FINAL
June 25, 2012


CARIBBEAN FINANCIAL
ACTION TASK FORCE

# Mutual Evaluation Report

## Anti-Money Laundering and Combating the Financing of Terrorism

# Curaçao

June 25, 2012

Curaçao is a member of the CFATF. This evaluation was conducted by the CFATF and was adopted as a 3rd mutual evaluation by its Council of Ministers on **TBD**.

**TABLE OF CONTENTS**

# PREFACE – information and methodology used for the evaluation of Curacao

1. The Evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Curaçao was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004[1]. The evaluation was based on the laws, regulations and other materials supplied by Curaçao, and information obtained by the Evaluation Team during its on-site visit to Curaçao from August 22nd to September 2nd 2011, and subsequently. During the on-site visit the Evaluation Team met with officials and representatives of relevant Curaçao government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

2. Curaçao had its first CFATF Mutual Evaluation in 1999 as part of the Netherlands Antilles and the second round Mutual Evaluation in October-November 2002. This Report is the result of the third Round Mutual Evaluation of Curaçao as conducted in the period stated herein above. The Examination Team consisted of Mr. Robin Sykes, Legal expert (Jamaica), Mrs. Cheryl Greenidge, Financial Expert (Barbados), Ms. Maxine Hypolite-Bones, Financial Expert, (Trinidad and Tobago) and Mr. Martin Tabi, Law Enforcement Expert, (Canada). The Team was led by Ms. Dawne Spicer, Deputy Executive Director, CFATF Secretariat. Ms. Alejandra Quevedo, Legal Advisor, CFATF Secretariat attended as an observer. The Experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems. The Team would like to express its gratitude to the Government of Curaçao.

3. This Report provides a summary of the AML/CFT measures in place in Curaçao as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). It also sets out Curaçao's levels of compliance with the FATF 40+9 Recommendations (see Table 1).

[1] As updated February 2008.

# Executive Summary

## Background Information

1. This Report provides a summary of the anti-money laundering (AML) and combating the financing of terrorism (CFT) measures in place in Curaçao during the period August 22 and September 2, 2011(the date of the on-site visit) and immediately thereafter. The Report describes and analyses those measures and provides recommendations on how certain aspects of Curaçao's AML/CFT system can be strengthened. It also sets out Curaçao's level of compliance with the Financial Action Task Force (FATF) 40 + 9 Recommendations (See. Table 1 '*Ratings of Compliance with the FATF Recommendations'*).

## Key Findings

- Curaçao has a relatively small open island economy, with tourism as its main economic pillar. The Island's geographical location, tourism, relative easy logistical accessibility, high mobility of goods and services, pose threats in terms of illegal activities like drug trafficking and money laundering (ML). While the amount of money related to ML is difficult to quantify, most of the ML activities are related to drug trafficking. With regard to terrorist financing (TF), the Curaçao Authorities indicated that Jihad and /or the financing of Jihad related terrorism have not been observed in Curaçao. Although, there has been potential links made to participation of the FARC in drug trafficking via the Island, no concrete activities have been detected.

- There are three forms of ML (intentional, culpable and habitual), which are criminalized in the Penal Code. However, the possession of materials or substances in Tables I and II of the Vienna Convention is not criminalized. Offences for preparation and TF do not meet the requirements of the Terrorist Financing Convention. With regard to the operation of the FIU (MOT), Articles 4, 16 and 22 of the NORUT contain provisions that risk interference in the operation of the Unit and the protection of information.

- The Central Bank of Curaçao and Sint Maarten is responsible for the regulation and supervision of the financial services sector in Curaçao; due to the nature of their activities, pension funds do not fall within the AML/CFT regime. While the Central Bank has powers of enforcement (i.e. penalties, orders administrative fines and withdrawal of licenses) for non-compliance, it was found that the Central Bank has only issued instructions to financial institutions and so there is insufficient evidence in support of a laddered approach to sanctioning or that the sanctions are effective proportionate and dissuasive.

- DNFBPs are supervised by the Central Bank, the FIU (MOT) and the Gaming Control Board (GCB). With regard to the DNFBP sector, the Evaluation Team found that the threshold for identification requirements for casinos is too high; that there are no legislative requirements for CDD when carrying out occasional transactions under circumstances covered by the Interpretative Note to SR. VI. There is also no legislative requirement for service providers to conduct ongoing due diligence on the business relationship and the NOIS permits full CDD exemption rather than reduced or simplified CDD for low risk situations.

- The non-profit sector in Curaçao consists of two types of entities that meet the FATF definition of NPOs: foundations and associations. Although, there is no specific

supervisory framework for the NPO sector as defined by the FATF, the monitoring of the non-profit sector in Curaçao occurs in various ways; including registration with the Chamber of Commerce. However, there has been no recent review of this sector with regard to vulnerabilities for FT and there is no supervisory programme in place to ensure the NPO sector's compliance with the AML/CFT legal framework.

- In Curaçao, national cooperation and coordination takes place through various mechanisms such as the CIWG and periodic meetings between Customs, Tax Office and the PPO or between the PPO and the FIU (MOT). There is an insufficient amount of officers in the PPO assigned to handle mutual legal assistance requests. With regard to resources, there is a need for additional human resources in both the FIU (MOT) and the BFO.

**Legal Systems and Related Institutional Measures**

2. ML offences pursuant to Articles 435a to 435c of the Penal Code are in accordance with Article 3 paragraph 1(b) of the Vienna Convention. With regard to Article 6 of the Palermo Convention, the definitions contained in the Penal Code do substantially meet the requirements of the Convention. The Penal Code is very clear in its application to residents of Curaçao who have committed offences abroad and to the treatment of offenders where the proceedings are being transferred for trial in Curaçao based on a Treaty with the State in which the offence was committed. However it is not clear that the laws of Curaçao allow for the prosecution of all serious offences committed abroad which have counterpart offences in Curaçao. Under the Penal Code a person does not have to be convicted of a predicate offence as a prerequisite for prosecuting a ML case. This position has been supported by case law.

3. All of the designated categories of offences are predicates for ML and there is no threshold approach. Article 4 of the Penal Code provides that the laws of Curaçao will apply to any person who commits offences listed in that section (including terrorist offences) outside of Curaçao. The Penal Code also makes provision for ancillary offences; however the ancillary crime of preparation is only applicable to offences which carry a penalty in excess of eight (8) years. Accordingly, participation will not apply to culpable ML since it only carries a penalty of four (4) years.

4. With regard to SR. II, the provisions in the law related to TF do not meet the requirements of SR II as a result of several deficiencies arising out of the definition of certain terms and the Examiners' inability to determine whether these terms included the specific elements of the offence of TF and other related terrorist activities. (See. Paragraph 282 of the MER). There are provision in the Penal Code and the Penal Procedures Code that deal with freezing, seizure and confiscation of property, including the proceeds of crime. These measures include the seizure of items such as letters and packages, seizure of items related to specific offences and the seizure of items related to a criminal financial investigation. With regard to confiscation, there are two key measures the first of which entails the confiscation of assets owned by the convicted person and the second which relates to the confiscation of all the items that are illegally possessed by the convicted person. Curaçao has a strong regime for confiscation which provides for the rights of third parties and has frozen and seized assets relating to ML and predicate offences. There have however been no cases of freezing, seizing or confiscation of assets in relation to TF or criminal proceedings. Since the statistics included data for other Islands, the Examiners had difficulty in assessing the true effectiveness of Curaçao's confiscation regime.

5. The National Decree of September 28 2010 seeks to implement UNSCRs 1267, 1333, 1363, 1373, 1390 and 1526. To date, there have been no cases where the assets of either locally designated terrorists or persons on the UN listings relating to the Taliban, Al Qaida or Osama bin Laden has been identified or frozen. The Examination Team found that Curaçao's regime

for freezing assets of terrorist entities was broad enough to cover the categories of property classified as subject to confiscation in R.3. However, the procedures for de-listing of persons and unfreezing of assets are not publically known, there is lack of guidance to non-financial entities and individuals and there is no structure for monitoring compliance outside of the financial sector.

6. The FIU (MOT) was established as an administrative FIU in 1997 pursuant to the NORUT and it falls under the Minister of Finance. It has been an active member of the Egmont Group since 1998. Executed and intended unusual transaction reports (UTRs) are made either electronically or in hard copy to the FIU (MOT) by both financial institutions and DNFBPs. The analysis of the UTRs is advanced through a system of 'alert' which is used to identify and prioritize the need for further analysis and also through other information such as newspaper articles, local and international requests for information and FATF and Egmont typologies. The Examiners noted however that based on this process some reported UTRs will never be analyzed by the FIU (MOT) and concluded that this would have an effect on effectiveness.

7. The FIU (MOT) provides a substantial amount of guidance to reporting entities through training sessions and public media interviews. There are however insufficient trends and typologies in the FIU (MOTs) annual report. As a supervisor for DNFBPs, the FIU (MOT) has provided training to these various sectors. With regard to access to information, the FIU (MOT) has direct and indirect access to databases of law enforcement and other agencies such as the Civil Registry.

8. With regard to the independence and autonomy of the FIU (MOT), an issue arises with regard to Article 4 of the NORUT, which provides that the Minister of Finance is the manager of the database and can draft regulations with regard to the database and is responsible for its proper functioning. The Minister has delegated his powers with regard to the database to the Head FIU (MOT). However, there is no disposition in the legislation that prevents the Minister of Finance from exercising his powers and directly managing the database. In practice however, the Head of FIU (MOT) has always managed the database and the Minister of Finance has never interfered in the operational activities of the FIU (MOT). The appointment, suspension or dismissal of the Head and other personnel of the FIU (MOT) can only occur after a hearing by the Guidance Committee, with the recommendation of the Minster of Finance in consultation with the Minister of Justice. The Examination Team found that the current composition of the Guidance Committee could lead to undue influence or interference.

9. A security test conducted by the FIU (MOT) with regard to the security of its IT system concluded that the system was well safeguarded from hacking. The Examiners were however concerned with the provisions of Articles 4, 16 and 22 of the NORUT, which present a risk to the proper protection of information since a person can be informed about the personal data contained on them in the database. Effectiveness issues with regard to the FIU (MOT) as it pertained to the lack of sufficient human resources; the approval process for cases and the use of a letter on a case by case basis to obtain access to law enforcement databases were noted.

10. All AML/CFT investigations are conducted under the direction of the PPO. The BFO and RST are the two main units that conduct ML investigations. The UFCB, which is established under the CPD is responsible for receiving all disclosures from the FIU (MOT) for all law enforcement authorities on behalf of the PPO. The UFCB is however facing important issues with regard to its structure, resources and operations. With regard to FT, Authorities have reported that they have never investigated such a case.

11. There are multiple powers available to the Authorities that assist in the investigation and prosecution of ML and TF offences. Upcoming reforms to the Penal Code are expected to improve the investigative tools available to the police. During the on-site, law enforcement noted that obtaining a Court Order to compel production of documents and information from

reporting entities or the search of persons or premises was challenging. The Examiners were of the view that this issue could affect effectiveness.

12. Curaçao Customs is currently using a disclosure system for monitoring both incoming and outgoing cross-border transportation of currency. The new declaration cards no longer request a cross-border transportation declaration and so the requirement to make a truthful disclosure is not clearly identified at the border. However, the Authorities were working on additional solutions to raise public awareness. There is also no power to stop or restrain currency where there is a suspicion of ML or FT and no indication that entities or individuals associated with terrorist activities listed by the UN are being monitored. Based on an agreement with the police, all cases concerning the transport of money are dealt with by the BFO and completed forms are sent to the FIU (MOT).

**Preventative Measures – Financial Institutions**

13. The AML/CFT framework for the financial sector of Curaçao constitutes executive decrees, regulations, and provisions and guidelines (P&Gs). The preventative measures contained in the P&Gs (CDD, reporting and record keeping measures) must be implemented by all supervised institutions. The NORUT and the NOIS contain provisions for the Central Bank to conduct examinations and test AML/CFT compliance. The laws also cover the sharing of information with other competent authorities.

14. With regard to CDD, pursuant to the NOIS the service provider is obliged to establish the identity of the client and the ultimate interested party using reliable and independent sources. Additionally, verification of the identity of non-resident clients must be obtained under the relevant P&Gs. A review of the CDD verification measures forms an integral part of a Central Bank onsite examination. There are however no legislative requirements for CDD when carrying out occasional wire transfers in circumstances covered by the Interpretative Note to SR.VII or for service providers to conduct on-going due diligence. The NOIS also allows for full exemption from CDD rather than reduced CDD and the sector specific P&Gs do not conform to the NOIS as it relates to the timing of verification for non-resident clients. There are also issues with regard to non-life activities reportable under the NORUT and CDD under the NOIS, and the failure of the P&Gs for CI to limit simplified CDD to circumstances where Curaçao is satisfied they are in compliance with and effectively implementing the FATF Recommendations.

15. With regard to PEPs, the relevant P&Gs provide that financial institutions should conduct enhanced due diligence for high risk customers; including PEPs, their families and associates. Financial institutions must make reasonable efforts to ascertain that the source of wealth or income is not from illegal activities. The P&G for CI (credit institutions) contain specific provisions on correspondent banking activities such as fully understanding and documenting the nature of the respondent's banks management and business activities. However the P&G for CI does not explicitly require that credit institutions assess the respondent's AML/CFT controls or ascertain whether they are adequate and effective.

16. There are complete measures in place to deal with the misuse of technological developments in ML or FT schemes and the relevant P&Gs for CI, and IC & IB require financial institutions to have policies and procedures in place that address the risks associated with non face-to-face business relationships or transactions. Requirements for third parties and introduced businesses are also fully dealt with under the P&Gs for CI and IC & IB.

17. There is no secrecy law in place in Curaçao that inhibits the implementation of the FATF Recommendations by financial institutions. Pursuant to various national ordinances[2], financial institutions are required to provide the Central Bank with information to enable it to exercise its supervisory function. The Central Bank cannot however exchange information with the supervisory arm of the FIU (MOT) or GCB. Further, the FIU (MOT) in conducting its supervisory function cannot disclose information with domestic supervisory counterparts and the GCB cannot disclose information to national or international supervisors.

18. With regard to record keeping, the NOIS stipulates that service providers are under an obligation to keep relevant data (name, address, type of account etc.) in an accessible manner until five (5) years after the termination of the agreement or until five (5) years after the performance of the service. Additionally, the P&Gs specify that financial institutions must ensure compliance with the record keeping requirements contained in the relevant ML and FT legislation. There is however no explicit requirement in law or regulation for IC & IB and MTCs to maintain business correspondence for third parties for the requisite period. Additionally, there is no explicit requirement in law or regulation that requires financial institutions to ensure that business correspondence is available on a timely basis to domestic competent authorities.

19. With regard to compliance with SR. VII a general instruction is given to credit institutions requiring them to observe the latest Interpretative Note for SR. VII and apply the relevant parts. There are no explicit mandatory provisions in the P&Gs regarding requirements on beneficiary institutions to apply risk based procedures when dealing with wire transfers that are not accompanied by complete originator information. Additionally, the lack of complete originator information is not a subjective indicator for assessing whether a wire transfer is suspicious and should be reported to the FIU (MOT).

20. According to the P&Gs for CI, IC & IB and for MTC, financial institutions are required to pay special attention to all complex, unusual large transactions and all unusual patterns of transactions, that have no apparent economic or visible lawful purpose and to put those findings in writing. However, there is no requirement for those findings to be kept for at least five (5) years or that they be made available to the auditors or other competent authorities. Financial institutions must also pay special attention to business relationships or transactions from countries that do not or insufficiently apply the FATF Recommendations. The Examination Team however found that there were insufficient instructions issued regarding counter-measures where countries continue to insufficiently apply the FATF Recs.

21. With regard to the reporting of suspicious transactions, UTRs are submitted to the FIU (MOT) based on either objective or subjective indicators. The Evaluation Team found effectiveness issues with regard to reporting suspicious reports due to a heavy reliance on objective reports, the prescriptive list of indicators and insufficient flexibility for reporting entities to identify suspicion of ML or FT.

22. There are adequate internal controls, compliance functions and audit to test compliance for financial institutions in Curaçao. Fully adequate AML/CFT provisions are also available and applicable to foreign branches and subsidiaries. Also as a result of licensing requirements, shell banks cannot be established in Curaçao.

23. The Central Bank is an independent supervisory authority for the financial sector which comprises credit institutions, insurance companies, pension funds, insurance intermediaries, investment institutions, administrators, company (trust) service providers and securities

[2] Article 12 of the NOSBCI, Article 28 of the NOSII, Article 18 of the NOIB, Article 78 of the RFETCSM, Article 36 of the NOSIIA, Article 36 of the NOSIIA, Article 22h paragraph 4 of the NORUT and Article 11 paragraph 4 of the NOIS

exchanges. Financial resources are budgeted annually to hire and train staff in the Central Bank's supervision departments. The Examiners concluded that the limited number of AML onsite inspections did into definitively demonstrate adequacy of the supervisory powers. Based on the NORUT and NOIS, the Central Bank has the authority to impose sanctions on financial institutions for non-compliance. However, the range of sanctions available to the Central Bank under the various Ordinances is uneven and effectiveness could not be determined due to the limited use of the sanctioning power..

24. Money transfer companies (MTCs) operate in Curaçao pursuant to the legal provisions of the RFETCSM. A foreign exchange license is necessary to conduct the business of a MTC. There is however no legislative requirements for CDD when carrying out occasional wire transfers or for service providers to conduct ongoing due diligence on business relationships. There are also issues with regard to a specified subjective indicator for identification problems for MTCs in the NORUT; the timing of verification of non-resident clients and the non-maintenance of a current listing of agents by MTCs.

**Preventative Measures – Designated Non-Financial Businesses and Professions**

25. In addition to executive decrees and regulations, the legal framework for DNFBPs in Curaçao also includes specific P&Gs (AML/CFT directives) for DNFPBs supervised by the Central Bank and the FIU (MOT). There are also national ordinances for the supervision of investment institutions and company (trust) service providers. An Island ordinance and the Minimum Internal Control Standards (MICs) deals with the casino sector. The casino sector is supervised by the Gaming Control Board. Both the guidelines issued by the FIU (MOT) and the MICS issued by the GCB for casinos are not considered 'other enforceable means', which substantially affected the level of compliance with R.6, 8 and 9 by DNFBPs.

26. At the time of the Evaluation, a pilot programme of test audits was being completed by the FIU (MOT) towards commencement of a supervisory regime to monitor compliance. As such, there was no effective supervisory regime in place to monitor compliance of the DNFBPs with AML/CFT obligations under the authority of the FIU (MOT). The provision of services dealing with the organization of contributions for the creation, operation or management of companies and the provision of nominee services and internet casinos are not subject to the AML/CFT provisions of the NOIS and NORUT.

27. With regard to R. 16, the Examiners found that there was ineffective reporting of UTRs by DNFBPs. Additionally, the deficiencies identified for R. 13 & 14 and R. 15 & 21 were also applicable to DNFBPs. With regard to the supervision and monitoring of DNFBPs, there is no supervision of internet casinos for compliance with AML/CFT obligations; the FIU (MOT) lacks resources to effectively supervise DNFBPs subject to AML/CFT regulations and there are no P&Gs for internet casinos. Additionally, the deficiencies identified for R. 17 and 29 are also applicable to DNFBPs supervised by the Central Bank.

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

28. With regard to legal persons, Curacao has a system of central registration in place, which is regulated through the Commercial Register Act (CRA). According to Articles 3 and 4 of the CRA all businesses and legal entities, excluding public law entities, established in Curacao must register with the Commercial Register. The information in the Commercial Register is available to the general public and is easy to access on line. According to the NOIS (Article 2), the supervisory authority may issue regulations as to the identification of clients and beneficial owners. The Examination Team found that there is no system in place to register information about the ultimate beneficial owner (UBO) and there is no procedure to have the UBO available to competent authorities in a timely manner. There are punitive provisions under the CRA; however the Chamber of Commerce has no administrative sanctioning power. Local persons

are not permitted to hold bearer shares. For international companies there is an obligation to take bearer securities into safe custody, however there are still some bearer shares in circulation.

29. Pursuant to the NOIS and the NORUT, the Central Bank is entrusted with the supervision of company (trust) service providers and has the obligation, among other things to verify the compliance by the TSP with the requirements of identification and verification of the UBO. The Examiners concluded that not all competent authorities have information on UBOs in a timely fashion.

30. Both local and international NPOs are obliged to register and file any registration information changes with the Registry of the Chamber of Commerce. The focus on the NPO sector has been minimal so that there is no outreach programme or AML/CFT training in place for the NPO sector. Additionally, no training has been given to the financial institutions with regard to the risks of the NPO sector. NPOs do not have an obligation to keep financial information on transactions or to submit statements to the Chamber or Commerce or any other relevant authority.

**National and International Cooperation**

31. The CIWG was established by law in 1990. Accordingly, the list of representatives to the CIWG is prescribed by National Ordinance; however there is some flexibility with regard to adding representatives. The PPO represents law enforcement and so the FIU (MOT), the BFO, RST and UFCB are not members of the CIWG. This was noted as a deficiency since it was felt that there should be some representation of operational competent authorities on the CIWG. There is also no national committee or working group for competent authorities only.

32. The Vienna and Palermo Conventions and the Convention for the Suppression of Financing of Terrorism are in force for Curaçao. With regard to measures for dealing with UNSCRs 1267 and 1373, Curaçao has an administrative freezing of assets framework in place. Where the entity is designated under the UN Listing, the freezing is automatic. Under the Protocols for the locally designated terrorists, there is a process of information gathering and investigation for the PPO to mount a freezing action under the criminal law. Given the requirements for investigations to ground such an action, this form of freezing under the criminal law is not "*without delay*". There is also no provision in law to deal with paragraph 4(a) of UNSCR 1267. Additionally, TF is not criminalized in accordance with the TF Convention which is a hindrance to mutual legal assistance. There needs to be full implementation of the Vienna and Palermo Conventions.

33. With regard to extradition, there is no requirement to commence prosecution against a national of Curacao (who is immune from extradition) where there is a request from a foreign state or where it pertains to FT matters. It appears that most competent authorities are able to cooperate with their foreign counterparts at operational, policy and administrative levels. Although law enforcement authorities have the authority to exchange information with foreign counterparts, there is no clear mechanism in place allowing for such exchange of information with foreign counterparts to take place. The same is applicable to the sharing of information pertaining to FT. There is also no clear mechanism that allows the Central Bank, the FIU (MOT) supervisory arm or the GCB to conduct enquiries on behalf of foreign counterparts.

**Other Issues: Resources and Statistics**

34. With regard to resources, a lack of adequate resources has resulted in a lower percentage of analysed UTRs. The high number of vacant positions in the FIU (MOT) reduces its capacity to analyse and supervise. The Examination Team also found that there was a need to strengthen domestic capacity with regard to specialist prosecutors and the judiciary. Potential challenges

with resources available for AML/CFT supervision and regulation of financial institutions was also noted.

35. Curacao needs to improve its system of maintaining statistics. The Examiners found that no statistics were being kept on the exchange of information between law enforcement authorities other than those related to mutual legal assistance. There was also no statistics on the type of legal assistance that was requested and the time required to respond to requests for mutual legal assistance. The PPO's database is not segregated with regard to its different activities.

# MUTUAL EVALUATION REPORT

## 1. GENERAL

### 1.1 General information on Curaçao

1. Curaçao has an area of 444 square kilometres and is located in the Southern Caribbean approximately 60 kilometres off the coast of Venezuela. Its population stands at 142,180 (January 1, 2010) Curaçao is a multicultural society. The official languages are Papiamentu, Dutch, and English; Spanish is widely spoken.

**Economy**

2. The size of Curaçao's economy, measured by Gross Domestic Product (GDP), amounted to US$3.0 billion in 2010, with a GDP per capita of US$20,800. During the past five years, the economy grew by an average annual rate of 1.2%. The economy of Curaçao suffered also from the global recession, reflected by a contraction in real GDP of 0.5% in 2009. In the national accounts, financial intermediation has the largest share in gross value added of the private sector (24%) because of the prominent presence of the international financial services industry in Curaçao. Financial intermediation is followed by real estate, renting & business activities (18%), trade (14%), transport, storage & communications (10%), and manufacturing (9%). It should be noted that tourism is one of the main economic activities in Curaçao, but it is not considered a separate sector in the national accounts. Therefore, tourism activities are spread over various sectors, the most important of which are: hotels & restaurants; trade; transport, storage & communications; and real estate, renting & business activities. The unemployment rate amounted to 9.7% in 2009, compared to 10.3% in 2008. The inflation rate reached 1.8% in 2009 and 2.8% in 2010.

**System of Government**

3. Prior to October 10, 2010, the date on which the Netherlands Antilles was dissolved, Curaçao was one of five island territories of the Netherlands Antilles. On October 10, 2010, Curaçao became an autonomous country within the Kingdom of the Netherlands. The Kingdom of the Netherlands consists now of four countries: the Netherlands, Aruba, Curaçao and Sint Maarten. For Curaçao, the new status means an increased autonomy in the fields of legislation, justice and executive power. The political system of Curaçao is a parliamentary democracy, and is based on underlying human right fundamentals, such as freedom of association, the right to form political parties, freedom of the press, and freedom of speech.

4. Curaçao has full autonomy on most matters, except for those mentioned in Article 3 (see below), of the Charter for the Kingdom of the Netherlands. Paragraph 2 of the Charter regulates the conduct of Kingdom affairs and in paragraph 4 of the Charter the constitutional organization of the countries within the Kingdom of the Netherlands is regulated. The Constitution of Curaçao was ratified in September 2010, and entered into force on October 10, 2010.

5. Her Majesty the Queen is the Queen of all the countries within the Kingdom of the Netherlands. The Governor of Curaçao though acts as the representative of her Majesty the Queen in Curaçao and is appointed for a six-year term by the Dutch monarch. His role is dual: on a national level (Curaçao) the Governor does not carry political responsibility and primarily has a representative role. However, as Kingdom Government representative he can intervene if national legislation and decisions contravene Kingdom rules and legislation, and international

treaties. The government system is based on the trias politica, which means a clear division between powers of the executive, legislative and judicial system. The Prime Minister, who chairs the Government, together with the Council of Ministers forms the executive power of the Government of Curaçao. The Prime Minister and other ministers are appointed for four-year terms. Legislative power is shared by the Government and the Parliament. The Parliament comprises of twenty-one (21) members elected by direct, popular vote to serve four-year terms.

6. The judicial system of Curaçao, which has mainly been derived from the Dutch system, operates independently of the legislature and the executive powers. Jurisdiction, including appeal, lies with the Joint Court of Justice of Curaçao, Aruba, Sint Maarten and of Bonaire, Sint Eustatius and Saba ("Joint Court of Justice") and the Supreme Court of Justice in the Netherlands.

**The Governor as an organ of the Kingdom**

7. The powers, obligations and responsibilities of the Governor as an organ of the Kingdom of the Netherlands are prescribed in the Regulations for the Governor (N.G. 2010, no. 57), which were issued based on the Charter of the Kingdom of the Netherlands ("Charter"). The Governor is authorized, within the limits of these regulations and the instruction of the Crown, to act on behalf of the Kingdom Government. This applies to the following Kingdom affairs (Article 3, paragraph 1, of the Charter):

    1. maintenance of the independence and the defence of the Kingdom (Commander of the Armed Forces);
    2. foreign relations;
    3. Netherlands nationality;
    4. regulation of the orders of knighthood, the flag and the coat of arms of the Kingdom; and;
    5. regulation of the nationality of vessels and laying down standards required with regard to the safety and navigation of seagoing vessels flying the flag of the Kingdom, with the exception of sailing ships;
    6. supervision of the general rules governing the admission and expulsion of Netherlands nationals;
    7. general conditions for the admission and expulsion of aliens;
    8. Extradition.

8. Other matters maybe declared to be Kingdom affairs by common accord (Article 3, paragraph 2, of the Charter). In addition, the Governor has the authority, for example in the event of disasters, to make parts of the Armed Forces available to the Government of Curaçao.

**The Governor as an organ of the country Curaçao**

9. According to the Constitution of Curaçao, the Governor, as a representative of the Dutch monarch, is the formal head of the Government of Curaçao. The Council of Ministers chaired by the Prime Minister exercises the executive power and is responsible to the Parliament of Curaçao. The Governor presents the draft national enactments to Parliament for approval and decrees them after this approval has been obtained. Subsequently, he sees to it that these national enactments are promulgated.

**Legal system**

10. The legal system used in the Kingdom of the Netherlands is based on civil law, where as primary source of law the legal code is used. Curaçao is an integrated part of the Kingdom of the Netherlands, together with Aruba and Sint Maarten. The legal system of Curaçao knows

different types of laws on different levels. On the level of the Kingdom there are The Charter (Statuut) and other legislation ("rijkswet- en regelgeving) that have force of law within the whole Kingdom and are published in the various National Gazettes of the four countries within the Kingdom.

11. There are also provisions and Guidelines (issued by the Central Bank under legal authority) and Minimum Internal Control Standards (MICS – Gaming Industry). Explanatory Memorandum and other instruments such as jurisprudence, good governance and good practice are also used as part of the legal system. On the national level (within Curaçao) you have the Constitution, National Ordinances, National Decrees and Ministerial Decrees. The hierarchy of these laws is in order as is mentioned. They are all published in the National Gazette or the "Curaçaosche Courant". The legislation concerning the combating of money laundering and financing of terrorism is enacted in National Ordinances, National Decrees and Ministerial Decrees.

## Transition Legislation

12. Up until October 10, 2010 the five islands of the Netherlands Antilles constituted one jurisdiction, with Netherlands Antilles law as the governing law. Upon the dissolution of the Netherlands Antilles, Netherlands Antillean law ceased to exist. Curaçao became a separate country within the Kingdom, with its own government and laws, which required adaptation of the legislation, public administration and financial supervision. Although (most of) the applicable laws did not change materially, some amendments were necessary to reflect the constitutional changes (e.g. replacing references to the Netherlands Antilles with references to Curaçao). These amendments are laid down in the National Ordinance for the implementation of the additional Article I of the Constitution of Curacao: 'National Ordinance settling different national ordinances for the country Curaçao' (N.G. 2010, no. 87).

13. Article 5 of the National Ordinance general transition legislation and governance states the following:

- The national ordinances of the Netherlands Antilles and the Island ordinances of the Island territory of Curaçao referred to in Article 1 will acquire the status of national ordinances of Curaçao;
- The national decrees containing general measures of the Netherlands Antilles and the Island decrees containing general measures of the territory of Curaçao referred to in Article 1 will acquire the status national decrees containing general measures of Curaçao;
- The other decrees of a regulatory nature of the Netherlands Antilles referred to in Article 1 will acquire the status of ministerial decrees with general operation of Curaçao.

14. All references to the Netherlands Antilles in the national ordinances, the national decrees and ministerial decrees mentioned in Article 5, are replaced with references to Curaçao (article 6, paragraph 2). With regard to the financial supervision, some National Ordinances have been replaced with new legislation for Curaçao and Sint Maarten jointly (the Central Bank Statute and the Regulations for Foreign Exchange Transactions Curaçao and Sint Maarten "RFETCSM"). With regard to Conventions/Treaties which were in effect for the Netherlands Antilles before October 10, 2010, they have remained in effect for Curaçao.

**(a)Transparency and good governance principles**

## Transparency policy of Curaçao

15. Transparency of legal persons and arrangements is of outmost importance when combating money laundering and terrorist financing and accordingly Curaçao recognizes that the availability of adequate, accurate and timely information on the Ultimate Beneficial Owners (UBOs) (direct or indirect qualifying interest of 25% or more) of companies operating in or from a jurisdiction is crucial. Curaçao has several (complementary) mechanisms in place to prevent the unlawful use of legal persons.

16. The introduction of the National Ordinance on Identification when rendering Services as lastly amended by N.G. 2009, no 66 (N.G. 2010 no. 40) (NOIS) in 1996 assures that financial institutions and company (trust) service providers obtain and document the identity of their clients even in cases where the client is represented by a third party.

17. The NOIS was amended in November 2009 and extended with the requirement to identify beneficial owners in accordance with this legislation (article 1, section 1, under j. and k. in conjunction with article 2, section 1, and articles 3, 5, 6 and 7). The definition of beneficial owner in this legislation covers an interest holder of a corporate entity (including partnerships, corporations etc.), a trust and a private foundation. Prior to this amendment of the NOIS the supervised entities were already subject to the obligations to identify and verify the beneficial owners of their clients based on the Provisions and Guidelines (P&G).

18. The introduction of new legislation on legal persons (Civil Code Book 2) was also a significant step to diminish the use of bearer shares. The issuance of bearer shares is in principle not allowed. However a client can request that a company provide him with bearer shares certificates. In those cases, the Ordinance contains provisions for the company to comply with traceability conditions if so desired. The National Decree Custody Bearer Share Certificate (N.G. 2010 no.36) was furthermore enacted to secure that bearer shares are kept in custody in order to secure knowledge of the Beneficial Owner information.

## Good Governance

### Respect of principles such as transparency and good governance

19. "The Corporate Governance Code of the Island Territory of Curaçao (the 'Corporate Governance Code') is based on the Ordinance Corporate Governance as adopted on October 12, 2009 by the Island Council of the Island Territory of Curaçao (O.B. 2009 nr. 92) and is applicable to Curaçao, being the successor of the Island Territory of Curaçao. The Corporate Governance Code (CGC) became operative as of fiscal year 2010 and is applicable to all corporations which have their statutory seat in Curaçao and of which the shares or the depositary receipts in evidence of shareholding, are held by the Government of Curaçao in whole or in part, or else the legal entities incepted by instruction and under responsibility of the of Curaçao.

20. The Corporate Governance Code is also applicable to foundations of which the Government of Curaçao is empowered to appoint or dismiss one or more members of the managing board, or respective to which the Executive Council has the authority to amend the articles of association.

### (b) Culture of AML/CFT compliance

21. Curaçao is committed to the fight against money laundering and terrorist financing. Because of this commitment, and its membership to both the Financial Action Task Force on Money Laundering (FATF) and the Caribbean Financial Action Task Force (CFATF), Curaçao has a comprehensive framework to prevent and combat money laundering and terrorist financing. In addition, Curaçao regularly attends both the FATF and CFATF meetings.

22. The main laws or executive decrees relating to money laundering and terrorist financing (where applicable as amended) are:

a) The National Ordinance on the amendment of the Penal Code (penalization of terrorism, terrorist financing and money laundering) (N.G. 2008, no. 46); (replaced i.a.: The National Ordinance Penalization of Money Laundering (N.G. 1993, no. 52);
b) The National Ordinance on the Reporting of Unusual Transactions (N.G. 1996, no. 21) as lastly amended by N.G. 2009, no 65 (NORUT ) (N.G. 2010, no 41);
c) The National Decree containing general measures on the execution of articles 22a, paragraph 2, and 22b, paragraph 2, of the National Ordinance on the Reporting of Unusual Transactions (National Decree penalties and administrative fines for reporters of unusual transactions( N.G. 2010 no. 70));
d) The National Ordinance on Identification of Clients when rendering Services (N.G. 1996, no. 23) as lastly amended by N.G. 2009, no 66 (NOIS) (N.G. 2010 no. 40);
e) The National Decree containing general measures on the execution of articles 9, paragraph 2, and 9a, paragraph 2, of the National Ordinance on Identification of Clients when rendering Services. (National Decree containing general measures penalties and administrative fines for service providers) (N.G. 2010, no. 71);
f) Ministerial Decree with general operation of May 21, 2010, laying down the indicators, as mentioned in article 10 of the National Ordinance on the Reporting of Unusual Transactions (Decree Indicators Unusual Transactions) (N.G. 2010, no. 27);
g) Ministerial Decree with general operations of March 15, 2010, implementing the National Ordinance on the Reporting of Unusual Transactions (N.G. 2010, 10);
h) Ministerial Decree with general operations of March 15, 2010, implementing the National Ordinance on Identification of Clients when Rendering Services (N.G. 2010, no.11);
i) Sanctions National Decree Al-Qaida c.s., the Taliban of Afghanistan c.s., Osama bin Laden c.s. and locally designated terrorists (N.G. 2010, no. 93)
j) National Ordinance on the Obligation to report Cross-border Money Transportation (N.G. 2002, no. 74).
k) National Decree providing for general measures of 8th August 2011 for the implementation of Articles 1, paragraph 1, subsection b, under 16.6, subsection d, under 12 and 11, paragraph 2 of the National Ordinance on Identification of Clients when rendering Services. (National Ordinance on the Identification of Customers when Providing Services)(N.G. 2011, no. 32) and
l) National Decree providing for general measures of 8th August 2011 for the implementation of Articles 1, paragraph 1, subsection a, under 16 and 22h paragraph 2 of the National Ordinance of Unusual Transactions (National Decree designating services and supervision under the National Ordinance on Reporting Unusual Transactions)(N.G. 2011, no. 31)

**(c) Measures to prevent and combat corruption**

23. The Penal Code contains provisions which penalize corruption, including bribery of civil servants and government officials. Several persons have been convicted in the past for corruption, including bribery, based on these provisions.

24. On 16 July 2010, the Netherlands Antilles acceded to the Group of States against Corruption (GRECO). The Civil Law Convention on Corruption of the Council of Europe has applied to

the Netherlands Antilles since 1 April 2008. Curaçao is not yet a party to the UN Convention against Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Presently the Government of Curaçao is working on finalizing the relevant legislation needed so these treaties, among other treaties on the subject of corruption, can be ratified for Curaçao by the Kingdom of the Netherlands.

**(d) Court system**

25. Curaçao's court system (as part of the Trias Politica) is part of a Joint Court of Justice shared by Aruba, Curaçao, Sint Maarten and the BES-islands Bonaire, Sint Eustatius and Saba. The Joint Court of Justice is responsible for the administration of justice both in first instance and in appeal for the Caribbean part of the Kingdom of the Netherlands. The Joint Court of Justice consists of a presiding judge and the other members and their substitutes. The members of the Joint Court of Justice deal in first instance and in appeal with civil cases, criminal cases, and cases of administrative law (including tax law). Furthermore there is the Supreme Court (Hoge Raad der Nederlanden) in The Hague, The Netherlands, where in case of civil and criminal cases, application of the law and principles of law (and not factual aspects) can be disputed. For administrative cases only two instances exist.

**The Court in First Instance**

26. A case that is dealt with in court for the first time falls under the jurisdiction of the Court of First Instance presiding on the Island where the case has materialized, which is an organizational part of the Joint Court of Justice. Cases in first instance are dealt with by one Judge.

**Cases in Appeal**

27. The appeal court, as part of the Joint Court of Justice, handles cases in appeal that were dealt with and decided on by the Courts in First Instance. The cases in appeal are always dealt with by three members of the Joint Court of Justice. A Judge who handled a case in first instance can not form part of the three judges who deal with the same case on appeal. Against the verdicts in appeal, cassation at the Supreme Court in The Hague, The Netherlands, presided by three or five judges (raadsheren) is possible. The Supreme Court has the authority to overturn rulings by appellate courts (cassation) and therefore establishes case law, but only if the lower court applied the law incorrectly or the ruling lacks sufficient reasoning. Facts are no longer subject to discussion at this level. The Supreme Court may not rule on the constitutionality of laws passed by the legislature and treaties. Hence the Kingdom of the Netherlands does not have a Constitutional Court.

**Judicial Tribunals**

28. The members of the Joint Court of Justice also have seats in different judicial tribunals, such as the Arbitration Court for Civil Servants and the Arbitration Court of Tax Cases and their respective Boards of Appeal.

29. Judges in the Kingdom of the Netherlands are appointed for life by Her Majesty the Queen of The Netherlands, but have a retirement age of 65. Only under specific circumstances, as laid down in the law, such as misconduct or criminal activities, can the Supreme Court dismiss Judges.

**(e) High ethical and professional requirements for police officers, prosecutors, judges and measures and mechanisms to ensure these are observed.**

30. In Curaçao, Police officers have to take an oath of office. There is also an applicable professional code which is laid down in a handbook. The elementary training for police officers addresses integrity in several modules. Furthermore, relative to integrity, the police corps was guided by the Policy Integrity 2009 – 2010. The Training Institute for Law Enforcement and Safety Concerns (Opleidingsinstituut voor Rechtshandhaving en Veiligheidszorg) provided training on code of conduct versus integrity for members of the judicial chain in April 2011. From 2008 to present the aforementioned Training Institute has been providing workshops "Promises in the Justice Area" of the internationally reputable Freeman Group to the judicial chain, other services and organizations, including Customs. In 2010 the Training Institute together with the Bureau Integrity Amsterdam and a consultancy company provided workshops on managing integrity for the managers in the judicial chain, including Customs. As of April 2011 the Training Institute has provided follow-up training for all members of the judicial chain. This follow-up training includes a theme day on integrity.

31. Integrity is an important aspect for the Public Prosecutor Office (PPO). The integrity policy has recently been sharpened to be in line with the Kingdom Law PPO ("Rijkswet OM" (N.G. 2010, no. 59)). This has been realized through the drafting of a code of conduct for the PPO. This code of conduct will govern the effective and efficient functioning of the organization and the behavior of the PPO employees. The draft code of conduct has to be approved by the Management team of the PPO.

**(f) System for ensuring ethical and professional behaviour of professionals such as accountants and auditors, and lawyers.**

32. The accountants, lawyers, tax advisor and notaries are some of the professionals that fall within the scope of the AML/CFT system in Curaçao.

33. **Accountants** are subject to the National Ordinance on Identification of Clients when rendering Services (N.G. 1996, no. 23) as lastly amended by N.G. 2009, no 66 (N.G. 2010 no. 40) (NOIS) and The National Ordinance on the Reporting of Unusual Transactions (N.G. 1996, no. 21) as lastly amended by N.G. 2009, no 65 (N.G. 2010, no 41) (NORUT) since May 2010. Supervision on the compliance with these requirements is mandated to the FIU (MOT).

34. The accountants operating in Curaçao are associated in the Nederlands Antilliaanse Vereniging voor Accountants (the NAVA), the Netherlands Antillean Association for Auditors. The members of the NAVA are qualified accountants, who are members of the Royal Dutch Institute of Registered Accountants, the Dutch Institute of Accountants, the American Institute of Certified Public Accountants and a National Institute of Accountants, which Institute is a member or associate member of the International Federation of Accountants.

35. The accountant is required to be a member of the Royal Dutch Institute of Registered Accountants, which is the Dutch institute for chartered accountants. The Royal Dutch Institute of Registered Accountants has Regulation regarding the Code of conduct for all registered accountants (RA). The code of conduct is applicable to all accountants who are a member of the Royal Dutch Institute of Registered Accountants, no matter in what part of the world they are. The code is valid as from January 2007 and forms an important basis for the functioning of the accountant.

36. The code of conduct consists of five (5) principles as follows: integrity, objectivity, expertise, secrecy and professional behaviour. The code of conduct also sets rules regarding the independence of the accountant, the engagement acceptance and fees.

37. There exists legislation in order to ensure these principles are actually observed. The legislation includes specialist and professional requirements, an external independent oversight on accountants and accountant organizations that exercise statutory control, quality review by the

Royal Dutch Institute of Registered Accountants and there are also requirements for permanent education for everybody that is a member of the Auditor register. Any party, who believes that an accountant does not adhere to the accountant's laws and regulations (including the above-mentioned principles), can also file a complaint with the disciplinary board. The disciplinary board can apply the following punishments to accountants, if a complaint is upheld, warning, reprimand, suspension or even removal from the register of accountants.

38. **Lawyers** are subject to the NOIS and NORUT since May 2010. Supervision on the compliance with these requirements is mandated to the FIU (MOT). A Bar of Association has been established since 1977 for lawyers operating in Curaçao. The Bar works to improve the administration of justice, promotes programmes that assist lawyers in their work, and works to build public understanding of the importance of the rule of law in a democratic society. Membership to the Bar Association is not yet mandatory for lawyers, but procedures have been initiated to implement a system with mandatory membership. Entry in the register of the Joint Court of Justice is a mandatory requirement that enables lawyers to practice. Lawyers, whether a member of the Bar or not, are subject to disciplinary ruling which is administered by the Council of Supervision and in second instance by the Council of Appeal. The disciplinary rules are laid down in the National Ordinance on lawyers (N.G. 1985, no. 142).

39. The Council of Supervision for lawyers enables any party that has a complaint against a lawyer to address their complaint to the Council. If the Council considers the complaint founded the Council can proceed with the following penalties:

- a single / simple warning
- a reprimand
- suspension for up to one year
- deletion of tableau

40. If a lawyer gets a warning or a reprimand he can continue with his duties. When he gets a suspension he can not exercise his profession as a lawyer for the period that he is suspended. During that period he can not participate in the general assembly. When a lawyer is deleted from the tableau he is not authorized to ever practice his profession again.

41. **Tax advisors** are subject to the NOIS and NORUT since May 2010. Supervision on the compliance with these requirements is mandated to the FIU (MOT). The admission as a tax advisor is issued, until further notice, after a petition on this effects. If the petitioner, in the opinion of the Board of appeal of tax matters, is of good social behaviour and has passed the exam for tax advisers he is admitted as a tax advisor. There is a disciplinary committee of tax advisors. Members and prospective members are subject to the disciplinary proceedings of the Association of Tax advisors.

42. The decision of the commission, instituted on a complaint or an own-initiative, that has been considered well founded may lead to:

1. warning;
2. reprimand;
3. suspension;
4. disqualification as a member of the association.

43. **Notaries** and candidate-notaries are subject to the NOIS and NORUT since May 2010. Supervision on the compliance with these requirements is mandated to the FIU (MOT).

44. The basis for exercising the profession of a Notary is set in the National Ordinance of January 28, 1994 containing new rules on the notary office. This national ordinance deals with all

conditions for exercising the profession of a notary. (e.g. powers of the notary; appointment and dismissal of a notary and supervision.).

45. There is a Supervisory Board that supervises the notary and the candidate notary. Complaints against a notary or a candidate-notary must be made in writing to the Chairman of the Supervisory Board. The Chairman of the Board has the power to judge if the complaint is not founded and than dismiss it with a reasoned decree. If the Chairman can not resolve the issue he will inform the Board. The Board will treat the complaint further.

46. If a notary or candidate-notary neglects his duty, or acts in conflict with the care that he ought to exercise, than the Supervisory Board has the power to, either on its own motion or on the basis of a complaint, take several measures. The judgment must always be reasoned. The possible measures against the notary are: a warning; a reprimand; imposition of a fine of up to NAf.10, 000; suspension for up to one year; nomination for his removal from office. The possible measures against the candidate-notary are: a warning; a reprimand; withdrawal of the internship certificate for a period not exceeding two (2) years.

## 1.2 General Situation of Money Laundering and Financing of Terrorism

### Introduction

47. Curaçao has a relatively small open island economy, with tourism as its main economic pillar. Tourism is, as a result hereof, an important contributor to the foreign exchange reserves of Curaçao. One contributing factor is that the island offers good transportation facilities, both via air and sea given its optimal airport and harbour infrastructural facilities. Besides, the island of Curaçao is home to a wide range of activities, such as international financial services, oil refining and harbour related activities such as free zone, ship repair, dry dock and towing, with an important economic contribution. The international financial services sector is particularly known for being supported by highly professional domestic banking, trust, legal, administrative and fiscal advisory services and, most recently, a securities exchange.

48. It should be noted that the aforementioned characteristics, such as geographical location, tourism, relative easy logistical accessibility, high mobility of goods and services, pose threats in terms of illegal activities like drug trafficking and money laundering. It is in this context that Curaçao is continuously vigilant in detecting and deterring criminals from engaging in any form of money laundering or terrorism financing.

### Combating of money laundering and (related) illegal activities

49. It is broadly known that although the amount of money related to money laundering is difficult to quantify, most of the money laundering activities are related to drug trafficking. Historically the island of Curaçao has experienced peaks and drops related to drug trafficking and related crimes. One contributing factor is the island's geographical location between (certain) drug producing countries (South America) and drug consuming markets (North America and Europe) and transportation facilities. Another factor of influence is the international economic climate. When the economic climate in the producing countries and/or the distributing countries worsens, this tends to boost illegal activities. The same boost can be expected from an improvement in economic climate in the consuming countries, as this increases demand.

50. The local investigating and prosecuting authorities have historically acted promptly against all crimes including those with a link to money laundering. Besides prosecution, pro-active actions have been taken at both the airport and the harbour. Regarding the airport it is worth mentioning that at the end of the nineties during one of the peaks of the drug trafficking

business the so called "Hato team" became operational. This team's main task was to strictly control traffic, especially of suspicious passengers, at the airport. Suspicious outgoing passengers were not allowed to travel, while suspicious incoming passengers were sent back. This team's activities were executed in cooperation with the Schiphol airport in the Netherlands.

51. Regarding combating of illegal activities at and via sea one could mention the Coast Guard. This cooperation agreement between the Netherlands and Curaçao has been in force since the beginning of the nineties. The Agreement provides for Dutch marine ships, in cooperation with local judicial authorities, to patrol the territorial waters of Curaçao in search of illegal activities. Furthermore, the *US Forward Operating Location (FOL)* has a base on Curaçao for the purpose of host nation and interagency drug interdiction efforts through the source and transit zones. The FOL operations are based on an agreement with the Kingdom of the Netherlands, which was signed in March 2000 and ratified in October 2001.

52. The harbour of Curaçao is well known for its accessibility and being supported by a wide range of harbour related activities. As a result, the container mobility via Curaçao's harbour is high. In order to counter arrest illegal movements via containers, Customs of Curaçao have been actively screening these containers by means of a container scan.

53. Furthermore, the Netherlands and Curaçao have also been cooperating when combating cross-border related crime. For this matter the so called "Recherche Samenwerking Team" (RST) unit was founded in November 2001 as a result of a cooperation protocol signed by Aruba, Netherlands and the former Netherlands Antilles. As a result of the cooperation some major case were brought to and prosecuted in court (e.g. the Campo case and Kings Cross Operation).

54. The occurrence of money laundering has over the past years been more evidenced in the traditional banking sector than in the other financial sectors. However, as banks have aggressively taken measures to detect and deter money laundering and terrorist financing, non-bank financial institutions have become increasingly vulnerable to money launderers and terrorists as they seek to launder their funds derived from criminal activities and finance their terrorist activities.

55. An example of such a non-bank financial institution sector is the money remitters sector. Efforts between the Curaçao and Dutch authorities resulted in a decline of misuse of this type of companies from money laundering.

56. A sector where money laundering was detected by the authorities was the free zone. The money launderers in a case called "Kings Cross" were in that respect successfully prosecuted and convicted. The "Kings Cross" was a case in which law enforcement authorities investigated illegal activities within Curaçao's Free Zone.

## AML/CFT studies, assessment and initiatives

### Threat Assessment report

57. A threat assessment concerning, among other things, the financing of terrorism, has been performed by the National Coordinator Countering Financing of Terrorism. The outcome of this assessment has been presented to the Parliament of the former Netherlands Antilles.

### Progress Report

58. On November 30, 2001 the Council of Ministers of the Dutch Kingdom concluded in a joint statement agreement on the intensification of the cooperation between the countries within the Kingdom of the Netherlands for the combat of terrorist financing. Progress reports have in this

respect been issued on a regular basis thereafter. The latest progress report (7th) was issued in 2008.

59. Study towards SR VIII regarding entities that can be based for the financing of terrorism in the former Netherlands Antilles by **Forensic Services Caribbean N.V.**

**Criminaliteitsbeeldanalyse Curaçao 2008**

60. (Criminality picture analysis 2008)
The report contains an analysis of the criminality phenomena in order to obtain insight in prioritization and method of approach of this criminality.

## Terrorism and financing of terrorism

61. A distinction can be made between the so called "Jihad related terrorism" and "non-Jihad related" terrorism. The former is defined as being linked to extremist religious activities, in general the Muslim religion, while non-Jihad related terrorism is defined as violent activities mainly being linked to different political beliefs and/or point of view. Jihad and /or the financing of Jihad related terrorism have not been observed in Curaçao. The only mentioning of non-Jihad related activities has been potential links made to participation of the FARC in the drug trafficking via the Island. Locally however no concrete activities have been detected.

## Legislation

62. Curaçao has been taking a tough position against (the risks of) money laundering and terrorist financing. The legislation pertaining to the relevant measure is noted at paragraph 22 above.

## Statistical data

63. Studies have shown that it is fairly difficult to determine the scale of the money laundering business. Still, it is possible to get a close enough indication by means of figures related to the prosecution of the latter. As mentioned earlier, money laundering activities are closely related to illegal drug trafficking and related crimes.

64. These figures reveal developments for the period of 2005 up to 2010, for the islands of Curaçao, Bonaire and Sint Maarten.

| | Conclusion | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|---|---|
| ML | Number of prosecutions ML | 16 | 25 | 18 | 25 | 33 | 24 |
| ML | Number of acquittals | 0 | 0 | 0 | 0 | 1 | 1 |
| ML | Number of settlements ML (conditional dismissal of case) | 20 | 14 | 2 | 13 | 12 | 2 |
| ML | Number of transfers (to other department/abroad) | 0 | 0 | 0 | 8 | 11 | 1 |
| ML | Number of heenzendingen (case dismissal 02; no evidence) | 4 | 0 | 2 | 8 | 7 | 3 |
| TF | Number of prosecutions TF | - | - | - | - | - | - |
| TF | Number of acquittals | - | - | - | - | - | - |
| TF | Number of transfers (to other department/abroad) | - | - | - | - | - | - |
| TF | Nmber of settlements TF (conditional dismissal of case) | - | - | - | - | - | - |
| TF | Number of heenzendingen (case dismissal 02; no evidence) | - | - | - | - | - | - |

| | Convictions | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|---|---|
| ML | Number of convictions ML | 16 | 25 | 17 | 24 | 19 | 23 |
| ML | Number of convictions not-reported | 0 | 1 | 3 | 7 | 7 | 0 |
| TF | Number of convictions TF | - | - | - | - | - | - |

.

## 1.3 Overview of the Financial Sector and DNFBP

### FINANCIAL SECTOR

65. The financial system consists of a wide variety of financial institutions. The following chart shows the types and numbers of financial institutions which are subject to the supervision of the Central Bank.

| ***Type of financial institution*** | ***2007*** | ***2008*** | ***2009*** | ***2010*** |
|---|---|---|---|---|
| *Domestic commercial banks* | *11* | *12* | *13* | *13* |
| *International banks* | *34* | *36* | *34* | *34* |
| *Credit unions* | *16* | *16* | *16* | *16* |
| *Specialized credit institutions* | *6* | *6* | *6* | *6* |
| *Savings banks* | *1* | *1* | *1* | *1* |
| *Savings and credit funds* | *10* | *8* | *7* | *7* |
| ***Type of financial institution*** | ***2007*** | ***2008*** | ***2009*** | ***2010*** |
| ***Money transfer companies*** | *2* | *2* | *2* | *2* |
| *Life insurance companies* | *11* | *10* | *10* | *10* |
| *General insurance companies* | *21* | *21* | *21* | *21* |
| *Funeral insurance companies* | *11* | *13* | *13* | *13* |
| *Captive insurance companies* | *13* | *11* | *12* | *11* |
| *Professional reinsurance companies* | *6* | *5* | *4* | *5* |
| *Pension funds* | *22* | *22* | *20* | *20* |
| *Insurance brokers* | *67* | *72* | *73* | *77* |
| *General funds for sickness insurance* | *1* | *1* | *1* | *1* |
| *International investment institutions* | *0* | *0* | *5* | *5* |
| *Local investment institutions* | *12* | *14* | *14* | *14* |
| ***Securities exchange*** | *0* | *0* | *0* | *1* |
| ***Central Bank*** | *1* | *1* | *1* | *1* |

## Credit institutions

66. At the end of 2010 there were thirteen (13) domestic commercial banks operating in Curaçao and Sint Maarten with a total amount of deposits of NAf. 12,485.1 million and total assets of NAf. 14,390.8 million. These banks offer a wide variety of products and services including traditional banking services, insurance broker services and investment products. All domestic commercial banks are privately owned. The only public bank (i.e. entirely controlled by the government) is also the only savings bank in Curaçao. At year-end 2010 there were sixteen (16) credit unions, with a total amount of deposits of NAf. 77.1 million and total assets of NAf. 185.4 million. In addition, thirty-four (34) international banks, six (6) specialized credit institutions, and seven (7) savings and credit funds (including four (4) savings and thrift funds) operate in Curaçao. All credit institutions operating under the provisions of the National Ordinance on the Supervision of Banking and Credit Institutions 1994 (N.G. 1994, no. 4) (NOSBCI**)** and providing the services as described in the NOIS and NORUT should comply with the stipulations of these AML/CFT legislation.

## Money Transfer Companies (MTC)

67. At year-end 2010, there were two (2) money transfer companies operating in Curaçao pursuant to the legal provisions of the Regulations for Foreign Exchange Transactions Curacao and Sint Maarten (N.G. 2010, no. 112) (RFETCSM). MTC also fall under the NOIS and the NORUT since the year 2000 (article 1, paragraph 1 under a sub 10° of the lastly amended NORUT and article 1, paragraph 1 under b sub 10° of the lastly amended NOIS).

68. The Central Bank issued AML/CFT Provisions and Guidelines for money transfer companies (MTCs) under the RFETCSM and also under the NOIS (article 11, paragraph 3) and NORUT (article 22h, paragraph 3). The Central Bank is charged with the supervision on the compliance of MTCs with the NOIS (article 11, paragraph 1 under a), the NORUT (article 22h paragraph 1 under a) and the RFETCSM (article 21). Onsite inspections to verify the compliance with the NOIS and NORUT are done based on these Articles.

## Institutional Investors and insurance brokers

69. As per January 1, 2011 there were ten (10) life and twenty-two (22) general insurance companies, thirteen (13) funeral insurance companies, eleven (11) captives, five (5) professional reinsurance companies, twenty (20) pension funds and one (1) general fund for sickness insurance operating in Curaçao. In addition, there were (seventy-seven (77) insurance brokers registered. The insurance companies are governed by the National Ordinance on the Supervision of the Insurance Industry (N.G. 1990, no. 77) (NOSII), the pension funds by the National Ordinance on Corporate Pension Funds (N.G. 1985, no. 44) (NOCPF), and the insurance brokers by the National Ordinance Insurance Brokerage Business (N.G. 2003, no. 113) (NOIBB). The captives together with the professional reinsurers that are governed by the Special Insurance License Decree (N.G. 1992, no. 50) (SILD) constitute the international insurance industry. The locally operating life insurance companies and the insurance brokers are required to comply with the stipulations of the NORUT, NOIS and the AML/CFT legislation.

70. The Total Net Premium Income of the local life insurance sector amounted to NAf 176.2 million for 2009 compared to NAf 256.9 million for 2008. The Net Benefits Incurred by the local life insurance sector amounted to NAf 99.9 million for 2009 and NAf 103.1 million for 2008. The changes in Net Technical Provisions of the local life insurance sector amounted to NAf 101.2 million for 2009 compared to NAf 178.8 million for 2008.

71. The total Net Earned Premium of the local non-life insurance industry amounted to NAf 253.1 million for 2009 compared to NAf 279.6 million for 2008. The Net Claims Incurred by the local non-life insurance industry amounted to NAf 120.8 million for 2009, respectively, NAf 153.3 million for 2008.

## Investment institutions

72. Investment institutions are governed by the National Ordinance on the Supervision of Investment Institutions and Administrators (N.G. 2002, no. 137) and have been subject to supervision by the Central Bank since the beginning of 2003. Investment institutions fall under the NORUT and NOIS.

## Securities Exchange

73. The Central Bank handled an application for a license to establish a local securities exchange in the fourth quarter of 2009, which led to a recommendation to the Minister of Finance to issue a license in March 2010. The new licensee is the first active securities exchange within the Curaçao jurisdiction and is governed by the National Ordinance on the Supervision of Securities Exchanges (N.G. 1998, no. 252).

## Central Bank

74. The Central Bank is governed by the Central Bank Statute (N.G. 2010, no. 101) and should also comply with the requirements of the NOIS and NORUT.

75. The following table shows which types of financial institutions in Curaçao are authorized to perform the types of financial activities that fall within the scope of the FATF Recommendations.

**Table 1:**

| TYPES OF FINANCIAL INSTITUTITIONS AUTHORISED TO CARRY OUT FINANCIAL ACTIVITIES LISTED IN THE GLOSSARY OF THE FATF 40 RECOMMENDATIONS | |
|---|---|
| **Type of financial activity (See the Glossary of the 40 Recommendations)** | **Type of financial institution that is authorized to perform this activity** |
| 1. Acceptance of deposits and other repayable funds from the public (including private banking) | Domestic commercial banks, international banks, credit unions, savings banks, savings and credit funds. |
| 2. Lending (including consumer credit: mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting) | Domestic commercial banks, international banks, credit unions, specialized credit institutions, savings and credit funds, life insurance companies, Central Bank. |
| 3. Financial leasing (other than financial leasing arrangements in relation to consumer products) | Domestic commercial banks, international banks. |
| 4. The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds) | Domestic commercial banks, money transfer companies, Central Bank, |
| 5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, travellers' cheques, money orders and bankers' drafts, electronic money). | Domestic commercial banks, international banks, credit unions, money transfer companies, Central Bank (regarding overdrafts by commercial banks or |

| | |
|---|---|
| | Government) |
| 6. Financial guarantees and commitments | Domestic commercial banks, international banks. |
| 7. Trading in:<br>a) money market instruments (cheques, bills, CDs, derivatives, etc.);<br>b) foreign exchange;<br>c) rate and index instruments;<br>d) transferable securities;<br>e) commodity futures trading | Domestic commercial banks, international banks, international and local investment institutions, securities exchange, Central Bank. |
| 8. Participation in securities issues and the provision of financial services related to such issues | Domestic commercial banks, international banks, international and local investment institutions. |
| 9. Individual and collective portfolio management | International and local investment institutions. |
| 10. Safekeeping and administration of cash or liquid securities on behalf of other persons | Administrators and all company (trust0 service providers, Central Bank. |
| 11. Otherwise investing, administering or managing funds or money on behalf of other persons | International and local investment institutions, administrators and all company (trust) service providers. |
| 12 Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers) | Life insurance companies and insurance brokers (not all insurance brokers are authorized by a life insurer to underwrite0 |
| 13. Money and currency changing | Domestic commercial banks, Central Bank. |

## DNFBP

### DNFBP supervised by the FIU (MOT)

76. As of May 15th, 2010 the amended NORUT and the NOIS came into effect. As of that date the following DNFBPs have become designated subjects under AML/CFT supervision by the FIU (MOT).

77. **Lawyers**: As of May 15th, 2010, there were 195 legal firms operating in Curaçao. Under the provisions of the National Ordinance regarding lawyers (N.G. 1985, no. 142), lawyers have powers of attorney and provide legal advice. Apart from the acts considered to be specific to lawyers, as defined in the National Ordinance regarding lawyers, lawyers may perform all kinds of legal activities including financial activities on behalf of a client or on their client's own behalf:
    - sale and purchase of real estate;
    - Management of funds, securities or other assets;
    - opening and administration of bank accounts, saving accounts and securities account; and
    - setting up and managing companies.

78. **Notaries**: There are ten (10) notaries in Curaçao who are associated in the "Antilliaanse Arubaanse Notariële Vereniging". They provide legal form and public faith to private acts and contracts and they are responsible for the wording of public instruments according to the will of the parties. As soon as the general agreement comes into effect, the function of the notary is to recognize and authenticate specific documents issued by the notary's office. In general notaries are i.a. authorized to give explanations on the status and capacity of persons; issue the attestations vita; legalize signatures; take oaths; issue certificates of inheritance; incorporate/establish legal persons; and transfer legal ownership of real estate.

79. **Accountants**: The accountants operating in Curaçao are associated in the Nederlands Antilliaanse Vereniging voor Accountants (the NAVA), the Netherlands Antillean Association for Auditors. The members of the NAVA are qualified accountants, which are members of the Royal Dutch Institute of Registered Accountants; the Dutch Institute of Accountants; the American Institute of Certified Public Accountants; and a National Institute of Accountants, which Institute is a member or associate member of the International Federation of Accountants.

80. Approximately 100 qualified accountants are members of NAVA. Typically the professional services provided by accountants are Assurance services; Accountant services and Advisory Services.

81. The assurance services relate to the auditor or review of financial statements or similar financial reporting, or agreed upon procedures on specific matters. The accounting services relate to bookkeeping and compilation of financial statements. The advisory services could cover a wide range of subjects, for example on strategic matters, ICT, Human Resources, Internal organization and internal control systems.

82. Accountants are engaged to provide advisory services in connection with the purchase, sale or take over of enterprises. In these cases the accountant is engaged either by the purchaser or the seller. Prior to accepting such engagement or for the matter any other engagement, the accountant is required by his Professional Code of Conduct, to perform adequate client and engagement acceptance due diligence procedures. Only if both the client and the engagement meet the criteria of acceptance, the accountant is permitted to provide his advisory services.

83. **Real Estate brokers**: There are seventy-six (76) real estate agencies in Curaçao. The Real Estate broker deals with the acquisition, possession, transfer, management and development of real estate and / or any right or interest in real estate, and participation in any other firm or company with a similar or related purpose; the renting, leasing, mortgaging or in general concerns of property and any right or interest in property; and acting as an intermediary in the conclusion of contracts on behalf of third parties.

84. **Dealers in precious metals and precious stones**: The dealers in precious metals and precious stones must meet the terms and conditions of the government in order to receive a licence to operate a jewellery store. These conditions include that the shares of the company can not be bearer shares. The dealers in precious stones and precious metals are subject to AML/CFT legislation.

85. There are seventy-four (74) jewellers in Curaçao. The business of a jewellery store is the exploitation, import trade of gold, silver, gems and jewellery, including specialty jewellery, diamonds, watches and accessories.

86. **Tax advisor: A** person who, without being an attorney, makes it his profession to act as an advisor and agent in tax matters. There are thirty-six (36) tax advisors in Curaçao.

87. **Administration office:** The tasks of administration offices are to provide administration; provision of audit work; providing tax and business advice; participate in, - and work with, manage and administer other enterprises and companies with the same, similar or related target. There are forty-one (41) administration offices in Curaçao.

88. **Car dealer:** The purpose of a car dealer is importing and selling vehicles and parts of such vehicles. This is the case for dealers in both new and second hand vehicles. Furthermore, they provide service and repair vehicles. There are 143 new and used car dealers in Curaçao.

**DNFBP supervised by the Central Bank**

89. Administrators and company (trust) service providers are governed by the National Ordinance on the Supervision of Investment Institutions and Administrators (N.G. 2002, no. 137) and the National Ordinance on the Supervision of Trust service providers (N.G. 2003, no.114). The administrators have been subject to supervision by the Central Bank since the beginning of 2003. The Central Bank has been entrusted with the supervision of the trust sector since the beginning of 2004 and started licensing the trust service providers in 2005. This sector is governed by the National Ordinance on the Supervision of Company Service Providers. Investment institutions, administrators, and company (trust) service providers fall under the NORUT and NOIS.

| ***Type of financial institution*** | ***2007*** | ***2008*** | ***2009*** | ***2010*** |
|---|---|---|---|---|
| *Administrators* | *11* | *12* | *12* | *14* |
| ***Company (trust) service providers*** | | | | |
| *Licensed legal persons* | *82* | *86* | *89* | *89* |
| *Licensed natural persons* | *1* | *1* | *1* | *1* |
| *Legal persons with dispensation* | *9* | *9* | *11* | *11* |
| *Natural persons dispensation* | *35* | *43* | *46* | *53* |

### *DNFBP supervised by the Gaming Control Board (GCB)*

### Casinos

90. The Gaming Control Board ("GCB") is the supervisory authority for the casinos in Curaçao and was established in 1999. Internet casinos, lotteries and other games of chance do not fall under the supervision of the GCB. Initially, casinos were regulated through legislation of the Netherlands Antilles. The responsibility for casinos was later on delegated to the government of the island where the casinos were located (Island Ordinance Casino sector Curaçao (O.B. 1999, no. 97 as lastly amended by O.B. 2010, no. 27)).

91. The policy document for the establishment of the GCB outlines that the prevention of money laundering is one of the tasks of the GCB. The casino license holder has to comply with the Minimum Internal Control Standards ("MICS") as a requirement for the license. The AML/CFT requirements are included in the MICS and must be at all times adhered to by all casino license holders. In June 2009, the Island Counsel accepted an adaptation of the law (O.B. 2009, no. 57) which introduced new enforcement tools that can, among other things, be applied to casino license holders that do not comply with the MICS. The legislation regulating the new enforcement tools has been in force since June 2009.

92. Currently, thirteen (13) casinos are established in Curaçao and the casinos are by law required to be associated to a hotel. Eight (8) casinos are part of international hotel chains, while five (5) casinos are locally owned.

93. The legislation does not limit the amount of tokens bought. Disbursements shall be made in cash or by cheque, larger amounts only by cheque. An estimate of eighty-five percent (85%) of the visitors to the casinos are residents of Curaçao. The remaining fifteen (15%) are guests or people who have a short stay in Curaçao. An estimated four (4%) of casino visitors are so-called "high rollers".

94. Cruise ships are not allowed to open or operate their casinos while in the territorial waters of Curaçao. There are no cruise lines companies based at Curaçao and/or have their homeport at Curaçao.

95. The number of casinos has not increased significantly in the last couple of years. Please see below a matrix of the yearly turnover (in NAF) in the casino sector on Curaçao for the period 2005-2010 (drop, play and win.).

**Table 2:**

| | **2005** | | | | **2006** | | |
|---|---|---|---|---|---|---|---|
| Maand | Drop | Pay | Win | Maand | Drop | Pay | Win |
| Januari | 17,325,624 | 11,944,091 | 5,381,533 | Januari | 16,554,166 | 11,163,335 | 5,390,832 |
| Februari | 15,204,247 | 9,930,819 | 5,273,428 | Februari | 14,821,275 | 9,890,268 | 4,931,007 |
| Maart | 16,064,715 | 10,895,556 | 5,169,159 | Maart | 16,265,498 | 11,005,884 | 5,259,614 |
| April | 17,207,152 | 11,593,778 | 5,613,375 | April | 15,233,690 | 10,244,541 | 4,989,149 |
| Mei | 15,188,518 | 10,311,578 | 4,876,941 | Mei | 15,740,260 | 10,452,430 | 5,287,830 |
| Juni | 14,541,156 | 9,591,707 | 4,949,449 | Juni | 16,066,129 | 10,654,713 | 5,411,416 |
| Juli | 15,483,870 | 10,039,123 | 5,444,747 | Juli | 16,868,044 | 11,173,853 | 5,694,190 |
| Augustus | 14,383,054 | 9,587,319 | 4,795,735 | Augustus | 15,744,178 | 10,881,718 | 4,862,460 |
| September | 13,605,484 | 8,385,849 | 5,219,635 | September | 15,758,050 | 10,439,743 | 5,318,307 |
| Oktober | 13,834,677 | 8,926,072 | 4,908,605 | Oktober | 15,197,930 | 10,137,112 | 5,060,818 |
| November | 13,911,116 | 9,102,252 | 4,808,865 | November | 15,210,604 | 10,597,791 | 4,612,813 |
| December | 16,908,810 | 10,899,307 | 6,009,504 | December | 19,717,536 | 13,568,758 | 6,148,778 |
| **Totaal** | **183,658,425** | **121,207,450** | **62,450,975** | **Totaal** | **193,177,361** | **130,210,146** | **62,967,215** |

| | **2007** | | | | **2008** | | |
|---|---|---|---|---|---|---|---|
| Maand | Drop | Pay | Win | Maand | Drop | Pay | Win |
| Januari | 18,262,953 | 12,533,454 | 5,729,499 | Januari | 23,038,527 | 15,756,042 | 7,282,485 |
| Februari | 16,658,668 | 11,501,852 | 5,156,816 | Februari | 21,700,032 | 14,596,602 | 7,103,430 |
| Maart | 20,172,526 | 14,531,774 | 5,640,752 | Maart | 22,405,816 | 15,078,426 | 7,327,390 |
| April | 20,515,684 | 14,607,152 | 5,908,531 | April | 22,346,341 | 15,455,590 | 6,890,751 |
| Mei | 19,562,264 | 13,567,554 | 5,994,710 | Mei | 23,232,301 | 15,736,710 | 7,495,591 |
| Juni | 18,729,708 | 12,534,368 | 6,195,340 | Juni | 23,833,014 | 16,704,439 | 7,128,575 |
| Juli | 19,938,337 | 13,928,551 | 6,009,786 | Juli | 25,151,340 | 17,527,346 | 7,623,993 |
| Augustus | 18,989,012 | 13,001,694 | 5,987,317 | Augustus | 25,548,920 | 18,334,877 | 7,214,043 |
| September | 18,983,682 | 12,887,019 | 6,096,663 | September | 24,363,112 | 17,601,445 | 6,761,667 |
| Oktober | 18,726,548 | 12,669,096 | 6,057,451 | Oktober | 23,425,169 | 16,528,054 | 6,897,115 |
| November | 20,450,228 | 13,777,224 | 6,673,004 | November | 21,344,973 | 14,643,491 | 6,701,481 |
| December | 23,215,502 | 15,884,948 | 7,330,554 | December | 28,442,189 | 19,974,447 | 8,467,742 |
| **Totaal** | **234,205,111** | **161,424,687** | **72,780,424** | **Totaal** | **284,831,733** | **197,937,468** | **86,894,266** |

| | 2009 | | | | 2010 | | |
|---|---|---|---|---|---|---|---|
| Maand | Drop | Pay | Win | Maand | Drop | Pay | Win |
| Januari | 33,745,882 | 24,926,865 | 8,819,018 | Januari | 32,933,234 | 24,008,437 | 8,924,796 |
| Februari | 27,379,411 | 19,724,225 | 7,655,185 | Februari | 29,055,301 | 20,777,906 | 8,277,396 |
| Maart | 27,910,067 | 19,164,117 | 8,745,951 | Maart | 31,315,872 | 22,640,546 | 8,675,327 |
| April | 29,048,842 | 20,950,193 | 8,098,649 | April | 31,043,257 | 22,095,999 | 8,947,258 |
| Mei | 31,741,883 | 22,909,233 | 8,832,650 | Mei | 29,935,646 | 21,255,489 | 8,680,157 |
| Juni | 30,483,390 | 21,937,466 | 8,545,924 | Juni | 29,131,352 | 20,777,739 | 8,321,776 |
| Juli | 30,989,446 | 22,375,129 | 8,614,317 | Juli | 29,083,327 | 20,626,746 | 8,420,396 |
| Augustus | 30,356,243 | 21,435,543 | 8,920,699 | Augustus | 27,314,789 | 19,196,766 | 8,075,061 |
| September | 28,395,434 | 20,330,957 | 8,064,477 | September | 27,116,206 | 19,875,796 | 7,197,090 |
| Oktober | 29,477,524 | 20,861,236 | 8,616,288 | Oktober | 30,708,587 | 22,131,711 | 8,527,728 |
| November | 29,328,159 | 20,886,205 | 8,441,954 | November | 26,674,291 | 19,357,095 | 7,317,197 |
| December | 32,486,537 | 23,130,411 | 9,356,126 | December | 32,715,465 | 23,736,872 | 8,896,718 |
| **Totaal** | **361,342,818** | **258,631,579** | **102,711,239** | **Totaal** | **357,027,327** | **256,481,102** | **100,260,900** |

## 1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

**LEGAL ENTITIES**

**Introduction**

96. The statutory regulations with regard to legal entities under private law are contained in Book 2 of the Civil Code ("**CC**"). The following legal entities are explicitly regulated in Book 2 of the CC:

- limited liability company (*'naamloze vennootschap'*);
- private limited liability company (*'besloten vennootschap'*);
- foundation (*'stichting'*),
- private foundation (*'stichting particulier fonds'*),
- association (*'vereniging'*),
- cooperation (*'coöperatie'*) and
- mutual insurance association (*'onderlinge waarborgmaatschappij'*).

97. Other relevant laws in this regard are the Commercial Code ("Wetboek van Koophandel"), Commercial Register Act ("Handelsregisterverordening"), Business License Act ("Vestigingsregeling Bedrijven") and several (financial) supervision ordinances.

## The Limited Liability Company

98. A limited liability company (*'naamloze vennootschap'* or *'N.V.'*) is a company limited by shares. The N.V. can act as a public company and as a closely held private company.

### *Incorporation*

99. The N.V. is incorporated by a notarial deed executed by one or more incorporators before a civil law notary. This notarial deed of incorporation constitutes the statutes and regulations governing the company and conduct of its affairs. Those statutes and regulations are generally referred to as the articles of association. There is a free choice of language for the deed of incorporation and for the currency of the capital. The choice for a name must be checked with the Chamber of Commerce for approval. No governmental approval or check is needed for the incorporation or the contents of the deed of incorporation setting forth the articles of association.

### *Registration*

100. Once incorporated, the company must be registered with the Commercial Registry of the local Chamber of Commerce and Industry. Details to be filed include the object of the company, its share capital (if any) and the identity of the managing directors, supervisory director (if any) and possible attorneys-in-fact acting under general powers of attorney (‘*procuratiehouders’*).

### *Share capital*

101. From a company law perspective, there is no minimum share capital. Based on regulatory requirements, there are, however, minimum capital requirements for finance companies issuing publicly traded debt obligations, investment institutions, insurance companies and banks. The nominal value of the shares can be stated in any currency. However, shares do not need to have a nominal value. The shareholder should pay up at least the nominal value of the shares being purchased (if the shares have a nominal value) or the consideration as determined in the deed of incorporation or the deed of issue. Contributions of capital in excess of the nominal capital (if the shares have a nominal value) are treated as share premium (‘*agio’*). A company can repurchase its own shares (on a limited basis).

### *Shares*

102. Shares of a limited liability company can only be issued in registered form. If shares are in registered form a share certificate can be issued. Registered shares can be converted into bearer shares provided the articles of association permit so (current business licence policy of the Ministry of Economic Development does not allow issuance of bearer shares in locally owned and operated companies; only for international companies). For bearer shares, share certificates must be issued. It should be noted that as of June 16, 2010 the National Decree Custody Bearer Share Certificates (N.G. 2010, no. 36) was enacted. This Decree is based on the National Ordinance Supervision of Trust Service Providers and is the codification of the already long existing practice that Company (Trust) Service Providers in Curaçao require that bearer share certificates are kept in custody in order to know the ultimate beneficial owner of these bearer shares and thus the owner of the limited liability company.

103. If shares are in registered form, the managing directors are required to maintain a register of shareholders which is open for inspection by all shareholders (to the extent it concerns the shares held by such shareholder) and, if so determined in the Articles of Association, by such other persons as determined in the Articles of Association. Moreover, all institutions subject to the supervision of the Central Bank are obliged to disclose all of their shareholders to the Central Bank. The shareholders register must contain (i) names and addresses of all holders of registered shares, (ii) the type of shares, (iii) the voting rights attached thereto, (iv) the amount paid up on each share, (v) obligation to make an additional payment (if required), (vi) the date on which the shares were acquired, (vii) the issuance of share certificates (if any) and (viii) the names and addresses of persons who have a right of usufruct or pledge in respect of such shares (if any).

104. The Articles of Association determine the rights attached to the shares. Non-voting shares and shares with limited voting rights and shares with no or a limited right to distribution of profits are permitted.

### *Management*

105. A Management Board consisting of one or more managing directors (*'directeuren'*), who may be individuals as well as corporations, manages the N.V. The Board of managing directors represents the company, defines business policy and manages the company's affairs. There are no restrictions on the nationality of managing directors; however, at least one (of the ultimate) managing directors must be residing or domiciled in Curaçao in case of local activities (either an individual or a corporation; this is based on Curaçao Government policy). For international companies established in Curaçao, it is required for them to have at least one local managing director or local representative.

106. The Articles of Association can determine that management duties are divided between a "general board" and an "executive board". In such event, the executive board is entrusted with the daily management of the company. If provided for in the Articles of Association a limited liability company may have a board of supervisory directors ('*Raad van Commissarissen'*) to oversee the management of the company and to advise and to supervise the board of managing directors. A board of supervisory directors can consist exclusively of natural persons. The N.V. can also opt for an "independent" board of supervisory directors. An independent supervisory director cannot be dismissed by the shareholders' meeting without reason. It should be noted, however, that if there is such an independent board of supervisory directors in place that the requirements applicable for the so-called "large N.V." as to financial statements and the auditing and publication thereof will become applicable for such N.V.

107. A large company is a company that meets the following criteria:

- there are at least twenty (20) employees who jointly work at least twenty (20) man-days in Curaçao at any time in the period between one month prior to and one month after the balance sheet date;
- the value of the assets shown on the balance sheet exceeds NAf 5 million or the equivalent thereof in foreign currency;
- the net turnover for the financial year shown in the annual accounts exceeds NAf 10 million or the equivalent thereof in the foreign currency.

108. Unless the Articles of Association determine otherwise, managing directors and supervisory directors are appointed by, and can be suspended or dismissed by, the general meeting of shareholders.

### *Shareholders meeting*

109. The general meeting of shareholders of a limited liability company has all powers that are not conferred upon the management or other person, within the limits set by law and the Articles of Association, insofar the Articles of Association do not provide otherwise. An annual general meeting of the shareholders should be held at least once a year, usually within eight months after the end of a company's financial year. At the annual general meeting the financial statements and a report of the managing board should be submitted for approval together with such other matters as may be set out in the notice convening the meeting.

110. Unless the Articles of Association determine otherwise, shareholders meetings must be held in Curaçao. Attendance by proxy is permitted and a simple majority of votes present and represented at meetings can validly adopt resolutions with no quorum requirements. Written

resolutions can also be adopted outside of a meeting, provided that all persons that are entitled to vote with regard to the subject have cast their vote.

111. Extraordinary general meetings of shareholders may be convened from time to time to deal with matters that arise during the course of the year. Such extraordinary general meetings may also, in certain cases, be convened by the management or supervisory board at the request of shareholders controlling ten percent (10%) or more of the issued voting shares.

### *Profits and distributions*

112. The net profits of a limited liability company are at the disposal of the shareholders who can either declare a dividend or reserve the profits. If the Articles of Association so provide, interim dividends may be declared from current year profits by the shareholders meeting or such other corporate body as appointed thereto in the articles of association. Dividends and other capital distributions cannot be paid and made if the equity capital is or becomes negative as a result of such dividend or distribution. If the company has a nominal share capital that capital is considered the limit.

### *Filing tax returns*

113. All limited liability companies are required to file annual profit tax returns together with the relevant financial statements.

### The Private Limited Liability Company

114. The private limited liability company (*'besloten vennootschap'* or *'BV'*) is a flexible form of company and is similar to the limited liability company. The main differences with the limited liability company (N.V.) are:

- The private limited liability company has registered shares only;
- The Articles of Association can determine that the shareholders can be held liable for the debts of the private limited liability company;
- There is no distinctive financial regime such as for the "large" limited liability company;
- Shareholders meetings for the private limited liability company can be convened on the initiative of an individual shareholder;
- The possibility of an independent supervisory board does not exist for the private limited liability company;
- The private limited liability company can be organized that is, it is "managed by shareholders": no distinction between shareholders and managing director as corporate bodies.

115. The option of a company "managed by shareholders" has been introduced for the private limited liability company. This form of the private limited liability company does not have a board of managing directors as a separate corporate body. The joint shareholders or the sole shareholder act as management, which simplifies the taking of corporate action and the management of this type of company in general. Since no managing directors have been appointed as such, there are no formalities of appointment, suspension, and dismissal of managing directors, nor is there a difference between shareholders' meetings and board meetings in this case. The shareholders may determine the details of the way in which they will

manage the company and the division of tasks mutually agreed upon in a shareholders' agreement.

