences, this may be addressed once the new CrCA is enacted in 2014. As such, Aruba's compliance with R.35 may be assessed at a level essentially equivalent to LC.

RECOMMENDATION 36 – RATED PC

R36 (Deficiency 1): 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.

R36 (Deficiency 4): The requirement that non-treaty based requests must be "reasonable" (undefined), combined with discretion, which is unclear, as to when such requests will be actioned, is an unreasonable and disproportionate condition on providing MLA.

R36 (Deficiency 6): 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.

123. Aruba is unable to enter into bilateral MLA agreements on its own due to constitutional constraints set out in the Charter for the Kingdom of the Netherlands, which require Aruba to first negotiate permission via the Netherlands Ministry of Foreign Affairs. Aruba advised in October 2010 that it was compiling a report to identify more jurisdictions with which Aruba could consider entering into MLA agreements with (beyond current treaty partners Surinam, Canada, the US, Australia, and Hong Kong, China), to be used by the Prosecutor General as a basis for discussions with the Netherlands Ministry of Foreign Affairs. However, no further updates were received on this initiative, and no new agreements have been concluded since the time of the MER.

124. The MER recognizes that Art.558 of the CCrPA does allow for MLA to be rendered in the absence of treaties, if incoming requests are assessed to be "reasonable" (i.e. no significant deviation from the types of assistance typically provided for treaty-based requests) and do not violate the grounds of refusal set out in Art.559 CCrPA. However, concerns were expressed in the MER regarding the unclear level of discretion to which reasonability could be used to reject requests, and a lack of data on MLA requests at the time of the MER meant that it could not be established whether this was indeed the case.

125. A statistics system has since been established by the Aruban Public Prosecutor's Office to track incoming and outgoing MLA requests, including the country of origin, nature of the offence, and the nature of assistance requested. These statistics (see Annex 9) indicate that Aruba has consistently extended assistance to non-treaty partners such as Curacao, Sint Maarten, Belgium, Spain, Albania, and Venezuela; and that assistance is rendered in an efficient manner, with

turnaround times averaging 2-4 months.⁹ Aruba also advises that it has not rejected any MLA requests on the basis of failure to meet reasonable grounds, and that it intends to address this concern by eliminating the criterion of reasonability in the new Art.558 of the CCrPA, which was submitted to the Minister of Justice for review on 31 October 2013. The new provision will therefore read as follows:

“2. In cases of a non-treaty request, as well as in cases in which the applicable treaty does not mandate compliance, the request will be complied with, unless its compliance violates a legal provision or a direction of the Minister of Justice.”

The new Art.558 will be tabled together with other CCrPA revisions for Parliamentary discussion in late-2014, with a view to enactment in early 2015.

126. It is further noted that as part of the Kingdom of the Netherlands, Aruba is also party to a number of international Conventions which include provisions allowing for mutual legal assistance, such as the Vienna, Strasbourg, Palermo, and Terrorist Financing Conventions, as well as the European Convention on Mutual Assistance in Criminal Matters (inclusive of the Additional Protocol), the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and the European Convention on the Suppression of Terrorism, amongst others. As an opt-in signatory under the Kingdom of the Netherlands, Aruba also renders assistance through the Treaty of San Jose, which is a regional maritime agreement involving the United States, the Kingdom of Netherlands, France, Belize, Costa Rica, the Dominican Republic, Guatemala and Nicaragua (amongst others), and is aimed at enhancing regional cooperation to counter illicit trafficking.

127. In sum, deficiency 6 is addressed but deficiencies 1 and 4 remain unaddressed as Aruba has yet to expand its bilateral MLA network and effect clarifications to the CCrPA provisions regarding reasonability. In practice however, Aruba has implemented a system to track the receipt and facilitation of MLA requests, and has provided data from this system which illustrates that these deficiencies do not prevented Aruba from rendering timely and effective mutual legal assistance to foreign jurisdictions, irrespective of the existence of an MLA treaty.

R36 (Deficiency 2): 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.

128. Aruba introduced a separate and autonomous TF offence in the Criminal Code of Aruba, which came into force on 4 March 2010. This deficiency has been addressed.

R36 (Deficiency 3): The limitations regarding the predicate offences for money laundering also limit the ability to assist in relation to ML based on such predicates.

