



CARIBBEAN  
FINANCIAL ACTION  
TASK FORCE

# First Follow-Up Report

Sint Maarten  
May 30<sup>th</sup>, 2013

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## I. Introduction

1. This report represents an the CFATF Secretariat's analysis of Sint Maarten' progress with regard to correcting the deficiencies identified its Mutual Evaluation Report (MER), as approved on November 2012 and subsequent by Round Robin on January 8th, 2013<sup>1</sup>. This is the first follow-up report, based on a matrix of progress provided by Sint Maarten on March 25, 2013<sup>2</sup> (see the attached matrix of progress). Sint Maarten was placed in regular-expedited follow-up process.

2. Sint Maarten received ratings of PC and NC on fourteen (14) of the sixteen (16) Core and Key Recommendations respectively as follows:

Rec.	1	3	4	5	10	13	23	26	35	36	40	I	II	III	IV	V
Rating	LC	PC	LC	PC	PC	NC	PC	NC	PC	PC	PC	PC	NC	PC	NC	PC

3. With regard to the other non-Core or Key Recommendations<sup>3</sup>, Sint Maarten was rated partially compliant or non-compliant, as indicated below.

Partially Compliant (PC)	Non-Compliant (NC)
R. 9 (Third parties and Introducers)	R. 12 (DNFBPs – R. ,6,8-11)
R. 14 Protection & no Tipping-off	R. 16 (DNFBP-R. 13-15 &21)
R. 17 (Sanctions)	R. 24 (DNFBP-regulation, supervision and monitoring)
R. 21 (Special attention for higher risk countries)	R. 33 (Legal persons-beneficial owners)
R. 25 (Guidelines & Feedback)	SR. VI (AML requirements for MVTs)
R. 27 (Law enforcement authorities)	SR. VIII (NPOs)
R. 30 (Resources)	SR. IX (Cross-border Declaration & Disclosure)
R. 31 (National co-operation)	
R. 32 (Statistics)	
R. 38 (MLA on confiscation and freezing)	
SR. VII (Wire transfer rules)	

<sup>1</sup> Post Plenary, in order to provide St Maarten with a comprehensive list of outstanding documents, it was discovered that translated Articles of the Netherlands Antilles Penal Code that were relevant to assessing compliance primarily with Recommendation 1 (Table of Designated Category of Offences) and also affecting Recommendation 3, 13, 35, 36, SR II and SR IV were not analysed by the Examiners. Accordingly, a post Plenary analysis was conducted, which resulted in the rated for Recommendation 1 being upgraded from a "PC" to a "LC". The ratings for Recommendations 3, 13, 35, 36, SR II and SR IV were not affected as the effect of the Penal Code articles on those Recommendations was minimal. The amended Post Plenary Report was forwarded to the Sint Maarten Authorities and approved for submission for approval of the specific parts by the Round Robin process. The Post Plenary Report was adopted by Plenary on January 8, 2013.

<sup>2</sup> The Matrix of progress was subsequently updated on April 15<sup>th</sup> and April 23<sup>rd</sup> of 2013.

<sup>3</sup> Recommendations referred to are the previous FATF 40+9 Recommendations, which are those still in force in relation to this follow-up report.

4. The following table is indented to assist in providing an insight into the level of risk in the main financial sectors in Sint Maarten, as per December 31, 2012:

Size and integration of Sint Maarten financial sector

		<b>Banks</b>	<b>Other Credit Institutions *</b>	<b>Securities 1</b>	<b>Insurance<sup>2</sup></b>	<b>TOTAL</b>
<b>Number of institutions</b>	Total #	8	1		7 <sup>3</sup>	
<b>Assets</b>	US\$	1,766,640	14,683		86,908,000	
<b>Deposits</b>	Total: US\$	1,502,881	0		15,005,000 <sup>4</sup>	
	% Non-resident	29% of deposits	0% of deposits		46.4% <sup>5</sup>	
<b>International Links</b>	% Foreign-owned:	64.2% of assets	100% of assets	% of assets	4.9 % of assets <sup>6</sup>	% of assets
	#Subsidiaries abroad	3	0		3 <sup>7</sup>	

Notes:

<sup>1</sup> Please, note that there are no local or foreign investment institutions under the Central Bank's supervision in Sint Maarten.

<sup>2</sup> The figures of the insurance sector are as per December 31, 2011.

<sup>3</sup> This total includes local insurance companies (life, non-life and funeral).

<sup>4</sup> Represents the investments by institutions in (time) deposits with banks.

<sup>5</sup> Represents the investments by institutions in (time) deposits with foreign banks in percentages of total (time) deposits.

<sup>6</sup> Represents the Total Assets of the institutions with foreign shareholders in percentage of Total Assets.

<sup>7</sup> Represents the number of subsidiaries abroad. Number is not only limited to insurance companies.

## II. Summary of progress made by Sint Maarten

5. Sint Marteen has begun the work in rectifying the deficiencies found in its AML-CFT systems reflected in the MER.

6. Sint Maarten Penal Code was amended in June 2012. Additionally, Sint Maarten Authorities are working in amending the Criminal Procedures Code (CPC).

7. Revisions for amending the National Ordinance on the Reporting of Unusual Transactions (NORUT) and National Ordinance on Identification of Clients when rendering Services (NOIS) have already started.

8. The Provisions and Guidelines on the detection and deterrence of Money Laundering and Terrorist Financing (P&Gs) for: credit institutions (CI), insurance companies and intermediaries – insurance brokers (IC & IB), money transfer companies (MTC), administrators of investment institutions and self-administered of investment institutions (AII & SAI) and company trust service providers (TSP) are being revised.

9. The Head of the Financial Intelligence Unit (FIU) (MOT) was appointed on January 2013. In addition the FIU (MOT) has started the process of drafting the P&Gs for the DNFBPs.

### **Key Recommendations and Core Recommendations**

#### **Recommendation 3**

10. As mentioned at the beginning of this report, the Authorities indicated that new Penal Code of Sint Maarten was passed in Parliament in June 2012. Currently, by decision of the Ombudsman, the Penal Code is under review by the Constitutional Court to ensure that it complies with the principles of human rights. The Authorities informed that the constitutional revisions by the Constitutional Court are expected to be finalized in July 2013. In the mean time, the process of translation of the new Penal Code into English has started.

11. The Authorities also mentioned that the CPC is being drafted by the joint Committee revising the CPC of Curacao, Aruba, Sint Maarten and the BES-Island. The draft of the CPC will be finalized by the end of May 2013. Later in 2013 the final draft will be submitted to Parliament.

12. In consequence, until the text of the new Penal Code and the CPC is provided it is not possible to make an assessment. The deficiencies remain outstanding.

#### **Recommendation 5**

13. The Authorities have indicated that the NOIS and the P&GS for IC & IB are being revised in order to address the deficiencies identified in the MER. The revision of the NOIS and the P&Gs is expected to be finalized by the end of June and July 2013, respectively. In consequence, until the text of the amendment of NOIS and P&Gs are finalized it is not possible to make an assessment. The deficiencies remain outstanding.

#### **Recommendation 10**

14. As mentioned before the NOIS is being revised to address the recommended actions indicated in the MER. As in the previous case, until the text of the amendment of NOIS is finalized it is not possible to make a proper assessment. The deficiencies remain outstanding.

#### **Recommendation 13 and Special Recommendation IV**

15. In addition to what was mentioned in Recommendation 3, with regard to the Penal Code, the Authorities have indicated that the Ministerial Decree containing the establishment of indicators of the Unusual Transactions National Ordinance (MDIUT) will be amended to address some of the deficiencies identified in the MER. It is anticipated that the amendments will be finalized by the end of June 2013.

16. The Authorities explained in the matrix that the MDIUT, although not explicitly mentioned, does not exclude tax matters when reporting a suspicious transaction. However giving the prescriptive nature of the indicators as indicated in the MER in paragraph 837 there is a need of an explicit provision to require that suspicious transactions should be reported regardless of whether they involve tax matters.

17. Based on the above the reforms are underway but at this point in time the deficiencies remain outstanding.

### **Recommendation 23**

18. With regard to the deficiency related to the money transfer companies (MTCs), the authorities indicated that the Public Prosecutors Office (PPO) will be addressing the matter. In addition the Authorities indicated that for 2013 Central Bank has scheduled three (3) on-site visits to MTCs. In addition, authorities indicated that one (1) supervisory staff has been hired by the Central Bank of Curacao and Sint Maarten (CBCS) in order to improve the monitoring of licensees in Sint Maarten. Within the existing supervisory staff (approximately fifty (50) people) this additional staff will be responsible for the institutions under the CBCS supervision primarily located in Sint Maarten. The CBCS is providing on the job training as well as supervisory courses to that staff to gradually enhance his supervisory responsibilities.

19. The process of developing risk based approach supervision model has started. Considering the comments made in the MER that AML/CFT examinations should not be a by-product of the prudential supervision, the CBCS is enhancing its risk based approach in the area of AML/CFT by separately quantifying the risk in the area of AML/CFT in order for high risk institutions in this matter to be adequately supervised and continuously monitored. This will be an ongoing process.

### **Recommendation 26**

20. Sint Maarten Authorities have indicated that the NORUT will be amended to correct some of the deficiencies indicated in the MER. The FIU (MOT) has a permanent Head in place as of January 1, 2013, by National Decree No. LB -13/0029

21. As indicated earlier in this Report, the Authorities mentioned that FIU (MOT) has started the process of drafting the P&Gs for the DNFBPs, which is anticipated to be finalized by mid June 2013. Also, the Authorities pointed out that the FIU (MOT) is disseminating information to the reporting entities on the manner and procedures for reporting on a case by case basis. There are plans to start group sessions in this regard.

22. The FIU (MOT) is in the process of hiring new staff as it has been concluded that there is a need of more qualified staff. A new employee of legal background started in May 1<sup>st</sup>, 2013 and there are plans to hire more qualified staff in the following areas of need: legal, information and technology, supervision, analysts, policy officials. It is expected that with the new staff, the number of investigated reports that would be sent to the PPO increases and the FIU (MOT) could produce its annual reports.