116. The management of a private limited liability company is under the obligation to keep a record of the company's shareholders. The contents of the shareholders register are the same as for the limited liability company.

117. The shareholders register must be regularly kept up to date. Every shareholder has the right to inspect the shareholders register. The Articles of Association may stipulate that others are entitled to inspect the shareholders register. The private limited liability companies are also required to file annual profit tax returns together with the relevant financial statements. For tax exempted companies, additional requirements apply (art. 1A Profit Tax Act).

**The Foundation ('*Stichting*')**

118. A Foundation is a legal person. Its purpose is to use its capital for the realisation of its objects as laid down in its Articles of Association. It does not have members or shareholders, nor a capital divided into shares. The Board of a foundation, which manages its affairs, is therefore not subject to the overall control of members or shareholders.

119. The initial Managing Board is appointed at the moment of incorporation. Thereafter, vacancies are filled at the sole discretion of the board in office or by another person or body especially nominated for that purpose. The foundation may be formed for either an unlimited duration or a certain period of time or until a specified event occurs. The foundation can be dissolved by resolution of the Board, unless the Articles of Association provide for otherwise. For example, it is possible that the Founder has the authority to dissolve the foundation. An interested party can also request that a competent Court dissolve the foundation.

120. A foundation is established by a notarial deed executed before a civil law notary. The Articles of Association of a foundation must include (i) the name of the foundation, including the word 'Stichting' (foundation) or a translation thereof, (ii) its purpose, (iii) the first managing board, (iv) the manner how board members are appointed and dismissed, (v) where the foundation has its (statutory) seat, and the designation of the balance after liquidation in the event of dissolution of the foundation or the manner in which the designation shall be determined. A foundation has no capital per se, since it has no shares or shareholders. The Founder of a foundation can contribute to the foundation the initial assets at the time of establishment of the foundation or on any date afterwards.

121. A foundation may also have a supervisory board which supervises the board in accordance with the Articles of Association. The Founder of a foundation and the members of the board and of the supervisory board can not participate in the assets and/or profits of a foundation.

**The Private Foundation *('Stichting Particulier Fonds')***

122. The private foundation has been introduced as a variant of the long existing "common" foundation. The private foundation is comparable to the Anglo-Saxon trust. The Dutch name is '*Stichting Particulier Fonds'*, abbreviated '*SPF'*. The private foundation is, like other foundations, a separate legal entity, with assets and liabilities in its own name. Furthermore, a private foundation neither has shareholders, members or the like. Beneficiaries do not have to be appointed if such appointment is not desired. While it is not possible that a common foundation makes distributions (except distributions of an idealistic or charitable nature) to the incorporators or to others out of its income or out of its assets, a private foundation is allowed to do so.

123. Therefore, the purpose of a private foundation may include the making of distributions to incorporators and or others, such as children or grandchildren of the founder, without serving a charitable or social purpose. Beneficiaries of such distributions can – but are not required to – be appointed/designated in the Articles of Association, and if such is done, either in very general or very specific terms. In most cases, the Articles of Association of private foundations do not provide for such designation and it is at the discretion of the Board of Directors of the private foundation to designate beneficiaries.

124. Another major difference between common and private foundations is that the private foundation's purpose may not be to conduct a business or enterprise for profit. Managing its assets (investments, equities etc), to act as a holding corporation, or to participate as a partner in a limited partnership, will however not be regarded as "conducting a business". Under the provisions of Book 2 of the CC, the foundation may invest its assets, and may do so actively. There are no limits on the type of investments for private foundations, however they are not allowed to include in the purpose clause of its Articles of Association, the following words - "to generate profits by running a business or enterprise for profit".

125. Like the common foundation, a private foundation is established as such by deed executed before a notary. The contents of the Articles of Association are the same as described for the common foundation.

126. As a general provision in Curacao's corporate law, all legal entities – including foundations and private foundations that are not carrying out an enterprise – must maintain a proper administration, and prepare an annual balance sheet and profit and loss account. In case a foundation carries out an enterprise, it is required to file an annual profit tax return.

## The Association

127. An Association is a legal entity with members, formed by a multilateral legal act. An Association can also be established by notarial deed. It may not distribute profit amongst its members. An Association of which the Articles of Association have not been recorded in a notarial deed cannot acquire registered property and cannot inherit an estate. An Association can have ordinary members and one or more other class members. Membership of an association shall be personal, unless the Articles of Association provide otherwise.

128. The management of the Association shall be appointed from the members, and the appointment shall be made by the general meeting unless the Articles of Association provide that non-members may also be appointed or for a different manner of appointment, provided each member is able to participate, directly or indirectly, in the voting on the appointment of the officers.

129. The Articles of Association may provide that the general meeting shall consist of delegates elected by and from the members and also regulate the manner of election and the number of delegates. Each member must be able to, directly or indirectly, participate in the election. All powers of the Association not conferred on other corporate bodies by law or the Articles of Association, shall vest in the general meeting.

## The Cooperative Association and Mutual Insurance Association

130. A cooperative association is a legal person with members, established by a notarial deed. The object of a cooperative association is to make profits for the benefit of its members or to provide for certain material needs under contracts, other than insurance contracts. A mutual

insurance society is also a legal person with members, established by a notarial deed. Its objects must be to enter into insurance contracts with the members and keep the members insured.

**Licenses**

131. Under local law, each legal entity that carries on an enterprise needs to have a license for the managing directors to act as such (director's license); and a license to carry out business (business license). These two licenses are issued by the Government.

132. In addition, the Central Bank issues licences to credit institutions (banks), insurance companies, company (trust) service providers, investment institutions, and administrators of investment institutions.

## Liquidation

133. The voluntary liquidation of a legal entity starts with a resolution of the shareholders, members, an interested party, or the Court (as the case may be) to that effect. The liquidator does not have to be a resident of Curaçao and can be either an individual or a company. In the absence of the appointment of a liquidator, the Board or the Chamber of Commerce (as the case may be) are to act as liquidators. Once a company is in liquidation, the liquidator manages the affairs. The legal entity continues to remain in existence but only in so far as this is necessary for the liquidation and dissolution of its affairs. The liquidator converts the assets of the legal entity into cash, settles the relationships with third parties and pays the debts.

## Registration

134. All companies conducting business in Curaçao are required to be registered with the local Chamber of Commerce and Industry. This registration requirement also applies to branches of foreign companies, where branches are established and conduct business in Curaçao. The information relating to the Company (name of the company, date of incorporation, place of business, Articles of Association and any amendments thereto) as well as the information of the managing director(s), supervisory director(s) (if any) and proxy holders (if any) need to be registered and this information is publicly available and may be reviewed by any person. Shareholders or ultimate beneficial owners are not publicly registered. Also foundations, private foundations, associations, partnerships are required to be registered with the Chamber of Commerce. The registration comprises the same information as for companies.

135. As of January 1, 2010 there is only one register for all required registrations. The statistics as per June 30, 2010 are as follows:

Table 3.

| | | 2010 | | | 2009 |
|---|---|---|---|---|---|
| Legal Form | Total | Local | International | Total | Local |
| Proprietorships | 7580 | 7580 | | 7411 | 7411 |
| Open partnerships | 228 | 220 | 8 | 227 | 215 |
| Limited Partnerships | 153 | 55 | 98 | 156 | 51 |
| Partnerships | 22 | 22 | | 22 | 22 |
| Limited Liability Companies | 18372 | 7682 | 10690 | 19208 | 7749 |
| Private Limited Liability Companies | 3088 | 2287 | 801 | 2517 | 1728 |
| Shareholder Managed Private Limited Liabilty Companies | 24 | 23 | 1 | 26 | 25 |
| Cooperative societies | 28 | 27 | 1 | 27 | 26 |
| Foundations | 3600 | 3290 | 310 | | |
| Private Foundations | 4544 | 261 | 4283 | 30 | 11 |
| Association with full jurisdiction | 104 | 104 | | | |
| Association with limited jursidiction | 15 | 15 | | | |
| Association without jurisdiction | 3 | 3 | | | |
| Dutch Private Limited Liability Companies | 440 | 8 | 432 | 472 | 2 |
| Others | 193 | 114 | 79 | 193 | 108 |
| Total | 38394 | 21691 | 16703 | 30289 | 17348 |

Table 4.

| | | 2008 | | | 2007 | |
|---|---|---|---|---|---|---|
| Legal Form | Total | Local | International | Total | Local | International |
| Proprietorships | 7095 | 7095 | | 7530 | 7530 | |
| Open partnerships | 214 | 202 | 12 | 248 | 234 | 14 |
| Limited Partnerships | 162 | 41 | 121 | 163 | 37 | 126 |
| Partnerships | 19 | 19 | | 17 | 17 | |
| Limited Liability Companies | 20186 | 7793 | 12393 | 20609 | 7775 | 12834 |
| Private Limited Liability Companies | 2052 | 1325 | 727 | 1482 | 886 | 596 |
| Shareholder Managed Private Limited Liabilty Companies | 23 | 22 | 1 | 22 | 21 | 1 |
| Cooperative societies | 26 | 25 | 1 | 29 | 28 | 1 |
| Foundations | | | | | | |
| Private Foundations | 34 | 14 | 20 | 34 | 11 | 23 |
| Association with full jurisdiction | | | | | | |
| Association with limited jursidiction | | | | | | |
| Association without jurisdiction | | | | | | |
| Dutch Private Limited Liability Companies | 525 | 9 | 516 | 552 | 6 | 546 |
| Others | 176 | 97 | 79 | 147 | 97 | 50 |
| Total | 30512 | 16642 | 13870 | 30833 | 16642 | 14191 |

## Corporate record keeping requirements

136. The management of a legal entity is obligated to keep a record of the financial condition and of everything relating to the activities of the legal entity according to the requirements to which such activities give rise and it must keep the books, documents and other data carriers in respect thereof in such a manner that the rights and obligations of the legal entity can be ascertained there from at any time (article 15, paragraph 1 of Book 2 of the CC). If management fails to keep books and records and does not prepare financial statements, each management board member may personally be held liable in case of bankruptcy (article 16, paragraph 2 of Book 2

of the CC). Furthermore, the management must prepare written annual accounts, comprising of at least a balance sheet and a statement of income and expenses (article 15, paragraph 2 of Book 2 of the CC). In the event the company concerns a large company, additional conditions have to be complied with when preparing the annual accounts.

137. For example an external expert is required to audit the annual accounts. An external expert can be a *register-accountant* as defined in the Dutch regulations, an administrative-accountant consultant as defined in the Dutch Civil Code, a certified public accountant as defined in the US regulations and a person admitted as an expert by the Minister of Economic Development (article 121, paragraph 6 of Book 2 of the CC).

## PARTNERSHIPS

### Introduction

138. Partnerships are contractual co-operations for purposes of professional practice or business operations; they are not legal entities. There are three (3) forms of partnerships: A partnership (*maatschap*), general partnership (v*ennootschap onder firma*) and limited partnership (c*ommanditaire vennootschap*). All partnerships are formed either by notarial deed or by a deed executed between parties.

#### The General/limited Partnership

139. A general partnership (*'vennootschap onder firma'* or *'VOF'*) acts under a joint name, conducts a business and has a separate capital and is an agreement concluded between two or more (legal) persons that meets the formation requirements of professional partnerships. In a general partnership ('v*ennootschap onder firma'*) the individual partners are jointly and severally liable for the debts resulting from the partnership.

140. In the limited partnership ('c*ommanditaire vennootschap'*) a distinction is made between the limited partners and the general partners. The general partners are jointly and severally liable for the debts resulting from the partnership. The liability of the limited partners is, in principle, limited to the amount of their contribution to the partnership. This limitation is, however, forfeited in the event the limited partners are directly involved in the management of the partnership.

#### Partnership

141. In a partnership (*'maatschap'*) the partners are not jointly and severally liable for the debts resulting from the partnership. In principle, a creditor can hold each partner liable for an equal part of the debt (notwithstanding each partners' share in the partnership), unless when entering into the obligation which gave rise to the debt it was explicitly stated that each partners' portion of the debt would be in proportion to their share in the partnership.

#### Registration

142. Both general- (v*ennootschap onder firma*) and limited partnerships (c*ommanditaire vennootschap*) have to be registered in the Commercial Register. However, the registration of the partnership (*maatschap*) in the Commercial Register is optional.

#### Tax Filings

143. As partnerships are fiscally transparent, they are not required to file profit tax returns. In stead, each partner must include its partnership income in his own profit or income tax return.

## 1.5 Overview of strategy to prevent money laundering and terrorist financing

### *a. AML/CFT Strategies and Priorities*

144. Curaçao has adopted a multi-directional approach in its combat against ML and TF. With regard to the FIU (MOT) the government actively aims to maintain a high standard of professionalism within the FIU (MOT), in order to meet its objectives as stated in article 3 of the NORUT and in the NOIS. The objectives are to prevent and detect ML and TF activities and to disseminate after analysis, the suspicious transactions to the Public Prosecutor's Office (PPO). The FIU (MOT) meets on a regular basis with the PPO and Law Enforcement Agencies to discuss items of common interest in the fight against ML and TF. Every year the employees of the FIU (MOT) attend trainings, both locally and internationally, seminars and other meetings where they are given the tools to assist them in the combating of ML and/or TF.

145. Pursuant to the NORUT, the FIU (MOT) is in frequent contact with the reporting entities to ensure that they are aware of the ML and TF risks that they can encounter in their work and how to deal with them. The authorities identify the key elements of the overall strategy to combat ML and TF to be:

a. Implementing international standards, in particular, the FATF Recommendations;
b. Maintaining a strong penal regime against drug trafficking, ML and TF and other crimes;
c. Having effective law enforcement that serves as a strong deterrent;
d. Hiring motivated and professional staff to develop and implement AML/CFT policies and measures;
e. Promoting a high level of coordination and cooperation among all relevant government agencies; and
f. Having frequent meetings with the private sector representatives to inform them of recent policies, to get their input into restructuring AML/CFT frameworks.

146. With regard to the FIU (MOT), the effectiveness of its programmes is measured, amongst other things, by the quantity and quality of reports received after providing training to the different sectors. An increase in reports based on subjective indicators, in certain sectors, was also the result hereof. Furthermore, by working together with other relevant agencies, e.g. law enforcement, has led to a better understanding of the work of the FIU (MOT) and more efficient cooperation.

147. The number of convictions due to ML has significantly increased over the past years. This is a direct result of the increased measures undertaken by the Government, including the AML/CFT rules and regulations issued/enacted over the past years.

148. The government has amended the NORUT and NOIS and has strengthened its AML/CFT regime by incorporating the designated non-financial businesses and professions ("DNFBPs") in the respective laws. The FIU (MOT) was assigned with the task of supervising the DNFBPs concerned, excluding the company (trust) services providers, administrators, internet gambling and casinos, which have their own supervisory authorities.

## 1.5b The institutional framework for combating ML and TF

**Ministries:**

**Ministry of Finance**

149. The Minister of Finance and the Minister of Justice are responsible for the AML/CFT legislation. The Minister of Finance is, amongst other things, responsible for financial supervision legislation and tax legislation. The Ministry of Finance assesses the budgetary implications of newly proposed AML/CFT legislation. Based on the assessment, an advice is formulated and incorporated in the explanatory memorandum to the AML/CFT legislation that is enacted. The FIU (MOT) falls under the Minister of Finance.

### Ministry of Justice

150. The Minister of Justice is primarily responsible for the policy making with respect to judicial matters and the enacting of legislation relating to penal and penal procedures and legal persons and arrangements.

### Ministry of General Affairs

151. The Legislation and Legal Affairs department of the Ministry of General Affairs is responsible for reviewing draft AML/CFT legislation and in general, making sure that the quality of all the legislation on the national level is being maintained.

### Ministry of Foreign Affairs

152. The Kingdom of the Netherlands comprises of the Netherlands, Curaçao, Sint Maarten, Aruba and the three BES islands (Bonaire, Sint Eustatius and Saba). The Minister of Foreign Affairs of the Kingdom of the Netherlands is responsible for the foreign policy of the whole Kingdom. The Foreign Relations Organization of Curaçao coordinates the foreign policy of Curaçao in cooperation with the Ministry of Foreign Affairs in The Hague. The Foreign Relations Organization of Curaçao coordinates, among other things, the ratification process of AML/CFT treaties and the participation in (sub-) regional and international organizations for Curaçao.

### The National Committee on Money Laundering (CIWG)

153. The CIWG is a national committee established by law in 1990 to advice the government on anti Money Laundering measures to be taken in order to be compliant with the FATF Recommendations. In 2002 the legislation appointing the CIWG (National Decree no. 18 of May 30, 2002) was amended to include the combating of Terrorist Financing. The CIWG comprises of representatives of the Office of the Attorney-General, Tax Office, Justice Department, Central Office for Legal and General Affairs, Foreign Relations Organization of Curaçao, the Central Bank, and the private sector's representative bodies being the Curaçao Bankers Association, the International Bankers Association, and the Curaçao International Financial Services Association (CIFA). The FIU (MOT), the Gaming Control Board (GCB), the Insurance Association of the Netherlands Antilles (NAVV) and ACONA (Association of Compliance Officers of the Netherlands Antilles), Curinde also attend the CIWG meetings and are involved in the consultation process concerning review of draft rules and regulations.

154. In 2002, the Central Bank was appointed Chair and Secretary of the Committee. The CIWG advices the government on the developments on the international standards regarding AML/ CFT and also the CIWG helps in the drafting of legislation, monitors and co-ordinates the various agencies' efforts to achieve full compliance with the FATF 40 + 9 Recommendations.

The CIWG is in constant consultation with the private sector's representative bodies. This cooperation helps in making the measures that are proposed to Government also practical to implement. The CIWG is the main contact with FATF, CFATF and other organizations and countries on this specific area. The CIWG can invite other bodies and organizations to partake in its work.

## Criminal justice and operational agencies

### The FIU (MOT)

155. The tasks of the FIU (MOT) are set out in Articles 3 and 1 under h and in article 22h of the NORUT. The Meldpunt Ongebruikelijke Transacties is the FIU (MOT) of Curaçao. The FIU (MOT) has been an Egmont member since 1998. As of May 2010 the FIU (MOT) has been designated as the supervisory authority for the DNFBPs.

### Public Prosecutor Office (PPO)

156. The Public Prosecutor's Office (PPO) is responsible for the proper investigation of all crimes including the offences of ML and TF. Under the direction of the PPO the investigation of criminal offences is carried out by the Police. To combat ML and TF the Police have instituted special services as follows:
    - BFO/Harm (Bureau Financial Investigations/Hit and Run Money Laundering)
    - VDC (Security Service of Curaçao)
    - RST ( Special Task force Curaçao)
    - TIO (Information and Investigation Team of money laundering through fiscal constructions)
    - PIOD (Customs Investigation Service)
    - UFCB (Unit Combating of Financial Crimes)
    - LR (Investigation Service of the Government)

### Police (BFO)

157. The BFO/HARM comprises the financial criminal investigators. The BFO/HARM is a department especially charged with the combating of ML and the applicable cases of TF and consists of fifteen (15) staff members to perform its duties. To keep abreast of the ever changing ML characterizations, the members of this service attend relevant courses, seminars and conventions.

158. According to the NOOCMT, the police officials working at the Immigration Service are required to send immediately to the FIU (MOT) reports containing information on the cross border cash and /or bearer negotiable instruments as well as the funds taken into custody. The special unit of the police (BFO) decides what happens with the passenger and the money. Customs Officers have the authority to carry out investigations on their own, but Customs Curaçao has an agreement with the police that all the cases concerning money transport are handed over to the BFO because it is more specialized.

### Customs

159. The tasks of Customs include law enforcement with regard to the combating of ML and TF at the border. Customs is obliged to report both executed and intended unusual transactions to the FIU (MOT). The responsibilities of Customs with respect to cross-border cash and /or bearer negotiable instruments are laid down in the National Ordinance Obligation to Report Cross-Border Money Transportations (NOOCMT) (N.G. 2002, no. 74). According to the NOOCMT,

customs officials are required to send immediately to the FIU (MOT) reports containing information on the cross border cash and /or bearer negotiable instruments as well as the funds taken into custody. Furthermore, Customs of Curaçao actively screens containers by means of a container scan due to high container mobility via Curaçao's harbour. As previously noted, Customs has had since 2008 passive dogs trained and use these to detect, amongst other things, banknotes.

### Intelligence and security agencies

160. The VDC has the task bound by law to strive to achieve the objective, to foster the fundamental interests of Curaçao towards a continued existing democratic legal order, towards an incorruptible government, towards a sense of domestic safety and other vital interest of Curaçao and where necessary that of the Kingdom of the Netherlands. The VDC can do this by safeguarding the interests mentioned in its objective, by determining the risks to those interests and by contributing in minimizing and controlling those risks.

161. The VDC therefore plays a role in the fight against ML and TF when ML and TF have the tendency to bring down the existing democratic legal order, to corrupt the government, to threaten domestic safety or other vital interests of Curaçao (like the financial market) or interests of the Kingdom of the Netherlands.

162. The VDC will do this by collecting information about person(s) and organization(s) that are involved in ML and TF, and that through their activities have caused a serious suspicion that they pose a danger.

163. The Minister of General Affairs is informed of the VDC findings. If a criminal offence is being committed, the Minister of Justice will be notified. Cooperation from all government organizations and government owned companies is imperative when it comes to gathering information for the safeguarding of the abovementioned interests of Curaçao. With the consent of the Minister of General Affairs (also the Prime Minister), international cooperation is also possible.

### Task Force

164. On November 30, 2001 the Council of Ministers of the Dutch Kingdom concluded in a joint statement, agreement on the intensification of the cooperation between the countries within the Dutch Kingdom for the combat of terrorist financing. Progress reports have in this respect been issued on a regular basis thereafter. The latest progress report (7th) was issued in 2008. A threat assessment concerning, amongst other things, the financing of terrorism, has also been performed by the Dutch National Coordinator Countering Financing of Terrorism. The report resulting from this assessment was presented to the Parliament of the former Netherlands Antilles.

### Committee law enforcement agencies

**165.** The committee comprises of the FIU (MOT), the PPO, Customs, Tax office and several law enforcement authorities. This Committee meets periodically (approximately every two months) and discusses common subjects with regard to the fight against ML and TF.

### Financial sector bodies:

### Supervisors of financial institutions, including the supervisors for banking and other credit institutions, insurance, and securities and investment.

166. The Central Bank is entrusted with the supervision of the compliance with the AML/CFT legal framework by the financial institutions pursuant to article 1, paragraph 1, sub i in conjunction with article 11, paragraph 1, sub a of the NOIS, article 1, paragraph 1, sub h in conjunction with article 22h, paragraph 1, sub a of the NORUT and the various supervisory ordinances.

167. The Central Bank has issued Provisions and Guidelines (P&Gs) on the Detection and Deterrence of Money Laundering and Terrorist Financing for the financial institutions which are subject to the AML/CFT regime. The provisions and guidelines (formerly Guidance Notes) were first issued in 1992 and have been updated continuously.

168. Articles 9 and 9a of the NOIS authorize the Central Bank to impose penalties or fines in the event of non-compliance with AML/CFT legal requirements. Article 9d of said ordinance authorizes the Central Bank to publish details regarding imposed penalties or fines.

169. Article 20, paragraphs 3 and 4 of the NORUT regulate the information sharing between the Supervisor and the FIU (MOT). Articles 22a and 22b of same authorize the Central Bank to impose penalties or fines in the event of non-compliance with AML/CFT legal requirements. Article 22e of the said ordinance authorizes the Central Bank to publish details regarding imposed penalties or fines.

**Supervisors or authorities responsible for monitoring and ensuring AML/CFT compliance by other types of financial institutions, in particular bureau de change and money remittance businesses.**

170. In accordance with Article 8, paragraph 1 of the RFETCSM, the Central Bank is authorized to grant a license to persons or institutions empowering them to hold a bureau de change. However, it is the Central Bank's policy for more than two decades not to grant such licenses. Only domestic commercial banks operating under the provisions of the NOSBCI are permitted to provide the service of exchanging foreign currencies.

171. Money remittance businesses are subject to AML/CFT supervision from the Central Bank based on Article 1, paragraph 1, sub i in conjunction with Article 11, paragraph 1, sub a of the NOIS, based on Article 1, paragraph 1, sub h in conjunction with Article 22h, paragraph 1, sub a of the NORUT, and also on Article 21 of the RFETCSM.

172. The Central Bank issued AML/CFT provisions and guidelines for money transfer companies under the RFETCSM and also under the NOIS (Article 11, paragraph 3) and NORUT (Article 22h, paragraph 3). Currently, a legislation process for the expansion of the legal framework for the supervision of money transfer companies and/or their (sub) representatives is ongoing.

**Exchanges for securities**

**173.** The license to a securities exchange The Dutch Caribbean Securities Exchange N.V. ("DCSX") was granted by the Minister of Finance only in March 2010. DCSX has a self-regulatory body that oversees its activities. The Central Bank supervises both DCSX and the oversight activities of the self-regulatory body. Because of this, exchange securities companies can be expected to establish in Curaçao they have therefore been incorporated in the NOIS and NORUT (N.G. 2011 no 31 and no 32).

**The Central Bank**

174. As a financial service provider, the Central Bank issued AML/CFT provisions and guidelines for internal purposes. In accordance with the RFETCSM the Central Bank is the entity authorized to grant foreign exchange licenses and exemptions. Said ordinance also authorizes the Central Bank to issue implementation decrees as part of the foreign exchange regulation. As such the Central Bank has issued General Administrative Regulation GAR 2009 (part 5), Integrity requirements when submitting an application for a foreign exchange license or an exemption. GAR 2009 (part 5) has been updated to include the latest amendments of the AML/CFT legislation. The updated version, GAR 2010 (part 5), has been published on the Central Bank's website. The integrity requirements dealt with in GAR 2010 (part 5) regard the identification of the natural person or legal entity to which a foreign exchange license or exemption is granted.

**Ministries or agencies responsible for licensing, registering or otherwise authorizing financial institutions.**

### Minister of Finance

175. Licenses to securities exchanges are granted by the Minister of Finance after having been advised on such by the Central Bank (Article 2 of the NOSSE).

### Ministry of Economic Development

176. All businesses, including the financial institutions, are required to apply for a business license in order to be permitted to conduct their business in Curaçao. The application for a business license should be submitted to the Ministry of Economic Development**.** For financial institutions the business license is a requirement in addition to the license or registration requirements as laid down in the respective supervisory legislation.

### Chamber of Commerce

177. All businesses, including financial institutions, are required to register with the local Chamber of Commerce. More specifically, the Commercial Register Act (N.G. 2009, No. 51) state the following in Article 2, paragraph 1, Article 3, paragraph 1 and Article 4, paragraph 1: There is a Registry of Companies in which companies and legal persons are registered according to the stipulations of this National Ordinance. In the Registry of Companies the companies that are established or have a branch in Curaçao, limited liability companies, private limited companies, co-operatives, mutual insurance companies, foundations, private foundations and associations with full legal capacity are registered.

### DNFBP and other matters

### Casino Supervisory body:
### The Gaming Control Board

178. The Government of Curaçao decided to establish a GCB in 1999 in order to combat money laundering and to comply with the FATF standards. The GCB has ensured compliance by the casinos with AML/CFT regulations through the Island ordinance (O.B. 1999, no. 97, lastly amended by O.B. 2010, no. 27) that specifically regulates the casino sector, using the enforcement tools allowed by that legislation. This means that although the NOIS and the NORUT entrusted the GCB to ensure compliance with these laws only since 2010, nevertheless the GCB has effectively and legally ensured compliance of the casinos with AML/CFT

regulations for over ten (10 years already. Indicators based on the NORUT for the casinos to report were introduced since 2001.

179. The appointment of the GCB by the NORUT is based on Article 22h, paragraph 1, sub b, jo Article 1, paragraph 1, sub a, under 11°, sub a, and the appointment of the GCB by the island government as supervisor for the casinos (Island Decree O.B. 1999, no. 84, lastly amended by O.B. 2009, no. 60). The appointment of the GCB by the NOIS is based on Article 11, paragraph 1, sub b, jo Article 1, paragraph 1, sub b, under 11°, sub a, and the appointment of the GCB by the Island Government as supervisor for the casinos (Island Decree O.B. 1999, no. 84).

180. On Curaçao, only legal entities can apply for a casino license (paragraph 1.1 of the Casino License Conditions of the GCB ). In doing so, the legal entity must disclose all of its financial beneficiaries, and if these are legal entities as well, they also must disclose *their* beneficiaries and so on until all financial beneficiaries are broken down into a list of natural persons only, leading to the UBO.

181. The GCB has each of these natural persons investigated by the VDC to ascertain whether the person concerned has a criminal record (locally or overseas) or if there is any reason to suspect that this person or his actions may endanger State security, public safety or otherwise disrupt the community. If so, the VDC will issue a negative advice, and the GCB will deny the personal license, and therefore also the casino license.

182. Based on the Island Ordinance Casino sector Curaçao (IOCSO) (Article 6 and 8 of the IOCSO (O.B. 1999, no. 97, lastly adapted by O.B. 2010, no. 27), the GCB has the power to refuse or withdraw a license, and to close down a casino, either temporarily or permanently. Paragraph 7.5 of the casino license conditions (the conditions to be met to be eligible for a casino license) states that the applicant must prove to the satisfaction of the GCB that the casino business meets the MICS.

183. Chapter 6 of the MICS, prevention of Money Laundering, states all the requirements for casinos regarding the prevention of ML and TF. The MICS are part of the requirements to obtain a casino license. If a license holder fails to comply with any one of the license' regulations (including the MICS), the GCB can as an ultimate sanction withdraw the casino license (Article 8, paragraph 1, sub c, of the Island Ordinance Casino sector Curaçao) and close down the casino.

184. The GCB can also use other sanctions, depending upon the situation as follows:
    - Instruct the license holder and if necessary, publish this instruction (article 23t, paragraphs 1 and 4, of the Island Ordinance Casino sector Curaçao);
    - Impose an order with periodic penalty payment until the demand is met ("last onder dwangsom") (article 23k, paragraph 1, of the Island Ordinance Casino sector Curaçao);
    - Use administrative enforcement ("bestuursdwang") (article 23d, paragraph 1 of the Island Ordinance Casino Sector Curaçao);
    - Impose a fine to the maximum of NA*f* 5.000 per offence and if the offence persists or is repeated this amount can be increased up to a maximum of NA*f* 5.000 per day for the number of days the offence continued or was repeated (article 23p, paragraphs 1 and 2, of the Island Ordinance Casino sector Curaçao); and
    - Due to the fact that non-compliance with the MICS is a punishable act (article 26, paragraph 1, sub b, of the Island Ordinance Casino sector Curaçao), the GCB can notify the PPO.

185. The Island Ordinance Casino sector Curaçao has been adapted to reflect this sanction policy. The adaptations came into force in June 2009. The MICS require a casino license holder to appoint a compliance officer.

### Supervisor or SRO for DNFBPs

DNFBP supervisory body:

#### The FIU (MOT)

186. The FIU (MOT) is entrusted with the supervision of compliance with the AML/CFT legal framework by lawyers, notaries, accountants, real estate agents, jewelers, car dealers, tax advisors and administrative offices pursuant to Article 1, paragraph 1, sub i in conjunction with Article 11, paragraph 1, sub d of the NOIS, Article 1, paragraph 1, sub h in conjunction with Article 22h, paragraph 1, sub d of the NORUT. The FIU (MOT) has issued AML/CFT directives (provisions and guidelines) for DNFBPs.

#### The Central Bank

187. The Central Bank is entrusted with the supervision of compliance with the AML/CFT legal framework by company (trust) service providers and administrators of investment institutions pursuant to Article 1, paragraph 1, sub i in conjunction with article 11, paragraph 1, sub a of the NOIS, Article 1, paragraph 1, sub h in conjunction with article 22h, paragraph 1, sub a of the NORUT and the various supervisory ordinances.

188. According to the third paragraph of the above-mentioned Articles, the Central Bank is authorized to issue P&Gs in order to advance compliance with the NOIS and the NORUT. As such, the Central Bank has issued the P&Gs on the Detection and Deterrence of ML and FT for Administrators of Investment Institutions and Self-Administered Investment Institutions and the P&Gs on the Detection and Deterrence of Money Laundering and Terrorist Financing for Company (Trust) Service Providers.

### Registry for companies and other legal persons

189. All companies, including DNFBPs, conducting business in Curaçao are required to be registered with the local Chamber of Commerce and Industry. This registration requirement also applies to branches of foreign companies, which branches are established and conduct business in Curaçao.

### Any other agencies or bodies that may be relevant

190. **Association of Compliance Officers of the Netherlands Antilles (ACONA):** The ACONA was formally established in 2006, with the support of the Curaçao Bankers' Association, the Curaçao International Financial Association, International Bankers Netherlands Antilles and the Compliance Officers Netherlands Antilles. The basic objectives of ACONA are to raise the level of compliance awareness in the broadest sense in the financial sector by means of education and to provide an informal platform for persons working in the field of compliance to exchange and share knowledge and experiences.

191. The member base of ACONA comprises a wide scale of financial service providers. Currently, there are 104 members. The ACONA seeks to provide a forum for Compliance Officers to freely discuss issues related to the execution of their duties and to provide a networking environment, in order to enhance the educational opportunities of their members.

192. **The Curaçao Bankers' Association (CBA):** The CBA is the association of the local banks established on Curaçao. The CBA represents and furthers the interest of its member banks and serves as a forum for its members to discuss matters of common interest and acts as a conduit between the industry and the relevant authorities. In addition, the CBA promotes continuous upgrading of expertise among its members' employees. The CBA is a member of the CIWG.

193. **The International Bankers Association (IBNA):** the IBNA is the association of international banks established on Curaçao. The IBNA represents and furthers the interest of its member banks and serves as a forum for its members to discuss matters of common interest and acts as a conduit between the industry and the relevant authorities.

194. **Insurance sector and the representative organizations (NAVV; UNAC):** Insurance Association of the Netherlands Antilles (NAVV) is responsible for organizing AML/CFT trainings for the different companies, networking, representation of the insurance industry in relevant committees (CIWG) and the contact with the regulator.

195. **Curacao International Financial Services Association (CIFA) and International Financial Group (IFG):** CIFA is a representative organisation comprising of various sectors of the financial (services) industry of Curaçao. IFG was founded by some of the major international financial service providers in Curaçao. They contribute by giving advice and participating in relevant AML/CFT forums.

### The Financial Institute

196. The Financial Institute founded by the financial sector and the Central Bank provides continuous training on a wide spectrum of financial themes. AML/CFT training form an important part of the curriculum.

### Curinde:

197. International trade and distribution is stimulated and facilitated through the economic zones. The economic zones are regulated by law: National Ordinance Economic Zones 2000 ("Landsverordening economische zones 2000") (N.G. 2001, no. 18).

198. Presently, there are two Economic zones with physical flow of goods: Free Zone Koningsplein and Economic Zone Hato. These zones are managed and operated by Curinde N.V. a company of which the government is the major shareholder.

199. In order for a company to be admitted to Free Zone Koningsplein or Economic Zone Hato, the following requirements should be met:

- A one on one meeting with Curinde to present planned activity,
- A completed application form, together with two bank- and two commercial references must be submitted to Curinde N.V.,
- After a positive due diligence check:
    - Establish a limited liability company under local law, which is dedicated exclusively to the economic zone business;
    - Register company at the Curaçao Chamber of Commerce and Industry;
    - Open a local bank account; and
    - Apply for the required licenses to start an operation in the economic zone.

200. Once the above is completed and a company is admitted to the zone:

1. Management and all employees need a valid pass to enter the zone. This also applies to all buyers and visitors to the Zone.
   In order to obtain a pass, a valid identification must be presented. Relevant information is entered into the access control system.
   The access control system registers the flow of persons and vehicles, whereby at all times it is possible to check who is in- or has been in the zone.
2. The flow of merchandise into and from the zones needs to comply with Customs regulations. Customs is housed at the entrance of the Zones.
3. The export during a calendar year should be at least 75% of the total sales allowing local sales up to a maximum of 25%. This is being monitored by Curinde based on the import/export trade figures obtained from the Customs. In case a company is not able to comply, its admission to the economic zone will be revoked.

201. To prevent Economic Zone companies from becoming victims of money laundering, a manual was prepared with the assistance of Mr. Nikos Passas a professor in Criminal Law and a worldwide acclaimed authority in issues concerning international crime and money laundering. During the preparation, several meetings were held with selective companies and on October 13, 2008 a plenary meeting was held with all e-zone companies to present the draft manual. The idea was to increase their awareness and receive feedback. On May 26, 2009 a plenary session was held to launch the manual and inform the economic zone companies about the manual and to answer all their questions.

202. This manual was sent to all economic zone companies. To avoid trade in counterfeited goods, plenary sessions were organized for all economic zone companies on April 13 and 16, 2010 to create awareness of the risks involved. Hereby Curinde was assisted by a local law firm. To raise awareness on Money Laundering risk within free trade zones CURINDE N.V. in close cooperation with the CIWG, the Drug Enforcement Administration (DEA) and the FIU (MOT) organized over the years several training sessions for the free trade zone companies.

### *c. Overview of policies and procedures*

**Risk-based approach by the Central Bank**

203. The risk-based approach (RBA) as it relates to AML/CFT forms an integral part of the Central Bank's regulatory approach. It is incorporated in the AML & CFT Provisions and Guidelines issued by the Central Bank to all supervised sectors. Supervised institutions must conduct enhanced due diligence for all of their high risk clients. Supervised institutions must in that respect develop risk profiles for all of their customers comprising of minimally the following possible categories: low, medium and high risk. The supervised institutions must at least consider the following risk categories while determining the risk profile of a customer: (i) customer risk, which encompasses the type of customer and the nature and scope of the business activities of the customer, (ii) products/services risk, which encompasses the assessment of the existence of a legitimate business, economic, tax or legal reason for the customer to make use of the products/services offered by the supervised institution, (iii) country or geographic risk, which encompasses an evaluation of the vulnerabilities arising from high risk countries and territories, and (iv) delivery channels risk, which encompasses an assessment of the vulnerabilities posed by the distribution channels of the products and services offered by the supervised institution.

204. A supervised institution's decision to enter into business relationships with a customer classified as high risk must be taken at its senior management level. The institution must make reasonable efforts to ascertain that the customer's source of wealth or income is not from illegal activities and where appropriate, review the customer's credit and character and the type of

transactions the customer would typically conduct. The institution must ensure that the identification documents of its high risk category of customers are at all times valid.

205. Supervised institutions may also apply simplified or reduced CDD measures when identifying and verifying the identity of the customer and the beneficial owner.

206. Supervised institutions must apply CDD requirements to existing customers and may determine the extent of such measures on a risk sensitive basis depending on the type of customer, business relationship, or transaction.

207. During the on-site examinations conducted by the Central Bank, the examiners of the Central Bank assess the content, effectiveness and adequacy of the risk-based approach applied by the supervised institutions. Any shortcomings identified relative to the risk-based approach, will be communicated to the supervised institution during the Central Bank's on-site examinations and in the on-site examination reports of the Central Bank.

208. The Central Bank considers the following financial institutions to be very ML/FT low risk due to the nature of their businesses: credit unions, savings and credit funds, pension funds and funeral insurance companies. Life insurers are also considered ML/FT low risk. This is particularly due to the nature of the activities they conduct and the type of transactions they perform.

**Risk-based approach by the FIU (MOT)**

209. FIU (MOT) has issued AML/CFT directives for lawyers, civil law notaries, accountants, real estate agencies, tax advisors and administrative offices that allow them to implement a risk-based approach. The RBA mirrors that for supervised institutions described above.

**Risk-based approach by the GCB**

210. The RBA as it relates to AML and TF forms an integral part of the Gaming Control Board's regulatory approach. It is incorporated in the MICS regarding Deterrence and detection of money laundering and terrorist financing (Chapter 6 of the MICS). Casinos must develop clear customer acceptance policies and procedures, including a description of the types of customers likely to pose a higher than average risk to the casino. The casino should develop risk profiles to determine which of the categories expose its casino to higher risk. Casinos should conduct enhanced due diligence for high risk customers, including politically exposed persons (PEPs), their families and associates. The casinos must at least consider the following risk categories while determining the risk profile of a customer:
    - Customer risk;
    - Transaction risk;
    - Country/Geographic risk.

### *d. Progress since the last mutual evaluation*

211. The last assessment of the Netherlands Antilles' compliance with the FATF Recommendations was conducted by the IMF in 2002. The IMF report was issued in 2004 after the findings were actualized. In 1999 the FATF conducted an AML assessment of the Netherlands Antilles. The remarks and recommendations of the FATF examiners made during the last Mutual Evaluation have been revised by the competent authorities. In an effort to enhance its legal and institutional AML/CFT framework the Netherlands Antilles has made significant changes to its legislative and regulatory regime. The supervisory oversight has been strengthened as well. The following measures below have been taken to address the remarks and recommendations made.

**The FIU (MOT)**

212. The FIU (MOT) legislation provides a platform for an improved exchange of information between the FIU (MOT) and other authorities. Since the last mutual evaluation the FIU (MOT) introduced an online reporting system. The Central Bank and FIU (MOT) addressed the issue of reporting unusual transactions by giving information and training sessions to the sectors subject to their supervision. There has been significant improvement in the reporting behaviour of the non-bank financial institutions.

213. Since 2004 FIU (MOT) has signed more than forty-nine (49) MOUs with foreign financial intelligence units. The first MOU was signed in 2002 (Belgium) and the last MOU was signed in 2010 with Canada. Since the last amendment of NORUT exchange of information with Egmont member countries can occur without a MOU.

**AML/CFT provisions and guidelines**

214. After the last Mutual Evaluation the Central Bank updated the respective AML/CFT provisions and guidelines by including the recommendations addressed by the FATF examiners. A copy of the then new AML/CFT provisions and guidelines were sent to all (financial) institutions under its supervision, specifically Provisions and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing for Credit Institutions; Money Transfer companies, Company (Trust) Service Providers and Administrators of Investment Institutions and Self-Administered Investment Institutions.

215. Aforementioned provisions and guidelines have been amended several times since their introduction in order to comply with the latest FATF Recommendations.

**Countries with less adequate anti-money laundering laws**

216. All supervised institutions that conduct foreign operations, either through a branch and or a subsidiary and or a representative office, should provide the Central Bank with a "Statement of Regulatory Compliance". The Statement serves to update the Central Bank on the ongoing compliance by the supervised institution's foreign operations entity with the laws and regulations of the relevant foreign jurisdiction(s) in which each operates. The Guidelines for the Statement of Regulatory Compliance entered into effect as of June 2007.

**Money Transfer Companies**

217. Money transfer companies that operated without the Central Bank's authorization were denounced to the PPO. Money transfer companies are subject to the NOIS and the NORUT since 2001. There are AML/CFT provisions and guidelines in place for this sector and training and information session are given frequently.

**Company (Trust) Service Providers**

218. Company (trust) service providers have been supervised by the Central Bank since 2004, as was advised by the IMF. Formerly, (since 2002) the supervision of this sector was entrusted to the "Raad van Toezicht" by virtue of the National Ordinance on the Supervision of Fiduciary Businesses (N.G. 2001, no. 147). The Central Bank's Investment Institutions & Trust Supervision department supervises this sector. This department periodically conducts onsite examination at the institutions in this sector. The basis for the supervision of this sector is anchored in the NOSTSP.

219. Training and information sessions are given periodically by the Central Bank. Legislation (National Decree Custody Bearer Shares Certificates (N.G. 2010, no 36)) has been put in place securing custody of bearer shares issued by international companies. Local companies are not allowed to issue bearer shares. This decree is based on the NOSTSP.

220. All the recommendations of the assessors have been implemented. The respective legislation and AML/CFT provisions and guidelines for the supervision of these institutions are in place.

**Casino industry**

221. The Gaming Control Board (GCB) was established in 1999**.** The establishment of the GCB in Curaçao has increased the awareness of the AML/CFT threats in the casino industry. Aforementioned awareness was also increased by providing training and information sessions by experts to the players in this sector. The casino sector has to comply with the NOIS and the NORUT and MICS.

**The Economic zone**

222. The Economic zone and the national anti money laundering authorities have addressed the concerns mentioned in the FATF Mutual Evaluation Report. In the meantime the Economic zone issued AML/CFT manuals for all economic zone companies. Several training and awareness sessions have been organized over the past years. A DEA officer of the United States who was based in Panama presented an AML/CFT case on a real Economic Zone case from Panama. This training was presented both to the economic zone companies and to the financial sector.

223. In the meantime the "legislation on a reporting system from cross border cash transactions" has been introduced. This legislation also covers monetary instruments as recommended by the assessors. The powers for Customs officer have also been included in aforementioned legislation.

224. As a result of the changes made many prosecutions on money laundering were brought before the Court and were successfully convicted. At the CFATF plenary of October 2009 the results of a specific ML case "the Kings Cross" were presented. The "Kings Cross" was a case in which law enforcement authorities investigated illegal activities within Curaçao's Economic zone.

**Customs**

225. Since the last Mutual Evaluation the NOOCMT entered into effect. The Customs Department enforces the NOOCMT at the border. Operation Kings Cross is an example of the execution of the aforementioned legislation. In 2008 Customs invested in the training of passive dogs that besides drugs and fire arms also have the ability to detect banknotes.

226. Customs has invested also in three (3) SABRE 4000. The SABRE 4000 is a portable trace detector that can detect threats from explosives, chemical warfare agents, toxic industrial chemicals or narcotics, and can do so in approximately twenty (20) seconds. Customs has three (3) baggage scanners at the airport. These scanners are capable of detecting organic and inorganic items such as weapons, explosive and narcotics.

**Ratified conventions**

227. The 1990 Council of Europe Convention was ratified by the Netherlands Antilles in August of 1999.

# 2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

***Laws and Regulations***

## 2.1 Criminalisation of Money Laundering (R.1 & 2)

2.1.1 Description and Analysis

***Recommendation 1***

228. Money laundering (ML) is punishable under the Penal Code, Title XXXA in Articles 435a to 435c. These Articles deal with three forms of ML, namely intentional, culpable and habitual money laundering.

229. Article 435a provides for intentional ML. In this case ML is comprised of:

(a) hiding concealing the true nature site or origin disposal or transfer of the object or the disposal or transfer of the object or the hiding or concealing the party who is entitled to the object while he knows the object is directly or indirectly derived from any crime;

(b) the acquisition, possession, transfer, conversion or use of an object while the person knows or understands that the object is directly or indirectly derives from any crime.

230. The penalty for intentional ML is a prison term not exceeding twelve (12) years or a fine not exceeding one million guilders.

231. Penal Code Article 435b provides for habitual ML. The Article provides that 'a person who habitually commits money laundering shall be liable to a prison sentence not exceeding sixteen (16) years or a fine not exceeding one million and two hundred thousand guilders." In such cases the prosecutors must show that the offender has displayed conduct which shows a demonstrable pattern of money laundering behaviour.

232. Penal Code Articles 435c provides for culpable ML. The Article provides that:

(a) hiding concealing the true nature site or origin disposal or transfer of the object or the disposal or transfer of the object or the hiding or concealing the party who is entitled to the object while he should reasonable suspect that the object is directly or indirectly derived from any crime;

(c) the acquisition, possession, transfer, conversion or use of an object while the person should reasonably suspect that the object is directly or indirectly derived from any crime.

233. The penalty is a prison term not exceeding four (4) years or a fine not exceeding twenty five thousand (25,000) guilders. The prosecutor is able to charge an individual with all three types of ML where warranted and the Judge may determine what the most appropriate offence to apply is.

234. The offences relating to intentional money laundering under Article 435a do not strictly meet the criteria set out in the Vienna and Palermo Conventions to the extent that under the

Conventions, the mental element for the crime of transfer and conversion is twofold, i.e. knowing that the object in question is derived from crime and carrying out transferring and converting activities for the purpose of concealment of the origin. Under Curacao law, the prosecutors would only have to prove the first element and not the second. With regard to hiding and concealing the origin of such objects, this is a separate offence for which the mental element only relates to knowing that the object is derived from crime (which is in keeping with the requirements of the Conventions). The Curacao law therefore is broader in nature than the requirements of the Convention. In the circumstances, the Examiners do not believe that this negatively impacts the effectiveness of the regime.

235. Money laundering offences pursuant to Articles 435a to 435c of the Penal Code are in accordance with Article 3 paragraph 1(b) of the Vienna Convention. However with regard to sub paragraph c of the Vienna Convention, the authorities have not fully criminalized possession of equipment or materials or substances listed in Table I and Table II. The criminalization of these offences should include the knowledge that they are being or are to be used in or for the illicit production of narcotics and psychotropic substances.

236. With regard to Article 6 of the Palermo Convention, the definitions contained in the Penal Code do substantially meet the requirements of the Convention. However it is not clear that the laws of Curaçao allow for the prosecution of all serious offences that have been committed abroad which have counterpart offences in Curaçao. The provisions of the Penal Code are very clear as to its application to residents of Curaçao who have committed offences abroad and to the treatment of offenders where the proceedings are being transferred for trial in Curaçao based on a Treaty with the State in which the offence was committed. In other cases, the Code (Article 4, 4a and 5) speaks to the prosecution of certain offences in Curaçao which have taken place abroad. It is not clear whether these named offences refer to all serious offences as specified in the Palermo Convention. So, for example, Article 4, 4a and 5 does not refer to the offences of trafficking in human persons and migrant smuggling (Penal Code Articles 203a, 260, 287, 288, 289 and 290), nor reference to the arms trafficking provisions of the Fire Arms State Ordinance.

237. In the Penal Code articles on money laundering, 'objects' mean all goods and all property rights, which are directly or indirectly derived from any crime. The Examiners are of the view that the scope of the language of the statute is appropriately wide to apply to assets of any kind which are connected to criminal activity whether directly or indirectly, meeting the requirements of the Convention.

238. There are no provisions in the Penal Code which indicate that it is necessary for a person to be convicted of a predicate offence as a prerequisite for prosecuting a ML case. There have also been decisions of the Court which indicate that there is no requirement for a conviction for the predicate offence. (Judicial ground 3.5 HR 28-09-2004, LJN: AP2124).

239. All three of the ML offences refer to "…*objects derived from any crime*". As a consequence the ability of the Authorities to prefer a ML charge and prosecute ML offences would not depend on the nature of the predicate offence, since all crimes would be included as predicate offences.

240. The Authorities have provided details of the offences that match those listed in the FATF Listing of Designated Offences. These are contained in Table 5.

**Table 5: Designated Categories of Offences**

| FATF 20 DESIGNATED CATEGORIES OF OFFENCES | CURACAO'S EQUIVALENT LEGISLATION |
|---|---|
| Participation in an organized criminal group and racketeering | Article 146 of the Penal Code. |
| Terrorism including Terrorist Financing | While terrorism[3] is an offence under<br><br>1° Articles 97 thru 102, 114 subsection 2, 123 subsection 2, 124a subsection 2, 129, 130, 163 sub 3°, 167c sub 2º, 172 sub 3°, 174 sub 2°, 176 sub 3°, 180 subsection 2, 300 and 302 of the Penal Code;<br><br>2°. Articles 122a, 122b, 128a, 128b, 182a, 182b,<br><br>295b, 302a, 318a, 318b, 430a and 430b of the Penal<br><br>Code;<br><br>3°. Articles 146a, 295a and 298 subsection 3 of the Penal Code; |
| Trafficking in human beings and migrant smuggling. | Human smuggling and Slave trade are criminalized in Articles 203a, 287, 288, 289 and 290 of the Penal Code.<br><br>Trafficking in Women en Children is criminalized in Article 260 of the Penal Code.<br><br>As of the amendment of the Penal Code which passed Parliament on the 7th of July 2011, Human Trafficking in General is criminalized in Article 2:239. This Article has not yet entered into force. |
| Sexual exploitation including sexual exploitation of children | Article 259 of the Penal Code. |
| Illicit Trafficking in Narcotic Drugs and Psychotropic substances | Articles 3, 11, 11a, 11b, 11c, 11d of the State Ordinance on Narcotic Substances and Ministerial Regulations that list the Narcotic Substances. |
| Illicit Arms Trafficking | The Fire Arms State Ordinance. |
| Illicit trafficking in stolen and other goods | Articles 431, 432, 432bis and 432ter of Penal Code. |
| Corruption and Bribery | Articles 183, 184, 185, 378, 379 and 380 of the Penal Code. |
| Fraud | Articles 339, 339a, 340 and 341 of the Penal Code. |
| Counterfeiting currency | Articles 214 thru 221 of the Penal Code |
| Counterfeiting and Piracy of products | Articles 350 of the Penal Code. |
| Environmental crime | Article 178, 179, 179a, 179b of the Penal Code;<br><br>The State Ordinance of the Protection of the Nature that |

[3] Terrorist financing is not independently criminalized under the old Penal Code, but as of the amendment of the Penal Code which passed Parliament on the 7th of July 2011, terrorist financing is independently criminalized in Article 2:55. This Article has not yet entered into force.

| | |
|---|---|
| | implements the Convention on the International Trade of Endangered Species of Flora and Fauna.<br>The State Ordinance on the Maritime Management |
| Murder, Grievous bodily injury | Articles 300, 302, 313 thru 316 of the Penal Code. |
| Kidnapping, illegal restraint and hostage taking | Articles 295, 295a and 298 of the Penal Code. |
| Robbery or theft | Articles 323, 324, 324a and 325 of the Penal Code. |
| Smuggling | The State Ordinance on the Import, Export and Transit of goods. |
| Extortion | Articles 330 and 331 of the Penal Code. |
| Forgery | Articles 230 thru 240 of the Penal Code. |
| Piracy | Articles 395 thru 399 of the Penal Code. |
| Insider trading, market manipulation | Article 9 National Ordinance on the Supervision of Securities Exchanges |

241. Curaçao does not have a threshold approach. In Curaçao all crimes can be predicates for money laundering.

242. Article 4 of the Penal Code provides that the laws of Curacao will apply to any person who outside of Curaçao commits any of a number of offences listed in that section (including terrorist offences). Article 4a deals with the transfer of proceedings from another State to Curaçao based on treaty arrangements between Curaçao and that State. Article 5 provides that the laws of Curaçao apply to residents of Curacao who commit certain crimes outside of Curaçao. However, since in Curaçao all offences may constitute predicate offences and given the very specific criteria (e.g. Treaty requirements) and listings of offences contained in Articles 4, 4a and 5, the Examiners are unable to say whether the laws of Curaçao would apply to all offences committed abroad that have an equivalent offence in the Curaçao Penal Code. The Examiners did note that there are serious offences (indicated in the Table above) that are not referred to in Articles 4, 4a and 5 of the Penal Code.

243. It should be noted that currently, the Curaçao authorities are engaged with the Governments of Venezuela and Colombia with regard to breaches of gold exporting regulations and money exchange regulations respectively. These offences would appear to fall within the categories of offences listed in Article 4 of the Penal Code.

244. The ML offences contained in Articles 435a, 435b, and 435c of the Penal Code specify that anyone who is involved in ML is liable to punishment, irrespective of whether or not he himself has committed the predicate crime.

245. The Penal Code refers to the following ancillary offences:
- Preparation (article 48a)
- Attempt (article 47)
- To be a co-perpetrator (article 49)
- Complicity (article 50)
- Capacity of being an offender/participation in an organization (articles 146 and 146a)

246. However the ancillary crime of preparation only applies to offences that attract penalties in excess of eight (8) years imprisonment. The crime of preparation refers to the wilful

acquisition, manufacture, importation forwarding exportation or possession of objects, materials, information or vehicle intended for use in the commission of a crime. This ancillary offence would not apply to culpable money-laundering, which carries a penalty of four (4) years imprisonment.

***Recommendation 2***

247. Article 53 of the Penal Code provides that criminal offences can be committed by natural persons and legal persons. The Article also provides that in the case of offences committed by legal persons, criminal liability may also attach to the natural person who ordered or directed the offence.

248. There are no statutory provisions that establish how the mental element of ML is to be established. However, based on decided cases in Curaçao, the Courts have shown a willingness in considering cases to infer the intention of the suspect from objective circumstances. The Supreme Court in The Hague has confirmed in a number of cases the principle that the intentional element of the ML offence can be deduced from the factual circumstances, such as the behaviour of the accused.

249. Parallel criminal prosecution and administrative or civil proceedings against a legal person are possible. A criminal case does not exclude civil proceedings. However, in criminal proceedings, the Judge may also make an award for the accused person to compensate or provide restitution to an aggrieved party. In such cases a party may not pursue civil proceedings for damages if he has already received compensation in the criminal proceedings. In addition, the Court, in imposing a fine in criminal proceedings may take into account any other fine imposed in any administrative or regulatory proceedings.

250. Under the criminal law, in case of intentional ML, the penalty is a maximum of one million guilders and/or six (6) years in jail. A maximum fine of one million two hundred thousand guilders and/or a sentence of up to nine (9) years is applicable for habitual ML. Offenders will be found guilty of habitual ML where the prosecution is able to prove a pattern or course of conduct which indicates that the offender has carried out ML offences on a repeated basis. In the case where the accused should have reasonably suspected that the relevant object was directly or indirectly derived from a crime, (referred to as "culpable money laundering") the penalty is a maximum of twenty five thousand guilders and or a jail sentence of up to four years. (Articles 4235a – 435c of the Penal Code). It should be pointed out that these penalties do not exclude confiscation measures such as dispossession of unlawfully obtained benefit civil proceedings by an aggrieved party, which ~~is~~ measures are applicable to both natural and legal persons.

251. At the time of the visit, the Team was advised that the foregoing offences were being revised downwards under the recently enacted revisions to the Penal Code. The previous penalties were:

(i) for intentional money laundering twelve (12) years (now reduced to 8 years);
(ii) for habitual money laundering sixteen (16) years (now reduced to 9 years)
(iii) for culpable money laundering four (4) years. This remains the same under the amended Code.

The Examiners were advised that these revisions are in keeping with the penalties for ML in the Netherlands. This proposed reduction in penalties is a matter for concern for the Examiners because it will impact the effectiveness and dissuasiveness of the AML regime.

252. By way of contrast, the following are the penalties for intentional ML in a sample of CFATF member states:

1. Cayman Islands: 3 main offences on conviction on indictment 14 years and unlimited fines;
2. Commonwealth of The Bahamas: 2 main offences, on conviction on information 20 years and unlimited fines;
3. Antigua and Barbuda: 20 years and fines of up to $200,000.00.
4. Jamaica: 20 years and unlimited fines.
5. Dominican Republic: up to 20 years in some cases and up to 50 years in others;
6. Guatemala: Maximum of 20 years

253. With regard to prosecutions and convictions for ML, the Examiners were handicapped insofar as the statistics provided essentially referred to the work of the prosecution authorities throughout the former Netherlands Antilles, and not just Curaçao. This was understandable, given the recent change in Curacao's constitutional status. The statistics also did not differentiate between the different types of ML offences, predicate offences or the range of sentences handed down, which would have been useful in assessing effectiveness.

254. The Examiners also noted that the PPO also had powers to settle cases, which the Examiners acknowledge is a necessary corollary to the prosecutor's discretion whether to pursue a case or not. The Examiners were not however advised of the specific guidelines that would establish appropriate circumstances for settlement. Given that in some years there are a substantial amount of settlements, it appears advisable for transparency purposes, that the PPO should develop clear guidelines as to when and how this discretion should be exercised.

255. In addition financial institutions and designated non-financial businesses and professions may also be subject to regulatory sanctions, if they engage in ML or breach the statutes and guidelines that impose measures to prevent money laundering.

***Recommendation 32*** **(money laundering investigation/prosecution data)**

256. The Public Prosecutors' Office (PPO) does maintain data on ML cases, including information on investigations and prosecutions. Given the changes in the Government system which occurred in October 2010, the Curaçao PPO is separating its systems and data from the systems and data of the other Island with which it was previously associated. The data provided to the Examiners at the time of the Evaluation was combined with those of the other territories of the former Netherlands Antilles.

| **Actions in the Former Netherland Antilles** | **2005** | **2006** | **2007** | **2008** | **2009** | **2010** |
|---|---|---|---|---|---|---|
| **ML Investigations** | **29** | **31** | **19** | **28** | **31** | **31** |
| **TF Investigations** | **0** | **0** | **0** | **0** | **0** | **0** |
| **ML Prosecutions** | **15** | **25** | **18** | **25** | **33** | **24** |
| **TF Prosecutions** | **0** | **0** | **0** | **0** | **0** | **0** |
| **Acquittals** | **0** | **0** | **0** | **0** | **1** | **1** |
| **ML** | **20** | **14** | **2** | **13** | **12** | **2** |

| | | | | | | |
|---|---|---|---|---|---|---|
| **Settlements (conditional dismissal)** | | | | | | |
| **ML Convictions** | **16** | **25** | **17** | **24** | **19** | **23** |

257. Although Examiners were advised that the majority of ML investigations, prosecutions and convictions occurred in Curacao, the Examiners were not able to assess the true effectiveness of the regime because of the lack of clear data relating to Curaçao. This resulted from the recent change in Curacao's constitutional status and the delay in separating data and reporting systems.

2.1.2 Recommendations and Comments

*Recommendation 1*

258. Curaçao should criminalize the possession of equipment or materials or substances listed in the Vienna Convention.

259. The Authorities should move amendments to extend the powers of prosecution to all crimes committed abroad which would constitute crimes in Curaçao.

260. The law should provide for the widest range of ancillary offences for all money laundering offences. Currently, the ancillary offence of preparation would not apply to some money laundering offences.

*Recommendation 2.*

261. The Authorities should reconsider a reduction in the penalties for money laundering.

*Recommendation 32*

262. The PPO must segregate its database with regard to its different activities.

2.1.3 Compliance with Recommendations 1 & 2

| | Rating | Summary of factors underlying rating[4] |
|---|---|---|
| **R.1** | **LC** | • **The possession of equipment or materials or substances listed in Table I and Table II of the Vienna Convention has not been criminalized.**<br>• **The Penal Code provides for a specific listing of offences occurring abroad which may be prosecuted in Curacao which may not cover all serious crimes.**<br>• **The ancillary offence of preparation would not apply to culpable money laundering offences** |
| **R.2** | **LC** | • **The effectiveness of the ML prosecution regime could not be properly assessed based on the statistical information provided.** |

## 2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and Analysis

***Special Recommendation II***

263. On June 21, 2008 the National Ordinance Criminalization of Terrorism, Terrorist Financing and Money Laundering came into force. This national ordinance concerns the amendment of the Penal Code to implement, among other things, the regulations laid down in Article 2 of the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism ("TF Convention") (Treaty series 2002, 12) concluded in New York on December 9, 1999. As a result thereof two new terms have been introduced in the Penal Code, namely terrorist offence and terrorist purpose.

264. Pursuant to Article 84a of the Penal Code, the term terrorist offence is understood to mean:

1. Each of the crimes described in the Articles 97 up to and including 102, 114, second paragraph, 123, second paragraph, 124a, second paragraph, 129, 130, 163, under 3°, 167c, under 2°, 172, under 3°, 174, under 2°, 176, under 3°, 180, second paragraph, 300 and 302, if the crime has been committed with a terrorist purpose;
2. Each of the crimes carrying an imprisonment pursuant to Articles 122a, 122b, 128a, 128b, 182a, 182b, 295b, 302a, 318a and 318b, as well as 430a and 430b;
3. Each of the crimes described in the articles 146a, 295a, 298, third paragraph.

265. Pursuant to Article 84b of the Penal Code, the term terrorist purpose means the purpose to cause fear to the population or part of the population of a country, or unlawfully force a government or international organization to take action, not to take action or to tolerate, or to seriously disrupt or destroy the fundamentals of the political, constitutional, economic or social structures of a country or an international organization.

266. Pursuant to Article 48a of the Penal Code:

1. Preparation of a crime that according to legal definitions carries an imprisonment of eight years or more is punishable when the perpetrator willfully acquires, manufactures, imports, forwards, exports or possesses objects, materials, information carriers, spaces or vehicles intended to commit that crime.
2. In case of terrorist offences, the acts of preparation shall also be understood to include the financing or the attempt at financing those offences.
3. The maximum, of the principal sentences for the crime shall be reduced by half in case of preparation.
4. Article 47, third and fourth paragraph apply equally.
5. The term 'objects' means all goods and all property rights.

267. Pursuant to Article 146a of the Penal Code:

- Participation in an organization aiming at committing terrorist offences carries an imprisonment not exceeding eighteen years.
- Founders, leaders or directors of an organization referred to in the first paragraph will be punished with life imprisonment or a temporary imprisonment not exceeding twenty-four years.
- With the term participation as described in the first paragraph is also meant the

rendering of financial or other material support as well as the acquisition of funds or persons in favor of the organization described in the first paragraph.

268. Article 48a of the Penal Code creates the general ancillary offence of preparation which includes acquisition, importation, forwarding, exportation or possession of objects intended to commit the offence. Part 2 of the Article provides that in cases of terrorist offences, the acts of preparation shall also be understood to include the financing or attempt of financing those offences.

269. It should be noted that the participation in a Terrorist organization has been criminalized in Article 146a of the Penal Code. A conviction for participation in a terrorist organization carries a term of imprisonment not exceeding eighteen (18) years. Part 3 of Article 146 (a) of the Penal Code provides that participation in a terrorist group includes the rendering of financial or other material support as well as the acquisition of funds or persons in favour of the said terrorist organizations.

270. There are no Court cases that have considered these issues and therefore there are no available interpretations as to the scope of these Articles.

271. On the issue of the ancillary offence of attempt, Article 47 of the Penal Code/ provides for the offence of attempt. The penalty for attempt is calculated as a third of the penalty for the substantive offence.

272. The predicate offence regime for ML in Curaçao covers all serious crimes and extends to the widest range of predicate offences. Specifically, each of the offences for ML refers to several activities involving funds that are derived from any crime (which would include both terrorist offences and offences relating to the participation (financing) of the terrorist offence.

273. Articles 4, 4a and 5 of the Penal Code also provides that residents of Curaçao can be prosecuted for a number of criminal acts carried out abroad which constitute an offence under Curaçao law. In particular:

(a) Article 4 Part 6 of the Penal Code specifies that the laws of Curaçao will apply to persons who outside of Curaçao commits one of several crimes contained in the Penal Code insofar as the crime is covered under the Treaty on combating terrorist bomb attacks.

(b) Article 4 Part 7 speaks to the an offence being committed where terrorist financing activity as defined under Curacao law occurs abroad.

274. The intentional element of TF can be deduced from objective circumstances. In Article 48a of the Penal Code, the crime of participation is deemed to include financing in the case of participation referable to terrorist offences. The criminal intent can be concluded from objective circumstances such as the nature of the goods and/or services involved, and the actions of the perpetrator.

275. Criminal liability for legal persons can be found in Article 53 of the Penal Code. The provisions of Article 53 also apply to TF offences.

276. There are no limitations on parallel proceedings in relation to TF offences. For example a financial institution and its officers may be sanctioned by a Court in criminal proceedings, but may also be subject to sanctions imposed administratively by the regulator of the financial institution.

277. The Examiners found that the provisions in the law that related to Terrorism Financing did not meet the requirements of SR II in the following respects:

a. Under the law, the reference is made to *"…the financing or attempt to finance those [terrorism] offences"*. Examiners were unable to determine whether this would have included the provision or collection of funds by any means directly or indirectly with the unlawful intention that they should be used in full or in part to carry out a terrorist act.

b. The law makes reference to *"…an organization aiming at committing terrorist offences*". This term differs from the definition of "*terrorist organization*" under SR II, which includes groups that have committed terrorist offences, participated as accomplices, or makes a contribution. These acts may be done either in furtherance of a terrorist acts or with the knowledge that the group intends to commit a terrorist act.

c. The Examiners were not able to verify whether the offences listed in Article 84a corresponded to the definition of "*terrorist acts*" in SR II. It is noted that Article 84b is similar to part (ii) of the definition of "*terrorist acts*".

d. The financing of terrorism is encompassed in the broader definition of participation which applies to other criminal offences. To meet the requirements, the financing of terrorism should not be criminalized based on an inchoate offence such as conspiracy, aiding and abetting or attempt. The Examiners consider participation to be an inchoate offence that is equivalent to aiding and abetting.

e. The Examiners were unable to ascertain whether the financing of terrorism extended to the use of both legitimately and illegitimately derived funds. The Examiners were also unable to determine whether the "*financing*", or the *"the rendering of financial or other material support as well as the acquisition of funds"* would apply to funds as that term is defined in SR II.

f. The provisions of Article 48a do not make reference to the mental element of the financing offence as required by SR II.

g. The Examiners were not able to assess the penalties that attached to terrorism offences since the penalties for the financing offence (participation) is calculated as one half of the term attaching to the relevant terrorism offence. The Examiners were not provided with the details of the offences referred to in Article 84a. As a result the Examiners could not assess the effectiveness, proportionality or dissuasiveness of the penalties.

h. The provisions of Article 48a do not make reference to the offence of organizing or directing or contributing to the commission of an offence and the relevant mental element as specified at Article 2(5) of the Terrorism Convention.

***Recommendation 32 (terrorist financing investigation/prosecution data)***

278. In Curaçao investigations into TF have not resulted in prosecutions for TF. The PPO does maintain statistics on investigations, prosecutions and convictions in relation to crimes committed in Curacao. However, because of the recent constitutional changes, there is an exercise underway to segregate the data relating to Curaçao from the existing database which refers to statistics for the former Netherlands Antilles. As at the date of the Mission, there have been no investigations, prosecutions or convictions for FT.

### 2.2.2 Recommendations and Comments

279. The offences of participation (which would include the financing offences) should be criminalized in keeping with the requirements of the Terrorism Financing Convention.

### 2.2.3 Compliance with Special Recommendation II

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **SR.II** | **PC** | • **Offences for participation and financing of terrorism do not meet the requirements of the Terrorist Financing Convention.**<br>• **The Examiners could not evaluate effectiveness of the FT sanctions.** |

## 2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1 Description and Analysis

***Recommendation 3***

280. In the Penal Code and the Penal Procedures Code there are different provisions dealing with the freezing, seizure and confiscation of property, including the proceeds of crime.

281. Freezing and seizure measures include:

- Seizure of items under Article 119a of the Penal Procedures Code. However in such cases the suspected offence must be one which attracts a penalty of imprisonment not exceeding four (4) years.

- Seizure of items under Article 121 of the Penal Procedures Code. In these cases, the suspect must be caught in the act. In addition in such cases the prosecutor may also demand and seize letters and packages entrusted to the postal and transportation services.

- Seizure of items under Article 122 of the Penal Procedures Code. This refers to cases relating to such offences for which the suspect can be remanded into custody. This power is vested in the Public Prosecutor.

- Seizure of items under Article 123 which relate to a number of specific offences.

- Seizure of items pursuant to a criminal financial investigation ordered under Article 177a. This relates to crimes with penalties of four (4) years imprisonment or more.

282. With regard to confiscation there are two key measures:

(a) Dispossession under Article 35 of the Penal Code. This entails the confiscation of assets owned by the convicted person which have been obtained for the most part from a criminal offence, being items related to the crime committed, instrumentalities related to the crime, things which obstructed the tracing of the assets, things manufactured or intended for use in committing the offence, and real and personal rights attaching to these items.

(b) Taking an asset out of circulation under Article 38b of the Penal Code. This refers to the confiscation of things in the possession of the convicted person that are illegally possessed (e.g. narcotics or firearms)

283. With regard to Confiscation Article 35 of the Penal Code provides that the objects susceptible to confiscation are:

a. objects belonging to the convicted person or which he can totally or partially use for his own purposes and which for the most part have been obtained by means of a criminal offence;
b. objects related to the crime committed;
c. objects instrumental in committing or preparing the offence;
d. objects instrumental in obstructing the tracing of the offence
e. objects that were manufactured or were intended to commit the offence;
f. real rights on or personal rights concerning the objects referred to in the sections a up to and including e.

These provisions apply to any offence under Curaçao law including ML and participation offences (which include FT).

284. With regard to the seizure of assets of a corresponding value, Article 38e of the Penal Code provides for dispossession. In separate Court proceedings (post conviction), at the request of the Public Prosecutor, an obligation can be imposed on the convicted person to pay a sum of money to the country based on the calculation of unlawfully obtained benefits. Any asset belonging to the convicted individual can then be seized to settle this fine.

285. The Judge shall determine the amount, based on the estimation of the unlawfully obtained benefit. Benefit includes the savings on the costs. The value of the objects considered to form part of the unlawfully obtained benefit is estimated on the benefit obtained by the person and the specific circumstances are taken into consideration.

286. When determining the amount on which the unlawfully obtained benefit is calculated the legally awarded claims to the third party shall be deducted. Any previous decision with regard to the the payment of a sum of money for the dispossession of unlawfully obtained benefit shall be taken into account when imposing a measure.

287. As for unlawfully acquired benefits, there are three ways to assess the value of these benefits (based on case law):
- Transaction based calculation (in case of a single criminal offence);
- Calculation based on cash statements (in case more than one offence has been committed) or;
- Asset comparison.

288. In Article 35 of the Penal Code which describes objects that are susceptible to confiscation, there is reference to objects which have been obtained by means of a criminal offence. There is no reference or inference as to whether this includes property that is derived from a crime, whether directly or indirectly. The same provision provides that assets that are susceptible to confiscation include real or personal rights that attach to the assets, which could include profits income and other benefits

289. In Article 35 of the Penal Code, paragraphs 2 and 3 there is provision for confiscation of goods and property rights of third parties where it can be shown that the third party knew or suspected the manner of acquisition (by means of the criminal offence) or the designated use or purpose of the goods or property.

290. The grounds for seizure are set out in articles 119 and 119a of the Penal Procedures Code. Article 119 states that:

1. Susceptible to seizure are all objects and claims that can serve to reveal the truth or to prove unlawfully obtained benefit as referred to in Article 38e of the Penal Code.

2. Susceptible to seizure are furthermore all objects and claims, whose confiscation or withdrawal from circulation can be ordered.

291. While no direct reference in the laws provide for ex parte seizures, there are statutory references to cases where the public prosecutor can proceed in urgent circumstances to search premises and seize items without awaiting a court order (per article 122 of the Penal Procedures Code) and therefore impliedly without notice. A similar exemption exists in the cases of 'urgent necessity' where the public prosecutor may seize packages, letters and documents entrusted to the postal service.

292. Article 126 establishes a general obligation not to carry out a seizure within a residence unless the occupant has been heard and been requested to voluntarily surrender the objects for confiscation (which is a notice requirement). However, such requirements may be suspended where it is 'urgently necessary in the interests of the investigation' (Article 126 of the Penal Procedures Code).

293. In the case of a seizure under Article 119a of objects necessary to secure a right of recourse to a fine that may be imposed, this may only be done by way of a Court authorization. Article 129a specifies that the authorization must be served on the suspect or third party as soon as is granted by the Judge.

294. In the Penal Procedures Code powers to identify and trace assets are based on the provisions of search and seizure and the mandatory handover of documents and records. These powers include:

7. Article 127 provides that in the case where a perpetrator is caught in the act, the prosecutor may demand that packages letters documents and other records entrusted to the postal services or another institution shall be surrendered for seizure. This is subject to a Judge's later order.
8. Articles 137 to 139 provide for additional powers of search and seizure upon a Judge's authorization. See also above at paragraph 285.

295. Article 177a of the Penal Procedures Code provides for a more comprehensive investigative and confiscation regime by way of a criminal financial investigation where there is a suspicion of an offence that is punishable by a prison term exceeding four (4) years or an offence which indicates a significant monetary benefit. The regime vests the prosecutor with significant powers to obtain access to premises and to information. He may search premises and also may seize objects to preserve the Court's right of recourse to recover fines and penalties.

296. It is significant to note that the Penal Code provides protection for persons who have the right to refuse to provide information (Penal Procedures Code Article 252). This exemption applies to persons who are under a duty of confidentiality. The PPO advises that this situation applies for example to doctors and religious advisors, however in practice the issue generally arises with attorneys, notaries in circumstances of lawyer/client privilege. In such cases, the PPO will bring the matter before a Judge to determine whether the case is a proper one for seizure. The investigative authorities did however consider that this did constitute an obstacle to investigations.

297. The Examiners also noted the provisions of Article 126 of the Penal Procedures Code which provides that, save in exceptional cases, seizure should not take place on occupied premises unless the occupant or a household members is present and has been heard and has been requested to voluntarily surrender the object for confiscation. The occupant or householder is to be given an opportunity to explain the presence of property liable to seizure on the premises.

298. The Penal Code also protects the universal right against self-incrimination. It also protects the spouse and relatives of an accused person from being liable to provide evidence against that person.

299. The Penal Code provides for detailed procedures for interested parties to complain about the confiscation of property belonging to them or in which they have an interest. A successful compliant may result in the property being released from confiscation or from being withdrawn from circulation.

300. Article 35, sections 2 and 3 of the Penal Code protects the rights of bona fide parties by setting out specific conditions under which third party goods may be confiscated, basically requiring knowledge of the third party with regard to their criminal provenance, use or destination. Third parties can challenge the seizure of their goods by using the procedure of Article 150 of the Penal Procedures Code. The same applies for creditors of these third parties.

301. Article 152 of the Penal Procedures Code requires prosecutors who note, in the course of a confiscation action, the existence of property belonging to a third party to notify that party of the liability of that property to confiscation.

302. Regarding the possibility of voiding contracts aimed at frustrating seizure, confiscation or confiscation orders, a contract of which a person knows or should know that it will prejudice authorities in a recovery, is unenforceable under the laws of Curaçao. Article 40 of Book 3 of the Civil Code declares legal actions (such as contracts) performed in breach of a mandatory legal provision or public order to be null and void. This would apply, for example, if entering into the contract constituted a criminal offence or if the contract was concluded to hinder the ability of the State to recover a financial claim. In addition, pursuant to Article 119d section 2 of the Penal Procedures Code, the Public Prosecutor may declare null and void fraudulent conveyances, which include legal acts, performed by an accused or convicted person in the year preceding the commencement of an investigation of the person.

**Additional Element**

303. Article 146 of the Penal Code provides for an offence relating to the participation in an organization aiming at committing crimes, which carries a penalty of a term of imprisonment of not more than five (5) years. The operation of Article 35 of the Penal Code (which describes the types of objects that are susceptible to confiscation) would therefore apply to objects related to and instrumental to the commission of this offence.

*Statistics- The Number of Cases and amount of property frozen, seized and confiscated re ML &FT*

304. For an effective fight against ML and FT the statistics are kept up to date. The Authorities in charge of this are the FIU (MOT), Special task force Curaçao (RST), police and the PPO. These Authorities keep updated data on Confiscations and Seizure (freezing and seizure)

| Actions in the former Netherlands Antilles | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|---|
| Seized goods (value) | 2,847,263,05 | 921,129.99 | 17,670,066,97 | 1,058,693.01 | 9,272,518.19 | 7,650.00 |
| Pre-trial asset | 111,919.16 | 60,883.42 | 50,738.90 | 30,423.00 | 67,569.78 | 23,200.00 |

| | | | | | | |
|---|---|---|---|---|---|---|
| forfeiture (settlement) | | | | | | |
| Asset forfeiture at trial | 62,923.32 | 0 | 250,856.64 | 342,992.60 | 47,0570.08 | 23200.00 |
| Post trial Asset Forfeiture | | | 14,500,000 | 427,250.00 | 13,682,760.00 | 0 |

The amounts in the Table are in Guilders

305. The amounts frozen and seized in 2008 relate to proceedings for ML and predicate offences that are pending prosecution in the Courts. To date, the orders that prevent any dealing, transfer or disposal of the property are all still in effect. There have been no cases of freezing, seizing or confiscating assets in relation to FT or criminal proceedings.

306. As noted previously, the PPO's statistics provided include data for other Islands of the former Netherlands Antilles, because of the very recent change in Curacao's constitutional status. Therefore the Examiners would be challenged to draw any fundamental conclusions from the data presented. Although the Examiners were advised that the majority of the PPO's AML and CFT Activities are centred in Curaçao, the effectiveness of the confiscation regime in Curaçao is not clear to the Examiners.

2.3.2 Recommendations and Comments

307. Curacao has a strong regime for confiscation which provides for the rights of third parties. The regime is also driven by pragmatic issues, including taking account of issues that can affect the success of cases. These factors are taken into account where cases are settled by the PPO, who establishes appropriate conditions for settlement with the defence for the settlement of cases. Whilst the prosecutor always retains the ultimate discretion as to whether cases should be proceeded with, the Examiners consider that it would be more transparent for the PPO to establish appropriate Guidelines to govern such cases to avoid the possibility or appearance of impropriety.

2.3.3 Compliance with Recommendations 3

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.3** | **LC** | • **Examiners had difficulty in assessing the true effectiveness of Curacao's confiscation regime.** |

## 2.4 Freezing of funds used for terrorist financing (SR.III)

2.4.1 Description and Analysis

***Special Recommendation III***

308. Article 4 of the Penal Code creates a class of terrorism offences that incorporates numerous other offences contained in the Code. Article 48 then outlines the offence of preparation of a crime, which includes the wilful acquisition, importation, forwarding exporting or possession of objects intended to commit that crime. That Article also indicates that the offence includes financing or attempts at financing terrorism. Article 35 of the Penal Code goes on to indicate

the nature of objects that are susceptible to confiscation, which would include objects belonging to the convicted person derived from crimes or related to crimes (which would include terrorist financing offences as defined under the Penal Code). There are also a number of other confiscatory measures that are available to law enforcement authorities (such as the Criminal Financial Investigations powers under Article 177a) prior to conviction that would also apply to objects related to terrorism prevention offences.

309. On the specific issue of addressing Special Recommendation III and the related UN instruments relating to terrorism, the National Decree of September 28 2010 seeks to implement UNSCRs 1267, 1333, 1363, 1373, 1390 and 1526.

310. The prohibitions listed below apply equally to both terrorists and terrorism entities (which may be designated locally by the Ministers of Finance and Justice) as well as to Al Qaida, the Taliban, Osama Bin Laden and their representatives or any entity belonging or controlled by these entities. It also applies to natural persons, enterprises designated by the Al Qaida and Taliban Sanctions Committee of the United Nations.

311. The National Decree~~s~~ (Sept. 28, 2010) provides for:

i. prohibitions on acts of management or disposition with regard~~s~~ to the funds or assets, which may be originating from or generated from assets or funds in the custody of natural persons credit institutions or other enterprises in Curaçao, belonging directly or indirectly in full or in part, or are at the disposal of or are managed by the above entities
ii. prohibitions on the making of payments directly or indirectly to the abovementioned persons;
iii. Prohibitions on making capital or other financial means to the abovementioned persons.
iv. Prohibitions on the entry into Curaçao of the above mentioned persons (save where same are residents of Curacao);
v. Prohibitions on persons contributing in any manner whether directly or indirectly to acts prohibited in the Decree.

312. The Sanctions National Ordinance of December 12 1997 provides critical details on the regime for Curaçao's compliance with resolutions or recommendations of international bodies in the field of international law or with international arrangements. The Sanctions National Ordinance deals with such issues as the traffic of goods, services and payments with states or territories designated in sanctions national decrees, the granting of full or partial exemptions by Ministerial Decrees, appeals and key powers of supervising public officers to search premises vehicles and to access information. It also lays down penal provisions for breaches of key obligations.

313. The Authorities in Curaçao have also implemented Sanctions National Decree Democratic People's Republic of Korea, September 28$^{th}$ 2010 prohibiting dealing in assets belonging to or at the disposal of, or managed by, natural persons, enterprises, institutions or institutions involved in or supporting the nuclear and cruise missile programs of that country and that have been designated by Security Council or the Committee of the United Nations.

314. The Authorities have also implemented the Sanctions National Decree Islamic Republic of Iran, September 28$^{th}$ 2010. This similarly prohibits acts of support to Iran's nuclear programme.