129. The MER identified deficiencies in the money laundering offence (R.1) relating to lack of coverage of all designated predicate offences listed in the FATF Glossary, and of certain ancillary offences, which inhibit Aruba’s ability to provide broader MLA cooperation. Based on Aruba’s 5th

⁹ Prior to this, detailed information on mutual legal assistance was also supplied by Aruba in its 3rd, 4th and 5th follow-up reports.

follow-up report, a proposal to amend the CrCA to redress these deficiencies has already been debated and agreed to by Aruba's Parliament. However, the enactment of the new CrCA will only take place in 2014 (see paragraph 47). Until the new CrCA is enacted, this deficiency is partially addressed. Aruba should provide updates on the enactment and entry into force of the new CrCA, once this is done.

R36 (Deficiency 5): The deficiencies that exist in relation to assistance for seizure and confiscation of illegal proceeds (see R.38) also impact R.36.

130. The deficiencies identified under R.38 concerning the rendering of assistance towards the seizure and confiscation of illegal proceeds have been partially addressed (see Annex 8).

131. Accordingly, this deficiency is partially addressed.

RECOMMENDATION 36, OVERALL CONCLUSION

132. While technical deficiencies remain in Aruba's framework for mutual legal assistance, substantive improvements have been made in terms of the criminalisation of the TF offence in the CrCA, and the establishment of a statistics system by the Public Prosecutor's Office to track and facilitate the processing of MLA requests. More importantly, the data provided as a result of this new system demonstrates that Aruba renders timely and effective legal assistance pursuant to the receipt of requests from both treaty and non-treaty partners, irrespective of the deficiencies identified in the MER. On balance, Aruba's level of compliance with R.36 may therefore be viewed as essentially equivalent to an LC.

RECOMMENDATION 40 – RATED PC

R40 (Deficiency 1): Law enforcement authorities – There are no statistics available to suggest that exchange of information with foreign law enforcement authorities is effective.

133. Aruba has provided statistics across the period of 2009-2013 regarding the level of international cooperation that has taken place between the Special Police Task Force, the Aruban Police Force (both the Bureau for Financial Investigations and the Organised Crime Unit), the Customs Investigation Unit, the Fiscal (tax) Intelligence and Investigation Team, the National Internal Investigations Department, the Coast Guard, and their foreign counterparts. These statistics (provided in Annex 10) relate to ML/TF as well as predicate offences, cover both incoming and outgoing requests, and overall points to substantive cooperation taking place between Aruban law enforcement authorities and their foreign counterparts.

134. This deficiency has been addressed.

R40 (Deficiency 2): CBA – The capacities of the CBA to cooperate and exchange information with foreign counterparts are limited by (i) the scope issue, (ii) the fact that the CBA only supervises the compliance with the CDD requirements, (iii) the deficiencies identified in relation to the preventive measures, and (iv) the broadly defined safeguards and controls.

135. These deficiencies are rectified by the entry into force of the AML/CFT State Ordinance, which extends AML/CFT obligations to the full scope of financial services designated under the FATF Glossary; consolidates all AML/CFT supervisory duties under the ambit of the CBA; rectifies deficiencies identified in relation to preventive measures; and introduces broad powers (under Art.36) for the CBA to exchange data and information with foreign counterparts.

136. This deficiency has been addressed.

R40 (Deficiency 3): CBA – 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.

137. Art.36 of the AML/CFT State Ordinance now enables the CBA to, on behalf of a foreign counterpart, request a service provider to provide data and information, or to conduct an investigation or cause same to be conducted at a service provider, or at everyone as regards whom it can be reasonably suspected that he disposes of data and information that may reasonably be of importance to the requesting agency. Further, Art.36 enables the CBA to allow an official of a requesting foreign counterpart to participate in the implementation of its request.

138. This deficiency has been addressed.

R40 (Deficiency 4): CBA – Regarding the TCSPs, since they are not subject to AML/CFT requirements, the CBA cannot exchange information related to ML, TF or predicate offences.

139. AML/CFT obligations are now applied to the full range of financial service providers as designated under the FATF Glossary, including Trust and Company Service Provider (TCSPs). The Ordinance also provides broad powers for the CBA to exchange information and conduct inquiries on TCSPs for the purposes of assisting foreign counterparts.

140. This deficiency has been addressed.

R40 (Deficiency 5): The MOT as a supervisory body cannot cooperate and exchange information with its foreign counterparts.

141. Under the AML/CFT State Ordinance, the MOT is no longer the supervisory body for compliance with the STR obligation. Accordingly, this deficiency is no longer relevant.