23. In addition, according to the information provided by the Authorities, the FIU (MOT) has moved to a new location which in the view of the authorities the security has been enhanced. The building which houses the FIU (MOT) office is being secured by the installation of an access control system and cameras (inside and outside of the building and in the FIU (MOT) office). Visitors will have to identify themselves and a camera has been placed their identity can be verified and have not direct access to the FIU (MOT) office. The database can only be accessed by two (2) authorized persons. The project will be finalized by mid May 2013.

24. The permanent appointment of the Head of the FIU (MOT), the new hiring of staff and the relocation of the FIU (MOT) are important steps to overcome the deficiencies identified in the MER.

### **Recommendations 35, 36 and 40**

25. The Authorities indicated that Opium Legislation Act<sup>4</sup> will be revised to address some of the issues in relation to the compliance with the Vienna Convention. Additionally, as indicated before with the new Penal Code and the upcoming reforms to the CPC, Sint Maarten Authorities expect to correct the deficiencies identified in the MER.

26. Regarding Recommendation 40, the Authorities indicate that the domestic laws, (with the exception of the RFETCSM) or the CBCS charter do not allow for the CBCS to undertake investigations on behalf of their foreign counterparts.

27. With regard to the ability to provide international cooperation with their foreign counterpart by all law enforcement entities, the authorities refer to the articles 183 – 185, 521 and 522 of the CPC ensures local and international cooperation between law enforcement entities and their counterparts. The translation of the articles was provided by the Authorities on May 13<sup>th</sup>, 2013. Further analysis of the content of the articles will be provided in the next follow up report.

### **Special Recommendations I, II, III & V**

28. As mentioned earlier, the Authorities indicated that new Penal Code of Sint Maarten was passed in Parliament in June 2012. Currently, by decision of the Ombudsman, the Penal Code is under review by the Constitutional Court to ensure that it complies with the principles of human rights. Sint Maarten Authorities expected that with the new Penal Code the deficiencies identified in the MER will be resolved. In addition as indicated, a reform to the CPC is currently being drafted.

29. Until the text of the new Penal Code and the reform to the CPC is enacted and provided, it is not possible to make an assessment with regard to the compliance of the relevant Recommendations.

30. With regard to Special Recommendation III, the Authorities present in the matrix information related to mutual legal assistance which pertains to Recommendations 36 and ss., different from what it is required in the criteria for Special Recommendation III.

### **Other Recommendations**

31. In the following paragraphs there is a brief update of the actions undertaken by Sint Maarten regarding the other non- Core or Key Recommendations. (For further information please refer to the index matrix).

**Recommendations 9, 12, 14, 16, 17, 18, 21, 24, 25, 27, 30, 31, 32, 33, 38, and 39, Special Recommendations R. VI, VII, VIII and IX.**

### **Recommendation 9**

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<sup>4</sup> Opiumlandsverordening 1960

32. The Authorities have indicated that the P&Gs for CI, IC & IB and MTC are being revised to implement the recommended actions. However until the final text of the P&Gs is provided, it is not possible to make an assessment with regard to the compliance with this Recommendation.

#### **Recommendations 12, 16 and 24**

33. As mentioned before the NOIS and the NORUT are being revised to address some of the deficiencies identified in the MER with regard to the designated non-financial business and professions (DNFBPs).

34. The P&Gs for SAII & AII and TSP are being amended. In addition the FIU (MOT) is drafting the P&Gs for the DNFBPs that are under its supervision.

The FIU (MOT) has started to process to set up the supervision of DNFBPs. Recently they hired two staff for the supervision area of the FIU (MOT) and indicated that DNFBPs are being registered with the FIU (MOT).

<b>Registered DNFBP</b>	<b>#</b>
Jewellery businesses	92
Real estate companies	171
Car dealers	33
Notaries	3
Accountants	68
<b>TOTAL</b>	<b>367</b>

35. Also DNFBPs are receiving sensitization on NORUT and the role of the FIU (MOT). The Authorities indicated that the legal affairs department of the Ministry of General Affairs together with the economic affairs department of the Ministry of Tourism, Economic Affairs, Traffic and Telecommunication will draft the appropriate legislation and guidance to regulate and supervise casinos and internet casinos.

36. Considering the above, all deficiencies remain outstanding.

#### **Recommendation 14**

37. The Authorities have indicated that article 20 of the NORUT covers every person including directors, officers and employees (permanent or temporary) of financial institutions. However as indicated in the MER, paragraph 843, from the language of the provision there cannot be certainty that all financial institutions and their directors, officers and employees (permanent or temporary) would be prohibited from disclosing STR or related information being report to the FIU (MOT). The deficiency remains outstanding.

#### **Recommendation 17**

39. With regard to the deficiency related to inclusion of specific provisions to indicate that sanctions apply to directors and senior management of financial institutions, the Authorities have advised that they will review their legal instruments to address this deficiency

40. With regard to the power to apply a wide range of sanctions, the Authorities will address this item in draft Harmonization Law which is in legislative process and expected to be enacted by the end of 2013. Therefore, at this point in time the deficiencies remain outstanding.

#### **Recommendation 21**

41. The Authorities indicated that the P&Gs for CI, IC & IB and MTC establish that 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 high-risk and non-cooperative jurisdictions. This statement meets the criteria 21.1 as it was stated in the MER in paragraph 825.

42. However the recommended action in the MER refers to the criteria 21.1.1. The MER in paragraph 826 relates to the process where Central Bank routinely circulates to financial institutions and publishes on its website, extracts from FATF public statements regarding jurisdictions for which the FATF calls for action. The recommended action requires that those notices from the CBCS include not only the jurisdiction that FAFT calls for action. The financial institutions should be advised of concerns about weaknesses in the AML/CFT systems of other countries.

43. With regard to the remaining recommended action the authorities advised that the NOIS and the P&Gs are being revised to correct the deficiency.

44. Based on the above but at this point in time the deficiencies remain outstanding.

#### **Recommendation 25**

45. Sint Maarten Authorities have indicated that FIU (MOT) and the PPO are analysing the typologies and all sanitized and specific cases. The Authorities advised this process will be carried out periodically and when completed, feedback will be given to the financial institutions by the end of June 2013 in a Typology Report. The typologies which are being analysed include: money laundering through money remittance providers, trafficking in human beings and smuggling of migrants, laundering the proceeds of corruption, politically exposed persons and other public officials, tax crimes and trade based money laundering.

46. As indicated before, the Authorities advised that the FIU (MOT) is disseminating information to the reporting entities on the manner and procedures for reporting in a case to case basis.

47. The Authorities indicated that more guidance will be provided to financial institutions with respect to terrorist financing. This matter is being discussed with the CBCS. In addition, the drafting of the P&Gs for factoring services is being carried out by the CBCS.

#### **Recommendation 27**

48. The Authorities advised that the FIU (MOT) will be responsible for the training sessions in ML/TF for the law enforcement agencies (LEA). The authorities indicate that in August 2013 the PPO will provide training to all LEAs.



49. With regard to the issue of the unlicensed MTCs, there have been discussions with the PPO and the CBCS to address the matter.

### **Recommendations 30, 31 and 32**

50. The Head of the FIU (MOT) is taking action to enhance the fulfilment of the FIU (MOT) functions. As part of this, it is expected that seven (7) staff members for the FIU (MOT) will be recruited by August 2013.

51. Also financial resources have been allocated for the training of the FIU (MOT) staff during 2013. The training sessions will start on July 2013. In addition, the FIU (MOT) along with the PPO will be responsible to organize the AML/CFT training for the different stakeholders. The FIU (MOT) has discussed with the PPO training avenues and the training for all reporting entities, especially DNFBPs will be done in close collaboration with the other FIUs of the Kingdom, starting July 2013. The tentative schedule for training is as follows:

- Week 1 - July 2013. Reporting entities: Workshop AML awareness Building
- Week 1 - July 2013. Law Enforcement Agencies: introduction AML training
- Week 4 - August 2013. Law Enforcement Agencies: (basic) AML training (by PPO)
- Week 2 - September 2013. Law Enforcement Agencies: trade based ML training/offshore finance centres/new payment technologies
- Week 3 - October 2013. FIU (MOT) Aruba, Curaçao and Sint Maarten: trade based ML/offshore finance centres/new payment technologies/property and notaryship/correspondent banking/MTCs/legal structures and client investigation
- Week 3 - December 2013. Law enforcement agencies: property and notaryship/MTCs/legal structures and client investigation.

52. The FIU (MOT) has also been working on getting the offsite electronic data backup and this project is expected to be completed by June of 2013. In addition a fireproof safe and fire extinguishers are already in place at the FIU (MOT).

53. With regard to the recruitment of staff for the law enforcement agencies the Authorities advised that have been recruiting personnel for KPSM where six (6) positions identified in the book of function of the Police Corps were advertised. The recruitment process is still underway. The Authorities indicated that the Court of Justice dispose of extra office space since December 2012.

54. The Anti-Money Laundering and Terrorism Financing Committee (CAWGFT) was formally established by National Decree No. LB-11/0076 dated June 8<sup>th</sup>, 2012. The Article 2 of the National Decree defines the duties of the CAWGFT which include the roles of supervising the implementation of the FATF Recommendations, advising the government on AML/CFT matters, submission of the appropriate draft proposals to the steering group<sup>5</sup>, which may also issue regulations for implementing the recommendations; serve as contact point with the CFATF.

55. The Members of the CAWGFT are as follows (Article 3):

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<sup>5</sup> The Steering Group is comprised of the Minister of General Affairs as Chair, the Minister of Finance, the Minister of Tourism, Economic Affairs, Transport & Telecommunications and the Minister of Justice.

- Attorney General of Curacao, Sint Maarten, Bonaire, Saba and Sint Eustatius
- The Secretary-General of the Ministry of Justice
- Chair of the Sint Maarten Banking Association
- Chair of the Sint Maarten Chamber of Commerce
- Head of the Judicial Affairs Department
- Director of Taxes
- Head of the Sint Maarten Customs Force
- Head of the Foreign Relations Directorate
- Director of the Financial Intelligence Unit
- Head of the Legal Affairs & Legislation Department
- Delegate of the Minister of Finance;
- Delegate of the Minister of General Affairs;
- Delegate of the Minister of Tourism, Economic Affairs, Transport & Telecommunications;
- Delegate of the Central Bank of Curacao and Sint Maarten, to be appointed by the President of the Central Bank of Curacao and Sint Maarten.