315. In addition the Curaçao Authorities have established specific operating protocols that govern the procedures in cases where there were hits arising from lists of locally designated terrorists

generated by the Security Services of Curaçao[5], or where there are hits arising from the lists generated by the United Nations Security Council relating to UNSCR 1373.

316. To date, there have been no cases where the assets of either locally designated terrorists or persons on the UN listings relating to the Taliban, Al Qaida or Osama bin Laden has been identified or frozen.

317. The Sanctions National Decree Al_Qaida c.s., Taliban of Afghanistan, Osama bin Laden and terrorists to be designated locally of September 28, 2010 (N.G. 2010, no. 93) contains the prohibitions on dealing with funds or assets belonging directly or indirectly to, or at the disposal of or managed by the Taliban of Afghanistan c.s. and Osama bin Laden. Moreover, the National Ordinance of June 10, 2008 for the amendment of the Penal Code (National Ordinance penalization terrorism, terrorist financing and money laundering) regulates the seizure of terrorists' funds and other assets.

318. Based on Article 2 of the Sanctions National Ordinance, Curaçao has the ability to take national measures by National Decree to freeze terrorist funds pursuant to UNSCR 1267. This entails that the terrorist must be related to Al-Qaida, Osama Bin Laden and/or the Taliban and as such appears on the United Nations "freezing list".

319. The Examiners note that the protocol with regard to freezing of assets of terrorists mentioned on the UN lists provide for financial institutions who find themselves in control of funds covered by the National Ordinance to first make a report to the Central Bank and to the FIU (MOT), following which the entity is required to freeze the funds or assets without delay. There is no requirement for the financial institution to give notice to the person whose assets are to be frozen.

320. The Sanctions National Ordinance provides the same prohibitions in relation to locally designated terrorists as it does for Al Qaida, the Taliban of Afghanistan and Osama bin Laden. Thus dealings in assets or funds belonging to, or at the disposal of or managed by locally designated terrorists are prohibited by the National Sanctions Ordinance.

321. It should be noted however, that in the Protocol with regard to locally designated terrorists, it is the Security Service that will keep a data bank of persons, enterprises or institutions that may be involved in terrorism or terrorism financing but which do not appear on UN listings. The Security Service~~s~~ is required to pass on this information to the PPO for investigation and to the Central Bank and the FIU (MOT). The Central Bank will then pass this information onto its licensees, whereupon if assets or funds are identified the financial institution is required to immediately freeze same. Given that the Security Service is not referred to in the Sanctions National Decree Al Qaida, Taliban, Osama Bin laden and locally designated terrorists, it is presumed that the designation of locally designated terrorists is done by the Ministers of Finance and Justice pursuant to Article 1(2), 2(2) and 3(2) of the said National Decree.

322. The PPO's view of this process is that the information provided by the Security Service must be sufficient to meet the standards of a normal criminal investigation in order to merit criminal freezing and seizure of assets, as opposed to the administrative process that takes place in the financial sector outlined in the Protocols. If the information provided by the Security Service does not meet this threshold, then the financial institution will be required to unfreeze the funds.

323. The Sanctions National Ordinance does not specifically refer to the giving effect to freezing actions initiated by other countries. Curaçao Authorities would operate on the same lists

[5] Please note that the Protocols that were presented to the Examiners refer to the 'Netherlands Antilles', however the Examiners took note of the fact there is transitional legislation which basically alters references to the NA to Curaçao.

generated by the United Nations, and therefore freezing in such a case should be straightforward. With regard to giving effect to the freezing actions of other countries in the cases of a person who has been designated a terrorist in that overseas country, the action taken by Curaçao would depend on the weight of evidence indicating that such a person has committed or is about to commit a criminal act and would therefore be subject to usual considerations attaching to requests for mutual legal assistance. Under the Penal Code Article 557, the Public Prosecutor is under an obligation to promptly consider requests and decide on the appropriate action.

324. The Sanctions National Decree Al Qaida, Taliban of Afghanistan, Osama Bin Ladin and locally designated terrorists is worded appropriately to include application to:
    a) funds or other assets wholly or jointly owned or controlled, directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organizations; and
    b) funds or other assets acquired from or generated from funds or other assets wholly or partially owned or controlled, directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organizations.

325. The Government of Curaçao uses statutory instruments such as National Decrees to indicate countries, institutions or individuals who are subject to sanctions in Curaçao and whose assets are subject to freezing. Under the Protocols, the Central Bank is vested with the responsibility of advising the financial institutions of all actions relating to such countries institutions and individuals, and for providing guidance and interpretations to the relevant financial institutions with regard to the appropriate actions to take.

326. The Central Bank does provide in its internal procedures and processes (Provisions and Guidelines) information to its licensees' on countries, institutions or individuals who would be subject to freezing actions. The Central Bank also provides case by case guidance and feedback to licensees to ensure that licensees take the appropriate steps to protect themselves.

327. Based on the Protocol, the Central Bank provides guidelines to financial institutions that may be holding targeted funds and other assets with regard to their obligations to take actions in case of seizure measures. In Curaçao, regulated entities will receive guidance from their regulators with regard to the procedures to be adopted under the freezing requirements.

328. The Central Bank's Provisions and Guidelines (P&Gs) contain provisions on the obligation of the supervised institutions with regard to their obligations in taking action under freezing mechanisms. It is not clear who would issue guidance to non-financial firms that find themselves in possession of funds or assets that should be frozen.

329. The Protocols provide for the procedures whereby individuals who have been subject to freezing may have their assets unfrozen. In the case of a person whose name coincides with that of a person or entity on the UN listing, the Security Service will investigate whether a hit is authentic. In the case of a locally designated terrorist, the PPO will determine whether the facts provided by the Security Service are sufficient to ground a criminal case. If in either case there is a finding that listing is not supported, then the person should be de-listed and assets must be unfrozen by the financial institution, within a reasonable time. However, these protocols are not public documents and therefore in the view of the Examiners, these procedures for de-listing and unfreezing are not publicly known.

330. Under the Protocols, in case of a no-match on the UN lists or in case the freezing of the goods is due to an error, the (financial) institution shall release the assets within a reasonable period of time. However, as noted above these Protocols are not public documents and therefore an affected party could have a difficulty in understanding his or her rights with respect to frozen property.

331. Article 9 of the Sanctions National Ordinance regulates the authority of the Minister or Ministers concerning the granting of full or partial exemptions, releases or dispensations. The Minister or Ministers can grant exemption or grant a dispensation of the rules, as described in Article 3 of the Sanctions National Ordinance (which cover broad areas such as traffic of goods and services, the making of payments, and telecommunications) , after having received a request for that purpose. Exemption, releases and dispensations can be refused, altered or revoked.

332. Article 9 of the Sanctions National Ordinance provides that exemptions and releases are done by Ministerial Decrees. Such exemptions and releases (as well as any subsequent modifications or repeals) are required to be published in the National Gazette. The Ordinance does not however indicate the grounds upon which these exemptions or releases may be granted.

333. It should also be noted that under Article 6 of the Sanctions National Decree Al_Qaida, Taliban of Afghanistan, Osama bin Ladin and locally designated terrorists, the Minister may grant releases from the prohibitions contained in that Decree upon representations by the Central Bank. The Decree does not state the grounds upon which these exemptions would be granted and no such applications have been made by the Central Bank in the past.

334. Article 10 of the National Sanctions Ordinance provides for a right of appeal from a decision of the Minister to refuse or to modify or repeal of any release, exemption or dispensation to the Court of first instance within thirty (30) days of the Minister's decision.

335. The regime for freezing the funds and assets of terrorist entities (whether the subject of a UN list or a locally designated terrorist) as contained in the Sanctions National Decree is wide enough to cover the categories of property classified as subject to confiscation in Recommendation 3. The regime also allows for freezing to prevent transfer or disposal. Freezing can take place without notice and authorities do have the necessary powers to trace and identify property subject to confiscation under this regime.

336. According to Article 11 of the Sanctions National Ordinance the designated persons are authorized, exclusively in so far as this is reasonably necessary for the execution of their tasks to:

    a. Ask for all information;
    b. Demand access to all books, records and other information bearers and have a copy made or to temporarily take them with them;
    c. Survey and investigate goods, take them with them temporarily for this purpose and take samples from them;
    d. Enter all places, with the exception of dwellings without the explicit permission of the occupants, accompanied by persons designated by them;
    e. Inspect vessels, stationary vehicles and their cargo; and
    f. Enter dwellings or parts of vessels used as dwellings without the explicit permission of the occupant.

337. Third party protections under the administrative freezing regime of the National Ordinance appear to be governed by Article 9 of the Sanctions National Ordinance which gives the Minister power to grant releases and exemptions. There is no express indication that the rights of a third party operating in good faith will be protected in the exercise of the Minister's discretion but the Central Bank advises that in practice this is taken into account.

338. The Sanctions National Ordinance also indicates who the persons are that have to supervise the observance of the law. The officials or persons are appointed by national decree. The decree is published in the Curaçao Gazette. The National Decree of February 4, 2011 on the appointment

of supervisors of the Sanctions National Ordinance designates the Central Bank as the supervisor of compliance with mentioned ordinance for the financial institutions under its supervision (Curacao Gazette March 4, 2011). The Central Bank has the legal power to effectively monitor the compliance with the relevant legislation, rules or regulations governing the obligations under SR III. Supervision of compliance with these regulations by financial institutions form part of the ongoing supervision by the Central Bank and is included in the P&Gs.

339. However, the Central bank advised that it did not consider that its supervisory activities under the Ordinance extended beyond its monitoring of its licensee financial institutions. Under Article 17, the Minister may also designate officers to investigate breaches of the Ordinance. However, there did not seem to be structures in place for monitoring breaches of the Ordinance which may take place outside of the regulated sector.

340. Article 20 of the Sanctions National Ordinance contains the penal provisions that are applicable in case of failure to comply with the provisions of the said Ordinance. In the case of intentional breaches, the penalties are one year's imprisonment or NAf 10,000 or both. In the case of unintentional breaches, the case of unintentional breaches the penalty is either four (4) months imprisonment or NAf 3000 or both fine and imprisonment.

***Recommendation 32 (terrorist financing data)***

341. Curaçao has not frozen any property related to terrorist financing.

2.4.2 Recommendations and Comments

342. Measures should be put in place that allow freezing without delay, and the maintenance of such freezes, as required by UNSCR 1373.

343. Curaçao should make the procedures for de-listing and unfreezing publicly known.

344. Curaçao should have a mechanism for the issue of Guidance to non-financial entities or individuals who may find themselves in possession of property or assets that may belong to terrorists or terrorist entities.

345. A clear structure should be put in place for the monitoring compliance outside of the financial sector.

346. Clear criteria for the exercise of the Minister's discretion with regard to the protection of third party rights should be developed.

2.4.3 Compliance with Special Recommendation III

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **SR.III** | **PC** | • **Freezing of assets of locally designated terrorist cannot occur or be maintained without delay as required by UNSCR 1373.**<br>• **Procedures for de-listing of persons and unfreezing of assets not publicly known.**<br>• **Lack of guidance to non-financial entities and individuals.** |

| | | |
|---|---|---|
| | | • **No structure for monitoring compliance outside of the financial sector**<br>• **No clear criteria for the exercise of the Minister's discretion to issue exemptions or releases.** |

## ***Authorities***

## 2.5 The Financial Intelligence Unit and its functions (R.26)

2.5.1 Description and Analysis

***Recommendation 26***

347. The FIU (MOT) was established in 1997 pursuant to the NORUT of 1996. The FIU (MOT) falls under the Minister of Finance. Article 3 of the NORUT outlines the tasks of the FIU (MOT). With the amendment of the NORUT, the FIU (MOT) was given as of May 2010 the additional task to supervise compliance with the NORUT and the NOIS with regard to the DNFBPs not falling under the supervision of the Central Bank and/or the Gaming Control Board (GCB). The FIU (MOT) is an administrative FIU (MOT). After due analysis of the received unusual transactions, and in case of suspicion of ML/TF, these transactions are disseminated to the law enforcement agencies and to the PPO.

348. Prior to October 10, 2010, the FIU (MOT) was the sole national FIU (MOT) for the five (5) islands comprising the Netherlands Antilles. As per October 10, 2010 with the dismantling of the Netherlands Antilles, the scope of the activities of the FIU (MOT) only encompasses the jurisdiction Curaçao. Sint Maarten is in the process of establishing its FIU with support from the FIU (MOT) of Curaçao.

349. Pursuant to the NORUT the FIU (MOT) has access to all databases and other registers of the law enforcement agencies. The FIU (MOT) can obtain all necessary information from the reporting entities that are obliged by law to respond within the period stipulated by the FIU (MOT). The FIU (MOT) has been a member of Egmont since 1997 and partakes in the work of the Training Working Group.

**The mission and vision of the FIU (MOT)**

350. The mission of the FIU (MOT) is to:

- maintain the integrity of the financial system;
- contribute both nationally and internationally to prevent and combat money laundering and financing of terrorism;
- promote the reporting of unusual transactions;
- build up a widespread network of information exchange with foreign reporting centers with regard to methods, technological applications and analysis techniques, in order to combat money laundering and the criminal activities that are at the root thereof; and
- make recommendations for improving and developing methods and techniques to combat ML and FT.

351. The vision of the FIU (MOT) is:

- to provide professional support to the judiciary system through analyzing legally gathered information for the prevention, detection, control and prosecution of money laundering and to recognize and take advantage of the creative synergy that this creates;
- to build up a widespread network of information exchange with foreign reporting centres with regard to methods, technological applications and analysis techniques, in order to combat money laundering and the criminal activities that are at the root thereof; and
- assist other Financial Intelligence Units in the Caribbean and Central America with trainings and organizing their unit.

352. The FIU (MOT) serves as a central national agency (Article 2 of the NORUT) responsible for, among other things, collecting, registering, processing and analyzing the data obtained and transmitting disclosures on unusual transactions regarding ML and/or FT to the competent authorities. The tasks of the FIU (MOT) are laid down in Article 3 of the NORUT. The core functions of the FIU (MOT) include among other things: - receiving and analyzing unusual transactions and disseminating unusual transactions to the competent authorities; conducting investigations into developments in the field of ML and FT and into improvements of the methods to prevent and detect ML and FT.

**Receiving reports**

353. Pursuant to the NORUT all domestic banks, commercial banks, international banks, savings banks, savings and credit funds, credit card companies, money transfer companies, life insurance companies, trust companies and company service providers and casinos, are obliged to report both executed and intended unusual transactions to the FIU (MOT). Since May 15th 2010, other DNFBPs (including internet casinos; real estate agents; dealers in precious metals; dealers in precious stones; lawyers, notaries, other independent legal professionals and accountants) are also obliged to report both executed and intended unusual transactions to the FIU (MOT).

354. Every year, the vast majority of unusual transaction reports (UTRs) submitted to the FIU (MOT) comes from local banks (82% in 2010 and 87% in 2009). Money remitters come second in terms of volume of UTRs (with 10% or less) and offshore banks have submitted less than 4% of the total volume of UTRs in 2009 and 2010. Before May 2010, trust companies and casinos were the only DNFBPs submitting UTRs to the FIU (MOT), with less than 0.5% of the total volume in 2009 and 2010. Since May 2010, other DNFBPs have started submitting UTRs, but it remains very limited.

355. Unusual transactions are defined in the law and as stipulated in Article 6 of NORUT, a list of indicators is provided, by Ministerial Decree (N.G. 2010, no. 27), for reporting entities to assess whether a transaction must be considered unusual. The list contains both objective and subjective indicators.

356. Objective indicators are mostly related to different types of threshold of transactions. The list of objective indicators is very exhaustive. They include, for example: transactions of NAF 250,000 and higher; transaction of NAF 20,000 in large nominations; wire transfers of NAF 20,000 and higher intended for foreign countries. The UTRs submitted based on objective indicators (objective UTRs) could be considered similar to large cash transactions and electronic fund transfer reports. Although extremely valuable, they cannot be considered as suspicious transaction reports (STRs) because they have to be reported even if the reporting entities do not suspect or have reasonable grounds to suspect that funds are the proceeds of a criminal activity, and/or are related to ML or FT.

357. The list of subjective indicators are for reports that reporting entities suspect or have reasonable grounds to suspect that funds are the proceeds of criminal activity, and/or are related to ML or FT. As such, UTRs submitted based on subjective indicators (subjective UTRs) could be considered as the equivalent of STRs. However, the list of subjective indicators provided by Ministerial Decree is very prescriptive or rule based. Many of the subjective indicators include a threshold and require meeting two or more sub-indicators (for example: transactions of NAf 100,000 and higher including traveller's checks from or to a foreign country with no explicable objective). As such, a portion of the subjective UTRs are also reported even if the reporting entities do not suspect or have reasonable grounds to suspect that funds are the proceeds of a criminal activity, and/or are related to ML or FT. In addition, it is conceivable that some suspicious or unusual transactions would not be reported because the transaction would be below a prescribe threshold.

358. The Examiners have concluded that one category of subjective indicator is general and flexible enough to allow reporting entities to submit what could be considered a suspicious or unusual transaction. This indicator is: "transactions where there is a cause to presume that they may relate to money laundering or terrorist financing".

359. Reports can be received either electronically or in hard copy. However, most reports are received electronically. This makes the FIU (MOT) more effective in its analytical capacity. At the beginning of 2010, the FIU (MOT) implemented a new web based application (CORSYS) for reporting entities to submit their UTRs electronically. The speed of integration into the FIU (MOT) database has been increased, making the data quickly available to the analysts. All the reporting entities met by the Examiners had no issues with the new reporting system. Many welcomed the improvement in the way to report, others reported having received adequate training and support to install and use the system.

**Analysing reports**

360. For Curaçao, the FIU (MOT) received 11,832 UTRs in 2009 and 9,067 UTRs in 2010. About eighty-five percent (85%) of these reports are objective and about fifteen percent (15%) are subjective. Only a portion of the fifteen percent (15%) of subjective UTRs offer a rationale for the suspicion or what would be considered unusual by reporting entities. However, all these reports, objectives and subjective, can be very valuable for analysis by the FIU (MOT).

361. FIU analysts do not look at all the UTRs received. Many of the UTRs (both objective and subjective) would not present any suspicious aspect and would not trigger an analysis on a stand alone basis. A system of 'alert' is used (MOT alert) to identify and prioritize the need for further analysis of the received transaction reports.

362. Every day the computer generates Alerts, which are based on certain criteria:

1. The quantity of transactions over the last six (6) months is five (5) or more.
2. The amount of the transactions in the last six (6) months exceeds NAf. 500,000
3. Reports based on subjective indicators.
4. Reports based on certain terms: fraud, terrorism, criminal, etc.

363. Analysis at the FIU(MOT) not only takes place on the basis of alerts but also among other things using newspaper articles, local and international requests for information, queries using terms like 'drug, cash, terror, fraud, high risk jurisdictions', and FATF and Egmont typologies. Prioritization allows the FIU to allocate or redirect resources in accordance with priorities based

on risks. Based on the above-mentioned alerts, queries, newspapers articles, requests for information and FATF typologies, FIU (MOT) makes a risk assessment in order to prioritize and execute its work.

364. Based on this way of proceeding, it is possible that some reported unusual transactions will never be analysed by the FIU (MOT).

365. At the time of the on-site visit by the Examiners, four (4) analysts were conducting analysis of UTRs selected by among other things the computerized alert system. The selection of cases triggered by the alert system and other information sources was based on an assessment influenced by, among other things: information on the subject(s) in the database of the FIU (MOT) or from other confidential or open sources, the subjects which have been disseminated within the past five (5) years to the PPO, the subjective indicators, the typologies, foreign FIUs information, relevant newspaper articles and high risk jurisdictions. Reports identified by an alert that are given a lower priority stay in the database for future reference. Reports that are given a higher priority will be analysed further and potentially disseminated taking into account the findings of the analysis.

366. The FIU can also initiate a case based on a request from law enforcement agencies. The FIU (MOT) received fifty-one (51) such requests in 2009 and forty-nine (49) in 2010. However, it is not possible to identify how many of these requests were from authorities of Curaçao, as the statistics are for the former Netherlands Antilles.

367. Trained analysts determine whether or not funds involved represent a suspicion of ML/TF. Based on the Analyst's findings, and after consultation with the Head of FIU (MOT), the transactions will be disseminated (when there is a suspicion of ML/TF) or filed for intelligence purposes.

368. For investigations generated by the FIU (MOT), the analytical process is not focused on a single UTR. In selecting a UTR from among other things the alert system, the analyst will automatically get other relevant reports existing in the database. The system uses key variables such as names and birth dates to extract related reports. Reports are kept in the database for a minimum period of five (5) years. Reports could stay in the system for a longer period of time when new reports are submitted on the same subject. The analysts also have access to other sources of information to conduct the analysis, including information from foreign FIUs (see further details on access to information and international cooperation in subsequent sections). Analysts have been trained to use the Analyst Notebook programme (by the provider of the system and by FIUs of Colombia and Mexico).

369. The Analyst processing a UTR (case) will complete his/her analysis and make a formal recommendation to the Supervisor Analyst relative to the potential ML/TF suspicious cases. Periodic meetings are held with the analysts, the Supervisor Analyst, the senior legal counsellor and the Head of FIU (MOT). During these meetings only complex cases involving potential ML/TF suspicion are discussed. During this the review, taking into account the fact that the FIU(MOT) is administrative, the Analyst is required to indicate in all cases why there is a suspicion of ML/TF and that the transactions/case need to be disseminated to the PPO and law enforcement agencies. The Analyst indicates the reason for starting the case, the actions taken in that respect, the authorities that have been contacted, the reactions received, the indicators for ML/TF that are evident, the Typologies of ML/TF that are applicable, and if Police registers both locally and abroad (through the relevant foreign FIU) have been consulted. The buffer function entails that the FIU (MOT) has to make sure that only transactions which it considers as having a suspicion of ML/TF are disseminated to the PPO.

370. Where such analyst meetings cannot be held, the recommendations made by the analysts are forwarded electronically to the Head of FIU (MOT) after being subject to the Supervisor

Analyst's review. The Supervisor Analyst will review the Analyst's report, propose to incorporate necessary amendments and thereafter the Supervisor Analyst will forward the case file to the Head of FIU (MOT). If the Head of FIU (MOT) concurs, he will sign off on the Supervisor Analyst's recommendation. Where the Head of FIU (MOT) has any questions with regard to the forwarded case, he will first discuss this with the Supervisor Analyst and if needed with the analyst involved. In case the Head of FIU (MOT) is absent they are forwarded to the person who has power of attorney.

**Effectiveness of analysis performed**.

371. The FIU (MOT) receives an average of 20,000 UTRs[6] per year, which after analysis, results in an average of 4,000 transactions being used in cases disseminated to the PPO as suspicious transactions with regard to ML/TF (in conjunction with other sources of information). In 2010, the number of disseminated transactions has dropped from 3,930 in 2009 to approximately 2,000 transactions. There are a number of reasons for this decrease primarily: among other things, the decrease in transactions from the money remitting sector, the preparations for the new constitutional situation in the Netherlands Antilles, including providing support for the establishment of the FIU (MOT) in Sint Maarten to mention a few.

372. The FIU has received training for the analysts from the FIU of the Netherlands, FIU Mexico and FIU Colombia. The FIU (MOT) has also organized training sessions for other FIUs. In July 2009, together with the Training Working Group of the Egmont Group, of which the FIU is a member, a Tactical Analysis Training was organized on the island of Sint Maarten. Analysts from approximately sixteen (16) Caribbean countries, the Netherlands, Mexico and Nigeria attended this training. At the end of the training a – 'Train the Trainers' - course was organized by Egmont. The Head of the FIU (MOT) and four (4) other staff members took that training, including the 'train the trainers' component'. Afterwards, the FIU (MOT) organized a Tactical Analysis Training for the FIUs of Suriname and of the Dominican Republic. In May 2011, the FIU (MOT) in joint cooperation with the Egmont Group and the World Bank organized another Tactical Analyst Training for the Caribbean and Central American Region.

373. The FIU (MOT) and the PPO have agreed to meet on a regular basis to discuss the dissemination of reports, their quality and possible feedback of the result of the dissemination to the reporting entities. Additionally, the FIU (MOT) meets periodically (approximately every two months) with many law enforcement agencies, the PPO, Customs and Tax department, to discuss matters relating to ML/TF, operational effectiveness of the several agencies and possible bottlenecks.

374. The approval process for the FIU (MOT) appears to be burdensome. The decision to have all, simple or small cases presented by an analyst and discussed with the Head of the FIU should be revised. Such process could be maintained, exceptionally, for the few most complex cases and a lower level of scrutiny could be used for the vast majority of cases. Also, the approval process should be reconsidered. Instead of having the Head of the FIU approving all cases (except where the Head is absent), consideration should be given for delegation of authority in order to allow the approval of disclosure of simple or regular cases by other officials other than the Head of FIU (MOT).

**Feedback and guidance**

[6] The 20,000 UTRs represent those for the former Netherlands Antilles. For Curaçao the average would be around 12,000.

375. The FIU (MOT) provides a substantial amount of guidance to reporting entities. It informs the reporting entities collectively via sessions organized by the FIU (MOT) itself, informative and training sessions to individual reporting entities which have requested training, or by the Association of Compliance Officers of the Netherlands Antilles, the Central Bank and other institutions that operate in the field of compliance. The training deals with issues regarding their reporting obligations, the manner of reporting, the reporting form, their reporting behaviour, use of indicators, typologies, FATF, EGMONT and the work in general of the FIU (MOT). The FIU (MOT) over the years has given interviews via the radio, television and in the local newspapers, among other things, with regard to the work of the FIU (MOT), the obligation to report and trends in ML/TF.

376. Over the past four (4) years the FIU (MOT) has organized several informative sessions either alone or in cooperation with the ACONA or Central Bank. During the period 2006 to 2009, there were ninety-two (92) informative sessions and in 2010 between January and September there were eighteen (18) informative sessions. The FIU (MOT) also organizes training and informative sessions for individual reporting entities on request.

377. The FIU (MOT) has also given individual trainings to the following sectors over the past four (4) years: casinos, company (trust) service providers, credit union, domestic banks, international banks, insurance companies, and Customs, lawyers, notaries , accountants, tax advisors, real estate agents, jewellers, care dealers and administrative offices. The FIU (MOT) has also given informative sessions to law enforcement agencies regarding ML/TF and its jurisprudence, trends and typologies, recent ML/TF cases both national and international with regard to the work of the FIU (MOT) and the cooperation with the respective agencies. The Judiciary of Curacao, Sint Maarten, Bonaire and Aruba also received the above-mentioned trainings.

378. The FIU (MOT) is also involved in the provision of lectures at the yearly Compliance Course organized by the Financial Institute. Together with the Foundation Financial Institute, the FIU (MOT) assists with and gives training to Trust Officers, among other things with regard to the FIU (MOT), FATF Recommendations and the use of indicators in the company (trust) service sector. The FIU (MOT) has organized trainings for the company (trust) service sector in Curaçao and Sint Maarten; for the Insurance sector in Curaçao and Sint Maarten, for all casinos in the former Netherlands Antilles, (approximately fifteen (15) in Curaçao and fifteen (15) in Sint Maarten, one (1) in Bonaire), and the DNFBPs. Over the past four (4) years the FIU (MOT) has given 110 training/presentations to both the financial sector and the DNFBPs.

**Access to other sources of information**

379. Pursuant to Article 5 of the NORUT, the FIU (MOT) has the authority to have access to domestic information in the database and other registers of the law enforcement agencies (including law enforcement units of the Immigration Department, Customs and the Tax Office). The law enforcement agencies are obliged by law to give the requested information to the FIU (MOT). The FIU does not have direct access to law enforcement databases; the PPO confirmed that a letter has to be submitted to a law enforcement agency to obtain information. The letter is submitted on a case by case basis. All law enforcement agencies are expected to provide the requested information to the FIU (MOT) within a period of five (5) working days.

380. The FIU (MOT) also receives or directly access relevant information from the Civil Registry, (with regard to correct names of subjects, correct address, inhabitants of a certain address, etc.) the Vehicle Registry, (with regard to the registered owner of a vehicle), the Land Registry (with regard to the registered owner of real estate), and the Chamber of Commerce database, (type of company, its share capital, managing directors of a company, in order to assist in the fight against ML/TF. With regard to the Chamber of Commerce, in addition to the public access via

its website, the FIU (MOT) can also request further information not available publicly. For the vehicle registry, the FIU (MOT) has direct access to the database that they purchase.

381. In addition, all analysts have access to Internet, World Check, OFAC, the terrorist lists of UN and EU, and Interpol.

382. The FIU (MOT) does not have access to any database of the National Security (VDC) information. According to the FIU (MOT), they have collaborated with the VDC on ML/TF cases. However, it was not possible for the Examiners to validate this information with the VDC and assess the nature and extent of the collaboration between the two agencies, because the Assessment Team did not have the opportunity to meet with the VDC during the onsite visit.

**Obtaining additional information from reporting entities**

383. Pursuant to Article 12 of the NORUT the FIU (MOT) is authorized to request additional information from all reporting entities. This additional information can be requested from the entity filing the report as well as a third reporting entity mentioned in the report. The additional information can also relate to information received in an international request for assistance.

384. The reporting entity is obliged by law to respond within the time period set by the FIU (MOT). This period is set at five (5) working days after receipt of the FIU (MOT)'s request by the reporting entity. If the reporting entity cannot reply within the given time period, after being notified of this, the FIU (MOT) will extend the period with a maximum of five (5) additional working days, unless the information is needed urgently for example to comply with both local and foreign requests for information. If this is the case the FIU (MOT) will inform the reporting entity that the requested information is needed urgently. The reporting entities cooperate fully with the FIU (MOT) in this regard.

385. In 2009, the FIU (MOT) submitted eighty (80) requests for additional information to reporting entities. Of this total, sixty-two (62) requests were submitted to banks; fourteen (14) to money remitters; three (3) to casinos; and, one (1) to a trust. The FIU (MOT) indicated having received good collaboration from reporting entities in that context.

**Dissemination of information domestically**

386. Pursuant to Article 6, paragraph 1 of the NORUT the FIU (MOT) has the obligation to disseminate information to the law enforcement agencies when after due analysis there is a suspicion of ML/TF.

387. According to Article 7, paragraph 1 of the NORUT the FIU (MOT) can disseminate information to the law enforcement agencies or any other agencies with similar competency as further specified in the National Decree for the implementation of Article 7 paragraph 1 of the NORUT (N.G. 2001 no. 69). Pursuant to paragraphs 3 and 4 of Article 20 NORUT exchange of information can occur between the FIU (MOT) and the supervisory authorities.

388. As indicated in the section above on analysis, the FIU (MOT) is disseminating reports that were assessed by the FIU (MOT) to be suspicious and investigations containing one or many UTRs. When a case (investigation) results in a suspicion of ML/TF, a letter addressed to the PPO is prepared for the Head of FIU (MOT)'s signature.

389. The reports or the FIU (MOT) investigations are submitted to a unit of the CPD, the (Unit Combating Financial Crimes). All relevant documents are sent electronically to the UFCB. This Unit is responsible for receiving all information from the FIU (MOT) for all units of CPD

and KPC. After its own analysis of reports and investigations submitted by FIU (MOT), the UFCB can decide to submit a proposal to the PPO. Should it be judged relevant; the PPO would then assign the case to a law enforcement authority for investigation. The PPO also receives a hardcopy of FIU (MOT) investigations.

390. In order to request information from the FIU (MOT), all law enforcement authorities need permission in writing from the PPO. The UFCB does not allow access to its database without a letter from the PPO.

391. Pursuant to the NORUT, the FIU (MOT) notifies the relevant reporting institution when ~~a~~ transactions that have been reported, have been disseminated to the PPO because of a suspicion of ML/TF.

**Independence and autonomy**

392. Pursuant to NORUT Article 2, the FIU (MOT) is a central national agency falling under the responsibility of the Minister of Finance.

393. Pursuant to Article 4 of the NORUT, the Minister of Finance is the Manager of the FIU (MOT) database. In his capacity as manager, the Minister of Finance can draft regulations with regard to the database and is responsible for its proper functioning. According to the third paragraph of Article 4 of the NORUT, the Head of the FIU is entrusted with the actual management of the database in the name and under the responsibility of the Minister of Finance. This provision (Article 4, paragraph 3) allows the Minister to delegate his powers with regard to the database to the Head FIU (MOT). However, there is no disposition in the legislation (NORUT) indicating that the Minister of Finance cannot decide to exercise his powers and directly manage the database.

394. In practice however, the Head of the FIU has always been managing the database and the Minister of Finance has never interfered in the operational activities of the FIU (MOT). However, according to the disposition of the legislation, a Minister of Finance could, in theory, decide to directly manage the database. Such a situation could lead to undue influence or interference.

395. Pursuant to Article 16 of the NORUT, there is a Guidance Committee for the FIU (MOT) officially chaired by the Minister of Finance (authority delegated to a representative of the Minister of Finance) and composed of the Minister of Justice, supervisory authorities, law enforcement authorities and representatives from the private sector (reporting entities falling under the scope of NORUT). The Committee determines its own mode of operation and members are appointed by the Minister of Finance. The FIU is not represented on the Guidance Committee.

396. According to the legislation, the tasks of the Committee is to provide guidance to the FIU (MOT) on its mode of operation; provide knowledge and expertise and advise the Ministers of Finance and of Justice. The advice to the Ministers can be on the performance of the FIU (MOT); on the effectiveness of the obligation to report; and on the establishment of indicators.

397. In practice, this Guidance Committee is chaired by a representative of the Minister of Finance and, according to some members representative of the private sector; it does not meet on a regular basis (once or twice a year). Recent meetings have been to discuss the annual report and staffing actions. However, according to the disposition of the current legislation, the Minister of Finance, the Minister of Justice or representative of the private sector subject to this legislation could, in theory, interfere on the mode of operation of the FIU (MOT). Such a

legislative provision could also potentially lead to undue influence from members of the Guidance Committee.

398. The responsibility to decide whether a UTR is classified as a STR and sent to the law enforcement agencies and the PPO is entrusted with the Head of the FIU (MOT) without, in practice, any interference from others.

399. Appointment of the Head of FIU (MOT) and the other employees at the FIU (MOT) takes place, pursuant to Article 8 of the NORUT. The Appointment, suspension or dismissal of the Head and other personnel of the FIU (MOT) takes place after a hearing by the Guidance Committee on the recommendation of the Minister of Finance in joint consultation with the Minister of Justice. The Head of the FIU (MOT) is appointed for five (5) years. This period can be renewed at the end of each term for another five (5) years.

400. For other personnel of the FIU (MOT), the Head of the FIU is responsible to conduct the staffing process and to make a recommendation for final approval by the Minister of Finance. Once the recommendation has been approved, the candidates will have been screened by the National Security Department (VDC).

401. With regard to the budget of the FIU (MOT), every year the FIU (MOT) sends a budget proposal to the Minister of Finance. The Minister then sends this proposal for advice to the Ministry of Finance. If the Ministry of Finance has any questions with regard to an item, they contact the FIU (MOT). In all cases the view of the FIU (MOT) is taken into account. The amount of the budget is always such that the FIU (MOT) can perform its tasks without any problems or bottlenecks. If during the year it appears that a certain item was not sufficiently budgeted, then the FIU (MOT) sends a substantiated request to the Minister of Finance to increase the relevant item. Such requests have always been honoured by the Ministry of Finance.

402. In practice the FIU (MOT) can make use of the budget for all its core functions. No approval is needed to do any purchases, however, the governmental procedure needs to be followed, which includes indicating which budget item is being accessed and also to request the form with which creditors will be paid. Whenever the total price of the items to be purchased exceeds NAF. 5,000 three (3) quotations need to be requested from suppliers. The FIU (MOT) is free to choose the best offer; best not being always the cheapest. If the FIU (MOT) decides on an offer which is not the cheapest, then the FIU (MOT) will inform the Ministry of Finance of this fact and will have to complete the relevant forms for approval. Where this has occurred the approval is always given.

403. The FIU (MOT) has regular internal financial review, control and audits that examine expenditures, programs and effectiveness. To this end, a software programme was installed with the assistance of the Ministry of Finance. The FIU (MOT) is also contacted at least twice a year by its account manager at the Ministry of Finance, with regard to its expenditures in relation to the budget.

**Protection of information**

404. Pursuant to Article 20 of the NORUT, persons are prohibited from making the performance of his duties public, where those duties pertain to the application of the law or of decisions taken pursuant to the law. Pursuant to Article 23 of the NORUT, violation of this Article can be deemed a criminal offence or minor offence and can be punished with a prison sentence of a maximum of four (4) years, a financial penalty or detention for a maximum of one (1) year.

405. Pursuant to Article 22, paragraph 1 of the NORUT, a person can be informed by the Manager (the Minister of Finance, with delegated authority to the Head of FIU (MOT)) of the FIU (MOT) database about the personal data contained on himself or herself in the database.

406. Pursuant to Article 4, paragraph 1 of the NORUT, the Minister of Finance is the legal manager of the registers including the database of the FIU (MOT). The Minister of Finance is responsible for the proper functioning of the database. The factual management of the database is, however, entrusted to the Head of the FIU (MOT) (Article 4, paragraph 2 of the NORUT). Only the analysts, the senior legal counsellor and the administrative assistant of the FIU (MOT) have been authorized by the Head of the FIU (MOT) to have access to the database for their analytical work and the input of data in the database. The database of the FIU (MOT) cannot be accessed by any law enforcement agency or other third parties.

407. The FIU (MOT)'s computer system is an 'in-house' network and access to the Internet is gained through individual laptops and not through the server. Each laptop accesses the Internet separately and isolated by making use of a wireless access point. This is to avoid 'infection' of the system through the wireless LAN. Password protection is employed to restrict access to the network to employees only. UTR information is entered and maintained on a purpose built LOTUS NOTES database.

408. The FIU (MOT) has conducted a security test with regard to the security of the IT-system. One of the criteria of this test was for the agency involved to try to hack into the system. The conclusion was that hacking into the IT-system of the FIU (MOT) was very well safeguarded. IT security is the responsibility of the IT-analyst of the FIU (MOT). Whenever the FIU (MOT) needs assistance of non-FIU (MOT) parties with regard to maintenance of the IT-systems a test/ development environment is established containing dummy data. The non-FIU (MOT) party can then work in this environment. After concluding his work, the adapted objects will then be copied to the production environment. With regard to IT-security, the FIU (MOT) has a policy in place with regard to access to the FIU (MOT), user IDs, passwords, firewalls and dedicated work stations for consultation with FIU.net, Egmont Secure Web and FATF.net.

409. With regard to the physical security of the information, the servers of the FIU (MOT) are stored in a room that is only accessible through the use of a special code by authorized FIU (MOT) staff. This room has no windows. With regard to the hard copy database (containing files regarding UTRs which have been reported in hard copy, requests for information, Customs reports are stored in a room only accessible through the use of a special code. This room also has no windows.

410. The office of the FIU (MOT) is situated on the sixth floor of a building shared with other government agencies or departments. The FIU (MOT) does not have control of the physical security of the building; it is under the responsibility of the Security department of the building. During working hours, individuals can have access to the sixth floor of the building. The FIU (MOT) office is protected by a keypad lock code.

411. Employees of the FIU (MOT) can access the office through the use of a secret keypad lock code. Employees are only allowed in the office during working hours. Whenever an employee needs to access the office outside of working hours, the Head of FIU (MOT) grants an authorization for this and will also notify the Security department of the building.

**Public Reports**

412. Every year the FIU (MOT) publishes an annual report. This report is submitted for approval to the Guidance Committee, the Minister of Finance and to the Minister of Justice before being released publicly (www.mot.an). The reports include a very complete set of statistics and graphs. They also include between one and three sanitized cases, representing the most

interesting case(s) of a given year. The achievement of the FIU (MOT) of the preceding year, as well as the objectives of the FIU (MOT) for the coming year, are also presented in these reports.

413. Other than the annual report, the FIU (MOT) has not developed or contributed to the development of domestic public reports on, trends or typologies. The FIU (MOT) contributed to the FATF typologies project on free trade zone by submitting a domestic case (the King Cross case).

**The Egmont Group of FIUs**

414. The FIU (MOT) is a member of the Egmont Group since 1998 and has been active in the Training, Legal, Outreach and IT Working Groups of the Egmont Group.

415. The Government subscribes fully to the Egmont Groups' Statement of Purpose and The Principles of Information Exchange between FIUs. The FIU (MOT) has also signed the Egmont Charter.

416. The NORUT was amended making the exchange of information with other FIUs more efficient; by including a clause stating that for information exchange with Egmont FIUs an MOU would not be required anymore, unless the laws of the other FIU requires a MOU (Article 7 paragraph 2).

417. The FIU (MOT) is exchanging information with foreign FIUs.

Incoming Egmont requests

| Year | Quantity |
|---|---|
| 2006 | 64 |
| 2007 | 51 |
| 2008 | 45 |
| 2009 | 49 |

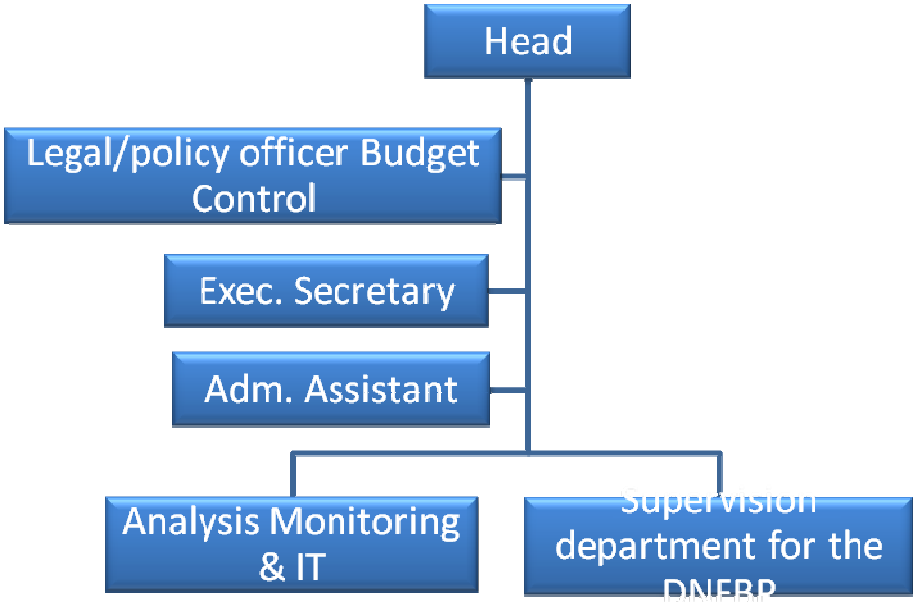
Outgoing Egmont requests

| Year | Quantity |
|---|---|
| 2006 | 22 |
| 2007 | 5 |
| 2008 | 19 |
| 2009 | 47 |

***Recommendation 30***

*Resources-FIU only*

The Structure of the FIU (MOT):




418. The Head of the FIU (MOT) is responsible for the day to day management of the FIU (MOT), for the policy and strategic direction of the organisation, planning and management oversight, communication and press liaison.

419. The Administration and Support Services provides the infrastructure to support and enable the FIU (MOT)'s work. The functions within this Department include those of office management, financial and administrative management, supply chain management, human resources, registry and document storage services.

420. The Supervision Department is responsible for the supervision of compliance with the NORUT and NOIS by DNFBPs. The Analysis and IT Department receives data and reports from reporting entities. It is responsible for storing this information, analysing it and, if necessary disseminating reports to law enforcement agencies and to the PPO.

421. The Legal, Policy and Budget Control Section has several areas of responsibility. The Section among other things, engages with international and regional policy and standard-setting organisations (CFATF, EGMONT, FATF), provides advice on policy matters regarding the FIU (MOT) and advises, establishes and gives guidance with regard to the budget of the FIU (MOT) and liaises with the account manager of the FIU (MOT) at the Ministry of Finance with regard to budgetary bottlenecks.

422. The Analyst and IT Department is organizationally and physically separate from the Supervision Department. Each Department has its own database and is not allowed to access the database of the other. Physically the two Departments are on opposite sides of the FIU (MOT) floor.

**Funding**

423. The FIU (MOT) receives its funds from the Government. According to Article 9 of the NORUT, the Minister of Finance, in agreement with the Minister of Justice, having heard the Guidance Committee referred to in Article 16 of the same Ordinance, determines the budget and formation of the FIU (MOT). The yearly budget is drawn up by the FIU (MOT). At the drawing up of the budget all the plans that the FIU (MOT) has for the coming year are taken into account. The draft budget must be sent to the Minister of Finance for approval after which it is approved by the Parliament. The Head of the FIU (MOT) has the authority to use the budget after it has been approved by the Government by following certain administrative procedures. These procedures can be very simple or elaborate, depending on the amount that the FIU (MOT) has to spend. The budget of the FIU (MOT) has always been sufficient to execute the core functions and cover the expenses of the FIU (MOT).

**Staffing**

424. As noted earlier, according to Article 8 of the NORUT, the Minister of Finance in joint consultation with the Minister of Justice, having heard the Guidance Committee referred to in Article 16 of the same ordinance is authorized to appoint, suspend and remove the Head and the other personnel of the FIU (MOT).

425. As previously stated with regard to other staff candidates, the Head of the FIU (MOT) will present the candidates he has interviewed and approved, to the Minister of Finance for final approval and appointment. The candidates go through a very strict screening by the Security Department of the Central Government (VDC) before being appointed. It is also the Head of the FIU (MOT) who can present an employee of the FIU (MOT) to the Minister of Finance, for suspension or removal.

426. The FIU (MOT) has approved funding for twenty-one (21) positions for its four (4) Departments, including the unit responsible for the supervision of reporting entities. At this moment the staff consists of fifteen (15) employees of which two (2) employees (the senior legal counsellor and the supervisor of the analyst department) have been outsourced to the FIU (MOT) of Sint Maarten for the period of one (1) year. During this period the FIU (MOT) can make use of the services of the mentioned employees when required. Currently, a total of five staff works in the analyst and IT department (four (4) analysts and one (1) IT expert). Seven (7) persons work in the Supervisory Department.

427. Of the fifteen (15) persons currently employed at the FIU (MOT), thirteen (13) staff currently work at the FIU (MOT). As noted above, two (2) staff members have been put to the disposition of the FIU in Sint Maarten, but FIU (MOT) remains with the authority to make an appeal on these staff members, if necessary. Five (5) staff to perform FIU duties regarding analytical work, five (5) staff to perform FIU supervisory work. In addition there is also one (1) office manager, two (2) administrative assistants and the Head of the FIU (MOT). It appears that the local recruitment of additional resources is extremely challenging and sensitive which would explain why up to six (6) positions are currently vacant. With a population of 142,180, it is very difficult to find experts that would have the right set of skills to work as an analyst with the FIU (MOT). In a small and very competitive market like Curaçao, it is difficult for the public sector to compete with offers made by private sector employers. With the expected additional volume of work, due in part by the coverage and reporting of DNFBPs, the FIU (MOT) should consider obtaining further funding to open new positions (in addition to the current twenty-one (21) funded positions) which would allow for an increase in the capacity on both sides (supervision and analysis).

428. The FIU (MOT) requires a minimum standard of education/training at HBO level (Higher vocational level) when recruiting members of staff. It has expertise in a wide range of fields, namely legal, ICT, financial, law enforcement, Organisational and IT & Security Auditing.

**Sufficient technical and other resources**

429. The FIU (MOT) has an independent IT system that enables the control over access to information. The FIU (MOT) disposes of a computerized database and analytical software tools and the data that the FIU (MOT) receives is stored electronically. The computer system of the FIU (MOT) is up to date and has more than sufficient storage capacity. The staff is well trained in the use of analytical tools.

430. The FIU (MOT) has the authority to initiate a case when triggered by information provided by reporting parties, supervisory body or law enforcement. The Annual Report shows the statistics on response times from reporting entities and law enforcement agencies. After the data is analyzed the FIU (MOT) provides the competent domestic authorities with financial intelligence as quickly as possible so that they can pursue the leads provided by the FIU (MOT). The FIU (MOT) also cooperates in an efficient and rapid manner with all of its foreign counterparts.

431. The FIU (MOT) has a separate and secure database in place, which as previously noted is not accessible to all personnel of the FIU (MOT). The IT-security policy includes restricted access to the database among other things. The database is constantly backed up. The separation of our FIU (MOT)'s database from the outer electronic world is an important element in maintaining the security and confidentiality of the information.

432. The FIU (MOT) has sufficient physical space and electronic security systems in place to securely protect the information held by the FIU (MOT) and to protect its employees. Network security testing is carried out regularly. In the Codes of Conduct rules are laid down with regard to the separation of functions within the FIU (MOT) with regard to access of information.

**Operational independence and autonomy**

433. The FIU (MOT) is an administrative FIU (MOT), which falls under the Minister of Finance. The FIU (MOT) acts as an intermediary ('buffer') between the reporting entities (financial and professionals) and the law- enforcement authorities in charge of financial crime investigations and prosecutions. Every year, the FIU (MOT) renders an annual report to the Minister of Finance. It provides information on the FIU's (MOT) activities over the last year and its plan for the following year.

434. In order to ensure the independence of the FIU (MOT), the Code of conduct of the FIU (MOT) states that the employees of the FIU (MOT) cannot perform extra duties without the written approval of the Minister of Finance. Every employee of the FIU (MOT) has signed a letter stating that the employee is not performing extra duties for institutions that have a reporting obligation.

435. As previously stated above, the FIU (MOT) has a high degree of financial autonomy in the way that the yearly budget is drawn. The budget is done by the FIU (MOT) itself. All the plans that the FIU (MOT) has for the coming year are taken into account, when drawing up the budget.

**Undue influence or interference**

436. With regard to undue influence or interference, as noted above in the discussion on R.26, the management of the FIU (MOT) is delegated to the Head of the FIU (MOT) although in law the power resides with the Minister of Finance. In that regard, it was noted that the Minister of Finance in theory could influence the operation of the FIU. Additionally, it was noted that there could be undue influence from members of the Guidance Committee.

**Confidentiality**

437. Confidentiality is of a high level. According to Article 20 of the NORUT, anyone who performs or has performed any task for the application of this national ordinance or of resolutions adopted pursuant to this national ordinance, is prohibited from making further or other use of data or information furnished or received in pursuance of this national ordinance, or from making the same known further or otherwise than for the discharge of his task or as required by this national ordinance. Whenever individuals from other institutions perform work, duties or any other activities for the FIU (MOT), they are required to sign a secrecy statement. According to the Ministerial Decree in which the Regulations for the Register of the FIU (MOT) were laid down, access to the database of the FIU (MOT) is given by the Head of the FIU (MOT). This authorization is only given to a limited number of staff members who are reminded regularly of their secrecy obligation.

**High integrity**

438. As noted above in the discussion on R.26, candidates must undergo a very strict screening by the VDC to ensure the high integrity of the personnel. After commencement of the employment, screening continues on a regular basis. All employees must observe the regulations laid down in the Code of Conduct.

**Appropriately skilled**

439. The FIU (MOT) requires a minimum standard of education/training at Higher Vocational Education-level when recruiting members of staff. It has a high level of expertise in a wide range of fields, namely legal, ICT, financial, law enforcement, organisational and security auditing. Knowledge on ML and FT prevention is updated periodically through participation in national and international courses and programs on this matter.

**Adequate and relevant training:**

440. A great part of the budget of the FIU (MOT) is set aside for the training of the personnel. Each year, the staff of the FIU (MOT) participates and attends several national and international training courses in the field of preventing ML and TF. The FIU (MOT) also provides general and specific trainings for the reporting entities throughout the year. These sessions are also attended by the FIU (MOT) staff. These sessions serve as a means for the FIU (MOT) to improve the quality of the reports that it receives from the reporting entities. The training that is provided include among other things, the reporting requirements, recognition of unusual and suspicious transactions, terrorism financing, reporting procedures, raising of general awareness, FATF and typologies, Egmont, and the use of indicators. The FIU (MOT) also provides Tactical Analysis Training courses for foreign FIUs. The training that the FIU (MOT) has been involved in over the last five (5) years is contained in the annual reports of the FIU (MOT).

***Recommendation 32(FIU)***

*Statistics-*

441. The FIU (MOT) in its annual reports include the following information among other things:

- All unusual transactions received in the respective year, distributed over the FIU (MOT), including among others, cash transactions, Customs reports, wire transfers, credit card transactions;
- The transactions that were disseminated to the PPO;
- Use of indicators by the reporting entities;
- Requests for information received from and sent to law enforcement agencies;
- Requests for information received from and sent to other FIUs;
- Training given and received by the FIU (MOT); and
- Trends and typologies;
- Sanitized cases;
- Statistics regarding the reporting behaviour;
- Relevant laws;
- Indicators;
- Currency transactions;
- Objectives for the coming year.

442. Pursuant to Article 11 of the NORUT, all reporting entities are obliged to report both executed and intended unusual transactions to the FIU (MOT). Every year, the vast majority of unusual transaction reports (UTRs) submitted to the FIU (MOT) comes from local banks (82% in 2010 and 87% in 2009). Money remitters come second in terms of volume of UTRs (with 10% or less) and offshore banks have submitted less than 4% of the total volume of UTRs in 2009 and 2010. Before May 2010, trust companies and casinos were the only DNFBPs submitting UTRs to the FIU (MOT), with less than 0.5% of the total volume in 2009 and 2010. Since May 2010, other DNFBPs have started submitting UTRs, but it remains very limited.

443. Unusual transactions are defined in the law. As stipulated in Article 6 of NORUT, a list of indicators is provided, by Ministerial Decree (N.G. 2010, no. 27), for reporting entities to assess whether a transaction must be considered unusual. The list contains both objective and subjective indicators. As previously noted, one category of subjective indicator is general and flexible enough to allow reporting entities to submit what could be considered a STR. This indicator is: "transactions where there is a cause to presume that they may relate to money laundering or terrorist financing".

444. The following tables indicate the total number of unusual transaction reports received and disseminated by the FIU (MOT).

Total UTRs received and disseminated by the FIU (MOT) [2006 - 2009] for Curacao only.

| Year | UTRs received | UTRs*disseminated |
|---|---|---|
| 2007 | 10,003 | 4218 |
| 2008 | 13,704 | 2628 |
| 2009 | 11,832 | 2720 |
| 2010 | 9,067 | 496 |

*UTRs with the suspicion of ML/TF

Total UTRs received/ disseminated per type of reporting entities [2007– 2010] for Curacao only.

| Sector | | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|

| | | | | | |
|---|---|---|---|---|---|
| Local Banks | Received | 6,786 | 10,459 | 10,240 | 7,441 |
| | *Disseminated* | 893 | 1219 | 1890 | 425 |
| International Banks | Received | 144 | 297 | 131 | 337 |
| | *Disseminated* | 13 | 4 | 13 | 8 |
| Customs | Received | 589 | 784 | 402 | 264 |
| | *Disseminated* | 227 | 1 | 133 | 4 |
| Money Remitters | Received | 2,308 | 1,915 | 798 | 928 |
| | *Disseminated* | 3049 | 1381 | 674 | 58 |
| Casinos | Received | 7 | 25 | 21 | 4 |
| | *Disseminated* | 1 | 0 | 4 | 0 |
| Central Bank | Received | 0 | 0 | 2 | 1 |
| | *Disseminated* | 0 | 0 | 0 | 0 |
| Credit Card Companies | Received | 1 | 3 | 0 | 1 |
| | *Disseminated* | 0 | 0 | 0 | 0 |
| Savings Banks | Received | 19 | 0 | 0 | 0 |
| | *Disseminated* | 2 | 17 | 0 | 0 |
| Trust Companies | Received | 45 | 129 | 56 | 32 |
| | *Disseminated* | 8 | 1 | 1 | 0 |
| (Life) Insurance Companies | Received | 1 | 0 | 122 | 14 |
| | *Disseminated* | 0 | 0 | 0 | 0 |
| Credit Unions | Received | 103 | 92 | 63 | 45 |
| | *Disseminated* | 25 | 5 | 5 | 1 |
| Total | Received | 10,003 | 13,704 | 11,832 | 9,067 |
| | *Disseminated* | 4218 | 2628 | 2720 | 496 |

Note: all other types of reporting entities have not reported a UTR over the last four years.

445. In some years the total disseminated exceeds the total received because the disseminations included transactions of previous years.

446. Reports filed by Customs on cross-border transportation of currency of NAF 20,000 or more, must be reported to the FIU (MOT). The following table indicates the number of reports filed on the abovementioned transportation of currency.

Amount of cross border cash movement reports [2007-2010]

| Custom | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|
| UTRs received Curacao | 589 | 426 | 402 | 264 |
| UTRs* disseminated for the NA | 230 | 52 | 134 | 47 |
| Value (NAf) For the NA received | 324,559,519 | 302,471,894 | 287,258,860 | 298,593,608 |

*UTRs with the suspicion of ML/FT

447. The FIU (MOT) is obliged - pursuant to Article 6 of the NORUT and the relevant indicators - to furnish data to law enforcement agencies, when there are reasonable grounds to suspect that a certain person and/or legal entity is guilty of ML and/or FT.

448. Dissemination of information by the FIU (MOT) takes place via requests received from the law enforcement agencies (after seeking approval from the PPO), via investigations of the FIU

(MOT) submitted to the UFCB, via update-disseminations (when certain transactions have previously been disseminated) and when a foreign FIU requests the FIU (MOT) authorization to furnish the data received to their prosecutors and law enforcement agencies.

449. The following table indicates the number of unusual transactions that were disseminated to the PPO after analyses by the FIU (MOT). These unusual transactions are based on tactical ML investigations that have been conducted by the FIU (MOT).

| Year | Total quantity of UTRs disseminated | Quantity disseminations based on investigation of the FIU (MOT) |
|---|---|---|
| 2007 | 4218 | NA 1,077 |
| 2008 | 2628 | NA 385 |
| 2009 | 2720 | NA 1,266 |
| 2010 | 496 | NA 119 |

450. The following table indicates the amount of international requests for information received and sent by the FIU (MOT).

| Year | Requests received | Requests sent |
|---|---|---|
| 2007 | 51 | 5 |
| 2008 | 51 | 12 |
| 2009 | 51 | 47 |
| 2010 | 56 | 47 |

2.5.2 Recommendations and Comments

*Recommendation 26*

451. The Authorities should consider revising the composition and mandate of the Guidance Committee (Article 16 of the NORUT) to avoid any possibility of undue influence or interference.

452. Article 22 of the NORUT should be revised in order to better protect the access to the database from individuals being the object of UTRs.

453. The process of having most cases presented by an analyst to the Head of the FIU should be revised with consideration being given to using the process in exceptional circumstances. In addition, other officials than the Head of FIU (MOT) should have the authority to approve the disclosure of cases on a regular basis.

454. The Curaçao Authorities should consider amending Article 4, of the NORUT to remove provisions that could potentially lead to the risk of interference or undue interference.

455. The annual report (or other reports) of the FIU (MOT) should include more information on ML and FT trends and typologies.

*Recommendation 30*

456. The FIU (MOT) should be provided with additional resources that would allow it to analyse a higher percentage of UTRs received.

457. The vacant positions at the FIU (MOT) should be filled so that its capacity to analyse and supervise will be increased.

### 2.5.3 Compliance with Recommendation 26

| | Rating | Summary of factors relevant to s.2.5 underlying overall rating |
|---|---|---|
| **R.26** | **PC** | • **Provisions of Articles 4, 16 and 22 of the NORUT present a risk to the proper protection of information.**<br>• **Articles 4, 16 and 22 of the NORUT contain provisions that risk the interference in the operation of the FIU (MOT).**<br>o **Possibility of undue influence and interference by the Minister of Finance who can directly manage the FIU (MOT) database under the provisions of the NORUT (Articles 4 and 22).**<br>o **Current composition of the Guidance Committee for the FIU (MOT) could lead to undue influence or interference (Article 16).**<br>• **Insufficient trends and typologies in the FIU (MOT's) annual reports.**<br>• **Effectiveness issues:**<br>o **Lack of sufficient human resources is limiting the FIU (MOT's) effectiveness.**<br>o **Systems and procedures in place result in a low level of UTRs being analysed.**<br>o **The approval process of the FIU (MOT) with regard to cases appears to be burdensome.**<br>o **Important limitation to indirect access to law enforcement database (requirement of a letter on a case by case basis).** |

## 2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27 & 28)

### 2.6.1 Description and Analysis

***Recommendation 27***

458. The investigation of ML and FT offences is carried out by different units within different agencies. All investigations are conducted under the direction of the PPO.

459. Before October 10, 2010, the Korps Politie Curaçao (KPC) was the local police force for the Island of Curaçao and the Central Politie Department (CPD) was the police force for all Islands of the then Netherlands Antilles.

460. The Financial Investigations Bureau (*Bureau Financiële Onderzoeken)* is one Unit of the KPC that is focussing on investigations of ML and FT. Other Units of the KPC that focus on other types of investigation could also have a ML component to their investigations. As the Penal Procedures Code also provides for the possibility of a financial criminal investigation aimed at determining unlawfully obtained benefits in order to have these dispossessed, the Financial Investigations Bureau was specifically instituted to assess the amount of unlawfully obtained benefits.

461. The Special Task Force (*Recherche Samenwerkingsteam or RST*) is an organized group of specially trained detectives from Curaçao and other jurisdictions of the Kingdom of the Netherlands that has been established under CPD to combat cross-border crimes.

462. The Tax Office and Customs also have a respective Unit responsible to investigate cases in relation to ML/TF: the Customs Investigation Service (PIOD) and Information and Investigation Team (TIO).

463. The Public Prosecutor's Office is particularly in charge of:

- The enforcement of the legal regulations
- The prosecution of criminal offences
- The execution of Court rulings or Court rules in criminal cases
- The supervision of the observance of judicial decisions in disciplinary cases.

464. The PPO is headed by the Public Prosecutor, who can be assisted by one or more Public Prosecutors, deputy Public Prosecutors and temporary substitute Public Prosecutors. In the performance of their duties they are equal members of the PPO.

465. The Public Prosecutor, the Head of the Public Prosecution Department operates under the auspices of the Attorney-General. The Public Prosecutors, Deputy Public Prosecutors and the temporary substitute Public Prosecutors are subordinate to the Head of the Public Prosecutor's Department, where they have been assigned. When the Public Prosecutor is absent or is prevented from attending he is substituted by another member of the PPO at the Public Prosecutor's Department.

466. At the PPO there is one (1) prosecutor specifically appointed as contact person for the investigation departments charged with the investigation and prosecution of ML and FT, while all prosecutors are authorized to prosecute such cases. There are two (2) Public Prosecutors appointed as substitute contact persons for ML/TF cases.

467. The PPO consists of a first line office of the prosecutors (*officieren van justitie*) and the office of the Attorney-General (*procureur-generaal*). The Attorney-General is the highest authority on matters of prosecution and is appointed by the Queen upon recommendation of the Joint Court of Justice.

468. The PPO is responsible for the proper investigation of all crimes including the offences of money laundering and terrorist financing. Under the direction of the PPO the investigation of criminal offences is carried out by different units of several law enforcement authorities, depending on the nature of the case. The LR (Information and Investigation Team) combat ML if and so far as it is an official employed by the Government committing ML and/or terrorist laundering.

469. BFO and RST are the two main units conducting ML investigations. BFO is focussing on local cases in Curaçao and RST works jointly with other jurisdictions of the Kingdom of the Netherlands on cross-border crimes.

470. The Unit Combating of Financial Crimes (UFCB), a Unit currently established under the CPD, is responsible for receiving all information (disclosures) from the FIU (MOT) for all law enforcement authorities and on behalf of the PPO. All relevant documents are sent electronically to the UFCB. After its own analysis of reports and investigations submitted by the FIU (MOT), the UFCB can decide to submit a proposal to the PPO. Should it be judged relevant; the PPO would assign the case to a law enforcement authority for investigation. The PPO also receives a hardcopy of FIU (MOT) investigations. Law enforcement authority units such as BFO and RST do not receive disclosures directly from the FIU (MOT) or from the UFCB. However, law enforcement authorities can, with written permission from the PPO, access or request information from the FIU (MOT). The FIU (MOT) can respond back to such request directly to law enforcement authorities. The UFCB does not allow access to its database by other law enforcement authorities without a letter from the PPO.

471. In 2009, two (2) officers and a Unit Head were working for the UFCB and they received 3778 STRs and forty-two (42) investigations from the FIU (MOT). During that period of time, the UFCB submitted three proposals to the PPO. All of the three proposals were related to an investigation of the FIU (MOT). It is unclear what the UFCB has done with the 3778 STRs and the thirty-nine (39) other investigations submitted by the FIU (MOT) in 2009

472. The UFCB has been chronically understaffed over the last four years, while the number of reports and investigations submitted by the FIU (MOT) was increasing. In addition, since October 2010, the existence and mandate of this Unit is unclear. The Examiners found that there were limits to the dissemination and access of financial intelligence amongst the different law enforcement authorities because of resource limitations; structure and manner of operations (mandate and functioning) at the UFCB. Given that this specific Unit is being used as a filter for all information disseminated by the FIU (MOT) to law enforcement authorities, it would be important to reconsider its method of operation and the appropriation of resources.

473. With regard to FT, the joint task force, RST, would likely be the Unit responsible for such investigation. However, the Authorities have reported that they never investigated such a case.

474. The PPO is authorized to decide independently if/and when to arrest persons suspected of ML or FT. This is a fundamental principle of the criminal investigation and procedure. Furthermore, the various investigation departments and the PPO are not obliged to seize or impose (prejudgment) and make arrests. These Authorities can decide not to arrest or seize. However, immediate seizure is required when the objects are forbidden and if there is a danger to the public health or a threat to the public safety. These objects are drugs and firearms. It is even illegal to import or forward these objects.

**Additional Elements**

475. Some special investigation powers are applied in a number of ML investigations. In the past special investigation powers were successfully applied in a ML investigation (investigation Mochi of BFO/HARM). Several special investigation methods, such as surveillance and wire tapping, are used for predicate offences (e.g. investigations of large drug transports). However, some important limitations remained at the time of the on-site visit and accordingly a new legislation (Power of Investigation Act) is under development that will allow for more flexibility in the use of different investigative tools.

476. Most financial criminal investigators work at the BFO/HARM. The RST also employs some analysts and financial criminal investigators who carry out investigations. However, the RST cannot be considered as a group specializing only in investigating the proceeds of crime.

477. It is possible to carry out investigations in other countries if international and interregional legal aid is requested. Curaçao must also have concluded a Treaty with the requesting nation concerning legal aid requests.

478. Consultation takes place periodically (every 6-8 weeks), during a two-day workshop on Financial Investigations for BFO, HARM, RST, PPO, BNO and FIU (MOT) (also with the participation of Aruba, Sint Maarten and Suriname GS). Up until 2008, there was also a Crime Status Analysis conducted by the RST. There is also a monthly meeting concerning investigation services.

**FIU (MOT)**

479. ML and FT methods, techniques and trends are reviewed by the FIU, law enforcement authorities and other competent authorities (as appropriate) during the joint (financial) investigation team meeting held periodically (every 6-8 weeks). The (financial) Investigation Team gets together to conjunctly revise and share all the new methods, techniques and trends the division detects during their investigations.

***Recommendation 28***

480. The PPO has overarching jurisdiction to investigate and prosecute crime in Curaçao, including serious offences such as ML and FT. Pursuant to Article 119 of the Penal Procedures Code all objects and claims that serve to uncover the truth or to prove unlawfully obtained benefits or all objects and claims that can be ordered for confiscation or withdrawal from circulation are subject to seizure. There are multiple powers available to the Authorities that assist in the investigation and prosecution of these offences. See. Discussion at Section 2.3 of the Report.

481. The PPO has indicated that the basis for seizure must be a reasonable suspicion of the commission or impending commission of a specific crime. This is seen by the Authorities as unduly limiting and the upcoming reforms to the Penal Code are expected to address this issue. Searches of household premises generally must take place in the presence of the owner or occupant.

482. Law enforcement authorities confirmed during the on-site visit that obtaining a Court order to compel production of documents or information from reporting entities or to search persons or premises is challenging. The required threshold to obtain a Court order or a warrant is often difficult to reach in the context of a normal investigation.

483. The Examiners have also noted the protection granted by Article 125 of the Penal Procedures Code with regard to persons with a duty of confidentiality. This extends to notaries, lawyers, physicians and religious leaders. Thus Court orders are usually required in these cases, if the person does not give his consent voluntarily. In such cases, the prosecutors and police must ensure that they are able to present a strong case in order for the Judge to order production of the documents or other material. The police have indicated that this sometimes leads to a delay in proceeding which can affect investigations.

484. The Judiciary have also indicated that some of the investigative measures such as electronic surveillance have been successfully challenged on the basis of the European Council on Human Rights laws.

485. With regard to the taking of witnesses' statements in criminal proceedings the following regulations are applicable in Curaçao: Within the scope of the criminal investigation the police and the Examining Judge can examine the witnesses based on Articles 243 up to and including 261 of the Penal Procedures Code. Witnesses can also be examined under oath during the Court session. The Penal Procedures Code regulates the summons of witnesses by the Examining Judge (Articles 243 up to and including 261 of the Penal Procedures Code), the Public Prosecutor's Office (Article 421 of the Penal Procedures Code), the suspect, (Article 287 (3) of the Penal Procedures Code) and the Judge of the Court (Article 502 of the Penal Procedures Code). Based on case law, the summons of witnesses by the police, which is not regulated by law, has become common.

486. An Examining Judge can be interrogated as a witness. This can form a kind of counter weight, since statements by witnesses made in his presence, can serve as evidence. The registrar of the Examining Judge or of the Court can also be examined as a witness. However, it is more controversial to have a Public Prosecutor being required to act as a witness since Public Prosecutors are one of the parties in criminal proceedings. Public Prosecutors do not have the right to remain silent and cannot be convicted, as a consequence of their statements. In the eventuality that a Public Prosecutor would be forced to make a statement it would impede that person to act as Public Prosecutor during the Court session for that specific case. The Supreme Court has a strict criterion about this: in the Dutch prosecution system it would not be deemed fit; except in special cases to interrogate one of the parties involved in the criminal proceedings, such as a Public Prosecutor who represents the PPO when asking questions about holding a judicial preliminary investigation.

487. The competent investigating authorities can draw up official reports, among which witness testimonies, because ML is a criminal offence that can be punished independently pursuant to the Penal Code. This report can serve as evidence pursuant to Article 387 of the Penal Procedures Code. As such, competent authorities can testify about their written findings, but they can also examine witnesses and record this in a declaration stated under oath of office. The investigation office can be summoned to be examined as a witness during the Court session.

488. In case of reasonable suspicion of a criminal offence, the supervisors- without investigative powers can inform law enforcement authorities or the PPO. Supervisors can be examined as a witness and submit documents that can be included as evidence in an investigation.

489. At the time of the Mission, the Authorities were seeking to improve on the investigative tools available to the Police, by way of revisions to the Penal Code as well as a new Powers of Investigation Act.

***Recommendation 30 (Law enforcement and prosecution authorities only)***

490. Duties of the PPO have been laid down in the Kingdom Act, PPO, Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba (N.G. 2010, 59). Just like the PPO the Joint Court of Justice forms part of the 'judiciary'. The PPO is in charge of the supervision of the enforcement of the legal regulations of Curaçao and of the settling of criminal cases against persons. As leader of investigations by the police, the PPO decides which cases are brought before the criminal court and disposes itself of minor cases. Moreover, the PPO is charged with the execution of the judicial decision of criminal cases both with regard to custodial sentences and community punishments as well as financial sanctions. The PPO is independent although the Minister of Justice may give general instructions to the Office but he may not give specific instructions in relation to any individual case. The Ministry of Justice is responsible for preparing the yearly operational plan and budget for the Prosecutor's Office.

491. The Attorney General is the head of the PPO. He is in charge of the judicial police and is not a political appointee. Under him there is the Solicitor General at the Court of Appeal, who stands in for the Attorney General in his absence and who is in charge of appeal cases. The operational management of the PPO (head of the financial department, HR official, ITC etc.) falls under the Office of the Attorney General. The Chief Public Prosecutor is the head of the Court in First Instance office. He is subordinated to the Attorney General. The Chief Public Prosecutor is assisted by a staff of Public Prosecutors, Public Prosecutor clerks and the other supporting staff members. At the PPO there are twelve (12) Public Prosecutors under the supervision of a Chief Public Prosecutor and they are assisted by six (6) Public Prosecutor clerks. All Public Prosecutors are appointed by the Government. At the time of the on-site visit, two specially assigned prosecutors were in charge of handling ML and FT cases. However, all prosecutors as a part of their normal duties lay money laundering charges where applicable and prosecute these as a part of their cases. The point was made that although prosecutors handle the trial of cases, much of the investigative work is carried out by the police, thus the role of the prosecutor tends to be coordination in terms of investigations.

492. The PPO, in cooperation with the public administration, has instituted a terrorist incident response plan (TIRP). It is the primary duty of the public administration to keep this plan (TIRP) up to date for the public order and the disaster relief. The PPO as noted before is a member of the CIWG.

493. The Examiners are of the view that the use of two (2) specialist prosecutors seemed to be an insufficient number of specialists. Additionally, the more experienced prosecutors tend to be recruited from Holland on contracts of between four to six (4-6) years. The Curaçao Authorities are seeking to increase the domestic prosecutorial capacity by developing their own specialist counsel, by revising salary structures to attract more local attorneys. Specialist prosecutors are given appropriate levels of training and have the necessary technical resources to carry out their functions.

494. In terms of the Judiciary, the Judges are mainly from Holland and are recruited on three to five (3-5) year contracts. There are three (3) Judges at first instance and two (2) instructing Judges for preliminary enquiries and other pre-trial investigatory applications. There are eight (8) Judges at the appeal level, where appeals on facts and law are considered. Judges are required to have a master in laws qualification and also a minimum of three (3) years judicial experience. There are two (2) Judges that are experienced in ML matters.

495. The BFO/HARM is a department especially charged with the combating of ML and the applicable cases of FT. It is part of KPC/BFO/HARM and consists of fifteen (15) staff members to perform its duties. Currently, nine (9) positions are staffed and six (6) positions are vacant. This Unit is also facing recruitment challenges. Finding additional resources domestically that will be able to handle increasingly complex cases of money laundering and, potentially, terrorist financing appears to be a very important problem. To keep abreast of the ever changing ML characterizations, the members of this service attend relevant courses, seminars and conventions.

496. The RST is a team that cooperates with the local police and investigation services. The RST contains various disciplines, amongst which is the combating of ML. The staffing of the team changes periodically and the average staff consists of four (4) or five (5) experts. At the time of the onsite there were four (4) investigators.

497. Neither the RST nor the BFO can benefit from a specialist in FT since no specific training in relation to FT has been provided to BFO or RST investigators.

498. The UFCB, which as previously noted is responsible for receiving and disseminating to other law enforcement authorities the information provided by the FIU (MOT), is composed of one (1) Unit head and two (2) police officers

**Funding**

499. The PPO, KPC, HARM and BFO receive their funds from the Government. In addition, there is a Fund for the Combating of Crime which consists of the proceeds of criminal investigations (confiscations, dispossessions, settlements etc). The PPO uses some of the money from this Fund for among other things crime prevention.

500. The RST, which is assisted by agents from the Netherlands, receives its funds from the Netherlands. (BZK: The Ministry of Interior and Kingdom affairs)

**Operational independence**:

501. All criminal investigations are done under the guidance and responsibility of the PPO. The PPO decides independently if and when to investigate or prosecute criminal cases. This is a fundamental principle of the criminal investigation and procedure. The PPO gives account about its pursued policy to the Minister of Justice. The Minister of Justice in charge of the overall policy and budget of the PPO. The Minister can give general guidelines with regard to prosecution policy to be pursued but the Minister of Justice cannot give orders/instructions to the PPO in specific criminal cases.

502. In the case of the Judiciary, they are fully independent and are funded via an independent budget from the Dutch Government. Issues relating to the Judiciary including budgets and the appointment of Judges are handled by an Overseeing Council, on which the Dutch Government is represented.

503. The HR department of the PPO is responsible for new staff members according to clearly defined criteria such as education and expertise. Among other things, persons can join the PPO by taking the specific training procedures of judicial officer (Raio), the internal procedures for lawyers who are already involved with the PPO or finally via the external procedures. This is the outsider's route for lawyers with at least six (6) years of relevant professional experience outside of the PPO (the accelerated Raio training program). The applicant must always be assessed and must appear before an evaluation committee in order to become a Public Prosecutor. Candidates must always have the appropriate level of knowledge and experience to be selected. With regard to staff members other than Public Prosecutors there is also a thorough background verification prior to their appointment. Because of the small-scale community there is also social monitoring of the Authorities and their employees. The training and requirements for prosecutors and Judges are similar, save for at the latter stages when the officer makes an election as to his desired speciality and at that point he receives the relevant specialized training.

504. Information security takes place among all investigation departments in charge of ML investigations.

**Customs**

505. Custom officers are being provided with trainings regarding ML and FT. Over the last few years, a number of Customs officers have been participating in the financial conference that RST organizes in the month of October. From January 24th to 26th 2008 there was a training

seminar held in Curaçao regarding investigation in cases of human smuggling, human trafficking and ML (overview of crime relating to human smuggling, human trafficking, bulk cash smuggling). This seminar was given by US Immigration and Customs Enforcement (ICE).

506. From September 23rd to 27th 2008, the capacity building trainings on human trafficking and money laundering was continued. This seminar was also given by ICE. The PPO in cooperation with the public administration has instituted TIRP as previously noted. Customs usually sends one or two participants to this meeting. This group meets to inform each other and raise awareness on how to combat terrorism.

**Public Prosecutors**

507. Transfer of knowledge mostly takes place through the twinning model. This entails that less experienced criminal investigators are paired with more experienced criminal investigators. Currently, one of two public prosecutors focussing on ML cases is from The Netherlands, on a term assignment of four to six years, and is mentoring the second public prosecutor assigned to ML cases. No other specific training on ML or FT is provided to public prosecutors.

508. Up until now, most prosecutors come for a term assignment from The Netherlands. The process to become a public prosecutor or Judge takes up to six (6) years. A few domestic candidates are currently going through that six (6) year process. Some Judges do attend specialized continuing legal education at the Study Centre in the Netherlands.

509. In 2010, police officers, Customs and RST officers participated in a course on digital investigations. As noted above, the RST organizes annually in the month of October a conference on financial crimes to which law enforcement employees, supervisory authorities and the FIU (MOT) within the Kingdom of the Netherlands attend. Furthermore, starting April 18, 2011 officers within the judicial chain can participate in a course on financial investigations.

**Additional Elements**

510. There are no special training or educational programmes for Judges and Courts related to ML or FT.

2.6.2 Recommendations and Comments

*Recommendation 27*

511. The Curacao Authorities should review the functions and method of operation of the UFCB, and depending on the outcome of that review, provide the Unit with adequate human and economic resources.

512. The BFO is also facing recruitment challenges. Authorities should deploy efforts to find additional resources domestically that will be able to handle increasingly complex cases of ML and, potentially, FT.

*Recommendation 28*

513. The process for obtaining a Court order to compel production of documents or information from reporting entities and warrant for the search of persons and premises should be amended

so that it can be more easily available to law enforcement in the investigation of ML and FT matters.

*Recommendation 30*

514. The human resources of the BFO should be enhanced significantly so that they can properly handle increasingly complex cases of ML.

515. The PPO should continue to build up its specialist prosecutorial resources and the Authorities should continue their efforts to attract more local legal professionals into the prosecutorial and judicial services.

2.6.3 Compliance with Recommendations 27 & 28

| | Rating | Summary of factors relevant to s.2.6 underlying overall rating |
|---|---|---|
| **R.27** | **LC** | • **Effectiveness:**<br>  • **The UFCB is facing important issues with regard to structure, resources and operations.**<br>  • **BFO is also facing resources issues as there are six (6) vacant positions out of a total of fifteen (15) positions.**<br>  • **Domestic recruitment of officers is an issue for law enforcement authorities in general. The level of experience and knowledge can limit the ability to undertake complex money laundering cases.**<br>  • **Limited training on ML to law enforcement authority officers.**<br>• **No specific training is provided to law enforcement authority officers on terrorist financing.** |
| **R.28** | **LC** | • **Effectiveness: competent authorities can face challenges in obtaining warrants to search persons or premises or Court orders to compel production of documents or information held by reporting entities.** |

## 2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and Analysis

***Special Recommendation IX***

516. Curaçao Customs falls under the Minister of Finance. Articles 112 -121c and 220 – 258a of the General Regulation Import, Export and Transit of 1908 N.G. 1949 no. 62) specify the general competence of Customs.

517. In 2012 the new Customs legislation; the General Ordinance regarding Customs and Excise, shall enter into force. Customs has dual tasks. The first one is the charging of Customs duties and excise which is governed by legal, political, economic and policy rules (fiscal responsibilities).

518. The other set of tasks is related to non-fiscal responsibilities. This includes law enforcement with regard to the smuggling of drugs, weapons and protected species as well as the combating of ML and FT at the border.

519. In general Customs performs the following tasks:
- Control, levy and collection of all duties at importation and the control and investigation of all illegal and wrongful border crossings of goods
- Controls and audits of (import and export) companies
  - Excise goods
  - Warehouses
  - Administrations
- Controls of the shore and bays (preventive)
- Controls of the economic zones: Controls at the gates and audits
- Night patrol against illegal droppings (go-fasts)
- Control on small vessels with fruit, fish etc.
- Control of Harbour of Willemstad, Yacht-basins, Fishingports, Fuik, Bullenbaai
- Visitation of all kinds of ships, boats and vessels
- Customs has a special Unit, the Maritime Action Team**,** that strips ships, boats and vessels, they are first line responders at coast guard alerts,
- Control and investigate incoming and outgoing flights, passengers and luggage
- Close cooperation with all judicial partners
- Close cooperation with the health, environmental and agriculture departments
- information on ships and airplanes
- ship registers
- Clearance
- Tax and import declaration, the import duty is carried out at import, export and transit declarations based on import, export and transit, either electronically or in writing
- Monthly declarations
- Payment processing
- Temporary storage of goods
- Handling of requests for refund, of parcels, correspondence, complaints reviews and appeals and of permit applications.
- Setting additional assessments
- Inspection of Parcels
- Collateral security

520. Pursuant to Article 2 paragraph 2 of the National Ordinance on the Obligation to Report Cross-Border Money Transportation NOOCMT (N.G. 2002, No. 74) as part of the measures to combat ML, persons carrying the amount of NAF 20.000 or more in cash and/or bearer negotiable instruments, entering or leaving the country, must report this to the Customs authorities. At this time, Curaçao is using a disclosure system and persons carrying NAF 20,000 or more should report the information by completing a specially designed form.

**Customs**

521. Pursuant to Article 1 (c) of the NOOCMT, the term “money” is defined as domestic and foreign paper currency, coins and currency notes, and also negotiable instruments to bearer.

522. Customs Curaçao is currently using a disclosure system for both incoming and outgoing cross-border transportation of currency. Prior to October 2010, a card distributed to all passengers

arriving in Curaçao required the declaration of cross-border transportation of currency exceeding the prescribe threshold (NAF 20,000). However, the new cards no longer request a declaration of cross-border transportation. As a result, the Authorities have to rely on a disclosure system.

523. The existence of this new system is not sufficiently clear for visitors crossing the border. Information provided to passengers in relation to their obligation to disclose transportation of currency above the threshold is insufficient (signs on the wall). At the time of the on-site visit, the Authorities were working on additional solutions (distributing flyers before the control area) to raise public awareness. They were also considering adding signs on the wall. Curaçao Customs is also working with other competent authorities to edit the card distributed to passengers arriving in Curaçao towards reinstating the declaration system.

524. The Examiners found that reporting takes place by submitting a statement, according to a model laid down by the Minister, signed by the person reporting. This applies to persons entering, leaving or in transit, in the harbours or airports of Curaçao.