R40 (Deficiency 5): The MOT as a FIU – The capacities of the MOT to exchange information are limited by the fact that Aruba has signed MOUs with a limited set of jurisdictions.

142. Art.22 paragraph 3 of the AML/CFT State Ordinance introduces a State Decree containing general administrative orders regarding the provision of data by the MOT, to agencies in or outside the Kingdom which have a task similar to that of the MOT, as well as regarding the conditions under

which data will be provided. This State Decree (the State Decree Register MOT) entered into force on 26 July 2013, and (through Art.6 of the Decree) eliminates the legal requirement for MOUs in order to exchange information with FIUs that are members of the Egmont Group, which goes towards substantially addressing this deficiency

143. This deficiency has been addressed.

R40 (Deficiency 6): The MOT as a FIU – The MOT can only provide information that is already in its possession but it cannot conduct inquiries on behalf of foreign counterparts.

R40 (Deficiency 7): The MOT as a FIU – The MOT cannot search other databases to which it has direct or indirect access, to answer the request of a foreign FIU.

144. Arts.2 and 6 of the State Decree Register MOT, read in conjunction with Arts. 20 and 27 of the AML/CFT State Ordinance, would enable the MOT to request for further data or information from service providers for performance of its functions (e.g. collection and analysis of data to determine its significant to AML/CFT), to input such data into the MOT Register, and to share such data with foreign FIUs with which the MOT either (a) is an Egmont member, or (b) is an FIU within the jurisdiction of the Kingdom of the Netherlands. It is presumed that this combination of powers would also enable the MOT to conduct inquiries and obtain information pursuant to a request from a foreign FIU that falls under the above categories.

145. As regards the searching of other databases, Art. 23 of the AML/CFT State Ordinance enables the MOT to consult the registers and other sources of information of supervisory agencies, as part of the proper performance of its duties. To effect this, the MOT has entered into Memoranda of Understanding with several government agencies such as the CBA and the Public Prosecutor's Office. Aruba has advised that the MOT frequently consults the records of the following agencies and departments: the Chamber of Commerce, the Immigration department, the Civil Service Office, Public Prosecutor records, law enforcement data systems, the Tax Authority Department, the Land Registry Department, and the Motor Vehicle Registration Department, amongst others.

146. These deficiencies have been addressed.

R40 (Deficiency 8): Effectiveness – There are no statistics to suggest that cooperation between supervisors and their counterparts in AML matters is effective and is provided in line with the FATF standards.

147. Aruba provided data across 2012 to June 2013 indicating that 5 AML/CFT-related information requests were received and 2 requests submitted by the CBA during this period. All requests submitted and received related to integrity and suitability testing for financial institutions. However, no data was provided on the outcomes of these requests, nor on whether these were handled in an efficient manner.

148. In sum, the figures provided by Aruba suggest that cooperation is taking place between the CBA and its counterparts. However, a desk-based review is unable to conclusively determine whether cooperation is effective and in line with the FATF standards.

RECOMMENDATION 40, OVERALL CONCLUSION

149. Aruba has put in place measures to enhance the capabilities of the CBA and MOT to cooperate with their counterparts, although Aruba has yet to supply conclusive data that affirms the effective use of these capabilities. Where Aruba's law enforcement authorities are concerned, statistics have been supplied by Aruba which suggest that substantive international cooperation is taking place.

150. Aruba's level of compliance with R.40 is therefore assessed to be equivalent to an LC.

SPECIAL RECOMMENDATION I – RATED NC

SR.I (Deficiency 1): Lack of implementation of the Terrorist Financing Convention in relation to terrorist financing.

151. On 6 March 2010, a separate and independent terrorist financing offence was introduced in Art.140a of the Criminal Code of Aruba, consistent with the requirements of the Terrorist Financing Convention. This deficiency has been addressed

SR.I (Deficiency 2): No implementation of UNSCR 1267 and 1373.

152. To operationalise the State Decree, Aruba published the Consolidated List on the website of the CBA, and advisory notices were sent by the CBA to supervised institutions. Aruba also enacted a domestic Freezing List on 20 November 2013, and introduced mechanisms for the establishment, implementation and maintenance of a domestic Freezing List. A detailed explanation may be found under the section on SR.III ((see paragraphs 154-158). This deficiency has therefore been largely addressed.

SR.I, OVERALL CONCLUSION

153. Aruba has brought its level of compliance with SR.I to a level essentially equivalent to LC.

SPECIAL RECOMMENDATION III – RATED NC

SR.III (Deficiency 1): 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.