56. In case of absence, each member is entitled to appoint the appropriate representative. In addition, as an observer member, the Ministry of Finance of The Netherlands will delegate a representative (Article 4)

57. The FIU (MOT) will function as Secretariat of the CAWGFT (Article 5). According to the Authorities the CAWGFT has met five (5) times. The agenda is focused on the correcting the deficiencies identified in the MER and the appropriate implementation of FATF Recommendations.

58. The Authorities advised that FIU (MOT) has plans to work on the production of its annual reports for years 2011 and 2012. These reports will include information such as: requests from and to overseas FIUs, ML related cases, typologies, etc.

### **Recommendation 33**

59. The Authorities indicated that the law will be amended to require that all legal person must register the ultimate beneficial owner information at the Chamber of Commerce. The Chamber of Commerce distributes UBO information to the FIU (MOT). In addition, the Authorities advised that the deficiencies will be examined by the legal affairs department at the Ministry of Justice.

### **Recommendations 37, 38 and 39**

60. See paragraph 27 of this Report.

### **Special Recommendations VI and VII**

61. The Authorities indicated that the matter of the unlicensed MTCs is going to be dealt by the PPO. In addition the relevant provisions are being revised to correct the deficiencies indicated in the MER.

62. The P&Gs for CI and IC & IB are being revised to implement the recommended actions.

### **Special Recommendation VIII**

62. The Authorities have advised that the deficiencies will be examined by the legal department of the Government by the Ministry of Justice in conjunction with the ministry of General Affairs.

### **Special Recommendation IX**

63. The legal department of the Government (which agency/ Ministry?) will address some of the deficiencies. The Authorities advised that the Customs Department will be assisted with software where statistics can be produced and be kept. As indicated before the FIU (MOT) is working on the development of a training schedule for the Customs Department. The schedule is expected to be finalized in July 2013.

### **III Conclusion**

64. As outlined in this Report, since the adoption of its MER, Sin Maarten has begun the process of new and amended legislation in the legislative process, which it is hoped will result in timely enactment and implementation such as the Penal Code, CPC, NOIS, NORUT and the Harmonization Law. In addition, the P&Gs are being amended. As indicated in this Report, the Authorities have an ambitious plan of compliance as they have anticipated that some of the amendments will be finalised during 2013.

65. The Head of the Financial Intelligence Unit (FIU) (MOT) was appointed on January 2013. The FIU (MOT) has starting the process of drafting the P&Gs for the DNFBPs and to develop training programs for public and private stakeholders.

66. It is important to point out that the Plenary in November 2012 in Virgin Island decided that countries in the expedited follow-up process would be required to achieve substantial progress on outstanding recommendations and report back to the plenary in May 2013 and must ensure full compliance with all outstanding key and core recommendations by November 2013<sup>6</sup>.

67. It is recommended that Sint Maarten report back to the November 2013 Plenary expecting that Sint Maarten achieve the substantial progress required.

CFATF Secretariat  
May, 2013

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<sup>6</sup> CFATF-SRPLEN-XXXVI-ver 2. CFATF Plenary Meeting XXXVI – Summary Record. Virgin Islands, November, 2012 and CFATF-Plen-XXXVI-2012-9-ANE-1. Caribbean Financial Action Task Force International Cooperation Review Group. Chair's Report to Plenary Meeting XXXVI.

**Matrix with ratings and follow-up action plan 3<sup>rd</sup> round Mutual Evaluation  
Sint Maarten**

Forty Recommendations	Rating	Summary of factors underlying rating <sup>7</sup>	Recommended Action	Undertaken Action
Legal systems				
1. ML offence	LC	<ul style="list-style-type: none"> <li>• No confirmation that illicit arms trafficking, smuggling, insider trading and market manipulation are criminalised as ML predicate offences.</li> <li>• The Penal Code is not applicable to anyone who outside of Sint Maarten committed the crimes of ML; TF and most of the non-terrorist related predicate offences.</li> </ul>	<ul style="list-style-type: none"> <li>• The Authorities should ensure criminalization of the following predicate offenses: illicit arms trafficking, smuggling, insider trading and market manipulation.</li> <li>• The Penal Code should be amended to ensure that most of the non-terrorist related predicate offences for ML, ML and TF occurred in a foreign country can be prosecuted in Sint Maarten.</li> </ul>	Article 1:5 of the proposed PC SXM creates jurisdiction in cases of TF (currently article 4 and 4a PC). The money laundering offences apply to All crimes (articles 2:404, 2:405, 2:406 Penal Code SXM, currently punishable in articles 435a, 435b, 435c Penal Code), thus including the mentioned ones. Next to that the proposed article 2:54 and 2:55 PC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime (currently dealt with in the articles articles 435a, 435b, 435c Penal Code combined with 48a paragraph three (with explicitly mentions the financing of terrorism). The Proposed article 2:55 the financing of crime is punishable as a severe crime. The switching provision of 2:224 (currently 96) makes the general provisions of the first book of the Penal Code applicable to all other Criminal laws
2. ML offence – mental element and corporate liability	LC	<ul style="list-style-type: none"> <li>• No evidence that parallel civil and criminal proceedings are possible.</li> <li>• The manner in which the data was captured did not allow for proper assessment of the effectiveness of ML prosecutorial efforts.</li> <li>• Penalty applicable to culpable ML is not</li> </ul>	<ul style="list-style-type: none"> <li>• Amend the Penal Code to ensure that parallel criminal and civil proceedings are possible The penalty applicable for a person convicted for culpable ML should be revised to ensure it is effective, dissuasive and proportionate</li> </ul>	Culpable ML in the proposed article 2:406 PC SXM (currently article 435c PC) is punishable with 4 years. Due to this duration of the penalty other effective measures are possible for the prosecution. The switching provision of 2:224 (currently 96) makes the general provisions of the first book of the Penal Code applicable to all

<sup>7</sup> These factors are only required to be set out when the rating is less than Compliant.

		sufficiently dissuasive		other Criminal laws
3. Confiscation and provisional measures	PC	<p>Effectiveness issues</p> <ul style="list-style-type: none"> <li>• The powers to confiscate or take provisional measures in relation to terrorist financing or some predicate offences for ML are limited (please see ratings R1 and SR11)</li> <li>• Confiscation measures (under both pre-conviction and post-conviction circumstances) in the Penal Code do not allow for the measures to be imposed without notice.</li> <li>• Based on the insufficient statistics effectiveness of the confiscation regime could not be confirmed.</li> </ul>	<ul style="list-style-type: none"> <li>• The Penal Code should ensure the effective applicability of Sint Maarten's confiscation mechanisms to Terrorist Financing offences according to the TF Convention and all the designated categories of predicate offenses (refer to paragraph 277).</li> <li>• The Authorities should ensure that comprehensive statistics are maintained in relation to the investigation, prosecution, and conviction of ML related cases.</li> <li>• The confiscation measures under the Penal Code should be revised to allow for the pre-conviction and post-conviction measures to be imposed without notice.</li> </ul>	<p>In the proposed PC SXM the articles 2:54 and 2:55 criminalize TF. Via the proposed article of 1:77 (currently 38e) (a separate and/or parallel procedure to the criminal proceedings) Post-conviction measures can be imposed. For pre-conviction measures the proposal for the new CPC SXM has to be awaited. The new CPC SXM is currently being drafted by the joint Committee revising the Criminal Procedure Code of CUR, AUA, SXM and the BES-island. The switching provision of 2:224 (currently 96) makes the general provisions of the first book of the Penal Code applicable to all other Criminal laws</p>
Preventive measures				
4. Secrecy laws consistent with the Recommendations	LC	<ul style="list-style-type: none"> <li>• No clear provision for the FIU (MOT) as supervisor to exchange information with other foreign supervisors.</li> </ul>	<ul style="list-style-type: none"> <li>• FIU (MOT) as supervisor should have the possibility to exchange information with other local and international supervisory authorities</li> </ul>	<p>FIU (MOT) as supervisor does exchange information with other local and international supervisory authorities. This is done based on article seven (7) of the NORUT and carried out when a request for information is submitted to FIU (MOT).</p>
5. Customer due diligence	PC	<ul style="list-style-type: none"> <li>• The current version versions of the NOIS and NORUT do not adequately cover the scope of financial services activities and operations conducted by financial institutions that are subject to AML/CFT requirements. Activities and operations not covered include: <ul style="list-style-type: none"> <li>○ Lending (factoring)</li> <li>○ Financial leasing</li> <li>○ Financial guarantees and commitments</li> <li>○ Trading in money market instruments</li> <li>○ Participation in securities issues and the provision of financial services related to such issues</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Sint Maarten should urgently amend the NOIS and NORUT to incorporate the full range of activities and operations of financial institutions, including explicit wording with respect to lending; financial leasing; financial guarantees and commitments; trading in a) money market instruments, b) foreign exchange, c) transferable securities, commodity futures; participation in securities issues and the provision of financial services related to such issues; individual and collective portfolio management; factoring services</li> </ul>	<p>The NOIS and the NORUT are being revised. The recommended actions under bullet points 1 through 6 will be addressed in</p>

