

## MUTUAL EVALUATION OF ARUBA: THIRD FOLLOW UP REPORT

### LIST OF RECOMMENDATIONS AND SPECIAL RECOMMENDATIONS RATED PC AND NC IN THE MUTUAL EVALUATION REPORT

PARTIALLY COMPLIANT (PC)	NON-COMPLIANT (NC)
<p><b>Core Recommendations</b></p> <p>R13 STR Reporting</p> <p>SRIV STR Reporting related to FT</p>	<p><b>Core Recommendations</b></p> <p>R5 Customer Due Diligence</p> <p>SRII Criminalisation of TF</p>
<p><b>Key Recommendations</b></p> <p>R3 Confiscation and Provisional Measures</p> <p>R26 FIU</p> <p>R35 Conventions</p> <p>R36 Mutual Legal Assistance</p> <p>R40 Other Forms of Co Operation</p>	<p><b>Key Recommendations</b></p> <p>R23 Regulation, supervision and monitoring</p> <p>SRI Implement UN Instruments</p> <p>SRIII Freezing/confiscation of terrorist assets</p> <p>SRV International Co Operation</p>
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## **THIRD FOLLOW UP REPORT SUBMITTED BY ARUBA**

### **1. Introduction**

The October 2010 FATF Plenary marks the first anniversary of the adoption of the Mutual Evaluation Report (MER) of Aruba. On this occasion a more detailed Follow Up Report is presented in order to demonstrate the substantial progress that has been made in implementing the recommendations of the MER and in particular those rated “key” and “core” by the FATF.

The progress in Aruba is driven and overseen at the most senior level by the AML/CFT Strategy Group. This group is chaired by the Prime Minister and comprises the Minister of Justice, the Minister of Finance and the Minister of Economic Affairs and senior officials of all relevant agencies. The function of the group is to set Aruba’s strategy with regard to Aruba’s AML/CFT risks and defences, and ensure sufficient resource and focus is made available to monitor those risks and implement proper defences. The top priority of the AML/CFT Strategy Group at this time is to ensure full and urgent implementation of the Recommendations set out in the MER. Up to now (end September) the AML/CFT Strategy Group has met four times. Thus, it is the case that Aruba can demonstrate total political commitment into the meeting international standards in the area of AML/CFT.

In the previous two Follow Up Reports Aruba submitted a Strategic Implementation Plan (SIP) in which all the recommendations from the MER were listed with e.g. the primary agencies, the required actions and the set timeframes. A revised SIP is attached to this third Follow Up Report for a more detailed account of the actions required and/or completed.

### **2. Core Recommendations – Non Compliant**

Two core recommendations were rated non-compliant (NC), namely Special Recommendation II (Criminalisation of TF) and Recommendation 5 (Customer Due Diligence). The former was addressed in February of this year with the incorporation of an independent TF offence in the Penal Code. This was reported in the First Follow Up Report and presented in the February 2010 Plenary in Abu Dhabi. As for Recommendation 5 the following significant progress can be reported.

#### **2.1 Recommendation 5 - Customer Due Diligence (rated NC)**

The previous two follow up reports to Plenary explained that the means by which Aruba intended to upgrade its Customer Due Diligence (CDD) requirements was to adopt a strategy of firstly merging the State Ordinance on the Identification when Providing Services (SOIPS) and the State Ordinance on the Reporting of Unusual Transactions (SORUT) into a single state ordinance, and secondly by issuing new Directives under the financial services regulatory laws. As drafting on this work has progressed, a change to this strategy has emerged which need to be explained in further detail.

The SOIPS sets out identification requirements for certain financial institutions and DNFBPs, while the SORUT institutes a reporting obligation for these service providers through a system of objective and subjective tests and to that effect establishes the Aruban FIU (“Meldpunt Ongebruikelijke Transacties” or MOT) for the receipt, analysis and dissemination of the unusual transactions reports. In addition, the MOT was, at the time of the adoption of the MER, charged with carrying out a supervisory function over reporters.

In essence, the MER found four key problems with these two laws:-

- a) the lists of businesses falling under the scope of these two laws did not match,
- b) the scope of business types that were covered by these laws was not sufficiently wide,
- c) the obligations placed on businesses that were caught within the regime of the SOIPS were insufficient, and
- d) the system of the Central Bank of Aruba (CBA) having supervisory functions for regulated financial services businesses concurrently with the FIU having supervisory functions over all reporters, did not work efficiently, particularly in the light of inadequate coordination and information sharing powers between the competent authorities.

The MER recommended these deficiencies were corrected and that the entire AML/CFT supervisory functions for regulated financial institutions be transferred to the CBA which, according to the MER, would sit more efficiently with their general supervisory responsibilities with regard to financial services businesses. In addition, the MER recommended the MOT take up a far more active examination and outreach programme with regard to the entities for which it would remain supervisor, as its onsite work had been largely curtailed due to lack of resource, and that to achieve this it needed additional resources.

Accordingly, this was the strategy adopted and work progressed through the first half of the year to upgrade and merge the SOIPS/SORUT and draft new Directives to be issued under the regulatory laws. Additionally, the supervisory oversight of the financial institutions in the AML/CFT area was completely transferred to the CBA on July 1 of this year.