525. On arrival, after going through immigration and retrieving luggage from the carousel, the passengers go to the Customs inspection area, taking along their luggage and other belongings. At that point, passengers can proceed to the exit via the "nothing to declare" line (green line) or the "something to declare" line (red line). Passengers taking the "something to declare" line will have to put all their belongings through a scan for verification by Customs officers.

526. Curaçao Customs has adopted an approach based on risk. Accordingly, for flights coming from some specific destinations, Customs will send all or a very high proportion of passengers through the scanning process (red line).

527. However, for flights representing a lower risk, passengers will be free to decide which scanning process (red or green line) to use. With the current system, it is not sufficiently clear for travellers crossing the border that they have to disclose cross-border transportation of currency above NAF 20,000. No information is provided to passengers prior to proceeding to the exit in relation to their obligation to disclose transportation of currency above the threshold. The only sign informing passengers of their obligation to disclose cross-border transportation of currency was installed on the scan in the "something to declare" area. The Authorities have noted that on a random basis Customs Officers will check all the luggage of selected passengers who choose the 'green lane'. Further, they have stated that if a passenger chooses the 'green lane' it does not mean that he/she still cannot be monitored and checked. Furthermore, before luggage is put on the carousel, it can be checked physically or by the sniffer dogs at random.

528. In addition to the control area with officers and scans, Curaçao Customs also has officers, in uniform or plain clothes posted at different locations in the arrival area to identify suspicious behaviour. They also benefit from a system of video camera. In addition, a team of fourteen (14) sniffing dogs work at detecting drug, food and cash at the baggage carousel or outside before luggage is sent to the carousel.

529. During an inspection, although it is an obligation of the passenger to report the amount of money that he is carrying when it is NAf. 20.000 or more, the officer can decide to continue with the inspection or not. If the passenger's answer is negative with regard to any money above the threshold and the officer decides to proceed with the inspection and finds an amount of money equivalent to NAf. 20.000 or more, the money will be seized and the passenger will be arrested and turned over to the special unit of the police (BFO) who is in charge of financial cases.

530. The passenger will have to prove who the owner of the money is. In cases of passengers travelling together with jointly NAf. 20,000 or more and where the Customs Officers have reasons to believe that this amount of money belongs to one person, Customs has the authority to start with an investigation to see if this amount of money belongs to one or more persons.

Declaration/reporting Curaçao

| Year | No. of Reports |
|---|---|
| 2006 | 389 |
| 2007 | 589 |
| 2008 | 426 |
| 2009 | 402 |

**Inspection at departure**

531. Customs also has the authority, to carry out inspections on passengers leaving Curaçao. According to the law, persons leaving the country, carrying NAf. 20.000 or more must report no later than at the time when the police official employed at the Immigration Service may carry out a passport inspection or, if no passport inspection takes place, no later than at the time when the Customs and excise duties official may carry out an inspection of the luggage brought by travellers. There is always a passport inspection for each and every flight on travellers leaving the Island. For the flights departing to the Netherlands (Europe) the passengers are checked by Customs Officials before they get to the Immigration for their passport inspection.

532. All flights especially those departing to the U.S. and Europe (Netherlands) are checked on a regular basis. This means that during these inspections the passengers are asked and checked as to whether they carry any amount of money.

533. For all flights departing to the Netherlands (Europe) there is a special team to check all passengers. Also passengers travelling to other destinations during the period that flights depart to Europe are checked with regard to the amount of money that they carry. This is to minimize the possibility of passengers handing over amounts of money to other passengers in the transit hall. Passengers in transit are checked at random.

**Transport of money by vessels from Venezuela**

534. The transport of large amounts of money by the so called “fish and fruit boats” arriving from, or departing to Venezuela must be reported to Customs. Also in these cases the person(s) carrying the money must report this to Customs.

535. Pursuant to Article 5 of the NOOCMT, Customs as well as the police officials employed with the Immigration Service are responsible for the supervision of the observance of the provisions laid down by or by virtue of the NOOCMT.

536. In accordance with Article 5 of the NOOCMT the following actions can be taken:

- request any information, subject property to inspection and temporarily seize such property and take it with them for such purpose;

- access all locations, with the exception of residences or parts of vessels intended as residences, accompanied by the people designated by them, without the explicit permission of the occupant;
- search vessels that are mooring or landing, and any stationary aircraft and vehicles and their cargo;
- take money into custody if the person reporting does not immediately provide them with the data, referred to in Article 3, or if they have reasonable doubt as to the correctness of the data provided by the person reporting.

537. The BFO decides in consultation with the Public Prosecutor what happens with the passenger and the money. Customs Officers have the authority to carry out investigations on their own, but Curaçao Customs has an agreement with the police that all the cases concerning the transport of money will be handed over to the BFO who is more specialized to deal with these matters. Customs sends the completed forms to the FIU (MOT). Customs makes an official report of findings of the passenger that is handed over to the BFO and makes a copy of the passport of the passenger.

538. The following chart shows the number of cases/persons that Customs has handed over to the BFO.

| Year | BFO |
|---|---|
| 2005 | 12 |
| 2006 | 12 |
| 2007 | 3 |
| 2008 | 12 |
| 2009 | 12 |
| 2010 | 2 |

**Customs**

539. Article 5 of the NOOCMT states:

1. The import and excise duty officials as well as the police officials employed with the Immigration Service shall be responsible for the supervision of the observance of the provisions laid down by or by virtue of this national ordinance.
2. Only to the extent that such is reasonably required for the performance of their duties, the officials referred to in the first paragraph shall have the power to exercise the power described above in the discussion on 'transport of money by vessels from Venezuela.'
3. The officials referred to in the first paragraph of Article 5 of the NOOCMT shall immediately draw up a report regarding the money that was taking into custody. The money can be taken into custody for a maximum of seven (7) days. This term may be extended once by a second period of a maximum of seven (7) days by the head of their department. When this term has lapsed

the money will immediately be returned to the person reporting, unless Article 6, second paragraph[7] of the NOOCMT is applied.

4. If necessary, access to a place referred to in article 5, paragraph 2, section c of the NOOCMT, shall be provided with the assistance of police officers.
5. The officials referred to in the first paragraph shall have the authority to search the body and the clothing of people moving from or to the vessels, vehicles or aircrafts.
6. The body search or the search of clothes shall be carried out by officials of the same sex as the person subjected to the search.
7. Persons subjected to a body search or a search of clothes shall stand still at the first order by the officials referred to in the first paragraph of article 5 of the NOOCMT, and shall follow such officials to a location designated by the officials.
8. The officials referred to in the first paragraph of Article 5 of the NOOCMT shall always be given all cooperation that is demanded on the grounds of the second, fifth and seventh paragraphs of Article 5 of the NOOCMT.
9. By national decree containing general measures, rules can be laid down regarding the way in which officials referred to in the first paragraph of Article 5 of the NOOCMT shall carry out their tasks.

540. There are no clear dispositions in both NOOCMT and NORUT with regard to the power to stop or restrain currency where there is a suspicion of ML or FT and to report of suspicion of ML or FT by Customs Officers. As such, it appears that the UTRs submitted by Customs to the FIU (MOT), as reported in the Annual report of the FIU (MOT), would be reports of cross-border money transfer which may or may not be suspicious.

541. According to Article 3 of the NOOCMT (The content of the forms and final destination of the forms) the forms (report of cross-border transportation of currency) must be handed over to the Customs Officer at the inspection counter.

542. Article 3 of the NOOCMT provides that when reporting, as referred to in the second paragraph of article 2, the correct data must be provided as to:

a. the identity and place of residence of the person reporting and the owner of the money;
b. the magnitude, origin and destination of the money;
c. the reason for selecting the method of transportation of the money.

All of the above mentioned original forms are sent to the FIU (MOT).

543. According to Article 4 of the NOOCMT, the FIU (MOT) receives the data obtained pursuant to Article 3.

[7] *The officials or persons charged with the detection of offences as referred to in the NOOCMT shall at all times have the power to seize any and all objects that are eligible for seizure in relation to the provisions of the NOOCMT pursuant to the Penal Procedures Code. They can demand that such objects be handed over. For the penal provisions please be referred to article 7 of the NOOCMT. Intentional contravention of articles 2, 3, and 8 paragraph 1 NOOCMT will be punished either with imprisonment of up to 4 years or with a fine of up to NAF.500, 000 or both. Unintentional contravention will be punished by imprisonment of up to 1 year or with a fine of up to NAF. 250,000 or both). By National Decree containing general measures rules shall be laid down as to the report on taking into custody of the money, the place where the money is kept, the transfer and the control of the money.*

544. The import and excise duty officials as well as the police officials employed with the Immigration Service immediately send all reports referred to in Article 2 of the NOOCMT and copies of reports regarding money that has been taken into custody to the FIU (MOT).

545. These reports are not currently submitted electronically. However, Customs and the FIU (MOT) are working on developing an electronic reporting system.

546. Customs, Immigration and BFO, when needed, brief each other with regard to cross-border matters. Every two (2) months, there is an "investigation officers meeting" (opsporingsdienstenoverleg), where Customs officers, tax officers, police, FIU (MOT) and the PPO participate. In this meeting, for instance, issues regarding ML and FT are discussed and actions to be taken are coordinated.

547. In addition, Curacao Customs is an active member of the CIWG, the national advisory committee on AML/CFT which focuses on domestic implementation of the FATF standards.

548. There is a wide variety of methods by which Customs information can be shared or exchanged with other Customs authorities or other foreign competent authorities.

**FIU (MOT)**

549. The FIU (MOT) thus exchanges information with regard to the data contained in the Customs report with other FIUs.

**Customs**

550. Curaçao Customs is a very active member of the Caribbean Customs Law Enforcement Council (CCLEC). CCLEC is a multilateral regional organization dedicated to improving the overall professionalism of its members. In 1989, the members of the Council (thirty-eight (38)) agreed to formalize their exchange of information through the adoption of a Memorandum of Understanding (MOU) regarding mutual assistance and cooperation for the prevention and repression of customs offences in the Caribbean Region. At that time twenty-one (21) countries signed the MOU but this number has since increased to thirty-six (36) signatories.

**Sanctions**

551. Non compliance with the obligation to make a declaration is an offence. According to Article 7 NOOCTM:

1. Contravention of the provisions referred to in Articles 2, 3 or 8, first paragraph, to the extent this occurs intentionally, shall be punished either with imprisonment of up to four (4) years or with a fine up to five hundred thousand guilders (NAf 500,000) or with both imprisonment and fine.
2. Contravention of the provisions referred to in the first paragraph, to the extent this occurs unintentionally, shall be punished either with imprisonment or up to one year or with a fine of up to two hundred and fifty thousand guilders (NAf 500,000) , or both these punishments.
3. Contravention of the provisions referred to in the first paragraph shall be a criminal offence and contravention as referred to in the second paragraph shall be an offence.

552. The BFO decides what happens with the passenger and the money. This takes place in consultation with the Public Prosecutor.

553. Customs Officers have the authority to carry out investigations on their own, but Customs has an agreement with the police that all the cases concerning the cross-border transport of money are handed over to the police (BFO).

554. The sanction regime in place, pursuant to NOOCMT Article 7 appears to be sufficiently proportionate and dissuasive. Statistics on the number of cases submitted to the BFO for investigation were provided, however, no statistics related to sanctions imposed were provided and, as such, it is not possible to conclude on the effectiveness of the sanctions.

555. Article 7 of the NOOCTM (sanctions) is also applicable to persons who carry out a physical cross-border transportation of currency or bearer negotiable instruments that are related to FT or ML.

Confiscation

556. According to Article 5 of the NOOCMT the import and excise duty officials as well as the police officials employed with the Immigration Service shall be responsible for the supervision of the observance of the provisions laid down by or by virtue of the NOOCMT.

557. The customs and excise duty officials and police officials have the power to among other things subject property to inspection and to temporarily take it with them for such purpose. This includes taking money into custody if the person reporting does not immediately provide them with the data, referred to in Article 3of the NOOCMT or if they have reasonable doubt as to the correctness of the data provided by the person reporting.

558. The customs and excise duty officials and police officials referred to in the first paragraph of Article 5 of the NOOCMT shall immediately draw up a report regarding the money that was taken into custody. See. Discussion above with regard to the contents of Article 5 of the NOOCMT. Article 6 stipulates that: The officials or persons charged with the detection of offences as referred to in this National Ordinance shall at all times have the power to take into custody any and all objects that are eligible for being taken into custody in relation to the provisions of this national ordinance pursuant to the Code of Criminal Procedure. They can demand that such objects be surrendered. Article 5, third paragraph, shall apply mutatis mutandis.

559. Confiscation of property is regulated in Article 35 of the Penal Code. Withdrawal from circulation and dispossession of unlawfully obtained benefit are regulated in Article 38a up to and including 38d of the Penal code and Article 38e of the Penal Code.

560. Customs Authorities indicated that they did not make any use of the United Nations lists of entities and individuals associated with terrorism activities. As such, the Examiners have concluded that Curaçao Customs is not in a position to verify whether persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee (UNSCR 1267) or designated in the context of the UNSCR 1373 are or could be in relation with physical cross-border transportation of currency. According to Customs Authorities, the Immigration Authorities have the responsibility to verify against the United Nations lists. No information was provided to the Examiners to confirm that Immigration Authorities are actually proceeding with such verification.

561. Prosecutors and other law enforcement authorities indicated that Customs does not have or does not use the power to further look into unusual cross-border movement of gold or other precious metals or precious stones. As such, Customs isn't obligated to have the expertise to establish the source, destination or purpose of the movement of this item. According to law enforcement

authorities and prosecutors, in recent cases, it would have been useful to have Customs seeking additional information on the true origin of gold being imported into the country.

562. The systems for reporting cross border transactions should be subject to strict safeguards. The original forms are brought to the FIU (MOT) which is responsible for protecting this information in the same manner that it protects other reports submitted by reporting entities.

**Additional Elements**

563. All reports with regard to the cross border transportation of currency above NAF. 20,000 are imported contained in a Customs database. This enables Customs Authorities to properly allocate its resources for effective management.

564. Upon requests received from law enforcement agencies, the PPO or from other FIUs, the FIU (MOT) is authorized to disseminate this information for ML/FT purposes. The FIU (MOT) and Customs are in the process of establishing an online reporting system to make the processing of the reports more efficient.

***Recommendation 30 (Customs authorities)***

**Structure**

565. The structure of Curaçao Customs comprises a total of 254 employees. This includes a staff of fifty-nine (59) in the Harbour Department (including twenty-one (21) staff for the free trade zone); fifty-two (52) in the Airport Department; and, forty-nine (49) in the Department of Intelligence and Investigation.

**Funding**

566. Customs receives its funds from the Curaçao Government. The Agency seems to be adequately resourced for staff and equipment. It was recently able to acquire equipment such as portable scans and additional scans for port containers.

567. Every Customs officer is screened before their enlistment. Customs officials are required in general to maintain high standards concerning confidentiality.

568. The Customs Department has an integrity officer. There is also a Customs' Code of Conduct. All Customs officers are required to behave according to the Code of Conduct.

**Customs**

569. Please be referred to information on training at section 2.6 of the Report above.

***Recommendation 32***

**FIU (MOT)**

570. Please be referred to previous statistics and discussion at section 2.6 of the Report above.

2.7.2 Recommendations and Comments

*Special Recommendation IX*

571. Authorities should further improve the way they inform travellers of their obligation in the arrival zone or revert to a declaration system by putting back a question on transportation of currency on the card distributed to all passengers.

572. Customs should be obligated to better monitor the source, the destination or purpose of the movement of gold or precious metal and stones.

573. Curaçao Customs should have the power to stop or restrain currency where there is a suspicion of ML or FT.

*Recommendation 32*

574. Customs or other relevant competent authority should maintain statistics with regard to cross border bearer negotiable instruments.

### 2.7.3 Compliance with Special Recommendation IX

| | Rating | Summary of factors relevant to s.2.7 underlying overall rating |
|---|---|---|
| **SR.IX** | **PC** | • **Ad hoc cross-border declaration system. Unexpected change from declaration system (declaration card) to disclosure system. As a result, the requirement to make a truthful disclosure is not clearly identified at the border.**<br>• **No process in place to identify the source, destination and purpose of movement of gold or other precious metal and stones.**<br>• **No power to stop or restrain currency where there is a suspicion of ML or FT.**<br>• **No indication that authorities are monitoring entities or individuals associated with terrorist activities listed by the United Nations.** |

## 3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

**Overview scope Coverage of AML/CFT preventive measures**

**General**

575. The Central Bank is responsible for the regulation and supervision of the financial services sector in Curaçao. The Central Bank exercises supervisory oversight responsibilities over the banking and other credit institutions, insurance companies, insurance brokers, pension funds, investment institutions, and money transfer companies. The banking and other credit institutions are governed by the NOSBCI, the insurance companies by the NOSII, the insurance brokers by the NOIB, the pension funds by the NOSPF, and the money transfer companies (MTC) by the RFETCSM, hereafter referred to as "ordinances". It should be noted, however, that pension funds in Curaçao do not fall under the scope of the AML/CFT regime exercised by the Central Bank.

576. This is due to the nature of the activities of the pension funds, which entails:

- Company pension funds which receive their funds from contributions made by the employer and the participating employees. In the latter case funds are being withheld directly from employees' salaries.

- The amount of the contributions that should be paid into the fund is laid down in the rules of procedure (huishoudelijk reglement) of the fund; any contributions made into the fund can therefore be easily traced.

- The participating employee will receive a benefit when he or she reaches retirement age. The funds contributed to the pension plan remain within the fund for a long period of time.

**Legal framework**

577. The AML/CFT framework for the financial sector of Curaçao constitutes the following laws and executive decrees, regulations, provisions and guidelines:

- The National Ordinance on the amendment of the Code of Criminal law (penalization of terrorism, terrorist financing and money laundering) (N.G. 2008, no. 46);
- The National Ordinance on the Reporting of Unusual Transactions (N.G. 1996, no. 21) as lastly amended by N.G. 2009, no 65 (N.G. 2010, no 41) (NORUT);
- The National Decree containing general measures on the execution of articles 22a, paragraph 2, and 22b, paragraph 2, of the National Ordinance on the Reporting of Unusual Transactions.(National Decree penalties and administrative fines for reporters of unusual transactions) ( N.G.2010 no.70);
- The National Ordinance on Identification of Clients when rendering services (N.G. 1996, no. 23) as lastly amended by N.G. 2009, no. 65 (N.G. 2010, no. 40)
- National Decree containing general measures on the execution of articles 9, paragraph 2, and 9a, paragraph 2, of the National Ordinance on Identification of Clients when rendering Services. (National Degree containing general measures penalties and administrative fines for service providers) (N.G. 2010, no.71);
- Ministerial Decree with general operation of 21 May 2010, laying down the indicators, as mentioned in article 10 of the National Ordinance on the Reporting of Unusual Transactions (Decree Indicators Unusual Transactions) (N.G. 2010, no. 27);
- Ministerial Decree with general operations of March 15, 2010, implementing the National Ordinance on the Reporting of Unusual Transactions (N.G. 2010, 10);
- Ministerial Decree with general operations of 15 March 2010, implementing the National Ordinance on Identification of Clients when Rendering Services (N.G. 2010, no.11);
- National decrees freezing assets from Taliban cs and Osama bin Laden cs;
- National Ordinance on the Obligation to report Cross-border Money Transportation (N.G. 2002, no. 74);
- Sector specific Provisions and Guidelines of the Central Bank on the Detection and Deterrence of Money Laundering and Terrorist Financing Credit Institutions, Insurance Business and Insurance Brokers and Money Transfer Companies.
- National Decree providing for general measures of 8$^{Th}$ August 2011 for the implementation of Articles 1, paragraph 1, subsection b, under 16, 6, subsection d, under 12 and 11, paragraph 2 of the National Ordinance on Identification of Clients when rendering Services. (National Decree designating

services, data and supervision under the National Ordinance on the Identification of Customers when Providing Services) (N.G. 2011, no. 32); and

- National Decree providing for general measures of 8Th August 2011 for the implementation of Articles 1, paragraph 1, subsection a, under 16, and 22 h paragraph 2 of the National Ordinance of Unusual Transactions (National Decree designating services and supervision under the National Ordinance on the Reporting of Unusual Transactions) (N.G. 2011, no. 31).

578. The preventive measures contained in the Provisions and Guidelines (P&Gs), inclusive of customer identification and verification, detection and (internal and external) reporting of unusual transactions, record keeping, independent testing of compliance program, and employee training, must be implemented by all supervised institutions.

579. The supervisory ordinances as well as the NORUT and the NOIS contain provisions for the Central Bank to conduct examinations, including those to test for compliance with the AML/CFT rules and regulations. They also cover the sharing of information with other competent authorities and overseas regulators on a reciprocal basis.

**Enforceability of the P&Gs**

580. The P&Gs issued by the Central Bank for credit institutions, insurance companies and intermediaries (insurance brokers), and money transfer companies are deemed other enforceable means. National Ordinances are the primary and formal legislative instruments at the national (country) level and are issued by the Government and the Parliament, and enacted by the Governor. National Decrees are delegation instruments which are enacted by the Government (executive power). The National Decrees Containing General Measures regulate subjects mentioned in the National Ordinances. The purpose of a National Decree is often to discipline/regulate/detail an enacted law. Ministerial Decrees are legislative instruments issued by one or more Minister(s) with responsibility over the subjects regulated in those Decrees.

581. Sector-specific P&Gs are issued by the Central Bank under the authority of the NOIS (Article 2, paragraph 5, and Article 11, paragraph 3); the NORUT (Article 22h, paragraph 3); and the respective supervisory ordinances the RFETCSM for money transfer companies (Article 7).

582. The Central Bank's powers of enforcement (i.e. penalties, orders and administrative fines) for non compliance with the *obligatory provisions of the* P&Gs are derived from the National Ordinances:

- Articles 9 and 9a of the NOIS
- Articles 22a and 22b of the NORUT,
- Articles 35 and 44 RFETCSM

Withdrawal of a financial institution's license is the ultimate penalty based on the supervisory ordinances.

583. However, information provided to the Examiners/Assessors show that the Central Bank has only issued instructions to financial institutions following an examination, with deadlines for remedial action. There is therefore insufficient evidence in support of implementation of a laddered approach to sanctioning and that these sanctions are effective, proportionate and dissuasive. An order for a penalty can be imposed on a Service Provider who is defined as anyone who renders services as a profession or as a trade.

584. The authority given to the Central Bank to issue AML/CFT P&Gs, provides the Central Bank with greater flexibility to amend existing or issue new AML/CFT rules when deemed necessary as a result of international and local AML/CFT developments.

## 3.1 Risk of money laundering or terrorist financing

585. In keeping with the FATF AML/CFT Methodology, where there is proven low risk of ML and FT, a country may decide not to apply some or all of the requirements in one or more of the Recommendations. However, this should only be done on a strictly limited and justified basis. The Examiners noted that the last threat assessment was conducted several years ago with the last progress report produced in 2008. The Central Bank has determined that credit unions, savings and credit funds, pension funds, funeral insurance companies and life insurance companies are low risk. While the CIWG is charged with advising Government on AML/CFT measures, the Examiners were unclear of the process at this level to determine low risk and thus adjudge the reasonableness of the Central Bank's conclusions.

586. An important objective of the Central Bank's supervision of the financial sector is to promote the stability of the financial system and the reputation of Curaçao's financial sector. Considering the significant number and types of institutions supervised by the Central Bank, the Central Bank deems it imperative that its supervisory regime is conducive to the application of the risk-based approach (RBA). The application of the RBA allows the Central Bank to allocate and use its resources more effectively among supervised institutions, while at the same time it allows the Central Bank to distinguish those institutions that pose a higher threat to the achievement of supervisory objectives. The monitoring of controls to combat ML and FT also forms an integral part of the supervisory risk-based regime applied by the Central Bank.

587. Even though the nature, scope and complexity of the activities of the institutions supervised by the Central Bank vary from institution to institution, the overarching aim of the risk-based regime applied by the Central Bank is to focus on the institutions that pose a higher risk to the stability of the financial system. The assessment of the risk of a supervised institution, from a regulatory perspective, is not only performed through off-site measures, such as evaluation of the timeliness of filings and the content of financial reports, but also through deficiencies identified during on-site examinations in areas such as management, capital, assets, earnings, and liquidity and the rating or risk classification assigned to each one of these areas. Based on the Central Bank's overall risk assessment conducted in light of the qualitative factors, as mentioned before, the Central Bank will determine the appropriate supervisory strategies and the intensity of the supervision and on-site examinations to be applied to a particular supervised institution.

588. The Central Bank considers the following financial institutions to have a very low ML/FT risk due to the nature of their businesses: credit unions, savings and credit funds, pension funds and funeral insurance companies. Life insurers are also considered as being a low risk for ML/FT. This is particularly due to the nature of the activities they conduct and the type of transactions they perform.

589. The supervised institutions are also allowed, by virtue of the various sector-specific P&Gs issued by the Central Bank, to apply a RBA in their money laundering and terrorist financing programmes. In this way, supervised institutions are able to better allocate resources towards measures to prevent or mitigate ML and FT

590. A risk analysis must be performed by the supervised institutions to determine the risk profile of their clients. The supervised institutions must at least consider the following risk categories while developing the risk profile of a client: (i) customer risk, (ii) products/services risk, (iii) country or geographic risk, and (iv) delivery channels risk. The risk profile should be updated over time as circumstances develop and threats evolve. Proportionate procedures should be designed based on the assessed risk. Higher risk areas should be subject to enhanced procedures, including measures such as enhanced customer due diligence and enhanced transaction monitoring. Furthermore, in instances where risks are low, simplified or reduced

controls may be applied. The strategies to manage and mitigate the identified ML and FT activities are aimed at preventing the activity from occurring through a mixture of deterrence (e.g. appropriate CDD measures), detection (e.g. monitoring and reporting of unusual transactions), record-keeping so as to facilitate investigations, and staff training.

591. The basic CDD obligations re CDD i.e. the identification and verification of all clients and their ultimate beneficial owners or third parties stand at all times unless otherwise indicated.

## 3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and Analysis

***Recommendation 5***

592. The NOIS, the NORUT and the indicators used to report unusual and or suspicious transactions (which were first issued in 1996) cover the activities or operations as described in the definition of financial institution in the glossary of the 40 + 9 FATF Recommendations.

593. The (financial) institutions which perform these activities are: credit institutions, money transfer companies, and insurance brokers. They are all subject to the supervision of the Central Bank through the respective supervisory ordinances and also with regard to the compliance with AML/CFT obligations through the NOIS and the NORUT.

594. The services as described in Article 1, paragraph 1 (b). of the NOIS inter alia:

1. taking into custody securities, paper currency, coins, currency notes, precious metals and other valuables;

2. opening an account on which a balance may be kept in money, securities, precious metals or other valuables;

3. renting out a safe-deposit box;

4. effecting payment in connection with the cashing in of coupons or comparable documents of bonds or comparable securities;

5. entering into or mediating at the effecting of a life insurance contract as referred to in Article 1, first paragraph, section a., of the National Ordinance Supervision of the Insurance Industry, at a premium as referred to in Article 1, first paragraph, section c., of the National Ordinance Supervision of the Insurance Industry in excess of an amount to be stipulated by the Minister. (The amount is set at NAf. 2,500.00 per year, if it is a periodic premium and at NAf. 5,000.00, if it is a once-only premium – Ministerial Decree With General Operations of March 15, 2010 Implementing the NOIS).

6. making a distribution on account of a life insurance contract as referred to in paragraph 5 above which is in excess of an amount to be stipulated by the Minister; (The amount is set at NAf. 20,000.00 by Ministerial Decree).

7. rendering services in respect of a transaction or of evidently related transactions, having an equivalent or aggregate equivalent equal to or in excess of an amount to be stipulated by the Minister, which may vary for the different kinds of transactions; (The amount is set at NAf. 20,000.00 by Ministerial Decree).

8. crediting or debiting an account, or causing this to be done, on which account balance may be kept in money, securities, precious metals or other currency;

9. entering into an obligation for payment in favour of the holder of a credit card to the person who has accepted such manner of payment by being shown such credit card, to the extent that this does not concern a credit card which can only be used with the company or institution issuing the credit card or with a company or institution belonging to the same economic entity through which the legal persons and companies are connected organizationally;

10. taking delivery of moneys or monetary values as part of a pecuniary transfer, in order to make such moneys or monetary values payable or have them made payable in the same form or in another form elsewhere, or paying or making payable moneys or monetary values as part of a pecuniary transfer after such moneys or monetary values have been made available in the same form or in another form elsewhere.

11. offering prices and premiums, which can be competed for against payment of a value that is more than an amount to be determined by the Minister, in the framework of:
a. the operation of games of hazard, casinos and lotteries;
b. the operation of offshore games of hazard.
The amount is set at NAf. 20,000.00, by Ministerial Ordinance.

595. By National Decree Providing for General Measures issued on September 2, 2011 service is further defined inter alia as:

c. the providing of factoring services;

d. the providing of credit through a credit provider, including, in any case, mortgage and consumer credits and the furnishing of financial security including the granting of guarantees and sureties and financial leasing;

i. the exchanging of guilders or foreign currency.

596. The aforementioned clarifies the uncertainty with the scope of activities covered under the AML/CFT regime relative to the FATF definition of a financial institution. It should be noted that factoring services and securities companies other than those providing services for themselves or for their customers, are being captured for the first time.

597. Article 1, paragraph 1b.5 of the NOIS and the P&G for Insurance Companies and Intermediaries refer to brokers and not agents. It is therefore unclear, whether the activities of insurance agents fall under the NOIS. As stated earlier, pension funds are not captured in the NOIS.

598. The services described in Article 1, paragraph 1a. of the NORUT differ from those services defined in the NOIS. The NOIS requires service providers to complete CDD where there is a periodic life insurance premium over NAf. 2,500.00 or NAf. 5,000.00, if it is a single premium. The NORUT does not define a threshold however the Indicators Unusual Transactions Ministerial Decree establishes (a) objective indicators of NAf. 100,000 or higher where the first premium or the single premium is paid in cash (b) subjective indicators where the first premium or the single premium is NAf. 25,000 and higher. By Ministerial Decree the NOIS further establishes a threshold of NAf. 20,000 and higher for life insurance payments. Consequently, it

appears that the issue is resolved by way of the objective indicators exceeding the NOIS threshold.

599. Of note is that the NORUT establishes an objective indicator for non-life insurance policies. However, the NOIS only applies to Article 1 (a) of the National Ordinance on the Supervision of the Insurance Industry, i.e. life insurance contracts. It therefore appears that such persons conducting reportable activities under the NORUT would not be subject to CDD under the NOIS.

600. The NOIS together with the P&Gs contain the obligations as prescribed in Recommendations 5-8. The obligations on the identification of the clients, its representatives and UBOs, the verification of these, moreover, the safekeeping of records are stated in the NOIS. The rules governing risk based approach, and PEPs and others are based on the mandatory AML/CFT P&Gs of the supervisory authorities.

601. The various supervisory ordinances also authorize the Central Bank to issue P&G's on integrity issues such as the AML/CFT P&Gs on risk based approach, PEPs, high risk customers, and high risk countries.

602. Although the P&Gs qualify as other enforceable means (OEM). Curaçao has decided to draft legislation to incorporate FATF Recommendations 5-8 in the NOIS itself.

603. There is no requirement in law or regulation that prohibits anonymous accounts.

604. While the P&Gs prohibit anonymous accounts, their status as OEM does not satisfy the FATF requirement for this criteria, which requires that the measure be in law or regulation. However, pursuant to Article 2, paragraph 1 of the NOIS all service providers are required to establish the 'identity of a client and the ultimate interested party' before providing a service. Accordingly, this provision effectively prohibits anonymous accounts and thereby complies with the FATF requirement.

605. As part of the client file review conducted by the Central Bank during its on-site examinations, the examiners of the Central Bank inspect the books and records of the supervised financial institutions to determine if anonymous accounts or accounts in fictitious names appear The Central Bank has noted that they have not encountered any such accounts In the few cases when the Central Bank had determined that numbered accounts exist, through a review of the names and identification documents pertaining to the corresponding numbered accounts, the names on the identification documents were satisfactorily matched with those of the clients for whom the numbered accounts were set up.

**When CDD is required**

606. With regard to establishing business relations all financial institutions are required, pursuant to Article 2 of the NOIS, to identify a client and the ultimate beneficiaries of the client, before rendering a service to the client. This requirement is, according to Article 5 of the NOIS, also applicable in the case where a natural person is representing a client or is representing the representative of the client. In case a financial institution knows or should reasonable presume that the natural person appearing before it is not acting for himself, the financial institution should take, pursuant to Article 5, paragraph 4 of the NOIS, reasonable measures in order to establish the identity of the customer for whom the natural person is acting and, in the event of a client being represented by a third party, the identity of such representative.

607. In addition, the P&Gs state that credit institutions, insurance companies and their intermediaries, and money transfer companies, have the obligation to identify their (prospective) personal or corporate clients/customers before rendering them services. Internal

procedures must clearly indicate for which services clients or their representatives must be identified and which identification documents are acceptable. Furthermore, as stated in the respective P&Gs, financial institutions are required to develop clear customer acceptance policies and procedures, including a description of the types of customer likely to pose a higher than average risk to them.

608. As part of its client file review, the Central Bank verifies during its on-site examinations whether the financial institutions are complying with the requirements concerning the application of CDD measures prior to the establishment of a business relationship, as set out in the NOIS and the P&Gs. The Examiners were advised that a Central Bank review revealed that the financial institutions duly observe these requirements.

609. The provision of services in respect of a transaction or of evidently related transactions, which in essence include occasional transactions, is addressed in Article 1, paragraph 1, sub b, 7° of the NOIS. The threshold for the application of CDD measures for such transactions has been set in Article 4 of the Ministerial Decree at NAf. 20,000 (US$ 11,173). This threshold is applicable to transactions conducted by all financial institutions on behalf of their clients. Wire transfers generally are captured in Article 1, paragraph 1(b)10 (see detailed description at paragraph 593 item 10).

610. Pursuant to the P&Gs credit institutions, insurance companies and their intermediaries, and money transfer companies, have the obligation to perform CDD measures prior to conducting a transaction with a client, irrespective of the value of the transactions. The P&Gs require financial institutions to have policies in place to ensure that transactions will not be conducted with (prospective) customers who fail to provide satisfactory evidence of their identity.

611. It should be noted, however, that for life insurance contracts and the provision of mediation services therewith, the level of the premium for the application of CDD measures, as referred to in Article 1, paragraph 1 sub b, 5° of the NOIS, has been set in Article 2 of the Ministerial Decree for the Implementation of the NOIS (N.G. 2010, no. 11), at NAf. 2,500 (US$ 1397) per annum if it concerns a periodic premium, and at NAf. 5,000 (US$ 2793) if it concerns a non-recurring premium. Furthermore, according to Article 3 of the Ministerial Decree, identification is required in the insurance industry when making a distribution on account of a life insurance contract as referred to in Article 1, paragraph 1, sub b, 6°, of the NOIS which is in excess of the amount of NAf. 20,000 (US$11,173).

612. During the on-site examinations of the Central Bank, the examination teams verify whether the financial institutions are adhering to the requirements concerning the application of CDD measures as it relates to the conduct of occasional transactions. The review of the Central Bank revealed that the financial institutions duly observe these requirements. They perform CDD measures prior to conducting a transaction with a client and in practice request CDD information even for transactions below the threshold of NAf. 20,000 (US$11,173) stipulated for occasional transactions.

613. As stated above, the NOIS defines occasional transactions generally, and wire transfers under separate provisions. There is no specific requirement in law or regulation that requires CDD to be undertaken when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII. The provisions concerning the conduct of occasional transactions for credit institutions, insurance companies and their intermediaries, and money transfer companies are further outlined in the P&Gs. These P&Gs provide that financial institutions should be extremely vigilant before accepting funds for transfer. If such funds are accepted, suitable identification information and knowledge of the source of funds should be required. Based on FATF Special Recommendation (SR) VII, financial institutions are required, by virtue of the P&Gs (and not in law or regulation, to include accurate and meaningful originator information (at least the name, address, and account

number) on funds transfers within or from Curaçao, and on related messages sent. The information should remain with the transfer or related message through the payment chain. If the information seems inaccurate or incomplete, additional information should be requested prior to accepting or releasing funds. Financial institutions must observe the latest Interpretative Note to SR VII and, when deemed necessary, consider the reporting of any unusual transaction to the FIU (MOT).

614. In Curaçao, all banks make use of the SWIFT system for cross-border wire transfers. Using the SWIFT system, the originator information should always accompany the transfer. In case of domestic wire transfers between the local banks, the NACS (Netherlands Antilles Clearing System) is used, where the Central Bank serves as an intermediate financial institution. The MT 103 is sent from the ordering client to his/her bank, which sends an MT 202 to the Central Bank with the request to send the respective amount to the beneficiary bank. The MT 103 always contains the originator information and is sent along with the MT 202.

615. The Central Bank verifies during its on-site examinations whether the originator information as well as the beneficiary information pertaining to wire transfers is known to the financial institution. This is done through interviews held with the responsible individuals as well as through a sample testing of SWIFT messages. According to the Central Bank, the reviews have shown that the provisions relative to wire transfers are duly adhered to by financial institutions.

616. Article 8 of the NOIS states that it is prohibited for a service provider to render a service, if the identity of the client has not been established in the manner prescribed in the NOIS. The 'manner prescribed' includes provisions for exemptions and thresholds, while also referencing the NORUT (as it relates to exemptions). Article 4, paragraphs 2 through 4 of the NOIS provide for exemptions to CDD (as required under Article 2, paragraph 1) for certain transactions relating to life insurance and securities trading services. However, Article 5 states that such exemptions are not allowed if the service is related to a transaction that is considered an unusual transaction within the meaning of the NORUT, or if the Minister so designates. Under the NORUT, objective/mandatory indicators refer to thresholds. Subjective indicators refer to general situations as well as transactions above defined thresholds. Section II of the NORUT states that reporting is mandatory, if the person who is obliged to report a transaction considers that there is a reason to assume that it could be connected with ML or FT. Although not explicitly stated, this is intended to apply, irrespective of any exemption threshold.

617. The Ministerial Decree for the Implementation of the NOIS (N.G. 2010, no. 11), stipulates a minimum threshold of NAf 20, 000 (US$11,173) for the application of CDD measures with respect to occasional transactions, as described above, and the provisions in the P&Gs prohibit financial institutions from establishing business relationships or conducting transactions with a customer in case insufficient CDD information is obtained from the customer. This entails that financial institutions are required to apply CDD measures to all (prospective) customers regardless of any exemptions or thresholds contained in the NOIS. Furthermore, according to the P&Gs credit institutions, insurance companies and their intermediaries, and money transfer companies, have the obligation to report any intended unusual transaction to the FIU (MOT) without delay in the event the intended unusual transaction was the reason for the decision not to enter into a business relationship with or conduct a transaction on behalf of a client.

618. The compliance of the financial institutions with this provision is also verified during the on-site examination conducted by the Central Bank. According to the Central Bank, the examinations have revealed that this provision is duly adhered to.

619. Article 3, paragraph 6 of the NOIS states that the service provider shall see to it that the identity data is correct. When it turns out that these data is no longer in accordance with reality, the service provider is obliged to adjust these modified identity data. This suggests that the service

provider should undertake CDD where previously obtained identification data is no longer reliable or accurate. See. Below under 'Required CDD Measures'.

620. The P&Gs for CI, IC & IB and MTC, state that ongoing due diligence on the business relationship must continue even after the client has been identified.

621. The P&Gs for CI and MTC state that if doubts arise relating to the identity of the client after the client has been accepted and accounts have been opened, the relationship with the client must be re-examined to determine whether it must be terminated and whether the incident must be reported to the FIU (MOT). A similar provision is not contained in the P&G for IC & IB.

622. As part of its client file review, the Central Bank verifies during its on-site examinations whether the financial institutions are complying with this requirement. According to the Central Bank, their review revealed that the requirement is duly observed by the financial institutions.

**Required CDD Measures**

623. Article 2, paragraph 1 of the NOIS states that the service provider is obliged to establish the identity of a client and the ultimate interested party, is such exists, before rendering such a client a service. If the client is a natural person, who is incapable of performing the juristic act, related to the service, it will be sufficient for the service provider to establish the identity of the person who acts as the legal representative. Article 3, paragraph 5 states the service provider is obliged to verify the identity of the client and the ultimate interested party, using reliable and independent sources.

624. Furthermore, the P&Gs for CI, IC & IB, and MTC require that verification of the identity of non-resident clients be obtained by reference to one or more of the following, as deemed practical and appropriate:
- existing relationships of the prospective customer;
- international or home country telephone directory;
- personal reference by a known customer;
- embassy or consulate in home country of address provided by the prospective client;
- comparison of signature if a personal account cheque is tendered to open an account; and
- if provided, cross reference of address printed on personal cheque to permanent address provided by client on standard application form.

625. In addition to the certified extract from the register of the Chamber of Commerce and Industry (or an equivalent institution) referred to in the NOIS for the identification of corporate customers, the P&G for CI and the P&G for IC & IB state that Management may require the following additional information to be provided for corporate customers:
- shareholder's register;
- certificate of incorporation;
- articles of association;
- a list to include full names of all directors (including supervisory directors if applicable), signed by a minimum number of those directors sufficient to form a quorum;
- a list to include names and signatures of other officials authorized to sign on behalf of the company, together with a designation of the capacity in which they sign; and
- business plan/cash flow statements.

626. The Central Bank has indicated that a significant amount of time is devoted during their on-site examinations to review the client files of the financial institutions. During this review, the CDD documents available on file are reviewed through sample testing. Any deficiencies identified are communicated to the financial institutions with a request to take corrective actions.

According to the Central Bank it has thus far only encountered minor omissions of CDD documents in the files. They noted that files generally contain all the required CDD information.

627. Pursuant to Article 5 of the NOIS, a credit institution is bound to establish the identity of the individual appearing before it on behalf of a customer or on behalf of a representative of a customer, before it proceeds to render the financial service.

628. According to the P&Gs credit institutions, insurance companies and their intermediaries, and money transfer companies are required to request proof of identity of any party who represents the client, including the individuals with signing authority together with a designation of the capacity in which they sign. Furthermore, the P&G for CI and the P&G for MTC state that if a customer acts for a third party or that third party acts for another third party, the financial institution must be bound to also establish the identity of each third party.

629. In addition to the certified extract the P&Gs state that credit institutions, insurance companies and their intermediaries must identify the nature of the business, account signatories, and the (ultimate) beneficial owner(s). They must obtain personal information on the managing and/or supervisory directors. Copies of the identification documents of all account signatories, including the directors without signing authority on the corporate client's accounts, must be kept on file. The procedures for the identification of personal customers must be applied for the mentioned account signatories' director(s) and all (ultimate) beneficial owners holding a qualifying interest in the company. Financial institutions must ascertain the identity of corporate customers based on reliable identification documents, with preference for originals and official documents attesting to the legal existence, and structure of a company or legal entity. The identity, existence and nature of the corporate customer must be established with the aid of a certified extract from the register of the Chamber of Commerce and Industry, or an equivalent institution, in the country of domiciliation.

630. The checklist of the Central Bank regarding identification requirements include the following in the case of representation, i.e. a natural person representing a legal entity on the basis of power of attorney or vice versa, the identity of both the one representing and the one being represented should be established by means of official identification documentation. In addition, this should be accompanied by written declaration or official documentation confirming this representation.

631. When a legal entity is represented by one (or more) of its directors, his (or their) authority to validly represent the legal entity must be covered by a (certified) copy of the Articles of Association or a (certified) copy of a written decision of the Board of Directors.

632. The checklist further states that the identity of a resident legal entity should be established by means of a certified extract of registration at the Chamber of Commerce and Industry. In the case of a non-resident legal entity, the extract could be from an equivalent institution in the country of registration.

633. The following additional data should be requested depending on the type of service provided:
- A (certified) copy of an act of incorporation;
- A (certified) copy of articles of association;
- A (certified) copy of the shareholder's register;
- A (certified) copy of identification data directors, proxy holders, commissioners, Board members and the (ultimate beneficial) owner(s) (with a minimum of 25% in qualified ownership).

634. Article 2, paragraph 1 of the NOIS as detailed above also applies to the ultimate interested party. The same is also applicable to Article 3 paragraph 5 as discussed previously above.

635. Article 3, paragraph 4 of the NOIS stipulates that the same identification requirements for natural and legal persons are applicable to the ultimate beneficiary of a client. In addition, according to Article 3, paragraph 5, the identification of the ultimate beneficiary must be verified by using reliable and independent sources.

636. Based on the P&Gs for credit institutions, insurance companies and their intermediaries, are required to establish and verify the identity of the ultimate beneficiary of a client. The P&G for IC & IB additionally states that if claims, commissions, and other monies are to be paid to persons (including partnerships, companies, etc) other than the policyholder, then the proposed recipients of these monies should be the subject of verification.

637. Based on Article 2, paragraph 4 of the NOIS in conjunction with Article 7 of the *Ministerial Decree with General Operation implementing the National Ordinance Identification when Rendering Services* (N.G. 2010, no. 11), the Central Bank as a service provider is exempted from the obligation to identify (the ultimate beneficiaries of) customers that are licensed or registered and supervised by the Central Bank. Nevertheless, as part of the licensing or registration procedures, ultimate beneficiaries of the applying institution are subjected to the Central Bank's integrity test, as outlined in the Central Bank's *Policy Rule on Integrity Testing*.

638. According to Article 5, paragraphs 3 of the NOIS, if a third party is acting for another third party, the financial institution has the obligation to establish the identity of such third party in the same manner, unless the third party is a natural person who is not competent to perform the legal act related to the service. Furthermore, in case the customer is acting on behalf of an ultimate beneficiary, pursuant to Article 2, paragraph 1 of the NOIS, the identification of the ultimate beneficiary must be established prior to rendering any service to the customer. However, the Minister may grant an exemption from these provisions. According to Article 3, paragraph 5 of the NOIS, the identity of both a customer and the ultimate beneficiary of the customer must be verified by using reliable and independent sources.

639. As stated earlier, the P&G for CI requires financial institutions to obtain specific information on the ownership and control of a corporate customer, and further requires completion of a beneficial owner declaration form for each corporate owner. This covers all account signatories and ultimate beneficial owners (UBO) holding a qualified interest. The identity, existence and nature of the corporate customer must be established with the aid of a certified extract. The P&G goes on to state that that management "may" require additional information such as the shareholders' register, which in this case would also serve to understand the ownership and control structure of the business relationship.

640. The P&G for IC & IB requires that CDD includes for legal persons and arrangements, insurers taking reasonable measures to understand the ownership and control structure of the customer;

641. Article 1 paragraph j of the NOIS defines ultimate interested party as the natural persons who has or holds a qualified participation or qualified interest in a legal person or corporation or the natural person who is entitled to the assets or the proceeds of a trust or private fund foundation; while paragraph k defines qualified participation or qualified interest.

642. Prospective customers who wish to open an account with the Central Bank must complete an application form. The application form lists all the documents that should be included in the application. Application forms together with the identification documents are sent by the Central Bank's Accounting Department to the Risk Compliance Management Department for review. The latter advises the Central Bank's Management in writing on the identification of

the prospective customer. At times an application relates to existing customers (government departments) who wish to open an additional account.

643. Based on the P&Gs credit institutions, insurance companies and their intermediaries, and money transfer companies are required to obtain information on the purpose and intended nature of the business relationship with their (prospective) customers.

644. Customers who wish to open an account with the Central Bank are required to indicate the objective of the account on the application form. In general these customers are government departments, government related entities or financial institutions.

645. Pursuant to Article 3, paragraph 6 of the NOIS, a financial institution is responsible for the correct identification data. If it appears that the data is no longer valid, the financial institution has the obligation to amend the data. However, this does not clearly establish an obligation on the service provider to conduct on-going due diligence on the business relationship.

646. The P&Gs for CI, IC & IB and for MTC, state that the efforts to "know your customer" must continue even after the client has been identified. This means that CDD must be an ongoing process throughout the business relationship with the customer.

647. The P&Gs for CI, IC & IB, and for MTC provide that ongoing due diligence must include the scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, its business and risk profile, and where necessary, the source of funds.

648. Pursuant to the P&Gs for CI, IC & IB, and for MTC, documents, data, or information collected under the CDD process must be kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships.

**Risk**

649. Based on the P&Gs credit institutions, insurance companies and their intermediaries, investment institutions, and money transfer companies are required to conduct enhanced due diligence for all high risk customers, including politically exposed persons ("PEPs"), their families and associates.

650. Furthermore, the P&Gs provide that the (other) high risk clients should be determined by the application of the risk-based approach. This entails that the financial institutions must develop risk profiles for all of their customers to determine which categories of customers expose the institutions to higher ML and FT. The P&Gs also provide guidance on the types of (i) customer, (ii) products/services, (iii) country or geographic area, and (iv) delivery channels that are regarded as high risk. Once a client has been classified as high risk, enhanced CDD measures must be applied on that client and the financial institution must ensure that the identification documents of that client are at all times valid.

651. In addition, the P&G for IC & IB provides that insurance companies and intermediaries should be extra vigilant to the particular risks from the practice of buying and selling second hand endowment policies, as well as the use of single premium unit-linked policies. Insurance companies and intermediaries should check any reinsurance or retrocession to ensure the monies are paid to bona fide re-insurance entities at rates commensurate with the risks underwritten. Furthermore, the P&G provides that insurance companies and intermediaries should pay special attention to non resident clients and understand the reasons for which the client has chosen to enter into an insurance contract in the foreign country.

652. Financial institutions have the obligation, pursuant to Article 2, paragraph 1 of the NOIS, to identify a client and the ultimate beneficiaries of the client, before rendering a service to the client. However, according to Article 2, paragraph 4 of the NOIS, the Minister of Finance may grant exemption from the provisions contained in the first paragraph if the following person is acting as a customer of the financial institution:

a. an enterprise or institution that has a license under Article 2 of the NOSBCI, or an insurance broker that is registered under Article 4 of the NOIB; or
b. an enterprise or institution belonging to a category to be designated by the Minister of Finance acts as a customer.

653. Article 2, paragraph 6 of the NOIS provides that the Minister of Finance may grant a release from the first paragraph, if so requested.

654. Article 7 of the Ministerial Decree (N.G. 2010, no.11) provides that exemption from Article 2, paragraph 1 of the NOIS shall be granted if any of the following is acting as a customer:

a. an enterprise or institution as referred to in Article 2, paragraph 4, sub a of the NOIS (see above);
b. a natural person or legal person that is affiliated to a stock exchange which is a member of the World Federation of Exchanges and which is not established in a country that does not comply with at least ten (10) of the core[8] recommendations proposed by the Financial Action Task Force (FATF).

655. Furthermore, with respect to the insurance industry, article 2, paragraph 3 of the NOIS stipulates that the obligation to establish the identity of a customer before rendering any financial service shall not apply to the entering into or making a distribution on account of a life insurance contract insofar as a pension insurance offered by a life insurance business is concerned, unless such insurance is surrendered or serves as security.

656. The foregoing provisions allow for no CDD rather than reduced or simplified CDD for a specific category of clients which contradicts the FATF Recommendations.

657. Based on the P&G for CI, credit institutions may apply simplified or reduced CDD measures when establishing the identity and verifying the identity of the customer and the beneficial owner. The following are examples of customers (transaction or products) where simplified or reduced CDD may be applied due to the fact that the risk may be lower:

(a) financial institutions subject to requirements to combat money laundering and terrorist financing consistent with the FATF Recommendations and supervised for compliance with those requirements;
(b) public companies subject to regulatory disclosure requirements, i.e., companies that are listed on a stock exchange or comparable situations; and
(c) government administrators or enterprises.

658. Due to the low risk of ML or FT characterized by the services rendered by the Central Bank, the Central Bank may apply reduced or simplified customer due diligence measures based upon the advice of the Risk Compliance Management Department. For example, in the case of

[8] For clarity in reading, the Dutch term 'kern' includes both Core and Key FATF Recommendations.

adequate checks and controls executed by other service providers regarding identification related to monies in consignment.

659. Based on the foregoing, the P&G does not therefore limit credit institutions to countries that Curaçao is satisfied are in compliance with and effectively implementing the FATF Recommendations.

660. The P&G for CI and the P&G for IC & IB, stipulate that simplified CDD measures are not acceptable whenever there is suspicion of money laundering or terrorist financing or specific higher risk scenarios apply.

661. The P&Gs provide specific guidance to credit institutions, insurance companies and their intermediaries, and money transfer companies that must be followed when determining the extent of the CDD measures that must be applied on a risk sensitive basis. They must also develop risk profiles for all of their customers to determine which categories of customers expose them to high money laundering and terrorist financing risk.

662. The assessment of the risk exposure and the preparation of the risk classification of a customer, must take place after the CDD information has been received. The risk profile must comprise at a minimum the following possible categories: low, medium and high risk. The financial institutions must apply CDD requirements to existing customers and may determine the extent of such measures on a risk sensitive basis depending on the type of customer, business relationship, or transaction.

663. As noted previously, the financial institutions must at least consider the following risk categories while developing and updating the risk profile of a customer: (i) customer risk, (ii) products/services risk, (iii) country or geographic risk, and (iv) delivery channels risk. The assessment of customer risk entails an assessment of the type of customer and the nature and scope of the business activities of the customer. The assessment of the products/services risk entails an assessment of the potential risk presented by products and services offered by the institution. A key element is the establishment of the existence of a legitimate business, economic, tax or legal reason for the customer to make use of the products/services offered by the institution. Country or geographic risk encompasses the money laundering and terrorist risk characterized by specific countries/geographical locations. Delivery channels risk deals with the manner in which the institution establishes and delivers products and services to its customers.

664. The weight assigned to these risk categories (individually or in combination) in assessing the overall risk exposure may vary from one institution to another. The institution must therefore make its own determination as to the assignment of the risk weights. The result of the risk assessment of a particular customer, as evidenced by the risk profile, will determine if additional information needs to be requested, if the obtained information needs to be verified, and the extent to which the resulting relationship will be monitored.

665. The Central Bank noted that during their on-site examinations, verification as to whether the financial institutions have developed risk profiles for their customers to determine which categories of customers expose them to higher money laundering and terrorist financing risk is done. High risk clients should be subjected to enhanced due diligence, their identification documents should be valid at all times, and enhanced scrutiny of transactions should be performed. Lower risk clients may be subjected to reduced or simplified due diligence (at the establishment of the relationship and during the course of the relationship as well). During on-site examinations it is verified through client file reviews whether the identification documents are valid for high risk clients. Through reviews of the account histories of the clients' accounts a sample of transactions is made and discussed with the relevant staff (mostly the compliance

officer) to verify if enhanced scrutiny is applied to these types of transactions and if they have been reported to the FIU (MOT) in case of unusual transactions.

666. According to the Central Bank, their examinations have revealed that the risk based methods used by the financial institutions are in line with the RBA prescribed. A risk rating assignment system is utilised by most financial institutions. In the few cases when no risk assignment methodology is used, no reduced or simplified CDD measures are applied by the institutions concerned.

**Timing of verification**

667. All financial institutions are required, pursuant to Article 2 of the NOIS, to identify a client and the ultimate beneficiaries of the client, before rendering a service to the client.

668. Article 3, paragraph 5 of the NOIS provides that the identification of a client must be verified by using reliable and independent sources. This verification requirement is also applicable to the ultimate beneficiary of a client.

669. In addition, the P&Gs for CI, for IC & IB, and the P&G for MTC require that the identity of a resident individual customer, including the ultimate beneficiary, be verified when a business relationship is established with the customer.

670. A review of the CDD verification measures applied by financial institutions forms an integral part of the on-site examination conducted by the Central Bank. During this review, the requested verification documents available on file are reviewed through sample testing. Any deficiencies identified are communicated to the financial institutions with a request to take corrective actions. The Central Bank has determined that the verification requirements are generally adhered to by the financial institutions.

671. The NOIS does not provide for the timing of CDD verification to be performed by financial institutions. Consequently, no provision is contained in the NOIS stating that the verification of the identity of the customer and beneficial owner can be completed following the establishment of the business relationship.

672. Although the P&Gs do not specifically state that the verification of the identity of the customer and beneficial owner can be completed following the establishment of the business relationship, they provide that verification of the identity of non-resident clients must be obtained subsequent to the receipt of the certified identification document.

673. The Authorities advised that notwithstanding what the P&Gs make provision for as it relates to verification of the identity of non-resident clients, this does not entail that verification of the identity of the customer and beneficial owner can be completed following the establishment of the business relationship. Notwithstanding Article 2 paragraph 5 and Article 11 paragraph 3 of the NOIS, some confusion is created whereby the P&Gs make provision/elaborate on what is not (the timing of CDD verification) covered in the NOIS.

674. The on-site examinations conducted by the Central Bank revealed that the verification of client identity forms an integral part of the CDD measures applied at the time of client acceptance. It was advised that the financial institutions, generally, do not conduct transactions on behalf of the client concerned, unless the identity of the client has been verified.

675. Financial institutions are not permitted to enable customers to utilise their services prior to verification of the identity of the customers. As a result hereof, no specific procedures are prescribed in that respect relative to risk management.

**Failure to Satisfactorily Complete CDD**

676. All financial institutions are required, pursuant to Article 2 of the NOIS, to identify a client and the ultimate beneficiaries of the client, before rendering a service to the client. Furthermore, Article 8, of the NOIS provides that, the service provider shall be prohibited from rendering a service if the identity of the customer has not been established in the manner prescribed in the NOIS.

677. The P&Gs do not explicitly require that a financial institution should consider making a suspicious transaction report where the requirements at E.C 5.3 to 5.6 are not met. Where it is reasonable to believe that a requested transaction is connected with criminal activity or if the client refuses to sign a "source of funds declaration", and there is no credible explanation to dispel concerns, the credit institutions, insurance companies and their intermediaries, and money transfer companies must refuse to execute the requested transaction to ensure that the minimum standards are met, but still report it to the Unusual Transactions Reporting Centre (FIU/MOT).

678. One of the subjective indicators included in the NORUT is identification problems for new accounts. In addition, this indicator is stated for specific transactions over marginal amounts (thresholds) set for varying transaction types.

679. The Central Bank's AML/CFT Framework states that pursuant to the Ministerial Decree Indicators Unusual Transactions (N.G. 2010 no. 27), the Central Bank, as a renderer of financial services, also has the obligation to report unusual transactions to the FIU (MOT).

680. The Central Bank has in the past rejected an occasional transaction regarding the purchase of coins and notes because of lack of insight into the business of the prospective customer.

681. As already stated, the NOIS precludes the rendering of a service without completing CDD requirements. As such, E.C. 5.16 is not applicable.

**Existing Customers**

682. The NOIS came into force in July 2010 and the P&Gs were revised in May 2011. Both the NOIS and P&Gs require implementation of a risk based approach, after the required CDD information has been received. The P&G for IC & IB requires that CDD must apply, on the basis of materiality and risk, to existing customers at appropriate times, such as claims notification, surrender requests and policy alterations including changes in beneficiaries. As it relates to the P&Gs for CI, there is no expressed requirement for service providers to conduct CDD on existing customers as at the date of enforcement of the national requirement, on the basis of materiality and risk, and to conduct due diligence on such existing relationships at appropriate times. It was also noted that the most recent inspection results provided by the Central Bank reflect that files were found incomplete with regard to the NOIS.

683. As stated earlier, Article 2, paragraph 1 of the NOIS effectively prohibits anonymous accounts therefore the requirement of applying CDD on existing anonymous clients does not apply.

***Recommendation 6***

684. The P&Gs for CI, IC & IB, and for MTC, provide that financial institutions should conduct enhanced due diligence for high risk customers, including politically exposed persons (PEPs), their families and associates. The financial institution must make reasonable efforts to ascertain that such high risk investors' source of wealth or income is not from illegal activities. The financial institution must not accept or maintain a business relationship where it knows or has

reasonable grounds to believe that the funds were derived from corruption or misuse of public assets. This is without prejudice to any obligation the financial institution has under criminal law or other laws or regulations.

685. The compliance officers of the financial institutions often seek relevant information from sources other than the customer. These sources include (i) screening through World-Check; (ii) information available on in-house databases; (iii) information provided by head office or other branches, (iv) the Internet, on which searches are carried out as well as local and/ or international newspapers. Financial institutions with an international presence, often make use of their expertise abroad (*e.g.* in the PEPs home country) when deciding whether or not to take on a client who is a PEP.

686. The P&Gs provide that the decision to accept a PEP must be taken at senior management level.

687. Since existing customers may subsequently obtain a PEP status after being accepted as customers, and the P&Gs provide that financial institutions must undertake regular reviews of at least the more important customers to detect if an existing customer may have become a PEP. The P&Gs also provide that the approval of the senior management is required to continue the relationship with a customer that has become a PEP.

688. The P&Gs provide that the institution must make reasonable efforts to ascertain that the PEPs source of wealth and source of funds/ income are not from illegal activities and where appropriate, review the customer's credit and character and the type of transactions the customer would typically conduct. Financial institutions must not accept or maintain a business relationship if the institution knows or must assume that the funds are derived from corruption or misuse of public assets. All customers have to fill out a source of funds declaration form.

689. As indicated above, financial institutions must conduct enhanced due diligence for PEPs, their families and associates. Where a financial institution is in a business relationship with a PEP, it must conduct enhanced ongoing monitoring of PEPs. This requirement is contained in the P&Gs for CI, and IC & IB. The P&G for MTC only speaks to continuous enhanced monitoring on PEPs who hold prominent public functions domestically. The Authorities are of the view that by nature, the MTC business is characterized by occasional customers, and therefore foreign PEPS are unlikely to be repeat customers. Furthermore, MTCs can only accept Guilders, thus making this service less likely to be used by such persons. For this reason, enhanced ongoing monitoring of foreign PEPs does not feature in the P&G.

690. Compliance by the financial institutions with the legal stipulations and the Provisions and Guidelines is verified by the Central Bank's examiners during on-site examinations. However, while the Central Bank supervises corporate pension funds, these are not subject to AML.CFT regulations.

**Additional Elements**

691. As stipulated in the P&Gs for CI, IC & IB, and for MTC financial institutions are encouraged to conduct enhanced ongoing monitoring on PEPs who hold prominent public functions domestically.

692. Curaçao is not yet a party to the UN Convention against Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The relevant legislation needed to ratify this Treaty is in Parliament. On 16 July, 2010 the Netherlands Antilles acceded to the Group of States against Corruption (GRECO). The Civil Law Convention on Corruption of the Council of Europe has applied to the Netherlands Antilles since 1 April, 2008 and is now applicable to Curaçao.

***Recommendation 7***

693. The P&G for CI contain specific provisions on correspondent banking activities. It should be noted, however, that since the other non-banking financial institutions in Curaçao conduct transactions on behalf of their clients through credit institutions, no specific provisions related to correspondent banking relationships have been issued for the non-banking financial institutions.

694. Credit Institutions must, pursuant to the P&G fully understand and document the nature of the respondent bank's management and business and determine from publicly available information the reputation of the institution and the quality of supervision, including whether it has been subject to a ML or FT investigation or regulatory action. The Central Bank has indicated that compliance with aforementioned requirement is verified during on-site examinations.

695. The P&G for CI does not explicitly require that credit institutions assess the respondent's AML/CFT controls and ascertain that they are adequate and effective. The P&G stipulates that particular attention must be paid to correspondent services (such as correspondent banking services) provided to a financial institution licensed in a jurisdiction where the credit institution has no physical presence or is unaffiliated with a regulated bank, or where AML/CFT measures and practices are known to be absent and/or inadequate.

696. The credit institution's policies and procedures regarding the opening of correspondent accounts must at least require the following actions:

- ascertain that the respondent bank has effective customer acceptance and know-your-customer (KYC) policies and is effectively supervised; and
- identify and monitor the use of correspondent accounts that may be used as payable-through accounts."

697. Credit institutions must obtain approval from senior management before establishing new correspondent relationships.

698. Credit institutions establishing correspondent relationships must communicate their documented AML/CFT responsibilities to have a clear understanding as to which institution will perform the required measures. .

699. All overseas banks should adhere to the AML/CFT rules and regulations applicable in their respective country. In Curaçao the correspondent bank relationships are mostly with banks established in the US and EU countries which are FATF Members.

700. Where a correspondent relationship involves the maintenance of "payable-through accounts", credit institutions must, be satisfied that:

- their customer (the respondent financial institution) has performed all the normal CDD obligations on those of its customers that have direct access to the accounts of the correspondent financial institution; and
- the respondent financial institution is able to provide relevant customer identification data upon request to the correspondent financial institution.

701. The Central Bank has noted that during the full scope examinations and the special assignments conducted specific attention has been paid to "payable-through accounts". Currently in Curaçao most payments are done through SWIFT Transfers.

702. The Authorities have stated that generally, there are no "payable-through accounts" in Curaçao (i.e. an account maintained at the correspondent bank by the respondent bank but which is accessible directly by a third party to effect transactions on its own behalf). Nevertheless, there are specific provisions in place to deal with such accounts. Practically, most transactions are done through SWIFT. In cases where a client uses MT 202, adequate cover lists are used. In cases determined by the Central Bank that the controls of the process of identification or verification of the CDD are not adequate, the financial institutions are instructed to take appropriate measures to address the shortcomings within a limited timeframe. The financial institutions must comply with the CDD requirements as set forth in the NOIS and P&G for CI

***Recommendation 8***

703. According to the P&Gs for CI, IC & IB, and for MTCs, financial institutions are required to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in ML or FT schemes. In case of electronic services, credit institutions are additionally required to comply with the provisions contained in the "Provisions and Guidelines for Safe and Sound Electronic Banking" issued by the Central Bank. Moreover, the P&G for CI state that credit institutions could refer to the "Risk Management Principles for Electronic Banking" issued by the Basel Committee in July 2003.

704. The P&G for CI, the P&G for IC & IB provide that financial institutions are required to have policies and procedures in place to address any specific risks associated with non-face-to-face business relationships or transactions. These policies and procedures must apply when establishing customer relationships and when conducting ongoing due diligence.

705. Examples of non-face-to-face operations include business relationships concluded over the Internet or by other means, such as through the post; use of ATM machines; telephone banking; transmission of instructions or applications via facsimile or similar means, and making payments and receiving cash withdrawals as part of electronic point-of-sale transactions using prepaid or re-loadable or account-linked value cards.

706. According to the P&Gs for CI, and IC & IB, measures for managing the risks must include specific and effective CDD procedures that apply to non-face-to-face customers. Examples of such procedures include the certification of documents presented, the request of additional documents to complement those required for face-to-face customers; independent contact with the customer, third party introduction and requiring the first payment to be carried out through an account in the customer's name with another bank subject to similar CDD. In the case of "non-face-to-face clients" identification, copies of the CDD document should be certified by a notary public or embassy/consulate.

707. In Curaçao, customers (of domestic banks) are not authorized/ allowed to open accounts with financial institutions through the Internet, telephone, mail, post or other similar means without a verification ("face-to-face") or certification ("non-face-to-face") process .

708. According to the "Provisions and Guidelines for Safe and Sound Electronic Banking," issued by the Central Bank, credit institutions are required to select reliable and effective authentication techniques to validate the identity and authority of their e-banking customers. Single-factor authentication, as the only control mechanism, is insufficient and not accepted by the Central Bank for transactions involving access to customer information or the movement of funds to other parties. Credit institutions should ensure that customers are identified and their identities verified before conducting business over the Internet. Password generating devices, biometric methods, challenge-response systems, and public key infrastructure are some ways of strengthening the authentication process.

709. For non-resident clients a copy of the identification document is sufficient, under the condition that the relevant document is accompanied by a certified extract of the civil registry of births, marriages and deaths of the place of residence of the party or that the document is certified by a notary public or embassy/consulate (Article 3, paragraph 1, second sentence sub a of the NOIS). Another option is that identification documents are sent via electronic means under the condition that within two (2) weeks a certified copy is received by the service provider (Article 3, paragraph 1, second sentence sub b of the NOIS).

710. Verification of the identity of non-resident clients must subsequently be obtained by reference to one or more of the following, as deemed practical and appropriate:

- existing banking relationships of the prospective customer;
- international or home country telephone directory;
- personal reference by a known account holder;
- embassy or consulate in home country of address provided by the prospective client;
- comparison of signature if a personal account cheque is tendered to open the account; and
- if provided, cross reference of address printed on personal cheque to permanent address provided by client on standard application form.

711. The identification of a customer and the verification of his identity may be also done by a professional (e.g. attorney or an accountant) or institution subject to adequate AML/CFT supervision[9].

712. The name, address and telephone number of the notary public/professional/institution including the name and contact details of the institution's officer who actually signed for verification must be clearly indicated. Furthermore, the submitted copy of the identification document, including the photograph, must be clearly legible.

713. Financial institutions must pay special attention to non-resident customers and understand the reasons why the customer has chosen to open an account in Curaçao.

714. Pursuant to Article 5 of the NOIS, a credit institution is bound to establish the identity of the individual appearing before it on behalf of a customer or on behalf of a representative of a customer, before it proceeds to render the financial service. If the customer acts for a third party or that third party also acts for another third party, the credit institution must be bound to also establish the identity of each third party.

715. Financial institutions can rely on intermediaries or other third parties to introduce business or perform the following elements of the CDD process:

a. identification and verification of the customer's identity;
b. identification and verification of the beneficial owner; and
c. obtaining information on the purpose and intended nature of the business relationship.

716. The following steps must be taken by financial institutions when relying on intermediaries or other third parties to perform aforementioned elements of the CDD process:

[9] A jurisdiction is adequately AML/CFT supervised if its Mutual Evaluation Report discloses less than 10 "Non Compliant or Partially Compliant" ratings regarding the 16 "key and core " FATF Recommendations and a Compliant ( C ) or Largely Compliant ( LC ) rating for FATF Recommendation 23.

- immediately obtain from the third party the necessary information concerning the elements of the CDD process;

- satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay;

- satisfy themselves that the third party is adequately AML/CFT regulated and supervised, and has measures in place to comply with the required CDD requirements.

- a service level agreement will be required in cases where the complete CDD process has been outsourced to an intermediary or third party. In case only one or two elements of the due diligence process is/are performed by an intermediary or third party (like for example identifying the client and verifying the copy of a passport) then a service level agreement is not required.

717. If the financial institution relies on other third parties to perform the CDD process (in this case the CDD process has been outsourced) then a written contractual arrangement is required and must be readily available for the Central Bank during its on-site visits.

718. According to the P&Gs, even though the financial institution can rely on other third parties for part of the CDD process or the process may be outsourced, the ultimate responsibility for customer identification and verification remains with the financial institution relying on the third party".

*719.* During on-site examinations the Central Bank verifies whether the requirements concerning non face-to-face business relationships or transactions are adhered to.

3.2.2 Recommendations and Comments

*Recommendation 5*

720. Insurance agents should be captured in the AML/CFT framework.

721. Clarity is needed on whether all persons conducting reportable activities under the NORUT are subject to CDD under the NOIS. Specifically, the NORUT establishes an objective indicator for non-life insurance policies; however, the NOIS only applies to Article 1a of the National Ordinance on the Supervision of the Insurance Industry, i.e. life insurance contracts.

722. The P&G for IC & IB should require financial institutions to undertake CDD when doubts arise about the veracity or adequacy of previously obtained customer identification data.

723. There should be a specific requirement in law or regulation for CDD to be undertaken when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII.

724. The NOIS should clearly establish an obligation on the service provider to conduct on-going due diligence on the business relationship.

RISK

725. In keeping with the FATF rules of not applying or exempting some or all of the Forty Recommendations to some financial activities in strictly limited and justified circumstances, and based on a proven low risk of money laundering or terrorist financing, clarity is needed on

the risk exercise undertaken that resulted in the designation and exemption of low risk financial institutions.

726. Exemptions in the NOIS should allow for reduced or simplified CDD for low risk scenarios, rather than no CDD.

727. The P&G for CI should limit simplified and reduced CDD to customers of countries that Curacao is satisfied are in compliance with and effectively implementing the FATF Recommendations.

TIMING OF VERIFICATION

728. The P&G and the NOIS should be consistent in terms of timing of verification of the identity of non-resident clients.

FAILURE TO SATISFACTORITY COMPLETE CDD

729. The P&Gs should explicitly require that a financial institution considers submitting a UTR where the requirements at E.C 5.3 to 5.6 are not met. Further, the P&G for CI should require the conduct of CDD on existing customers/retrospective CDD, on the basis of materiality and risk, and due diligence on such existing relationships at appropriate times.

*Recommendation 6*

730. There should be effective coverage of factoring which was recently included in the NOIS and the NORUT.

*Recommendation 7*

731. The Guidelines for CI should explicitly require that credit institutions assess the respondent's AML/CFT controls and ascertain that they are adequate and effective as required under Recommendation 7.

3.2.3 Compliance with Recommendations 5 to 8

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.5** | **PC** | • **No legislative requirements for CDD when carrying out occasional wire transfers in the circumstances covered by the Interpretative Note to SR VII**<br>• **No legislative requirement for service providers to conduct on-going due diligence on the business relationship.**<br>• **Clarity is needed on whether non-life activities that are reportable under the NORUT are to be subject to CDD under the NOIS.**<br>• **The NOIS allows for full exemption from CDD rather than reduced or simplified as provided for under the FATF Recommendations.**<br>• **The P&G for CI does not limit simplified and reduced CDD to customers of countries that Curacao is satisfied are in compliance with and effectively implementing the FATF Recommendations.** |

| | | |
|---|---|---|
| | | • **The risk exercise undertaken to exempt certain financial institutions from CDD based on their designation as low risk, is unclear**<br>• **No explicit requirement in the P&Gs requiring financial institutions to consider making a UTR, where the requirements of E.C. 5.3 to E.C. 5.6 are not met. In addition, no requirement in the P&G for CI to conduct CDD on existing customers on the basis of materiality and risk, and to conduct due diligence on such existing relationships at appropriate times.**<br>• **The sector P&Gs do not conform to the NOIS as it relates to the timing of verification of non-resident clients.**<br>• **No requirement in the P&G for IC & IB requiring financial institutions to undertake CDD when doubts arise about the veracity or adequacy of previously obtained customer identification data.** |
| **R.6** | **LC** | • **Effective supervision on factoring service providers cannot be determined in light of recent inclusion under the AML/CFT framework.** |
| **R.7** | **LC** | • **Credit institutions are not required to assess the respondent's AML/CFT controls and ascertain that they are adequate and effective.** |
| **R.8** | **C** | **This Recommendation has been fully observed** |

## 3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

***Recommendation 9***

E.C. 9.1

732. According to the P&GS credit institutions, insurance companies and insurance intermediaries relying upon a third party are required to immediately obtain from the third party the necessary information concerning certain elements of the CDD process.

733. The Central Bank has indicated that during on-site examinations, the examiners assess and evaluate the applicable CDD process with respect to reliance on third parties. Furthermore, it is verified whether the necessary CDD information can be obtained immediately from a third party.

734. Financial institutions subject to supervision of the Central Bank that have outsourced the CDD process to a third party are required to ensure that the requested information regarding CDD is provided without delay, i.e. within 48 hours.

735. Once again, the P&Gs for CI, IC & IB provide that financial institutions must satisfy themselves that the third party AML/CFT is adequately regulated and supervised, and has measures in place to comply with the required CDD requirements.

736. The Central Bank has determined during its on-site examinations that this criterion is duly adhered to by the supervised financial institutions. The financial institutions generally assess the CDD process of the party on whom they are relying in order to obtain comfort with the CDD elements performed by the third party.

737. Additional guidance has been issued by the Central Bank in the P&Gs on countries and territories that should be regarded as high risk countries and territories. According to the P&G for CI , IC & IB, these countries are:

- Countries subject to sanctions and embargoes issued by e.g. the United Nations and the European Union;
- Countries identified by FATF and FATF-style regional bodies (FSRBs) as lacking appropriate AML/CFT laws, regulations and other measures; and
- Countries identified by credible sources, such as FATF, FSRBs, IMF and World Bank

738. The ultimate responsibility for customer identification and verification remains with the financial institution regardless of any outsourcing arrangement.

3.3.2 Recommendations and Comments

3.3.3 Compliance with Recommendation 9

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.9** | **C** | **This Recommendation has been fully observed.** |

## 3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

***Recommendation 4***

739. There is no secrecy law in place in Curaçao that inhibits the implementation of the FATF Recommendations by financial institutions.

**Central Bank**

740. Pursuant to the different national ordinances regulating the supervision of the financial sector, financial institutions are required to provide the Central Bank with information to enable the Central Bank to exercise its supervisory function (Article 12 of the NOSBCI, Article 28 of the NOSII, Article 18 of the NOIB, Article 78 of the RFETCSM, Article 36 of the NOSIIA, Article 36 of the NOSIIA, Article 22h paragraph 4 of the NORUT and Article 11 paragraph 4 of the NOIS). For the purpose of efficient and effective supervision the Central Bank may request financial institutions to provide additional information whenever it is deemed necessary.

741. As previously stated, the P&Gs were issued by the Central Bank pursuant to the stipulations in the different national ordinances and should be complied with by the supervised institutions. The Central Bank, based on the authority given by virtue of the different national ordinances is empowered to request and access information from the financial institutions in order to verify their compliance with the AML/CFT Guidelines.

742. The Central Bank signed a MOU with the Public Prosecutor, 'Exchange of information Public Prosecutor - the Bank', in 2002. It was updated on September 10, 2007. This MOU provides for the sharing of information between these two authorities for the purpose of integrity supervision. Individual depositor information cannot be shared under the MOU but can be facilitated with a court order in accordance with Article 40 paragraph 3 of the NOSBCI. Interviews with the Police suggest that information requests to the Central Bank in relation to matters reported by the Bank itself are not readily forthcoming. Some clarification may therefore be needed as it relates to the information expectations of the Central Bank by the Police.

743. Article 20, paragraph 3 of the NORUT provides for the supervisor, including the GCB, to inform the Reporting Office if, in the performance of duties, facts come to light that could possibly indicate ML or FT. Article 22h(1)(d) of the NORUT appoints the Head of the Reporting Office as the supervisor of real estate intermediaries; dealers in vehicles; precious stones, precious metals, ornaments, jewels; and providers of fiduciary businesses. Since the supervisory arm of the FIU (MOT) was not in place at the advent of the NORUT, it is open to challenge whether Articles 20 and 21 will allow for the exchange of information as it relates to that arm of the FIU (MOT). This also holds for the NOSTSP and NOSIIA. However, the Authorities are of the view that since no reference is made in these Articles to the FIU (MOT) in its capacity as supervisory authority or financial intelligence unit then information sharing between the Central Bank and the supervisory arm of the FIU (MOT) is possible.

744. Neither the NOSBCI, NOSTSP, NOIB nor NOIS provide for the sharing of information with the GCB.

745. Article 27, paragraph 5 of the RFETCSM states that the Central Bank is authorized to inform the FIU of facts encountered when carrying out its duties assigned under the RFETCSM, which implies ML or FT.

746. Pursuant to Article 25 of the IOCCS, any person who is or has been entrusted in regard to the implementation of the ordinance, with a supervisory task or any other task, is under the obligation to maintain secrecy of everything that has come to his attention, in the exercise of his duties, insofar as such obligation is based on the nature of the matter. There is no provision for information sharing with local or international supervisors.

747. The different (supervisory) national ordinances provide for the sharing of information (both locally and internationally) between supervisory authorities and the Central Bank. Reference is in this respect made to the following articles in the supervisory national ordinances:

- Article 41 sub paragraph b of the National Ordinance on the Supervision of Banking and Credit Institutions (N.G. 1994, no 4) which provides for disclosure to foreign counterparts and states that the information and data provided by the (Central) Bank must not contain any names of individual depositors of the credit institution concerned. Pursuant to Article 40, individual information can only be provided in the context of an investigation, hearing or inquest, providing it involves a criminal case.

- Article 20 paragraph 5 National Ordinance on the Insurance Brokerage Business, (N.G. 2003, no. 113) allows the Central Bank, on the basis of reciprocity and upon request, to furnish information to the administrative body that is in charge of insurance supervision in another state. Individual insurance brokerage company information can be shared where there is an investigation, preliminary inquiry or court proceedings;

- Under Article 24 of the National Ordinance on the Supervision of Trust Service Providers, (N.G. 2003, no 114), information can be shared to governmental institutions on the Netherlands Antilles or abroad or to foreign government-appointed institutions charged with the supervision of trust service providers; Disclosure is not allowed according to sub paragraph 1(c) which states that the furnishing of the data or information would not be in keeping with the rules of the Netherlands Antilles or with public order or the data or information relates to individual international companies. Article 23(2) allows the Bank to share any information as part of an investigation, preliminary judicial investigation or Court hearing;

- Article 28 of the National Ordinance on the Supervision of Investment Institutions and Administrators (N.G. 2002, no. 137). This Article allows for disclosure to governmental institutions on the Netherlands Antilles or abroad or to institutions appointed by the government of the Netherlands Antilles or foreign countries charged with the supervision of financial markets or of natural persons and legal persons active in those markets.

- Article 78 of the National Ordinance on Insurance Supervision (N.G. 1990, no. 77): paragraph 2 of this Article states that the Central Bank is authorized on the basis of reciprocity, on request to provide the administrative body which in another country is charged with the supervision of the insurance business, with data which that body needs to comply with the task entrusted to it pursuant to its national legislation, provided that said body has pledged itself to the Central Bank to keep the data provided by the Central Bank secret;

- Article 28 of the RFETCSM provides for the sharing of information (both locally and internationally) between the Central Bank and reporting centres referred to in national ordinances, assigned agencies charged with the supervision of financial markets or legal persons, companies or natural persons operation therein and the Public Prosecutor or other authorities responsible for tracing and prosecuting, and

- Article 21 of the NORUT states that the FIU is authorized to provide information to law enforcement authorities within the Dutch Kingdom and foreign authorities with similar responsibilities as the FIU.

3.4.2 Recommendations and Comments

748. It should be made clear whether the MOT, in it functions as a supervisory authority, is allowed to disclose information with domestic supervisory counterparts.

749. The IOCCS should make provision for the sharing of information with national and international supervisors.

750. Clear information gateways should be made in all Ordinances for supervisor-to-supervisor exchange by the Central Bank with the supervisory arm of the FIU (MOT) and the GCB.

751. The Police and Central Bank should resolve any differences in expectations as it relates to how readily information is forthcoming.

3.4.3 Compliance with Recommendation 4

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.4** | **PC** | • **The Central Bank cannot exchange information with the supervisory arm of the FIU (MOT); or GCB.**<br>• **The FIU (MOT), in the conduct of its supervisory function, is not allowed to disclose information with domestic supervisory counterparts.**<br>• **The GCB cannot disclose information to national and international supervisors.**<br>• **There are differences in views between the Police and Central Bank regarding the ready availability of information requests.** |

## 3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and Analysis

***Recommendation 10***

752. Article 7 of the NOIS stipulates that the service provider shall be under the obligation to keep the data referred to in Article 6 of the NOIS in an accessible manner until five (5) years after the termination of the agreement on the grounds whereof the service was rendered, or until five (5) years after the performance of a service as referred to in Article 1, paragraph 1, sub b under 2-7 and 9-16 of the mentioned ordinance. Article 6 refers to information data and account files such as

- The name, address, residence or place of establishment of the client and ultimate interested party;
- The nature, number, date and place of issue of identification documentation; and
- Type of new account and number; safety deposit box number; credit or debit card numbers and correspondent bank account number.