		<ul style="list-style-type: none"> <li>○ Individual and collective portfolio management</li> <li>• Certain categories of financial services providers are not covered in the scope of the NOIS and NORUT: <ul style="list-style-type: none"> <li>○ Intermediaries operating in the Curacao Stock Exchange (DCSX)</li> <li>○ Life insurance agents</li> </ul> </li> <li>• Ministerial Decree for the Implementation of the NOIS (N.G. 2010, no. 11) does not specify or cross-reference any threshold for occasional transactions that are wire transfers, and it is unclear whether Article 4 of the Ministerial Decree (referencing article 1, paragraph one, section b., under 7, of the NOIS) apply to wire transfers.</li> <li>• There are no provisions in law or regulation for a financial institution to undertake CDD measures when it has doubts about the veracity or adequacy of previously obtained customer identification data.</li> <li>• The basic obligation to conduct CDD when there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations is not set out in law or regulation.</li> <li>• The basic obligation to conduct ongoing due diligence is not specified in law or regulation</li> <li>• The requirement to verify the identity of customers and beneficial owners before the establishment of business relations is not always practical.</li> <li>• There are no provisions for insurance companies and insurance brokers to re-examine the relationship with the client to determine whether to terminate and whether to report to the MOT if</li> </ul>	<p>and insurance activities conducted by agents. Furthermore, all intermediaries operating in the Curacao Stock Exchange (DCSX) should be covered by these national ordinances.</p> <ul style="list-style-type: none"> <li>• There should be explicit requirements in law or regulation for CDD to be undertaken when carrying out occasional transactions that are wire transfers, as per the Interpretive Note to SR VII.</li> <li>• Require financial institutions, through law or regulation, to undertake CDD measures when they have doubts about the veracity or adequacy of previously obtained customer identification data.</li> <li>• Require financial institutions, through law or regulation, to conduct CDD when there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations.</li> <li>• Require financial institutions, through law or regulation, to conduct ongoing due diligence.</li> <li>• The requirement to verify the identity of customers and beneficial owners before the establishment of business relations is not always practical. Sint Maarten should amend the NOIS to allow for verification at after the establishment of a business relationship in specified circumstances.</li> <li>• Require insurance companies and insurance brokers to re-examine the relationship with the client to determine whether to terminate and whether to report to the MOT if doubts arise relating to the</li> </ul>	
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		doubts arise relating to the identity of the client after the client has been accepted and accounts have been opened	identity of the client after the client has been accepted and accounts have been opened.	
6. Politically exposed persons.	LC	<ul style="list-style-type: none"> <li>No clear requirements within the P&amp;Gs for financial institutions to put in place appropriate risk management system to determine whether a potential customer, customer or beneficial owner is a PEP.</li> </ul>	<ul style="list-style-type: none"> <li>Amend the P&amp;Gs to state that FIs should put in place appropriate risk management system to determine whether a potential customer, customer or beneficial owner is a PEP.</li> </ul>	The P&G for IC & IB is being revised to implement the recommended actions.
7. Correspondent banking	LC	<ul style="list-style-type: none"> <li>Only the P&amp;G for CI contain specific provisions on correspondent banking activities. No similar provisions exist for other types of financial institutions.</li> <li>There are no provisions for financial institutions to assess the respondent institution's AML/CFT controls, and to ascertain that they are adequate and effective.</li> </ul>	<ul style="list-style-type: none"> <li>Correspondent activities provisions should be incorporated in all the other P&amp;Gs, similar to the P&amp;G for CI, which contains specific provisions on correspondent banking activities.</li> <li>The P&amp;Gs should require the respondent institution's AML/CFT controls, and to ascertain that they are adequate and effective.</li> </ul>	The P&G for IC & IB is being revised to implement the recommended actions.
8. Non face to face and new technologies.	LC	<ul style="list-style-type: none"> <li>There is no requirement for MTC to comply with criteria 8.2 and 8.2.1</li> </ul>	<ul style="list-style-type: none"> <li>P&amp;Gs for MTCs should incorporate requirements regarding E.C 8.2 and EC 8.2.1</li> </ul>	The P&G for MTCs is being revised to implement the recommended actions.
9. Third parties and introducers	PC	<ul style="list-style-type: none"> <li>The "adequately supervised" criterion in the P&amp;Gs is not in line with the requirements of essential criteria 9.3.</li> <li>The sources through which financial institutions should satisfy themselves that a third party is adequately regulated is limited to Mutual Evaluation Reports.</li> <li>There are no requirements for MTC to comply with Recommendation 9</li> </ul>	<ul style="list-style-type: none"> <li>Amend the "adequately supervised" provisions of the P&amp;Gs, in line with the requirements of essential criteria 9.2, which requires that financial institutions satisfy themselves that the third party is regulated and supervised (in accordance with Recommendation 23, 24 and 29) and has measures in place to comply with the CDD requirements set out in Recommendation 5 and Recommendation 10.</li> <li>Amend the P&amp;G's to require that financial institutions satisfy themselves that the third party adequately regulated and supervised by referring more broadly to reports assessments and reviews of reports produced by the FATF, IMF or FSRBs,</li> </ul>	<p>The P&amp;Gs for CI and IC &amp; IB are being revised to implement the recommended actions.</p> <p>The P&amp;Gs for CI and IC &amp; IB are being revised to implement the recommended actions.</p>

			<p>rather than specifically to Mutual Evaluation Reports.</p> <ul style="list-style-type: none"> <li>• P&amp;Gs for MTC should incorporate requirements to comply with Recommendation 9.</li> </ul>	<p>The P&amp;G for MTC's is being amended to prohibit the non-face to face transactions at MTC's.</p>
10. Record-keeping	PC	<ul style="list-style-type: none"> <li>• The obligation under E.C. 10.1, which compels financial institutions to maintain all necessary records on transactions, is not clearly stipulated in law or regulation.</li> <li>• The obligation to maintain records of business correspondence for at least five years following the termination of an account or business relationship is not stated in law or regulation.</li> <li>• The obligation under E.C. 10.3 requiring that all customer and transaction records and information be available to competent authorities upon appropriate authority on a timely basis should be in law or regulation</li> </ul>	<ul style="list-style-type: none"> <li>• The NOIS should be amended to reflect the obligation to maintain all necessary records on transactions, both domestic and international for five years following the termination of an account or business relationship (or longer if requested by the competent authority in specific cases and upon proper authority).</li> <li>• The NOIS should be amended to reflect the obligation to maintain records of business correspondence for at least five years following the termination of an account or business relationship</li> </ul>	<p>The NOIS is being revised. The recommended actions under the first and second bullet points are being addressed in the revision of the NOIS.</p>
11. Unusual transactions	LC	<ul style="list-style-type: none"> <li>• There are no specific provisions in the P&amp;Gs for financial institutions to keep documented findings regarding complex, unusual large transactions, or unusual patterns of transactions, available for competent authorities and auditors for at least five years.</li> </ul>	<ul style="list-style-type: none"> <li>• The P&amp;Gs should be amended to incorporate specific provisions for FIs to keep documented findings of their findings regarding complex, unusual large transactions, or unusual patterns of transactions, available for competent authorities and auditors for at least five years.</li> </ul>	<p>The P&amp;G and the NOIS are being amended to incorporate specific provisions for FIs to keep documented findings regarding complex, unusual large transactions, or unusual patterns of transactions for at least five years.</p>
12. DNFBP–R.5, 6, 8–11	NC	<ul style="list-style-type: none"> <li>• The threshold for identification requirements for casinos is not in accordance FATF standard.</li> <li>• No AML/CFT requirements for internet casinos.</li> <li>• No requirements, by law or regulation for DNFBPs regarding criteria 5.2.c. 5.2.d, 5.2.e and 5.7</li> <li>• No requirements for DNFBPs supervised by the FIU (MOT) and casinos regarding criteria 5.6 to 5.11, 5.16 and 5.17</li> <li>• The deficiencies in section 3.5 for Rec. 10 which are applicable to all DNFBPs</li> </ul>	<ul style="list-style-type: none"> <li>• The threshold for identification requirements for casinos in legislation should be amended in accordance with the FATF standard.</li> <li>• AML/CFT requirements should apply to internet casinos.</li> <li>• DNFBPs should be required by law or regulation to comply with 5.2.c. 5.2.d, 5.2.e and 5.7 of Recommendation 5</li> <li>• Authorities should put legislation for</li> </ul>	<p>The NOIS and the NORUT are being revised. The recommended actions under bullet points 1 through 6 will be addressed in the revision of the NOIS and the NORUT.</p>



		<ul style="list-style-type: none"> <li>• No legislation i.e. law or guidelines for DNFBPs supervised by the FIU (MOT) and casinos that includes all the requirements of recommendations 6, 8, 9 and 11.</li> <li>• No requirements for SAII and AII regarding criteria 6.1 and 9.3</li> </ul>	<p>DNFBPs supervised by the FIU (MOT) and casinos with the requirements of criteria 5.5.2, 5.6 to 5.11, 5.16 and 5.17 of recommendation 5.</p> <ul style="list-style-type: none"> <li>• The deficiencies in section 3.5 for Recommendation 10 which are applicable to all DNFBPs should be remedied.</li> <li>• The Authorities in Sint Maarten should issue legislation for DNFBPs supervised by the FIU (MOT) and casinos that includes all the requirements of recommendations 6, 8, 9 and 11.</li> <li>• Central Bank should incorporate in the P&amp;Gs for SAII and AII requirements regarding E.C 6.2 of Recommendation 6 and E.C 9.3 of Recommendation 9</li> </ul>	
13. Suspicious transaction reporting	NC	<ul style="list-style-type: none"> <li>• The scope of UTR reporting may not be as extensive as required by FATF as some designated categories of predicate offenses for ML are not covered in Sint Maarten (see R1).</li> <li>• It is unclear that suspicious transactions apply regardless of whether they involve tax matters.</li> </ul> <p><i>Effectiveness issues</i></p> <ul style="list-style-type: none"> <li>• Heavy reliance on objective indicators (i.e threshold).</li> <li>• The burden of reporting subjective (rules based) indicators could detract from the FIs reporting genuine suspicious transactions.</li> </ul>	<ul style="list-style-type: none"> <li>• Sint Maarten should ensure that all designated categories of predicate offenses for ML are covered in order to eliminate the restrictions in the UTR reporting system in this regard (refer to paragraph 277)</li> <li>• Sint Maarten should consider express provisions in law regulation or other enforceable means to require that suspicious transactions should be reported regardless of whether they involve tax matters.</li> <li>• The MDIUT should be amended to allow the reporting entities to identify suspicion of ML or FT and avoid reliance on the prescriptive indicators.</li> </ul>	<p>The P&amp;G for SAII and AII is being revised to implement the recommended actions.</p> <p>The Ombudsman has opted to make use of the constitutional provisions to send the Penal Code to the Constitutional Court for review, in order to determine if the Penal Code complies in all its aspects with the principles of human rights, as laid down in international treaties, and that the Code does not violate aforementioned principles.</p> <p>The Ministerial Decree on indicators, although not explicitly mentioned, does not exclude tax matters when reporting a suspicious transaction. Suspicious UTR reporting takes place whether or not it involves a tax matter.</p> <p>The MDIUT will be amended to allow reporting entities to identify suspicion of ML or FT to avoid reliance only on the prescriptive indicators.</p>
14. Protection & no tipping-	PC	<ul style="list-style-type: none"> <li>• It is not clear that this prohibition covers financial institutions and their directors officers and employees</li> </ul>	<ul style="list-style-type: none"> <li>• Make it clear that financial institutions, their directors, officers and employees</li> </ul>	<p>According to the Civil law system which Sint Maarten is part of and contrary to the Common</p>