However, during the first six months following the publication of the MER, a different strategic pressure entered discussions concerning the capacity and recruitment capability of the MOT to deliver a robust supervisory oversight regime. During the first half of 2010 the AML/CFT Strategy Group concluded that it would be best to transfer the entire AML/CFT supervisory function vis-à-vis financial institutions (regulated and unregulated) and DNFBPs to the CBA. This decision was formalized by the Council of Ministers by decision of May 27, 2010. The CBA has accepted this additional responsibility and has voted additional resources to the 2010 and 2011 budget to secure the necessary personnel. Additional personnel are already in post (one of whom has AML/CFT supervision expertise from the Dutch Central Bank) and further recruitment is in progress.

As a result of this shift in the executive oversight functions, it is now considered by Aruba that it is not necessary to issue directives under the regulatory laws for financial institutions, but to have one “master” standard set by the new state ordinance replacing the SOIPS and SORUT (to be introduced on 1<sup>st</sup> January 2011), which will comprehensively set out the range of obligations on all financial institutions and DNFBPs regarding CDD as set out in Recommendation 5 (as well as the related Recommendations 6 through 12) and the Methodology, unusual transactions reporting, risk profiling, record keeping, staff training and account monitoring. This new state ordinance will designate the MOT for the purposes of receipt, analysis and dissemination of unusual transaction reports made by financial institutions and DNFBPs, but will designate the CBA as the sole supervisor. This new “master” state ordinance will contain full local and international cooperation provisions and sanction powers.

The new state ordinance will be entitled “State Ordinance for the prevention and combat of money laundering and terrorist financing” (“AML/CFT State Ordinance”) and represents a step change in the extent and force of provisions in Aruba and will be referred to frequently throughout this report as it is the key vehicle by which many of the Recommendations regarding preventive and institutional measures will be implemented. Its passage also provides the opportunity for consequential amendments to other laws and therefore represents an important vehicle for adopting further important recommendations contained within the MER. It should be noted that the existing supervisory state ordinances for financial institutions will be amended in order to ensure that the AML/CFT State Ordinance is grounded in the supervisory regime of Aruba. In light of this, the amendments in the supervisory state ordinances will explicitly set out obligations for the supervised financial institutions regarding integrity protection and integrity management, requiring them to have procedures and measures in place for the implementation of their obligations in the area of AML/CFT as set out in the AML/CFT State Ordinance and the regulations and directives based on this state ordinance (such as the AML/CFT handbooks). Related to this, it should also be noted that compliance with the requirements of the AML/CFT State Ordinance and the regulations and directives based on this state ordinance will be considered by the CBA in the execution of its supervisory tasks pursuant to the supervisory state ordinances. Subsequently, non-compliance with the requirements of the AML/CFT State Ordinance and the regulations and directives based on this state ordinance will be addressed with the following instruments:

- a) Issuing an individual direction and, if deemed necessary, publication of such a direction;
- b) Imposing a penalty charge order (no maximum);
- c) Imposing an administrative fine (maximum Afl. 2,5 million or approximately USD 1,4 million per infraction);
- d) Publication of the penalty charge order or administrative fine;
- e) Silent receivership;
- f) Revocation of the banking or insurance license or removal from the money transfer companies registry;
- g) Criminal prosecution of the service provider and its senior management.

A draft has been finalized after undergoing consultation across all relevant agencies and the project is on track to achieve the implementation date of 1<sup>st</sup> January 2011. Aruba notes that during the legislative process changes can still be considered based on further consultation or advise, as long as these are in

agreement with the FATF standards. A copy in English of this draft and the accompanying Explanatory Memorandum has been submitted to the FATF secretariat together with this report.

Sitting beneath the AML/CFT State Ordinance will be a range of Handbooks which will set out how the CBA expects those persons and institutions who are subject to the law to meet their obligations. The first Handbook, for regulated financial institutions, has undergone industry consultation and is now being reviewed based on the response received from industry. Industry training in the provisions of the Handbook is already underway with two seminars delivered on June 30 and September 21 and more planned for November. A copy of the draft Handbook has also been submitted to the FATF secretariat.

The AML/CFT State Ordinance will be implemented through a separate implementation state ordinance (currently being drafted) which will contain transitional provisions in order to drive implementation by the industry with regard to existing customers whilst ensuring new customers are taken on to full new standard from day one.

Work on the DNFBP sector (it should be remembered that in Aruba Trust and Company Service Businesses are regulated as financial institutions by the CBA already and therefore fall into the group previously referred to), in terms of handbooks and outreach, is also underway with seminars planned for the fourth quarter of 2010.

## **2.2 Special Recommendation II - Criminalisation of TF (rated NC)**

As mentioned above, a separate and autonomous terrorist financing offence was introduced in the Penal Code of Aruba as reported to the February 2010 Plenary. This new provision came into force on March 4 of this year and was deemed satisfactory by the Secretariat. Aruba notes that since the introduction of this new provision, one TF-related report was received by the MOT in June 2010, which is currently under investigation.

## **3 Core Recommendations – Partially Compliant**

Aruba was rated Partially Compliant (PC) on two Core Recommendations, namely Recommendation 13 (STR Reporting) and Special Recommendation IV (STR Reporting regarding Terrorist Financing).

The PC ratings of these two Recommendations arise from the same root causes behind Aruba's ratings on Recommendation 5 and Special Recommendation II as all four ratings arise from the shortfalls in the SOIPS and the SORUT and previous absence of a separate and independent TF offence. By the same token, the route to compliance is through the solutions previously outlined for Recommendation 5 and Special Recommendation II.