753. The intentional violation of record-keeping requirements is punishable with either a fine of up to NAf. 500,000 (US$ 280,000), or imprisonment of up to four (4) years, or both (Article 10 paragraph 1 of the NOIS). The unintentional violation of record-keeping requirements is punishable with either a fine of up to NAf. 250, 000 (US$ 140,000), or imprisonment of up to one (1) year, or both (Article 10 paragraph 2 of the NOIS). Punishment is pronounced either against the legal entity, or against those who ordered the act to be committed, or against both (Article 53 of the Penal Code (Article 53 and 96 of the Penal Code together with Article 10 of the NOIS)). Financial institutions are required to comply with instructions from their supervisory authorities (Article 22h, paragraph 3 of NORUT; Article 22 of NOSBCI; Article 11, paragraph 3 of the NOIS.

754. Pursuant to the P&Gs for CI, IC & IB, and for MTC financial institutions must ensure compliance with the record keeping requirements contained in the relevant money laundering and terrorist financing legislation. The financial institutions must ensure that investigating authorities must be able to identify a satisfactory audit trail for suspected transactions related to ML and FT.

755. Where appropriate, financial institutions must "consider" retaining certain records e.g. customer identification, account files, business correspondence, for periods which may exceed those required under the relevant ML and FT legislation, rules and regulations.

756. A document retention policy must include, among other things, the following:

- All necessary records on transactions (both domestic and international) must be maintained for at least five (5) years after the transaction took place. Such records must be sufficient to permit reconstruction of individual transactions (including the amounts, currencies, and type of transaction involved) so as to provide, if necessary, evidence for prosecution of criminal behavior; and
- All customer and transaction records and information are available on a timely basis to the domestic competent authorities.

757. The National Decree Penalties and Fines Service Providers establishes a maximum fine of NAf 1,000.00 for not complying or not complying in due time with the obligations imposed by or pursuant to Articles 2, first, second and fifth paragraphs, 3, 5, first through fourth paragraph and sixth paragraph, 6, 7, 8 and 11, third paragraph, of the NOIS

758. Pursuant to the P&Gs for CI, IC&IB, and MTC in situations where the records relate to on-going investigations or transactions which have been the subject of disclosure to the FIU,

investigating or law enforcement authority, they must be retained until it is confirmed by these parties that the case has been closed.

759. In Article 42 of the NOSBCI it is indicated that a credit institution is obligated during a period of at least ten (10) years to keep (preserve) all letters, documents and data carriers concerning its business and transaction records (the movement and changes in the accounts) relating to all accounts maintained by the credit institutions in its own name or for third parties with letters, documents and other data carriers pertaining thereto.

760. A document retention policy must weigh the statutory requirements and the needs of the investigating authorities against normal commercial considerations.

761. Article 15a (on Bookkeeping) of Book 3 of the Civil Code requires a person who carries on a business or independently exercises a profession to keep, for ten (10) years, books showing assets and liabilities and everything concerning his business or profession, according to the requirements of that business or profession; and he shall keep all books, papers and other data carriers in respect thereof, so that his rights and obligations may be ascertained at any time. A similar provision is contained in Article 15 Book 2 of the Civil Code as it relates to records of the financial condition of a legal person and the books, documents and other data carriers in respect thereto. While the NOSBCI is more explicit, the Authorities advised that these provisions have in practice been applied and observed for tax purposes and include business correspondence for third parties. There is no definition in the Code to support the latter assertion and further clarity may nevertheless be required.

762. During on-site examinations, it is verified whether the financial institutions are adhering to the record keeping requirements.

***Special Recommendation VII***

763. The P&G for CI states that "Based on FATF Special Recommendation (SR) VII, credit institutions must include accurate and meaningful originator information (at least the name, address, and account number) on funds transfers within or from Curaçao, and on related messages sent. The information must remain with the transfer or related message through the payment chain. If the information seems inaccurate or incomplete, additional information must be requested prior to accepting or releasing funds. A general instruction is given to credit institutions that they must observe the latest Interpretative Note to SR VII and apply its relevant parts. No threshold is applied.

764. The Examiners were advised that in Curaçao it is not possible for ordering institutions to provide only the originator's account number or a unique identifier within the message or payment form. All banks in Curaçao make use of the SWIFT system for effecting transfers. The SWIFT system is a secure system which does not allow omitting of neither originator nor beneficiary information. Notwithstanding, the Examiners are of the view that while all information is required for the transfer to be executed, guidance is needed, in accordance with the Standards, as a beneficiary institution may receive a wire transfer that does not contain all the required information.

765. It should be noted that the P&G for CI does not specifically address cross-border wire transfers from a single originator that are bundled in a batch file for transmission to beneficiaries in another country. Rather, the general instruction above is ~~it~~ stated.

766. For domestic wire transfers the same principles as for cross-border transfers apply for the ordering institution.

767. In the case of domestic wire transfers between the local banks, the NACS (Netherlands Antilles Clearing System) is used, where the Central Bank serves as an intermediate financial

institution. The MT 103 is sent from the ordering client to his/her bank, which in turn sends an MT 202 to the Central Bank with the request to send the respective amount to the beneficiary bank. The MT 103 always contains the originator information and is sent along with the MT 202.

768. As previously noted, the P&G for CI, includes a general statement that credit institutions must observe the latest Interpretative Note to SR VII and apply its relevant parts. Also, further scrutiny is required and reporting to the FIU must be considered.

769. The Authorities have not taken the approach to specify in the single document, P&G for CI, the obligations on banks in their role as intermediary or beneficiary institutions. This potentially limits the usefulness of the P&G document itself as a source of specific guidance to financial institutions.

770. Beneficiary financial institutions are not required to apply risk based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. The Authorities have indicated that it is not possible to execute transactions in Curacao, which are not accompanied by both originator and beneficiary information; hence there is no reason for a Risk Based Approach. However, the examiners are of the view that it is not impossible for an incomplete wire transfer to be presented and if received, even if not processed, the Standards speak to such a scenario. It is further noted that lack of complete originator information is not included as a subjective indicator in the NORUT in assessing whether a wire transfer or related transactions are suspicious and should be reported to the FIU (MOT).

771. In addition to monitoring an institution's compliance with regulations through meetings and periodic reporting and during on-site examinations, the Central Bank also verifies whether the financial institutions comply with the P&G for CI. Part of this exercise concerns interviews with individuals responsible for SWIFT transactions as well as sample tests.

772. Non compliance with P&Gs on wire transfers can be sanctioned with an administrative fine or penalty in accordance with the National Decree containing general measures Penalties and Administrative Fines Reporters Unusual Transactions (NPFRUT)(N.G. 2010, no.71) and the National Decree containing general measures Penalties and Administrative Fines Service Providers (NDPSP)(N.G. 2010, no. 70).

773. Article 2 of the NPFRUT establishes a maximum administrative sanction of NAf 500,000 as the penal sum applicable under Article 22a, paragraph 1 of the NORUT (not complying or not complying in due time with obligations imposed pursuant to article 11, second paragraph of Article 12, Article 13, Article 20, and the third paragraph of Article 22h. The same penalty applies for Article 9 of the NOIS on the penal sum the supervisor may impose as it relates to the first, second and fifth paragraphs of Article 2, Article 3, first through fourth and sixth paragraphs of article 5, Articles 6 to 8, and third paragraph of Article 11.

774. Article 3 of the NPFRUT establishes a maximum administrative fine of NAf 1,000 for not complying or not complying in due time with obligations imposed pursuant to article 11, second paragraph of Article 12, second paragraph of Article 13, Article 20, second and third paragraphs of Article 22h of the NORUT. The same penalty applies for the first paragraph Article 9a of the NOIS on the penal sum the supervisor may impose as it relates to the first, second and fifth paragraphs of Article 2, first through fourth and sixth paragraphs of Article 5, Articles 6 to 8, and third paragraph of Article 11.

775. These sanctions are imposed for each individual violation. This means that, if, for example, wire transfers were not completed ten (10) times, there are ten (10) violations in conformity with the NOIS.

776. In order to promote the observance of the NORUT, NOIS, and the Provisions and Guidelines on AML & CFT the Central Bank can also notify the public of the facts with respect to which an order for a penalty or an administrative fine is imposed, the violated instruction and also the name, address and domicile of the person on whom the order for a penalty or the administrative fine is imposed.

777. In case of violation of or acting contrary to the provisions in the relevant articles mentioned in Article 23 of the NORUT, or violation of regulations set by or pursuant to the relevant Articles mentioned in Article 10 of the NOIS, and the compulsory requirements in the P&Gs on AML & CFT may immediately refer the violation to the Public Prosecutor for further (criminal) investigation and prosecution. An example of a case where this can occur is during an onsite examination,

778. Based on the NOSBCI the Central Bank can also impose the following, (not exhaustive), actions or (administrative) sanctions on the supervised (financial) institutions or individuals.

***1. Issuance of an order /direction/instruction (***Article 22 paragraph 1)

***2. The appointment of a trustee/administrator (***Article 22 paragraphs 2 and 3)

***3. Penalizing of violation (***Article 46)

***4. Revocation of the license or dispensation (***Article 9)

779. Information provided to the Examiners show that the Central Bank has only issued instructions to financial institutions following an examination, with deadlines for remedial action. While this may be effective as directives/instructions are followed by the institutions and further action is hardly necessary, there is insufficient evidence to support a laddered approach to sanctioning and an overall effective, proportionate and dissuasive regime.

**Additional Elements**

780. In Curaçao, all incoming and outgoing cross-border transfers are required to have meaningful (at least the name, address and account number) originator information as indicated in the P&G for CI.

3.5.2 Recommendations and Comments

*Recommendation 10*

781. It should be explicitly stated in law or regulation that IC & IB and MTC maintain business correspondence for third parties for at least five (5) years following termination of an account or business relationship (or longer if requested by a competent authority in specific cases upon proper authority. The language in the P&Gs should also reflect a mandatory requirement as it relates to this matter.

782. Provision should be made in law or regulation requiring financial institutions to ensure that all information (business correspondence) is available on a timely basis to the domestic competent authorities.

*Special Recommendation VII*

783. The P&Gs should make it mandatory for beneficiary institutions to apply risk based procedures when identifying and handling wire transfers that are not accompanied by complete originator information. In addition, lack of complete originator information should be included as a subjective indicator to the NORUT in assessing whether a wire transfer or related transaction is suspicious and should be reported to the FIU (MOT).

784. Curacao should consider disclosing the requirements for cross border wire transfers in a composite P&G document.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.10** | **LC** | • **No explicit requirement in law or regulation for IC & IB and MTCs to maintain business correspondence for third parties for at least five (5) years following termination of an account or business relationship (or longer if requested by a competent authority in specific cases upon proper authority. No mandatory provisions in the P&G regarding the above.**<br>• **No explicit requirement in law or regulation requiring financial institutions to ensure that information (business correspondence) is available on a timely basis to the domestic competent authorities.** |
| **SR.VII** | **LC** | • **No explicit mandatory provisions in the P&Gs regarding requirements on beneficiary institutions to apply risk based procedures when identifying and handling wire transfers that are not accompanied by complete originator information. In addition, lack of complete originator information is not included as a subjective indicator in the NORUT in assessing whether a wire transfer or related transaction is suspicious and should be reported to the FIU (MOT).** |

***Unusual and Suspicious Transactions***

## 3.6 Monitoring of transactions and relationships (R.11 & 21)

3.6.1 Description and Analysis

***Recommendation 11***

785. Based on the NORUT, a ministerial decree has been enacted containing the objective and subjective indicators by which all financial institutions must assess if a customer's transaction qualifies as an unusual transaction. All transactions that have been categorized as unusual based on the indicators must be reported to the FIU (MOT).

786. According to the P&Gs for CI, IC & IB, and for MTC, financial institutions are required to pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose and to set forth their findings in writing. Furthermore, management must provide its staff with specific guidelines and training to recognize and adequately document the unusual transactions.

787. Additional sector-specific requirements from the NORUT have been included in the respective P&Gs with respect to the special areas of attention for unusual transactions, due to the particular type and complexity of the transactions of the clients of the various types of financial institutions. These additional sector specific requirements are outlined below.

788. According to the P&G for CI, credit institutions are required to aggregate and monitor balances and activities in customer accounts and apply consistent CDD measures on a fully consolidated worldwide basis, regardless of the type of accounts, such as on-or-off balance sheet, and assets under management. Employees of credit institutions must not only focus on financial statements of the client, but also on aspects, such as the client's local or foreign relationships and the financial profile of the client, and the client's engagement in other business activities.

789. Pursuant to the P&G for IC & IB, ML and FT violations are not only committed through new business relationships and transactions. Insurance entities must therefore be alert to the implications of the financial flows and transactions patterns of existing policyholders, particularly where there is significant, unexpected and unexplained change in the behaviour of the policyholders' account.

790. Neither the NOIS nor P&Gs require that findings of examinations on the background and purpose of complex, unusual large transactions be kept for at least five (5) years. Article 7 of the NOIS stipulates that the service provider shall be under the obligation to keep the (due diligence) data referred to in Article 6 of the NOIS in an accessible manner until five (5) years after the termination of the agreement on the grounds whereof the service was rendered, or until five (5) years after the performance of a service as referred to in Article 1, paragraph 1, sub b under 2-7 and 9-16 of the mentioned ordinance.

791. In addition, pursuant to the P&Gs for CI, IC & IB, financial institutions must ensure compliance with the record keeping requirements contained in the relevant ML and FT legislation. The financial institutions must ensure that investigating authorities must be able to identify a satisfactory audit trail for suspected transactions related to money laundering and terrorist financing.

792. Given the above, there is no requirement in the P&Gs for findings to be made available to the competent authorities and auditors.

793. During on-site examinations the Authorities indicated that interviews are held with the compliance officer during which the methods and (automated) tools to determine unusual transactions are discussed. The scope and depth of the institution's KYC efforts are tested through reviews of client files in which the presence and quality of documents pertaining to the establishment of business relationship and additional information are assessed.

***Recommendation 21***

794. According to the P&Gs for CI, IC & IB, and for MTC~~,~~ (financial) institutions are required to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries that do not or insufficiently apply the FATF Recommendations including the high-risk and non-cooperative jurisdictions. Jurisdictions are considered as high-risk and non-cooperative when they have detrimental rules and practices in place which constitute weaknesses and impede international co-operation in the fight against ML and FT.

795. Countries that have ten (10) or more "Non Compliant (NC) or Partially Compliant (PC)" ratings of the 16 "key and core" FATF Recommendations in their Mutual Evaluation Report can be considered high risk jurisdictions when they have not shown a high level commitment to

remedy their deficiencies in a reasonable timeframe. The FATF and some FSRB's do issue statements on these countries.

796. The risk-based approach described in the P&G provides that countries and territories should be regarded as high risk. (Details are found at R. 9). Enhanced CDD must be performed on clients from these countries.

797. Different warnings and threats are officially communicated to the financial sector and are also periodically posted on the Central Bank's website. The Examiners confirmed during interviews that financial institutions are aware of warnings and threats. In this regard the following decrees have been enacted in Curaçao:

- The Sanctions National Decree Al-Qaida c.s., the Taliban of Afghanistan c.s., Osama bin Laden c.s. and locally designated terrorists (N.G. 2010, no. 93)
- the National Decree, Laying Down General Provisions, of September 28, 2010 for the enforcement of articles 2, 3 and 4 of the Sanctions National Ordinance (Sanctions National Decree Democratic People's Republic of Korea) (N.G. 2010, no. 91); and
- the National Decree, Laying Down General Provisions, of September 28, 2010 for the enforcement of articles 2, 3 and 4 of the Sanctions National Ordinance (Sanctions National Decree Islamic Republic of Iran) (N.G. 2010, no. 92).

798. Pursuant to the P&G for CI, financial institutions are required to examine as far as possible the background and purpose of business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries that do not or insufficiently apply the FATF Recommendations including high-risk and non-cooperative jurisdictions. Findings must be set forth in writing and must be available to the domestic competent authorities. The same is not contained in the P&Gs for IC & IB and for MTC. In addition, financial institutions are required to maintain a satisfactory audit trail for suspected transactions related to AML/CFT and report all unusual (intended) transactions immediately to the FIU (MOT).

799. The Authorities advised that during the onsite examinations the Central Bank's examiners verify adherence to these guidelines and letters issued as a result of FATF warnings by means of sample testing.

800. The FIU (MOT) as supervisor of some of the DNFBP also issued similar FATF warnings (Section 4 criterion 21.1.1).

801. However, where a country continues not to apply or insufficiently applies the FATF Recommendations, Curaçao has not issued instructions regarding application of appropriate counter-measures.

3.6.2 Recommendations and Comments

*Recommendation 11*

802. Financial institutions should be required to (1) keep the findings of examinations on the background and purpose of complex, unusual large and unusual patterns of transactions for at least five (5) years and (2) make such findings available to the auditors and competent authorities.

*Recommendation 21*

803. The P&Gs for IC & IB and the MTCs should require that for transactions that have no apparent economic or visible lawful purpose, the background and purpose of such transactions should, as far as possible, be examined, and written findings should be available to assist competent authorities (e.g. supervisors, law enforcement agencies and the FIU (MOT)) and auditors.

804. Authorities should effectively demonstrate employ of instructions regarding countermeasures for transactions and business relationships with countries that do not apply or insufficiently apply the FATF Recommendations.

### 3.6.3 Compliance with Recommendations 11 & 21

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.11** | **PC** | • **No requirement in the P&Gs for financial institutions to keep their findings of examinations on the background and purpose of complex, unusual large transactions for at least five (5) years.**<br>• **No requirement in the P&Gs for findings of examinations on the background and purpose of complex, unusually large or unusual patterns of transactions to be made available to the auditors and competent authorities.** |
| **R.21** | **PC** | • **No requirement in the P&Gs for IC & IB and MTCs that for transactions that have no apparent economic or visible lawful purpose, that their background and purpose should as far as possible, be examined, and written findings should be available to assist competent authorities and auditors.**<br>• **Insufficient instructions issued regarding countermeasures where countries continue not to or insufficiently apply the FATF Recommendations** |

## 3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

### 3.7.1 Description and Analysis

***Recommendation 13 & Special Recommendation IV***

805. An unusual transaction is defined based on the indicators laid down in the Ministerial Decree 2010, no. 27 pursuant to Article 10 of the NORUT. The indicators are divided into objective and subjective indicators. The objective indicators are indicators that explicitly set the threshold for specific transaction amounts related to e.g. cash deposits, currency exchange, credit card, wire transfer, money remitting and customs transactions, that must be reported to the FIU (MOT). In addition, transactions reported to the law enforcement authorities also fall under the objective indicators and must be reported to the FIU (MOT). The subjective indicators oblige the reporting entities to report transactions which they qualify as unusual transactions and which they have reasonable grounds to suspect that the transactions relate to ML/TF.

806. Furthermore, the P&Gs provide specific guidance on the recognition, documentation and reporting of unusual transactions. The supervised institutions are required to adhere to the guidance.

807. As noted above, an unusual transaction is defined based on the indicators laid down pursuant to Article 10 of the NORUT.

808. The jurisdiction of Curaçao takes an 'all crimes' approach. All acts which are qualified as a felony in the Penal Code and other legislation could constitute a predicate offence for ML and FT.

809. As stated above, the obligation under the NORUT requires the transaction to be unusual. According to the P&Gs for CI, IC & IB, and for MTC, if a financial institution suspects or has reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts, or by terrorist organizations, it must report promptly its suspicion to the FIU/MOT.

810. The indicators for the financial institutions that have been issued pursuant to Article 10 of the NORUT by virtue of the Ministerial Decree 2010, no. 27, also include indicators for the financing of terrorism.

811. Pursuant to Article 11 of the NORUT anyone who renders a service by virtue of his profession or in the ordinary course of his business is required to report any intended unusual transaction to the FIU (MOT) without delay. Based on the subjective indicator a transaction needs to be qualified as unusual and must be reported to the FIU (MOT) if there are reasonable grounds to suspect that a transaction is related to money laundering or terrorism financing, regardless of the amount of the transaction involved.

812. Further to the above, in case a predicate offence for ML/FT has been determined, an unusual transaction report must be filed with the FIU (MOT). While no objective or subjective indicators refer to tax matters, there are no requirements that would prevent reporting of tax matters.

**Effectiveness**

813. The effectiveness of the unusual and suspicious reporting regime is uncertain. As stated in section 2.5, UTR submissions are dominated by banks, and before May 2010, trust companies and casinos were the only DNFBPs submitting UTRs. However, since May 2010, other DNFBPs have started submitting UTRs, but in moderate numbers. The current system does not favour financial institutions reporting when they suspect or have reasonable grounds to suspect that funds are the proceeds of criminal activity. Subjective indicators are rules based and several include thresholds and a requirement to meet two or more sub-indicators. It is therefore possible for (a) some subjective based UTRs to be reported where there are no grounds for suspicion and (b) an unusual or suspicious report not to be reported because the reportable threshold is not reached. The relevance of the set threshold for all types of credit institutions is in doubt as one interviewee never submitted an UTR as the threshold was too low and would require all transactions to be reported. Statistics on subjective reporting by financial institutions appear ~~is~~ low. Less than fifteen percent (15%) of UTRs in 2010 and 2009 were based on subjective indicators.

**Additional Elements**

814. When a predicate offence for ML/TF has been determined, an unusual transaction report must be filed by the financial institution with the FIU (MOT). No distinction is made between domestically and internationally related offences.

***Recommendation 14***

815. According to Article 14 data or information that, in accordance with Articles 11 or 12, paragraph 2, of the NORUT have been supplied, cannot serve as a basis for or in favour of a criminal investigation or a prosecution due to suspicion of, or as a proof with respect to an indictment due to money laundering or an offense underlying this or the financing of terrorism by the person who has supplied these data or information. Pursuant to Article 15 of the NORUT, a person who files a report is not liable against the perpetrator for any damage that is caused by the report of the suspicious transaction, unless the damage is caused by intent or gross negligence. In general, Article 14 of the NORUT provides protection for the person filing the report protection against criminal liability while Article 15 of the NORUT provides against civil liability.

816. However, the forgoing addresses the "person who has supplied data or information" to the MOT and the "person who works for the person who has supplied the data or information". It is therefore not clear that indemnity extends to the directors of the financial institution as required.

817. Article 20, paragraph 1 of the NORUT states that anyone who supplies data or information, and also the person who, pursuant to Article 11, paragraph 1, submits a report, is obliged to maintain such as confidential. Paragraph 2 prohibits anyone from making use of or disclosing such information to the public other than for performing their duties or as required under the NORUT. As noted above, the prohibition against disclosure of information appear to be applicable only to persons who have supplied the data or information or person who work for the person who have supplied the data or information.

818. Article 23 of the NORUT establishes a penalty of imprisonment for a maximum of four (4) years on conviction, or an administrative fine of a maximum of Naf 500,000, or both.

***Recommendation 25 (only feedback and guidance related to STRs)***

819. The FIU (MOT) provides feedback to reporting entities in the form of a confirmation for each report (UTR) received, pursuant to Article 3, subsection c of the NORUT. It also notifies reporting entities when reported transactions are disclosed to the PPO or law enforcement agencies. The FIU (MOT) does not provide any other form of feedback to reporting entities or sector of reporting entities.

820. As stated at Section 2.5, the FIU has not developed or contributed to the development of domestic public reports on e.g. trends and typologies.

821. The Central Bank has not provided general or specific case by case feedback to financial institutions and DNFBPs under their supervision. This responsibility is fully assumed by the FIU (MOT).

***Recommendation 19***

822. A system for reporting of unusual transactions has, based on article 11, paragraph 1 of the NORUT, been implemented in Curacao since 1996. Cash transactions above certain fixed thresholds are in that respect required to be reported to the FIU (MOT), which is the national central agency with a computerized database.

***Recommendation 32***

*Statistics-Reports filed on domestic/foreign currency transactions or international wire transfers*

823. Section 2.5 captures statistics on UTRs filed by type of reporting entity. There are statistics on cross border transportation of currency but no information on bearer negotiable instruments. Cross border declaration of bearer negotiable instruments is not captured in the declaration system (Section 2.7).

824. The Authorities should prepare statistics on Curacao only, which should include bearer negotiable instruments.

**International wire transfers. Currency is NAf (Antillian Guilder)**

| qty2007 | amt2007 | qty2008 | amt2008 | qty2009 | amt2009 | qty2010 | amt2010 |
|---|---|---|---|---|---|---|---|
| 39 | 6816026 | 51 | 22324993 | 53 | 16477281 | 32 | 16757479 |
| 147 | 2321331694 | 329 | 4062832995 | 361 | 1420981647 | 478 | 1672509961 |
| 1227 | 97239173 | 1861 | 137571228 | 1999 | 172071930 | 1574 | 138357128 |
| 73 | 6012925 | 78 | 34558534 | 90 | 3899898 | 101 | 49995663 |
| 427 | 39962747 | 456 | 41855253 | 732 | 52638717 | 268 | 10607114 |
| 0 | 0 | 2 | 554849 | 0 | 0 | 0 | 0 |
| **1913** | **2471362565** | **2777** | **4299697852** | **3235** | **1666069473** | **2453** | **1888227345** |

3.7.2 Recommendations and Comments

*Recommendation 13and SR. IV*

825. The Authorities should ensure that entities from all sectors report UTRs.

826. Mechanisms should be put in place that would require all reporting entities to focus on identifying and reporting on transactions for which they can identify a suspicion.

827. Reporting entities should not rely only on the prescriptive list of indicators provided by the Ministerial Decree.

828. The relevant procedures should be revised to allow developing more flexibility for reporting entities to identify suspicion of ML or FT.

*Recommendation 14*

829. Relevant amendments should be made to ensure that directors of legal persons are protected by law from both civil and criminal liability for breach of confidentiality when reporting to the FIU (MOT) in good faith.

830. The tipping-off offence should cover all the directors, officers and employees of financial institutions.

*Recommendation 25*

831. Reporting entities should receive more general and case-by-case feedback on reports submitted to the FIU.

832. The annual report (or other reports) of the FIU (MOT) should include more information on ML and FT trends and typologies.

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.13** | **PC** | • **Effective implementation of reporting of suspicious reports is not demonstrated.**<br>➢ **Subjective indicators for the filing of UTRs are rules based, which hinders the reporting entity's autonomy to decide whether to file a UTR**<br>➢ **Heavy reliance by the reporting entities on the prescriptive list of indicators provided by the Ministerial Decree.**<br>➢ **Insufficient flexibility for reporting entities to identify suspicion of ML or FT.** |
| **R.14** | **PC** | • **Directors of legal persons are not protected by law from civil and criminal liability for breach of confidentiality for reporting to the FIU (MOT) in good faith.**<br>• **Tipping-off offence only applicable to employees directly involved in the reporting of any unusual or suspicious transaction to the FIU (MOT).** |
| **R.19** | **C** | **This Recommendation has been fully observed** |
| **R.25** | **PC** | • **Inadequate feedback to reporting entities.**<br>• **The FIU (MOT) annual reports do not include adequate information on trends and typologies.**<br>• **See also summary factors at Sections 3.10 and 4.3 of the Report.** |
| **SR.IV** | **PC** | • **Effective implementation of reporting of suspicious reports is not demonstrated.**<br>➢ **Subjective indicators for the filing of UTRs are rules based, which hinders the reporting entity's autonomy to decide whether to file a UTR.**<br>➢ **Heavy reliance by the reporting entities on the prescriptive list of indicators provided by the Ministerial Decree.**<br>➢ **Insufficient flexibility for reporting entities to identify suspicion of ML or FT.** |

***Internal controls and other measures***

## 3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)

3.8.1 Description and Analysis

***Recommendation 15***

833. According to the P&Gs for CI, MTC and for IC & IB each financial institution must issue a policy statement, which clearly expresses its commitment to combat the abuse of its facilities

and services for the purpose of ML and FT. The policy statement must, among other things, address the implementation of a formal system of internal control to identify (prospective) clients and deter, detect and report unusual transactions and keep adequate records of the clients and transactions. This policy statement must be communicated to the employees of the financial institutions.

834. The P&Gs also provide that the policy statement to be issued by financial institutions must, among other things, address the appointment of one or more compliance officers at the management level responsible for ensuring day-to-day compliance with the AML & CFT procedures. The officer(s) must have the authority to investigate unusual transactions extensively.

835. The responsibilities of the compliance officer are outlined in the P&Gs and must be included in their job descriptions and signed off and dated by the officer, indicating his/ her acceptance of the entrusted responsibilities.

836. Pursuant to the P&Gs the compliance officer(s) and other appropriate staff must have timely access to the customer identification data and other customer due diligence information, transaction records, and other relevant information.

837. With regard to a requirement to maintain an adequately resourced and independent audit function to test compliance, the P&Gs provide that the policy statement to be issued by financial institutions must, among other things, address a system of independent testing of the AML /CFT policies and procedures by the institution's internal audit personnel, compliance department, or by a competent external source to ensure their effectiveness.

838. Furthermore, the P&Gs stipulate that financial institutions must maintain an adequately resourced and independent audit function to test compliance (including sample testing) with their policies, procedures and controls. The independent testing must be conducted at least annually by an internal audit department or by an outside independent party such as the external auditor of the financial institution. These tests may include:

- evaluation of the AML/CFT manual;
- file review of the financial institution;
- interviews with employees who handle transactions and with their supervisors;
- a sampling of unusual transactions on and beyond the threshold(s) followed by a review of compliance with the internal and external policies and reporting requirements; and
- assessment of the adequacy of the record retention system.

839. The scope of the testing and the testing results must be documented, with any deficiencies being reported to senior management and/or to the Board of Supervisory Directors, and to the designated officer(s) with a request to take prompt corrective actions by a certain deadline.

840. The P&Gs for CI, MTC and for IC & IB provide that the policy statement to be issued by financial institutions must, among other things, address the preparation of an appropriate training programme for personnel to increase employees' awareness and knowledge in the area of ML and FT prevention and detection.

841. Furthermore, the P&Gs provide that financial institutions must at a minimum develop training programs and provide (ongoing) training to all personnel who handle transactions that may be qualified as unusual or suspicious based on the indicators outlined in the Ministerial Decree regarding the Indicators for Unusual Transactions (N.G. 2010, no. 27).

842. The provisions on training vary depending on the type financial institution. However at a minimum the P&Gs require the following:

- creating awareness by the employee of the ML and FT issue, the need to detect and deter ML and FT, the laws and regulations in this respect and the reporting requirements;
- the detection of unusual transactions or proposals, and the procedures to follow after identifying these;
- making sure that the need to verify the identity of the client is understood;
- the areas of underwriting of new policies or the modification of existing policies; and
- to keep abreast of the developments in the area of ML and FT.

843. Training must be provided to all new employees dealing with clients, irrespective of their level of seniority. Similarly, training must also be provided to existing members of the staff (such as account and assistant account managers) who are dealing directly with clients. It is felt that these persons are the first point of contact with potential money launderers and financiers of terrorism and their efforts are therefore vital to the organization's strategy in curtailing ML and FT.

844. A higher level of instruction covering all aspects of ML and FT policies, procedures and regulations must be provided to those with the responsibility to supervise or manage staff.

845. Financial institutions must make arrangements for refreshment training at regular intervals which must include a clear explanation of all aspects of the laws or executive decrees in Curaçao relating to ML and FT and requirements concerning customer identification and due diligence. The training must be provided at least annually (for credit institutions, semi-annually) and include, among other things, the review of the instructions for recognizing and reporting of unusual transactions.

846. In order for a financial institution to be able to demonstrate that it has complied with the aforementioned guidelines with respect to staff training, it must at all times maintain records which include:

- details of the content of the training programs provided;
- the names of staff who have received the training;
- the date on which the training was provided;
- the results of any testing carried out to measure staff understanding of the money laundering and terrorist financing requirements; and
- an on-going training plan.

847. According to the P&Gs, financial institutions must ensure that their business is conducted at a high ethical standard and that the laws and regulations pertaining to financial transactions are adhered to. Each financial institution must screen its employees criminal records.

848. Furthermore, the Central Bank's *Policy Rule for Sound Business Operations in the event of Incidents and Integrity-sensitive Positions* provides that all supervised institutions must screen new staff members for integrity-sensitive positions. Furthermore, internal procedures will be necessary to screen staff members who are already employed by the institution and are appointed in an integrity-sensitive position The supervised institution should in that respect maintain a record of its integrity-sensitive positions, mentioning the tasks, competences, and responsibilities for each position. In the event that an institution employs a staff member (in-employment screening) or is taking a staff member into its service (pre-employment screening)

who will be working in an integrity-sensitive position, it must form an opinion on the integrity of the person in question. To this end, it shall at least proceed to:

- obtain written information about the integrity of the person in question from the employer(s) of this person during the past five years;
- ask the applicant in question for permission and also authorization to obtain information from the (ex)-employer(s);
- explicitly ask the person in question (by means of an application form) about incidents from the past that could be significant for judging the integrity of the person in question;
- have the person in question submit a declaration concerning the conduct, in the meaning of the National Ordinance on Judicial Documentation and on the declarations concerning conduct (P.B. 1968, no. 213).

849. The Examiners were advised that during on-site examinations, the Central Bank verifies whether the supervised institution has issued an AML/CFT manual in which all requirements relative to the internal procedures, and policies and controls to prevent ML and FT are covered. It is also verified at what frequency the manual is being updated and who is responsible for this task. In cases where the Human Resources Department is responsible for the distribution for the manual to employees, the on-site examiners of the Central Bank request proof of receipt by the employees through a sign-off procedure. In addition, during the on-site examinations it is also verified whether the compliance office has timely access to customer identification data and other CDD information, transaction records, and other relevant information. Furthermore, the job description of the (assistant) compliance officer is requested, to determine whether it contains all responsibilities mentioned in the P&Gs.

**Additional Elements**

850. In accordance with the P&Gs for CI, MTC, and for IC & IB the compliance officers must prepare a report of all unusual transactions for external reporting purposes. The report must be submitted to senior management for their review for compliance with existing regulations and their authorization for submission to the FIU (MOT). Copies of these reports must be kept by the reporting institution.

851. If an unusual transaction is not authorized by senior management to be incorporated in the report to the FIU (MOT), all documents relevant to the transaction including the reasons for non authorization must be adequately documented, signed off by the designated officer and senior management, and kept by the reporting institution.

852. The foregoing suggests that the compliance officer function is not fully independent of senior management.

***Recommendation 22***

**The Role of the Central Bank**

853. The Central Bank issued the Guidelines for the Statement of Regulatory Compliance to all financial institutions in 2007.

854. It should be noted that the Central Bank has established formal arrangements (such as MOUs) with host country supervisors to facilitate and promote information sharing between the Central Bank and the supervisor in the host country. Information sharing arrangements with host country supervisors include being advised of adverse assessments of qualitative aspects of the

institution's operations, such as aspects related to the quality of risk management and controls at the offices in the host country.

855. Under the MOUs that are in place, the Central Bank directors and staff have contact with the supervisory authorities of said countries. During these contacts, the status and the expertise of the local management of the relevant foreign operations are discussed, which also helps to evaluate the oversight of the licensed institution's management of its foreign operations. The MOUs also state that branches and subsidiaries established in the country of one of the parties may be inspected on-site by the home supervisor, provided adequate notification procedures and procedures to communicate results of such examinations are established.

856. Article 17 of the NOSBCI, specifically states that the Central Bank has the authority to request all information from every corporation or institution in which the supervised institution is participating, or from every corporation or institution that is participating in a credit institution, which the Central Bank deems necessary for the exercise of supervision on a consolidated basis.

**Role of the Financial Institutions**

857. According to the P&Gs for CI, MTC, and for IC & IB financial institutions are required to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local (i.e., host country) laws and regulations permit.

858. Financial institutions incorporated in Curaçao (home country) are expected to develop their group policies on AML/CFT and extend them to all of their branches and subsidiaries which are located outside of Curaçao.

859. Furthermore, financial institutions are pursuant to the P&Gs for CI, MTC, and for IC & IB also required to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries that do not or insufficiently apply the FATF Recommendations including high-risk and non-cooperative jurisdictions.

860. The P&Gs state that where the minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries are required to apply the higher standard, to the extent that local (i.e., host country) laws and regulations permit.

861. Furthermore, the P&Gs require financial institutions to pay particular attention that this principle is observed with respect to their branches and subsidiaries in countries that do not or insufficiently apply the FATF Recommendations.

862. Pursuant to the P&Gs, financial institutions are required to inform the Central Bank when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (i.e., host country) laws, regulations, or other measures.

863. Furthermore, the Guidelines for the Statement of Regulatory Compliance require all financial institutions to inform the Central Bank on their foreign entity's non-compliance with the regulatory (including AML/CFT) regime. The Central Bank is entitled to periodically verify the content of each Statement with the relevant foreign supervisory authority.

3.8.2 Recommendations and Comments

3.8.3 Compliance with Recommendations 15 & 22

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.15** | **C** | **This Recommendation has been fully observed.** |
| **R.22** | **C** | **This Recommendation has been fully observed.** |

## 3.9 Shell banks (R.18)

3.9.1 Description and Analysis

***Recommendation 18***

864. In Part II of the NOSBCI the general rules for natural and legal persons wishing to engage in the business of credit extension are set out. The NOSBCI does not explicitly prohibit shell banks but the conditions for licensing and operating are of such a nature that shell banks cannot be established neither can they operate in or from Curaçao.

865. More specifically, the general rules for natural and legal persons wishing to engage in the business of credit extension in Part II of the NOSBCI provide that prior to extending credit; these persons are required to obtain a license from the Central Bank. In addition, according to Article 13, paragraph 1 of the NOSBCI, every credit institution is obliged to maintain and keep the accounts, records and other data carriers relating to its accounting system in Curaçao after obtaining a license from the Central Bank. Hence the focus is on substance, and this requirement is also applicable for branch offices of credit institutions established abroad (Article 13, paragraph 2 of the NOSBCI). Taking the above into consideration, banks without a physical presence cannot be established in Curaçao.

866. Furthermore, in accordance with the admission requirements for credit institutions one or more managing and supervisory director must be resident in Curaçao. At all times at least two (2) members of the Board of Managing Directors must function and be a resident of Curaçao. At least one member of the Board of Supervisory Directors must be a resident of Curaçao. The authorities indicated that these requirements are continuously examined during the on-site examinations that are conducted by the Central Bank.

867. The P&G for CI stipulates that credit institutions are not permitted to enter into, or continue, correspondent banking relationships with shell banks.

868. During the on-site inspection, the Central Bank examiners assess which correspondent banks are used by the financial institution under review. The Central Bank examiners also verify to what extent the financial institution under review has satisfied itself that the correspondent bank is following the FATF Recommendations.

869. The Authorities have noted that the on-site examinations conducted by the Central Bank have not revealed that correspondent banking relationships exist with shell banks. Curaçao conducts business with correspondent banks established in the following countries: United States of America-fifteen (15), United Kingdom-seven (7), the Netherlands six (6), Switzerland-five (5) and Japan-four (4).

870. According to the P&G for CI, credit institutions are required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.2 Recommendations and Comments

3.9.3 Compliance with Recommendation 18

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.18** | **C** | **This Recommendation has been fully observed.** |

***Regulation, supervision, guidance, monitoring and sanctions***

## 3.10 The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)

3.10.1 Description and Analysis

***Recommendation 23& 30 –Authorities/SROs roles and duties & Structure and resources***

Rating/assessment of financial institutions

871. The Central Bank is entrusted with the (prudential and integrity) supervision of financial institutions in Curaçao by virtue of Article 8 of the Central Bank Statute (N.G. 2010, no. 101).

872. The NOSBCI, NOSII, NOIB, NOSPF and the NOSSE, which have been enacted based on the aforementioned Article of the Central Bank Statute, regulate the supervision of financial institutions. Furthermore, the Central Bank is pursuant to Article 1, paragraph 1, sub a of the NOIS and Article 22h, paragraph 1, sub a of the NORUT entrusted with the supervision of AML/CFT compliance under the financial institutions.

873. The Central Bank is entrusted with the AML/CFT supervision of financial institutions in accordance with the NOIS and NORUT as stated above. Financial institutions have to be licensed or registered by the Central Bank under the respective supervisory legislation. The licensing or registering occurs after the conditions of the legislations/executive decrees and or provisions and other admission requirements are met.

874. During the on-site examination conducted by the Central Bank adherence to the laws, the decrees concerning AML/CFT and the P&Gs is assessed.

875. The institutional investor department supervision entails a prudential supervision of all insurance companies which also contains AML/CFT supervision on only life insurance companies and insurance brokerage firms. In its ongoing supervision the Central Bank uses the STAMECER analysis as an instrument to assess the soundness of the insurance companies. Aforementioned acronym stands for Solvency, Technical Provisions, Assets, Management, Earnings, Compliance, Examination Results and Reporting. The outcome of the STAMECER analysis will be the input for planning, priority setting and resource allocation which directs the supervision operations. Other market information such as the latest financial crisis may also direct the Central Bank's supervision. In that regard, the Central Bank concentrated its efforts primarily on the supervision of pension funds. The institutional investor supervision department is responsible for the supervision of insurers (general, life, funeral), reinsures, captives, pension funds and brokers. If a life insurance company is scheduled for an examination, the Central Bank will always address the issue of money laundering. In this respect overall policy matters of the institution are discussed and assessed. All life insurance companies were subjected to AML examinations in 2003 and 2010. In the future the Bank will maintain the interval of 3 to 5 years to visit all life insurance companies in relation to their AML activities.

***Resources (Supervisors)***

876. The Central Bank Statute (O.B. 2010, no. 101) provides the basis to acquire the necessary financial, human and technical resources for the effective execution of its supervisory function. It also provides the Central Bank with the desirable independence and autonomy. The Central Bank may conduct on-site examinations whenever it deems necessary for the purposes of efficient supervision.

**The Central Bank**

**Structure:**

877. The Central Bank is by virtue of the Central Bank Statute an independent supervisory authority for the financial sector, which consists of credit institutions, insurance companies, pension funds, insurance intermediaries, investment institutions, administrators, company (trust) service providers and securities exchanges. Article 18 prohibits the Bank or any member of the Board of Management or Board of the Supervisory Committee to ask for or accept instructions from institutions or organs of the country or from Governments or any other organ.

878. The Government does not give any operational direction and/or guidance to the Central Bank. It should also be noted that in an effort to strengthen the Central Bank's independent position vis-à-vis the government, the Central Bank Statute limits the monetary financing of budget deficits to five percent (5%) of the Government's revenues in the previous year. This limitation must be seen in the context of an overdraft facility to meet liquidity deficits of the public sector that may result from seasonal fluctuations in Government revenues. Furthermore, there is no interference in the operational independence of the Central Bank by the industry. The private sector is often times being consulted to provide comment on draft supervisory policies and legislations, particularly when this is legally prescribed.

879. In its role as supervisor of the financial institutions the Central Bank promotes the soundness of the financial sector to i.a. safeguard the interest of, amongst others, the depositors of credit institutions and the policyholders of insurance companies.

880. The prudential supervision of the financial sector is aimed at promoting the soundness of the financial system in Curaçao. This supervision is pursued mainly through the Central Bank's analysis of the solvency and liquidity position of the financial institutions. Moreover, integrity supervision is exercised by the Central Bank on all (financial) institutions, which includes the area of AML/CFT.

881. The Board of Directors of the Central Bank comprises of: the president and two statutory executive directors. The appointment, suspension, and dismissal of the members of the Board of Directors of the Central Bank are outlined in Article 20 of the Central Bank Statute. The Statute provides for a term of eight (8) years of office of the president and the statutory executive directors with one possibility of extension for another term of eight (8) years.

882. The organizational structure relative to the supervisory and integrity affairs of the Central Bank is as follows:

**Diagram 1.**

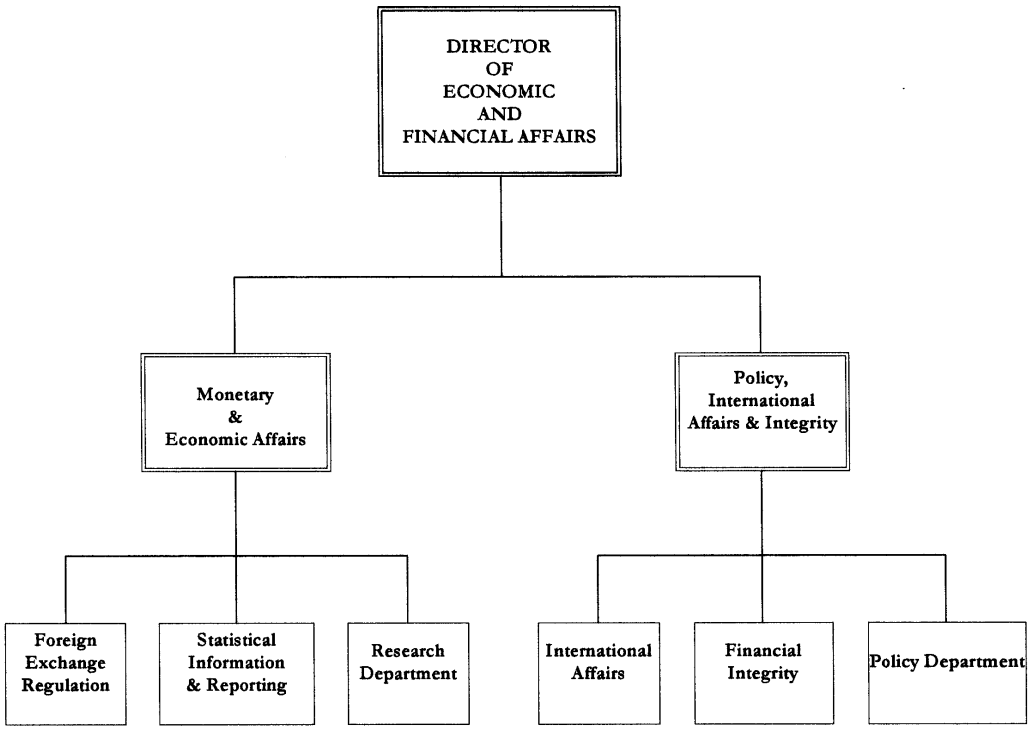
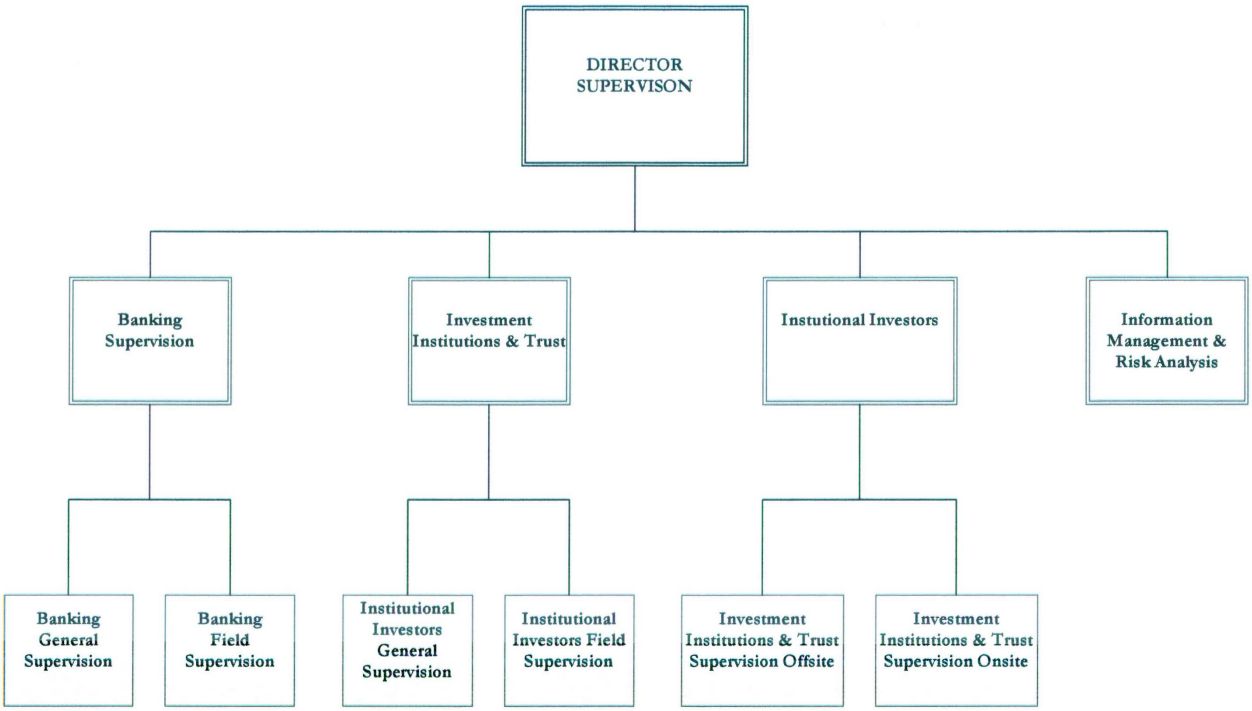

DIRECTOR OF ECONOMIC AND FINANCIAL AFFAIRS
Monetary & Economic Affairs
Policy, International Affairs & Integrity
Foreign Exchange Regulation
Statistical Information & Reporting
Research Department
International Affairs
Financial Integrity
Policy Department

**Diagram 2.**


DIRECTOR SUPERVISON
Banking Supervision
Investment Institutions & Trust
Instutional Investors
Information Management & Risk Analysis
Banking General Supervision
Banking Field Supervision
Institutional Investors General Supervision
Institutional Investors Field Supervision
Investment Institutions & Trust Supervision Offsite
Investment Institutions & Trust Supervision Onsite

**Funding:**

883. The supervisory activities of the Central Bank are partially funded through fees charged to the supervised sector. The fees charged to the supervised institutions are based on different criteria. Credit institutions are, for example, charged monthly fixed fees which are periodically calculated based on the rating assigned to the institution by the Central Bank, the capital adequacy and the size of the institution. Insurance companies are charged a certain percentage of their premium income.

884. The remaining funds to cover the expenses pertaining to the supervisory activities of the Central Bank are generated from the operational results of the Central Bank.

885. Funding sources appear to be adequate to allow the Central Bank to oversee AML/CFT effectively.

**Staffing:**

886. Financial resources are annually budgeted to hire staff in the supervision departments and to train the staff of the supervision departments. All supervision departments have their own budget and have a career development plan to ensure the professional development of all supervisory staff. The number of staff members directly involved with supervision of the financial sector amounts to approximately fifty (50). The number of persons indirectly involved with the supervision of the financial industry, e.g. legal department, policy making department, and IT amount to approximately ten (10).

887. Staff hired by the Central Bank to conduct the supervision work have PhD, Masters and or a Bachelor's degree. These staff members have expertise in a wide range of fields namely finance, economics, accounting, legal, ICT, Organisational and IT & Security Auditing. The supervisory staff members have job descriptions outlining their responsibilities.

888. The overall AML/CFT level of knowledge and expertise of the Central Bank's examiners appear to be adequate. The staff is well trained and capable of understanding and acting upon critical situations that may arise in the sector. The Central Bank also serves as a main source of information to the financial sector where inquiries in terms of anti- money laundering and counter-terrorist financing are addressed.

889. Section 1.3 lists the types of financial institutions supervised by the Central Bank as at December 2010, which sum to 260 financial institutions and (168 DNFBPs). It would therefore seem that staff is pressured to effectively undertake AML/CFT oversight, along with monitoring of other risk areas.

**Sufficient technical and other resources:**

890. The prudential supervision departments of the Central Bank have computerized databases and analytical software tools e.g. Business Objects enabling them to periodically analyze the financial position and result of the supervised institutions and verify their compliance with legal stipulations. The staff is well trained in the use of analytical tools and receives refresher courses periodically.

891. In carrying out its supervisory responsibilities, the supervision departments are assisted by the Financial Integrity Unit of the Central Bank which is responsible for assessing the integrity of the policymakers of supervised institutions. Assistance to the supervision departments is also provided by other departments within the Central Bank. For example the legal and the policy making departments. Furthermore, technical assistance is on request provided by the Dutch Central Bank and the AFM (the Dutch authority financial markets).

892. Given the number of persons directly involved in supervision and the examination statistics presented, it is not clear that there are sufficient resources to implement the AML/CFT supervisory programme.

893. The prospective staff members of the Central Bank are carefully selected based on their educational background, training, expertise, and integrity. The integrity screening entails that a thorough background check is performed on the candidate. The Central Bank has a code of conduct for its personnel. Moreover, the supervision staff members are also subjected to a separate code of conduct for supervision personnel (Besluit beroepsregels toezichtfunctionarissen).

894. All staff members are required to sign a Confidentiality Agreement at the beginning of their working relationship with the Central Bank. According to Article 31 of the Central Bank Statute, the Supervisory directors, President and directors of the Central Bank are required to keep confidential all information obtained during the execution of their function, in so far disclosure of such information is not prescribed by or pursuant to the National Ordinance. Furthermore, in the employee hand book "Reglement arbeidsvoorwaarden personeel van de Bank van de Nederlandse Antillen" it is also mentioned that staff members should maintain confidentiality on all information that they are exposed to in connection with their work. In addition, according to Article 40 of the NOSBCI, Article 78 of the NOSSI, Article 20 NOIB, Article 28 of the NOSTSP and Article 10 of the NOSSE, no information obtained from a financial institution may be disclosed further or in any other manner than as required for the performance of tasks or decisions taken pursuant to the application of the National Ordinances.

895. For all supervisory staff members there is a career development plan in place and (local and international) training is provided. Additionally, ongoing AML training for the Central Bank personnel takes place through local and international programs. Among the specific sources of training are: the Netherlands Institute for Banking Training ("NIBE"), Oceana Publications Annual Conference on Money Laundering and Cyber Crime, Money Laundering Alert of the CFATF, "Anti-Money Laundering Examination Seminar" by the Federal Reserve System, "AML-CFT Program" by the Toronto Centre and the World Bank, UTRC training activities, The Financial Institute (headed by the Financial Director of the Bank, at the initiative of the industry) and the Compliance Officers Association ("ACONA"), Kingdom seminar for FIUs, RST, ASBA, CGBS and OGBS, Offshore Group Collective Investment Schemes Supervisors ("OGCISS") organize regular training programs. On occasion, the Central Bank provides instructors and participants to these courses.

896. As indicated previously, training is provided to the supervisory staff members who are involved in AML/CFT assessments where insight is given on the scope of possible offences, different typologies and also techniques used to trace unusual transactions that could possibly be related to ML and/or FT. Examiners of the Supervision Departments are required to attend AML/CFT training on a regular basis. The training comprise of both internal training, specifically tailored to the examiners of the aforementioned departments, or external training organized by other foreign supervisory authorities, international standard setting bodies, such as the IAIS, IOSCO, or other regional groups, such as the Offshore Group of Collective Investment Schemes Supervisors, Commission of Securities Regulators of the Americas, the Caribbean Group of Securities Regulators, and the Offshore Group of Banking Supervisors (for trust-related trainings).

897. In addition, some of the Central Bank's personnel annually attend FATF and or CFATF and other relevant local or international conferences where current trends and typologies in AML and CFT are discussed and reported upon. A number of the Central Bank's personnel are accredited CFATF assessors.

***Recommendation 29& 17 –Authorities powers and Sanctions***

898. Based on the NORUT and the NOIS the Central Bank has the authority to impose sanctions on financial institutions under its supervision that do not or do not timely comply with the obligations set forth in the legislation. In addition, the Central Bank has the authority to impose sanctions on the financial institutions under its supervision that do not adhere to the compulsory requirements as set out in the P&Gs.

899. The Central Bank's authority to issue P&Gs is based on the following provisions:

- Article 22h, paragraph 3 of the NORUT;
- Article 11, paragraph 3 of the NOIS; and
- other supervisory legislation

900. The enforcement of sanctions is based on the following provisions:

- Articles 22a, 22b, and 22e of the NORUT;
- Articles 9, 9a, and 9d of the NOIS;
- The National Decree containing general measures Penalties and Administrative Fines Reporters Unusual Transactions (NDUT); and
- The National Decree containing general measures Penalties and Administrative Fines Service Providers (NDSP).

901. Based on the provisions stipulated in the NORUT and the NOIS the Central Bank has a range of regulatory and supervisory measures at its disposal, in case financial institutions fail to comply with or properly implement their AML/CFT obligations. Compliance by the supervised institutions with the provisions outlined in aforementioned provisions is assessed by the Central Bank during its on-site examinations.

902. Furthermore, the penal provisions are laid down in Article 23 of the NORUT and Article 10 of the NOIS.

903. Article 11, paragraph 1, sub a of the NOIS provides for the Central Bank to supervise credit institutions (domestic commercial banks, international banks, credit unions, specialized credit institutions, savings banks, savings and credit funds, MTCs, insurance companies and brokers, for compliance with the NOIS. Paragraph 4 of the NOIS empowers the Central Bank to request inspection of all the books, documents and other information carriers, such as electronic files, and to take a copy of such or to take it along temporarily. Article 22h, paragraph 1, sub a and paragraph 4 of the NORUT similarly empowers the Central Bank to monitor and ensure compliance with that Act. These combined powers allow for monitoring for compliance with requirements to combat money laundering and terrorist financing,

904. In addition, the supervisory ordinances -NOSBCI (Articles 16 and 18), NOSII (Articles 28 and 30), and NOIB (Article 18) provide the Central Bank with powers to access and obtain information as it relates to compliance with those statutes.

905. In accordance with Article 11, paragraph 4 of the NOIS and 22h, paragraph 4 of the NORUT, the Central Bank has the authority to conduct inspections of financial institutions, including on-site inspections, to ensure compliance.

**Credit institutions**

906. Article 16 of the NOSBCI provides the Central Bank with the power to conduct special investigations at the supervised institutions.

**Insurance**

907. The Central Bank is pursuant to Articles 28 and 30 of the NOSII authorized to request any information it deems necessary for the proper execution of its supervisory duty and to conduct on-site examinations at the insurance companies. Additionally, Article 18 of the NOIB provides the Central Bank with the same authority in respect to insurance brokers.

908. According to the P&Gs for CI, IC & IB, and for MTC all financial institutions must be prepared to provide information or documentation on ML and FT policies and deterrence and detection procedures to the examiners of the Central Bank before or during an on-site examination and upon the Central Bank's request during the year.

909. The financial institution must be prepared to make available the following items:

- its written and approved policy and procedures on ML and FT prevention;
- the name of each designated officer responsible for the institution's overall ML and FT policies and procedures and her/his designated job description;
- records of reported unusual transactions;
- unusual transactions which required closer investigations;
- the completed source of funds declaration;
- schedule of the training provided to the institution's personnel regarding ML and FT;
- the assessment report on the institution's policies and procedures on money laundering and terrorist financing by the internal audit department or the institution's external auditor;
- documents on system tests, such as the customers' transactions data and files, other relevant information such as Swift daily-overview, nostro-account reconciliation, list of clients that make use of deposit boxes, and non-account holders transactions; and
- required copies of identification documents.

910. The Central Bank's power to compel production of or to obtain access to all records, documents or information relevant to monitoring compliance is provided for in Article 11 paragraph 4 of the NOIS and Article 22h paragraph 4 of the NORUT. This therefore implies that access can be gained to accounts or other business relationships or transactions including any financial analysis that the financial institution has made with regard to detecting unusual or suspicious transactions.

911. The Central Bank's powers to compel or access information by virtue of the NOIS and the NORUT do not require a Court order.

912. The authorities have indicated that the power of enforcement to act against financial institutions and their directors can inter alia be derived from a general statutory provision in the Penal Code. Article 53 of the Penal Code provides that offences can be committed by natural persons and legal persons. When an offence is committed by a legal person, prosecution can be instituted and the penal sanctions and measures provided for in general ordinances, if eligible, can be pronounced:

a. Against the legal person

b. Against those who ordered the execution of the offence as well as against those who actually lead the execution of the prohibited conduct or
c. Against the ones mentioned in section a and b jointly

913. It appears therefore that the above mentioned provisions make it possible to act against directors or senior management. There is a so called switch provision (Article 96) of the Penal Code that provides for the application of Articles 53 of the Code to other facts which are penalised by other General Ordinances, unless the General Ordinances provides otherwise. Therefore, the administrative fines of the NOIS and NORUT are also applicable to the financial institutions and their directors. However, based on statistics provided on sanctions, this has not been tested.

914. Pursuant to Article 14 of Book 2 of the Civil Code, the members of the Board of Directors are personally and severally liable towards the legal entity for any loss caused by the improper performance of duties.

915. Before proceeding to imposing penalty, the Central Bank shall inform the (financial) institution or individual in writing of the intention to impose a penalty, stating the grounds on which the intention is based, and shall offer him the opportunity to redress the omission within a reasonable time.

916. The effective demonstration of powers to monitor and ensure compliance through onsite inspections is inconclusive given the limited inspection coverage.

917. Where it has been established that an entity consciously violated the stipulations of the NOIS, the NORUT and the P&Gs the enforcement instruments will be applied to the violator.

918. The violations committed under the NORUT, NOIS, and the P&Gs are subject to a penalty and/or an administrative fine or penal sanctions. With regard to penalty and/or an administrative fine, as noted previously these sanctions are imposed for each individual violation.

919. Furthermore, administrative sanctions can be administered under the Issuance ***of an order /direction/instruction*** (Article 22, paragraph 1, of the NOSBCI, and Article 33, paragraph 1 of the RFETCSM). If a supervised (financial) institution is found not to satisfy the requirements, rules, restrictions or instructions laid down by or pursuant to the relevant supervisory legislations, the Central Bank can issue an instruction specifying that the supervised (financial) institution must satisfy such requirements, rules, restrictions or instructions within a specified time. In some cases the Central Bank can also publish the issuance of the instruction.

920. Article 33, paragraph 1 of the RFETCSM states that where a licensee or person with an exemption does not comply with the obligation imposed by or by virtue of these Regulations, the Bank may order the licensee or person with an exemption, within the period stipulated by the Bank, as yet to comply with these Regulations. The Regulations themselves do not address AML/CFT and the Central Bank's powers of regulation and supervision are drawn from Article 21 of the RFETCSM (integrity), Article 11, paragraph 1a and 3 of the NOIS, and Article 22h, paragraph 3 of the NORUT. The RFETCSM refers to licensees, that are foreign exchange offices (Article 8, paragraph 1), which are banks authorized under the Central Bank Statute to operate as a foreign exchange bank; or an exempted person. Non-banks have been granted foreign exchange permission to conduct the business of MTCs by the Central Bank. It is unclear whether (a) any conditions have been attached to the existing non-bank MTCs operating in Curaçao. (b) how sanctions cited in the RFETCSM would be applied to such entities. The Examiners were advised that a new framework for prudential supervision of MTCs is being developed.

921. ***The appointment of a trustee/administrator*** Provisions for this measure are contained at Article 22, paragraphs 2 and 3 of the NOSBCI, Where the Central Bank determines that its request stated in an order has not or not adequately been complied with within the term specified by the Central Bank then the Central Bank can by registered letter serve notice to the supervised (financial) institution that. This notice will provide that with effect from a stipulated date, all or particular organs of the supervised (financial) institution may only exercise their powers after approval by one or more persons appointed by the Central Bank and with due observance of the instructions of said persons. The Central Bank may also take this action if special circumstances threaten the adequate functioning of certain supervised (financial) institutions. The foregoing does not apply under the RFETCSM (money transfer companies), NOSII (insurance industry) and NOIB (insurance brokers).

922. ***Penalizing of violation*** (Article 46 of the NOSBCI, Articles 35 and 44 of the RFETCSM). If the (financial) institution fails to satisfy its obligations resulting from the relevant supervisory legislation or fails to satisfy such obligations in time, the Central Bank can impose an administrative fine on the (financial) institution. In some cases the Central Bank can also impose a penalty. The foregoing is not available under the NOSII (insurance industry) and NOIB (insurance brokers).

*Administrative fines*

923. The violation of the obligations imposed by or pursuant to the following Articles is subject to a maximum administrative fine of NAf. 1,000 (Article 3 of the NDPFRUT (N.G. 2010, no. 71) and Article 3 of the NDPFSP. (N.G. 2010, no. 70)). As noted previously in the Report, such sanctions are imposed for each individual violation.

924. Before a fine is imposed, the Central Bank will inform the (financial) institution or individual in writing of the intention to impose a fine. The notice will also state the grounds on which the intention is based, and shall offer the institution or person the opportunity to redress the omission within a reasonable time.

925. Statistics provided by the Central Bank do not reflect a use of the range of sanctions available. Measures taken to date have however proven effective. The Authorities provided evidence of the revocation of a license, at the request of the entity, in accordance with Article 5(1)a of the NOTSTP. This followed an onsite examination which highlighted several deficiencies.

926. ***Revocation of the license or dispensation*** (Article 9 of the NOSBCI, and Article 22 of the RFETCSM). In case the supervised (financial) institution or individual refuses to comply with or is in violation of the provisions and the compulsory requirements as stipulated in the relevant supervisory legislation and the P&Gs on AML/CFT, respectively, the Central Bank can revoke the license or dispensation of the supervised (financial) institution or individual. In some cases emergency measures are applied (Article 59-73 of the NOSII and Articles 27-38 of the NOSBCI). The foregoing is not available under the NOSII (insurance industry), NOIB (insurance brokers) and NOSSE (securities exchange).

927. Article 22 paragraph h of the RFETCSM (regarding money transfer companies) states that a license may be withdrawn when the license/permit or exemption holder fails to comply with the obligations imposed by or by virtue of the Regulations.

928. ***Public Notice*** (Article 69 of the RFETCSM, Article 9d of the NOIS and Article 22e of the NORUT). The Central Bank can bring to the notice of the public the fact with respect to which an order for a penalty or an administrative fine is imposed, the violated instruction and also the

name, the address and the domicile of the person on whom the order for a penalty or the administrative fine is imposed.

929. Referral for criminal investigation or prosecution (Article 50 of the NOSBCI, Article 122 of the NOSII, and Article 81 of the RFETCSM, Article 10, paragraph 1 of the NOIS, Article 23, paragraph 1 of the NORUT). In case of violation of regulations set by or pursuant to the relevant Articles mentioned in the penal provisions of the supervisory legislations the Central Bank may immediately refer the violation to the Public Prosecutor for further (criminal) investigation and prosecution. This is not available under the NOIB and is therefore not applicable to insurance brokers.

930. The Central Bank as supervisory authority for financial institutions under its supervision can administer the administrative sanctions stipulated in Articles 22a, 22b, and 22e of the NORUT and Articles 9, 9a, and 9d of the NOIS. The penal sanctions (Article 23 of the NORUT and Article 10 of the NOIS) as mentioned above can only be administered/ imposed by a Court after conviction has taken place.

931. As previously noted Article 53 of the Penal Code provides that offences can be committed by natural persons and legal persons. For offences committed by a legal person, prosecution can be instituted and sanctions taken: (a) against the legal person, or (b) against those who ordered the execution of the offence as well as against those who actually lead the execution of the prohibited conduct, or (c) against the ones mentioned in section (a) and (b) jointly. As noted previously the switch provision makes it possible for action to be taken against directors or senior managers.

**Penalties and legal fines.**

932. The Central Bank has the authority to impose a penalty (a penalty is a pre-arranged sum that becomes payable when the supervised institution, and their directors or senior management, do not correct the violation committed within a period of time prescribed by the Central Bank) and/or an administrative fine (administrative fine is a punitive monetary sanction that is imposed with the intention of penalizing the offender) on the (financial) institution under its supervision that does not or does not timely comply with the obligations set forth in the NOIS and the NORUT. In addition, the Central Bank has the authority to impose penalties or administrative fines on the (financial) institutions under its supervision that do not adhere to the compulsory requirements as set out in the P&Gs.

Penalties

933. The violation of the obligations imposed by or pursuant to the following Articles is subject to a maximum penalty of NAf. 500,000 (Article 2 of the NDPFRUT (N.G. 2010, no. 71) and Article 2 of the NDPFSP. (N.G. 2010, no. 70)).

| NORUT | NOIS |
|---|---|
| - Article 11 | - Article 2, paragraph 1, 2, and 5 |
| - Article 12, paragraph 2 | - Article 3 |
| - Article 13 | - Article 5, paragraph 1 through 4 |
| - Article 22h, paragraph 3 | - Article 6 |
| - Article 20, paragraph 2 | - Article 7 |
| | - Article 8 |
| | - Article 11, paragraph 3 |

934. The Central Bank will indicate in its decision to impose a penalty the term in which the violator can execute a mandate without a penalty being forfeited.

935. The amount due can be collected by way of a writ of execution, increased by the costs of collection. The writ of execution shall be served on the violator by means of a bailiff's notification and will produce an entitlement to enforcement.

***Recommendation 23* –*Market entry***

936. The Central Bank is the supervisor for financial institutions operating in Curaçao. Market entry by financial institutions is subject to the stipulations of the respective supervisory laws.

**Credit institutions**

937. Articles 2-4 of the NOSBCI provide the general rules for persons and institutions that wish to carry on the business of credit institutions in Curaçao. The licensing requirements are further outlined in the Admission Requirements for Credit Institutions. Article 3 of the NOSBCI stipulates the type of data the application for a license must contain. Some important information on this matter, is:

a. the number, identity and the antecedents of the persons who, in the Central Bank's opinion, determine the day-to-day policy of the corporation or institution;
b. if applicable, the number, identity and the antecedents of the members of the Board of Supervisory Directors or the organ entrusted with the duties similar to those of the Board of Supervisory Directors;
c. the identity, financial status and antecedents of those who exercise authority in the corporation or institution by means of voting rights derived from their number of shares, in the general meeting of shareholders or in a comparable manner;
d. the extent of the participations or comparable control of the persons, or corporations or institutions referred to in d;
e. if applicable, the company structure of the group to which the corporation or institution belongs.

938. The Central Bank decides on a request within sixty (60) days of receipt of the request. In case the Central Bank decides to deny the request, the reasons for doing so will be cited.

**Insurance companies**

939. Based on Article 9 of the NOSII, it is prohibited to be engaged in:

- insurance business without a license granted by the Central Bank;
- the indemnity insurance business in an indemnity group for which the Central Bank has not granted a license;
- any other business than either the life insurance business or the indemnity insurance business.

940. The Central Bank will grant a license to any person who has proven to their satisfaction that they comply with the requirements for obtaining a license set by or pursuant to the NOSII. Upon application for a license, the applicant must submit a plan of operations to the Central Bank for assessment.

941. The following documents need to be submitted when requesting a license:

- Application form completed and signed by the authorized individual
- Extract Chamber of Commerce
- Personal Questionnaires (notarized)
- Articles of Incorporation
- Deed of appointment (in case of a representative)
- Audited annual statements of the last three (3) years and/or business plan
- Organizational Chart
- In case the company underwrites motor liability insurance, the declaration signed by the insurance company stating that the conditions of its motor vehicle liability insurance are in accordance with the stipulations as laid down in the Motor Vehicle Liability Insurance Act as prescribed (N.G. 1977, no. 4)
- Declaration from the home country Supervisory Authority confirming that the applicant is authorized to be engaged in the insurance business and has been actively engaged in said business in the home country for a period of at least five years directly preceding the date of the application.

942. Within two (2) months of its receiving the required data, documentary proof, and information, the Central Bank will notify the applicant of its decision regarding the application for a license by registered letter.

**Insurance brokers**

943. Based on Article 4 of the NOIB, the conduct of activities as an insurance broker is prohibited without a listing in the register of insurance brokers maintained by the Central Bank. The register is subdivided into the "Life" and the "Non-life" Sections. An insurance broker can be registered in both sections. A request for listing in the register is made through the submission of an application form to the Central Bank (Article 5 NOIB). The following documents need to be submitted to the Central Bank when requesting registration in the register:

- Application form
- Extract Chamber of Commerce
- Deed of incorporation
- Articles of Association
- Agency agreement with insurance company
- Stockholder's registry and Ultimate Beneficial Owner
- Copy document identification
- Personal Questionnaire
- Copy coverage professional indemnity insurance
- Copies of insurance diploma or copies of documents evidencing the professional competence
- Copy of the tenure between insurance broker and the person who exercises actual management

944. The Central Bank will communicate its decision in writing regarding a request for listing in the register to the applicant within sixty (60) days of receipt of the request. This will be accompanied by a proof of registration in the event that the request is granted. Where the Central Bank decides to deny the request, the reasons therefore will be cited.

**Money transfer companies**

945. The Central Bank has been assigned the responsibility to license natural and legal persons that perform "payments and receipt to non-residents with regard to goods, services, income and income transfers." (Article 10, paragraph 1 of the RFETCSM). Article 17, paragraph 1 of the

RFETCSM allows for the granting of a license/permit or an exemption in pursuant of the Regulations "for the performance of and the cooperation in acts". The licensing requirements for MTCs are outlined in the Admission Requirements for Money Transfer Companies subject to the "National Ordinance on the Foreign Exchange System". The RFETCSM succeeded this Ordinance. Included in the information submitted to the Central Bank in support of an application for a licence is:

- Application form
- Personal questionnaires and resumes of experience of all intended managing and supervisory directors and of all individual shareholders, being natural persons
- A declaration of good conduct of the prospective managing directors and Board of Supervisory Directors from the police/judicial authority
- Proof of place of residence of the members of the Board of Managing Directors and Board of Supervisory Directors and their addresses over the last five (5) years
- A copy of the shareholder's register
- Business plan
- Overview of internal control systems

946. The Articles of Incorporation must include a provision that services cannot be rendered through an intermediary agent or sub-agent without the Central Bank's prior approval. The ultimate beneficial owners being natural persons must always be known.

947. These companies (MTCs) are authorized to operate under the provisions of the RFETCSM which is meant inter alia for the regulation of the foreign exchange transactions. A foreign exchange license is necessary to conduct the business of a money transfer company.

948. Article 6, paragraph 1a provides for admission requirements for directors and senior management appointments.

**Securities exchanges**

949. The licensing requirements for securities exchanges are outlined in the document "Minimum Information Needed for the Central Bank to Evaluate a Request to Establish a Stock Exchange in Curaçao and Sint Maarten". It includes inter alia:

- Business Plan of the Stock Exchange: should outline amongst other things the purpose of the exchange, the products and services to be offered by the exchange, the affiliates of the exchange, the background of the affiliates, the members of the exchange, and the owners of the exchange.
- Organizational Chart: should highlight the different departments within the organization, affiliations with other companies, and participation in other companies.
- Shareholders' Register: a register of all the shareholders of the exchange.
- Description of the Trading Rules: the rules and regulations of the exchange should be formulated.
- Description of the Regulatory and Compliance Matters, including **the Appointment of a Compliance Officer:** the exchange should indicate how it will ensure that members and participants of the exchange adhere to the rules of the exchange and how clients, members and participants of the exchange can file complaints against other members and participants.
- **Information on the Directors of the Exchange:** A list of all intended Managing Directors and Board of Supervisory Directors along with a description of their experience must be provided to the Bank. The following

information of both Managing Directors and Supervisory Directors must be provided to the Central Bank:

- Last name of the candidate
- First name and middle name (if applicable)
- Place of birth
- Date of birth
- Place of residence and address
- Personal curriculum vitae
- Social security number (if available)
- Passport number

950. The Central Bank decides on a request for a stock exchange within sixty (60) days of receipt of the request. In the event that the Central Bank decides to deny the request, the reasons for the denial will be given.

**Overview integrity testing policy**

951. The decision to admit a financial institution to the financial sector is among others based upon the outcome of the integrity testing. The intention to sell or transfer shares in a supervised financial institution is also communicated to the Central Bank which also reviews the antecedents and plans of the prospective shareholders.

**952.** The Central Bank is legally entitled to perform integrity testing on (candidate) (co-) policymakers of financial institutions and (candidate) holders of qualifying interests in supervised institutions and other persons involved. The legal basis can be found in: NOSBCI; NOSII; National Decree on Special Licenses (NDSL); NOSPF; NOIB: NOSSE. The integrity testing applied by the Central Bank is laid down in the **Central Bank Policy Rule on Integrity Testing** which was last revised in January 2011. This policy rule is applicable to the following persons involved:

1. **Policymakers and participants in supervised institutions**

This includes each and every (and any future) body of any institution supervised by the Central Bank, notably:

a) (candidate)(co-)policymaker such as Director, Board Member, or Investment Manager/Adviser;
b) (candidate)member of a Board of Supervisory Directors or Supervisory Board;
c) (candidate) holder of a qualifying interest.

2. **Other persons involved**

This includes:

a) any natural person or legal entity who applies for, or has been granted dispensation in pursuance of Article 45 of the 1994 NOSBCS, for the purpose of extending credit on a regular basis or of raising funds by means of the issue of, among other things, debt instruments; and any natural person or legal entity who applies for, or has been granted dispensation in pursuance of Article 2 of the 2003 NOSTSP, for the purpose of providing trust services;
b) the (candidate)(co-)policymaker or (candidate) holder of a qualifying interest of an institution that applies for, or has been granted dispensation in pursuance of Article 45 of the 1994 NOSBCI, for the purpose of extending credit on a regular basis or of raising funds by means of the issue of, among other things, debt instruments; the (candidate)(co-)policymaker of a legal entity that applies for, or has been granted, dispensation in pursuance of Article 2 of the 2003 NOSTSP, for the purpose of providing trust services,

with the exception of the (candidate)(co-)policymaker of a group financing company or an international credit institution referred to in Article 2 and Article 3 of the National Decree laying down general measures (N.G. 1995, no. 219);

953. A qualifying interest as mentioned above is defined as follows: A direct or indirect holding (shareholder as Ultimate Beneficial Owner) equal to or exceeding ten percent (10%) of the nominal capital of a (non) public-listed enterprise or institution or the ability to exercise directly or indirectly the voting rights in a (non) public-listed enterprise or institution equal to or exceeding ten percent (10%) as well as the sole proprietor of the insurance brokerage business.

954. As part of the integrity testing and in connection with the further developments, the Central Bank has issued in January 2006 regulation concerning the number of permitted (co)-policy-making positions per person. The policy was issued with the objective of controlling multi (co-)policy positions in the financial sector and the need for a more direct and uniform policy with respect to the number of such positions permitted. The purpose of this regulation is to prevent conflicting interests when combining a number of (co-) policy positions in the financial sector. Financial interests and/or controlling interest in several legal persons or institutions play an important role in that case. This policy rule regulates possible conflict of interests that may arise in the case of (co)-policy-making positions in this sector, and includes:

a. a further specification with regard to the required independence of the supervisory directorship, in the case of financial and controlling interests, in conformity with the Principles of Good Governance (Any combination of (co)-policy-making positions with a financial or controlling interest in the mutual business relationship is only permitted, provided within the same group) (*Article 6. Financial or controlling interest within a group)*;

b. preventing conflicting financial and/or co-determination interests with other non-supervised legal persons and institutions (*Article 8. Conflicting co-determination interest and/or co-determination interest with other non-supervised legal person(s)/institution(s) and functioning local PEPs*); and

c. the aspect of functioning local PEPs (A*rticle 8. Conflicting co-determination interest and/or co-determination interest with other non-supervised legal person(s)/institution(s) and functioning local PEPs*). Local PEPs are understood to be in general persons who a) hold or have held a prominent public function, and b) the close relatives or c) immediate associates of these persons. In the event of an integrity testing of any application of a local PEP for holding a (co)-policy-making position at a supervised institution, the following distinction shall apply: a) functioning local PEPs (persons holding a public function); and b) non-functioning local PEPs (persons that have held a public function). Normally, there is in this case of a functioning local PEP possibly a conflicting interest and for that mere reason, the person in question will not qualify for holding a (co)-policy-making position.

955. To prevent criminals or their associates from holding or being a ultimate beneficial owner (UBO) of a significant or controlling interest or holding a management function in a financial institution, the Central Bank takes the following measures:

1. The Central Bank subjects a candidate UBO to its integrity testing, which includes the screening for the candidate's criminal antecedents, based on

the Policy Rule on Integrity Testing and the information provided in the Personal Questionnaire.

2. Criminal antecedents include:

a. Sentences by decision of the Court in cases of violation of penal provisions (inclusive of foreign countries), Transactions with the Office of the Public Prosecutor in case of violation of penal provisions (inclusive of countries abroad), (Conditional) dismissal, acquittal, or discharge from prosecution (inclusive of countries abroad), and Other facts and circumstances (Annex A1 of the Policy Rule); and

b. Sentences by irrevocable decision of the Court (inclusive of countries abroad) for insider trading in securities transactions, serious larceny, embezzlement, forgery, false testimony, injury to creditors or entitled parties, and money laundering (Annex of the Policy Rule).

3. Article 1 of the *Policy Rule on Integrity Testing* refers i.a. to the UBO holding a '*qualifying interest' that* must be subjected to the Central Bank's integrity testing. Pursuant to the *Policy Rule on Integrity Testing*, the ultimate beneficial owner must enclose an organizational chart explaining the current and foreseen shareholder or control structure (*Introduction Personal Questionnaire*). For reasons of regulatory review b*y the Central Bank*, and as part of their mandatory reporting requirements, all supervised institutions should also present to the Central Bank, not later than June 30 of the current year, their so called "*share holders information forms*".

4. If the (candidate) (co-)policy maker such as Director, Board Member, or Investment *Manager/Adviser is a legal entity, then the natural person w*ho holds the position with the institution on its behalf, as well as the (candidate) (co-) policymaker, the (candidate) member of the Board of Supervisory Directors or Supervisory Board, and the (candidate) holder of a qualifying interest within the legal entity will be referred to as 'persons involved'. The Central Bank may in this case also test the persons involved (*Article 5.1. Policymakers and participants in supervised institutions, and article 5.2. Other persons involved*).

5. If the (candidate) *member of a Board of* Supervisory Directors or Supervisory Board is a legal entity, then the (candidate)(co-)policymaker, the (candidate)member of the Board of Supervisory Directors or Supervi*sory Board, and the (candidate)*holder of a qualifying interest within the legal entity will b*e referred to as 'persons involved'*. The Central Bank may in this case also test the persons involved (*Article 5.1. Policymakers and participants in supervised institutions, and article 5.2. Other persons involved*).

956. Section 23, paragraph 2, sub a of the NOSBCI stipulates that a credit institution is not allowed to appoint any person to determine its day to day policy without the prior permission from the Central Bank.

957. Article 17, paragraph 1 of the NOSII, stipulates that the persons determining an insurer's day-to-day policy (management), to the judgment of the Central Bank, should be sufficiently qualified to operate the insurance business.

958. Financial institutions supervised by the Central Bank are subjected to the Central Bank's fit and proper assessment. The fit and proper assessment concerns both integrity and expertise and includes the following:

**Fit and proper criteria relating to integrity**

1. The integrity of the proposed directors and senior management is evaluated by the Central Bank through the aforementioned fit and integrity testing, as required by the respective supervision law(s) when obtaining a license.

2. The criteria and qualities for the assessment of the fitness and integrity of management and directors are outlined in the *Policy Rule on Integrity Testing* by the Central Bank.

3. Antecedents screening was originally based on the Policy Memorandum Fit & Proper test for banks/credit institutions and insurance officers, directors and principal shareholders (separate personal questionnaires were then used for each sector). The first version of the Central Bank *Policy Rule on Integrity* (and Fitness) Testing, including the standard Personal Questionnaire for all sectors, was subsequently issued by the Central Bank. This is regularly updated.

4. In conformity with Article 3 of the Central Bank *Policy Rule on Integrity Testing*, the testing of the integrity of the persons involved takes place with required regularity (every three (3) years) and is also applicable for other occasions for reasons deemed valid by the Central Bank, such as for verification and/or in case of change of *antecedents* before termination of the stipulated period, and in case of a reported incident. In other words, the result of the integrity testing, as mentioned in Article 3, remains valid for three (3) years for all (co-)policy functions, as permitted herewith per person by the Central Bank, starting with the first reported (co-)policy function.

5. The *Policy Rule on Integrity Testing* contains a number of annexes listing the criminal (Annexes A1 and A2), financial (Annex B), supervisory (Annex C), and other (Annex D) antecedents or courses of action, which play a role in some way when forming an opinion. The person involved must himself inform the Central Bank of any antecedents, by filling in the questionnaire. This applies not only to the antecedents included in the policy rule, but all antecedents, i.e., all other information with respect to his past that may seem relevant for the integrity testing by the Central Bank.