off		(permanent or temporary).	(whether permanent or temporary) are prohibited by law from disclosing (“tipping off”) the fact that an STR or related information is being reported or provided to the FIU.	law system the wording “ <i>een ieder</i> ” in article 20 of the NORUT implies that each and every one is subject to the sphere of action when the law is enacted, including directors, officers and employees (permanent or temporary) of financial institutions. It is not customary in our legal system that all different addressees of the law regulating an issue are mentioned separately one by one. This subject matter will also be submitted to a common law professor who teaches European law for a legal opinion.
15. Internal policies and controls	C			
16. DNFBP–R.13–15 & 21	NC	<ul style="list-style-type: none"> <li>• The deficiencies identified for Recs. 13 and 14 in section 3.7 apply to all DNFBPs.</li> <li>• No legislation i.e. law or guidelines for DNFBPs supervised by the FIU (MOT) and casinos that includes all the requirements of recommendations 15 and 21.</li> <li>• DNFBPs supervised by the Central Bank are not required to apply counter-measures to countries which do not or insufficiently apply FATF Recommendations.</li> <li>• UTR reporting by DNFBPs is ineffective.</li> </ul>	<ul style="list-style-type: none"> <li>• The deficiencies identified for Recs. 13 and 14 in section 3.7 for all DNFBPs should be addressed.</li> <li>• The Authorities in Sint Maarten should issue legislation for DNFBPs supervised by the FIU (MOT) and casinos that includes all the requirements of recommendations 15 and 21.</li> <li>• DNFBPs supervised by the Central Bank should be required to apply counter-measures to countries which do not or insufficiently apply FATF Recommendations.</li> </ul>	<p>The deficiencies identified for Recs. 13 and 14 in section 3.7 for all DNFBPs are being addressed in the amendment of the NORUT.</p> <p>The NORUT is being amended to include all the requirements of recommendations 15 and 21 for the DNFBPs supervised by the FIU (MOT). The authorities will draft separate legislation/guidelines to supervise casinos.</p> <p>The P&amp;G for CTSP is being revised to implement the recommended actions.</p>
17. Sanctions	PC	<ul style="list-style-type: none"> <li>• Outside of the Civil and Penal Codes, there are no indications that sanctions could apply to directors and senior management of financial institutions.</li> <li>• Sanctions not effective against MTCs that continue to operate without licenses.</li> <li>• Sanctions appear to be used sparingly.</li> </ul>	<ul style="list-style-type: none"> <li>• Include explicit provisions in the NOIS and NORUT to indicate that sanctions apply to directors and senior management of financial institutions.</li> <li>• Take immediate action against directors and senior management of unauthorised MTCs.</li> <li>• The Central Bank should have a wide</li> </ul>	<p>In accordance with our legal system, sanctions against directors and senior management are already in place in Sint Maarten. Please, refer to Sint Maarten’s answer to E.C. 17.3 in section 3.10 of the MEQ: <i>The power of enforcement to act against financial institutions and their directors can 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</i></p>

			range of sanctions and should be prepared to use them.	<p><i>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, 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.</i></p> <p><i>The above mentioned provision makes it possible to act against directors or senior management, because the director or senior management are the ones who give the orders on the work floor and because there is a so called switch provision (article 96) of the Penal Code that provides for the application of article 53 of the Penal Code to other facts which are penalized by other general ordinances, unless the general ordinances provide otherwise. Therefore the administrative fines of the NOIS and NORUT are also applicable to the financial institutions and their directors.</i></p> <p>However, as this legal mechanism was not understood, the matter will be further examined in order to ensure the correct understanding of this legal mechanism.</p> <p>The power to apply a wide range of sanctions has already been addressed in the draft Harmonization Law which is in legislative process.</p>
18. Shell Banks	C			
19. Reports of Currency transactions	C			
20. Other DNFBP & secure	C			

transaction techniques				
21. Special attention for higher risk countries	PC	<ul style="list-style-type: none"> <li>• Notices with respect to strategic deficiencies are limited to jurisdictions for which the FATF calls for action.</li> <li>• Countermeasures are not clearly specified with respect to countries that do not apply or insufficiently apply the FATF Recommendations.</li> </ul>	<ul style="list-style-type: none"> <li>• Ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of all countries specified by the FATF, not only those countries for which the FATF calls for action.</li> <li>• Ensure that Sint Maarten has the ability to apply counter-measures to countries that continue not to apply or insufficiently apply the FATF Recommendations.</li> </ul>	<p>The P&amp;Gs for CI (page 17), MTC (page 13), SAI &amp; AII (page 23), IC &amp; IB (page 21), and TSP (page 19) indicate that the supervised 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 high-risk and non-cooperative jurisdictions.</p> <p>The NOIS and the P&amp;Gs are being revised to implement the recommended actions.</p>
22. Branches and subsidiaries	C			
23. Regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> <li>• Unlicensed MTCs continue to operate within Sint Maarten, impacting on effectiveness with respect to E.C. 23.1, E.C 23.5 and E.C. 23.6.</li> <li>• Low number of on-site inspections for MTCs.</li> <li>• Factoring services are yet to be subject to Central Bank supervision under the NOIS and NORUT.</li> <li>• The RBA is not calibrated for AML/CFT risks.</li> </ul>	<ul style="list-style-type: none"> <li>• Take immediate action to close unlicensed MTCs.</li> <li>• Increase on-site inspections of MTCs.</li> <li>• Implement a regulatory and supervisory regime for factoring services.</li> <li>• Develop a risk based approach system to determine the AML/CFT focus of onsite inspections.</li> <li>• Commit resources to having supervisory staff in Sint Maarten for greater onsite monitoring of licensees.</li> </ul>	<p>The situation with the MTC's will be addressed by the PPO</p> <p>For 2013 the Central Bank has scheduled 3 on-site visits to MTC's in Sint Maarten.</p> <p>The process of developing a risk based approach has started.</p> <p>As per August 2012 one (1) supervisory staff has been hired by the CBCS to improve the monitoring of licensees in Sint Maarten.</p>
24. DNFBP - regulation,	NC	<ul style="list-style-type: none"> <li>• There is no adequate AML/CFT regulation and supervision of casinos</li> </ul>	<ul style="list-style-type: none"> <li>• The Authorities in St. Maarten should immediately implement adequate</li> </ul>	<p>Adequate AML/CFT regulation and supervision of casinos and internet casinos will be developed</p>

supervision and monitoring		<ul style="list-style-type: none"> <li>• No supervisory regimen for Internet casinos.</li> <li>• The FIU (MOT) as supervisory authority has not started yet.</li> <li>• The FIU (MOT) does not have adequate resources to fulfil their supervisory role.</li> <li>• The deficiency identified in section 3.10 (R. 29 and R17) with regard to the supervisory function of the Central Bank applied.</li> </ul>	<p>AML/CFT regulation and supervision of casinos in compliance with E.C. 24.1. Casinos in St. Maarten are not effectively regulated or monitored.</p> <ul style="list-style-type: none"> <li>• The Authorities should implement an AML/CFT regime for Internet casinos.</li> <li>• The FIU (MOT) should implement an effective supervisory regime and should be given resources to fulfil their supervisory role for the relevant DNFBP sector.</li> <li>• The deficiency identified in section 3.10 (R. 29 and R17) with regard to the supervisory function of the Central Bank should be cured.</li> </ul>	<p>in the coming year.</p> <p>The FIU is setting up the supervision of the DNFBP sector. Two newly recruited employees of the supervision section of the FIU (MOT) are carrying out the registration of the DNFBPs.</p> <p>In accordance with the legal system, sanctions against directors and senior management are already in place in Sint Maarten. Please be referred to the comment under Undertaken Action re. Rec 17.</p>
25. Guidelines & Feedback	PC	<ul style="list-style-type: none"> <li>• Not much guidance is given to financial institutions on TF techniques and methods.</li> <li>• P&amp;G for providers of factoring services is not in place.</li> <li>• DNFBPs supervised by the FIU and do not receive sufficient guidance to DNFBPs on complying with AML/CFT requirements</li> </ul>	<ul style="list-style-type: none"> <li>• The FIU should provide feedback with respect to typologies or sanitized cases, and on specific cases that have been closed.</li> <li>• FIU (MOT) is strongly encouraged to continue its outreach programme to <u>specifically</u> encompass both feedback and guidance related to UTRs.</li> <li>• Provide guidance to financial institutions with respect to terrorism financing.</li> <li>• Issue guidance to providers of factoring services.</li> <li>• The Competent Authorities in Sint Maarten should provide adequate guidance to DNFBPs supervised by the FIU and Casinos regarding AML/CFT</li> </ul>	<p>FIU (MOT) and the PPO are analysing the typologies and all sanitized and specific cases. This process will be carried out periodically and when completed, feedback will be given to the financial institutions.</p> <p>As stated before, FIU (MOT) does feedback with and guide the financial institutions related to UTRs.</p> <p>More guidance will be provided to financial institutions with respect to TF.</p> <p>The process of preparing the P&amp;G for providers of factoring services has started.</p>