### **3.3 Recommendation 13 – STR Reporting (rated PC)**

Aruba does not operate a suspicion based reporting system but an unusual transactions reporting system. This system requires reporters to report unusual transactions using objective indicators (measured by defined monetary thresholds or objective facts) or subjective indicators (measured by subjective facts or circumstances, e.g. the suspicion of involvement in criminal activities including money laundering or terrorist financing). Unusual transactions reports are analysed by the FIU and, in case of a reasonable suspicion of money laundering or terrorist financing, disseminated to law enforcement authorities for criminal investigation. The MER found the system to be complex, incomplete and not sufficiently focussed on the reporting of suspicions-related transactions.

This was compounded by non-matching lists of service providers between the SOIPS and SORUT and the narrowness of the overall scope of the group to whom the obligations extended.

The new AML/CFT State Ordinance – as explained under 2 above, comprehensively broadens the range of those obliged to report to a position fully compliant with the FATF 40+9 Recommendations. Related to this, Aruba intends to reduce the number of objective indicators, while placing more emphasis on the suspicion-based subjective indicators. The responsibility for supervising compliance with the reporting requirements by all financial institutions and DNFBPs will rest with the CBA as of January 1, 2011. In the meantime, in anticipation of the new AML/CFT legislation and in line with the comments made to this respect in the MER, the reporting thresholds for casino's were lowered from Afl. 20.000 (approximately USD 11.000) to Afl. 5000 (approximately USD 3000). This came into effect on June 1 2011 through an amendment of the Ministerial Indicator Regulation for Casino's

### **3.4 Special Recommendation IV – STR reporting regarding T F (rated PC)**

Given the shortcomings regarding the scope and effectiveness of Recommendation 13 above, inevitably, compliance with Special Recommendation IV suffered the same problems. Terrorist financing would, in Aruba's opinion, have fallen into the category of criminal behaviour, despite it not being criminalised as a separate and independent offence on the date of the MER. During the discussion of the MER in the October 2009 Plenary, Aruba reported that the MOT had by then received 3 TF-related reports. However, in the absence of a separate and independent offence for terrorist financing, the MER found Aruba only Partially Compliant with regard to Special Recommendation IV.

Pursuant to the objectives of the new AML/CFT State Ordinance more emphasis will be placed on identifying subjective criteria-based unusual transactions which may be related to money laundering, and vitally for this particular recommendation, terrorist financing. The AML/CFT State Ordinance, together with the Handbooks which offer further illustration to the industry as to the means by which they should achieve compliance with the provisions of the AML/CFT State Ordinance, will bring Aruba into full compliance from a legislative framework point of view. These changes to the legal framework together with the new TF-provision in the Penal Code of Aruba, the transfer of the supervisory functions to the CBA, and the increases in resources already underway, will ensure effectiveness.

During the discussion of the MER in October 2009 Aruba reported the receipt by the MOT of 3 TF-related unusual transactions reports. Meanwhile, the following TF-related reports can be reported:

August 2009:

2

September 2009:	3
December 2009:	1
June 2010:	1

It should be noted that all TF-related reports are investigated with priority by the MOT and disseminated to law enforcement authorities.

#### **4. Key Recommendations – Non Compliant**

Aruba was found non compliant in respect of four key recommendations, namely:

Recommendation 23 - Regulation, supervision and monitoring

Special Recommendation I - Implement UN Instruments

Special Recommendation III - Freezing/confiscation of terrorist assets

Special Recommendation V - International Co Operation

##### **4.1 Recommendation 23 -Regulation, supervision and monitoring (rated NC)**

The factors underlying this rating were:-

- i) *scope issues* - narrowness and lack of synchronisation of the groups of financial institutions and DNFBPs covered by the SOIPS and the SORUT together with the fact that the financial services regulatory regime overseen by the CBA did not extend to the securities and investment industry sectors, nor insurance intermediaries, currency exchange offices or the electronic stock exchange.
- ii) *gate-keeping issues* – the legal basis for conducting fit and proper testing and the processes in practice were considered to not adequately prevent criminals or their associates from holding or being beneficial owners of Aruban based credit institutions or insurance companies at the time of licensing or thereafter.
- iii) *lack of effectiveness*.- the division of supervisory authority between the CBA and the MOT is inappropriate and undermines the overall effectiveness, the communication between the CBA and the MOT needs strengthening, and the resources and training of the CBA and the MOT staff were deemed not adequate.

Aruba is undertaking the following actions to remedy these problems:

- i) *Scope issues* – The AML/CFT State Ordinance will extend the range of persons and institutions subject to AML/CFT oversight to all groups as required by the FATF standards, effective January 1, 2011. In addition to the extension of the AML/CFT oversight provisions, a new regulatory state

ordinance entitled “Financial Services (Aruba) State Ordinance” will bring the securities industry into full prudential and conduct of business supervision. The scope of the new Financial Services (Aruba) State Ordinance will include those who arrange, manage, deal or advise in investments; collective investment schemes and persons who are fund services providers (e.g. fund managers, administrators, registrars, distributors, etc); and persons who operate as a stock exchange. This state ordinance, together with associated codes of practice is written in compliance with IOSCO standards, is in draft stage and will shortly commence consultation. The first industry information session was held on September 24, 2010. The state ordinance is scheduled for introduction on July 1 2011.