SR.III (Deficiency 2): 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.

SR.III (Deficiency 3): 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.

154. Aruba has sought to implement UNSCR 1267 and 1373 through the State Decree Combating Terrorism and Terrorist Financing, which entered into force on 25 June 2010 and which regulates

the freezing of funds and other assets of persons and institutions deemed to be related to terrorism and terrorist financing, on the basis of the relevant UN resolutions. This State Decree follows the Aruban Sanctions State Ordinance of 2006, and provides for the direct implementation of UNSCR 1267 by means of referral to the Consolidated List issued by the UN Al Qaeda and Taliban Sanctions Committee, as well as calling for a domestic freezing mechanism as required by UNSCR 1373, by means of a domestic Freezing List that will be established by the Minister of Justice and implemented by the CBA.

155. The definition of “funds or other assets” as set out in Art. 1 of the State Decree appears to be aligned with the interpretation used in the UNSCRs. The State Decree also contains requirements on the CBA and MOT to publish in a timely and digital manner any and all changes to both lists (Art.3); to promptly and directly inform service providers and ensure that these are adhered to (Art.4); and to issue directives and render assistance in event clarifications are required from service providers (Arts.3 and 6). It is further noted that the State Decree targets all persons who hold funds or other assets of persons and organisations mentioned on either of the freezing lists, i.e. not limited to service providers covered by the various AML/CFT laws; rectifies a deficiency identified in the draft State Decree (via Art.2 section 3 of the finalised State Decree) concerning the need to clearly establish beyond doubt the identities of designated persons and/or entities; and contains provisions on publication, delisting and the obligation on service providers to report transactions with regard to frozen funds or other assets to the MOT (and the CBA, insofar as the service provider is a supervised financial institution).

156. However, the State Decree is less clear on the requirement to freeze funds “without delay”, providing instead that the Minister of General Affairs (and the minister or ministers charged with implementation of the State Decree) may exercise the right to abstain from hearing the advice of the Advisory Council if an international decree obliges immediate implementation. Since the enactment of the State Decree, the Minister(s) has exercised this provision once with respect to S/RES/1970 and S/RES/1973 concerning Libya (issued February and March 2011, respectively). However, the Aruban decree (the Sanctions State Decree Libya 2011) implementing the freezing of Libyan funds and other assets was only published in the Aruban Government Gazette one month later (18 April 2011), which suggests that the “without delay” component has not been fully complied with.

157. To operationalise the State Decree, Aruba published the Consolidated List on the website of the CBA, and advisory notices were sent by the CBA to supervised institutions. Aruba enacted the domestic Freezing List on 20 November 2013, and a joint effort was undertaken between the National Security Service and the Public Prosecutor’s Office to introduce a mechanism for the establishment and maintenance of a domestic Freezing List.¹⁰ This mechanism includes, inter alia, detailed procedures to examine and give effect to actions initiated under the freezing powers of other jurisdictions; to evaluate delisting requests; and to legally safeguard the rights of parties subject to erroneous listings, such as via verification of the identities of persons or entities erroneously designated, and releasing in a timely manner funds or other assets that were

¹⁰ Amendments were also made to the State Decree on 16 November 2012, to reflect the latest developments on the Consolidated List for Al Qaeda and the Taliban, and to improve Aruba’s operational framework by establishing a National Sanctions Committee aimed at assisting the Minister of Justice in the establishment of, and all subsequent modifications to, the domestic Freezing List.

inadvertently frozen.¹¹ A detailed explanation of the mechanism has been provided by Aruba, and be found in Annex 11. It remains unclear whether explicit procedures exist for the monitoring of service providers for compliance with the State Decree, and the protection of the rights of bona fide third parties consistent with the standards provided in Art.8 of the Terrorist Financing Convention. However, Aruba advises that supervision of financial institutions for compliance with the State Decree is in practice an integral part of the general AML/CFT compliance supervision by the CBA.

158. In sum, Aruba has established a basis for implementing S/RES/1267 and S/RES/1373 through the Sanctions State Ordinance 2006 and the State Decree Combating Terrorism and Terrorist Financing, and has operationalized this via the establishment of a domestic Freezing List and an accompanying operational framework. While some technical deficiencies remain, these do not appear to compromise the overall functioning of the regime. Overall, the deficiencies appear to be largely addressed.

SR.III (Deficiency 4): Aruba does not ensure that the confiscation of assets also applies to terrorist assets.