			<p>requirements.</p> <ul style="list-style-type: none"> <li>• FIU (MOT) should issue its own P&amp;Gs.</li> </ul>	<p>The FIU (MOT) is busy disseminating information to the DNFBPs supervised by the FIU regarding AML/TF requirements. The FIU (MOT) is working on developing its own P&amp;Gs.</p>
Institutional and other measures				
26. The FIU	NC	<ul style="list-style-type: none"> <li>• The legal basis for the establishment of the FIU (MOT) is not clear.</li> <li>• There is an absence of a permanent FIU Head physically present in the FIU on a daily basis.</li> <li>• Not all reporting entities are aware of the existence of the FIU (MOT) in Sint Maarten. Inadequate training and guidance sessions for reporting entities.</li> <li>• Articles 4, 8, 16 and 22 of NORUT present a risk to the operational autonomy of the FIU and create opportunities for undue interference and influence.</li> <li>• There is a low number of investigative reports forwarded by the FIU (MOT) to the PPO.</li> <li>• The security of the FIU (MOT) information, the premises and employees requires improvement.</li> <li>• The authorities should produce and publish the outstanding Annual Report for 2011 and ensure that it contains information relating to the typologies and trends for ML and TF for Sint Maarten.</li> <li>• Effectiveness of the FIU (MOT) could not be confirmed</li> </ul>	<ul style="list-style-type: none"> <li>•The authorities should ensure that the legal underpinnings for the establishment of the FIU (MOT) are sound. It should be clear in the law as to the Ministry under which it falls.</li> <li>•The authorities should move swiftly to appoint an FIU Head.</li> <li>•The FIU (MOT) should seek to clarify the manner and procedures for reporting, improve the relationship between itself and its stakeholders and provide guidance on the manner and procedures for reporting. The FIU (MOT) should increase awareness within its stakeholders of the existence of the MOT.</li> <li>•Articles 4, 8, 16 and 22 of NORUT should be amended in order to ensure operational autonomy of the FIU and avoid opportunities for undue interference and influence.</li> <li>•As the number of investigative reports forwarded by the FIU (MOT) is low compared to the number of UTRs recovered, the FIU (MOT) should reassess its internal process to ensure an adequate number of investigative reports are forwarded to the PPO.</li> <li>•The FIU should implement measures to</li> </ul>	<p>An amendment of the NORUT has been prepared to reflect the legal basis for the establishment of the FIU (MOT).</p> <p>The FIU (MOT) now has a permanent director in place as of January 1, 2013.</p> <p>With the amendment of the NORUT, the drafting of the P&amp;Gs for the DNFBPs and feedback and guiding sessions, the FIU (MOT) is disseminating information to the reporters on the manner and procedures for reporting. The DNFBPs are being registered and receive information simultaneously on the NORUT and the subsequent existence of the MOT.</p> <p>The NORUT is being amended to ensure operational autonomy of the FIU.</p> <p>The internal procedures of the FIU (MOT) are being reviewed and it has been concluded that more qualified personnel needs to be hired. The first new employee starts in 2 months. This must increase the number of investigated reports that is sent to the PPO.</p>

			<p>improve the physical security of manual files, electronic data, premises and the employees of the FIU (MOT).</p> <p>The MOT should produce and publish Annual Reports and ensure that it includes full information on ML and TF trends and typologies.</p>	<p>With the move in February 2013 of the FIU (MOT) office to its new location the physical security of the personnel, the files, and the databases has been increased. The next step is to hire qualified (and screened) personnel to assist in the production of the annual reports 2011 and 2012 of the FIU (MOT).</p>
27. Law enforcement authorities	PC	<p><i>Effectiveness:</i></p> <ul style="list-style-type: none"> <li>• No financial resources have been allocated for ML and TF training for the local law enforcement agencies</li> <li>• There is a shortage of suitably qualified law enforcement officers generally to execute effective ML investigations.</li> <li>• No specific training for TF or ML for several of the law enforcement authorities.</li> <li>• Unlicensed MTCs continue to operate within Sint Maarten</li> </ul>	<ul style="list-style-type: none"> <li>• Relevant financial resources should be directed to ensure that recruited officers are appropriately trained in ML and TF and are kept up to date in the recent developments in financial investigations. These challenges identified will therefore affect the proper investigation of ML and TF offences.</li> <li>• There should be a decisive approach with respect to the operation of certain MTCs without licenses in contravention of the law.</li> </ul>	<p>The FIU (MOT) will be responsible for the training sessions in ML/TF for the law enforcement agencies.</p> <p>The FIU (MOT) will discuss the issue of the unlicensed MTCs with the PPO. One MTC has an appeal pending at the CBCS.</p>
28. Document production, search and seizure	C			
29. Supervisors	C			
30. Resources, integrity, and training	PC	<ul style="list-style-type: none"> <li>• The MOT lacks of staff to adequately perform its functions (including the Head of FIU)</li> <li>• The staff of the FIU does not have adequate and relevant training for combatting ML &amp; TF.</li> <li>• The FIU lacks of analytical tools such as Analyst Notebook to assist in the analysis of UTRs.</li> <li>• The FIU lacks of resources to protect the FIU data, premises and staff; eg. Offsite electronic data fireproof safe, fire extinguishers, etc.</li> <li>• Several of the law enforcement agencies possess a shortage of suitably qualified officers trained in</li> </ul>	<ul style="list-style-type: none"> <li>• The authorities should increase the staff complement of the FIU (MOT.)</li> <li>• The authorities should acquire additional tools such as Analyst Notebook to assist in the analysis of UTRs.</li> <li>• Sufficient financial resources should be reserved that in order that the staff may be adequately trained for ML and TF.</li> <li>• The FIU should obtain the relevant resources eg. Offsite electronic data fireproof safe, fire extinguishers, etc to</li> </ul>	<p>The director of the FIU (MOT) has undertaken action to describe the full time equivalent of the FIU (MOT) functions. This establishes the staff complement of the FIU (MOT) per April 2013.</p> <p>The financial resources for the ML/TF training of personnel have been reserved in 2013.</p> <p>The connections for offsite electronic data backup are expected to be completed in the next two (2) months. A fireproof safe and fire extinguishers are already in place at the FIU (MOT).</p>



		<p>ML investigations.</p> <ul style="list-style-type: none"> <li>• Inadequate training for ML and TF.</li> <li>• No allocation of financial resources for ML and TF.</li> <li>• Inadequate space for the Court of First Instance to properly execute its functions</li> </ul>	<p>further protect its information, premises and employees.</p> <ul style="list-style-type: none"> <li>• The authorities should seek to quickly employ robust recruiting programmes to fill the vacancies in the law enforcement agencies such as the KPSM.</li> <li>• The authorities should ensure that all relevant entities including the Tax Department, Landsrecherche, Customs, Coast Guard and the KPSM are adequately and regularly trained in money laundering and counter financing of terrorism like the RST.</li> <li>• Improved facilities should be provided for the Courts of Justice</li> </ul>	<p>The authorities have been busy recruiting personnel for the law enforcement agencies such as the KPSM.</p> <p>As has been said before, the FIU (MOT) will take responsibility to organize the ML/TF training sessions.</p> <p>The Courts of Justice dispose of extra office space since December 2012.</p>
31. National co-operation	PC	<ul style="list-style-type: none"> <li>• The CIWG needs to be formally established.</li> <li>• Many of the national coordination mechanisms (such as the national AML Committee - CIWG; and Trainings to be undertaken by the PPO) are not yet in operation.</li> </ul>	<ul style="list-style-type: none"> <li>• The CIWG needs to be formally established.</li> <li>• The Authorities should ensure the implementation of the mechanism for coordination that were informed to the Team.</li> </ul>	<p>The anti-money laundering and terrorism financing committee, the CAWGFT, was formally established by national decree dated June 8<sup>th</sup>, 2012.</p> <p>The director of FIU (MOT) will discuss training by the PPO with this entity.</p>
32. Statistics	PC	<ul style="list-style-type: none"> <li>• No statistics available relating to requests to overseas FIUs.</li> <li>• No statistics available for requests for additional information by the FIU(MOT) to reporting entities.</li> <li>• Several reporting entities have not filed UTRs for either subjective or objective indicators and appear not to understand or know their responsibility to report.</li> </ul>	<ul style="list-style-type: none"> <li>• The Authorities should ensure that comprehensive statistics are maintained in relation to the investigation, prosecution, and conviction of ML related cases</li> <li>• The authorities should ensure that relevant statistics are maintained for Sint Maarten with respect to requests for additional information by the FIU (MOT).</li> <li>• The FIU should host training sessions on ML and TF for the reporting entities to ensure that the financial entities report as required.</li> <li>• The FIU should also maintain statistics regarding the number of requests made to</li> </ul>	<p>Now that the FIU (MOT) has moved to its new location, a start can be made with the (bi) annual production of on requests from and to overseas FIUs, ML related cases, etc. Director of FIU (MOT) is also busy with the hiring of qualified (IT) personnel to carry out these tasks. However, it needs to be mentioned here that all the DNFBPs have received information from the FIU (MOT) Netherlands Antilles.</p> <p>The FIU (MOT) will host training sessions on ML/TF for the reporting entities and DNFBPs in</p>



			foreign FIUs.	particular. This will be done in close collaboration with the FIUs in the Kingdom.
33. Legal persons–beneficial owners	NC	<ul style="list-style-type: none"> <li>There is no system in place to ensure access to the UBO information.</li> <li>Not all competent authorities have access in timely fashion to adequate, accurate and current UBO information.</li> <li>The requirement for bearer shares to be transformed into registered shares operates at the discretion of the shareholder and is therefore not mandatory.</li> <li>The NDCBSC does not require the capture and retention of the ultimate beneficial ownership details of the legal person on whose behalf the bearer shares are kept or held.</li> </ul>	<ul style="list-style-type: none"> <li>Sint Maarten should establish a system to ensure access to the UBO information of legal persons.</li> <li>There should be mechanisms in place to guarantee that competent authorities are able to obtain and have access in a timely manner to accurate and current UBO information.</li> <li>Article 105 3<sup>rd</sup> paragraphs reflects that bearer shares shall be transformed by the company into registered shares if this is requested by the holder of the bearer shares that this be done. This aspect of the CC must be amended to either make the transformation mandatory or mandate the registration of the UBO details in relation to the bearer shares and express mechanisms incorporate either in the Code or elsewhere to achieve this registration.</li> <li>Amend the NDCBSC so that the is wording requires that beneficial ownership information must also be captured for the ultimate beneficial owners of the legal person on whose behalf the bearer shares are kept or held</li> </ul>	<p>At this point in time the legal person is not obligated by law to submit its UBO information to the Chamber of Commerce. The law (CC) will be revised to guarantee that authorities have access to UBO information.</p> <p>This subject matter will be further examined by the legal affairs department and the ministry of Justice.</p> <p>This subject matter will be further examined by the legal affairs department / the ministry of Justice.</p>
34. Legal arrangements – beneficial owners	LC	<ul style="list-style-type: none"> <li>There is no certainty that all Competent Authorities have timely access to UBO information.</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>	This subject matter will be further examined by the legal department of government.
International Cooperation				
35. Conventions	PC	<i>Implementation in accordance with the Vienna Convention</i>	<ul style="list-style-type: none"> <li>Authorities must ensure the EDACs expressly addresses the matters of non-</li> </ul>	