- ii) *Gate-keeping issues* - In anticipation of the introduction of the AML/CFT State Ordinance the CBA has begun strengthening its policies and procedures significantly with regard to the fit and proper testing of principal persons (shareholders and directors) and of key persons (non-directors or shareholders who nonetheless hold important functions within the particular structure of a licence holder, e.g. Compliance Officer, Chief Operating Officer). As was previously reported, the CBA, through a small change in the legislation on judicial record keeping, now has access via the Prosecutor-General to the judicial documentation register (including criminal records) kept by the Public Prosecutor’s Office. Effective November 1, 2011, the CBA is in the process of adopting a new and far more comprehensive Personal Questionnaire and associated verification through third party checks. This are scheduled for introduction in the end of October 2010. The CBA’s staff is currently being trained in applying these new policies and procedures. Additionally, a public seminar was held on September 22 2010 on this topic. With these new Personal Questionnaires, the CBA will be in a much better position to carry out ongoing fit and proper monitoring of senior management members. Related to this, it should be noted that the regulatory State Ordinances will be amended through the Implementation State Ordinance discussed elsewhere in this report to include a provision enabling the CBA to remove senior management members
  
- iii) *Effectiveness Issues* - The AML/CFT supervisory function for regulated financial institutions was moved to the CBA as from July 1 2010 and the remainder of the supervisory function (in effect the non-regulated financial institutions and DNFBPs) will move to the CBA as per January 1 2011. In the period between January 1 and July 1 2010 when the Financial Services (Aruba) State Ordinance will be introduced, the securities industry and the stock exchange will be supervised for AML/CFT purposes only by the CBA, but after July 1 these will become subject to a full conduct of business and prudential regime.

Aruba submits that the combination of the new AML/CFT State Ordinance (extending scope and moving supervision responsibility to the CBA), the new financial services law addressing the securities industry and the significant increase in fit and proper checks applied to principal persons and key persons within regulated businesses, address the recommendations made in the MER with regard to Recommendation 23.

#### **4.2 Special Recommendation I – Implementation UN Instruments (rated NC)**

Aruba was rated NC in relation to Special Recommendation I due to a lack of proper implementation of the Terrorist Financing Convention (no separate and independent criminalisation of terrorist financing) while there was no implementation of UNSCR 1267 and 1373.

As for the implementation of the Terrorist Financing Convention, please refer to sections 2, 2.2 and 3.4 of this Follow Up Report. As for the implementation of the UNSC Resolutions 1267 and 1373, please refer to section 4.3 below. As a result of this implementation, the CBA has now also been able to upgrade its website and provide far better information to the regulated community and any other member of the business community who may refer to the publicly available website.

In addition, the Penal Procedures Code will be used to introduce the various Mutual Legal Assistance requirements to bring the TF offence into full effect from the point of view of the needs of the international community.

#### **4.3 Special Recommendation III - Freezing/confiscation of terrorist assets (rated NC)**

Aruba was rated NC with regard to Special Recommendation III for not having implemented UNSCR 1267 and 1373, and, although Aruba maintained there were provisions under the Penal Code and the Penal Procedures Code which would enable terrorist financing assets to be seized, the law was not clear and had never been tested. In addition, a national mechanism to designate persons in the context of UNSCR1373 was not present, nor was a comprehensive mechanism in place to examine and give effect to actions initiated under the freezing powers of other jurisdictions.

Aruba took urgent action in relation to the above issues by enacting on June 24 2010 the Sanctions State Decree Combat Terrorism and Terrorist Financing. As already reported in the June 2010 Plenary this State Decree, which is based on the Sanctions State Ordinance 2006, 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 for a domestic freezing mechanism as required by UNSCR 1373 by means of a freezing list to be established by the Minister of Justice and implemented by the Central Bank of Aruba. The Consolidated List has meanwhile been published on the website of the CBA and advisory notices have been sent by the CBA to its supervised institutions. This State Decree is aimed at everyone who holds funds or other assets of persons and organizations mentioned on the freezing lists. This includes not only the service providers covered by the various AML/CFT laws, but also any other person or entity holding funds or other assets of designated persons or organizations. The State Decree also contains provisions on publication, de-listing and the obligation for service providers to report transactions requested with regard to a frozen fund or other asset to the MOT and, in so far the service provider is a supervised financial institution, also to the CBA. Currently, Aruba is in the process of introducing a mechanism for the establishment and maintenance of the domestic list in cooperation with National Security Service and the Public Prosecutor's Office which is expected to be finalized by the end of October 2010.

#### **4.4 Special Recommendation V - International Co Operation (rated NC)**

In line with the "cascading effect" caused by not having a separate and independent terrorist financing offence and by the lack of implementation of the UNSC Resolutions 1267 and 1373 described above at SRI, II, III and IV, together with other limiting conditions and effectiveness issues by which Aruba could extend mutual legal assistance (MLA), resulted in Aruba being rated NC in respect of Special

Recommendation V. In addition to addressing the “cascade effect ” (done through the enactment of a separate and independent terrorist financing offence and the introduction of the Sanctions State Decree Combat Terrorism and Terrorist Financing mentioned above) Aruba was recommended to:

- a) Expand the range of MLA agreements it has, particularly with neighbouring countries;
- b) Give serious considerations to enacting a comprehensive and up to date State Ordinance dealing with MLA matters;
- c) Extending the actions that can be taken on the basis of reciprocity and the conditions on which requests of that nature can be progressed;
- d) A system to capture proper data and statistics regarding MLA requests (made and received);
- e) Introduce provisions to rectify the inability to take action against property held in the name of third parties;
- f) Introduce provisions to rectify the deficiencies regarding seizure assistance and improve arrangements to coordinate action in seizure and confiscation cases.