159. This deficiency has been fully addressed with the criminalisation of terrorist financing as a separate and independent offence under the CrCA.

SR.III, OVERALL CONCLUSION

160. Aruba has passed key legislation (the State Decree Combating Terrorism and Terrorist Financing) and established an operational framework for implementing S/RES/1267 and S/RES/1373. While some technical deficiencies remain, these do not appear to compromise the overall functioning of the regime. Aruba's compliance with SR.III may therefore be assessed at a level essentially equivalent to LC.

SPECIAL RECOMMENDATION V – RATED NC

SR.V (Deficiency 1): Terrorist financing is not an offence, and as dual criminality is a requirement for MLA, this means that assistance cannot be provided.

161. On 6 March 2010, a separate and independent terrorist financing offence was introduced in Art.140a of the Criminal Code of Aruba. This deficiency has been addressed.

SR.V (Deficiency 2): The other limitations that are set out in Recommendations 36-38 apply equally to terrorist financing activity.

162. Aruba has largely addressed the deficiencies under R.36, but only partially addressed the deficiencies under R.38 (see Annex 8).

163. This deficiency is therefore partially addressed.

¹¹ For persons listed under the Consolidated List however, appeals must be made to the respective governing body i.e. the Council of Europe, or the independent Ombudsman instituted pursuant to UNSCR 1904.

SR.V (Deficiency 3): As dual criminality is required for extradition, the lack of a TF offence means that, in effect, terrorist financing is not an extraditable offence.

SR.V (Deficiency 4): It is unclear if the law enforcement authorities can cooperate with their foreign counterparts since TF is not an offence.

164. On 6 March 2010, a separate and independent terrorist financing offence was introduced in Art.140a of the Criminal Code of Aruba. These deficiencies have been addressed.

SR.V (Deficiency 5): Law enforcement authorities – No statistics available to suggest that exchange of information with foreign law enforcement authorities is effective.

165. Aruba has provided statistics across the period of 2009-2013 regarding the level of international cooperation that has taken place between the Special Police Task Force, the Aruban Police Force (both the Bureau for Financial Investigations and the Organised Crime Unit), the Customs Investigation Unit, the Fiscal Intelligence and Investigation Team (tax), the National Internal Investigations Department, the Coast Guard, and their foreign counterparts (see Annex 10). Aruba's data indicates that law enforcement cooperation between Aruba and its foreign counterparts on TF matters has yet to take place. However, this is not inconsistent with the low risks that TF poses to Aruba (as determined by Aruba's National Risk Assessment), and therefore should not be taken as an indicator that Aruba is ineffective in this area.

SR.V (Deficiency 6): CBA – The capacities of the CBA to cooperate and exchange information with foreign counterparts are limited by (i) the scope issue, (ii) the fact that the CBA only supervises the compliance with the CDD requirements, (iii) the deficiencies identified in relation to the preventive measures, and (iv) the broadly defined safeguards and controls.

166. These concerns are rectified by the entry into force of the AML/CFT State Ordinance, which extends AML/CFT obligations to the full scope of financial services designated under the FATF Glossary; consolidates all AML/CFT supervisory duties under the ambit of the CBA; rectifies deficiencies identified in relation to preventive measures; and introduces broad powers for the CBA (under Art.36) to exchange data and information with foreign counterparts. This deficiency has been addressed.

SR.V (Deficiency 7): CBA – 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.

167. Art.36 of the AML/CFT State Ordinance now enables the CBA to, on behalf of a foreign counterpart, request a service provider to provide data and information, or to conduct an investigation or cause same to be conducted at a service provider, or at everyone as regards whom it can be reasonably suspected that he disposes of data and information that may reasonably be of importance to the requesting agency. Further, Art.36 enables the CBA to allow an official of a requesting foreign counterpart to participate in the implementation of its request.

168. This deficiency has been addressed.

SR.V (Deficiency 8): CBA – Regarding the TCSPs, since they are not subject to AML/CFT requirements, the CBA cannot exchange information related to ML, TF or predicate offences.

169. AML/CFT obligations are now applied to the full range of financial service providers as designated under the FATF Glossary, including TCSPs. The Ordinance also provides broad powers for the CBA to exchange information and conduct inquiries on TCSPs for the purposes of assisting foreign counterparts.

170. This deficiency has been addressed.

SR.V (Deficiency 9): The MOT as a supervisory body cannot cooperate and exchange information with its foreign counterparts.