	<ul style="list-style-type: none"> <li>• No specific provision was identified in relation to non-treaty based requests for extradition, expedition of extradition procedures and simplification of evidentiary requirements,</li> <li>• The framework under the criminal laws provided is not indicative of Sint Maarten having the ability to extend cooperation and assistance to Transit States as contemplated by article 10 of this Convention.</li> <li>• No evidence of implementation of controlled delivery techniques by the Authorities.</li> <li>• No specific provisions have been identified from the laws provided or advised in relation to special arrangements with Commercial Carriers precautionary measures implemented to ensure commercial carriers are not used for the commission of offences</li> <li>• No provisions have been identified in the laws provided which cover the Illicit Traffic at Sea</li> <li>• No provisions identified regarding measures to suppress the use of mails for illicit traffic.</li> </ul> <p><i>Implementation in accordance with the Palermo Convention</i></p> <ul style="list-style-type: none"> <li>• No measures were identified in the law in relation to having appropriate measures to encourage persons who have participated in organized criminal groups to cooperate with law enforcement.</li> <li>• The advised training initiatives do not appear to cover control techniques in free trade zones and free ports; modern law enforcement equipment and techniques, electronic surveillance, combating organized crime through the use of computers, telecommunications networks or other forms of modern technology and bilateral and multilateral</li> </ul>	<p>treaty based requests for extradition; ,expedition of extradition procedures and simplification of evidentiary requirements</p> <ul style="list-style-type: none"> <li>• The international cooperation framework under the criminal laws should expressly address Sint Maarten's ability to extend cooperation and assistance to Transit States as contemplated by article 10 of the Vienna Convention.</li> <li>• The criminal laws must expressly impose obligations on Commercial Carriers to ensure these carriers are not used for the commission of article 3 offences set out in the Vienna Convention.</li> <li>• The criminal laws must expressly address mechanisms required by article 17 (illicit traffic at sea) and required by article 19 (illicit use of mails) of the Vienna Convention.</li> <li>• The Penal Code and Penal Procedures Code should be revised to address the shortfalls identified in the ratings Table below in relation to the Palermo Convention</li> <li>• The Penal Code should be revised to expressly criminalize the indirect or unlawful provision of funding for the commission of a terrorism offence, as well as the wilful provision of funds etc. to individual terrorists set out in article 2(a) of the Terrorist Financing Convention.</li> <li>• The Penal Procedures Code and/or Penal Code should be amended to expressly address <ul style="list-style-type: none"> <li>• the matter of reciprocal confidentiality (as required by article 12 (Assistance to other States) of the TF Convention;</li> </ul> </li> </ul>	<p>The issue of the offences set out in the Vienna Convention is already partly dealt with in the Opium Legislation which currently is the Opiumlandsverordening 1960. This Act will have to be revised.</p> <p>The general provisions as set out in the Penal Code are applicable on all other Criminal laws, thus on the Opium Legislation through the switching provision of 2:224 (currently 96)</p> <p>The treaty of San Jose covers the combating of illicit traffic at sea and the use of mails for illicit traffic.</p> <p>The issue of the offences set out in the Vienna Convention is already partly dealt with in the Opium Legislation which currently is the Opiumlandsverordening 1960. This Act will have to be revised. This Act will have to be revised.</p> <p>The general provisions as set out in the Penal Code are applicable on all other Criminal laws, thus on the Opium Legislation through the switching provision of 2:224 (currently 96)</p> <p>With the introduction of the new Penal Code of SXM all offences set out in the Palermo Convention as well as the recommended offences will be criminalized.</p>
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		<p><i>Financing Convention</i></p> <ul style="list-style-type: none"> <li>• Wilful provision of funds etc. to individual terrorists does not appear to be covered by the approach to terrorist financing in the Penal Code.</li> <li>• No specific penalty is indicated for the offence of TF, appropriateness of this penalty in relation to this Article therefore cannot be assessed.</li> <li>• TF is not criminalized in accordance with the FT Convention. There is some doubt as to whether freezing mechanism could be invoked in response to a requesting foreign State's freezing requirement arising in relation to a terrorist financing offence.</li> <li>• No law or measure identified regarding the use of forfeited funds to compensate the victims of terrorist offences or their families.</li> <li>• Not all terrorism offences referenced in Annex 1 to the TF Convention are criminalized as required.</li> <li>• Reciprocal confidentiality (as required by article 12 (Assistance to other States) is not addressed in the Penal Code or Penal Procedures Code.</li> <li>• No provisions addressing the matters of custody arrangements, terms under which an offender transferred to Sint marten from a State will be returned to that State from which the offender was transferred, credit for time spent in custody of State to which the offender was transferred, were identified in the Penal Code or Penal Procedures Code.</li> <li>• No laws were identified on the matter of the guarantee of fair treatment of persons in custody.</li> <li>• There is a strong possibility therefore that the TCSP owners, directors and some managers not falling within the definition of staff, may be exposed to criminal liability for breaches of the NOSTSP in respect of reports made by the TCSP</li> </ul>		
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		pursuant to the NORUT		
36. MLA	PC	<p>The extent of Mutual Legal Assistance that may be extended by Sint Maarten is limited by the following deficiencies identified:</p> <ul style="list-style-type: none"> <li>• The indirect or unlawful provision of funding for the commission of a terrorism offence is not criminalized.</li> <li>• Terrorist financing is not criminalized in accordance with the FT Convention.</li> <li>• There is a doubt as to the extent of assistance that could be provided in relation to matters which have not been confirmed as predicate offences (i.e. Illicit Arms Trafficking, Smuggling, Insider Trading market manipulation).</li> </ul>	Amend the Penal Code to address the deficiencies set out in the ratings table.	<p>Next to that the proposed article 2:54 and 2:55 PC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime. In article 2:55 the financing of crime is punishable as a severe crime. Next to that article 1:120 PC SXM (currently article 48a) criminalizes the aiding and abetting of the crimes mentioned in article 2:54 and 2:55. Of course criminal attempts are punishable under 1:119 PC SXM (article 47)</p> <p>The matter of Mutual Assistance is dealt with in the current CPC SXM (article 555 and further (International Mutual Assistance) but will be more expressively mentioned and regulated more detailed in the new CPC SXM, which is currently drafted by the Joint Committee Criminal Procedure Code.</p> <p>(JCCPC) PC</p>
37. Dual criminality	LC	It is not clear whether the assistance provided by Sint Maarten occurred regardless of the existence of dual criminality.		
38. MLA on confiscation and freezing	PC	The deficiencies in R36 impact Sint Maarten's ability to extend mutual legal assistance	Amend the Penal Code to address the deficiencies set out in the ratings table	Already dealt with but more specific legislation is under construction as mentioned under R36
39. Extradition	PC	The deficiencies in R36 impact Sint Maarten's ability to extend mutual legal assistance through extradition.	Implement the recommended actions outlined in relation to SRIL.	Already dealt with but more specific legislation is under construction, as far as the CPC SXM is concerned, and in legislative process as far as CC SXM is concerned
40. Other forms of co-operation	PC	<ul style="list-style-type: none"> <li>• The Extract General Regulation Import, Export and Transit of 1908 NG 1949 No. 62 (In relation to Customs) and all domestic legislation with respect to the law enforcement entities should provide for international cooperation with their counterparts</li> <li>• No provisions have been identified under NOSCB, I,</li> </ul>	<ul style="list-style-type: none"> <li>• Authorities should consider revising the respective Ordinances (NOSBCI, RFETCSM, NOSIIA, NOSTCSP to expressly allow for the CBCS to undertake investigations on behalf of their foreign counterparts. Consequential amendments to</li> </ul>	Sint Maarten can hereby inform that its domestic laws with the exception of the RFETCSM or the CBCS charter do not allow for the CBCS to undertake investigations on behalf of their foreign counterparts.

		<p>RFETCSM, NOSIIA or the NOSTCSP which reflect that the Central Bank can undertake investigations on behalf of their foreign counterparts.</p> <ul style="list-style-type: none"> <li>Statistics have not been provided with respect to spontaneous referrals of information as well as to information supplies on request in order that there can be an adequate assessment of the implementation of this criteria</li> </ul>	<p>the Charter governing the powers of the CBCS may also be necessary to allow for the amendment of the Ordinances as recommended.</p> <ul style="list-style-type: none"> <li>The authorities should maintain statistics on entities' spontaneous referrals of information as well as information supplied as a result of a request. This system can be used at a policy and operational level to adequately assess the country's international cooperation efforts for AML/CFT.</li> <li>Sint Maarten's domestic legislation for all law enforcement entities should specifically provide for international cooperation with their foreign counterparts.</li> </ul>	<p>Articles 183, 184 and 185 of the CPC ensure international cooperation between law enforcement entities and their counterparts. The international cooperation is regulated in the articles 521 and 522 of the CPC. All law enforcement entities entails Customs, Police, Coastguard and Landsrecherche. Also the fraud unit of the Tax Office and all others who have been authorized to investigated offences. The NORUT already in its article seven has this arrangement. The other domestic laws do not have this provision for the CBCS.</p>
Nine Special Recommendations				
SR.I Implement UN instruments	PC	Refer to the ratings Table at Sections 2.2 and 2.4 of this Report.		
SR.II Criminalize terrorist financing	NC	<ul style="list-style-type: none"> <li>No specific penalty is reflected in the Penal Code for the offence of TF.</li> <li>The indirect or unlawful provision of funding for the commission of a terrorism offence is not criminalized.</li> <li>The wilful provision of funds etc. to individual</li> </ul>	<ul style="list-style-type: none"> <li>Article 48a of the Penal Code should be revised to expressly criminalise the indirect or unlawful provision of funding for the commission of a terrorism offence as set out in article 2(a) of the Terrorist Financing Convention.</li> </ul>	<p>Next to that the proposed article 2:54 and 2:55 PC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime. In article 2:55 the financing of crime is punishable as a severe crime. Next to that article 1:120 PC SXM (currently article 48a)</p>