6. All cases of doubt on integrity are officially presented and dealt with at the highest advisory level within the Central Bank by the so called Integrity Commission, consisting of the following members: General Legal Council (chairman); Deputy Director Supervision (vice-chairman); Head Integrity Financial Sector Unit (secretary); Deputy Director BOTFI, International Affairs and Financial Integrity (member); and Head Legal Department (member). Due caution is exercised in this respect, by applying the principle "hear both sides/the other side (of the argument)". In accordance with the National Ordinance Administrative Law (N.G. 2001, no. 79), objection or appeal against a disqualification for integrity by the Central Bank is possible within six weeks.

**Fit and proper criteria relating to expertise**

959. Another important aspect of the "fit and proper" test conducted by the Central Bank is the assessment of the competence of (co-)policymakers of (prospective) supervised institutions. The assessment of the competence is being performed (1) at the licensing phase, (2) after the licensing phase when a person is proposed to the Central Bank to be appointed as a (co-) policymaker of a supervised institution, and (3) in case the facts and circumstances merit a re-evaluation of the competence of an approved (co-)policymaker, after a person has been approved by the Central Bank.

960. When a person is to be subjected to the Central Bank's competence assessment, he/she is required to submit a curriculum vitae along with his/her Personal Questionnaire, containing information on his/her work experience and educational background. The information contained in the curriculum vitae forms the basis for the competence assessment. .

961. Some important aspects that are considered by the Central Bank during the assessment of the competence of a person, is the position (to be) fulfilled, the nature of the activities, size and complexity of the institution concerned, and the collective knowledge, skills and professional experience of the Managing Board/Management Team that exist within the institution concerned.

**Money transfer companies (MTC)**

962. Money transfer companies are currently allowed to operate pursuant to the RFETCSM which is inter alia meant for the regulation of foreign exchange transactions. A foreign exchange license is necessary to conduct the business of a MTC. The Central Bank has been assigned the responsibility to license natural and legal persons that perform money transfer companies (Articles 10, paragraph 1 and 17, paragraph 1 of the RFETCSM). The licensing requirements for MTC are outlined in the Admission Requirements for Money Transfer Companies. Currently, there are two companies authorized to conduct money remitting business in Curaçao, one of which operates 4 sub-agents. Supervision of these companies occurs based on this law (Article 78 of the RFETCSM). In addition, the Central Bank conducts AML/CFT supervision of these companies based on Article 11, paragraph 1 sub a of the NOIS as well as Article 22h paragraph 1, sub a of the NORUT.

963. It should be noted that all foreign exchange transactions of money transfer companies are to be conducted through a foreign exchange bank in Curaçao. A foreign exchange bank is a credit institution licensed under Article 2, paragraph 1 of NOSBCI to conduct the business of a credit institution as meant in Article 1, paragraph 1, sub c of the same National Ordinance. In addition, those credit institutions also possess a foreign exchange authorization according to Article 9, paragraph 3 of the Central Bank Statute, authorizing them to conduct foreign exchange transactions with non-residents of Curaçao.

**Money or currency changing service**

964. In accordance with Article 8, paragraph 1 of the RFETCSM, the Central Bank is authorized to grant a license to persons or institutions empowering them to hold a bureau de change. However, it is the Central Bank's policy for more than two decades not to grant such licenses. Only domestic commercial banks operating under the provisions of the NOSBCI are permitted to provide the service of exchanging foreign currencies.

**Money transfer companies**

965. Up to 2005 money remitting services were in high demand due to the then heightened drug trafficking business that had affected the jurisdiction which was particularly noticeable among the MTC's. Consequently, both MTC's were examined by the Central Bank in 2005. The examination revealed that there were large quantities of reported transactions from the money remitting sector however, as of 2006 this quantity decreased. Therefore, in line with the risk based approach the Central Bank's emphatic focus had been shifted to other risk areas. Nevertheless, the MTC's business remains a sector which has the attention of the Central Bank.

| Inbound | | | | | |
|---|---|---|---|---|---|
| | 2007 | 2008 | 2009 | 2010 | Jan – July 2011 |
| Number of transactions | 48,150 | 55,536 | 57,965 | 57,702 | 33,551 |
| Value in Guilders | 42,780,358 | 40,146,067 | 35,222,369 | 21,772,224 | 35,780,287 |

| Outbound | | | | | |
|---|---|---|---|---|---|
| | 2007 | 2008 | 2009 | | Jan – July 2011 |
| Number of transactions | 124,280 | 153,043 | 180,868 | 180,103 | 104,581 |
| Value in Guilders | 50,923,614 | 66,216,078 | 72,908,217 | 74,290,291 | 43,190,828 |

966. In April 2009, the Central Bank announced that, as part of its continuous efforts to safeguard the integrity of the Netherlands Antillean financial sector and to prevent its misuse for ML and/or FT, it had further tightened its policy with respect to money transfer activities. The tightening entails that the Central Bank will neither issue new authorizations for the conduct of money transfer activities in Curaçao nor grant permission to open additional outlets for the conduct of these activities pending the implementation of the new legal framework for the supervision of MTCs and/or their (sub) representatives.

967. Furthermore, the Central Bank has, on occasion, referred MTCs operating without a license to the PPO for prosecution. Since 2001 when MTCs were brought under the ambit of the NOIS and NORUT, seven (7) money transfer companies that previously operated without the Central Bank's authorization were denounced to the PPO. However, these were all operating in St. Maarten.

***Recommendation 23& 32 –Ongoing supervision and monitoring***

**Credit institutions**

*968.* Credit institutions are subject to the Core Principles of the Basel Committee. Principle 18 of the Core Principles of the Basel Committee dated October 2006 prescribes the following with regard to the abuse of financial services:"*Supervisors must be satisfied that banks have adequate policies and processes in place, including strict "know-your-customer" rules, that promote high ethical and professional standards in the financial sector and prevent the bank from being used, intentionally or unintentionally, for criminal activities."*

*969.* Principle 18 also addresses twelve (12) essential criteria and one (1) additional criterion. (Reference documents: *Prevention of criminal use of the banking system for the purpose of money-laundering*, December 1988; *Customer due diligence for banks*, October 2001; *Shell banks and booking offices*, January 2003; *Consolidated KYC risk management*, October 2004; *FATF 40 + IX*, 2003 and *FATF AML/CFT Methodology*, 2004, as updated.).

970. The P&G for CI prescribe the policies and processes that should be in place, including the **"**know-your-customer" rules that promote high ethical and professional standards in the financial sector and prevent the bank from being used, intentionally or unintentionally, for criminal activities."

Licensing and structure

971. In Part II of the NOSBCI the general rules for natural and legal persons wishing to engage in the business of credit extension are set out. Prior to extending credit, these persons are required to obtain a license from the Central Bank. It is therefore imperative that the Central Bank obtains sufficient data upon which it can rely for its decision to grant the license. Article 3 of the NOSBCI indicates the necessary information that needs to be sent along with the application for the license. The Central Bank maintains a register in which all local and foreign banks in the possession of a license are registered.

*972.* With respect to risk management processes to identify measure, monitor and control risks, the Central Bank's department which is charged with the supervision of financial institutions is the *Banking Field Supervision Department*. The RBA, based on the CAMELS system, is used to determine the priority and frequency of visits to the institution and hence a yearly examination plan is set up. The supervision of the AML/CFT regime is incorporated in the Management and Organization section of the *CAMEL*. The examination can take place in different forms. It can be a full-scope examination, a targeted examination, a quick scan or a special assignment.

973. With respect to consolidated supervision, there are MOUs in place between the Central Bank and other supervisory authorities. Under the MOUs that are in place, the Central Bank's directors and staff have regular contact with the supervisory authorities. During these contacts, the status and the expertise of the local management of the relevant foreign banking operations are discussed, which also helps to evaluate the oversight of the bank's management of its foreign operations.

974. With respect to supervision of overseas activities of locally incorporated banks, according to Article 17, the Central Bank has the authority to request all information from every corporation or institution in which the supervised institution has an interest, or from every corporation or institution that has an interest in a credit institution, which it deems necessary for the exercise of supervision on a consolidated basis.

975. With respect to home country access to local offices and subsidiaries, Article 25 of the NOSBCI provides that the Central Bank has the authority, within the framework of the prudential supervision, to permit foreign supervisory authorities to carry out investigations at credit institutions established in Curaçao that are under the consolidated supervision of the foreign authorities. Furthermore, the Article specifies that the Central Bank may stipulate conditions or give directions for the implementation of such supervisory activities. The MOUs also state that branches and subsidiaries established in the country of one of the parties may be inspected on-site by the home supervisor, provided adequate notification procedures and procedures to communicate results of such examinations are established.

976. For significant overseas operations of its banks, the home country supervisor establishes informal or formal arrangements (such as MOUs) with host country supervisors for appropriate information sharing on the financial condition and performance of such operations in the host country. Information sharing arrangements with host country supervisors include being advised of adverse assessments of such qualitative aspects of a bank's operations as the quality of risk management and controls at the offices in the host country.

977. Article 41 of the NOSBCI allows the Central Bank to provide information and data obtained in the performance of its duty to foreign supervisory authorities responsible for the supervision of institutions and corporations operating on the financial markets provided certain conditions are met.

978. Credit institutions are required to inform the Central Bank when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (i.e., host country) laws, regulations, or other measures, in accordance with the P&G for CI.

979. Jurisdictions are considered as high-risk and non-cooperative when they have detrimental rules and practices in place which constitute weaknesses and impede international co-operation in the fight against ML and FT.

Insurance companies and brokers

980. Insurance companies must apply for a license with the Central Bank in order to be engaged in the insurance industry in Curaçao. A company engaged in the insurance business with its registered office within Curaçao must have the legal status of a limited liability company (N.V.), private limited liability company (B.V.) or mutual insurance company.

981. In order for a broker to operate in Curaçao, it should apply to be registered in the insurance brokerage register maintained by the Central Bank. Brokers may operate through a private proprietorship or corporate body.

982. Insurance companies should be managed prudently. In line with IAIS Core Principle 9, the Central Bank has issued Corporate Governance provisions and guidelines for the Supervisory Board of the supervised financial institutions, and requires compliance with these corporate governance guidelines. The Central Bank has also issued guidelines as to the number of (Co) policy-positions permitted per person.

983. Members of the Supervisory Board, senior management and ultimate beneficial owners are also subject to integrity testing (IAIS Core Principle 7). Persons that fail the integrity test are not as an ultimate beneficial owner or to assume a position within the Supervisory Board or management of the company.

984. The companies supervised by the Central Bank's Institutional Investors Department are required to report on an annual basis to the Central Bank. For this reporting, the Central Bank has designed statements (ARAS filings) which upon submission have to provide a clear picture of the management carried out by the insurer and of his financial situation. Through this reporting risks are identified which are further dealt with either through desk supervision or onsite examinations. Companies are required to report within six months after the end of each financial year.

985. Based on article 27 paragraph 1 of the NOSII, insurance companies with a registered office within Curaçao in addition to the ARAS filings, have to submit to the Central Bank a copy of the annual report.

986. Article 27, paragraph 2 of the NOSII place similar requirements on hat insurance companies operating Together with the financial documentation, companies are also required to submit the following documentation:

- Information Form
- Statement of Employment
- Certified shareholders' Information Form
- Management letter issued by external auditor

- Statement of Compliance signed by the Board of Supervisory Directors and certified by the external auditor

987. The Authorities have asserted that the P&G for IC & IB is in line with the prescriptions set forth in the "International Association of Insurance Supervisors, Guidance Paper on Anti-Money Laundering and Combating the Financing of Terrorism" dated October, 2004. These provisions and guidelines enable the Central Bank to supervise insurers and intermediaries for AML/CFT purposes to prevent and counter such activities. The Central Bank assesses the adequacy and quality of the AML/CFT measures taken by the companies under supervision to ensure that they are in compliance with relevant AML/CFT laws and regulations.

Integrity supervision General

988. The Central Bank has established a special and separate department to assist other supervision departments with additional expertise in the area of integrity risk prevention. The Integrity Financial Sector Unit executes its advisory, instructive and coordinating function within the Central Bank on the basis inter alia of. the following instruments:

- the Register Integrity Financial Sector (with Regulation Code), including reported incidents pursuant to the *Central Bank Policy Rule For Sound Business Operations In The Event Of Incidents And Integrity-Sensitive Positions*;
- the Covenant on Information Exchange as concluded with the Public Prosecutor's Office;
- MOUs with foreign supervisory authorities; and
- the Policy Rule on Integrity Testing.

989. Natural and legal persons providing money transfer services fall under the scope of the NOIS and NORUT (Article 1, paragraph 1 sub b 10° of the NOIS and Article 1, paragraph 1 sub a 10° of the NORUT) and are subjected to the Central Bank's AML/CFT supervision. The Central Bank has issued guidelines to which the money transfer companies have to adhere (P&G for MTC). In Curaçao only legal persons provide money transfer services.

990. As previously noted, only domestic commercial banks operating under the provisions of the NOSBCI are permitted to provide the service of exchanging foreign currencies. These domestic commercial banks are also subjected to the NOIS and the NORUT.

Money transfer companies

991. Supervision of these companies occurs based on Article 78 of the RFETCSM. In addition, the Central Bank conducts AML/CFT supervision on these companies based on Article 11, paragraph 1 sub a of the NOIS as well as Article 22h paragraph 1, sub a of the NORUT.

992. The Central Bank's Banking Supervision Department performs on-site examinations on these types of institutions. A risk based approach is adopted as to the frequency and timing of the examinations. During the on-site examinations a thorough AML/CFT review takes place and the following is assessed:

- The presence and functioning of a compliance officer;
- Client identification before rendering of financial services;
- Timely reporting to the reporting center;
- The presence and quality of the AML/CFT manual;
- The frequency and quality of the AML/CFT training sessions to staff;
- Internal control measures, e.g. segregation of duties.

**General**

993. The Central Bank's AML/CFT supervision is part of its regular (integrity) supervision. This is an ongoing process whereby the supervisor regularly requests information and visits the (financial) institutions. The Authorities provided comprehensive statistics on onsite examinations since 2005 by each type of supervised licensee, together with information on formal requests for assistance. Whenever insufficient compliance with the laws is detected, the supervisor has primarily used moral suasion to bring about corrective action.

994. In one case the emergency measures were applied to a credit institution and the license was revoked because of the possible violation of the AML legislation.

**Credit institutions**

Table 6: On-site examinations

| | ***2005*** | ***2006*** | ***2007*** | ***2008*** | ***2009*** | ***2010*** |
|---|---|---|---|---|---|---|
| Examinations without AML/CFT components | 0 | 1 | 0 | 0 | 6 | 4 |
| Examinations with AML/CFT components | 11 | 8 | 12 | 7 | 4 | 22 |
| **Total Examinations conducted** | **11** | **9** | **12** | **7** | **10** | **26** |
| **Total licensed credit institutions:** | | | **78** | **79** | **77** | **77** |
| - **Domestic commercial banks** | | | **11** | **12** | **13** | **13** |
| - **International banks** | | | **34** | **36** | **34** | **34** |
| - **Credit unions** | | | **16** | **16** | **16** | **16** |
| - **Specialized credit institutions** | | | **6** | **6** | **6** | **6** |
| - **Savings bank** | | | **1** | **1** | **1** | **1** |
| - **Savings and credit funds** | | | **10** | **8** | **7** | **7** |

995. Given the risk based approach adopted it is not clear whether an onsite programme commensurate with licensees risk profile has been executed. Statistics provided by the Authorities reflect good inspection coverage in 2010 based on asset base. However, this was not the trend over the period.

996. In 2010, the twenty-two (22) examinations all related to international banks and represented 80% of the total assets of all thirty-four (34) such licensees. In 2009, the four (4) examinations conducted related to local banks and represented forty percent (40%) of total local bank assets. No AML/CFT examinations with AML/CFT components were conducted at international banks in 2009. In 2008, six (6) of 32 international banks were examined representing thirty-seven (37%) of total assets; while one (1) local bank was examined.

997. The below statistics highlight the sector-specific percentage representation of the institutions that were subjected to an on-site examination by the Central Bank from 2008 through 2010, in terms of total assets (for investment institutions' sector) and total clients (for trust service providers' sector and administrators' sector).

Table 7.

| | **2008** | **2009** | **2010** |
|---|---|---|---|
| Local Investment Institutions (total assets) | 1.39% | 0.13% | 40.64% |
| Foreign Investment Institutions (total assets) | 0.00% | 0.00% | 100.00% |
| Trust Service Providers (total clients) | 23.00% | 30.33% | 7.34% |

| | | | |
|---|---|---|---|
| Administrators (total clients) | 2.49% | 0.00% | 81.03% |

Table 8: Incomplete files regarding the NOIS/P&G

| | *2005* | *2006* | *2007* | *2008* | *2009* | *2010* |
|---|---|---|---|---|---|---|
| Incomplete files regarding the NOIS/P&G (Incomplete) | 23 | 31 | 21 | 14 | 8 | 32 |
| Incomplete files regarding the NOIS/P&G (complete) | 90 | 103 | 136 | 67 | 40 | 117 |
| Incomplete files regarding the NOIS/P&G (partially complete) | 180 | 160 | 241 | 115 | 98 | 189 |
| **Total files examined** | **293** | **294** | **398** | **196** | **146** | **338** |
| **Total on-site examinations conducted** | **11** | **8** | **12** | **7** | **4** | **22** |

998. A complete file contains one of the following documents for individual clients (resident and non-resident): driver's license, identity card, travel document/passport or any other document designated by the Minister of Finance. For non-resident clients the identity must be verified and in the case of non-face-to-face client relationship, the identification documents must be certified. For corporate clients, the file should contain articles of incorporation or reference letters, signature cards, a certified extract, personal identification document of all managing directors and proxy holders, personal identification documents of all ultimate beneficial owners holding a qualifying interest of twenty-five percent (25%) or more of nominal capital.

Table 9: Total number incomplete manual, insufficient training and Compliance Officers not appointed.

| | *2005* | *2006* | *2007* | *2008* | *2009* | *2010* |
|---|---|---|---|---|---|---|
| Incomplete manual | 3 | 5 | 6 | 4 | 2 | 9 |
| insufficient training for employees | 1 | 6 | 6 | 3 | 3 | 8 |
| Compliance officers not appointed to supervise | 0 | 0 | 1 | 0 | 1 | 0 |
| | | | | | | |
| Total on-site examinations conducted | 11 | 8 | 12 | 7 | 4 | 22 |

999. The increased number of deficiencies is linked to the fact that more institutions were visited.

Table 10: Reporting to FIU (MOT)

| | *2005* | *2006* | *2007* | *2008* | *2009* | *2010* |
|---|---|---|---|---|---|---|
| Unusual transactions not reported to FIU (MOT) | 26 | 21 | 18 | 26 | 7 | 35 |
| Not timely reported to FIU (MOT) | 3 | 7 | 7 | 2 | 3 | 1 |

1000. The rise between 2009 and 2010 is attributed to the increase in institutions visited.

**Money Transfer Companies**

Table 11: Examinations with AML/CFT component

| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|---|
| Examinations with AML/CFT component | 2 | 1 | 1 | 1 | 0 | 1 |

1001. Both MTCs were inspected in 2005 following heightened drug trafficking business which was particularly noticeable among MTCs.

Table 12: Examinations non-compliant with NOIS / P&G

| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|---|
| Examinations non-compliant with NOIS / P&G | 0 | 0 | 0 | 1 | 0 | 1 |

1002. During the examinations in 2008 and 2010 non-compliance with the NOIS and the P&G was observed since some clients had not been (properly) identified before a financial service was rendered to them.

1003. Mostly after 2007 a general improving trend is depicted; this is due to an increased AML/CFT awareness within the MTCs. Compliance officers have been appointed and attention has been given to the quality and contents of the AML/CFT manuals. MTCs conduct training for their employees at least once a year.

Table 13: Examinations with Incomplete manual, insufficient training for employees and compliance officers not appointed

| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|---|
| Incomplete manual | 0 | 1 | 1 | 0 | 0 | 0 |
| Insufficient training for employees | 1 | 1 | 1 | 0 | 0 | 1 |
| Compliance officers not appointed | 1 | 1 | 0 | 0 | 0 | 0 |

Table 14: Reporting to FIU (MOT)

| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|---|
| Transactions not repoted to FIU | 1 | 0 | 0 | 1 | 0 | 0 |
| Transactions not timely reported to FIU | 1 | 1 | 1 | 1 | 0 | 1 |

1004. Transactions are being reported, but this does not always take place on a timely basis. The Central Bank plans to continue to emphasize the importance of timely reporting to the FIU (MOT).

## Insurance companies

Table 15 On-site examinations conducted

| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|---|

| | | | | | | |
|---|---|---|---|---|---|---|
| Examination at life insurer | 2 | 1 | 2 | 1 | 1 | 6 |
| Examination with AML/CFT component | 0 | 0 | 0 | 0 | 1 | 6 |
| **Total Examinations conducted** | **17** | **4** | **10** | **12** | **11** | **11** |
| **Total licensed life insurance companies** | **10** | **10** | **11** | **10** | **10** | **10** |
| **AML Examinations : Total Licensees (Life)** | | | **0** | **0** | **0.1%** | **0.6%** |

Table 16: Incomplete files regarding NOIS/P&G

| | **2009** | **2010** |
|---|---|---|
| Client files reviewed | 0 | 174 |
| Incomplete files regarding NOIS/P&G | 0 | 68 |
| Examination of life insurer | 1 | 6 |

1005. One (1) examination of a life insurer took place in 2009. No review of client files was undertaken. The missing information in the files concerns primarily KYC documents.

**FIU (MOT) reporting**

1006. During the examinations in 2010, the Central Bank determined that the combined life insurers had reported 155 transactions to the FIU (MOT). During these examinations the Central Bank encountered one (1) transaction that should have been reported. None of the reported unusual transactions have been disseminated to the PPO by the FIU (MOT).

**Measures**

1007. The on-site examinations conducted by the Central Bank at mentioned institutions/persons are full scope or targeted (which entails AML/CFT compliance). The Central Bank gives instructions in the examination reports to the supervised institutions/persons to take corrective measures within a stipulated timeframe. The timeframe to remedy the violation/issue is dependent among other things upon the gravity and frequency of occurrence of the violation issue. The Central Bank also conducts follow-up examinations to determine the status of progress made relative to the correction/resolution of the violation/issue. Meetings with the management of the supervised institution or the supervised person are at times in that respect also held at the Central Bank or at the supervised institution/person. Failure to adhere to the instructions of the Central Bank or to take corrective measures in a timely manner may result in further actions, such as the imposition of fines or withdrawal of the license.

1008. Through moral suasion, corrective measures are normally taken by licensees, and the Central Bank has indicated that the need to impose further sanctions is then in most cases, not necessary. For the most serious violations/issues, the supervised institution/person is requested to file on a periodic basis a progress report with the Central Bank until the violation /issue is corrected or resolved.

**Requests for Assistance**

1009. Curacao (and Sint Maarten) have signed a number of MOUs as follows:

- Central Bank of Curacao and Saint Marteen (CBCS) & Dutch Central Bank – credit institutions
- CBCS and Dutch Central Bank – financial institutions in Bonaire, Saint Eustatius and Saba (BES)
- CBCS and Dutch Supervisory Authority Financial Markets – financial institutions BES
- CBCS and Central Bank of Aruba and Dutch Central Bank – trilateral MOU for financial sector
- CBCS and Central Bank of Aruba - credit institutions
- CBCS and Central Bank of Aruba – insurance companies
- Regional MOU – financial institutions i.e. banks, non-bank financial institutions, insurance company, pension fund and any other institutions that provides financial services
- CBCS and Venezuela – credit institutions
- CBCS and Honduras – credit institutions (LAAD AMERICAS NV)

Table 17 International Requests Received from Foreign Regulatory Bodies

| Requests From | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|
| Supervisory departments of the Central Bank | 0 | 1 | 1 | 1 | 2 |
| Foreign Regulators (and completed) | 16 | 30 | 7 | 23 | 54 |
| Total | 16 | 31 | 8 | 24 | 56 |

***Recommendation 25* –Guidelines (Guidance for financial institutions other than on STRs)**

1010. The Central Bank has issued sector specific P&Gs for all supervised institutions: Credit Institutions, Insurance Business and Broker Insurance and Money Transfer Companies which provide the financial institutions with assistance to implement and comply with the AML/CFT requirements. The P&Gs are issued under the authority of the NOIS, the NORUT and the respective supervisory ordinances.

1011. In addition, the Central Bank provides guidance in the form of seminars and consultations available to the financial institutions under its supervision. The last sessions for the respective sectors under the Central Bank's supervision were held in June 2010. During these sessions information was i.a. given on the latest changes to the P&Gs. The audience was given the opportunity to exchange ideas with the Central Bank's personnel on how, to meet particular AML/CFT obligations from a practical perspective.

1012. Furthermore, the Central Bank publishes, among other things, warning notices on its website which include publications from the FATF and/or MONEYVAL. In addition, the Central Bank

sends letters to the representative organizations to inform them about the matters covered in the publications as well as other relevant matters that require immediate attention.

1013. The representative organizations are:

- Curaçao Bankers Association;
- Sint Maarten Bankers Association;
- Curaçao International Financial Services Association;
- International Bankers Association in the Netherlands Antilles;
- Nederlands Antilliaanse Vereniging van Verzekeraars (representative organisation for insurance companies);
- Unie van Assurantie Consultants (Curaçao representative organisation for insurance brokers).
- St. Maarten Insurance Brokers Association (SIBA) (St. Maarten representative organisation for insurance brokers).

1014. With the recent inclusion of factoring services in the NOIS and NORUT, guidelines may be needed for such service providers who will now fall under the supervision of the Central Bank.

3.10.2 Recommendations and Comments.

*Recommendation 17*

1015. With respect to EC 17.1, the range of sanctions under the various Ordinances should be reviewed with a view to harmonising and ensuring effectiveness, dissuasiveness and proportionality as follows:

- The power to appoint a trustee/administrator should apply under the RFETCSM, NOSII and NOIB
- Revocation of the license or dispensation should be available under the NOSSE NOSII and NOIB
- The power to impose administrative fines for AML/CFT violations should be available under the NOIB.
- Referral for criminal investigation or prosecution by the Central Bank should be available under the NOIB, NOSII

1016. The application of conditions and application of sanctions under the RFETCSM to non-bank MTCs should be clarified.

*Recommendation 23*

1017. The new framework for prudential supervision of MTCs should be implemented as soon as possible.

*Recommendation 25*

1018. In light of recent the National Decree Designating Services, Data and Supervisors under the NOIS (when Providing Services), a framework, inclusive of a P&G, should be implemented.

*Recommendation 29*

1019. Albeit the risk-based approach, the onsite supervision programme should cover more licensed financial institutions and. include a file review.

*Recommendation 30*

1020. The Authorities should review and strengthen as necessary, the resources available to supervise financial institutions

3.10.3 Compliance with Recommendations 23, 29, 17 & 25

| | Rating | Summary of factors relevant to s.3.10 underlying overall rating |
|---|---|---|
| **R.17** | **PC** | • **The range of administrative sanctions available to the Central Bank under the various Ordinances is uneven.**<br>• **The procedures under the RFETCSM to impose sanctions on non-bank MTCs are unclear and may prove ineffective.**<br>• **Effectiveness of the range of sanctions available for non-compliance with requirements cannot be determined given the limited employ of such.** |
| **R.23** | **LC** | • **Financial institutions engaged in factoring services were only recently subject to the NOIS and NORUTT and subject to supervision by the Central Bank.** |
| **R.25** | **PC** | • **P&G for providers of factoring services not in place to assist in implementing and complying with AML /CFT requirements.**<br>• **See also summary factors at Sections 3.7 and 4.3 of the Report.** |
| **R.29** | **LC** | • **Limited number of AML onsite inspections do not definitively demonstrate adequacy of supervisory powers.** |

## 3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis (summary)

***Special Recommendation VI***

1021. Money transfer companies (MTCs) operate in Curaçao pursuant to the legal provisions of the Regulations for Foreign Exchange Transactions Curaçao and Sint Maarten (N.G. 2010, no. 112) (RFETCSM). MTCs also fall under the NOIS and the NORUT since the year 2000 (Article 1, paragraph 1 under a sub 10° of the NORUT and Article 1 paragraph 1 under b sub 10° of the NOIS). Currently, there are two (two) MTCs operating in Curaçao.

1022. A foreign exchange license is necessary to conduct the business of a money transfer company.

1023. At the moment there is also draft legislation on the supervision of money transfer companies. The Central Bank is charged with the supervision of the money transfer companies (natural and legal persons) to ensure compliance with the NOIS (Article 11, paragraph 1 under a), the NORUT (Article 22h paragraph 1 under a) and the RFETCSM (Article 21). Onsite inspections to verify the compliance with the NOIS and NORUT are done based on these Articles together

with Article 78 of the RFETCSM. The Central Bank maintains a current list of the names and addresses of licensed and/or registered MTCs and their sub-representatives, evidence of which was made available to the Examiners. There is no explicit requirement in the P&Gs for MTCS to maintain such lists.

1024. The Central Bank has issued guidelines for MTCs: "Provisions and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing for Money Transfer Companies" under the RFETCSM, and also under the NOIS (Article 11, paragraph 3) and NORUT (Article 22h, paragraph 3).

1025. During on-site examinations the Central Bank verifies whether the requirements as set forth in the guidelines are adhered to. Interviews held with the compliance officers of the supervised institutions constitute an important part of the field work. In addition, a sample based review of the send/receive forms is performed in which the sent/received amounts are verified (adherence to thresholds) and also whether copies of identification documents are made.

1026. MTCs are subject to FATF Recommendations 4-11, 13-15 and 21-23 and the FATF Nine Special Recommendations (in particular SR.VII). The responses at these sections of the Report also make specific reference to MTCs. Certain Essential Criteria of Recommendations 5 and 8 (5.4/ 5.5/ 5.6/5.18/ /8.2) and Recommendations 7, 9 and 22 are not applicable to MTCs (except for Essential Criteria 5.5.1.). See factors at section 3.2.2 which apply to MTCs. Additional information over and above what was previously stated is reflected below.

1027. With regard to anonymous accounts (E.C. 5.1) there is no provision in law or regulation regarding fictitious or anonymous accounts. However, the P&G indicates that MTCs must develop clear customer policies and procedures with regard to rendering money transfer services, including a description of the types of customers that are likely to pose a higher than average risk to the company. The policy must ensure that transactions will not be conducted with customers who fail to provide satisfactory evidence of their identity, and anonymous transfers and fictitious names must be prohibited.

1028. With regard to CDD (E.C. 5.2), the findings noted at R.5 also apply to MTCs. According to the P&G transactions processed by a MTC for occasional customers will be classified as an incidental service. Management's responsibility is to make the staff aware of all the relevant current arrangements or procedures. The procedure for the identification of regular personal customers must also be applied for the identification of occasional personal customers. Identification will be necessary for all transactions and for the amounts above the limits established by the Minister of Finance, as referred to in the Ministerial Decree as published in the N.G. 2010, no.11.

1029. By said Ministerial Decree, the threshold set for occasional transactions relating to a transaction or apparently related transactions, with an equivalent or joint equivalent is set at NAf 20,000 (approximately US$ 11,000) which is below the US$ 15,000 threshold in the FATF Standard.

1030. The P&G indicates that MTCs may only offer their money transfer services to natural persons and have the obligation to identify those (prospective) personal clients before rendering them money transfer services. It is also mentioned that the efforts to "know your customer" must continue even after the client has been identified.

1031. With regard to required CDD measures (E.C. 5.3), the findings noted earlier at R.5, section 3.5 of the Report also apply to MTCs. In addition, identification requirements are indicated in the P&G where a distinction is made between resident and non-resident clients.

1032. The P&G indicates that the legally allowed client identification documents and the nature of the transaction as prescribed in the NOIS must be regularly updated and adequately documented.

1033. Additionally, the P&G indicates that MTCs are required to ensure that documents, data, or information collected under the CDD process are kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships.

1034. MTC are not permitted to apply simplified or reduced CDD measures, only regular or enhanced CDD.

1035. With regard to the failure to satisfactorily complete CDD:

- As indicated in the P&G for MTCs, MTCs may only offer their money transfer services to natural persons and pursuant to Article 2 of the NOIS have the obligation to identify those (prospective) personal customers before rendering them money transfer services.
- As indicated the P&G, according to Article 11 of the NORUT, MTC are bound to report any unusual (intended) transaction thereby made or proposed to the FIU (MOT) without delay.

1036. The P&G do not explicitly require that a financial institution should consider making a suspicious report where the requirements at E.C. 5.3 to 5.6 are not met. In addition, a subjective indicator for 'identification problems' is not identified as it relates to MTCs under the NORUT.

1037. Pursuant to Article 20, paragraph 1 of the NORUT the person that reports the suspicious transaction is prohibited by law from disclosing such. In addition, as indicated in the P&G for MTCs, management must establish a policy to ensure that: the MTC and its Supervisory Directors, senior management and employees do not warn customers when information about them has been reported to the FIU (MOT), or on internal inquiries made by the institution's compliance staff on them.

1038. The findings noted previously with regard to giving special attention to business relationships and transactions with person (including legal persons and other financial institutions) from or in countries that do not or insufficiently apply the FATF Recommendations also apply to MTCs. In addition the MTC policies and procedures must at least require the company to ascertain that the respondent foreign MTC has effective customer and know-your-customer (KYC) policies with respect to rendering money transfer services, and is effectively supervised.

1039. During the on-site examinations the Central Bank verifies whether the MTCs comply with the requirements in the P&G. Interviews held with the compliance officers of these institutions constitute an important part of the field work. In addition the following is assessed:

- A review of the AML/CFT manual of the institution;
- The (technological) methodologies used to detect unusual transactions;
- The timeliness of reporting of the unusual transactions through a sample review;
- The security related to working space of the compliance officer;
- Whether legal persons are making use of the services of the MTC.

1040. As part of the Central Bank's continuous efforts to safeguard the integrity of the local financial sector and to prevent its misuse for money laundering and terrorist financing activities, it has further tightened its policy with respect to money or value transfer activities. Part of this measure is that all companies authorized by the Central Bank to conduct money or value transfer activities are required to update the Central Bank on the number of (sub-) representative(s) of their companies and the location from which each (sub-) representative conducts money or value transfer business.

1041. Furthermore, the current companies authorized by the Central Bank to conduct money or value transfer activities are not allowed to increase their number of outlets offering money or value transfer services without the prior consent of the Central Bank.

3.11.2 Recommendations and Comments

1042. The P&G for MTCs should explicitly require that a financial institution consider making a UTR/STR where the requirements at E.C 5.3 to 5.6 are not met.

1043. The Authorities should create or indicate a subjective indicator for identification problems as it relates to MTCs under the NORUT'.

1044. There should be an explicit requirement for MTCs to maintain a current list of agents.

3.11.3 Compliance with Special Recommendation VI

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **SR.VI** | **PC** | • **No legislative requirements for CDD when carrying out occasional wire transfers in the circumstances covered by the Interpretative Note to SR VII.**<br>• **No legislative requirements for service providers to conduct on-going due diligence on the business relationship.**<br>• **No explicit requirement in the P&G for MTCs requiring financial institutions to consider making a UTR where the requirements at E.C 5.3 to 5.6 are not met.**<br>• **See factors in sections 3.1 – 3.10 which apply to MTCs.**<br>• **A subjective indicator for identification problems is not specified for MTCs under the NORUT.**<br>• **The sector P&Gs do not conform to the NOIS as it relates to the timing of verification of non-resident clients.**<br>• **The P&G for MTCs should include an explicit requirement for MTCs to maintain a current list of agents.** |

## 4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

**General**

1045. DBFBPs are supervised by the FIU (MOT), Central Bank and the Gaming Control Board (GCB). The Designated Non-Financial Business and Professionals in Curacao are:

- Lawyers, notaries, accountants, real estate brokers, dealers in precious metals and precious stones, tax advisers, administration offices and car dealers, all of whom are supervised by the FIU(MOT);
- Administrators, company service providers (licensed legal persons, licensed natural persons, legal persons with dispensation, natural persons dispensations) all of whom are supervised by the Central Bank; and
- Casinos - land based casinos supervised by the GCB, while Internet casinos, lotteries and other games of chance are the responsibility of the Ministry of xx.

**Legal Framework**

1046. In addition to the executive decrees, regulations and provisions cited at Section 3 of this Report, some of which apply to DNFBPs, such as the NORUT and NOIS, the AML/CFT framework for DNFBPs consist of:

- AML/CFT directives (Provisions and Guidelines) for the DNFBP supervised by the FIU (MOT).
- AML/CFT directives (Provisions and Guidelines ) for the DNFBPs supervised by the Central Bank
- National Ordinance on the Supervision of Investment Institutions and Administrators (N.G. 2003, no.114) (NOSIIA).
- National Ordinance on the Supervision of Company (Trust) Service Providers (NOSTSP).
- Island Ordinance Casino Sector Curaçao.
- Minimum Internal Control Standards (MICS) for the Casino sector;

1047. The NOIS and the NORUT apply also to DNFBPs. Article 1, first paragraph, sub b under 11˚ through 15˚of the NOIS and article 1, first paragraph, sub a under 11˚ through 15˚of the NORUT stipulate the services of the DNFBPs brought under the AML/CFT obligations of both ordinances. These services are as follows:

i. Offering prices and premiums, which can be competed for against payment of a value that is more than an amount to be determined by the Minister, in the framework of:

   a) the operation of games of hazard, casinos and lotteries
   b) the operation of offshore games of hazard

ii. Acting as an intermediary with respect to purchasing and selling real estate and associated rights ;
iii. Dealing in vehicles, precious stones, precious metals, ornaments, jewels or other matters of great value so designated by Government decree
iv. Granting fiduciary services including the provision of management services in or from the Netherlands Antilles for international companies including ;

   1. making natural or legal persons available as a manager, representative, administrator or other official for international companies;
   2. providing domicile and office facilities for international companies;

3. establishing or liquidating international companies by order of, and at the expense of third parties.

v. A natural or legal person or company performing activities in the capacity of a lawyer, notary, accountant, tax adviser or a similar legal profession or trade, giving advice or assistance for :

a. Purchasing or selling of real estate
b. Managing funds, securities, coins, Government notes, precious metals, precious stones or other values
c. Establishing and managing corporations, legal persons or similar bodies
d. Buying or selling or taking over enterprises

1048. In addition, the National Decree for General Measures issued on September 2, 2011 further defined service include the following DNFBP activities:

a) The providing of accounting services, whether or not against payment for the benefit of investment institutions including in any case the following:

i. The conducting of the management of an investment institution including the providing of natural or legal persons charged with the duties of managing director, representative or other executive officer, including the decision-making;

ii. The accounting, including the conducting of the bookkeeping as well as the acquiring, recording, processing of information to be used in the managing and running of an investment institution, respectively, the acquiring, recording and processing of subscriptions, the surrendering of securities in investment institutions and the providing of information to parties entitled to said securities;

iii. The providing of domicile and office facilities for the benefit of investment institutions.

b) The management of portfolios individually or collectively, as well as the investing, the accounting and managing of moneys for the benefit of third parties
c) The acting as representative of a trust as referred to in Title 6 of Book 1 of the Civil Code.

1049. The fiduciary services listed above do not include lawyers, notaries, accountants or similar legal professions or trade preparing for or carrying out transactions for clients dealing with the organisation of contributions for the creation, operation or management of companies and for trust and company service providers carrying out transactions for clients dealing with acting as (or arranging for another person to act as) a nominee shareholder for another person. As such these activities are not subjected to AML/CFT obligations as required by FATF standards.

1050. The following National Decrees became effective in September 2011:

- National Decree providing for general measures of 8$^{Th}$ August 2011 for the implementation of Articles 1, paragraph 1, subsection b, under 16, 6, subsection d, under 12 and 11, paragraph 2 of the National Ordinance on Identification of Clients when rendering Services. (National Decree designating services, data and supervision under the National Ordinance on the Identification of Customers when Providing Services)(N.G. 2011, no. 32); and

- National Decree providing for general measures of 8Th August 2011 for the implementation of Articles 1, paragraph 1, subsection a, under 16, and 22 h paragraph 2 of the National Ordinance of Unusual Transactions (National Decree designating services and supervision under the National Ordinance on the Reporting of Unusual Transactions) (N.G. 2011, no. 31).

1051. Article 11, paragraph 1 of the NOIS and article 22h, paragraph 1 of the NORUT provide for the supervision of the DNFBP. Paragraph 3 of said Articles entitles the supervisor to issue provisions and guidelines in order to advance compliance with the NOIS and NORUT respectively the NORUT.

1052. AML/CFT Procedures and Guidelines have been issued for the following:

- Company Trust Service Providers
- Administrators of Investment Institutions and Self-Administered Investment Institutions
- Car Dealers and Jewellers
- Lawyers, Civil Law Notaries, Accountants, Tax Advisors and Trust Officers
- Real; Estate Agents

1053. In addition the GCB has issued the Minimum Internal Controls Standards (MICS) which include AML/CFT obligations for casinos. There are approximately thirty (30) on-line gaming operators, ten (10) of which are licensed and supervised by the BTP, whose only function is registration and licensing. There is no supervision in place to monitor internet casinos' AML/CFT operations. Furthermore, internet casinos are not specifically included in the NOIS and NORUT and therefore do not come under the AML/CFT obligation of these ordinances.

**Enforceability of P&G and MICS:**

1054. According to Article 11, paragraph 1, sub a of the NOIS, the Central Bank is the AML/CFT supervisor for administrators and company (trust) service providers. According to the third paragraph of the mentioned Article, the Central Bank is authorized to issue P&Gs in order to advance compliance with the NOIS. As such, the Central Bank has issued P&G for SAI & AII and P&G for TSPs. .It should be noted that the sector-specific P&G issued by the Central Bank under the authority of the NOIS, the NORUT and the respective supervisory ordinance are considered other enforceable means. (See. Section 3.1 of the Report). Conditions as noted in section 3.1 of this report with regard to sector specific P&Gs in the financial sector issued by the Central Bank are similar to those of the P&G issued for administrators and company (trust) service providers. As such, the P&Gs for administrators and company (trust) service providers are considered 'other enforceable means'.

1055. The FIU (MOT) has issued AML/CFT guidelines under similar authority as the Central Bank. It is noted that at the time of the Mutual Evaluation, a pilot program of test audits was being completed to commence a supervisory regime to monitor compliance. The programme's main focus was a learning exercise and the imposition of penalties was not considered. As such, at the time of the Mutual Evaluation there was no effective supervisory regime in place to monitor compliance of the DNFBPs under the authority of the FIU (MOT) with AML/CFT obligations.

1056. The MICS which include AML/CFT obligations for casinos and are subject to sanctions under the Island Ordinance Casino Sector Curaçao. Sanctions include revocation of licence and imposition of penalty payments on a one time and daily basis. However, there penalties are not considered broad or proportionate. (See. Section 4.3 of the report). Additionally, no penalty for

contravention of the, MICS has been imposed by the GCB on a casino. Based on the foregoing, the MICS is not considered OEM.

## 4.1 Customer due diligence and record-keeping (R.12)
(applying R.5, 6, and 8 to 11)

### 4.1.1 Description and Analysis

1057. The latest amendments of the NORUT and the NOIS came into force as of May 15th, 2010. These amendments entail that as of aforementioned date lawyers, notaries, accountants, real estate agents, jewelers, car dealers, tax advisors and administrative offices (the new reporting entities) are required by law to identify their clients and to report any unusual transaction to the FIU (MOT) in accordance with the requirements of the NORUT and the NOIS. FIU (MOT) has issued AML/CFT directives (provisions and guidelines) for lawyers, civil law notaries, accountants, real estate agencies, tax advisors and administrative offices that allow them to implement a risk-based approach. FIU (MOT) has also issued provisions and guidelines for real estate agents, jewelers and car dealers. With regard to the latter, a rule-based system is applied because these reporting entities have insufficient experience to implement and apply an effective risk based approach. The Central Bank as the AML/CFT supervisor for administrators and company (trust) service providers has also issued AML/CFT P&G for these institutions.

**Applying Recommendation 5**

1058. As noted DNFBPs are required to comply with the AML/CFT obligations of the NOIS, which include requirements of Rec.5. These requirements in relation to the provisions of NOIS have been analyzed in Section 3.2 of this Report and the deficiencies identified are also applicable to DNFBPs under the supervision of the GCB and the FIU (MOT). In addition, other deficiencies which would have been dealt with if the FIU (MOT) guidelines and the MICS were OEM are indicated below.

**Casinos**

1059. According to the NOIS, casinos are subject to customer identification requirements when they engage in financial transactions equal to or above NAf 20.000 (about USD11,173). The threshold of NAf 20.000 is too high compared to the FATF threshold of USD 3,000 for casinos. The other CDD requirements stipulated in the NOIS are also applicable to casinos. These have been analysed in Section 3 of the Report. It is noted that according to the MICS casinos have the obligation to identify their customers before rendering them services for an amount higher than **NAƒ5.000.** This requirement is well under the FATF threshold of USD 3,000. Casinos are also required to have clear customer acceptance policies which ensure that transactions will not be conducted or member accounts opened with customers who fail to provide satisfactory evidence of their identity. Other specific requirements relating to Rec. 5 are set out in the MICS. However, since the MICS are not considered other enforceable means these measures do not comply with the requirements of Rec.5

**DNFBPs supervised by the FIU (MOT) and GCB**

1060. While the requirements below are set out in Guidelines issued by the FIU (MOT) for DNFBPs and the GCB for casinos they are still outstanding given the OEM status of the Guidelines:

a) The requirement in the case of legal arrangements, to take reasonable measures to understand the ownership and control structure of the customer and to identify the natural person that ultimately owns or controls the customer;

b) The requirement to establish the purpose and intended nature of the business relationship;

c) The requirement to conduct continuous due diligence on the business relationship and the transactions undertaken throughout the course of that relationship, to ensure that the client's records previously obtained by the service provider still reflect the client's risk profile.

d) The requirement to ensure that documents, data or information collected under the due diligence process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of investors.

e) The requirement to apply enhanced due diligence for higher risk clients and reduced or simplified measures for low risk customers

f) Requirement not to apply simplified CDD measures whenever there is a suspicion of money laundering or terrorist financing

g) The requirement for the termination of a business relationship already in existence or determining the submission of a report to the FIU (MOT) when the service provider has reasonable doubt regarding the accuracy of the data previously obtained and is unable to perform CDD measures anew.

h) Requirement for the application of CDD measures to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times.

**DNFBP supervised by the Central Bank**

Administrators

1061. The DNFBPs under the supervision of the Central Bank are also subject to the provisions of the NOIS and the NORUT. Additionally, as already noted the AML/CFT P&Gs issued by the Central Bank for administrators and company (trust) service providers are considered other enforceable means. These P&Gs have similar requirements with regard to Rec. 5 as the P&Gs issued by the Central Bank for other financial institutions which were analysed in section 3.2 of this report. The following provides an analysis of the compliance of the NOIS and the P&Gs of the administrators and company (trust) service providers with the requirements of Rec.5.

*Anonymous accounts*

1062. While there is no requirement in law or regulation prohibiting anonymous accounts, the NOIS requires all service providers including all DNFBPs to identify all clients. This provision effectively prohibits anonymous accounts and thereby complies with FATF standards.

1063. Article 2 of the NOIS states: "The service provider shall be under the obligation to establish the identity of a customer before rendering any service to such customer". The other elements of criterion 5.2 are also required to be in law or regulation and are set out in the NOIS except for the requirement for CDD when carrying out occasional wire transfers in the circumstances covered by the Interpretative Note to SR VII. These provisions are also contained in the P&Gs for the administrators and company (trust) service providers.

*Required CDD measures*

1064. Article 2, paragraph 1 of the NOIS contains the obligation for service providers to identify their clients prior to rendering a service and Article 3, paragraph 5 of the NOIS stipulates the service provider to identify and verify the identity of the client and the ultimate interested party using reliable and independent sources.

1065. With regard to the requirement for the identification and verification of the identification of legal persons and arrangements Article 5 of the NOIS contains stipulations regarding the identification of persons acting on behalf of a client or on behalf of a representative of a client. Article 5 paragraph 2 of the NOIS requires a service provider to verify that the person purporting to act on behalf of the customer is so authorized. Article 3, paragraph 2 of the NOIS contains stipulations regarding the identification of clients which are legal persons.

1066. In addition, the P&G for the SAI & AII and the P&G for TSP have requirements for the verification of the legal status of clients including resident and non-resident individuals, investment institutions and international companies. These requirements include information and documentation and are in accordance with FATF requirements.

1067. Article 2, paragraph 1 of the NOIS requires the service provider to establish the identity of a client and the ultimate beneficiary, if any, before rendering any service to that client. Article 3, paragraphs 4 of the NOIS stipulate that in the event of an ultimate beneficiary, the identity of this person shall be established as stipulated in the paragraphs 1-3 of that same Article. Paragraph 5 further stipulates that the service provider is required to verify the ultimate beneficiary's identity using reliable and independent sources.

1068. Article 5 of the NOIS requires service providers to verify whether a customer is acting on behalf of another person and to take reasonable steps to establish the identity of the other person.

1069. Article 3, paragraphs 1, 3 and 4 of the NOIS require the service provider to identify and verify the identity of the client and the ultimate interested party using reliable and independent sources. Article 5, paragraphs 2 and 4 of the NOIS require a service provider to verify whether a natural person is acting for himself or a third party and to take reasonable measures to trace the identity of the client for whom he is acting.

1070. With regard to the requirement for understanding the ownership and control structure of the customer, both the P&G of the SAI &AII and the P&G of TSP require administrators and company (trust) service providers to request information on the control structure of customers and the persons who exercise ultimate effective control. As already mentioned above, Article 3 of the NOIS has a provision for a service provider to identify the ultimate interested party of a client. The ultimate interested party is defined in Article 1, paragraph j as the natural person who has or holds a qualified participation or qualified interest in a legal person or corporation or the natural person who is entitled to the assets or the proceeds of a trust or private fund foundation. A qualified participation or qualified interest is defined as a direct or indirect interest of twenty-five percent (25%) or more of the nominal capital, or a comparable interest, or being able to exercise twenty-five percent (25%) or more of the voting rights directly or indirectly, or being able to exercise directly or indirectly a comparable control.

1071. According to the P&G for SAI & AII, administrators are required to obtain information on the purpose and intended nature of the business relationship with their (prospective) clients (being administered investment institutions) or (prospective) investors of the administered investment institutions prior to offering them administrative services. There is a similar requirement in the P&G for TSP to obtain information on the purpose and intended nature of the business relationship.

*Ongoing due diligence*

1072. The requirement for ongoing due diligence on the business relationship is not in law or regulation.

1073. The P&G for SAI & AII and the P&G for TSP both state that the execution of the "know your customer" policy must be a continuous process, even after the initial identification of the client.

1074. The P&G for SAI & AII and the P&G for TSP provide that the continuous due diligence process must include scrutiny of transactions undertaken throughout the course of the relationship to ensure that the transactions being conducted are consistent with the service provider knowledge of the client, its source of funds, and its (business and) risk profile.

1075. The P&G for SAI & AII and P&G for TSP provide that administrators and company (trust) service providers are required to ensure that documents, data or information collected under the due diligence process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of investors.

1076. The P&G for SAI & AII and the P&G for TSP require that extensive due diligence be conducted on high risk clients, including politically exposed persons ("PEPs"), families and associates of PEPs. Administrators should draft policies and procedures to include a description of the types of investor that are likely to pose a higher than average risk to the investment institutions. These policies and procedures must ensure that (prospective) investors will not be accepted in case they fail to provide satisfactory evidence of their identity. Company (trust) service provider may apply risk based approach to the identification requirements for parties providing instruction on behalf of the international company.

1077. Article 2, paragraph 4 of the NOIS allows the Minister of Finance to grant exemption from CDD requirements to locally licensed financial institutions and insurance brokers and other designated institutions. At the time of the mutual evaluation, locally licensed financial institutions and insurance brokers and specific members of designated stock exchanges were granted exemptions. This provision allows for the application of no CDD rather than reduced or simplified CDD for a specific category of clients which contradicts FATF standards.

1078. The P&G for SAI & AII and the P&G for TSP provide that administrators and company (trust) service providers are allowed to apply risk based approach ("RBA"). By adopting a RBA, clients identified as high risk must be subject to enhanced customer due diligence while low risk clients may be subject to simplified/reduced customer due diligence. There are circumstances where the risk of ML or FT is lower, where information on the identity of the customer and the beneficial owner of a customer is publicly available, or where adequate checks and controls exist elsewhere in national systems. In such circumstances simplified or reduced CDD measures can be applied when identifying and verifying the identity of the customer and the beneficial owner.

1079. While the P&G for SAI & AII and the P&G for TSP allow for simplified or reduced CDD measures the P&G does not limit service providers to countries that Curaçao is satisfied are in compliance with and effectively implementing the FATF Recommendations.

1080. The P&Gs for administrators and company (trust) service providers stipulate that simplified CDD measures are not acceptable whenever there is suspicion of ML or FT or specific higher risk scenarios apply.

1081. The application of the risk-based approach when conducting CDD is allowed as set forth in the P&G issued by the Central Bank for administrators and company (trust) service providers

*Timing of verification*

1082. Article 2, paragraph 1 of the NOIS stipulates that service providers are obligated to identify a client and the ultimate beneficiary, if any, prior to rendering a service. Article 3, paragraph 5 ~~4~~ of the NOIS stipulates that in the event of an ultimate beneficiary, the identity of this person shall be established as stipulated in the paragraph 1-3 of that same Article.

1083. Since the NOIS only provides for the verification of the identity of a customer and beneficial owner prior to rendering a service there is no provision for verification to occur following the establishment of a business relationship.

1084. The requirement for a financial institution to adopt risk management procedures for conditions where a customer is permitted to utilise a business relationship prior to verification is not applicable because service providers are prohibited from rendering a service prior to completion of CDD measures.

*Failure to satisfactorily complete CDD*

1085. Article 8 of the NOIS stipulates that the service provider is prohibited from rendering a service if the identity of the customer has not been established in the manner prescribed in the NOIS. The manner prescribed in the NOIS incorporates the requirements for criteria 5.3 to 5.6.However, there is no requirement in the NOIS or the P&Gs for administrators or company (trust) service providers for a service provider to consider making a suspicious transaction report where the requirements of E.C. 5.3 to 5.6 are not met.

1086. The P&G for SAI & AII provide on page 25 that there may be circumstances where an administrator (declines to establish a business relationship with a potential client or) refuses to render additional administrative services to an existing client because of serious doubts about the client's or its representative's "bona fides" and potential criminal background. All these decisions must be based on normal business criteria and the administrator's internal policy to guard against ML or FT. It is important for the administrator or self-administered investment institution to provide an audit trail for suspicious funds and report all the unusual (intended) transactions as soon as possible to the FIU (MOT).

1087. The P&G for SAI & AII and the P&G for the TSP provide that, where there are doubts, relating to the identity of the client after the client has been accepted, the relations with the client must be re-examined to determine whether it must be terminated and whether the incident must be reported to the FIU (MOT).

*Existing customers*

1088. The P&G for SAI & AII and P&G for TSP provide that service providers must apply CDD requirements to existing clients and may determine the extent of such measures on a risk sensitive basis depending on the type of customer, business relationship or transaction.

1089. Anonymous accounts are effectively prohibited by NOIS. Additionally, the P&G for TSP allows for numbered accounts to be only maintained in such a way that allows for full compliance with FATF identification requirements. This together with the fact that the Central Bank has not encountered any such accounts in its supervision makes the requirement for CDD measures to be carried out on existing customers with anonymous accounts not applicable.

**Recommendation 6**

**DNFBP supervised by the Central Bank**

Administrators

1090. The P&G for SAI & AII provide on pages 21 and 22 that administrators must develop clear client acceptance policies and procedures, including a description of the types of client that are likely to pose a higher than average risk to them. Administrators are required to conduct more extensive due diligence for high risk clients including PEPs, families and associates of PEPs. PEPs are defined in the P&G in accordance with FATF requirements.

1091. The P&G for SAI & AII on page 18 requires the administrator to obtain approval from senior management to establish a business relationship with PEPs, families and associates of PEPs.

1092. Pursuant to page 18 of the P&G for SAI & AII an administrator must undertake regular reviews of at least the more important customers to detect if an existing customer subsequently becomes a PEP. The approval of the senior management is required to continue the relationship with a customer that has become a PEP

1093. In relation to PEPs, administrators must make reasonable efforts to ascertain that the PEPs source of wealth or income is not from illegal activities (page 18 of the P&G for SAI & AII).

1094. Administrators are required to ensure that documents, data or information collected under the customer due diligence process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of clients or business relationships. In addition, they are required to conduct more extensive due diligence for high risk clients, PEPs, families and associates of PEPs (page 14 of the P&G for SAI & AII).

1095. Administrators and self-administered investment institutions are encouraged to conduct enhanced ongoing monitoring on PEPs who hold prominent public functions domestically (page 18 of the P&G SAI and SAI).

Company (Trust) Service Providers

1096. The requirements as stipulated in the P&G for SAI & AII in relation to Recommendation 6 as indicated above are also imposed on company (trust) service providers in the P&G for TSPs.

**DNFBPs supervised by the MOT and the GCB**

1097. The criteria for Recommendation 6 are set out in guidelines issued by FIU (MOT) for DNFBPs and in MICS issued by the GCB for casinos. As already mentioned the guidelines and the MICS are not considered other enforceable means and as such all requirements in relation to Recommendation 6 remain outstanding for DNFBPs under the supervision of the MOT and the GCB.

1098. Curaçao is not yet a party to the UN Convention against Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Presently the Government of Curaçao is working on finalizing the relevant legislations needed so these treaties, can be ratified for Curaçao. On July 16, 2010 the Netherlands Antilles acceded to the Group of States against Corruption (GRECO). The Civil Law Convention on Corruption of the Council of Europe applies to the Netherlands Antilles since April, 2008.

Recommendation 8

**DNFBPs supervised by the Central Bank**

Administrators

1099. The P&G for SAI & AII requires Administrators to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes (section II,2.2.1, page 11)

1100. Administrators must have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions. These policies and procedures must apply when establishing customer relationships and when conducting ongoing due diligence (page 10 of the P&G for SAI & AII)

1101. Measure for managing the risks must include specific and effective customer due diligence procedures that apply to non face-to face customers (page 10 of the P&G for SAI & AII).

1102. The P&G provide for measures such as: the certification of documents presented; the requisition of additional documents to complement those which are required for face-to-face customers; develop independent contact with the customer; rely on third party introduction and require the first payment to be carried out through an account in the customer's name with another bank subject to similar customer due diligence standards (section II.2.Apage 10 of the P&G for SAI & AII).

Company (Trust) Service Providers

1103. The requirements as stipulated in the P&G for SAI & AII in relation to Recommendation 8 as indicated above are also imposed on company (trust) service providers in the P&G for TSPs.

**DNFBPs supervised by the MOT and the GCB**

1104. The criteria for Recommendation 8 are set out in guidelines issued by MOT for DNFBPs and in MICS issued by the GCB for casinos. As already mentioned the guidelines and the MICS are not considered other enforceable means and as such all requirements in relation to Recommendation 8 remain outstanding for DNFBPs under the supervision of the MOT and the GCB.

Recommendation 9

1105. The criteria for Rec. 9 are set out in the P&G for SAI & AII and the P&G for the TSP. The analysis and conclusion as set out in section 3.3 of this report are applicable to administrators and company (trust) service providers. With regard to the DNFBPs supervised by the MOT, the requirements of Rec. 9 remain outstanding since they are set out in guidelines which are not considered other enforceable means. The requirements for Recommendation 9 are not applicable to casinos.

Recommendation 10

1106. The analysis and conclusions with regard to the asterisked criteria of Rec. 10 which are required to be in legislation, as set out in section 3.5 of this report are applicable to all DNFBPs. It is noted that only administrators and company (trust) service providers comply with the requirement for the transaction records to be sufficient to permit the reconstruction of individual transactions since this is set out in the P&G for SAI &AII which are other enforceable means.

Recommendation 11

Administrators and Company (Trust) Service Providers

1107. The criteria for Rec. 11 are set out in the P&G for SAI & AII and company (trust) service providers. The analysis and conclusion as set out in section 3.6 of this report are applicable to administrators and company (trust) service providers.

1108. The criteria for Recommendation 11 are set out in the guidelines issued by MOT for DNFBPs and in MICS issued by the GCB for casinos. As already mentioned the guidelines and the MICS are not considered other enforceable means and as such all requirements in relation to Rec. 11 remain outstanding for DNFBPs under the supervision of the MOT and the GCB.

4.1.2 Recommendations and Comments

1109. Lawyers, notaries, accountants or similar legal professions preparing for or carrying out transactions for clients dealing with the organisation of contributions for the creation, operation or management of companies and trust and company service providers carrying out transactions for clients dealing with acting as (or arranging for another person to act as) a nominee shareholder for another person should be subject to the AML/CFT obligations of the NOIS and NORUT.

1110. Internet casinos should be subject to the AML/CFT obligation in the NOIS and NORUT.

1111. The threshold for identification requirements for casinos in legislation should be revised in accordance with the FATF standard

1112. DNFBPs should be legislatively required to perform CDD when carrying out occasional wire transfers in the circumstances covered by the Interpretative Note to SR VII

1113. Service providers should be legislatively required to conduct on-going due diligence on business relationships.

1114. The NOIS should be amended to only allow for reduced or simplified CDD measures for exempted institutions or enterprises under Article 2, paragraph 4.

1115. The P&Gs for administrators and company (trust) service providers should be amended to require DNFBPs to consider making a UTR when the requirements of E.C. 5.3 to E.C. 5.6 are not met.

1116. Criteria 5.5.2, 5.6 to 5.11, 5.16 and 5.17 of Rec. 5 should be enforceable on DNFBPs under FIU/MOT and the GCB.

1117. Deficiencies identified in section 3 for Recs. 10 and 11 which are applicable to DNFBPs under the Central Bank should be remedied.

1118. Obligations in Recs. 6 and 11 should be enforceable on DNFBPs under the supervision of FIU/MOT and the GCB and company (trust) service providers.

1119. Obligations in Recs. 9 should be enforceable on company (trust) service providers and DNFBPs under the supervision of the FIU (MOT).

1120. The deficiencies in section 3.5 for Rec. 10 which are applicable to all DNFBPs should be remedied. Additionally, the requirement to ensure that transaction records are sufficient to permit the reconstruction of individual transactions should be enforceable on DNFBPs under the FIU (MOT) and the GCB.

4.1.3 Compliance with Recommendation 12

| | Rating | Summary of factors relevant to s.4.1 underlying overall rating |
|---|---|---|
| **R.12** | **NC** | • **The provision of services dealing with the organisation of contributions for the creation, operation or management of companies and the provision of nominee services are not subject to the AML/CFT obligations of the NOIS and the NORUT.**<br>• **Internet casinos are not subject to the AML/CFT obligations of NOIS and NORUT.**<br>• **The threshold for identification requirements for casinos is too high.**<br>• **Deficiencies with regard to Rec.5 applicable to all DNFBPs include**<br>  ◦ **No legislative requirement for CDD when carrying out occasional wire transfers in the circumstances covered by the Interpretative Note to SR VII**<br>  ◦ **No legislative requirement for service providers to conduct on-going due diligence on the business relationship**<br>  ◦ **The NOIS allows for full exemption from CDD rather than reduced or simplified CDD as required under the FATF Recommendations**<br>• **No requirement in the P&Gs for administrators and company (trust) service providers obligating financial institutions to consider making a UTR when the requirements of E.C. 5.3 to E.C. 5.6 are not met.**<br>• **Criteria 5.5.2, 5.6 to 5.11, 5.16 and 5.17 of Rec. 5 are not enforceable on DNFBPs under the FIU/MOT and the GCB**<br>• **Deficiencies identified in section 3 for Recs. 10 and 11 are also applicable to DNFBPs under the Central Bank**<br>• **Requirements of Recs. 6, 8 and 11 are not enforceable DNFBPs under the supervision of FIU (MOT) and the GCB.**<br>• **Requirements of Rec. 9 are not enforceable on DNFBPs under the supervision of FIU (MOT).**<br>• **Deficiencies identified in section 3.5 for Rec.10 are also applicable to all DNFBPs. Additionally, the requirement to ensure that transaction records are sufficient to permit the reconstruction of individual transactions is not enforceable on DNFBPs under FIU (MOT) and GCB.** |

## 4.2 Suspicious transaction reporting (R.16)

(applying R.13 to 15 & 21)

4.2.1 Description and Analysis

1121. The services that fall under the scope of the NORUT are stated in Article 1. Curaçao requires reporting entities to report 'unusual' instead of 'suspicious' transactions. The indicators which apply are laid down in a joint ministerial decree of the Minister of Finance and the Minister of Justice (Ministerial Decree Indicators Unusual Transactions (N.G. 2010 no.27), which decree is based on Article 10 of the NORUT.

1122. DNFBP who render a service by virtue of their profession or in the ordinary course of their business are also required to report any hereby conducted or "intended" unusual transaction to the Reporting Centre without delay. The DNFBP's were introduced in the latest amendments of the NORUT that came into force on May 15th, 2010.

1123. For lawyers, public notaries and accountants it is stipulated that activities related to the establishing of the legal position of a client, his representation in court, the offering of counsel before, during and after a lawsuit, or offering of counsel about entering into or preventing legal proceedings, are not considered a service within the meaning of the NOIS and the NORUT.

1124. FIU (MOT) has been designated to be responsible for supervising DNFBPs to ensure compliance with the NOIS and the NORUT. The Government has also decided to include car dealers under the reporting obligations and supervision of the FIU (MOT).

**Recommendations 13 and 14**

1125. The criteria for Recs. 13 and 14 are set out in the NORUT and are applicable to all DNFBPs. The analysis and conclusions on compliance with Recs. 13 and 14 as detailed in section 3.7 of this report are applicable to all DNFBPs. It is noted that the figures for the number of STRs submitted to the MOT as indicated in section 2.5 of this report reveal that the number of reports from the DNFBPs remains limited despite and increase of the number of DNFBPs reporting after May 2010. This suggests that unusual transaction reporting for DNFBPs is ineffective.

**DNFBP supervised by the FIU (MOT)**

**Recommendations 15 and 21**

1126. The criteria for Recommendations 15 and 21 are set out in the P&G issued by the FIU (MOT) and the Central Bank for DNFBPs and the MICS issued by the GCB for casinos. Since the P&G issued by the Central Bank to administrators and company (trust) service providers are other enforceable means, the analysis and conclusions on compliance as detailed in sections 3.6 and 3.8 of this report for Recommendations 15 and 21 respectively are applicable to administrators and company (trust) service providers. As noted in section 3.8, R. 15 has been rated compliant and as such this rating will be applicable to administrators and company (trust) service providers in the DNFBPs. The requirements of Recommendations 15and 21 remain outstanding for DNFBPs under the supervision of the FIU (MOT) and the GCB, since the relevant guidelines and the MICs are not considered other enforceable means.

**Additional Elements**

1127. The DNFBPs have to report to transactions objectively when a certain threshold applies and also subjectively when they have reasonable grounds to suspect that funds are the proceeds of money laundering, terrorism financing and other criminal activities.

4.2.2 Recommendations and Comments

1128. The deficiencies identified for Recs. 13 and 14 in section 3.7 for all DNFBPs should be remedied.
1129. The deficiencies identified for Rec. 21 in section 3.6 for DNFBPs under the Central Bank should be remedied.
1130. Obligations in Rec. 15 and 21 should be made enforceable on the DNFBPs under MOT and GCB.

4.2.3 Compliance with Recommendation 16

| | Rating | Summary of factors relevant to s.4.2 underlying overall rating |
|---|---|---|
| **R.16** | **NC** | • **Deficiencies identified for Rec. 13 and 14 in Section 3.7 are applicable to all DNFBPs.**<br>• **Ineffective reporting of unusual transactions reporting by DNFBPs**<br>• **Deficiencies identified for Rec. 21 in Section 3.6 of this report also applies to DNFBPs under the Central Bank.**<br>• **Obligations in Rec. 15 and 21 are not enforceable on the DNFBPs under FIU (MOT) and GCB.** |

## 4.3 Regulation, supervision and monitoring (R.24-25)

4.3.1 Description and Analysis

***Recommendation 24***

**Casinos**

1131. Article 23, paragraph 1, of the Island Ordinance Casino Sector Curaçao (IOCSC) in conjunction with the Island Decree (O.B. 2002, no. 85), makes the GCB responsible for the administration and supervision of compliance of licensees (i.e. operators of games of hazard, land based casinos) with the IOCSC. Furthermore, article 22h of the NORUT and Article 11 of the NOIS designate the GCB as the body responsible for ensuring compliance of licensees under the IOCSC with the provisions of the NORUT and NOIS.

1132. On Curacao, only legal entities (i.e. companies who own or operate hotels with a minimum of 150 rooms) can apply for a casino license (paragraph 1.1 of the Casino License Conditions of the GCB). The licensing process requires legal entities to disclose all natural persons behind financial beneficiaries. Every person who is a financial beneficiary of the legal entity, requesting or holding a casino license, must apply for a personal license. A casino licence for the legal entity cannot be issued without all the natural persons behind the beneficiaries of the legal entity also having personal licences

1133. The IOCSC (O.B. 1999, no. 97, lastly amended by O.B. 2010, no. 27) describes the role of the GCB, the licensing requirements and the possibility to withdraw a license, for both the casino license and the personal license. Conditions as set out in Article 12 that must be met to obtain a personal license. are:

- Personal integrity (this is covered by the investigation by the Curaçao National Security Service);
- Financial solvency and reliability;
- Knowledge and skills regarding casinos.

1134. The GCB has each natural person investigated by the VDC to ascertain if the person concerned has a criminal record (local or overseas) or if there is any reason to suspect that the ~~is~~ person or his actions may endanger state security, public safety or otherwise disrupt the community. If so, the VDC will issue a negative advice, and the GCB will deny the personal license, and therefore also the casino license. In addition to this, the GCB has the VDC investigate the organization that the applicant proposes to run the casino (the "casino proprietor"). That organization must also disclose all of its financial beneficiaries, and they in turn must disclose *their* beneficiaries and so on until all financial beneficiaries are broken down into a list of natural persons only, leading to the UBO. All of these persons are investigated by the VDC. Furthermore, the GCB has the VDC investigate the casino-operator (also called casino-manager) as well as the directors of the casino proprietor. If the VDC issues a negative advice with respect to any of these persons, the organization will not be accepted as casino proprietor. The casino license holder cannot appoint another casino proprietor without the approval of the GCB, which will not be issued if any negative advice is issued by the VDC regarding the proposed organization

1135. Application for a casino licence may be rejected where facts and data provided by the applicant are incorrect or it may be reasonably expected that the licence holder will be unable to comply with provisions of the ordinance or the rules, conditions and restrictions attached to the licence. The above requirements for initial licensing are also applied for annual renewal of the casino and personal licences. The obligation to notify the GCB of changes in ownership is part of the conditions for the granting of the licence.

1136. A casino licence maybe revoked for the following:

a) Submission of incorrect or incomplete data at the time of the licence application

b) Non-compliance with provisions of Article 7 of the IOCSC.

c) Breach of rules, conditions and restrictions attached to the licence or statutory provisions

d) Inaccurate or incorrect completion of licence application forms

e) Failure to pay gaming licence fee

f) Refusal to grant access to persons authorised to inspect books, records or documents

g) Licence holder acting in a manner which imperils public order, public safety, the general interest or legal order.

1137. A personal licence maybe revoked for the following:

a) Submission of incorrect or incomplete data at the time of the licence application
b) Non-compliance with provisions of Article 12 of the IOCSC.
c) Breach of rules, conditions and restrictions attached to the licence or contravention of statutory provisions

1138. As already mentioned the GCB has been designated supervisor responsible for ensuring compliance of casinos with AML/CFT obligations of NORUT and NOIS. Under article 23,

paragraph 3, of the Island Ordinance Casino sector Curacao the GCB has the authority to audit and examine the casinos on all the aspects of complying with the requirements of the Ordinance. AML/CFT requirements are included in the MICS, which are part of the casino license regulations that the casinos must adhere to. These MICS also require casinos to provide information and documentation on money laundering and terrorist financing policies and deterrence and detection procedures to the examiners of the GCB before or during an examination and upon the GCB's request during the year (paragraph 6.10 MICS). The MICS also prescribe the items to be made available to the GCB.

1139. Pursuant to the above examination provisions, the GCB conducts annual examinations of the thirteen casinos in Curacao including testing of AML/CFT controls as specified in the MICS. Reports are prepared and identified issues are subject to follow-up. Special investigations can also be triggered by a complaint based on non-collection of taxes or the receipt of incorrect information. These examinations are carried out by the GCB's auditors who have received AML/CFT training. In addition, there is a technical team responsible for physically monitoring the operations of the casinos on a daily basis. This monitoring includes surveillance of the operations of the table games, the payout process and the drop box. Reports on table games and the slot machines are submitted daily and monthly respectively. Slot machines are also subject to rigorous review to ensure fair play and proper permission to import the machines.

1140. The range of sanctions available to the GCB includes those of the IOCSC, the NOIS and the NORUT. The sanction specified in NOIS and NORUT have been dealt with earlier in the report in section 3.10.

1141. One of the conditions of the casino license is compliance with the provisions of MICS, which in chapter 6 stipulate all the requirements for casinos regarding the prevention of money laundering and terrorist financing. If a license holder fails to comply with any one of the licensing regulations (including the MICS), the GCB can as an ultimate sanction withdraw the casino license (article 8, paragraph 1, sub c, of the IOCSC.) and close down the casino either temporarily or permanently.

1142. The GCB can also impose other sanctions, depending upon the situation as follows:

a) Issue directives to a casino for action in a stipulated time frame and publish said directive, (article 23t, paragraphs 1 and 4, of the Island IOCSC);

b) Impose an order with periodic penalty payment until the demand is met (article 23k, paragraph 1, of the IOCSC);

c) Administrative enforcement in relation to articles 3, 7a, 7b, 8a and 23t of the Island Ordinance Casino Sector Curacao (article 23d, paragraph 1, of the IOCSC) ;

d) Impose a fine to the maximum of NA$f$ 5.000 per offence and if the offence persists or is repeated this amount can be increased up to a maximum of NA$f$ 5.000 per day for the number of days the offence continued or was repeated (article 23p, paragraphs 1 and 2, of the IOCSC);

e) Notify the Public Prosecutor's Office of non-compliance with the MICS which is a punishable act (article 26, paragraph 1, sub b, of the IOCSC).

1143. The ability to apply sanctions to legal entities i.e. financial institutions and DNFBPs as well as their directors and senior management is derived from a general statutory provision in the Penal Code. Article 53 of the Penal Code provides that offences may be committed by natural and

legal persons. When an offence is committed by a legal person, a prosecution may be instituted and penalties imposed on;

a. the legal person, or

b those who ordered the offense and those who actually ordered the prohibited practice, or

a. the ones mentioned in part a and b of the above together

1144. The above mentioned provision makes it possible to apply sanctions against directors or senior management as instigators. There is also a so called switch provision (article 96) of the Penal Code that states that article 53 of the Penal Code is also applicable to other general offences, unless the General Regulation provides otherwise. Therefore the administrative fines and penalties of the LID and NORUT are also applicable to the financial institutions and their directors.

1145. Pursuant to article 14 (Book 2) of the Civil code, the members of the Board of directors are personally and severally liable towards the legal entity for any loss caused by the improper performance of duties. This implies that sanctions can be imposed on the DNFBP as well as its directors.

1146. The above measures provide for sanctions to be applied proportionately. The periodic penalty payment under article 23k, paragraph 1 of the IOCSC is not specified either in amount or a range. Since no fines have been imposed under this provision, it is not possible to assess how proportionate the penalty is. While the fine of a maximum NA$f$ 5.000 per offence appears minimal the daily imposition could be dissuasive.

1147. At the time of the on-site evaluation there were thirty (30) on-line gaming operators in Curacao, eleven (11) of which were paying licensees. No supervisory body had been appointed to effectively supervise internet casinos for compliance with AML/CFT obligations. E-gambling regulations are under revision.

**DNFBP supervised by FIU**

1148. FIU has been designated as responsible for supervising DNFBPs for compliance with the NOIS and the NORUT. The following services rendered by DNFBPs which are placed under the supervision of the FIU are:

- The providing of assistance and/or advice (by a natural person or legal person who as a lawyer, notary public, tax advisor or a legal, tax or administrative expert or a natural or a legal person who in the exercise of a similar legal profession or as an independent professional is employed) related to:

a. the buying and selling of real estate;
b. managing of client money, securities, coins, currency notes, precious metals, precious stones and other assets;
c. the creation or managing of companies, legal persons or similar business entities;
d. the buying, selling or take-over of companies.

- The dealing in high value merchandise (vehicles, precious metals, precious stones, and jewelry)

1149. The FIU has the power to conduct onsite and offsite surveillance on the DNFBPs under its supervision and was in the process of implementing this supervision function. At the time of the Evaluation, pilot examinations were completed on the sector which revealed a number of

shortcomings. However, no sanctions were issues since it was a learning exercise. There are a range of sanctions available to the FIU (MOT) outlined under the NOIS and NORUT.

**DNFBP supervised by the Central Bank**

1150. Administrators and company (trust) service providers are subject to the same AML/CFT supervisory regime as the financial institutions. Based on the provision of article 11, first paragraph, sub a of the NOIS, the Central Bank is the AML/CFT supervisor for administrators and company (trust) Service Providers. According to the third paragraph of mentioned article, the Central Bank is authorized to issue P&G in order to further promote compliance with the NOIS. As such, the Central Bank has issued P&G for SAI & AII and P&G for TSP. The supervisory function of the Central Bank is dealt with at section 3.10 of this report.

1151. With regard to the powers and sanctions, please be referred to recommendation 17 above.

1152. With regard to the FIU (MOT) having sufficient technical and other resources, to perform its functions, reference is made to Rec. 30 of section 2.6. and with regard to the Central Bank: reference is made to recommendation 30 of section 3.10.

*Recommendation 25 (Guidance for DNFBPs other than guidance on STRs)*

**FIU (MOT):**

1153. The Supervisory Department of the FIU (MOT) has published manuals for all the DNFBP. These manuals can be found on the website of the FIU (MOT) and will also be distributed in hard copy. The Supervisory Department has also provided the provisions and guidelines to the DNFBP. Furthermore the Supervisory Department has organized meetings with all the DNFBP in which guidance was given with regard to their reporting obligation. Please be referred to the annual reports of the FIU (MOT).

**Central Bank:**

1154. The Central Bank has issued P&G for SAI & AII and P&G for TSP, which are applicable to administrators and company (trust) service providers. Furthermore, the Central Bank is authorized to issue instructions to administrators and company (trust) service providers in case AML/CFT deficiencies have been identified. Furthermore, guidance is provided to administrators and company (trust) service providers on their AML/CFT regime, particularly during on-site examinations.

**GCB:**

1155. Guidance in complying with the AML/CFT regulations is provided through the requirements in the MICS, and through workshops provided by the MOT and the GCB on these matters.

4.3.2 Recommendations and Comments

*Recommendation 24*

1156. The Authorities should implement an AML/CFT regime for Internet casinos.

1157. The FIU (MOT) should implement an effective supervisory regime as soon as possible.

1158. The FIU (MOT) should be given more resources to fulfil their supervisory role for the relevant DNFBP sector**.**

1159. The deficiency identified in section 3.10 (R. 29) with regard to the supervisory function of the Central Bank should be remedied.

*Recommendation 25*

1160. Provisions and Guidelines should be developed for Internet Casinos.

4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

| | Rating | Summary of factors relevant to s.4.3 underlying overall rating |
|---|---|---|
| **R.24** | **NC** | • **No supervision of internet casinos for compliance with AML/CFT obligations**<br>• **The FIU/MOT has not implemented an effective supervisory regime.**<br>• **The FIU (MOT) lacks resources to effectively supervise DNFBPs subject to AML/CFT obligations.**<br>• **Deficiencies identified in section 3.10 with regard to R. 17 and 29 are also applicable to DNFBPs under the Central Bank** |
| **R.25** | **PC** | • **No Provisions and Guidelines for Internet Casinos**<br>• **See also summary factor at Section and 3.10 of the Report** |

## 4.4 Other non-financial businesses and professions Modern secure transaction techniques (R.20)

4.4.1 Description and Analysis

1161. The government of Curaçao has incorporated car dealers under the AML/CFT framework. This was specifically done on a proposal of the Court of Justice and the combating of local money laundering by among others juveniles.

**DNFBPs supervised by FIU (MOT)**

1162. The Government has decided to include car dealers under the reporting obligations and supervision of the FIU (MOT).

1163. Recommendations 5, 6, 8-11, 13-15, 17 and 21 apply equally to car dealers as is the case with for example dealers in precious stones and precious metals. As is the case for dealers in precious stones and precious metals, for car dealers a rule-based approach to ML/TF issues has been chosen. As noted by the Authorities, these DNFBPs are relatively small and have no organizational infrastructure yet to apply a risk-based approach.

**DNFBPs supervised by the Central Bank**

1164. Not applicable to the company service providers and administrators.

1165. The following information supports measures taken by the Authorities to encourage the development and use of modern and secure techniques for conducting financial transactions.

Total number of credit cards issued over the last three (3) years:

- 2011: 35,436
- 2010: 33,683
- 2009: 33,647

Total number of institutions providing internet banking services:

- 2011: 20
- 2010: 18
- 2009: 18

Total number of ATMs in Curacao over the last three (3) years:

- 2011: 133
- 2010: 130
- 2009: 131

1166. The statistics show that there has been an increase over the three year period (2009-2011) in credit card usage, internet banking and the number of ATMs.

4.4.2 Recommendations and Comments

4.4.3 Compliance with Recommendation 20

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.20** | **C** | **This Recommendation has been fully observed.** |

# 5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

## 5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and Analysis

1167. As noted above in Section 1.4 of the Report, the statutory regulations with regard to legal entities under Curaçao private law are contained, mainly, in Book 2 of the Civil Code (CC). Article 1 establishes that: "the provisions of this title shall apply in respect of the legal entities regulated in separate legal forms in this book: the foundation, the private fund foundation, the association, the cooperative society, the mutual insurance association, the limited liability company and the private limited company".

1168. For further and detailed information on legal persons please refer to Section 1.4 and table 3. The registration comprises the same information as for companies.

Central registration

1169. Curaçao has a system of central registration in place, which is regulated through the Commercial Register Act (CRA). The Commercial Registers are public registries containing only public records, available to the general public and competent authorities. (Commercial Register Act (N.G. 2009, no. 51) and National Decree containing general measures of December 22, 2009 for the execution of Article 20 of the CRA (N.G. 2009, no. 71) (Trade Register Decree 2009; Dutch: Handelsregisterbesluit 2009).

1170. The Commercial Register is maintained by the Chamber of Commerce and Industry in Curaçao which is a public law entity. The Chamber has an elected Board, while the Secretary, who is either an elected Board member or a full time professional, is in charge of carrying out the legal registry obligations of the Chamber of Commerce.

1171. It is important to mention that the current CRA has been introduced as per January 1st, 2010. Separate registers have all been substituted with one central register, while the existing filings with other registries have been mandatorily incorporated in the Commercial Register as of January 1st, 2010.

1172. According to Articles 3 and 4 of the CRA all businesses and legal entities, excluding public law entities, established in Curaçao must register with the Commercial Register. This registration requirement also applies to branches of foreign companies, where branches are established and conduct business in Curaçao (Article 6).