Giving effect to the actions recommended at b) c) e) and f) requires significant amendment to the Penal Procedures Code and, to a lesser extent, the Penal Code. Amendments of the Penal Procedures Code by Aruba are subject to constitutional procedural constraints set out in the Cooperation Agreement Netherlands Antilles and Aruba, which basically require the Netherlands Antilles and Aruba to have uniform Procedures Codes. Subsequent changes by Aruba requires the cooperation of the Netherlands Antilles and vice-versa. This regime is expected to continue after the dissolution of the Netherlands Antilles per October 10 of this year.

As for MLA agreements, Aruba is not able, due to constitutional constraints set out in the Charter for the Kingdom of the Netherlands, to enter into its own MLA agreements but instead has to negotiate permission first via The Netherlands Ministry of Foreign Affairs. The Prosecutor General of Aruba has appointed a person to compile a report setting out the jurisdictions with which MLA agreements should be achieved. This report will be used as the basis of commencing discussions with the Netherlands Ministry of Foreign Affairs in late September.

As for extending the legal framework, drafting is well advanced with regard to incorporating these matters into the Penal Code. Normally matters relating to MLA would be incorporated into the Penal Procedures Code, but again, Aruba finds itself constrained in this objective in that the Penal Procedures Code is required to be harmonised with the other Procedures Codes followed by (the other members of) the Netherlands Antilles. Thus, whilst the new Penal Code is planned to be enacted on January 1 2011 (and is currently on track), the Penal Procedures Code is delayed due to the political changes in the make up of the Kingdom of the Netherlands. The Penal Procedures Code is likely to be delayed from the originally planned date of 1 July 2010 to 1 July 2011. However, to avoid this delay, the procedures with regard to MLA can be enacted through the vehicle of the new Penal Code which is due for implementation on January 1 2011. In doing so, a significant speeding up of attaining compliance with the relevant recommendation is achieved, which evidences Aruba’s determination to use all available means to comply with the international standards.

As for Point d) the following statistics on outgoing and incoming requests for MLA in 2010 can be submitted, evidencing a system now in place to track such requests:-

Outgoing Requests:

No.	Country or Jurisdiction	Offence(s)	Nature of Assistance
1	Netherlands Antilles	Drug trafficking, money laundering, participation in criminal organization	Documents seizure, search of premises, confiscation of objects
2	Netherlands Antilles	Human trafficking	Interrogation of witnesses
3	Netherlands Antilles	Rape, sexual abuse	Interrogation of witnesses
4	Netherlands Antilles	Computer hacking	Interrogation of witnesses
5	Netherlands Antilles	Human trafficking (No's 5-7 relate to the same case)	Interrogation of witnesses, execution of judicial warrants
6	Netherlands Antilles	Human trafficking	Interrogation of witnesses, execution of judicial warrants
7	Netherlands Antilles	Human trafficking	Interrogation of witnesses, execution of judicial warrants
8	Netherlands	Drug trafficking, participation in a criminal organization	Telephone wiretap, review telephone contacts
9	Netherlands	Money laundering	Interrogation of witnesses, criminal investigation measures
10	Netherlands	Human trafficking	Interrogation of witnesses
11	USA	Drug trafficking, participation in a criminal organization	Documents seizure, participation in interrogation of witnesses
12	Germany	Drug trafficking, money laundering	Interrogation of witnesses

Incoming requests

No.	Country or Jurisdiction	Offence(s)	Nature of Assistance
1	Netherlands Antilles	Human trafficking, fraud by falsification	Arrest of suspect involved
2	Netherlands Antilles	Corruption, fraud, money laundering (No's 2-4 relate to the same case)	Interrogation of suspect involved, acts of investigation, Interrogation of witnesses, seizure of documents
3	Netherlands Antilles	Corruption, fraud, money laundering	Interrogation of suspect involved, acts of investigation, Interrogation of witnesses, seizure of documents
4	Netherlands Antilles	Corruption, fraud, money laundering	Interrogation of suspect involved, acts of investigation, Interrogation of witnesses, seizure of documents
5	Netherlands Antilles	Murder	Interrogation of witnesses,
6	Netherlands	Rape, sexual abuse	Interrogation of witnesses,
7	Netherlands	Fraud by falsification of documents	Seizure bank (account) data and ownership statements
8	Netherlands	Fraud by falsification of statements	Interrogation of suspect involved
9	USA	Drug trafficking (cross-border cocaine transport)	Electronic surveillance, telephone wiretapping
10	USA	Drug trafficking, money laundering, participation in a criminal organization (No's 10 and 11 relate to the same case)	Telephone wiretapping, review telephone contacts, acts of criminal investigation
11	USA	Drug trafficking, money laundering, participation in a criminal organization	Telephone wiretapping, review telephone contacts, acts of criminal investigation
12	USA	Fraud	Seizure of documents and

			objects
13	USA	Drug trafficking, participation in a criminal organization (No's 13 and 14 relate to the same case)	Interrogation of witnesses, delivery of test samples of drugs, interrogation of suspect involved
14	USA	Drug trafficking, participation in a criminal organization	Interrogation of witnesses, delivery of test samples of drugs, interrogation of suspect involved
15	Spain	Destruction of property	Interrogation of witnesses, interrogation of suspect involved
16	Venezuela	Drug trafficking	Seizure of documents, provision of immigration information, acts of criminal investigation
17	Albania	Money laundering	Provision of documents

Aruba notes that request for assistance are normally carried out within 2 to 4 months. Furthermore, the CBA received one information request from the USA.