		<p>terrorists is not criminalized.</p> <ul style="list-style-type: none"> <li>• TF is not independently criminalized and therefore there is no comprehensive treatment of terrorist financing in the Penal Code as required by the TF Convention.</li> <li>• The Penal Code does not specify a penalty for the legal person which participates in an organization aimed at committing terrorist offences.</li> <li>• Not all terrorism offences referenced in Annex 1 to the TF Convention are criminalized as required.</li> </ul>	<ul style="list-style-type: none"> <li>• Article 48a of the Penal Code should be revised to expressly criminalize the wilful provision of funds etc. to individual terrorists.</li> <li>• Penal Code should be revised to independently criminalize Terrorism Financing should be effected without delay.</li> <li>• Penal Code should be amended to incorporate specific penalties for the offence of TF.</li> <li>• Article 146a of the Penal Code (which extends to participating in a terrorist organization) should be revised to specify a penalty for the legal person who participates in such an organization.</li> <li>• The Authorities should amend the Penal Code to criminalize all the offences referenced in the Conventions and Protocols referenced at Annex 1 to the TF Convention.</li> </ul>	<p>criminalizes the aiding and abetting of the crimes mentioned in article 2:54 and 2:55. Of course criminal attempts are punishable under 1:119 PC SXM (currently article 47)</p> <p>As far as legal persons are concerned the proposed article 1:127 (currently article 53) states that legal persons can commit a criminal acts mentioned in the PC SXM. Next to that is should be pointed out that paragraph 7 of the proposed article 1:54 PC (currently creates a possibility to punish legal persons more harshly. Next to that the paragraph 2 and 3 of the mentioned proposed article 1:127 PC SXM (article 53) makes de facto leaders of the legal person punishable as well</p> <p>With the adaption of the proposed PC SXM all offence in the mentioned Conventions will be criminalized</p>
SR.III Freeze and confiscate terrorist assets	PC	<ul style="list-style-type: none"> <li>• The framework does not support an ability to invoke freezing mechanisms in response to a requesting foreign State's freezing requirement.</li> <li>• The substantive freezing mechanism for persons listed pursuant to UN Resolution 1267 (1999) would not meet the 'without delay' requirement based on the intervening legislative process between listing by the UN and issue of the requisite Sanctions National Decree which compels the freezing.</li> <li>• There is no clear guidance specially to other persons and entities concerning their obligations in taking action under the freezing mechanism.</li> <li>• The Sanctions National Decree does not expressly refer to assets jointly held by designated persons,</li> </ul>	<ul style="list-style-type: none"> <li>• The substantive freezing mechanism for persons listed pursuant to UN Resolution 1267 (1999) should be reviewed and appropriate adjustments made to ensure that the requirement of acting 'without delay' will be met in relation to subsequent freezing obligations that arise pursuant to terrorist related UN Resolutions that are issued.</li> <li>• The Sanctions National Decree should also expressly refer to assets jointly owned or controlled by designated persons, terrorists or terrorist organizations with third parties, and should incorporate wording to clearly communicate the enforceability of sanctions against the</li> </ul>	<p>The matter of Mutual Assistance is dealt with in the current CPC SXM (article 555 and further (International Mutual Assistance) but will be more expressively mentioned and regulated more detailed in the new CPC SXM, which is currently drafted by the Joint Committee Criminal Procedure Code.</p> <p>(JCCPC). The draft article 560 CPC creates a possibility to respond immediately to a request, when regulated by International Treaties combatting Terrorism and the Financing of Terrorism (and other International Treaties. In the draft Explanatory Memorandum it is clearly and expressively mentioned that the article is amended to expressively state that this article offers this possibility to the authorities.</p>



		<p>terrorists or terrorist organizations with third parties. The wording of the Decree also raises issues of enforceability of sanctions against the entire asset which is held “in part” by designated persons, terrorists or terrorist organizations.</p> <ul style="list-style-type: none"> <li>• There is no wording in the FATT Protocols which indicate compliance with these Protocols is mandatory or that breaches of the Protocols can be sanctioned by the Central Bank.</li> </ul>	<p>entire asset which is held “in part” by a designated person, terrorist or terrorist organization.</p> <ul style="list-style-type: none"> <li>• Sint Maarten should provide guidance to all persons and entities with regard to obligations in taking action under the freezing mechanism.</li> <li>• The FATT Protocols should incorporate wording to clearly reflect that compliance with these Protocols is mandatory and that breaches of the Protocols can be sanctioned by the Central Bank.</li> </ul>	<p>When the request is received the freezing of assests and freezing mechanisms are dealt with in the articles 119 untill 173 draft CC. Besides that the possibility of further Financial Investigation in the Criminal Procedure is dealt with in Title XVI of the Criminal Procedure Code.</p>
SR.IV Suspicious transaction reporting	NC	Rating factors in R13 apply to this Recommendation.		
SR.V. International cooperation	PC	<ul style="list-style-type: none"> <li>• The deficiencies in R36 impact Sint Maarten’s ability to extend mutual legal assistance through extradition.</li> <li>• The deficiencies in SR11 impact Sint Maarten’s ability to extend assistance in connection with combating TF and terrorist acts.</li> <li>• The deficiencies in R40 would impact Sint Maarten’s to the exchange of information regarding TF.</li> </ul>	<ul style="list-style-type: none"> <li>• Amend the Penal Code to address the deficiencies set out in the ratings table.</li> <li>• Implement the recommended actions outlined in relation to SR11</li> </ul>	<p>Next to that the proposed article 2:54 and 2:55 CC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime. In article 2:55 the financing of crime is punishable as a severe crime. Next to that article 1:120 CC SXM (currently article 48a) criminalizes the aiding and abetting of the crimes mentioned in article 2:54 and 2:55. Of course criminal attempts are punishable under 1:119 CC SXM (currently article 47)</p> <p>Mutual Assistance furthermore is (article 555 and further CPC) and will be more specifically be regulated in the new CPC SXM, currently drafted by the JCCPC Under construction, as far as the CPC SXM is concerned, and in legislative process as far as PC SXM is concerned</p>
SR.VI	NC	<ul style="list-style-type: none"> <li>• There continue to be MTCs operating within Sint Maarten without licenses from the Central Bank.</li> <li>• Provisions for MTCs to update the Central Bank on the number of agents and sub-agents should be</li> </ul>	<ul style="list-style-type: none"> <li>• Shut the operations of unauthorised MTCs operation in Sint Maarten.</li> <li>• Provisions for MTCs to update the</li> </ul>	<p>The situation with the MTCs will be addressed by the PPO.</p>



		formalised.	Central Bank on the number of agents and sub agents should be formalised.	
SR.VII Wire transfer rules	PC	<ul style="list-style-type: none"> <li>The E.C. for wire transfers are not detailed in the relevant P&amp;Gs.</li> <li>There are no explicit provisions in the P&amp;G for CI to be risk-based.</li> </ul>	<ul style="list-style-type: none"> <li>Sint Maarten should detail the requirements with respect to SR VII for the relevant financial institutions instead of relying on the general provision in the P&amp;G for CI to observe the latest Interpretive Note to SR VII</li> </ul>	The P&Gs for CI and IC & IB are being revised to implement the recommended actions.
SR.VIII NPOs	NC	<ul style="list-style-type: none"> <li>No recent assessment on the on the risk with regard NPO sector.</li> <li>There is no oversight or supervisory regime for NPOs.</li> <li>No requirement for NPO sector to keep financial information.</li> <li>No procedures in place to ensure that they are able to effectively investigate and gather information on NPOs.</li> <li>No training sessions or sensitization forum held for NPOs</li> </ul>	<ul style="list-style-type: none"> <li>Sint Maarten should conduct a new assessment on the risk with regard NPO sector.</li> <li>The Authorities should consider designating an authority to monitor and supervise the NPO sector.</li> <li>Sint. Maarten should institute an outreach program which provides adequate AML/CFT awareness about the risk of NPOs to terrorist financing.</li> <li>There should be appropriate sanctions available for those NPOs</li> <li>NPOs should be required to maintain transaction records for a minimum period of five (5) years.</li> <li>The Authorities in St. Marten should be procedures in place to ensure that they are able to effectively investigate and gather information on NPOs.</li> <li>There should be procedures in place which allow for timely and effective sharing of information on NPOs both domestically and internationally.</li> <li>The Authorities should consider issuing guidance specifically pertain to the NPO sector.</li> </ul>	This subject matter will be further examined by the legal department of government.
SR.IX Cross-Border	PC	<ul style="list-style-type: none"> <li>An ad hoc system is in place for the disclosure of the physical cross-border transportation of currency.</li> </ul>	<ul style="list-style-type: none"> <li>The authorities should ensure that they pursue the proposed declaration system to</li> </ul>	This subject matter will be further examined by the legal department of government.

Declaration & Disclosure		<ul style="list-style-type: none"> <li>• There is no system to restrain currency where there is a suspicion of ML or TF.</li> <li>• There are no statistics evidencing Customs' effectiveness in the area of international cooperation.</li> <li>• There are no statistics regarding the number of false declarations and investigations forwarded to the PPO.</li> <li>• There is no process for confiscating currency or negotiable instruments for persons listed in accordance with UNSCR 1373 and 1267.</li> <li>• There are no statistics relating to shipments of gold or other precious metals and stones.</li> <li>• There is no structure established for the training and targeted programmes for Customs.</li> <li>• No current information available with respect to the timeliness of the dissemination of the information relating to suspicious cash declarations/disclosures.</li> </ul>	<p>be completed by all passengers instead of the ad hoc disclosure system currently in place.</p> <ul style="list-style-type: none"> <li>• The Authorities should consider implementing the system to restrain currency where there is a suspicion of ML or TF.</li> <li>• The authorities should maintain statistics evidencing Customs' effectiveness in the area of international cooperation.</li> <li>• The Sint Maarten authorities should maintain the process for confiscating currency or negotiable instruments in implementing the UNSCR 1373 and 1267.</li> <li>• The authorities should maintain a system to identify the source, destination and purpose of movement of gold or other precious metals and stones.</li> <li>• A structure should be established for the training and targeted programmes for Customs.</li> <li>• The authorities should ensure that the relevant authorities possess timely access to suspicious cash declarations or disclosures, or intentional lack of disclosures information.</li> </ul>	<p>The Customs Department already has the software to generate statistics and a database to store this data.</p> <p>The FIU (MOT) is busy with the development of a training schedule (see schedule on page 8/9 of follow up report) for all the Law Enforcement Agencies.</p>
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