1173. According to Article 5 of the CRA, the "...person to whom a company belongs or – in case it concerns the registrations of a company belonging to a legal person – each of the directors of the legal person... the person charged with the day-to-day management..." have the obligation to enter the statements for registration. The information relating to the Company (name of the company, date of incorporation, place of business, Articles of Association and any amendments thereto~~)~~ as well as the information of the managing director(s), supervisory director(s).

1174. According to Articles 15 through 32 of the Trade Register Decree (NG 2009, no. 71) personal information of persons representing a company/legal person or any other person with power of representation must be mandatorily filed with the Commercial Register.

1175. Article 8 of the CRA establishes that "the statements for the first registration of a company must be entered within one (1) week after the commencement of the performance of the company' operation". In addition, "the other prescribed statements must be entered not later than one (1) week after the occurrence of the fact giving rise to the obligation to enter the statement for registration."

1176. Anyone including competent authorities can either obtain an excerpt of the registration, or a full and certified copy of all records registered in the file of the entities.

1177. The information at the Commercial Registers is available to the general public and easy to access on line at: http://www.curacao-chamber.an/info/3a_1.html).

1178. In general terms, the information available on the website relates to:

- Trade name
- Legal form
- Official company/entity name
- Date of incorporation / Date of established
- Statutory capital
- Business address
- Address
- Country
- Correspondence address
- Objectives
- Company officials.

The Examiners however noted that information pertaining to statutory capital and officials' names were not always present.

1179. Depending on the legal form, some of the records on line show additional data such as: Nominal capital, authorized capital, fiscal year. In addition, there is also a section where the name(s) of the 'official(s)' of the company appear. The information on the official includes: Function, title description, name, date, place and country of birth and nationality

1180. However, with regard to the information available on line, after a random check, it appears that not all entities (for e.g. some foundations) have registered the names or any additional data of the officials of the company which usually are the statutory director/managing director.

1181. Despite the fact that according to the statistics provided by the Authorities there have been amendments to the information of the legal entities, the public record available on the website does not show in all cases when the last update was made to the information on the legal entity.

1182. Additionally, the Examiners were advised by the Chamber of Commerce that with regard to information related to the ultimate beneficial ownership (UBO) there is no obligation to register. The information on the names of the shareholders will be held at the entity or at a notary, as the notaries need that information since it has to be part of the deed and Articles of Incorporation. The Authorities have noted that where the company opens an account with a local bank, the information must be available there as well and that the same is applicable to company (trust) service providers. The issue is however, the availability of the information on UBO in a timely fashion. Based on the lack of an obligation to register, competent authority needing information on a UBO, may if for example the bank account information is desired have to ask several banks in Curaçao to obtain the necessary information.

1183. Authorities informed that statistics of the movements in the registry are given to the general public and competent authorities. However this could not be confirmed as the section on statistics at the Chamber of Commerce's website is currently under construction.

1184. As a result, there are some concerns as to whether the required ownership and control details for all companies and other types of legal entities will be available and accurate.

1185. Article 1paragrpaph 1 under j of the NOIS (amended in November 2009) defines 'ultimate interested party' as "the natural person who has or holds a qualified interest in a legal person or corporation or the natural person who is entitled to the assets or the proceeds of a trust or private fund foundation". In addition, Article 1 paragraph 1 under k defines 'qualified participation or qualified interest' as "a direct or indirect interest of twenty-five percent (25%) or more of the nominal capital, or a comparable interest, or being able to exercise twenty-five percent (25%) or more of the voting rights directly or indirectly, or being able to exercise twenty-five percent (25%) or more of the voting rights directly or indirectly, or being able to exercise directly or indirectly a comparable control"

1186. Article 2 paragraph 1 of the NOIS establishes the obligation "to establish the identity if a client and the ultimate interested party, if such exist, before rendering such a client a service". Article 3 paragraph 4 establishes "if there is an ultimate interested party, it must be identified (...)". Article 6 establishes the obligation to record data of the 'ultimate interest party'.

1187. According to the NOIS, Article 2, paragraph 5 and Article 11 paragraph 3 the supervisory authority may issue regulations as to the identification of clients and beneficial owners. Central Bank has issued P&Gs with regard to clients of supervised institutions.

1188. In addition, based on the different Supervision Ordinances with regard to the financial sector, licensees are required to disclose their UBO. Moreover, any sale of an interest in a supervised

institution requires prior approval of the Central Bank. The UBO are subjected to the Central Bank's periodic (every three (3) years) fit and integrity testing (Personal Questionnaire on Integrity Testing).

1189. Central Bank has issued P&Gs with regard to clients of supervised institutions (credit institutions, insurance companies and intermediaries (insurance brokers), administrators of investment institutions and self-administered investment institutions and investors).

1190. The P&Gs contain extensive provisions on identification of (prospective) clients and their ultimate beneficiaries and precautions to ensure transparency concerning the beneficial ownership and control of legal persons.

1191. In addition, the NOIS and the P&Gs include the obligation to keep identification and transaction monitoring records up to date. Records must be kept for at least five years after a transaction has been completed or after the client relationship has been terminated.

1192. **Credit institutions:** "it is important to identify the nature of the business, account signatures, and the (ultimate) beneficial owner(s). CI also should obtain personal information on the managing and/or supervisory directors ... The procedures for the identification of personal customers should be applied for the mentioned account signatures director(s) and all (ultimate) beneficial owners holding a qualifying interest in the company." (P&Gs for CI page 12)

1193. **Insurance companies and intermediaries (insurance brokers):** "Customer due diligence measures that should be taken by insurers includes: Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner such that the insurer is satisfied that it knows who the beneficial owner is. This entails that insurers must take reasonable measures to understand the ownership and control structure of the customer". ((P&G for ICI page 10

1194. **For administrators of investment institutions and self-administered investment institutions.** "...The administrator must look beyond the investment institution for due diligence purposes and, depending upon the circumstances, requests proof of identity of any of the following parties: The (managing and supervisory) directors of the investment institution; any party who provides or will provide instructions to the administrator on behalf of the investment institution; in case any of the parties mentioned above is a legal entity, the directors and the ultimate beneficial owners holding a qualifying interest in the legal entity. Please note that a proof of registration of the legal entity with the Chamber of Commerce and Industry, or an equivalent institution, in the country of domicile should also be requested". (P&G for AI and SAII on page 9)

1195. **Investor is a corporation which is a private company:** "... the identity of all directors and all persons authorized to represent the investor towards the administrator or the self-administered investment institution has to be determined in accordance with these guidelines; a list of names and addresses of shareholders holding directly or indirectly twenty-five percent (25%) or more of the issued share capital of the company, and in the case of individual shareholders, their occupations and dates of birth; where a significant shareholder twenty-five percent (25%) or more is a body corporate and particularly where it appears to be a nominee or "front" company, information should be sought from the company regarding the ultimate beneficial ownership of that particular company. Where the ultimate beneficial owner(s) is (are) individual(s), identification documents as set out in these guidelines pertaining to individual investors should be obtained..." (P&G for AI and SAII, page 17).

***1196.*** **Investor is an institutional investor:** Where the investor is an institutional investor e.g. a pension fund, local authority; collective investment scheme or unit trust, endowment fund or charity, the administrator or the self administered investment institution as the case may be will

refer to appropriate sources to check identity depending on the circumstances. Where the investor is a pension fund of a listed company (or its subsidiary), or of a Government agency or local authority, no further steps to verify identity, over and above existing business practice, will normally be required. At all times documentary evidence should be collected and kept on file regarding such institutional investors including documentary evidence of the identity of its representatives. (P&G for AI and SAII, page 17).

Sanctions

1197. The violation of the supervision ordinances, NOIS and NORUT is punishable by criminal sanctions (imprisonment and/or fine). Moreover administrative sanctions (penalties and/or fines) can be imposed in the case of non-compliance with both the NOIS (Article 9, 9 a - 9e and 10), NORUT (Chapter VIa) the NOSIIA (Article 35) NOSTSP (Article 22) and the NOIB (Article 23).

1198. In addition to administrative and penal sanctions, the licensing authority has the authority pursuant to the supervisory ordinances to revoke a license/authorization - and thus shut down - any delinquent service provider. Providing financial services (as a credit institutions, company (trust) service provider, investment institution, administrator, insurance companies and insurance brokers.) without a license is in itself a criminal offense punishable with i.a. imprisonment.

1199. In case a company, legal person or branch establishment is incorrectly or erroneously registered, then an interested party may request that the Court of First Instance of the Curaçao (CRA, Article 18) delete, supplement or amend the registered data and where registration is absent to order the registration of the company, legal person, or branch establishment. In case that the Chamber of Commerce has sufficient indication that the content of a filing is not correct, it will act as an interested party.

1200. The CRA, Article 21, provides punitive provision (from NAf 20.000 to 50.000) for the submission of incorrect or incomplete statements and non compliance with obligations to submit statements. Those acts are criminal offenses. Based on the information provided by the Chamber of Commerce punitive measures have never been applied

Investigative system

1201. The information placed at the Chamber of Commerce is available to the general public. Even though the Authorities can access the information (mostly through the website) as was mentioned above there is no obligation to register information with regard to the UBO Therefore there are some concerns as to whether the information of the UBO will be accurate at all times and available to the authorities in a timely manner.

1202. The Chamber of Commerce informed the Examiners that they collaborate with the Authorities. Also, the FIU (MOT) informed the Examiners that they have informal Agreements. There have been minimal requests from the PPO according to the Chamber of Commerce but no major cases. However, there are no statistics showing the frequency and the number of requests

1203. If in a (criminal) investigation information on the beneficial ownership and control of legal persons is needed by the investigating officers, it can be obtained through a Court order. Everyone is obliged to comply with the Court order and provide the requested information. However based on the information given by the PPO the Court orders are issued when the Judges have ‘reasonable grounds to suspect.’ The PPO stated that that process was not simple.

1204. If the information is needed for foreign investigations the same procedures can be followed (through a request to the local authorities). However there is no evidence that information was exchanged on this matter.

1205. The Central Bank based on supervisory powers can assess compliance of the supervised institutions and persons with the requirement to have access to adequate, accurate and current information on the beneficial ownership and control of legal persons. The Central Bank has a MOU with the PPO and also shares information with the FIU (MOT) and the VDC when needed.

1206. However as mentioned earlier in this section, the concern remains as whether the competent authority can access information on a UBO in a timely manner. Additionally as there is no supervisory regime in place for other legal persons the accuracy of the UBO cannot be confirmed.

Preventive measures regarding bearer shares

1207. Civil Code, Book 2, Article 104-2, establishes: "Bearer shares may not be issued as such. In the instrument of incorporation it may however be provided, as regards shares which are subscribed pursuant thereto, that a bearer share certificate shall be issued on the application of share holder against surrender certificate for a registered share if this has been issued. If the articles so permit, this may also be provided in a later instrument of issue. As from the issue of the bearer certificate the share involved shall be deemed a bearer share". Further provisions on transfer of bearer shares are established in Articles 105, 107 y 110.

1208. According to the explanatory statement of the National Decree on the Obligation to retain Securities to Bearer "(…) it can be stated that the Civil Code of the Netherlands Antilles makes the transfer of bearer shares possible, in which regard no international standards of the FATF will be considered (…)".Based on this references it is unclear to the Examiners whether or not the transfer of bearer shares is permitted.

1209. Following the same explanatory statement, local persons and institutions, adhere to the policy that the Island Governments have established over the decades i.e. they are not permitted to hold bearer shares. This information was also confirmed by the Authorities at the time of the Mission.

1210. The National Decree on the Obligation to retain Securities to Bearer (N.G. 2010 no. 36) establishes in Article 2, that "trust company that provides management services to an international company with regard to which bearer securities exist or will be issued, will be under an obligation to take such bearer securities into safe custody without delay against issue of a depositary receipt to the party entitled to the bearer securities".

1211. Article 2.3.a of the National Decree on the Obligation to retain Securities to Bearer establishes the obligation to contract out the obligation to retain records of the identity and address of the natural person or legal person in whose behalf the bearer securities involved are kept in custody.

1212. The bearer securities will not be transferred from the deposit to any other depositary before the trust company is informed. The data and that the custodians that are eligible are limited to certain identified groups of professionals (Articles 2.3.a and 2.4 of the National Decree noted above)

1213. The monitoring and enforcement of compliance with this Decree is entrusted with the Central Bank. It must also be noted that pursuant to Article 12 paragraph 1, sub 2 of the NOSTSP the information on the beneficial owner of international companies must be available from the

company (trust) service providers. This information is to be made available to the Central Bank being the regulatory authority and proper fines may be imposed in case of non compliance.

1214. In the P&Gs issued by the Central Bank it is established that institutions must know the identity of the ultimate beneficial owner of the bearer shares or the nominee shareholder/services.

1215. The P&G for AI and SAII establishes that "for supervised investment institutions, the Central Bank discourages the issuance of bearer shares, except for the shares which are listed on public securities exchanges. The financial service providers in Curaçao and Sint Maarten must always know the beneficial owners of bearer shares of companies to whom they render services, which are not listed on a public securities exchange. Certificate of bearer shares must be held in custody by the administrator or self-administered investment institution or a party assigned by the administrator or self-administered investment institution".( P&G for AI and SII, page 20)

1216. The P&G for TSP establishes that "all company service providers that provide nominee shareholder services and/or provide custody of bearer shares must know the true identity of the person/persons (resident or non-resident) for whom assets are held or are to be held, including the (ultimate) beneficial owner(s). The identity of these clients must be established in accordance with the identification procedures previously mentioned." (P&G for TSP page 14)

1217. However, based on the information provided by the Authorities there is still circulation of bearer shares.

1218. Additionally, the Authorities are not certain as to whether bearer shares have been immobilized or put into custody by all institutions since the verification of immobilization of bearer shares is only done when an onsite inspection is performed, and this is not done for all institutions.

**Additional Elements**

1219. The P& G state, among other things, that the institution must have a formal system of internal control to identify and verify the identity of the (prospective) clients (and if applicable their ultimate beneficiaries). Guidance is also given in the P&G on the verification sources that can be consulted.

5.1.2 Recommendations and Comments

1220. Law or regulation should establish a requirement for all legal persons to register the information on the UBO at the Commercial Register of the Chamber of Commerce.

1221. The Chamber of Commerce should establish procedures to ensure that all the information at the Commercial Register is up to date and periodically reviewed and that the information is complete and accurate.

1222. The Authorities should provide the Chamber of Commerce with administrative sanctioning power against natural and legal persons who fail to provide accurate and up-to-date information.

1223. There should be better procedures with regard to the exchange of information in the Commercial Register.

1224. The authorities must ensure the immobilization of bearer shares.

5.1.3 Compliance with Recommendations 33

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.33** | **PC** | • **There is no system in place to register the information about the ultimate beneficial owner.**<br>• **The Chamber of Commerce has no administrative sanctioning power against legal persons who fail to provide accurate and up to date information.**<br>• **There is no certainty that the information at the Commercial Register is current or updated on a regular basis.**<br>• **There is no procedure in place to have the UBO available and in a timely manner to all competent authorities.**<br>• **There are still some bearer shares in circulation.**<br>• **Effectiveness has not been demonstrated.** |

## 5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

**For Company (Trust) Service Providers**

1225. As mentioned above on Central Banks' policy subsection, Article 2 of the NOIS states that all service providers must identify the 'ultimate interested party'.

1226. The P&G for TSP establishes an obligation to "identify their (prospective) clients/customers, including where applicable, the (ultimate) beneficiaries" (page 9). In addition, it establishes that the "the term 'client' in the context of a company (trust) service provider, does not only refer to the international company to which trust services are provided, but also to the applicant upon whose instructions the business relationship with the company service provider is established. The applicant who provides the instructions may or may not be the prospective international company to whom trust services are provided. (page 11).

1227. In that context, the trust service provider must then request "proof of identity of any of the following parties:

- the (managing and supervisory) directors of the international company;
- the (ultimate) beneficial owners or beneficiaries of the international company;
- in case any of the parties mentioned above is a legal entity, the directors of and the (ultimate) beneficial owners holding a qualifying interest in the legal entity. Please note that a proof of registration of the legal entity with the Chamber of Commerce and Industry, or an equivalent institution, in the country of domicile should also be requested.

1228. In the case of beneficiaries of a trust as the (ultimate) beneficiaries of a client, the P&G establishes provisions for 'bare trust/fixed trust' and 'discretionary trust' as follows:

- "Where the trust is identified as a 'bare or fixed trust' it is the settler that must be identified as the person exercising effective control over the trust and the trustees as the ultimate beneficiaries of the trust. Therefore, CCD measures as previously described must be applied to both the trustee, being the ultimate beneficiary, and the settler of the trust" (P&G for TSP page 15)

- "Where the trust is identified as a discretionary trust the ultimate beneficiary is not previously established. In this case a distinction must be made between applicable CDD measures at time of establishing the trust and CDD measures applicable at the time of appointment of beneficiaries of the trust. When the trust is established and thereby the client relationship is created, in case of a discretionary trust, CDD measures apply to the settler of that trust. As soon as the beneficiaries of the trust are appointed, the company (trust) service provider is required to perform proper CDD on the beneficiary (ies)"

1229. Based on the NOIS, Article 11, the Central Bank, entrusted with the supervision of company (trust) service providers, has the obligation, among others, to verify the compliance of the TSP with the requirements of identification and verification of UBO.

1230. Pursuant to Article 20 of the NOSTSP the Central bank has the power to ask for any information and have access to all data, including information and data relative to the clients of the company (trust) service providers, for the execution of their tasks.

1231. As was discussed above under the heading 'investigative system' the authorities are able to exchange information with the Chamber of Commerce. However, the Chamber of Commerce does not keep information on the UBO.

1232. The competent authorities then will only be able to access the information on the UBO of a particular entity client of the TSP through the Central Bank and the process in some instances may be lengthy. In cases of criminal investigation while the information can be obtained by a Court the process of getting a Court order is not simple. Therefore there are concerns on whether the Authorities will get the information required in a timely fashion as there is no evidence of clear procedures regarding this matter.

**Additional Elements**

1233. The P& G state, among other things, that the institution must have a formal system of internal control to identify and verify the identity of the (prospective) clients (and if applicable their ultimate beneficiaries). Guidance is also given in the P&G on the verification sources that can be consulted.

5.2.2 Recommendations and Comments

1234. There should be better procedures to access the information on UBOs in a timely fashion.

5.2.3 Compliance with Recommendations 34

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.34** | **LC** | • **Not all competent authorities have information on UBOs in a timely fashion.** |

| | | |
|---|---|---|

## 5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and Analysis

**Legal framework**

1235. Although, there is no specific supervisory framework for the NPO sector as defined by the FATF, the monitoring of the non-profit sector in Curaçao occurs in various ways.

1236. Both local and international NPOs are obliged to register with the Chamber of Commerce and to file any registration information changes with the Chamber of Commerce, as stipulated in the Commercial Register Act (N.G. 2009, no. 51). For a foreign foundation, the identity can be confirmed with a legalized registration excerpt of the Chamber of Commerce of that country or by a legalized act of a notary if the documents are not in origin in Curaçao.

1237. As far as a NPO meets the definition of an institution that falls under the supervision of the Central Bank, it is also subject to AML/CFT supervision. However the Examiners were informed by the Central Bank that currently they do not supervise any NPOs.

1238. As clients of institutions supervised by the Central Bank, the NPOs, including international foundations, are subject to the due diligence requirements outlined in the NOIS, NORUT and the P&Gs.

1239. NPOs (local or international) are addressed in all P&Gs issued by the Central Bank as a special category of clients of institutions supervised by the Central Bank.

1240. The P&Gs contain i.a. the following provisions: (financial) institutions must be vigilant with regard to the abuse of NPOs for terrorist financing. The institutions must observe the FATF's SR. VIII and apply the relevant parts of the FATF document entitled" Combating the abuse of non-profit organization, International best Practices". If a (financial) institution suspects or has reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts, or by terrorist organizations, it must promptly report its suspicion to the FIU (MOT).

**Nature of the NPO sector in Curaçao**

1241. The non-profit sector in Curaçao consists of two types of entities that meet the FATF definition of NPOs: foundations and associations. The difference between foundations and associations is mainly that foundations have no members. Associations are accountable to their members and often serve a purpose that is directly related to the activities of their members (e.g. sports and cultural clubs).

**Foundations with a public interest**

1242. The conventional foundations in Curaçao are in general non-profit institutions with a public interest, like schools, other educational initiatives, healthcare organizations and social- or cultural organizations. In many cases these organizations receive financial support from the Government of Curaçao or the Government of the Netherlands.

1243. The foundation called 'Stichting Ontwikkeling Nederlandse Antillen' (SONA) that receives development funds from the Netherlands plays a fundamental role in the financing of

foundations in Curaçao. SONA is responsible for legitimate and appropriate management and control of the funds which the Netherlands donates for development projects.

1244. Another important foundation is called the 'Antilliaanse Mede Financierings Organisatie' (AMFO). The donor of the foundation is the Dutch Government. AMFO is financing projects of Non-Governmental Organizations in Curaçao. The main purpose of AMFO is: social development, independency and innovation.

1245. Regarding foundations with a public interest, distributions to incorporators or to those, who constitute its bodies, are not allowed, and its distributions are furthermore restricted by law to distributions with often an ideal or educational, social or cultural purpose.

**Foundations with a religious or charity purpose**

1246. The charity foundations registered in the register of the Chamber of Commerce of Curaçao have various purposes. The charitable activities can be performed both in and outside of Curaçao. The charities often have a local specific purpose, e.g. giving support to animals, environment, people with a handicap, sport- or music activities. The charitable sector in Curaçao is a vital component in the economy; it supplies and complements in many ways the activities of the government and the business sector. In general, the financial funding is done by private persons, companies, sponsoring activities and religious groups.

**Two categories of foundations in Curaçao: local and international**

1247. At the Chamber of Commerce in Curaçao a division of two categories is made in the registration, namely *local and international.* An international foundation, which is directed by a local company (trust) service provider, is a foundation that is formed under the laws of Curaçao. These foundations in principle do not conduct substantial activities in its country of incorporation (Curaçao).

1248. As of January 1, 2010 there is only one register for all required registrations. The statistics by sector as for local and international foundations as per June 30, 2010 are as follows.

| Sector | Local | International |
|---|---|---|
| Agriculture | 10 | |
| Fishery | 1 | |
| Industry | 17 | 1 |
| Construction | 4 | |
| Wholesale | 1 | |
| Retail non-food | 2 | |
| Hotel etc | 7 | |
| Rep. Companies | 1 | |
| Transport | 10 | |
| Financial | 202 | 2183 |
| Insurance | 400 | 104 |
| Business services | 425 | 1511 |
| Rent / Real Estate | | 1 |
| Other business services | 27 | |
| Other services | 2193 | 349 |
| **Total** | **3300** | **4149** |

The Extent of the NPO sector in Curaçao is as it follows

| Year | Total number of Foundations | Number of 'Conventional' Foundations | Number of Private Foundations (SPFs) |
|---|---|---|---|
| 2006 | 6809 | 3878 | 2931 |
| 2007 | 7558 | 3976 | 3582 |
| 2008 | 8545 | 4298 | 4247 |
| 2009[10] | 9157 | | |

1249. Foundations are founded by a notarial deed (Article 50 of Book 2 of the Civil Code). The deed of incorporation has to contain the Articles of Association of the foundation. The Articles of Association should contain the following mandatory information: name of the foundation; purpose of the foundation; regular procedures to appoint and dismiss directors and the board; the Island where the foundation is seated; and the manner in which the foundation must re-distribute its assets in case the foundation is dissolved.

1250. The notary public who establishes the foundation bears the responsibility to set up the foundation in accordance with the Civil Code and to ensure that all required documents are in place. The notary public also bears the responsibility that the newly established legal entity is registered forthwith at the Chamber of Commerce; simultaneously the original acts and deeds should be deposited by the notary.

1251. The notary's role is to verify if the Articles of Association are compliant with the law, in other words to judge if the newly established legal person does not conflict with the public order, good public morals and or the law. In fact according to the law 'the National Ordinance on the Notary Office' (N.G. 1994, no. 6) it is mandatory for the notary to create a legal person when such a request is made. Also the NOIS obliges the notary to identify his clients, including the beneficial owners/founders, when rendering services as described in the NOIS.

**The Association**

1252. According to Article 70 of Book 2 of the Civil Code the association is a legal body with members that is founded to serve a given purpose. The law does not require an association to be founded by a notary act. It is common practice that for example a sports club without a statute grows into an association. In such a case the doctrine speaks of an 'informal association'. If necessary the Court can make these kinds of associations formal. When an association is founded by a notary act, statutes have to be deposited with the registry at the Courthouse.

**Review of the domestic NPO sector**

1253. The Authorities have noted that in 2007 on request of the Minister of Finance, Compliance Services Caribbean (CSC) initiated a study on NPOs which was concluded in 2009. The results of this study are presented in the document **"Report of findings towards the Special Recommendation VIII regarding entities that can be used for the financing of terrorism in the Netherlands Antilles".** This report focused on the potential misuse of non-profit

[10] The data of 2009 refer to 11 months of the year, December is excluded.

organizations (NPOs) for terrorist financing in the Netherlands Antilles. The adequacy of existing laws and regulations was also reviewed.

1254. The study conducted by CSC focused particularly on the following topics:

- The statutory requirements to found a foundation or an association;
- The statutory requirements to keep financial records;
- The supervision and monitoring authority power that the authorities have regarding to foundations and associations;
- The authority power the authorities have to supervise and monitor foundations and associations;
- The possibilities to abuse foundations or associations for the financing of terrorism;
- The number of foundations and associations that are known in the Netherlands Antilles;
- The current legislation for NPOs in the Netherlands Antilles;
- The familiarity of the authorities with the director(s), board, members and contributors of the foundations and associations; and
- The Private Foundation (SPF).

1255. During the survey conducted by CSC the primary competent supervisory and law enforcement authorities for the Netherlands Antilles were consulted. The Consulate of the United States of America was also consulted.

1256. It is important to point out that the recommendations of the Study at that time, among others, included:

- Promoting transparency, accountability and integrity in the administration and management of all NPOs.
- Periodic reassessment by reviewing new information on the sector's potential vulnerabilities to terrorist activities must be conducted.
- The risk of terrorist financing thorough foundations and associations must be part of a national policy/ national threat assessment

1257. It appears however that those recommendations have not been addressed as yet.

*(iii) conduct periodic reassessments*

1258. A periodic reassessment has not been conducted since the 2009 survey.

**Protecting the NPO sector from terrorist financing through outreach and effective oversight**

1259. At present, there is no designated supervisory authority specifically for the NPO sector. The 'supervision' falls within the obligations of CDD of the financial institutions. In this regards, the Examiners were advised by some supervised institutions that the procedures of due diligence applied to the non-profit organisations are the same as for the other legal persons or customers they have.

1260. Most of the private institutions interviewed do not consider the NPO sector in Curaçao as high risk.

1261. As far as the Examiners are aware, no training has been undertaken specifically for NPOs in relation to the awareness of the risks of terrorist abuses. Also there is no evidence that the private sector has been trained with regard to the vulnerabilities and risks that may arise from the NPO sector.

1262. As there is no supervision or monitoring of NPOs, it cannot be assessed whether or not there are any NPOs that account for a significant portion of the financial resources under control of the sector or substantial share of the sector's international activities.

1263. The information relating to NPOs (such as name, date of establishment, registered address, Articles of Association, including purpose and objectives, and any amendments thereto as well as the information of the managing director(s), supervisory director(s) (if any) and proxy holders (if any) needs to registered with the Chamber of Commerce. As mentioned earlier, the information at the Commercial Registers is available to the general public and easy to access on line. However, in the case of foundations information director/manager does not always appear as registered.

1264. Associations and Foundations before registering information in the Chamber of Commerce the information they registered at the Foundation register. Information from these previous records are traceable as the Register provides the old record number from the Foundation register.

1265. Based on the information provided by the Authorities, other than what it is prescribed in the Article 53 of the Penal Code in relation to criminal offences committed by legal persons, there are no different levels of sanctions for preventive measures to avoid the misuse of NPOs.

**Registration of NPOs**

1266. As described under the legal framework in the discussion of SR.VII above, NPOs are obliged to register with the Chamber of Commerce and to file any registration information changes with the Chamber of Commerce, as stipulated in the CRA (N.G. 2009, no. 51). The information relating to NPOs is publicly available. However, based on a random check to the website, there is no evidence that updates have been registered at the Chamber of Commerce.

1267. Pursuant to Article 15 of Book 2 of the Civil Code, entities like foundations are required for administrative purposes, keep a record of the financial condition of the legal person. However there is no requirement related to keeping detailed records of transaction (local and international) to verify that the funds are spent in accordance with the purpose and objectives of the organization.

1268. As was mentioned above, as NPOs are clients of institutions supervised by the Central Bank, records of transactions must be kept for at least five (5) years. However there should be specific requirements for NPOs.

1269. As stated before, information on NPOs is placed in the public and trade registry held by the Chamber of Commerce.

1270. NPOs are not required to submit information on records of transactions to any competent authorities.

1271. The information on NPOs is only known upon request by the authorities through a Court order.

**Targeting and attacking terrorist abuse of NPOs through effective information gathering, investigation.**

1272. The committee consisting of the FIU (MOT), the PPO, Customs, Tax office and law enforcement agencies meets on a regular basis to share information and discuss common subjects with regard to the fight against ML and FT.

1273. As stated before Central Bank has a MOU with the PPO and also shares information with the FIU (MOT) and the VDC.

1274. All authorities, including law enforcement authorities, have the legal power to obtain information from NPOs, whether or not by means of a Court order. However, when the request of information would depend on a Court order, it is important to note that the examiners were advised by the PPO office that in order to request a Court order they must have 'reasonable suspicion' to proceed.

1275. Authorities could access the Commercial Register, and will receive upon request electronic copies of databases for internal perusal. However as mentioned earlier, the information remaining in the online commercial register is not always current.

1276. As mentioned before, there is no specific regulation or supervision to the NPOs sector therefore the submission of information is not required, so proper system information sharing at a domestic/international level cannot be assessed

**Responding to international requests for information about an NPO of concern**

1277. The Office of the Attorney General receives all foreign requests for information through the Minister of Justice and request for mutual legal assistance are handle by a division at the Public Prosecutor's Office.

5.3.2 Recommendations and Comments

1278. The Authorities should enact legislation to deal with the AML/CFT responsibilities of NPOs. specifically pertain to the NPO sector

1279. Curaçao should consider designating a supervisory authority for the NPO sector.

1280. Curaçao authorities should conduct a new assessment on the risk with regard to the NPO sector.

1281. The Authorities of Curaçao should undertake outreach programmes to the NPO sector with a view to protecting the sector from FT abuse.

1282. Ensure that training programs are in place for the NPO sector and supervised institutions with regard-to the risks of the NPO sector.

1283. There should be a requirement for NPOs to keep records of transactions for at least five years and Curaçao Authorities should consider requiring the NPOs to submit that information to a designated competent authority periodically.

5.3.3 Compliance with Special Recommendation VIII

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **SR.VIII** | **NC** | • **There has been no recent review of the NPO sector and no current identification of its vulnerabilities for FT.**<br>• **There is no supervision or monitoring specifically for the NPO sector.**<br>• **No supervisory programme in place to ensure NPO sector compliance** |

| | | |
|---|---|---|
| | | **with AML/CFT legal framework**<br>• **No outreach programmes in place.**<br>• **No training in place to the NPO sector or to the financial institutions with regard the risks of the NPO sector.**<br>• **There is no obligation for NPOs to keep financial information on transaction or to submit financial statements to the Chamber of Commerce or any other relevant authority.** |

# 6. NATIONAL AND INTERNATIONAL CO-OPERATION

## 6.1 National co-operation and coordination (R.31 and 32)

6.1.1 Description and Analysis

***Recommendation 31***

***National co-operation and coordination***

1284. In Curaçao several authorities are involved in the combating of ML and FT.

- FIU (MOT);
- TIRP;
- Police Force of Curaçao;
- Recherche Samenwerkings Team;
- Customs (PIOD);
- PPO;
- Central Bank;
- Security Service of Curaçao;
- BFO/HARM;
- TIO Tactisch;
- Bureau Foundation of the Government Accountants (Stichting Overheids Accountants Bureau).

1285. These Authorities collaborate both at a ministerial and an operational level. There are various mechanisms to coordinate policy development and operational activities (investigations). In some situations cooperation is focused on a specific subject, for instance with regard to the combating of fraud of real estate property.

***Mechanism for cooperation and coordination***

1286. National cooperation and coordination takes place through the following mechanisms:

- the CIWG (working groups) meetings;
- the periodic (6 to 8 weeks) meetings with the various investigation departments, Customs, Tax Office and the Public Prosecutor;
- the meetings between the PPO and the FIU (MOT);

- all trainings organized by RST;
- Police departments meetings

1287. The CIWG was established by law in 1990. The legislation appointing the CIWG was however amended in 2002 (National Decree No. 18) to include the combating of terrorist financing. The CIWG is a Working Group composed of representatives from both the public and private sectors. It is chaired by the Central Bank. The list of representatives is prescribed by the National Ordinance. However, there is some flexibility with regard to adding representatives as needed. The members of the CIWG are from the Central bank, the PPO, the Tax Office, the Justice Department, the Central Office for Legislation and Legal Affairs, the Organisation of Foreign Affairs, GCB, and the private sector (banking, insurance and international sector).

1288. The FIU, police forces such as BFO, RST and UFCB are not members of the CIWG. The PPO represents the law enforcement authorities in the CIWG. The FIU is involved in the activities of the sub-working groups of the CIWG. From the private sector, most representatives are from financial institutions. From the DNFBP sectors, only some members of the CIFA are members of the CIWG, there are no representatives from other DNFBPs.

1289. The CIWG monitors and co-ordinates the various agencies' efforts to achieve full compliance with the FATF 40 + 9 Recommendations. The CIWG is in regular contact with the private sector representatives. This cooperation helps in making the measures that are proposed to the government also practical to implement. The CIWG also invites other bodies and organizations to partake in its work. The CIWG is a very high ranking organ within the AML/CFT framework. For example, under the Protocols governing the freezing of assets of terrorists mentioned on UN Listings, the CIWG may recommend/present a request to the Government relating to the drawing up of a sanctions Decree to implement the UN requirement.

1290. The Examiners were advised that the work of the CIWG included drafting statutes, commissioning reports (including risk assessments of the NPO sector) and exchanging information about developments at FATF and CFATF. The CIWG appeared to work on an irregular basis without any fixed meeting dates, agenda or work programme. The Examiners were not presented with Minutes of meetings, documents or reports produced by the CIWG.

1291. At the operational level, consultation takes place periodically (every 6 to 8 weeks). An "investigation officers meeting" (opsporingsdienstenoverleg), in which the FIU (MOT), the law enforcement agencies (for example UFCB, BFO and RST), the PPO, Customs and the Tax office participate to discuss matters of mutual interests in the fight against ML/FT. TF. Moreover, actions to be taken are coordinated during these meetings.

1292. Although, the FIU (MOT) indicated that it meets periodically (approximately every two months) with the PPO to discuss the disseminated transactions, the quality of the reports and the follow up needed with regard to the reporting entities, there is no indication that the UFCB, as the law enforcement authority unit that receives, analyses and disseminates FIU information within police forces, is involved in any such meetings.

1293. The FIU has organized several informative sessions for Customs and for law enforcement agencies, with regard to the work of the FIU (MOT) and cooperation with the respective law enforcement agencies.

**Progress report**

1294. On November 30, 2001 the Council of Ministers of the Dutch Kingdom concluded in a joint statement agreement on the intensification of the cooperation between the countries within the

Dutch Kingdom for the combat of terrorist financing. Progress reports have in this respect been issued on a regular basis thereafter. The latest progress report (7th) was issued in 2008.

**Additional Elements**

**FIU (MOT)**

1295. The FIU has a general mandate to disseminate information under Article 7 of the NORUT to national and international law enforcement agencies and regulatory agencies with a similar role as the FIU. At the domestic level, the FIU (MOT) disseminates information to one unit (UFCB), which is responsible to further disseminate to the PPO after conducting its own analysis.

1296. The FIU is in contact with other supervisors, such as the Central Bank and the Gaming Control Board, regarding the operational cooperation between the supervisors. Each year, the FIU organizes an average of thirty (30) training sessions and informative sessions for both financial and non-financial entities. FIU (MOT) also has a website where relevant information for all its partners in the reporting chain can be found, brochures and manuals are also issued to all reporting entities and interested competent authorities. Additionally, FIU (MOT) on a regular basis gives radio, television and newspaper interviews with regard to ML/TF issues.

***Recommendation 32***

1297. The national laws are reviewed regularly by various governmental bodies and ministries in order to enhance effectiveness of the AML/CFT system, as a part of their legislative work programmes. Issues such as possible bottlenecks for the implementation of AML/CFT measures, the execution of AML/CFT laws or the prosecution of ML/FT cases may be identified and new legislation is prepared to address the issues (e.g. safekeeping of bearer shares). At the time of the Mutual Evaluation the Authorities indicated that the NOIS and NORUT were subject to revision while a new MTC law was being developed. The Ministry of Justice and the PPO are also involved in key reforms to the Penal Code and other Statutes governing law enforcement issues.

1298. The Ministry of Justice indicated that the priority reforms to the law being proposed cover areas such as human trafficking, financing of terrorism articles, prosecution of offences committed abroad, corruption, abolishing of the death penalty. Particular care has to be taken to consider Kingdom level issues (e.g. ensuring comparability in offences as well as European treaties and laws that impose obligations on the Kingdom of the Netherlands.

1299. There are however no clear structures or processes in place at the national level in order to take operational findings on new trends (risks, threats, and vulnerabilities) into account in the development of new measures to combat ML and FT. Given that the police do not participate in the CIWG, they are not able to provide operational input into the recommendations that may be made by the CIWG. It was advised that the PPO also do not consistently attend CIWG meetings.

***Recommendation 30 –Resources (Policy makers)***

**FIU (MOT**

1300. The FIU (MOT) receives its funds from the Government. At the drawing up of the budget all the plans that the FIU (MOT) has for the coming year are taken into account. The draft budget must be sent to the Minister of Finance for approval after which it is approved by the

Parliament. The budget of the FIU (MOT) has always been sufficient to execute the core functions and cover the expenses of the FIU (MOT).

1301. The FIU (MOT) has a current formation strength of twenty-one (21) positions for its four (4) departments. At this moment the staff consists of fifteen (15) employees of which two (2) employees (the senior legal counsellor and the supervisor of the analyst department) have been outsourced to the FIU (MOT) of Sint Maarten for a period of one (1) year.

1302. With regard to the PPO and the Judicial services, these areas are appropriately funded and resourced. The Ministry of Justice deals with the budget of the PPO which depends on the yearly operational plan settled between the Ministry and the PPO's top management. The Judiciary is funded by the Dutch Government.

**The Central Bank**

1303. The supervisory activities of the Central Bank are partially funded through fees charged to the supervised sector. The fees charged to the supervised institutions are based on different criteria. Credit institutions are, for example, charged monthly fixed fees. Insurance companies are charged a certain percentage of their premium income, whereas investment institutions are charged a fee based on their total assets. Administrators and company (trust) service providers are charged a fee based on the number of clients serviced by them.

1304. The remaining funds to cover the expenses pertaining to the supervisory activities of the Central Bank are generated from the operational results of the Central Bank. Financial resources are annually budgeted to hire staff in the supervision departments and to train the staff of the supervision departments.

1305. The overall AML/CFT level of knowledge and expertise of the Central Bank's examiners appears to be adequate. The staff is exposed to training and capable of understanding and acting upon critical situations that may arise in the sector.

1306. The prudential supervision departments of the Central Bank have computerized databases and analytical software tools e.g. Business Objects enabling them to periodically analyze the financial position and result of the supervised institutions and verify their compliance with legal stipulations.

**The GCB**

1307. The supervisory activities of the GCB are funded through thirty-seven and a half percent (37.5%) of the income that Curaçao receives from the casino sector. The GCB is completely independent as to how and where these funds are best used.

1308. Financial resources are annually budgeted to hire and train the staff of the supervision departments. The complete organizational strength of the GCB consists of about forty-eight (48) people with still a few positions to be filled. The supervisory board consist of five (5) members with two (2) of these members nominated by the Government.

**The FIU (MOT)**

1309. The FIU (MOT) receives its funds from the Government. According to Article 9 of the NORUT, the Minister of Finance, in agreement with the Minister of Justice, having heard the Guidance Committee referred to in Article 16 of the same Ordinance, determines the budget and staff formation of the FIU (MOT). The yearly budget is drawn up by the FIU (MOT). At the drawing up of the budget all the plans that the FIU (MOT) has for the coming year are taken into account. The draft budget must be sent to the Minister of Finance for approval after which

it is approved by the Parliament. The budget of the FIU (MOT) has always been sufficient to execute the core functions and cover the expenses of the FIU (MOT).

1310. The FIU (MOT) is an administrative FIU, which as previously noted falls under the Minister of Finance. The FIU (MOT) acts as a 'buffer' between the reporting entities (financial and professionals) and the law- enforcement authorities in charge of financial crime investigations and prosecutions. The FIU (MOT) renders annual reports of its activities and its plan for the following year to the Minister of Finance.

1311. In order to ensure the independence of the FIU (MOT), in the Code of Conduct of the FIU (MOT) it is stated that the employees of the FIU (MOT) cannot perform extra duties without the written approval of the Minister of Finance. Every employee of the FIU (MOT) has signed a letter stating that the employee is not performing extra duties for institutions that have a reporting obligation.

1312. Pursuant to NORUT Article 2, the FIU (MOT) is a central national agency falling under the responsibility of the Minister of Finance.

1313. Pursuant to Article 4 of NORUT, the Minister of Finance is the Manager of the FIU (MOT) database. In his capacity as Manager, the Minister of Finance can draft regulations with regards to the database and its proper functioning. As previously noted in Section 2 of the Report according to the third paragraph of Article 4 of NORUT, the Head of the FIU is entrusted with the actual management of the database in the name and under the responsibility of the Minister of Finance. Article 4, paragraph 3 allows the Minister to delegate its powers with regard to the database. However, as discussed earlier in the Report, there is no disposition in the legislation (NORUT) indicating that the Minister of Finance cannot decide to exercise its powers and directly manage the database.

1314. In practice, the Head of the FIU has always been managing the database and the Minister of Finance has never interfered in the operational activities of the FIU (MOT). However, according to the disposition of the legislation, a Minister of Finance could, in theory, decide to directly manage the database. Such a situation could lead to undue influence or interference.

1315. Pursuant to Article 16 of NORUT, there is a Guidance Committee for the FIU (MOT) officially chaired by the Minister of Finance (authority delegated to a representative of the Minister of Finance) and composed of the Minister of Justice, supervisory authorities, law enforcement authorities and representatives from the private sector (reporting entities falling under the scope of the NORUT). The Committee determines its own mode of operation and members are appointed by the Minister of Finance. The FIU is not represented on the Guidance Committee.

1316. According to the legislation, the tasks of the Committee is to provide guidance to the FIU (MOT) on its mode of operation; provide knowledge and expertise and advise the Ministers of Finance and of Justice. The advice to the Ministers can be: on the performance of the FIU (MOT); on the effectiveness of the obligation to report; and, on the establishment of indicators.

1317. In practice, this Guidance Committee is chaired by a representative of the Minister of Finance and, according to some members representative of the private sector; it does not meet on a regular basis (once or twice a year). Recent meetings have been to discuss the annual report and staffing actions. However, according to the disposition of the current legislation, the Minister of Finance, the Minister of Justice or representative of the private sector subject to this legislation could, in theory, interfere on the mode of operation of the FIU by providing guidance related to its mode of operation. Such a legislative provision could also potentially lead to undue influence from members of the Guidance Committee.

**Central Bank**

1318. As stated above and in Section 3.10, it appears that staff may be pressured to effectively undertake AML/CFT oversight, along with monitoring of other risk areas. Funding sources, technical and other resources appear to be adequate to allow the Central Bank to oversee AML/CFT effectively.

1319. The Central Bank is by virtue of the Central Bank Statute an independent supervisory authority for the financial sector must carry out its supervisory task without any external influence or interference (Article 18 of the Central Bank Statute). The Government does not give any operational direction and/or guidance to the Central Bank. It should also be noted that in an effort to strengthen the Central Bank's independent position vis-à-vis the government, the Central Bank Statute limits the monetary financing of budget deficits to five percent (5%) of the government's revenues in the previous year. This limitation must be seen in the context of an overdraft facility to meet liquidity deficits of the public sector that may result from seasonal fluctuations in government revenues. Furthermore, there is no interference in the operational independence of the Central Bank by the industry.

**PPO**

1320. The PPO is in charge of the control of the compliance with the legal regulations of Curaçao and of dealing with criminal cases against persons. The PPO gives direction to the criminal investigations by the police, it decides which cases are brought before the Court and settles minor cases itself. Furthermore the PPO is in charge of the enforcement (execution) of Court decisions in criminal cases, both with regard to the freedom restricting punishments, community punishments and fines. The Minister can give instructions to the Public Prosecutor about the prosecution policy to be pursued, but does not interfere in individual criminal cases. At the moment there are twelve (12) Public Prosecutors supervised by one (1) Chief Public Prosecutor and assisted by six (6) Public Prosecutor's clerks. All Public Prosecutors are appointed by the Government.

**GCB**

1321. The Government and Parliament establish the policies, which are translated into law and regulation. The GCB independently exercises these policies accordingly without intervention of the government. Penalties to enforce compliance are also independently executed by the GCB. The supervisory board of the GCB does not include politically engaged members. However, the positions of Chairman and Secretary are directly appointed by the Government. The other members are nominated by the Public Prosecutor, the Central Bank of the Netherlands Antilles, and the Chamber of Commerce.

1322. The funding of the GCB is also handled independently. Currently the funding of the GCB is regulated by law (Art. 20c of the Island Ordinance Casino sector Curaçao). All supervised casino's have to adhere to these requirements. A percentage of thirty-seven and a half percent (37.5%) of the income from the sector is entitled to the GCB. The GCB is completely independent as to how and where these funds are best used.

1323. The audit team performs the audit program independently. The team members of the audit team are nominated by the management as supervisor and have access to all relevant information for their supervision, regardless of where this information might be located, although coordination with the management should always take place.

**Policy Makers only (Integrity)**

**FIU**

1324. The FIU (MOT) requires a minimum standard of education/training at Higher Vocational Education-level when recruiting members of the staff. It has expertise in a wide range of fields, namely legal, ICT, financial, law enforcement, organisational and security auditing. The level of expertise of the different fields is high. Knowledge on ML and FT prevention is updated periodically through participating in national and international courses and programs on this matter.

1325. To ensure high integrity of the personnel, before being appointed, the candidates must undergo a very strict screening by the VDC. After commencement of the employment, screening continues on a regular basis. All employees must observe the regulations laid down in the code of conduct. Furthermore, Article 20 of the NORUT prohibits anyone who, pursuant to the application of the law or of decisions taken pursuant to the law, performs or has performed any duties to make use thereof or to give publicity to such further or otherwise than for performing his duties or as required by the law.

**Central Bank**

1326. The prospective staff members of the Central Bank are carefully selected based on their educational background, training, expertise, and integrity and must observe codes of conduct for both the Bank and the supervisory department.

1327. As for confidentiality purposes, all staff members are required to sign a confidentiality agreement at the beginning of their working relationship with the Central Bank. According to Article 31 of the Central Bank Statute, the Supervisory Directors, President and Directors of the Central Bank are required to keep confidential all information obtained during the execution of their function, in so far disclosure of such information is not prescribed by or pursuant to national ordinance. Furthermore, confidentiality provisions for employees must be observed in the employee hand book and pursuant to the NOSBCI, the NOSSI, NOIB, NOSPF the NOSSE, and NOSIIA.

1328. For all supervisory staff members there is a career development plan in place and (local and international) training is provided. Ongoing AML training for the Central Bank personnel takes place through local and international programs.

**PPO**

1329. The common norms for the recruitment of civil servants are also applicable when recruiting new staff members at the PPO. A selection committee will investigate if the candidate meets the requirements for the specific vacancy. For policy makers an academic degree (for instance a law or economics degree) is required.

1330. New staff members are required to swear to an oath of confidentiality. The staff members have to be screened for specific functions (those that entail the combat of financing terrorism) by the VDC.

**GCB**

1331. The GCB periodically issues memos with procedures on the required behavior of GCB personnel. The law also prohibits certain conduct of the supervisor for the casinos, for instance the engaging of supervisory personnel in casino gaming activities. The GCB has also separately issued a memo to reinforce this regulation.

1332. At recruitment, all applicants for a position in the GCB-organization are screened by the Curaçao National Secret Service. The recruitment requirements depend upon the position. All personnel are required by law to maintain confidentiality (art. 25, first and second paragraph, of

the Island Ordinance Casino sector Curaçao (O.B. 1999, no. 97) and the employment agreement with the GCB reinforces this.

1333. Integrity training has not been organized. It is currently planned to incorporate this in order to equip the personnel with the proper mindset.

**Policy Makers only (Training)**

**FIU**

1334. A great part of the budget of the FIU (MOT) is set aside for the training of the personnel. The staff of the FIU (MOT) participates and annually attends several national and international training courses in the field of preventing ML and FT. The FIU (MOT) also provides throughout the entire year general and specific trainings for the reporting entities. These sessions are also attended by the FIU (MOT) staff. These sessions serve as a means for the FIU (MOT) to improve the quality of the reports that it receives from the reporting entities. The trainings that are provided regard, among other things, the reporting requirements, how to recognize unusual and suspicious transactions, Terrorism Financing, the reporting procedures, raising of general awareness, FATF and Typologies, Egmont, and the use of indicators. The FIU (MOT) also provides Tactical Analysis Training courses for its staff and for foreign FIUs.

1335. The training that the FIU (MOT) is involved in over the last five (5) years is contained in the annual reports of the FIU (MOT).

**Central Bank**

1336. As indicated in section 3.10 training is provided to the supervisory staff members who are involved in AML/CFT assessments comprising both internal training, and external training.

1337. In addition, some of the Central Bank's personnel annually attend FATF and or CFATF and other relevant local or international conferences and a number of the Central Bank's personnel are accredited CFATF assessors.

**GCB**

1338. Attached is a list of the ML an FT related trainings that the audit personnel, technical (field) personnel and IT personnel attended. See attached as an Appendix.

**With regard to the PPO:**

1339. Transfer of knowledge mostly takes place by means of the twinning-model. This entails that less experienced investigators are coupled to investigators with more experience in this field.

6.1.2 Recommendations and Comments

1340. There should be a clear structure, governance and terms of reference in place that would assist with the organization of the CIWG.

1341. The composition of the CIWG should include more operational competent authorities such as FIU (MOT), the PPO and other law enforcement authorities.

1342. Consideration should be given to having a forum where only competent authorities can work together on policy and legislative changes that will contribute to improve the national AML/CFT regime.

1343. An assessment of the adequacy of resources assigned to competent authorities should be undertaken to ensure that they keep pace with a dynamic financial sector.

6.1.3 Compliance with Recommendation 31

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.31** | **PC** | • **The national committee on AML/CFT measures (CIWG) lacks structure and organization.**<br>• **Important concerns with frequency of meetings of the CIWG.**<br>• **Operational competent authorities are not represented on the CIWG**<br>• **No national committee or working group for competent authorities only.** |

## 6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

***Recommendation 35***

**1344.** Curaçao is participant to many treaties to combat crime. As a small country a lot of emphasis is being put on international cooperation to effectively combat organised crime and terrorism.

1345. The United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances (Vienna Convention) entered into force on March 10, 1999 for the Netherlands Antilles (and now also for Curaçao).

1346. The United Nations International Convention for the Suppression of the Financing of Terrorism entered into force on March 22, 2010 for the Netherlands Antilles (and now also for Curaçao).

1347. The United Nations Convention against Trans-National Organized Crime (Palermo Convention) was entered into force on September 9, 2010 for the Netherlands Antilles (and now also for Curaçao)

**Table 29 Treaties and Conventions table**

| Treaty | Articles | Curacao's situation |
|---|---|---|
| Vienna Convention (1988) | 3 (Offences and Sanctions) | Penal Code Article 435a to 435c |
| | 4 (Jurisdiction) | Penal Code Article2 and 4 |
| | 5 (Confiscation) | Penal Code Articles 35, 38a-e, 119 and 119a-d, 121-123 |

| | | |
|---|---|---|
| | 6 (Extradition) | Extradition Decree |
| | 7 (Mutual Legal Assistance) | Penal Code Article 555 et seq |
| | 8 (Transfer of Proceedings) | Penal Code Article 579 |
| | 9 (Other forms of co-operation and training) | NORUT and Penal Code Article 564 |
| | 10 (International Co-operation and Assistance for Transit states) | Co-operation with the Dutch Kingdom and other states |
| | 11 (Controlled Delivery) | Established by case law |
| | 15 (Commercial carriers) | No measures seen by examiners |
| | 17 (Illicit Traffic at sea) | Penal Code Article 142, 38c and d |
| | 19 (Use of mail) | NOOCMT |
| | | NOOCMT |
| **Palermo Convention** | 5 (Criminalization of participation in an organized criminal group) | Penal Code Articles 127, 128 and 140 |
| | 6 (Criminalization of laundering of the Proceeds of Crime) | Penal Code Article 146 |
| | 7 (Measures to combat money laundering) | Penal Code 435a-435c |
| | 8 (Criminalization of corruption) | Penal Code |
| | 9 (Measures against corruption) | Penal Code Articles 183, 184, 185, 378, 379 and 380 |
| | 10 (Liability of Legal persons) | Penal Code Articles 183, 184, 185, 378, 379 and 380 |
| | 11 (Prosecution Adjudication and sanction) | Penal Code Article 53 |
| | 12 (Confiscation and Seizure) | Penal Code article 146, Penal Code 435a-435c, |
| | 13 (International Co-operation for the purposes of confiscation) | Penal Code Articles 35, 38a-e, 119 and 119a-d, 121-123 |
| | 14 (Disposal of confiscated proceeds of crime or property) | Penal Code Article 555 et seq |
| | 15 (Jurisdiction) | Operational procedures |
| | 16 (Extradition) | Penal Code Article2 and 4 |

| | | |
|---|---|---|
| | 17 (Transfer of sentenced persons) | Extradition Decree |
| | 18 (Mutual Legal Assistance) | Not seen |
| | 19 (Joint Investigations) | Penal Code Article 555 et seq |
| | 20 (Special Investigative Techniques) | Penal Code Article 564 |
| | 21 (Transfer of Criminal Proceedings) | Case law |
| | 22 (Establishment of criminal record) | Penal Code Article 579 |
| | 23 (Criminalization of obstruction of justice) | Not seen |
| | 24 (Protection of witnesses) | Penal Code Article 330 and 331 |
| | 25 (Assistance and protection of victims) | Not seen |
| | 26 (Measures to enhance cooperation with law enforcement authorities) | Not seen |
| | 27 (Law Enforcement cooperation) | Not seen |
| | 28 (Collection, exchange and analysis of information on the nature of organised crime) | Not seen |
| | 29 (Training and technical assistance) | NORUT |
| | 30 (Other measures) | Links with Netherlands and other states |
| | 31 (Prevention) | Links with Netherlands and other states |
| | 34 (Implementation of the Convention) | |
| Terrorist Financing Convention | 2 (Offences) | Penal Code Article 4 (see SR I) |
| | 4 (Criminalization) | Penal Code Article 4 (see SR I) |
| | 5 (Liability of legal persons) | Penal Code Article 53 |
| | 6 (Justification for commission of offence) | No justification contained in laws |
| | 7 (Jurisdiction) | Penal Code Article 2 and 4 |
| | 8 (Measures for identification, detection, freezing and seizure of funds) | National Sanctions Ordinance, Penal Code Articles 35, 38a-e, 119 and 119a-d, 121-123 |
| | 9 (Investigations & the rights of the accused). | National Sanctions Ordinance |

| | | |
|---|---|---|
| | 10 (Extradition of nationals) | Extradition Decree |
| | 11 (Offences which are extraditable) | Extradition Decree |
| | 12 (Assistance to other states) | Penal Code Article 555 et seq |
| | 13 (Refusal to assist in the case of a fiscal offence) | Penal Code Article 560 |
| | 14 (Refusal to assist in the case of a political offence) | Penal Code Article 559 |
| | 15 (No obligation if belief that prosecution based on race, nationality, political opinions, etc.) | Penal Code Article 559 |
| | 16 (Transfer of prisoners) | Penal Code Article 579 |
| | 17 (Guarantee of fair treatment of persons in custody) | Not seen |
| | 18 (Measures to prohibit persons from encouraging, organising the commission of offences and STRs, record keeping and CDD measures by financial institutions and other institutions carrying out financial transactions) and facilitating information exchange between agencies) | NORUT and NOIS Central Bank P and S. |
| | 19 Communication of outcomes to UN Secretary General | Penal Code Article 435a to 435c |

1348. The United Nations Convention for the Suppression of the Financing of Terrorism entered into force on March 22, 2010 for the Netherlands Antilles (Curaçao). New legislation was needed in order to implement the regulations laid down in the Terrorist Financing Convention. Therefore the Penal Code was amended (among others articles 4, 4a, 48a, 84a, 84b, 146a of the Penal Code.).

1349. However, the amendments effected to the Code that were in effect at the time of the Mission do not reflect the requirements of the Terrorism Financing Convention. The amendments do not make it clear whether it criminalizes conduct of persons by any means, directly or indirectly, unlawfully and wilfully provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out acts which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

1350. The Examiners also noted that under the Extradition Decree, Curaçao does not extradite its nationals, unless the Governor is of the opinion that there are guarantees that if the national is punished to serve a non-suspended sentence for the offences, he will be allowed to serve the sentence in Curaçao. There is no obligation at law for the authorities in Curaçao to promptly submit the case for prosecution to the Courts.

**Resolutions 1267 and 1373**

1351. Curaçao has an administrative freezing of assets framework in place. The Sanctions National Ordinance (SNO) empowers the government to implement international freezing orders such as the UN resolutions on terrorists. Since 2002 the national decrees freezing assets from Taliban c.s. and Osama bin Laden were issued. In addition the Central Bank instructed the supervised institutions to match their client data with the UN terrorist lists and other lists (see P&G) in order to detect whether assets must be frozen.

1352. The Sanctions National Decree Al-Qaida c.s., the Taliban of Afghanistan c.s., Osama bin Laden c.s. and terrorists to be designated locally (N.G. 2010, no. 93) based on the SNO implements UN resolutions 1267 (October 15, 1999), 1333 (December 19, 2000), 1363 (July 30, 2001), 1368 (September 12, 2001), 1373 (September 28, 2001), 1390 (January 16, 2002) 1526 (January 30, 2004). It is illegal for persons to deal with the assets of the terrorist indicated by the UN and those of other locally appointed terrorists, and as a result these can/must be "frozen" immediately when detected.

1353. It is notable that the maximum penalties for breaching the SNO per Article 20 appear to be relatively low, namely NAf 10,000 and/or one year imprisonment. It is not clear as to the penalties for breaching the Sanctions National Decree Al-Qaida c.s., the Taliban of Afghanistan c.s., Osama bin Laden c.s. and terrorists to be designated locally

1354. In addition, the SNO also provides at Article 9 for the Minister to grant full or partial exemptions or releases from the rules established by the Ordinance (covering road traffic, post and telecommunications, shipping and services and payments). Exemptions and releases may be made subject to conditions and such releases and exemptions and any modifications thereto must be gazetted.

1355. Moreover, a protocol (June 2010) has been adopted by the government to state more precisely the procedures respectively, on how to document and to handle assets to be frozen. Formerly, instructions were given by the Central Bank on how to proceed in those cases. Another protocol (June 2010) was also introduced by the government to establish the procedures regarding local persons suspected of being involved with the financing of terrorism or terrorist's activities. There have been no locally designated terrorists, nor cases of valid "hits" on the UN Listings.

1356. Where the entity is designated under the UN Listing, the freezing is automatic. Under the Protocols for the locally designated terrorists, there is a process of information gathering and investigation for the PPO to mount a freezing action under the criminal law. Given the requirements for investigations to ground such an action, thus freezing under the criminal law is not "*without delay*".

1357. The Sanctions National Decree Al-Qaida c.s., the Taliban of Afghanistan c.s., Osama bin Laden c.s. and terrorists to be designated locally also prohibits natural persons mentioned in section 1 of the UN Resolution 1526 from entering or travelling through Curaçao (not including Curaçao residents). This however is not in keeping with UNSCR 1267 which requires that states should deny permission for any aircraft to take off from or land in their territory if it is owned, leased or operated by or on behalf of the Taliban as designated by the Committee, unless the particular flight has been approved in advance by the Committee.

**Additional Elements**

1358. The 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (November 1990) entered into force for the Netherlands Antilles (and now also for Curaçao) on August 1, 1999.

1359. The Agreement between the Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland to supplement and facilitate the operation of the Convention of the Council of Europe on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (November 1990) entered into force for the Netherlands Antilles (and now also for Curaçao) on August 7, 2006.

1360. The Government of Curaçao is drafting legislation in order to implement and ratify the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (May 2005).

1361. The Convention on offences and certain other acts committed on board aircraft, September 14, 1963, Tokyo entered into force for the Netherlands Antilles on September 2, 1974 (and now also for Curaçao).

1362. The Convention for the suppression of unlawful seizure of aircraft, December 16, 1970, The Hague entered into force for the Netherlands Antilles on September 2, 1974 (and now also for Curaçao).

1363. The Convention for the suppression of unlawful acts against the safety of civil aviation, September 23, 1971 Montreal, entered into force for the Netherlands Antilles on September 2, 1974 (and now also for Curaçao).

1364. The Convention on the prevention and punishment of crime against internationally protected persons, including diplomatic agents, December 14, 1973 New York, entered into force for the Netherlands Antilles on January 5, 1989 (and now also for Curaçao).

1365. The International Convention against the taking of hostages, December 17, 1979, New York, entered into force for the Netherlands Antilles on January 5, 1989 (and now also for Curaçao).

1366. The International Convention for the suppression of terrorist bombings, December 12, 1997 New York, entered into force for the Netherlands Antilles on March 22, 2010 (and now also for Curaçao).

1367. Also, for the execution of UN Resolutions 1737 (December 23, 2006), 1747 (March 24, 2007) and 1803 (March 3, 2008) of the Security Council the Sanctions National Decree Islamic Republic of Iran (N.G. 2010, no. 92) has been implemented and for the execution of UN Resolutions 1695 (July 15, 2006) en 1718 (October 14, 2006) the Sanctions National Decree Democratic People's Republic of Korea (N.G. 2010, no. 91).

### 6.2.2 Recommendations and Comments

*Recommendation 35*

1368. The offence of terrorism financing should be criminalized in accordance with the Terrorist Financing Convention.

1369. The Vienna Convention should be fully implemented in Curacao law with regard to Article 15 of that Convention, as no measures regarding the Article were seen by the Examiners.

1370. The Palermo Convention should also be fully implemented in Curacao law with regard to Articles 18, 23 and 25-28 of that Convention as no measures regarding those Articles were seen by the Examiners.

*Special Recommendation 1*

1371. The laws should be properly amended to give effect to paragraph 4(a) of UNSCR 1267.

1372. Measures should b put in place that would allow for the freezing of assets without delay as they pertain to locally designated terrorists under UNSCR 1373.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.35** | **PC** | • **Terrorism Financing not criminalized in accordance with the TF Convention.**<br>• **Vienna Convention and Palermo Conventions not fully implemented in domestic law.** |
| **SR.I** | **PC** | • **Terrorism Financing not criminalized in accordance with the TF Convention.**<br>• **No provisions in law to deal with the requirements of paragraph 4(a) of UNSCR 1267.**<br>• **Freezing of the assets of locally designated terrorists cannot occur without delay as required by UNSCR 1373** |

## 6.3 Mutual Legal Assistance (R.36-38, SR.V)

6.3.1 Description and Analysis

***Recommendation 36 and SR. V***

1373. Curaçao can provide international legal assistance in a criminal investigation on the basis of the Penal Procedures Code and Treaties.

1374. International legal assistance is regulated in Book 7, Title VIII of the Penal Procedures Code articles 555 to 565.

1375. In summary the following topics are dealt with in this title:

- requests to perform investigation acts or to cooperate in this, the forwarding of documents, files or documentary evidence or supply information or the serving or issuing of documents or giving notice or information to third parties.
- The execution of the legal assistance requests is the responsibility of the Public Prosecutor, in so far as this is a question of the execution of investigation acts;
- This title also regulates the cases whereby the execution of the request will not be carried out.
- Requests with regard to an investigation of criminal offences, political or fiscal by nature, are only met pursuant to an authority by the Minister of Justice based on a treaty and then only in consultation with the Minister of General Affairs.

1376. Treaties covering international legal assistance:

- Treaty between the Kingdom of the Netherlands and the United States of

America with regard to mutual legal assistance in criminal cases. (The Hague June 12, 1981)

- Treaty between the Kingdom of the Netherlands and Australia with regard to mutual legal assistance in criminal cases (Canberra, October 26, 1988).
- Treaty between the Kingdom of the Netherlands and Canada with regard to mutual legal assistance in criminal cases. (The Hague, May 1, 1991).

1377. Curaçao can offer several forms of legal assistance, if they are requested in a criminal investigation.

1378. The following requests are qualified as requests for legal assistance: requests to perform investigation acts or to cooperate in the forwarding of documents, files or documentary evidence or supply information or the serving or issuing of documents or giving notice or information to third parties (Article 555, paragraph 2 of the Penal Procedures Code).

1379. With regard to the gathering of information from/or the examination of natural persons the following is regulated in Article 561 of the Penal Procedures Code: The Public Prosecutor has to submit to the examining Judge the request by a foreign judicial authority based on a treaty, where the request relates to the following:

a. if it is the intention to hear or interrogate persons who are not willing to appear as witnesses and submit the requested statement;
b. if a sworn statement has been explicitly requested, or a statement made before a judge;
c. if in view of the desired effect it is necessary to enter premises other than the public ones without the explicit permission of the entitled party, or that documentary evidence is seized;
d. if it is the intention to wiretap the data traffic.

1380. The laws of Curaçao also allow for officers from foreign jurisdictions to carry out certain operations within Curaçao, provided that they act under the supervision of the Curaçao Authorities. The questioning of witnesses by foreign officers is an example of this.

1381. The service of documents by law enforcement authorities in response to a request for mutual legal assistance is also permissible (Article 565).

1382. The laws of Curaçao also permit for the transfer of the execution of a sanction on an individual for an offence committed abroad with the consent of the Court

1383. It is also notable that the PPO may commence a criminal financial investigation pursuant to Article 579a of the Penal Code upon the request of a requesting foreign state. Once leave is granted for the commencement of such an investigation, it provides a wide array of measures to the investigating authorities including search powers, production powers and seizure powers

1384. The average time to deal with a request for legal assistance depends on the size of the investigation and/or the complexity of the request and/or if there are more requests for legal assistance. The intention for 2011 is to have dealt with a request within six (6) months after having received it with an average processing time of 90 days (3 months). In 2007 the average processing time was 139 days (115 days after receipt). In the last quarter of 2007 the average was 101 days (50 days after the date of receipt). In 2008 the average was seventy-four (74).

1385. The Public Prosecutor who has received the request shall decide without delay about its follow-up (Article 557 of the Penal Procedures Code). In so far as the request is based on a treaty the desired follow-up is applied as much as possible. In cases concerning a reasonable request that is not based on a treaty, as well as in cases whereby the compliance of the applicable treaty is

not compulsory the request will be granted, unless the compliance is in conflict with legal stipulation or with an instruction by the Minister of Justice (Article 558 of the Penal Procedures Code).

1386. Mutual Legal Assistance will be granted where there is a treaty in place or upon the authorization of the Attorney General. External requests not based on a treaty will be facilitated to the extent the request is not contrary to domestic statutory provisions or a directive issued by the Minister of Justice (Article 558). The Attorney General has advised that Curaçao has committed through its membership in the International Association of Prosecutors to provide the highest level of mutual legal assistance to colleague prosecutors to the extent permissible by the laws of Curaçao.

1387. Under Article 559 of the Penal Code, the following are the cases in which mutual legal assistance may not be afforded to a requesting state:

- in cases whereby the requesting country lacks jurisdiction according to the rules of international law;
- in so far as the suspect has been brought in or lured into the territory of the requesting country, or has been arrested and deprived of his freedom in a manner that is contrary to or unlawful according to international law;
- in so far as there is the suspicion that it has been done for the purpose of an investigation that was instituted with the intention to prosecute, punish or hurt the suspect because of his religious or political conviction, his nationality, his race or the population group he is part of;
- in so far as compliance would lead to the rendering of assistance to proceedings or adjudication that is incompatible with the principle on which Article 70 of the Penal Code and Article 282, first paragraph of the Penal Procedures Code is based;
- in case the request is made for the benefit of an investigation of offences for which the defendant is already being prosecuted in Curaçao.

1388. The Examiners do not consider these grounds for refusal to be unreasonable, disproportionate or unduly restrictive.

1389. There are internal guidelines within the PPO's Office when executing the requests of legal assistance. An international request for mutual legal assistance is sent to the Attorney General whereas similar requests within the Kingdom of the Netherlands are sent directly to the Chief Public Prosecutor. After having determined that there are no legal restrictions the request is handed over to a Public Prosecutor, who shall determine the further course of the action and who will act accordingly under the responsibility of the Chief Public Prosecutor. The Public Prosecutor is under a statutory duty to forthwith decide what action shall be taken with regard to the request (Article 557). In most cases the Public Prosecutor charges the police with the execution of the investigation. The registration (the date of entry, execution and handling) of the request takes place centrally. The duration of the procedures is supervised by the coordinating Public Prosecutor, who seeks to ensure that requests are dealt with rapidly and efficiently.

1390. A request for mutual legal assistance cannot be refused because it involves fiscal matters. However, under Article 560, if a request refers to the investigation of criminal offences related to fees, taxes, customs, foreign exchange, or related offences and whose compliance can be of interest for the tax authorities and the Central Bank or for requests concerning data that are held by the Tax authorities or the Central Bank the request requires the specific authorization of the Minister of Justice. Such a permit or authorization can only be issued on the basis of a Treaty and after consultation with the Minister of Finance. The explicit requirement for a treaty could

conceivably limit the assistance that Curacao Authorities could provide to other states where the matter involves fiscal matters.

1391. It should be noted however that Curacao does have a wide network of Tax Information Exchange Agreements with Australia, New Zealand, the USA, Canada, Spain, Mexico, Denmark, Iceland, Finland, Sweden, Greenland and the Faroe Islands, as well as the Caribbean Islands of St Lucia, Antigua & Barbuda, Bermuda, Cayman, British Virgin Islands and St Kitts & Nevis.

1392. Mutual legal assistance information can be obtained from the commercial banks and from other financial institutions. If it concerns a criminal investigation neither confidentiality nor secrecy can obstruct the use of the different statutory powers of investigation to satisfy a request for legal assistance. Article 40 of the NOSBCI determines that the Central Bank has a duty of confidentiality, however at the request of the Public Prosecutor this can be diverged from in case of a criminal investigation. A similar provision is included in all the other supervisory national ordinances.

1393. Article 559 of the Penal Procedures Code does not contain grounds for refusal of mutual legal assistance on the basis of the laws that impose secrecy or confidentiality demands on financial institutions or DNFBPs.

1394. Article 555 indicates that requests for mutual legal assistance includes requests to perform investigative acts or to render co-operation with such acts to dispatch files and evidentiary documents or to provide information or to serve or deliver documents or give notices or send notifications to third parties. The use of the term "*investigative acts*" is sufficiently wide to cover those investigative powers available to the authorities under the Penal Code and other laws of Curaçao.

1395. In general there are no mechanisms to prevent jurisdiction disputes. However, the Minister of Justice is the central authority with regard to international cooperation in criminal cases. The Minister has criteria that help decide which country is preferred for the prosecution. Based on the discretionary principle the Public Prosecutor's Office, for reasons of efficiency, can decide to participate in an agreement with the prosecution authorities of another nation concerning the prosecution of a person, if Curaçao, based on its own legislation, has the right to prosecute that person.

***Special Recommendation. V***

1396. A country may only receive mutual legal assistance or exchange of information and take other measures as long as the offences are criminalized according to the local law thereby applying (the principle of dual criminality.) The Authorities in Curacao confirm that they use a substance over form test to ascertain dual criminality. Thus, in the Evaluators view, differences in the form of the local offence would not deter the authorities from rendering mutual legal assistance provided that the offence being complained of is equivalent in nature.

1397. The mechanisms and procedures utilized by the PPO for determining the best venue for prosecution of defendants in connection with financing terrorism, terrorist acts and terrorist organisations would operate under similar considerations as would apply in the case of other serious offences.

1398. The powers of the PPO to investigate offences and carry out certain non-intrusive investigatory measures may be engaged in response to a direct request,

***Recommendation 37 and SR. V***

1399. Based on Article 558 of the Penal Procedures Code the request will be honored as much as possible once it is based on a Treaty. In cases concerning a reasonable request that is not based on a treaty, as well as in cases whereby the applicable Treaty does not include a compulsory compliance, the request will be met, unless the compliance is in violation of a legal regulation or of an instruction by the Minister of Justice.

1400. Dual criminality is not compulsory for simple and non-intrusive measures pursuant to Article 558 of the Penal Procedures Code. Dual criminality is however required if special investigative measures and investigative powers have to be used in so far as the request for legal assistance covers the search and seizure of eligible documentary evidence and the wire-tapping of data traffic (Article 562 of the Penal Procedures Code) or involves the Criminal Financial Investigation (per Penal Code Article 579a)

1401. Under the Extradition Decree of Aruba Curaçao and St. Maarten, extradition is possible if the criminal offence for which extradition is requested is also a criminal offence in Curaçao attracting a term of imprisonment of one (1) year or more. If the criminal activity includes several offences, some of which include lesser offences not attracting the one (1) year prison term, these offences will also be extraditable (Article 2(3)). There are no legal or practical impediments to rendering assistance for the extradition and those forms of mutual legal assistance where dual criminality is required. Legal assistance can also consist of the so-called 'minor legal assistance', which can refer to the execution of certain investigative activities. Curaçao recognizes and accepts that there are different systems to categorize criminal offences. Accordingly, when considering dual criminality it is the underlying conduct and not the legal title of the conduct that is taken into account.

1402. The Kingdom of the Netherlands, and consequently also Curaçao, does not extradite nationals if there is the likelihood that they could run the risk of being sentenced to death abroad or subject to corporal punishment (Article 3 of the European Convention on Human Rights).

***Special Recommendation. V***

1403. In the case of FT offences, the Authorities will apply a similar principle as is applied for other offences. The Curaçao Authorities have indicated that they would perform simple non-intrusive investigatory tasks even if there was an issue as to dual criminality.

1404. In the case of more intrusive measures, although dual criminality would be required for FT offences, the PPO confirms that it is the underlying conduct that would dictate whether assistance could be provided.

***Recommendation 38 and SR. V***

1405. The Curaçao Penal Code provides for extensive powers on the part of the authorities to provide mutual legal assistance to overseas counterparts at Penal Code Article 555 et seq.

1406. As mentioned before, Article 579a of the Penal Procedures Code offers the possibility of, among other measures, the criminal financial investigation, which gives the authorities wide powers to trace and seize assets derived from the proceeds of crime. The criminal financial investigation can only be conducted if this would have been possible if the offence or offences that the person is suspected in the requesting state would have been offences attracting penalties exceeding four (4) years imprisonment, had such offences been committed in Curaçao. The

offences of money laundering (culpable, intentional and habitual) and financing of terrorism offence are covered by this four (4) year threshold. During the criminal financial investigation the seizure of objects can only take place if it can reasonably be expected that the requesting country will issue a request for the execution of a confiscation or a sanction aimed at the dispossession of unlawfully obtained benefits.

1407. There are specific requirements for the use of seizure in the scope of mutual legal assistance. Subject to seizure are documents that can serve as evidence if the action has been committed in Curaçao and based on that action documents can be handed to the requesting State. In most cases seizure will require an application to be made to the examining Judge, by the Public Prosecutor. Because of the frequent contacts between the examining Judge and the Public Prosecutors, this phase of the procedure can be completed in a timely manner.

1408. In addition to Article 579a of the Penal Procedures Code, a foreign state, as long as there is a treaty, can request the seizure of objects in respect of which confiscation or civil seizure can be excluded, even without Curaçao having to open a criminal financial investigation. If a judgment has been pronounced in a foreign country, this judgment can be (partially) executed in Curaçao with the consent of the Joint Court of Justice (Articles 583 and further of the Penal Procedures Code).

1409. Article 119 of the Penal Procedures Code provides that all objects that relate to the unlawfully derived benefit to the accused or which have evidentiary value may be seized. Additionally all objects and claims which are subject to confiscation (post trial) are also subject to seizure, Under Article 35, these include various types of property, proceeds and instrumentalities that relate to criminal activity and any rights or benefits that flow from these objects.

1410. Under Article 119 of the Penal Procedures Code objects can be seized to secure a right of recourse in relation to a fine or obligation to be imposed in relation to that offence. This relates to offences to which penalties of imprisonment for terms of four (4) years or more (which include money laundering and terrorism financing). Under Article 177a of the Penal Procedures Code which relates to Criminal Financial Investigations, seizure can take place for the purpose of confiscating the benefit of criminal activity. Article 569a of the Code allows for a criminal financial investigation to be instituted at the request of a foreign state.

1411. There are roughly three ways to assess the economic profit (based on case law):

- Transaction based on calculation (in case of a criminal offence), or (in case more than one offence has been committed);
- Cash statements, or
- Property comparisons.

1412. The arrangements for coordinating seizure and confiscation actions with other countries has been established administratively although the Penal Code by inference contemplates joint operations with overseas officers (Article 564). The prosecution authorities establish arrangements with their overseas counterparts based on principles of mutual legal assistance and the nature of the operation in question.

1413. Curaçao has a Fund for the Combating of Crime and a Fund for Victim Support. These Funds are managed by the Ministry of Finance. Seized funds are deposited directly in these funds..

1414. Curaçao has an established active “asset-sharing” arrangement. However, it is not covered by special legal provisions. In Curaçao the Minister of Justice has the final say about “asset sharing”. The distribution of “assets” is done as much as possible on the basis of a Treaty (for instance a Treaty between Curaçao and the United States).

***Special Recommendation. V***

1415. The mutual legal assistance measures that are available under Penal Code Article 555 et seq (including the criminal financial investigation) are also available in cases of suspected FT. Similarly seizures under Article 119 that relate to fines (and consequent confiscations) based on the assessed value of the benefit to the accused are also available in cases of FT. The co-ordination of operations with overseas parties would also occur in cases where there is a suspicion of FT.

**Additional Element**

1416. Curaçao has administrative arrangements in place for both Asset forfeiture funds as well as asset sharing measures with its counterparts. These measures can be utilized in cases of suspected FT. The Examiners did not receive evidence that non criminal confiscation orders could be enforced.

***Recommendation 30 – Resources (Central Authority for receiving/sending mutual legal assistance requests)***

1417. Requests for legal assistance are dealt with under the coordination of the PPO according to the order of receipt/according to the order of importance by an investigation section of KPC or by the RST.

1418. The Departments specifically in charge of the handling of mutual legal assistance and extradition requests work directly under the supervision of the Public Prosecutor in charge of this portfolio. However the day to day management of mutual legal assistance requests is the responsibility of two (2) prosecutors. Their work is mainly coordination with regard to the investigative aspects of requests; meaning that they will assign these tasks to police officers whilst supervising the process.

1419. A request for mutual legal assistance is immediately sent to the Public Prosecutor pursuant to Articles 555, 556 and 557 of the Penal Procedures Code. The Public Prosecutor who has received the request will decide without delay about the steps to be taken. The average time frame as previously noted is seventy-four (74) days. There are plans to accelerate or shorten the duration of the handling, possibly by assigning more prosecutors to this area.

**Structure**

1420. Duties of the PPO have been laid down in the Kingdom Act, PPO, Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba (N.G. 2010, 59). The Public Prosecutor's Office is in charge of the supervision of the enforcement of the legal regulations of Curaçao and dealing with criminal cases against persons.

**Staffing**

1421. At the moment, there are twelve (12) Public Prosecutors under the supervision of a Chief Public Prosecutor and assisted by six (6) Public Prosecutor clerks. The Attorney General is the central authority for sending and receiving of mutual legal assistance and the extradition requests on behalf of the Minister of Justice. The PPO currently has two officers that focus on request for mutual legal assistance matters. Consideration should be given to increasing the number of lawyers that are assigned to deal with mutual legal assistance requests.

**Funding**

1422. The PPO receives its funds from the Government. Its budget is established based on the work programme agreed between the Ministry of Justice and the Attorney-General.

**Operational independence**

1423. All criminal investigations are done under the guidance and responsibility of the PPO. The PPO decides independently if and when to investigate or prosecute criminal cases. This is a fundamental principle of the criminal investigation and procedure. The Public Prosecutor's Office gives account about its pursued policy to the Minister of Justice. The Minister of Justice can give general guidelines with regard to prosecution policy to be pursued but the Minister of Justice cannot give orders/instructions to the PPO in specific criminal cases. In the case of mutual legal assistance under Penal Code Article 560, the Minister may make a determination with regard to rendering assistance in the case of certain offences.

1424. The staff of the Public Prosecutor's Office, including those involved in the sending and receiving of mutual legal assistance and extradition requests maintain high professional standard, including confidentiality standards. The staff is of high integrity and has been adequately trained. The same can be said of other Government ministries and authorities involved in the handling of mutual legal assistance and extradition requests. The Public Prosecutor's Office has sufficient knowledge, to deal with such requests if necessary in cooperation with other government services and agencies.

1425. In cases of a request for mutual legal assistance to investigate ML and the Public Prosecutor will instruct the specialists of BFO, RIEC, KPC and RST to investigate the matter. The staff of the Public Prosecutor's Office, including those who are involved in the sending and receiving of mutual legal assistance and extradition requests are sufficiently experienced in dealing with requests for assistance. See. Section 2.6 of the Report with regard to training for the PPO.

***Recommendation 32***

*Statistics*

1426. Curaçao maintains comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating ML and FT. This includes annual statistics on mutual legal assistance or other international requests for co-operation, all mutual legal assistance and extradition requests (including requests relating to freezing, seizing and confiscation) that are made or received, relating to ML, the predicate offences and FT including whether it was granted or refused**.** The Statistics are not kept with regard to the nature of the request and the time required to respond for mutual legal assistance. Authorities are however establishing separate systems for data management as previously statistics would be maintained for Curaçao St. Maarten and Aruba.

**Preliminary reporting International/Interregional Legal Assistance Public Prosecutor's Office.**

| | **Legal assistance** | **2007** | **2008** | **2009** | **2010** |
|---|---|---|---|---|---|
| | Received requests for legal assistance (gen) | **110** | **195** | **186** | **111** |
| | Handled requests for legal assistance (gen) | **67** | **147** | **149** | **75** |
| ML | Received request for legal assistance | **11 (incl. RST)** | **30** | **20 (incl. RST)** | |
| ML | Handled requests for legal assistance | **11** | **24 (also from 2007)** | **20 (also from 2008)** | |

| | | | | | |
|---|---|---|---|---|---|
| TF | Received requests for legal assistance | **0** | **0** | **1** | **0** |
| TF | Handled request for legal assistance | **0** | **0** | **1** | **0** |
| ML | Request for legal assistance by the N.A. | | | **59** | |
| TF | Requests for legal assistance by the N.A. | **0** | **0** | **0** | **0** |

**Status report**

**1427.** For 2010 111 requests for mutual legal assistance were received, of which seventy-five (75) have been handled. The other thirty-six (36) requests are being dealt with by the bailiff, the police and/or the examining Judge. Two (2) requests were withdrawn. In three (3) cases the requesting authorities were asked to supply more information. There was also one (1) partial request for mutual legal assistance.