Aruba recognises that Special Recommendation V is an area where compliance is still some way off but invites the Plenary to recognise that it is beyond Aruba's full control to press ahead of either the harmonisation requirements of the Cooperation Agreement Netherlands Antilles and Aruba and of the Charter for the Kingdom of the Netherlands with regard to entering into MLA agreements and introducing changes in the Penal Procedures Code. As explained above, the matter is however captured and in hand.

## **5 Key Recommendations Rated Partially Compliant (PC)**

Aruba was rated Partially Compliant on five Key recommendations, namely:

R3 – confiscation and Provisional Measures

R26 – FIU

R35 – Conventions

R36 – Mutual Legal Assistance

R40 – Other forms of Co Operation.

As will be appreciated, the scope issues of both the financial services regulatory regime and coverage of the SOIPS and SORUT provisions for service providers, together with the lack of a stand alone offence regarding terrorist financing, plus the lack of implementation of UNSC Resolutions 1267 and 1373, all as

previously identified continued to be the basis of the downgrading of Aruba's position with regard to these Recommendations also.

### **5.1 Recommendation 3 - Confiscation and Provisional Measures ( rated PC)**

Aruba was rated partially compliant with regard to Recommendation 3 because its powers to confiscate or take provisional measures in relation to terrorist financing were limited to circumstances where the criminal activity also amounted to a terrorist offence, there were no clear provisions to allow the confiscation of property derived indirectly from the proceeds of crime such as income and other benefits; there was an inability to take action against property held in the name of third parties and there was a lack of evidence of effective implementation of the powers to confiscate/take provisional measures. The MER therefore recommended that:

- a) Aruba should introduce a separate and independent TF offence;
- b) Aruba should consider amending its law to clearly provide that property derived indirectly from the proceeds of crime, such as income and other benefits are subject to confiscation;
- c) Aruba should amend its Penal Procedures Code to allow special confiscation of property held in the name of third parties.

Whilst a) has been addressed in the manner explained in sections 2, 2.2 and 3.4, implementing the recommendations at b) and c) above cannot be achieved without going through the existing harmonisation procedures involved in changing the Penal Procedures Code as explained above. Accordingly, as with the explanation under SRV, although drafting is well advanced, enactment of the new provisions is not likely to take place until July 2011.

As stated in regard to Special Recommendation V, Aruba recognises that Recommendation 3 is also an area where compliance with two of the three recommended actions, is still some way off but invites the Plenary to recognise that it is beyond Aruba's full control to press ahead of either the harmonisation requirements of the Cooperation Agreement Netherlands Antilles and Aruba and of the Charter for the Kingdom of the Netherlands with regard to entering into MLA agreements and introducing changes in the Penal Procedures Code. As explained above, the matter is however captured and in hand.

### **5.2 Recommendation 26 - FIU (rated PC)**

Aruba was rated PC with regard to the function of its FIU on the basis of a possible lack of independence, lack of published typologies, lack of ID data required within reports submitted, lack of resources, insufficient staff training with regard to terrorist finance, and a focus on cash and wire based transactions which the MER concluded were less important than more complex ML/TF schemes and methods. Together the MER found these points impacted the effectiveness of the FIU. To improve the effectiveness of the FIU, the MER recommended the following actions:

- a) Aruba should consider revisiting the *composition* of the Advisory Committee of the FIU in order to ensure total independence;

- b) The FIU should be provided with *additional staff*;
- c) The FIU should consider developing an *online system* for the reception of all unusual transactions reports, covering all sectors subject to reporting obligations;
- c) The FIU should consider developing a mechanism which would allow it to *evaluate the effectiveness* of the AML/CFT regime, notably the added value of intelligence reports to investigations and prosecutions;
- e) The FIU should consider establishing a permanent feedback mechanism which would allow it to evaluate the needs of the police but also which would force the *police to justify their follow up actions*, vis-a-vis, information disclosed.

Aruba has taken significant and decisive action to implement these various recommendations some which relate to working practices and some which require legislative amendments, as follows:

*Composition issues* – The AML/CFT State Ordinance will amend the composition of the Advisory Committee by ending the participation of private sector representatives. Related to this, the tasks of the Advisory Committee will no longer include advising on budget issues of the FIU. This will come into effect on January 1, 2011.

*Additional Staff* – The FIU staff recruitment is underway but it is accepted that it has been held back by the Government approval, budget approval and security clearances required. However, two offers have now been made and final procedures are being completed to recruit the persons involved. In addition to the two additional staff recruited the entire supervisory function will have been transferred to the CBA by January 1 2011 pursuant the supervisory set-up of the AML/CFT State Ordinance. The supervision of regulated financial institutions already moved and the balance of persons subject to reporting obligations under the AML/CFT State Ordinance will transfer to CBA oversight as of January 1, 2011. Accordingly, Aruba submits that the increase of two FIU staff, given the very significant reduction in remit, is sufficient to adequately give effect to the other tasks identified in the recommended actions for Recommendation 26.