171. Under the AML/CFT State Ordinance, the MOT is no longer the supervisory body for compliance with the STR obligation. Accordingly, this deficiency is no longer relevant.

SR.V (Deficiency 10): The MOT as a FIU – The capacities of the MOT to exchange information are limited by the fact that Aruba has signed MOUs with a limited set of jurisdictions.

172. Art.22 paragraph 3 of the AML/CFT State Ordinance introduces a State Decree containing general administrative orders regarding the provision of data by the MOT, to agencies in or outside the Kingdom which have a task similar to that of the MOT, as well as regarding the conditions under which data will be provided. This State Decree (the State Decree Register MOT) entered into force on 26 July 2013, and (through Art.6 of the Decree) eliminates the legal requirement for MOUs in order to exchange information with FIUs that are members of the Egmont Group, which goes towards substantially addressing this deficiency.

173. This deficiency has been addressed.

SR.V (Deficiency 11): The MOT as a FIU – The MOT can only provide information that is already in its possession but it cannot conduct inquiries on behalf of foreign counterparts.

SR.V (Deficiency 12): The MOT as a FIU – The MOT cannot search other databases to which it has direct or indirect access, to answer the request of a foreign FIU.

174. Arts.2 and 6 of the State Decree Register MOT, read in conjunction with Arts. 20 and 27 of the AML/CFT State Ordinance, would enable the MOT to request for further data or information from service providers for performance of its functions (e.g. collection and analysis of data to determine its significant to AML/CFT), to input such data into the MOT Register, and to share such data with foreign FIUs with which the MOT either (a) is an Egmont member, or (b) is an FIU within the jurisdiction of the Kingdom of the Netherlands. It is presumed that this combination of powers would also enable the MOT to conduct inquiries and obtain information pursuant to a request from a foreign FIU that falls under the above categories.

175. As regards the searching of other databases, Art. 23 of the AML/CFT State Ordinance enables the MOT to consult the registers and other sources of information of supervisory agencies, as part of the proper performance of its duties. To enable this, the MOT has entered into Memoranda of Understanding with several government agencies, such as the CBA and the Public Prosecutor's

Office. Aruba has advised that the MOT frequently consults the records of the following agencies and departments: the Chamber of Commerce, the Immigration department, the Civil Service Office, Public Prosecutor records, law enforcement data systems, the Tax Authority Department, the Land Registry Department, and the Motor Vehicle Registration Department, amongst others.

176. These deficiencies have been addressed.

SR.V (Deficiency 13): Effectiveness – There are no statistics to suggest that cooperation between supervisors and their counterparts in TF matters is effective and is provided in line with the FATF standards.

177. While Aruba provided data across 2012 to June 2013 indicating that 5 AML/CFT-related information requests were received and 2 requests submitted by the CBA during this period, these requests related to integrity and suitability testing for financial institutions and do not appear to concern TF issues. Absent any data from Aruba relating specifically to supervisory cooperation with regards to TF issues, this deficiency remains unaddressed.

SR.V, OVERALL CONCLUSION

178. Aruba has put in place measures to enhance the capabilities of the CBA and MOT to cooperate with their counterparts, although Aruba has yet to supply conclusive data that affirms the effective use of these capabilities. Where Aruba's law enforcement authorities are concerned, the statistics submitted suggest that effective international cooperation is possible on TF issues. Given the progress made by Aruba in this area, Aruba's level of compliance with SR.V may be assessed as essentially equivalent to LC.

ANNEXES

Available from the FATF Secretariat upon request at contact@fatf-gafi.org.

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| ANNEX 1 | Detailed follow-up report prepared by Aruba. |
| ANNEX 2 | National Risk Assessment of Aruba. |
| ANNEX 3 | Translated provisions from the new CrCA. |
| ANNEX 4 | Translation of Art.119a of the CCrPA; Report by Aruba on Seizure and Confiscation. |
| ANNEX 5 | Draft State Ordinance for the Supervision of the Securities Trade. |
| ANNEX 6 | AML/CFT Handbook. |
| ANNEX 7 | CBA: Personal Questionnaire for Financial Institutions. |
| ANNEX 8 | Analysis of R.38. |
| ANNEX 9 | List of MLA requests from January 2012 to October 2013. |
| ANNEX 10 | Report by Aruba on R.40 and SR.V. |
| ANNEX 11 | Report by Aruba on Freezing Measures against Terrorism and Terrorism Financing. |