**Source and nature**

1428. Of the 111 requests received for 2010; seventy-two (72) are from the Netherlands (Interregional legal assistance). The rest of the requests are (in order of number) from Belgium, Aruba, the United States of America, Great Britain, Germany, Venezuela, Spain, Switzerland, Panama, Algeria and Belgium.

**Execution**

1429. The Authorities appear to deal with requests between fifty-six (56) to seventy-four (74) days.

1430. The time needed for the drafting and sending of the request has not been included. This now takes an average of eleven (11) days.

**Expectation**

**1431.** Based on the number of received requests up till now the expectation is that approximately 200 requests will be received in 2011.

**Targets**

1432. The aim is to complete all requests for mutual legal assistance within six (6) months after receipt with an average processing time of three (3) months. In 2007 the average was 139 days (115 days as of receipt). In the last quarter of 2007 the average was 101days (50 days as of the days of receipt). In 2008 the average was seventy-four (74) days.

**Source of the request for legal assistance 2010**

| Country of the applicant | | |
|---|---|---|
| Applicant | Authority | Total |
| The Netherlands | AP Amsterdam | 7 |
| | AP Haarlem | 4 |
| | LP Rotterdam | 4 |
| | RB Arnhem | 3 |
| | AP Rotterdam | 2 |
| | RB Amsterdam | 2 |
| | RC Arnhem | 2 |

| | | |
|---|---|---|
| | LP Zwolle | 3 |
| | AP Den Haag | 1 |
| | AP Breda | 1 |
| | AP Middelburg | 1 |
| | LP Schiphol | 1 |
| | AP Alkmaar | 1 |
| | AP Den Bosch | 1 |
| | FP Den Bosch | 1 |
| | FP Amsterdam | 1 |
| | Ministry of Justice | 1 |
| | BOOM Rotterdam | 1 |
| | AP Assen | 1 |
| | AP Zwolle/Lelystad | 1 |
| | RB Middelburg | 1 |
| | Hof Amsterdam | 1 |
| | AP Utrecht | 1 |
| | FP Rotterdam | 1 |
| | AP Haarlem | 1 |
| **The NetherlandsTotal** | | **44** |
| United States of America | U.S. Department of Justice | **2** |
| **United States of America Total** | | **2** |
| Germany | Anwaltschaft Hamburg | 1 |
| **Germany Total** | | **1** |
| Belgium | Belgium Consulate | 3 |
| | Court of Antwerp | 1 |
| **Belgium Total** | | **4** |
| Aruba | OM Aruba | 4 |
| **Aruba Total** | | **4** |
| Great Britain | Home Office | 1 |
| **Great Britain Total** | | **1** |
| | (blank) | 1 |
| **Total** | | **1** |
| Algeria | AP Amsterdam | 1 |
| **Algeria Total** | | **1** |
| Grand Total | | **58** |

6.3.2 Recommendations and Comments

*Recommendation 30*

1433. The Curaçao Authorities should give consideration to assigning more lawyers to deal with mutual legal assistance requests.

*Recommendation 32*

1434. The Curaçao Authorities should keep statistics with regard to the nature of the request made and the time required to respond to mutual legal assistance requests.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

| | Rating | Summary of factors relevant to s.6.3 underlying overall rating |
|---|---|---|
| **R.36** | **LC** | • **Terrorism Financing not criminalized in accordance with the TF Convention.** |
| **R.37** | **LC** | • **Terrorism Financing not criminalized in accordance with the TF Convention.** |
| **R.38** | **C** | **This Recommendation has been fully observed** |
| **SR.V** | **LC** | **See. Sections 6.4 and 6.5 of the Report.** |

## 6.4 Extradition (R.37, 39, SR.V)

6.4.1 Description and Analysis

***Recommendation 39 and SR. V***

1435. Extradition is a Kingdom issue pursuant to Article 3, paragraph 1 sub h of the Charter for the Kingdom of the Netherlands. The Extradition Decree of Aruba, Curaçao and Sint Maarten (EDACS) and the Kingdom Act regarding cassation jurisdiction in extradition affairs for Aruba, Curacao and Sint Maarten are issued pursuant to the mentioned article of the Charter for the Kingdom of the Netherlands. Extradition by Curaçao can only take place based on a Treaty. Curaçao participates in various extradition treaties. The relevant laws and treaties concerning extradition are:

- The Extradition Decree of Aruba, Curaçao and Sint Maarten (N.G. 1926, no. 61 as lastly amended by Stb. 2010/343);
- Kingdom act regarding cassation jurisdiction in extradition affairs for Aruba, Curaçao and Sint Maarten (Stb. 2003/204 as lastly amended by Stb. 2010/339);
- The European Convention on Extradition (Trb. 1965, 9);
- The Extradition Treaty between the Kingdom of the Netherlands and the United States of America (Trb. 1980, 111);
- The Extradition Treaty between the Kingdom of the Netherlands and Australia (Trb. 1985, 137); and
- The Extradition Treaty between the Kingdom of the Netherlands and Canada (Trb. 1991, 169).

1436. Extradition conditions are:

- Dual criminality must be applicable (article 2 paragraph 1 sub a of the EDACS);
- The offence is liable to punishment at the moment of the request and the extradition decision (article 2 paragraph 1 of the EDACS);

- The offence carries a minimum imprisonment term of one (1) year (Article 2 paragraph 1 sub a of the EDACS);
- In both Curaçao and in the requesting State the right to prosecute must not have expired (Article 5 of the EDACS). The time limits for all offences have been inserted in Article 72 of the Penal Code;
- Extradition is possible as long as the wanted person is not being prosecuted, or has been sentenced or acquitted in Curaçao with regard to another criminal offence than the one for which extradition is requested. Extradition is possible after the person in question has served his sentence or if he is granted a pardon for the crime he committed (Article 6 of the EDACS).

1437. Extradition is possible on the basis of a Treaty and the principle of dual criminality. Money laundering is an extraditable offence since Article 2 of the EDACS allows extradition of all offences. Additionally, the offence must attract a term of imprisonment of one (1) year or more under Curaçao law. This makes money laundering an extraditable offence.

1438. Dutch citizens are not extradited unless extradition is requested for the purpose of a criminal investigation that had been instituted against them and in the Governor's opinion there are guarantees that, in case the person is sentenced to an non-suspended prison sentence in the requesting State concerning the offences for which his extradition was granted he will be allowed to serve this sentence in his own country (Curaçao or somewhere else in the Kingdom of the Netherlands (Article 4 of the EDACS).

1439. Pursuant to Article 4a of the Penal Code Curaçao can adopt the criminal prosecution of the requesting State. If a criminal offence (such as ML or FT) is committed abroad by a Dutch citizen, Curaçao gets, pursuant to Article 4a, jurisdiction to prosecute this person. For such adoption of the prosecution no Treaty is required. The Public Prosecutor shall then be charged with the assessment of the file. Hereby the Public Prosecutor will follow the same procedures as in local criminal cases. However there is no requirement for the Curaçao authorities to submit the matter for prosecution without undue delay upon receipt of the request from the requesting State.

1440. In general, if the case is one where the national may not be extradited, Curaçao can, as previously noted adopt the criminal prosecution of the requesting State. In that situation the cooperation between the central authorities is therefore of great importance to the success of the prosecution. The Curaçao PPO has been involved in a number of cases where this process has been adopted with success through co-operation with the requesting state.

1441. The EDACS has various periods, for instance with regard to the assessment of the requests and the deferment period (Articles 10, 15, 19 of the EDACS). These periods assist in the prompt handling of requests. The applicable procedure for handling these requests within the PPO's office is similar to the one for mutual legal assistance requests.

**Additional Elements**

1442. Article 11, section 1 of the Extradition Treaty between the Kingdom of the Netherlands and the United States of America provides that a request for provisional detention of the requested person can be done through diplomatic channels or through direct communication between the United States Department of Justice and the Ministry of Justice in Curaçao. Usually a request is received by the Public Prosecutor's Office and is addressed to the Attorney General. An extradition request must be accompanied by the indictment and/or the warrant for arrest.

1443. There are also cases where the requested person does not object to his/her extradition. In this case the shortened procedure of Article 16 of the Extradition Treaty between the Kingdom of the Netherlands and the United States of America is followed, meaning that the examining Magistrate

and the Court will not be involved. The requesting State is informed accordingly and a date is set for the requesting State to pick up the person

***Special Recommendation. V***

1444. The provision established in criteria 39.1-39.4 would apply to SR V.

**Additional Element**

1445. Extradition applies to all offences which would attract a penalty of over one year imprisonment in Curacao.

***Recommendation 37 and SR. V***

1446. For less intrusive and non-compulsory measures mutual legal assistance can be rendered in the absence of dual criminality as previously noted. These would include measures such as service of documents or the dispatch of notices to third parties.

1447. Curaçao recognizes that there are different systems to categorize criminal offences. For Curaçao the offence (for which extradition is requested) must be a criminal offence. A difference in legislation between Curaçao and the requesting State is not an impediment to extradition. When determining dual criminality the underlying conduct is taken into account and not the judicial title of the conduct.

1448. As terrorist financing is also a criminal offence in Curaçao (Article 48a of the Penal Code) the requirement of dual criminality should be met when extraditing a person.

1449. The extradition of citizens is possible for the purpose of prosecution but under the condition that the term of imprisonment can be served in Curaçao or within the Kingdom of the Netherlands. If the extradition is refused, Curaçao can adopt the criminal prosecution of the requesting state as discussed above.

**Additional Elements**

1450. Procedures for simplified extraditions (where the accused agrees to be extradited) are also applicable to extradition matters involving the financing of terrorism or terrorist acts.

6.4.2 Recommendations and Comments

*Recommendation 39*

1451. There is no requirement to commence prosecution against a national of Curacao (who is immune to extradition) where there is request from a foreign state.

*Special Recommendation V*

1452. The Curacao Authorities should have measures in place to ensure the early commencement of prosecution for FT offences against a national of Curacao (who is immune from extradition) where there is a request from a foreign state.

6.4.3 Compliance with Recommendations 37 & 39, and Special Recommendation V

| | Rating | Summary of factors relevant to s.6.4 underlying overall rating |
|---|---|---|
| **R.39** | **LC** | • **No requirement to commence prosecution against a national of Curacao (who is immune to extradition) where there is request from a foreign state** |
| **R.37** | **LC** | • **Terrorism Financing not criminalized in accordance with the TF Convention.** |
| **SR.V** | **LC** | • **No requirement to commence prosecution against a national of Curacao (who is immune to extradition) where there is request from a foreign state as it pertains to FT matters.**<br>• **See also summary factor in section 6.5 of the report.** |

## 6.5 Other Forms of International Co-operation (R.40 & SR.V)

6.5.1 Description and Analysis

1453. Within their mandate it appears that most competent authorities are able to cooperate with their foreign counterparts. This cooperation takes place on several levels (operational, policy, administrative) and subjects. Although law enforcement authorities have the authority to exchange information with foreign counterparts, there is no clear mechanism in place allowing for such exchange of information with foreign counterparts to take place. The Assessment Team was not provided with any statistics demonstrating, for law enforcements authorities, any exchange of information outside the mutual legal assistance process.

**FIU (MOT) for the FIU Functions**

1454. Pursuant to Article 7 of the NORUT the FIU (MOT) has the authority to exchange information with its foreign counterparts (other FIUs, not supervisory authorities). This information pertains not only to information in its database but also information from law enforcement agencies and other instances. Since its incorporation in 1997, the FIU (MOT) has signed approximately fifty (50) MOUs with other FIUs. As of the amendment of the NORUT in May 2010, upon recommendation of the FIU (MOT) no MOU is required to exchange information with regard to FIUs that are members of the Egmont Group, unless the laws of the jurisdiction of the other FIU requires an MOU. Moreover pursuant to Article 21 of the NORUT the FIU (MOT) can provide foreign police and non-police institutions which have a similar task as the FIU (MOT) with information.

1455. Also pursuant to Article 21 of the NORUT the FIU (MOT) is authorized to provide information to institutions within the Kingdom of the Netherlands having tasks that overlap the activities of the FIU (MOT).

1456. The FIU (MOT) cooperation with foreign FIUs goes beyond the exchange of tactical information. The FIU has received training for the analysts from the FIU of the Netherlands, FIU Mexico and FIU Colombia. FIU Guatemala has also assisted in organizing a visitation with regard to the Supervisory functions of a FIU. The FIU (MOT) has also organized training sessions for other FIUs. In July 2009, together with the Training Working Group of the Egmont, of which the FIU is a member, a Tactical Analysis Training was organized on the island of Sint Maarten. Analysts from approximately sixteen (16) Caribbean countries, the Netherlands, Mexico and Nigeria attended this training. At the end of the training a – 'Train the Trainers' -

course was organized by Egmont. The Head of the FIU (MOT) and four (4) other staff members took this training, including a 'train the trainers' component. Afterwards, the FIU (MOT) organized a Tactical Analysis Training for the FIUs of Suriname and of the Dominican Republic. The FIU (MOT) is now spearheading a project group with regard to FIUs with Regulatory Powers as a result of meetings in the Egmont Plenary in Cartagena Colombia, 2010. The supervisory department of the FIU (MOT) also assists colleague FIUs in their work. The FIU (MOT) organized a traineeship for two (2) analysts and one (1) legal counsellor for the FIU of Suriname. The legal counsellor was instructed in the administrative organization, P&Gs and legislation regarding the supervisory work. The supervision department of the FIU (MOT) also assisted the relevant department of the Central Bank of Aruba with regard to supervisory issues for DNFBPs.

1457. As a member of the Egmont Group, the FIU (MOT) uses the Egmont Secure Web and the FIU.Net to exchange information with other Egmont FIUs. All requests for information are dealt within a reasonable period ranging from forty-eight (48) hours up to thirty (30) days depending on the complexity of the result.

1458. For the year 2008 seventy percent (70%) of the received requests were handled within seven (7) days and thirty percent (30%) within eight (8) days to thirty (30) days. In 2009 forty-nine (49%) was handled within seven (7) days and fifty-one percent (51%) within eight (8) days to thirty (30) days.

**Customs**

1459. Curaçao Customs is a member of the Caribbean Customs Law Enforcement Council (CCLEC). CCLEC is a multilateral regional organization dedicated to improving the overall professionalism of its members.

1460. In 1989, the members of the Council agreed to formalize their exchange of information through the adoption of a Memorandum of Understanding (MOU) regarding mutual assistance and cooperation for the prevention and repression of customs offences in the Caribbean zone. At that time twenty-one (21) countries signed the MOU but this number has since increased to thirty-six (36) signatories. CCLEC comprises thirty–eight (38) Customs Administrations. Curaçao Customs is very active within CCLEC.

**PPO**

1461. The PPO is a member of the International Association of Prosecutors (IAP). This organization provides a forum for discussion of issues and the exchange of ideas relating to matters of critical importance to prosecution services, including information sharing and mutual legal assistance. The Attorney General indicated that a commitment was given to this body to provide mutual legal assistance to colleague prosecution services to the extent permissible by Curaçao's legal framework.

1462. There is no clear process for exchanging of information (including information on TF) by the PPO with foreign counterparts outside of the Kingdom beyond the Mutual Legal Assistance framework and the informal channels via the IAP. As a joint task force of the Kingdom of the Netherlands, the RST has the ability to exchange information with other jurisdictions of the Kingdom. The Public Prosecutors' Office indicated having the possibility to use a network of contact within and outside the Kingdom of the Netherlands in order to exchange information on ongoing investigations. However, the Assessment Team was not provided with any statistics demonstrating any exchange of information outside the mutual legal assistance process.

**The Central Bank**

1463. The Central Bank has established formal arrangements (such as MOUs) with foreign supervisors to facilitate and promote information sharing between the Central Bank and supervisors in host

countries. Information sharing arrangements with host country supervisors include being advised of adverse assessments of qualitative aspects of the institution's operations, such as aspects related to the quality of risk management and controls at the offices in the host country.

1464. Under the MOUs that are in place, the Central Bank Directors and staff have contact with the supervisory authorities of said countries. During these contacts, the status and the expertise of the local management of the relevant foreign operations are discussed, which also helps to evaluate the oversight of the licensed institution's management of its foreign operations. The MOUs also state that branches and subsidiaries established in the country of one of the parties may be inspected on-site by the home supervisor, provided adequate notification procedures and procedures to communicate results of such examinations are established.

**FIU (MOT) as supervisors of DNFBPs**

1465. The FIU (MOT) has currently no legal authority to exchange information with supervisory authorities from other jurisdictions.

**FIU (MOT)**

1466. For the exchange of information the FIU (MOT) utilizes the standard Egmont MOU, sometimes adapted to meet the needs of the other FIU. To date, the FIU (MOT) has signed approximately fifty (50) MOUs. This makes the exchange of information more efficient. No time has to be wasted in obtaining Governmental approval for signing MOUs with Egmont countries.

1467. As stated in section 3.4, it is unclear whether the FIU, in their conduct as a supervisory authority, is allowed to disclose information with international supervisory counterparts.

**PPO**

1468. The PPO will exchange information on an informal basis, through connections with other prosecutors such as the International Association of Prosecutors.

**The Central Bank**

1469. In accordance with the internal guidelines of the Central Bank, the formal response to request for exchange of information must occur within two (2) weeks, with the exception of the more intricate requests.

1470. As stated in section 3.4 of this report, pursuant to the NOSBCI and the NOSTSP, the Central Bank cannot share individual depositor or international company information with foreign counterparts.

1471. Within their mandate all competent authorities can both spontaneously and upon request, and in relation to money laundering and the underlying predicate offences cooperate with their foreign counterparts (please see discussion above.)

1472. As a member of the Egmont Group the FIU (MOT) is aware that information should be provided both freely and upon request of other FIUs. Whenever the FIU (MOT) receives a request from another FIU to check the database and police registers for certain subjects, this is always done. Also, even when the other FIU doesn't request it, the FIU (MOT) will spontaneously check the police database, and inform the other FIU of its findings. The FIU (MOT) takes an all crimes approach. All acts which are indicated as crimes in the Penal Code can constitute a predicate offence for ML/FT. The Supreme Court in the Netherlands has decided that Tax fraud is also a predicate offence for ML/FT.

1473. Within their mandate all competent authorities are able to cooperate with their foreign counterparts. As previously noted, this cooperation takes place on several levels (operational,

policy, administrative) and subjects. However, there is no explicit provision authorizing the Central Bank, supervisory arm of the FIU and GCB to conduct inquiries on behalf of foreign counterparts.

1474. Pursuant to Article 7 of the NORUT the FIU (MOT) can exchange information with other FIUs. This information can be law enforcement information or whatever information the other FIU requires. Pursuant to Article 5 of the NORUT, the FIU (MOT) has access to law enforcement databases and registers (upon request to the appropriate authority). Pursuant to Article 12 of the NORUT, the FIU (MOT) can request information from all reporting entities, that are obliged to answer within a given time period. The FIU (MOT) works together with the Civil Registry, the Land Registry, Tax Office and Customs. The FIU (MOT) has access to public databases like the Chamber of Commerce database.

1475. Based on Articles 555 to 565 of the Penal Procedures Code, law enforcement authorities are authorised to conduct investigations on behalf of foreign counterparts. The PPO does have direct authority with regard to police investigations and would be aware of the matters being investigated by the police bodies on behalf of foreign authorities.

**PPO**

1476. Outside of the Mutual Legal Assistance Framework, the processes for the PPO to share information would be informal. The PPO would clearly be guided by its duty to protect the rights of individuals. The Examiners did not note any factor that would unreasonably hinder or obstruct the sharing of information subject to the existing rights of affected parties.

**FIU (MOT)**

1477. The MOU that the FIU (MOT) uses states that whenever an FIU wants to use the received information for other purposes than intelligence (police investigation, legal proceedings), it needs to request authorization from the other FIU. The FIU (MOT) first confers with the PPO, before giving the requested clearance to use the information for purposes other than for intelligence.

**Customs**

1478. All requests will be dealt with if there is a Treaty, bilateral agreement or a MOU in place.

**Central Bank**

1479. As long as the conditions of the relevant exchange of information provisions of the supervisory ordinances (Article 41 NOSBCI , Article 78, paragraph 2 NOSII, Article 24 NOSTSP, Article 28 NOSIIA, Article 20, paragraph 5 NOIB) are met, the Central Bank is able to exchange information without disproportionate or unduly restrictive conditions.

1480. A request for cooperation cannot be refused because it involves fiscal matters. Apart from the general conditions applicable to all requests for mutual legal assistance the special conditions are also applicable to the issuance of fiscal data (as described in Article 560, paragraph 2, of the Penal Procedures Code). If a request refers to the investigation of criminal offences related to fees, taxes, customs, foreign exchange, or related offences and whose compliance can be of interest for the Tax Authorities and the Central Bank or for requests concerning data that are held by the Tax authorities or the Central Bank or by officials of this service and institution that have become known in the execution of their services, the request can only be honoured with the consent or authorization of the Minister of Justice. Such a permit or authorization can only be issued on the basis of a Treaty and after consultation with the Minister of Finance. Curacao is also a signatory to several Tax information Exchange Agreements. The FIU (MOT) has never refused a request for information on fiscal grounds.

1481. Information can be obtained from the commercial banks. If it concerns a criminal investigation neither confidentiality nor secrecy can obstruct a request for legal assistance. Article 40 of the

NOSBCI determines that the Central Bank has a duty of confidentiality, however at the request of the Public Prosecutor this duty can be suspended in case of a criminal investigation. A similar provision is included in all the other supervisory national ordinances. In general, confidential information can always be obtained through a court order.

1482. Article 559 of the Penal Procedures Code does not contain grounds for refusal of mutual legal assistance on the basis of the laws that impose secrecy or confidentiality demands on the financial institutions or DNFBP, although these are limitations as regards the provision of depositor information or information on international companies.

1483. In the cases of lawyers, notaries, tax consultants and accountants secrecy laws prohibit the exchange of information with regard to the determining of the legal position of a client, the legal assistance before, during or after legal proceedings, or advising with regard to starting or preventing legal proceedings.

1484. Pursuant to Article 20, paragraph 2 of the NORUT, information received from a request is confidential and may only be used in the manner as described in this provision. Furthermore, pursuant to Article 4 of the NORUT, only the Head and designated personnel of the FIU (MOT) can access the database. By Ministerial Decree, controls and safeguards have been put into place for the use of the database. These controls and safeguard include: that only authorized personnel can access the database; the type of information that can be kept; when information can be deleted; and how long information can be stored.

1485. Pursuant to the confidentiality provisions of the Supervisory Ordinances (Article 40 NOSBCI, Article 78 NOSII, Article 20 NOIB, Article 25, NOSIIA, Article 23 NOSTSP, article 28 NOSCPF, Article 10 NOSSE, Article 27 RFETCSM) the information received can only be used in the manner as described in these provisions. Furthermore, in the MOUs concluded by the Central Bank, there are controls and safeguards with regard to the use of the provider's information.

1486. The factors at section 3.4.3 impact on the FIU's, the GCB and Central Bank's ability to exchange information.

***Special Recommendation V***

1487. All the mechanisms and arrangements under Recommendation 40 apply to international cooperation on terrorist financing.

***Recommendation 32***

*Statistics*

1488. The Governor's Office maintains a database on inward and outward MLA requests and other international requests for co-operation. These statistics are reviewed from time to time to assess the effectiveness of Curaçao's AML/CFT regime.

| | Legal assistance | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|---|---|
| | Number of received legal assistance requests (general) | - | - | 110 | 195 | 186 | 176 |
| | Number of handled legal assistance requests (general) | - | - | 67 | 147 | 149 | 114 |
| ML | Number of received legal assistance requests | - | 12 | 11 | 30 | 20 | 24 |
| ML | Number of handled legal assistance requests | - | 4 | 11 | 24 | 20 | 10 |
| TF | Number of received legal assistance requests | 0 | 0 | 0 | 0 | 1 | 0 |
| TF | Number of handled legal assistance requests | 0 | 0 | 0 | 0 | 1 | 0 |
| ML | Number fo legal assistance requests by the N.A. | - | 4 | - | - | 59 | - |
| TF | Number of legal assistance requests by the N.A. | 0 | 0 | 0 | 0 | 0 | 0 |

6.5.2 Recommendations and Comments

*Recommendation 40*

1489. The Authorities should establish clear mechanisms for the exchange of information between law enforcement and their foreign counterparts.

1490. The FIU (MOT) should be given the legal authority to exchange information with supervisory authorities from other jurisdictions.

1491. The IOCCS should make provision for the sharing of information with foreign counterparts.

1492. Mechanism needed to facilitate all competent authorities (Central Bank, supervisory arm of the FIU (MOT) and GCB) undertaking enquiries on behalf of foreign counterparts.

*Recommendation 32*

1493. Statistics for the exchange of information (other than the mutual legal assistance process) between law enforcement authorities should be kept.

*Special Recommendation V*

1494. There should be clear mechanisms in place for law enforcement authorities to exchange information as it pertains to FT.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

| | Rating | Summary of factors relevant to s.6.5 underlying overall rating |
|---|---|---|
| **R.40** | **LC** | • **No clear mechanism in place for law enforcement authorities to exchange information with foreign counterparts.**<br>• **No authority for the FIU (MOT) to exchange information with supervisory authorities from other jurisdictions.**<br>• **Inability for the GCB to share information with foreign counterparts**.<br>• **No explicit provision authorizing the Central Bank, supervisory arm of the FIU (MOT) and GCB to conduct enquiries on behalf of foreign counterparts**. |
| **SR.V** | **LC** | • **No clear mechanism in place for law enforcement authorities to exchange information as it pertains to FT.**<br>• **See also summary factors in section 6.4 of the report.** |

# 7. OTHER ISSUES

## 7.1 Resources and statistics

Assessors should use this section as follows. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report i.e. all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report will contain only the box showing the rating and the factors

underlying the rating, and the factors should clearly state the nature of the deficiency, and should cross refer to the relevant section and paragraph in the report where this is described.

| | Rating | Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating |
|---|---|---|
| **R.30** | **PC** | • **Lack of adequate resources has resulted in a lower percentage of analysed UTRs.**<br>• **High number of vacant positions in the FIU (MOT) reduces its capacity to analyse and supervise.**<br>• **Insufficient human resources at the BFO.**<br>• **Need to strengthen domestic capacity with regard to specialist prosecutors and judiciary.**<br>• **Insufficient amount of officers in the PPO that are assigned to handle mutual legal assistance requests.**<br>• **Potential challenges with resources available for AML/CFT supervision and regulation of the financial institutions.** |
| **R.32** | **PC** | • **No statistics being kept on the exchange of information between law enforcement Authorities other than those related to mutual legal assistance.**<br>• **No segregation of the PPO database with regard to its different activities.**<br>• **No statistics on reports filed for cross border bearer negotiable instruments.**<br>• **No statistics kept on the type of legal assistance that was requested and the time required to respond to the request in accordance with E.C.32.2 (c).** |

## 7.2 Other relevant AML/CFT measures or issues

Assessors may use this section to set out information on any additional measures or issues that are relevant to the AML/CFT system in the country being evaluated, and which are not covered elsewhere in this report.

## 7.3 General framework for AML/CFT system (see also section 1.1)

Assessors may use this section to comment on any aspect of the general legal and institutional framework within which the AML/CFT measures are set, and particularly with respect to any structural elements set out in section 1.1, where they believe that these elements of the general framework significantly impair or inhibit the effectiveness of the AML/CFT system.

# TABLES

**Table 1: Ratings of Compliance with FATF Recommendations**
**Table 2: Recommended Action Plan to improve the AML/CFT system**
**Table 3: Authorities' Response to the Evaluation (if necessary)**

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

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

| Forty Recommendations | Rating | Summary of factors underlying rating[11] |
|---|---|---|
| **Legal systems** | | |
| 1. ML offence | **LC** | **The possession of equipment or materials or substances listed in Table I and Table II of the Vienna Convention has not been criminalized.**<br><br>**The Penal Code provides for a specific listing of offences occurring abroad which may be prosecuted in Curacao which may not cover all serious crimes.**<br><br>**The ancillary offence of preparation would not apply to culpable money laundering offences** |
| 2. ML offence – mental element and corporate liability | **LC** | **The effectiveness of the ML prosecution regime could not be properly assessed based on the statistical information provided.** |
| 3. Confiscation and provisional measures | **LC** | **Examiners had difficulty in assessing the true effectiveness of Curacao's confiscation regime.** |
| **Preventive measures** | | |
| 4. Secrecy laws consistent with the Recommendations | **PC** | **The Central Bank cannot exchange information with the supervisory arm of the MOT; or GCB.**<br><br>**The FIU (MOT), in the conduct of its supervisory function, is not allowed to disclose information with domestic** |

[11] These factors are only required to be set out when the rating is less than Compliant.

| | | |
|---|---|---|
| | | **supervisory counterparts.**<br><br>**The GCB cannot disclose information to national and international supervisors.**<br><br>**There are differences in views between the Police and Central Bank regarding the ready availability of information requests.** |
| 5. Customer due diligence | **PC** | **No legislative requirements for CDD when carrying out occasional wire transfers in the circumstances covered by the Interpretative Note to SR VII**<br><br>**No legislative requirement for service providers to conduct on-going due diligence on the business relationship.**<br><br>**Clarity is needed on whether non-life activities that are reportable under the NORUT are to be subject to CDD under the NOIS.**<br><br>**The NOIS allows for full exemption from CDD rather than reduced or simplified as provided for under the FATF Recommendations.**<br><br>**The P&G for CI does not limit simplified and reduced CDD to customers of countries that Curacao is satisfied are in compliance with and effectively implementing the FATF Recommendations.**<br><br>**The risk exercise undertaken to exempt certain financial institutions from CDD based on their designation as low risk, is unclear**<br><br>**No explicit requirement in the P&Gs requiring financial institutions to consider making a UTR, where the requirements of E.C. 5.3 to E.C. 5.6 are not met. In addition, no requirement in the P&G for CI to conduct CDD on existing customers on the basis of materiality and risk, and to conduct due diligence on such existing relationships at appropriate times.**<br><br>**The sector P&Gs do not conform to the NOIS as it relates to the timing of verification of non-resident clients.**<br><br>**No requirement in the P&G for IC & IB requiring financial institutions to undertake CDD when doubts arise about the veracity** |

| | | |
|---|---|---|
| | | **or adequacy of previously obtained customer identification data.** |
| 6. Politically exposed persons | **LC** | **Effective supervision on factoring service providers cannot be determined in light of recent inclusion under the AML/CFT framework.** |
| 7. Correspondent banking | **LC** | **Credit institutions are not required to assess the respondent's AML/CFT controls and ascertain that they are adequate and effective.** |
| 8. New technologies & non face-to-face business | **C** | **This Recommendation has been fully observed.** |
| 9. Third parties and introducers | **C** | **This Recommendation has been fully observed.** |
| 10. Record keeping | **LC** | **No explicit requirement in law or regulation for IC & IB and MTCs to maintain business correspondence for at least five (5) years following termination of an account or business relationship (or longer if requested by a competent authority in specific cases upon proper authority. No mandatory provisions in the P&G regarding the above.**<br><br>**No explicit requirement in law or regulation requiring financial institutions to ensure that information (business correspondence) is available on a timely basis to the domestic competent authorities.** |
| 11. Unusual transactions | **PC** | **No requirement in the P&Gs for financial institutions to keep their findings of examinations on the background and purpose of complex, unusual large transactions for at least five (5) years.**<br><br>**No requirement in the P&Gs for findings of examinations on the background and purpose of complex, unusually large or unusual patterns of transactions to be made available to the auditors and competent authorities.** |
| 12. DNFBP – R.5, 6, 8-11 | **NC** | **The provision of services dealing with the organisation of contributions for the creation, operation or management of companies and the provision of nominee services are not subject to the AML/CFT obligations of the NOIS and the NORUT.**<br><br>**Internet casinos are not subject to the AML/CFT obligations of NOIS and NORUT.** |

| | | |
|---|---|---|
| | | **The threshold for identification requirements for casinos is too high.**<br><br>**Deficiencies with regard to Rec. 5 applicable to all DNFBPs include:**<br>**No legislative requirements for CDD when carrying out occasional wire transfers in the circumstances covered by the Interpretative Note for SR. VII.**<br>**No legislative requirement for service providers to conduct on-going due diligence on the business relationship.**<br>**The NOIS allows for full exemption from CDD rather than reduced or simplified CDD as required under the FATF Recommendations.**<br><br>**No requirement in the P&Gs for administrators and company (trust) service providers obligating financial institutions to consider making a UTR when the requirements of E.C. 5.3 to E.C. 5.6 are not met.**<br><br>**Criteria 5.5.2, 5.6 to 5.11, 5.16 and 5.17 of Rec. 5 are not enforceable on DNFBPs under the FIU (MOT) and the GCB.**<br><br>**Deficiencies identified in section 3 for Recs. 10 and 11 are also applicable to DNFBPs under the Central Bank**<br><br>**Requirements of Recs. 6, and 11 are not enforceable on DNFBPs under the supervision of MOT and the GCB.**<br><br>**Requirements of Rec. 9 are not enforceable on DNFBPs under the supervision of the FIU (MOT).**<br><br>**Deficiencies identified in section 3.5 for Rec.10 are also applicable to all DNFBPs. Additionally, the requirement to ensure that transaction records are sufficient to permit the reconstruction of individual transactions** |

| | | |
|---|---|---|
| | | **is not enforceable on DNFBPs under FIU/MOT and GCB.** |
| 13. Suspicious transaction reporting | **PC** | **Effective implementation of reporting of suspicious reports is not demonstrated.**<br>**Subjective indicators for the filing of UTRs are rules based, which hinders the reporting entity's autonomy to decide whether to file a UTR**<br>**Heavy reliance by the reporting entities on the prescriptive list of indicators provided by the Ministerial Decree.**<br>**Insufficient flexibility for reporting entities to identify suspicion of ML or FT.** |
| 14. Protection & no tipping-off | **PC** | **Directors of legal persons are not protected by law from civil and criminal liability for breach of confidentiality for reporting to the FIU (MOT) in good faith.**<br><br>**Tipping-off offence only applicable to employees directly involved in the reporting of any unusual or suspicious transaction to the FIU (MOT).** |
| 15. Internal controls, compliance & audit | **C** | **This Recommendation has been fully observed.** |
| 16. DNFBP – R.13-15 & 21 | **NC** | **Deficiencies identified for Rec. 13 and 14 in Section 3.7 are applicable to all DNFBPs.**<br><br>**Ineffective reporting of unusual transactions by DNFBPs.**<br><br>**Deficiencies identified for Rec. 21 in Section 3.6 of this report also applies to all DNFBPs under the Central Bank.**<br><br>**Obligations in Rec. 15 and 21 are not enforceable on the DNFBPs under the FIU (MOT) and the GCB.** |
| 17. Sanctions | **PC** | **The range of administrative sanctions available to the Central Bank under the various Ordinances is uneven.**<br><br>**The procedures under the RFETCSM to impose sanctions on non-bank MTCs are unclear and may prove ineffective.**<br><br>**Effectiveness of the range of sanctions available for non-compliance with** |

| | | |
|---|---|---|
| | | **requirements cannot be determined given the limited employ of such.** |
| 18. Shell banks | **C** | **This Recommendation has been fully observed.** |
| 19. Other forms of reporting | **C** | **This Recommendation has been fully observed.** |
| 20. Other NFBP & secure transaction techniques | **C** | **This Recommendation has been fully observed.** |
| 21. Special attention for higher risk countries | **PC** | **No requirement in the P&Gs for IC & IB and MTCs that for transactions that have no apparent economic or visible lawful purpose, that their background and purpose should as far as possible, be examined, and written findings should be available to assist competent authorities and auditors.**<br><br>**Insufficient instructions issued regarding countermeasures where countries continue not to or insufficiently apply the FATF Recommendations** |
| 22. Foreign branches & subsidiaries | **C** | **This Recommendation has been fully observed.** |
| 23. Regulation, supervision and monitoring | **LC** | **Financial institutions engaged in factoring services were only recently subject to the NOIS and NORUTT and subject to supervision by the Central Bank.** |
| 24. DNFBP - regulation, supervision and monitoring | **NC** | **No supervision of internet casinos for compliance with AML/CFT obligations**<br><br>**The FIU (MOT) has not implemented an effective supervisory regime.**<br><br>**The FIU (MOT) lacks resources to effectively supervise DNFBPs subject to AML/CFT obligations.**<br><br>**Deficiencies identified in section 3.10 with regard to R. 17 and 29 are also applicable to DNFBPs under the Central Bank.** |
| 25. Guidelines & Feedback | **PC** | **The FIU (MOT) annual reports do not include adequate information on trends and typologies.**<br><br>**P&G for providers of factoring services not in place to assist in implementing and complying with AML /CFT requirements.**<br><br>**No P&Gs for Internet Casinos.** |

| Institutional and other measures | | |
|---|---|---|
| 26. The FIU | **PC** | **Provisions of Articles 4, 16 and 22 of the NORUT present a risk to the proper protection of information.**<br><br>**Articles 4, 16 and 22 of the NORUT contain provisions that risk the interference in the operation of the FIU (MOT):**<br>**Possibility of undue influence and interference by the Minister of Finance who can directly manage the FIU (MOT) database under the provisions of the NORUT (Articles 4 and 22).**<br>**Current composition of the Guidance Committee for the FIU (MOT) could lead to undue influence or interference. (Article 16).**<br><br>**Insufficient trends and typologies in the FIU (MOT's) annual reports.**<br><br>**Effectiveness issues:**<br>**Lack of sufficient human resources is limiting the FIU (MOT's) effectiveness.**<br><br>**Systems and procedures in place result in a low level of UTRs being analysed.**<br><br>**The approval process of the FIU (MOT) with regard to cases appears to be burdensome.**<br><br>**Important limitation to indirect access to law enforcement database (requirement of a letter on a case by case basis).** |
| 27. Law enforcement authorities | **LC** | **Effectiveness:**<br>**The UFCB is facing important issues with regard to structure, resources and operations.**<br><br>**BFO is also facing resources issues as there are six (6) vacant positions out of a total of fifteen (15) positions.**<br><br>**Domestic recruitment of officers** |

| | | |
|---|---|---|
| | | **is an issue for law enforcement authorities in general. The level of experience and knowledge can limit the ability to undertake complex money laundering cases.**<br><br>**Limited training on ML to law enforcement authority officers.**<br><br>**No specific training is provided to law enforcement authority officers on terrorist financing.** |
| 28. Powers of competent authorities | **LC** | **Effectiveness: competent authorities can face challenges in obtaining warrants to search persons or premises or Court orders to compel production of documents or information held by reporting entities.** |
| 29. Supervisors | **LC** | **Limited number of AML onsite inspections do not definitively demonstrate adequacy of supervisory powers.** |
| 30. Resources, integrity and training | **PC** | **Lack of adequate resources has resulted in a lower percentage of analysed UTRs.**<br><br>**High number of vacant positions in the FIU (MOT) reduces its capacity to analyse and supervise.**<br><br>**Insufficient human resources at the BFO.**<br><br>**Need to strengthen domestic capacity with regard to specialist prosecutors and judiciary.**<br><br>**Insufficient amount of officers in the PPO that are assigned to handle mutual legal assistance requests.**<br><br>**Potential challenges with resources available for AML/CFT supervision and regulation of the financial institutions.** |
| 31. National co-operation | **PC** | **The national committee on AML/CFT measures (CIWG) lacks structure and organization.**<br>**Important concerns with frequency of meetings of the CIWG.**<br>**Operational competent authorities are not represented on the CIWG**<br>**No national committee or working group for competent authorities only.** |
| 32. Statistics | **PC** | **No statistics being kept on the exchange of** |

| | | |
|---|---|---|
| | | **information between law enforcement Authorities other than those related to mutual legal assistance.**<br><br>**No segregation of the PPO database with regard to its different activities**<br><br>**No statistics on reports filed for cross border bearer negotiable instruments.**<br><br>**No statistics kept on the type of legal assistance that was requested and the time required to respond to the request in accordance with E.C.32.2 (c).** |
| 33. Legal persons – beneficial owners | **PC** | **There is no system in place to register the information about the ultimate beneficial owner.**<br><br>**The Chamber of Commerce has no administrative sanctioning power against legal persons who fail to provide accurate and up to date information.**<br><br>**There is no certainty that the information at the Commercial Register is current or updated on a regular basis.**<br><br>**There is no procedure in place to have the UBO available and in a timely manner to all competent authorities.**<br><br>**There are still some bearer shares in circulation.**<br><br>**Effectiveness has not been demonstrated.** |
| 34. Legal arrangements – beneficial owners | **LC** | **Not all competent authorities have information on UBOs in a timely fashion.** |
| **International Co-operation** | | |
| 35. Conventions | **PC** | **Terrorism Financing not criminalized in accordance with the TF Convention.** |
| 36. Mutual legal assistance (MLA) | **LC** | **Terrorism Financing not criminalized in accordance with the TF Convention.** |
| 37. Dual criminality | **LC** | **Terrorism Financing not criminalized in accordance with the TF Convention.** |
| 38. MLA on confiscation and freezing | **C** | **This Recommendation has been fully observed** |
| 39. Extradition | **LC** | **No requirement to commence prosecution against a national of Curacao (who is** |

| | | |
|---|---|---|
| | | **immune to extradition) where there is request from a foreign state** |
| 40. Other forms of co-operation | **LC** | **No clear mechanism in place for law enforcement authorities to exchange information with foreign counterparts.**<br><br>**No authority for the FIU (MOT) to exchange information with supervisory authorities from other jurisdictions.**<br><br>**Inability for the GCB to share information with foreign counterparts**.<br><br>**No explicit provision authorizing the Central Bank, supervisory arm of the FIU (MOT) and GCB to conduct enquiries on behalf of foreign counterparts**. |
| **Nine Special Recommendations** | **Rating** | **Summary of factors underlying rating** |
| SR.I Implement UN instruments | **PC** | **No provisions in law to deal with the requirements of paragraph 4(a) of UNSCR 1267.**<br>**Freezing of the assets of locally designated terrorists cannot occur without delay as required by UNSCR 1373.** |
| SR.II Criminalise terrorist financing | **PC** | **Offences for participation and financing of terrorism do not meet the requirements of the Terrorist Financing Convention.**<br>**The Examiners could not evaluate effectiveness of the FT sanctions.** |
| SR.III Freeze and confiscate terrorist assets | **PC** | **Freezing of assets of locally designated terrorist cannot occur or be maintained without delay as required by UNSCR 1373.**<br><br>**Procedures for de-listing and unfreezing not publicly known.**<br><br>**Lack of guidance to non-financial entities and individuals.**<br><br>**No structure for monitoring compliance outside of the financial sector**<br><br>**No clear criteria for the exercise of the Minister's discretion to protect of third party rights.** |
| SR.IV Suspicious transaction reporting | **PC** | **Effective implementation of reporting of** |

| | | |
|---|---|---|
| | | **suspicious reports is not demonstrated.**<br>➢ **Subjective indicators for the filing of UTRs are rules based, which hinders the reporting entity's autonomy to decide whether to file a UTR**<br>➢ **Heavy reliance by the reporting entities on the prescriptive list of indicators provided by the Ministerial Decree.**<br>➢ **Insufficient flexibility for reporting entities to identify suspicion of ML or FT.** |
| SR.V International co-operation | **LC** | **No requirement to commence prosecution against a national of Curacao (who is immune to extradition) where there is request from a foreign state as it pertains to FT matters.**<br>**No clear mechanism in place for law enforcement authorities to exchange information as it pertains to FT.** |
| SR VI AML requirements for money/value transfer services | **PC** | **No legislative requirements for CDD when carrying out occasional wire transfers in the circumstances covered by the Interpretative Note to SR VII.**<br>**No legislative requirements for service providers to conduct on-going due diligence on the business relationship.**<br>**No explicit requirement in the P&G for MTCs requiring financial institutions to consider making a UTR where the requirements at E.C 5.3 to 5.6 are not met.**<br>**See factors in sections 3.1 – 3.10 which apply to MTCs.**<br>**A subjective indicator for identification problems is not specified for MTCs under the NORUT.**<br>**The sector P&Gs do not conform to the NOIS as it relates to the timing of verification of non-resident clients.**<br>**The P&G for MTCs should include an explicit requirement for MTCs to maintain** |

| | | |
|---|---|---|
| | | **a current list of agents.** |
| SR VII Wire transfer rules | **LC** | **No explicit mandatory provisions in the P&Gs regarding requirements on beneficiary institutions to apply risk based procedures when identifying and handling wire transfers that are not accompanied by complete originator information. In addition, lack of complete originator information is not included as a subjective indicator in the NORUT in assessing whether a wire transfer or related transaction is suspicious and should be reported to the FIU (MOT).** |
| SR.VIII Non-profit organisations | **NC** | **There has been no recent review of the NPO sector and no current identification of its vulnerabilities for FT.**<br><br>**There is no supervision or monitoring specifically for the NPO sector.**<br><br>**No supervisory programme in place to ensure NPO sector compliance with AML/CFT legal framework**<br><br>**No outreach programmes in place.**<br><br>**No training in place to the NPO sector or to the financial institutions with regard the risks of the NPO sector.**<br><br>**There is no obligation for NPOs to keep financial information on transactions or to submit financial statements to the Chamber of Commerce or any other relevant authority.** |
| SR.IX Cross Border Declaration & Disclosure | **PC** | **Ad hoc cross-border declaration system. Unexpected change from declaration system (declaration card) to disclosure system. As a result, the requirement to make a truthful disclosure is not clearly identified at the border.**<br><br>**No process in place to identify the source, destination and purpose of movement of gold or other precious metal and stones.**<br><br>**No power to stop or restrain currency where there is a suspicion of ML or FT.**<br><br>**No indication that authorities are monitoring entities or individuals associated** |

| | | |
|---|---|---|
| | | **with terrorist activities listed by the United Nations.** |

**Table 2: Recommended Action Plan to Improve the AML/CFT System**

| AML/CFT System | Recommended Action (listed in order of priority) |
|---|---|
| **1. General** | **No text required** |
| **2. Legal System and Related Institutional Measures** | |
| 2.1 Criminalisation of Money Laundering (R.1 & 2) | **Recommendation 1**<br>• **Curaçao should criminalize the possession of equipment or materials or substances listed in the Vienna Convention.**<br>• **The Authorities should move amendments to extend the powers of prosecution to all crimes committed abroad which would constitute crimes in Curaçao.**<br>• **The law should provide for the widest range of ancillary offences for all money laundering offences. Currently, the ancillary offence of preparation would not apply to some money laundering offences.**<br>**Recommendation 2**<br>• **The Authorities should reconsider a reduction in the penalties for money laundering.** |
| 2.2 Criminalisation of Terrorist Financing (SR.II) | • **The offences of participation (which would include the financing offences) should be criminalized in keeping with the requirements of the Terrorism Financing Convention.** |
| 2.3 Confiscation, freezing and seizing of proceeds of crime (R.3) | • **Whilst the prosecutor always retains the ultimate discretion as to whether cases should be proceeded with, the Examiners consider that it would be more transparent for the PPO to establish appropriate Guidelines to govern such cases to avoid the possibility or appearance of impropriety.** |
| 2.4 Freezing of funds used for terrorist financing (SR.III) | • **Measures should be put in place that allow freezing without delay, and the maintenance of such freezes, as required by UNSCR 1373.**<br>• **Curaçao should make the procedures for de-listing publicly known.**<br>• **Curaçao should have a mechanism for the issuance of Guidance to non-financial entities or** |

| | |
|---|---|
| | **individuals who may find themselves in possession of property or assets that may belong to terrorist or terrorist entities.**<br>• **Clear criteria for the exercise of the Minister's discretion with regard to the protection of third party rights should be developed.**<br>• **A structure should be put in place for monitoring compliance outside of the financial sector.** |
| 2.5 The Financial Intelligence Unit and its functions (R.26) | • **The Authorities should consider revising the composition and mandate of the Guidance Committee (Article 16 of the NORUT) to avoid any possibility of undue influence or interference.**<br>• **Article 22 of the NORUT should be revised in order to better protect the access to the database from individuals being the object of UTRs.**<br>• **The process of having most cases presented by an analyst to the Head of the FIU should be revised with consideration being given to using the process in exceptional circumstances. In addition, other officials than the Head of FIU (MOT) should have the authority to approve the disclosure of cases on a regular basis.**<br>• **The Curaçao Authorities should consider amending Articles 4, of the NORUT to remove provisions that could potentially lead to the risk of interference or undue interference.**<br>• **The annual report (or other reports) of the FIU (MOT) should include more information on ML and FT trends and typologies.** |
| 2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28) | **Recommendation 27**<br>• **The Curacao Authorities should review the functions and method of operation of the UFCB, and depending on the outcome of that review provide the Unit with adequate human and economic resources.**<br>• **The BFO is also facing recruitment challenges. Authorities should deploy efforts to find additional resources domestically that will be able to handle increasingly complex cases of ML and, potentially, FT.**<br>**Recommendation 28**<br>• **The process for obtaining a Court order to compel production of documents or information from reporting entities and warrant for the** |

| | |
|---|---|
| | **search of persons and premises should be amended so that it can be more easily available to law enforcement in the investigation of (ML and FT matters.** |
| 2.7 Cross Border Declaration & Disclosure (SR.IX | • **Authorities should further improve the way they inform travellers of their obligation in the arrival zone or revert to a declaration system by putting back a question on transportation of currency on the card distributed to all passengers.**<br><br>• **Customs should be obligated to better monitor the source, the destination or purpose of the movement of gold or precious metal and stones**.<br><br>• **Curaçao Customs should have the power to stop or restrain currency where there is a suspicion of ML or TF.** |
| **3. Preventive Measures – Financial Institutions** | |
| 3.1 Risk of money laundering or terrorist financing | |
| 3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8) | **Recommendation 5**<br>• **Insurance agents should be captured in the AML/CFT framework.**<br><br>• **Clarity is needed on whether all persons conducting reportable activities under the NORUT are subject to CDD under the NOIS. Specifically, the NORUT establishes an objective indicator for non-life insurance policies; however, the NOIS only applies to Article 1a of the National Ordinance on the Supervision of the Insurance Industry, i.e. life insurance contracts.**<br><br>• **The P&G for IC & IB should require financial institutions to undertake CDD when doubts arise about the veracity or adequacy of previously obtained customer identification data.**<br><br>• **There should be a specific requirement in law or regulation for CDD to be undertaken when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII.**<br><br>• **The NOIS should clearly establish an obligation on the service provider to conduct on-going due diligence on the business relationship.**<br><br>**<u>RISK</u>** |

| | |
|---|---|
| | • **In keeping with the FATF rules of not applying or exempting some or all of the Forty Recommendations to some financial activities in strictly limited and justified circumstances, and based on a proven low risk of money laundering or terrorist financing, clarity is needed on the risk exercise undertaken that resulted in the designation and exemption of low risk financial institutions.**<br><br>• **Exemptions in the NOIS should allow for reduced or simplified CDD for low risk scenarios, rather than no CDD.**<br><br>• **The P&G for CI should limit simplified and reduced CDD to customers of countries that Curacao is satisfied are in compliance with and effectively implementing the FATF Recommendations.**<br><br>**<u>TIMING OF VERIFICATION</u>**<br><br>• **The P&G and the NOIS should be consistent in terms of timing of verification of the identity of non-resident clients.**<br><br>**<u>FAILURE TO SATISFACTORITY COMPLETE CDD</u>**<br><br>• **The P&Gs should explicitly require that a financial institution considers submitting a UTR where the requirements at E.C 5.3 to 5.6 are not met. Further, the P&G for CI should require the conduct of CDD on existing customers/retrospective CDD, on the basis of materiality and risk, and due diligence on such existing relationships at appropriate times.**<br><br>**Recommendation 6**<br><br>• **There should be effective coverage of factoring which was recently included in the NOIS and the NORUT.**<br><br>**Recommendation 7**<br><br>• **The Guidelines for CI should explicitly require that credit institutions assess the respondent's AML/CFT controls and ascertain that they are adequate and effective as required under Recommendation 7.** |
| 3.3 Third parties and introduced business (R.9) | **This Recommendation has been fully observed.** |

| | |
|---|---|
| 3.4 Financial institution secrecy or confidentiality (R.4) | • **It should be made clear whether the MOT, in it functions as a supervisory authority, is allowed to disclose information with domestic or international supervisory counterparts.**<br>• **The IOCCS should make provision for sharing of information with national and international supervisors**<br>• **Clear information gateways should be made in the Ordinance for supervisor-to-supervisor exchange by the Central Bank to the supervisory arm of the FIU (MOT).**<br>• **The Police and Central Bank should resolve any differences in expectations as it relates to how readily information is forthcoming.** |
| 3.5 Record keeping and wire transfer rules (R.10 & SR.VII) | **Recommendation 10**<br>• **It should be explicitly stated in law or regulation that IC & IB and MTC maintain business correspondence for third parties for at least five (5) years following termination of an account or business relationship (or longer if requested by a competent authority in specific cases upon proper authority. The language in the P&Gs should also reflect a mandatory requirement as it relates to this matter.**<br>• **Provision should be made in law or regulation requiring financial institutions to ensure that all information (business correspondence) is available on a timely basis to the domestic competent authorities.**<br>**Special Recommendation VII**<br>• **The P&Gs should make it mandatory for beneficiary institutions to apply risk based procedures when identifying and handling wire transfers that are not accompanied by complete originator information. In addition, lack of complete originator information should be included as a subjective indicator to the NORUT in assessing whether a wire transfer or related transaction is suspicious and should be reported to the FIU (MOT).**<br>• **Curacao should consider disclosing the requirements for cross-border wire transfers in a composite P&G document.** |
| 3.6 Monitoring of transactions and relationships (R.11 & 21) | **Recommendation 11**<br>• **Financial institutions should be required to (1) keep the findings of examinations on the** |

| | |
|---|---|
| | **background and purpose of complex, unusual large and unusual patterns of transactions for at least five (5) years and (2) make such findings available to the auditors and competent authorities.**<br><br>**Recommendation 21**<br><br>• **The P&Gs for IC & IB and the MTCs should require that for transactions that have no apparent economic or visible lawful purpose, the background and purpose of such transactions should, as far as possible, be examined, and written findings should be available to assist competent authorities (e.g. supervisors, law enforcement agencies and the FIU (MOT)) and auditors.**<br><br>• **Authorities should effectively demonstrate employ of instructions regarding countermeasures for transactions and business relationships with countries that do not apply or insufficiently apply the FATF Recommendations.** |
| 3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV) | **Recommendation 13 & SR IV**<br><br>• **The Authorities should ensure that ~~reporting~~ entities from all sectors report UTRs.**<br><br>• **Mechanisms should be put in place that would require all reporting entities to focus on identifying and reporting on transactions for which they can identify a suspicion.**<br><br>• **Reporting entities should not rely only on the prescriptive list of indicators provided by the Ministerial Decree.**<br><br>• **The relevant procedures should be revised to allow developing more flexibility for reporting entities to identify suspicion of ML or FT.**<br><br>**Recommendation 14**<br><br>• **Relevant amendments should be made to ensure that directors of legal persons are protected by law from both civil and criminal liability for breach of confidentiality when reporting to the FIU (MOT) in goof faith.**<br><br>• **The tipping-off offence should cover all the directors, officers and employees of a financial institutions.**<br><br>**Recommendation 25** |

| | |
|---|---|
| | • **Reporting entities should receive more general and case-by-case feedback on reports submitted to the FIU.**<br><br>• **The annual report (or other reports) of the FIU (MOT) should include more information on ML and FT trends and typologies.** |
| 3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22) | |
| 3.9 Shell banks (R.18) | |
| 3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25) | **Recommendation 17**<br><br>• **With respect to EC 17.1, the range of sanctions under the various Ordinances should be reviewed with a view to harmonising and ensuring effectiveness, dissuasiveness and proportionality as follows:**<br><br>  • **The power to appoint a trustee/administrator should apply under the RFETCSM, NOSTSP, NOSII and NOIB**<br>  • **Revocation of the license or dispensation should be available under the NOSSE, NOSII and NOIB.**<br>  • **The power to impose administrative fines for AML/CFT violations should be available under the NOIB.**<br>  • **Referral for criminal investigation or prosecution by the Central Bank should be available under the NOIB, NOSII**<br><br>• **The application of conditions and application of sanctions under the RFETCSM to non-bank MTCs should be clarified.**<br><br>**Recommendation 23** |

| | |
|---|---|
| | • **The new framework for prudential supervision of MTCs should be implemented as soon as possible.**<br><br>**Recommendation 25**<br><br>• **In light of the recent National Decree Designating Services, Data and Supervisors under the NOIS (when Providing Services), a framework, inclusive of a P&G should be implemented.**<br><br>**Recommendation 29**<br><br>• **Albeit the risk-based approach, the onsite supervision programme should cover more licensed financial institutions and include a file review.** |
| 3.11 Money value transfer services (SR.VI) | • **The P&G for MTCs should explicitly require that a financial institution consider making a UTR/STR where the requirements at E.C 5.3 to 5.6 are not met.**<br><br>• **The Authorities should create or indicate a subjective indicator for identification problems as it relates to MTCs under the NORUT.**<br><br>• **There should be an explicit requirement for MTCs to maintain a current list of agents.** |
| **4. Preventive Measures – Non-Financial Businesses and Professions** | |
| 4.1 Customer due diligence and record-keeping (R.12) | • **Lawyers, notaries, accountants or similar legal professions preparing for or carrying out transactions for clients dealing with the organisation of contributions for the creation, operation or management of companies and trust and company service providers carrying out transactions for clients dealing with acting as (or arranging for another person to act as) a nominee shareholder for another person should be subject to the AML/CFT obligations of the NOIS and NORUT.**<br><br>• **Internet casinos should be subject to the AML/CFT obligation in the NOIS and NORUT.**<br><br>• **The threshold for identification requirements for casinos in legislation should be revised in accordance with the FATF standard.**<br><br>• **Financial institutions should be legislative** |

| | |
|---|---|
| | **required to perform CDD when carrying out occasional wire transfers in circumstances covered by SR. VII.**<br><br>• **Service providers should be legislatively required to conduct on-going due diligence on business relationships.**<br><br>• **The NOIS should be amended to allow for reduced or simplified CDD measures for exempted institutions or enterprises under Article 2, paragraph 4.**<br><br>• **The P&Gs for administrators and company (trust) service providers should be amended to require financial institutions to consider making a UTR when the requirements of E.C. 5.3 to E.C. 5.6 are not met.**<br><br>• **Criteria 5.5.2, 5.6 to 5.11, 5.16 and 5.17 of Rec. 5 should be enforceable on DNFBPs under FIU/MOT and the GCB.**<br><br>• **Deficiencies identified in section 3 for Recs-10 and 11 which are applicable to DNFBPs under the Central Bank should be remedied.**<br><br>• **Obligations in Recs. 6, 8 and 11 should be enforceable on DNFBPs under the supervision of FIU/MOT and the GCB and company (trust) service providers.**<br><br>• **Obligations in Recs. 9 should be enforceable on company (trust) service providers and DNFBPs under the supervision of the FIU (MOT).**<br><br>• **The deficiencies in section 3.5 for Rec. 10 which are applicable to all DNFBPs should be remedied. Additionally, the requirement to ensure that transaction records are sufficient to permit the reconstruction of individual transactions should be enforceable on DNFBPs under the FIU (MOT) and the GCB.** |
| 4.2 Suspicious transaction reporting (R.16) | • **The deficiencies identified for Recs. 13 and 14 in section 3.7 for all DNFBPs should be remedied.**<br><br>• **The deficiencies identified for Rec. 21 in sections 3.6 for DNFBPs under the Central Bank should be remedied.**<br><br>• **Obligations in Rec. 15 and 21 should be made enforceable on the DNFBPs under MOT and GCB.** |

| | |
|---|---|
| 4.3 Regulation, supervision and monitoring (R.24-25) | **Recommendation 24**<br>• **The Authorities should implement an AML/CFT regime for supervision of and compliance by Internet casinos.**<br>• **The FIU (MOT) should implement and effective supervisory regime as soon as possible.**<br>• **The FIU (MOT) should be given more resources to fulfil their supervisory role for the relevant DNFBP sector.**<br>• **The deficiency identified in section 3.10 (R. 29) with regard to the supervisory function of the Central Bank should be remedied.**<br>**Recommendation 25**<br>• **Provisions and Guidelines should be developed for Internet Casinos.**<br>• **The FIU (MOT) should provide the DNFBPs that it supervises with more ML/FT feedback.** |
| 4.4 Other non-financial businesses and professions (R.20) | |
| **5. Legal Persons and Arrangements & Non-Profit Organisations** | |
| 5.1 Legal Persons – Access to beneficial ownership and control information (R.33) | • **Law or regulation should establish a requirement for all legal persons to register the information on the UBO at the Commercial Register of the Chamber of Commerce.**<br>• **The Chamber of Commerce should establish procedures to ensure that all the information at the Commercial Register is up to date and periodically reviewed and that the information is complete and accurate.**<br>• **The Authorities should provide the Chamber of Commerce with administrative sanctioning power against natural and legal persons who fail to provide accurate and up-to-date information.**<br>• **There should be better procedures with regard to the exchange of information in the Commercial Register.**<br>• **The Authorities must ensure the immobilization of bearer shares.** |

| | |
|---|---|
| 5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34) | • **There should be better procedures to access the information on UBOs in a timely fashion.** |
| 5.3 Non-profit organisations (SR.VIII) | • **The Authorities should enact legislation to deal with the AML/CFT responsibilities of NPOs.**<br>• **Curaçao should consider designating a supervisory authority for the NPO sector.**<br>• **Curaçao authorities should conduct a new assessment on the risk with regard to the NPO sector.**<br>• **The authorities of Curaçao should undertake outreach programmes to the NPO sector with a view to protecting the sector form FT abuse.**<br>• **Ensure that training programs are in place for the NPO sector and supervised institutions with regard to the risks of the NPO sector.**<br>• **There should be a requirement for NPOs to keep records of transactions for at least five years and Curaçao Authorities should consider requiring the NPOs to submit that information to a designated competent authority periodically.** |
| **6. National and International Co-operation** | |
| 6.1 National co-operation and coordination (R.31) | • **There should be a clear structure, governance and terms of reference in place that would assist with the organization of the CIWG.**<br>• **The composition of the CIWG should include more operational competent authorities such as FIU (MOT), the PPO and other law enforcement authorities.**<br>• **Consideration should be given to having a forum where only competent authorities can work together on policy and legislative changes that will contribute to improve the national AML/CFT regime.**<br>• **An assessment of the adequacy of resources assigned to competent authorities should be undertaken to ensure that they keep pace with a dynamic financial sector.** |
| 6.2 The Conventions and UN Special Resolutions (R.35 & SR.I) | **Recommendation 35**<br>• **The offence of terrorism financing should be criminalized in accordance with the Terrorist Financing Convention.** |

| | |
|---|---|
| | • **The Vienna Convention should be fully implemented in Curacao law with regard to Article 15 of that Convention, as no measures regarding the Article were seen by the Examiners.**<br><br>• **The Palermo Convention should also be fully implemented in Curacao law with regard to Articles 18, 23 and 25-28 of that Convention as no measures regarding those Articles were seen by the Examiners**.<br><br>**Special Recommendation 1**<br><br>• **The laws should be properly amended to give effect to paragraph 4(a) of UNSCR 1267.**<br><br>• **Measures should be put in place that would allow for the freezing of assets without delay as they pertain to locally designated terrorists under UNSCR 1373.** |
| 6.3 Mutual Legal Assistance (R.36-38 & SR.V) | |
| 6.4 Extradition (R.39, 37 & SR.V) | **Recommendation 39**<br><br>• **There is no requirement to commence prosecution against a national of Curacao (who is immune to extradition) where there is request from a foreign state.**<br><br>**Special Recommendation V**<br><br>• **The Curacao Authorities should have measures in place to ensure the early commencement of prosecution for FT offences against a national of Curacao (who is immune from extradition) where there is a request from a foreign state.** |
| 6.5 Other Forms of Co-operation (R.40 & SR.V) | **Recommendation 40**<br><br>• **The Authorities should establish clear mechanisms for the exchange of information between law enforcement and their foreign counterparts.**<br><br>• **The FIU (MOT) should be given the legal authority to exchange information with supervisory authorities from other jurisdictions.**<br><br>• **The IOCCS should make provision for the sharing of information with foreign counterparts.**<br><br>• **Mechanism needed to facilitate all competent authorities (Central Bank, supervisory arm of the FIU (MOT) and GCB) undertaking enquiries on behalf of foreign counterparts.** |

| | |
|---|---|
| | **Special Recommendation V**<br>• **The Curacao Authorities should have measures in place to ensure the early commencement of prosecution for FT offences against a national of Curacao (who is immune from extradition) where there is a request from a foreign state.**<br>• **There should be clear mechanisms in place for law enforcement authorities to exchange information as it pertains to FT.** |
| **7. Other Issues** | |
| 7.1 Resources and statistics (R. 30 & 32) | **Recommendation 30**<br>• **The human resources of the BFO should be enhanced significantly so that they can properly handle increasingly complex cases of ML.**<br>• **The Curaçao Authorities should give consideration to assigning more lawyers to deal with mutual legal assistance requests.**<br>• **The PPO should continue to build up its specialist prosecutorial resources and the Authorities should continue their efforts to attract more local legal professionals into the prosecutorial and judicial services.**<br>• **The FIU (MOT) should be given more resources to fulfil their supervisory role of the relevant DNFBP sector.**<br>• **The Authorities should review and strengthen as necessary, the resources available to supervise financial institutions.**<br>**Recommendation 32**<br>• **The PPO must segregate its database with regard to its different activities.**<br>• **Statistics for the exchange of information (other than the mutual legal assistance process) between law enforcement authorities should be kept.**<br>• **Customs or other relevant competent authority should maintain statistics with regard to cross border bearer negotiable instruments.**<br>• **The Curaçao Authorities should keep statistics with regard to the nature of the request made** |

| | |
|---|---|
| | **and the time required to respond to mutual legal assistance requests.** |
| 7.2 Other relevant AML/CFT measures or issues | |
| 7.3 General framework – structural issues | |

**Table 3: Authorities' Response to the Evaluation (if necessary)**

| Relevant sections and paragraphs | Country Comments |
|---|---|
| | |
| | |
| | |
| | |
| | |
| | |
| | |

# ANNEXES

**Annex 1: List of abbreviations**
**Annex 2: Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others.**
**Annex 3: Copies of key laws, regulations and other measures**
**Annex 4: List of all laws, regulations and other material received**

Annex 1

## LIST OF ABBREVIATIONS

| | |
|---|---|
| ACONA | Association of Compliance Officers of the Netherlands Antilles |
| ADM | Administrators |
| ARAS | |
| AML | Anti-Money Laundering |
| BFO/HARM | Bureau of Financial Investigations/Hit and Run Money Laundering |
| BV | Private Limited Liability Company (Besloten vennootschap) |
| CAMEL | Capital adequacy; Asset quality; Management & organization; Earnings & Liquidity |
| CBA | Curaçao Banking Association |
| CC | Civil Code |
| CDD | Customer Due Diligence |
| CFT | Combating Financing of Terrorism |
| CFATF | Caribbean Financial Action Task Force |
| CGC | Corporate Governance Code |
| CIFA | Curaçao International Financial Services Association |
| CIWG | National Committee on Money Laundering |
| COSRA | Council of the Securities Regulators of America |
| CSC | Compliance Services Caribbean |
| CPD | Central Ploitie Department |
| DCSX | Dutch Caribbean Securities Exchange N.V. |
| DEA | Drug Enforcement Administration |
| DNFBPs | Designated Non Financial Businesses & Professions |
| FATF | Financial Action Task Force |
| FIU | Financial Intelligence Unit/MOT |
| FT | Financing of Terrorism |
| GAR | General Administrative Regulation |
| GCB | Gaming Control Board |
| IAIS | International Association of Insurance Supervisors |
| IAP | International Association of Prosecutors |
| IBNA | International Bankers' Association |
| IFG | International Financial Group |
| IFS | Integrity Financial Sector |
| II | Investment Institutions |
| IOCSC | Island Ordinance Casino Sector Curaçao |
| IOSCO | International Organization of Securities Commissions |
| KPC | Korps Politie Curaçao |
| LR | Investigative Service of the Government |
| MD | Ministerial Decree |
| MICS | Minimum Internal Control Standards |
| MOT | Financial Intelligence Unit |
| MTC | Money Transfer Companies |
| NV | Limited Liability Company (naamloze vennootschap) |
| NAVV | Insurance Association of the Netherlands Antilles |
| NDSP | National Decree containing general measures Penalties and Administrative Fines Service Providers |
| NDUT | National Decree containing general measures Penalties and Administrative Fines Reporters Unusual Transactions |
| NOOCMT | National Ordinance Obligation to Report Cross-Border Money Transportations |
| NORUT | National Ordinance on the Reporting of Unusual Transactions |

| | |
|---|---|
| NOIS | National Ordinance on Identification when rendering Services |
| NOSTSP | National Ordinance on the Supervision of Company (Trust) Service Providers |
| NPFRUT | Penalties and Administrative Fines Reporters Unusual Transactions |
| P&G | Provision and Guidelines |
| PIOD | Customs Investigation Service |
| PPO | Public Prosecutors Office |
| RFETCSM | Regulations for Foreign Exchange Transactions Curaçao & St. Maarten |
| RST | Special Task Force Curaçao |
| SNO | Sanctions National Ordinance |
| STAMCER | Solvency; Technical provisions; Assets; Management; Compliance; Earnings & Reporting |
| STR | Suspicious Transaction Report |
| TIO | Information and Investigation Team on Money Laundering through Fiscal Constructions |
| TSP | Trust Service Provider |
| UFCB | Unit Combating of Financial Crimes |
| UBO | Ultimate Beneficial Owner |
| UTR | Unusual Transaction Report |
| VDC | Security Services of Curaçao |

**Annex 2**

# Details of all bodies met on the Mission – Ministries, other government authorities or bodies, private sector representatives and others

## 1. Government

Office of the Prime Minister
Honourable Prime Minister
Secretary of State

Public Prosecutors Office
- Attorney General
- Senior Legal Counsel

CIWG
- Central Bank Representatives
- Private Sector Representatives

Ministry of Justice
- Minister of Justice

Chamber of Commerce

Notary
Economic Zone (Curinde)

## 2 Operational Agencies

Financial Intelligence Unit (MOT)
- Head, Reporting Center
- DNFBP Examiner/Senior Legal Counsellor
- Supervisor/Senior Legal Counsellor

CPD/BFO (Curacao Police Force)

Customs Department

## 3 Financial Sector – Government

Central Bank of Curacao

## 4. Financial Sector – Associations and Private Sector entities

- MCB
- RBTT Bank
- ACU Credit Union
- DVB International Bank
- Citco Banking Corporation
- Dutch Caribbean Securities Exchange
- International Bankers Association
- ACONA
- Curacao Bankers Association
- Accountant Association
- Insurance Association
- Brokers Association
- Association of Compliance Officers
- Tax Advisors
- AMICORP
- FATUM
- AON Antillen
- CIFA & IFG

## 5. DNFBPs

- Western Union
- Joubert Realty – Rapid N.V.
- Autocity
- Renaissance Curacao Resort & Casino.
- Old Freeport Shop
- HBN Law
- Eclipse Management N.V.
- BDO Accountants & Adviseurs
- AMICORP Fund Services

**Annex 3**

## Legal Instruments Description

**The Charter of the Kingdom of the Netherlands and Charter amendments**
The Charter is the highest Constitutional law in the Kingdom of the Netherlands and supersedes all other laws. The relation between Curaçao and the other countries of the Kingdom of the Netherlands is governed by this Charter. It regulates, among others things, the conduct of Kingdom affairs, the mutual assistance, consultation and cooperation and the constitutional organization of the countries. The current Charter was enacted in 1954 and has been amended several times since its enactment due to, among other things, constitutional reforms (1975: independence Suriname; 1986: separation of Aruba from the Netherlands Antilles; 2010: dissolution of the Netherlands Antilles).

**Kingdom Acts and Executive General Measures for the Kingdom (Rijkswet and Algemene maatregel van Rijksbestuur)**
These laws/measures supplement the Charter by detailing subjects that are only dealt with generically in the Charter itself. Kingdom Acts and Executive General Measures of the Kingdom are permissible only in relation to those subjects expressly authorized by the Charter (article 14 of the Charter). They neither interfere with the Charter text itself, nor become an integral part of the Charter. Kingdom Acts that affect two or more Kingdom countries are enacted by consultation and approval by those countries of the Kingdom of the Netherlands and are thus more difficult to enact than other laws.

**Cooperation Agreement (Samenwerkingsregeling)**
Article 38 of the Charter also provides for the possibility for Kingdom countries to close cooperation agreements. For historical and practical reasons Curaçao cooperates with Aruba, and today also with Sint Maarten on various issues, of which cooperation on immigration and monetary and financial supervision legislation are noteworthy.

**Constitution (Staatsregeling)**
Every country within the Kingdom has its own Constitution (Grondwet or Staatsregeling). The basic rights of citizens, the institution and separation of the judiciary, legislative and
executive branches, the organization of government and its tasks and obligations, along with related subjects are regulated in the Constitution of Curaçao. The Constitution can be amended by a National Ordinance; however, the National Ordinance containing such amendment needs to be approved by the Parliament by a majority vote of 2/3. In addition, it also needs the approval In addition, it also needs the approval of the government of the Kingdom of the Netherlands (article 44 of the Charter).

**National Ordinance**
The National Ordinances are the primary and formal legislative instruments on national (country) level which are issued by the Government and the Parliament conjunctly and enacted by the Governor. Proposals for National Ordinances can be made by either the Government or the Parliament, although the former is usually the case. This is due to the fact that National Ordinances serve, among other things, as a basis and framework for policy and, related to this, as an instrument to regulate behavior. In a National Ordinance the legal authority to further regulate a subject can be delegated to the Government.

**National Decrees** (**containing general measures)**

National Decrees are delegation instruments which are enacted by the Government (executive power). The National decrees are distinguished in National Decrees Containing General Measures and National Decrees which are directed to specific purposes/persons. The National Decrees Containing General Measures regulate subjects mentioned in the National Ordinances. The purpose of a National Decree is often to discipline/regulate/detail an

enacted law. For example, the administrative sanctions of the National Ordinance on the Reporting of Unusual Transactions (N.G. 2010, no 41) are supported/further detailed by the National Decree Penalties and Fines Reporters Unusual Transactions (N.G. 2010, no. 71). These decrees can be issued or amended easily by the Government without the approval of the Parliament.

**Ministerial Decrees with general operation**
Ministerial Decrees are legislative instruments issued by one or more Minister(s) who has/have competence over the subjects regulated in those decrees. The authority to issue such decree is delegated to the Minister by a National Ordinance.

**Provisions and Guidelines**
The Central Bank can issue Provisions and Guidelines for the (financial) institutions under its supervision provided that the competent/authority to do so is delegated by the legislator, by means of a National Ordinance. This generally occurs through the Supervisory National Ordinances. Therefore the Provisions and Guidelines are classified as regulation and are enforceable, even though they are not issued by the legislator. If these Provisions and Guidelines are not adhered to by the institutions, sanctions can be imposed.

**Minimum Internal Control Standards (MICS)**
The Minimum Internal Control Standards are guidelines issued by the Gaming Control Board for the casinos under its supervision. The competence/authority to do so is delegated by the legislator. The MICS are classified as regulation and are enforceable.

**Explanatory Memorandum**
An Explanatory Memorandum is a companion document to a law which aids in the interpretation of that law. It outlines the intensions of the law and the meaning of the provisions as intended by the legislator. It provides useful background information about the purpose of the law. The Explanatory Memorandum is often used by a court to interpret legislation to:

a. Confirm that the meaning of a provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the law and the purpose or object underlying the law; or
b. Determine the meaning of a provision when the provision is ambiguous or obscure.

**Other instruments**
Court rulings (jurisprudence), general principles of good governance and even common practice are also sources of law.

### Integrity Financial Sector Statistics 2002-2010

| | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|---|---|---|---|
| **External reported incidents** | 24 | 5 | 58 | 11 | 16 | 37 | 26 | 35 | 41 |
| **Internal reported incidents** | 0 | 19 | 42 | 26 | 9 | 11 | 37 | 9 | 25 |
| **Total reported incidents** | 24 | 24 | 100 | 37 | 25 | 48 | 63 | 44 | 66 |

Note that the instructions for internal reporting were formally issued in 2003, and for external reporting in Jan 2004.

| | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|---|---|---|---|
| **Positive Integrity Result** | 0 | 232 | 779 | 594 | 327 | 304 | 486 | 463 | 327 |
| **Negative Integrity Result** | 1 | 10 | 29 | 15 | 8 | 9 | 4 | 3 | 5 |
| **Total Integrity Test Results** | 1 | 242 | 808 | 609 | 335 | 313 | 490 | 466 | 332 |

| | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|---|---|---|---|
| **BNA Information Requests** | 0 | 0 | 0 | 3 | 3 | 18 | 29 | 3 | 0 |
| **International Information Requests** | 0 | 0 | 8 | 9 | 28 | 27 | 14 | 14 | 25 |
| **Total** | 0 | 0 | 8 | 12 | 31 | 45 | 43 | 17 | 25 |

**Annex 4**

**List of all Laws, Regulations and other Material received**

1. Penal Code (relevant sections).
2. Anti-Money Laundering and Counter Financing of Terrorism Framework.
3. Provision and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing for Money Transfer Companies.
4. Ministerial Decree for implementing the National Ordinance on Identification when rendering services.
5. Provision and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing for Credit Institutions.
6. Provisions and Guidelines on the Detection and Prevention of Money Laundering and Terrorist Financing for Company (Trust) Service providers.
7. Gaming Control Board form showing licences conditions.
8. Policy document for AON.
9. Client acceptance form for BDO Accountants and Adviserurs.
10. Extradition Decree of Aruba, Curacao and Sint Maarten.
11. Ministerial Regulation Great Arab Socialist People's Jamahiriy.
12. National Ordinance on Identification of client when Rendering Services (N.G. 1996, no. 20) NG 2010, no. 40.
13. National Ordinance on the Reporting of Unusual Transactions (NG 1996, NO. 21) NG 2010, no. 41.
14. National Ordinance on the Supervision of Banking and Credit Institutions, 1994.
15. National Ordinance on the Supervision of Company Pension Funds.
16. National Ordinance on the Supervision of Investment Institutions and Administrators.
17. National Ordinance on the Supervision of Securities Exchange.
18. National Ordinance on the Supervision of the Insurance Industry.
19. National Ordinance on the Supervision of Trust Service Providers.
20. Penal Code (National Ordinance on the amendment of the Code of Criminal Law NG 2008, no. 46) and Penal Procedures Code.
21. Sanctions National Decree Al-Qaida c.s., the Taliban of Afghanastan c.s., Osama bin Laden c.s. and terrorists to be designated.
22. Sanctions National Decree Democratic People's Republic of Korea and Explanatory Notes.
23. Sanctions National Decree Islamic Republic of Iran and Explanatory Notes.
24. Sanctions National Ordinance.
25. AML-CFT Provision and Guidelines Company Trust Service Providers, May 2011.
26. Amendments NOSBCI.
27. Amendments Sanctions National Ordinance. (Dutch version).
28. AML-CFT Provisions and Guidelines AII and SAI, May 2011.
29. AML-CFT for Credit Unions.
30. AML-CFT Provisions and Guidelines Money Remitters, May 2011.
31. AML-CFT Provisions and Guidelines Insurance Companies and Intermediaries, May 2011.
32. Appendix I and II Policy Rule, June 2011.
33. Central Bank Statute for Curacao and Sint Maarten.
34. Civil Code Book 2.
35. Decree Sanctions Ordinance Supervisors.
36. Explanatory Memorandum National Ordinance on the Identification of Client when Rendering Services.
37. Explanatory Memorandum National Ordinance on the Reporting of Unusual Transactions.
38. Explanatory Memorandum to the Central Bank Statute of Curacao and Sint Maarten.
39. Explanatory Memorandum to the Regulation for Foreign Exchange Transactions Curacao and Sint Maarten.
40. Forms Annexes AML-CFT Framework Central Bank.
41. Framework AML-CFT Central Bank.

42. General Administrative Regulation (of the RFETCSM).
43. Indicators Unusual Transactions.
44. Island Decree Implementing Article 23, first para of the IOCCS (O.B. 2002, no. 85).
45. Island Decree (O.B. 2009, no. 60).
46. Island Ordinance amending the IOCCS as amended by O.B. 2009, no.57 (2010, no. 27).
47. Island Ordinance Curacao Casino (IOCCS) (O.B. 1999, no. 97).
48. Island Ordinance of June29, 2009 amending the Island Ordinance Curacao Casino Sector (O.B. 2009, no. 57).
49. Ministerial Decree with General Operations of March 15, 2010, implementing the NOIS.
50. Ministerial Decree with General Operations of March 15, 2010, implementing the NORUT.
51. Ministerial Regulation Great Libyan Arab Socialist People's Jamahiriya (Dutch version).
52. National Decree Administrative Penalties Insurance Brokers.
53. National Decree Administrative Penalties Trust Service Providers (2004, no. 82).
54. National Decree on Special Licenses.
55. National Decree on the Obligation to retain Securities to Bearer.
56. National Decree Penalties and Fines Reporters Unusual Transactions.
57. National Decree Penalties and Fines Service Providers.
58. National Ordinance of October 26, 2009 amending the National Ordinance of October 26, 2009 amending the National Ordinance on the Reporting of Unusual Transactions.
59. National Ordinance on the Obligation to Report Crossborder Money Transfer.
60. General Regulation Import, Export and Transit.
61. AML-CFT Provisions and Guidelines for Credit Institutions.
62. Business Licence Act.
63. Commercial Register Act.
64. National Decree Custody Bearer Share Certificaties.
65. National Ordinance on Identification of Client when Rendering Services (NG. 1996, no.23). NG. 2010, no. 40.
66. National Ordinance on the Supervision of Company Pension Funds.
67. Regulations for Foreign Exchange Transactions Curacao and Sint Maarten.
68. Trade Register Decree, 2009.
69. Appendix 1 MEQ Curinde Free Zone Manual.
70. Appendix 2 (FIU) MOT Curacao Annual Report – 2005.
71. Appendix 3 (FIU) MOT Curacao Annual Report - 2006
72. Appendix 4 (FIU) MOT Curacao Annual Report - 2007
73. Appendix 5 (FIU) MOT Curacao Annual Report - 2008
74. Appendix 6 (FIU) MOT Curacao Annual Report - 2009
75. Appendix 8 Warning Letter Central Bank
76. Appendix 9 Guidelines – RR.
77. Appendix 10 List AML-CFT Training Central Bank.
78. Appendix 11 Administrative Requirements MTC- NA.
79. Appendix 12 Warning Letter (FIU) MOT – Non-Financial Professions.
80. Appendix 13 GAR.
81. Appendix 14 Declaration of Identification.
82. Draft Procedures with regard to the investigative work of the Supervision Department, including the procedure how to handle incoming questions and an example of a supervisory investigation at a Notary Office.
83. Sanction Criteria form to indicate when an Administrative or Penal Sanction will be applied in Supervisory work.
84. Questionnaires to the DNFBPs.
85. Provisions and Guidelines for Car Dealers and Jewellers; Lawyers, Civil Law Notaries, Accountants, Tax Advisors and Trust offices.
86. Statistics of the (FIU) MOT Annual Report – 2010.
87. Breakdown of the 'biggest/most interesting cases' of the (FIU) MOT's pro-active investigations that were sent to the PPO.

2012