*Online system* – Following a significant investment of financial and human resources, on-line submission of data is now in operation and training has been delivered to banks, further roll out of training in the new system will be extended to money services businesses during October 2010.

*Evaluate the effectiveness* – Monthly meetings have been established with a new group formed entitled the “Finance Group” made up of representatives of the FIU, Prosecutor, Police, and Customs. Part of the formal remit of the group is to look into the effectiveness of the AML/CFT regime and in particular how the value of intelligence can be increased.

*Police follow up actions* – This recommendation was considered so important that it should be extended to all agencies with whom the FIU interacts, either in terms of sending intelligence reports or better addressing the needs of those agencies. Accordingly a bi-monthly meeting forum has been established.

Aruba submits four of these recommendations are fully implemented with the fifth which requires legislative changes to alter the composition of the Advisory Board, to be implemented on January 1 2011 as part of the AML/CFT State Ordinance.

### **5.3 Recommendation 35 - Conventions (rated PC)**

Aruba was rated partially compliant with Recommendation 35 due to a lack of proper implementation of the Terrorist Financing Convention in relation to terrorist financing, no implementation of UNSCR 1267 and 1373 and several failings regarding implementation of the Vienna and Palermo Conventions. The MER recommended two actions, namely to:

- a) rectify the shortcomings in the TF offence and freezing provisions in relation to terrorist assets, together with introducing a comprehensive package of measures to implement the requirements of the Terrorist Financing Convention, UNSCR 1267 and 1373
- b) take action to rectify the deficiencies with respect to the ML offence.

As previously explained, a stand alone offence relating to the financing of terrorism has been in place since March 4, 2010, whilst UNSCR 1267 and 1373 have been implemented since June 24, 2010 through the Sanctions State Decree Combat Terrorism and Terrorist Financing. In addition, matters to do with MLA will be incorporated into the Penal Code, thereby avoiding the procedural delays related to the Penal Procedures Code.

Regarding the deficiencies noted with respect to the ML offence, Aruba notes that these will be addressed in the new Penal Code which is now at parliament and is planned for enactment on January 1, 2011.

Accordingly Aruba has implemented two of the three actions associated with Recommendation 35 and the third is in hand and is scheduled for implementation on January 1, 2011.

### **5.4 Recommendation 36 - Mutual Legal Assistance (rated PC)**

Aruba was rated PC with regard to Recommendation 36 due to:

- a) Having only 5 bilateral MLA agreements in place, one of which was with a regional country;
- b) MLA provisions in Aruba require dual criminality and as there was no TF offence, assistance would be difficult under certain circumstances;
- c) Certain predicate offences do not expressly exist in Aruba (including counterfeiting, piracy of products, insider dealing, market manipulation, environmental crime and fraud) in addition to the full range of ancillary offences were not provided for (e.g. conspiracy to commit TF and association with TF);

- d) Threshold tests for non MLA agreement countries which were considered unreasonable and disproportionate;
- e) Deficiencies in relation to provisions to assist with seizure and confiscation of illegal proceeds;
- f) A lack of data on MLA requests was considered to mean that no track record in dealing with MLA requests in a timely and effective manner could be produced.

As for letter a, please refer to sections 2. 2.2, 3.4, 4.5, 4.1 and 4.2 (Special Recommendation V) of this Follow Up Report. In an effort to go some way to avoid the effect of the constraints noted therein, Aruba will place the legislation regarding Mutual Legal Agreements into the new Penal Code, due to be enacted on January 1, 2010, to avoid the delays of the Penal Procedures Code. With regard to the rest of the points outlined above, Aruba notes that b) is rectified as there is now a separate and independent TF offence, will c) and d) will be addressed in the new Penal Code of Aruba. Point e) cannot be rectified until the enactment of the Penal Procedures Code which is slower than desired because of the constraints outlined above. Finally, as for f), a statistics system has now been agreed and is being used.

### **5.5 Recommendation 40 - Other Forms of Cooperation (rated PC)**

Aruba was rated PC in respect of Recommendation 40 partly because neither the CBA nor MOT could show statistics to demonstrate that information exchange with foreign law enforcement authorities is effective, and partly due to specific legal limitations, namely:-

#### **CBA**

- a) Limitations arising from the narrow scope of the regulatory net,
- b) Limitations in the preventative measures and safeguards/controls that were considered too broadly defined to rely upon,
- c) Provisions enabling the CBA to exchange information with other banking and insurance supervisors is limited to that information already in its possession – the CBA being unable to conduct inquiries or investigations on behalf of a foreign counterparty,
- d) Although the CBA does supervise TCSPs from a regulatory point of view, they are not subject to reporting obligations under the SOIPS and SORUT.

#### **MOT as supervisory body**

- a) The FIU cannot cooperate and exchange information with its foreign counterparts

#### **MOT as body for receipt, analysis and dissemination of suspicious transaction reports**

- a) The MOT is limited by the small number of MOUs entered into,

- b) The MOT may only exchange information that is already in its possession, it cannot conduct inquiries on behalf of foreign counterparties,
- c) The MOT cannot search other databases (directly or indirectly) to answer the request of a foreign FIU.

The actions recommended in the MER to remedy these deficiencies centred on extending the *scope* of the regulatory and reporting regimes to meet the international standard set by the FATF, to review the *architecture of the supervisory regime* and in particular the division of responsibilities between the MOT and CBA, enable the CBA and MOT to conduct *enquiries on behalf of foreign counterparties*, to remove the limitation of both CBA and MOT to exchanging only information within their possession; *permit the MOT to cooperate with any other Egmont member* on the basis of the Egmont MMOU without the need for individual MOUs to have been agreed; *introduce clear channels and mechanisms* to enable swift cooperation.

*Scope* – The AML/CFT State Ordinance will successfully extend the scope of persons supervised for AML/CFT to the range required by the FATF standards. This will be implemented on January 1, 2011. In addition, the Financial Services (Aruba) State Ordinance will bring the securities industry, including stock exchanges, into regulation.

*Architecture of the Supervision Regime* – This has been reviewed and a decision was made to shift all AML/CFT supervisory responsibility to the CBA in two steps. The first step, effected on July 1, 2010, moved the AML/CFT supervision of regulated financial services business, and the supervision of the balance of all other financial institutions and DNFBPs, will be transferred with the introduction of the AML/CFT State Ordinance as per January 1, 2011.

*Enquiries on behalf of foreign counterparties* – Proper cooperation mechanisms will be incorporated into the AML/CFT State Ordinance in respect of the MOT's role as an FIU, and similar full powers will be accorded to the CBA as AML/CFT supervisor, in addition a range of consequential amendments to the regulatory laws will be made at the time of the introduction of the State Ordinance for AML/CFT to ensure that the CBA has adequate powers to give full and timely cooperation to other financial services regulators.

*Permit the MOT to cooperate with any other Egmont member* – The AML/CFT State Ordinance will adopt this provision by dropping the current SORUT requirement of a prior MOU for the exchange of information between the MOT and Egmont member FIUs.

*Introduce clear channels and mechanisms* – As previously set out a far better framework for national cooperation/coordination of agencies is now in place, Aruba also believes that placing all AML/CFT supervision in the hands of the CBA will greatly improve timely and effective cooperation.

## **6 Other (Non Key or Core) Recommendations rated NC**

Of the 20 other Recommendations rated non compliant in the Evaluation, R6, R7, R8, R9, R11, R12, R15, R16, R18, R21, half of R29, R33, SRVI, and SRVIII (eg 13.5) will all be brought into compliance by the AML/CFT State Ordinance which will be enacted as of the 1<sup>st</sup> January 2011.

In addition to the measures addressed by this AML/CFT State Ordinance, the sanctions provisions (Recommendation 17) and supervisory powers (remainder of Recommendation 29) will also be improved via consequential amendment to the regulatory laws taken through Parliament at the time of the introduction of the new AML/CFT State Ordinance, and the introduction of the new Financial Services (Aruba) State Ordinance which will bring the securities industry into full regulation.

An new State Decree regarding wire transfer rules which is being drafted on the basis of the AML/CFT State Ordinance will significantly enhance Wire Transfer rules in order to bring Aruba into compliance with the requirements of Special Recommendation VII, whilst enhancements to the cross border oversight regime (Special Recommendation IX) is also in hand and due for enactment by the new year. The position regarding improving resources and statistics recording is also underway.

In closing, particular mention is worth making of the efforts of Customs with regard to implementing the recommendations at Special Recommendation IX. Physical passenger control has been greatly enhanced at all ports of entry with transit passengers successfully segregated from arrivals, additionally much stronger presence of Customs is apparent at entry and exit of the country's major ports. Following the extension effective July 1 of this year of the cross border movements of cash definitions to include negotiable instruments, 112 reports were received and nine arrests have been made. In addition, closer liaison with US Customs have been established (US Customs have a physical presence in Aruba in respect of passengers taking direct flights into the US). Of the 9 arrests, 7 people were Chinese (carrying 2x US citizenships and 5xDutch), 1x Venezuelan and 1xUS national. This represents significant upgrading in the law and operational practise of cross border controls in place in Aruba.

## **7 Other issues**

As mentioned above, a separate state ordinance will be introduced for the purpose of the implementation of the AML/CFT State Ordinance. This implementation state ordinance, which is also being drafted, will contain the transitional provisions for the current service providers, and will modify the existing supervisory legislation in so far this is necessary for the implementation of the AML/CFT State Ordinance. Special mention is made of the regulatory state ordinances for the financial institutions currently being supervised by the CBA on the basis of the State Ordinance Supervision of the Credit System, the State Ordinance Supervision Insurance Business and the State Ordinance Supervision Money Transfer Companies. The provisions for fit and proper testing will be strengthened, the administrative sanctions amounts increased to the same level as the AML/CFT State Ordinance and provisions introduced to ensure general integrity awareness and management of which the compliance with the provisions set in or by virtue of the AML/CFT State Ordinance will be an integral part. Related to the latter, the regulatory state ordinances will be modified in order to allow for the application of the sanctions contained in these state ordinances (e.g. license revocation) in case of non compliance with the AML/CFT State Ordinance.

## **8 Summary**

Aruba submits that considerable progress has been made and will continue to be made in meeting the standards set down by the FATF in the 40+9 Recommendations. Full political support and executive priority is given to rectifying the shortfalls identified. The Plenary is requested to consider the next follow up from Aruba to be set for June 2011. It is most sincerely hoped that the international community will note the commitment evidenced to date and be satisfied sufficient progress with regard to prioritising key and core recommendations has been demonstrated.