



Third Follow-Up Report

Dominica

May 2012

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DOMINICA: THIRD FOLLOW-UP REPORT

I. INTRODUCTION

1. This report represents an analysis of Dominica's report back to the CFATF Plenary concerning the progress that it has made with regard to correcting the deficiencies that were identified in its third round Mutual Evaluation Report. The third round Mutual Evaluation Report of Dominica was adopted by the CFATF Council of Ministers in October 2009 in the Netherlands Antilles. Based on the review of actions taken by Dominica since its last follow-up report to meet the outstanding recommendations made by the Examiners, Plenary is being asked to allow Dominica to remain in the expedited phase of the follow-up process and report back to the November 2012 Plenary.
2. Dominica received ratings of PC or NC on thirteen (13) of the sixteen (16) Core and Key Recommendations as follows:

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

3. With regard to the other non-core or key Recommendations, Dominica was rated partially compliant or non-compliant as indicated below:

Partially Compliant (PC)	Non—Compliant (NC)
R. 9 (Third parties and introducers)	R. 6 (Politically exposed persons)
R. 11 (Unusual transactions)	R. 7 (Correspondent banking)
R. 15 (Internal controls, compliance & audit)	R. 8 (New technologies & non face-to-face business)
R. 20 (Other NFBP & secure transaction techniques)	R. 12 (DNFBP – R.5, 6, 8-11)
R. 22 (Foreign branches & subsidiaries)	R. 16 (DNFBP – R.13-15 & 21)
R. 27 (Law enforcement authorities)	R. 17 (Sanctions)
R. 28 (Powers of competent authorities)	R. 18 (Shell banks)
R. 29 (Supervisors)	R. 19 (Other forms of reporting)
R. 31 (National co-operation)	R. 21 (Special attention for higher risk countries)
R. 33 (Legal persons – beneficial owners)	R. 24 (DNFBP - regulation, supervision and monitoring)
R. 38 (MLA on confiscation and freezing)	R. 25 (Guidelines & Feedback)
SR. IX (IX Cross Border Declaration & Disclosure)	R. 30 (Resources, integrity and training)
	R. 32 (Statistics)
	R. 34 (Legal arrangements – beneficial owners)
	SR. VI (AML requirements for money/value transfer services)
	SR. VII (Wire transfer rules)
	SR. VIII (Non-profit organisations)

4. The following table is intended to assist in providing an insight into the level of risk in the main financial sector in Dominica.

Size and Integration of the jurisdiction's financial sector as at 31 December 2011

		Banks	Other Credit Institutions*	Securities	Insurance (Dec 10)	TOTAL
Number of institutions	Total #	7	11	Nil	20	38
Assets	US\$'000	709,581	255,974	Nil	55,767	1,021,322
Deposits	US\$'000	572,030	170,911	Nil	83,141	826,082
	% Non-resident	% of deposits	n/a	n/a	n/a	25
		25				
International Links	% Foreign-owned:	% of assets	% of assets	% of assets	% of assets	% of assets
		n/a	n/a	n/a	n/a	n/a
	#Subsidiaries abroad	n/a	n/a	n/a	n/a	n/a

II. SUMMARY OF PROGRESS MADE BY DOMINICA

- Dominica has begun implementing its phased approach towards the implementation of measures to address its 3rd round MER shortcomings. This 2-phase plan is intended to initially address the deficiencies related to the Core and Key Recommendation whilst the 2nd phase would address the deficiencies noted in the 'other' Recommendations. Since the second follow-up report Dominica has enacted the Financial Intelligence Unit Act, 7 of 2011, on 23rd November, 2011 (FIUA); the Money Laundering Prevention Act, 8 of 2011, on 22nd November, 2011, (MLPA); the Suppression of the Financing of Terrorism (Amendment) Act, 9 of 2011, on 22nd November, 2011 SFTAA and the Financial Services Unit (Amendment) Act, 10 of 2011 (FSUAA), on 22nd November, 2011. Money laundering charges has been proffered against one individual bringing to a total of six (6), the number of money laundering cases currently before the courts within the jurisdiction.

Core and Key Recommendations

- The shortcoming noted in the MER for **Recommendation 1**, was related to the fact that Dominican laws did not cover the physical and material elements of conversion or transfer for the offence of money laundering. The MLPA at s.3 (1) has attempted to cure this shortcoming by stating that "*A person who (a) receives, possesses, manages or invests; (b) conceals or disguises; (c) converts or transfers; (d) disposes of, brings into or takes out of Dominica; or (e) engages in a transaction which involves, property that is the proceeds of crime, knowing or believing the property to be the proceeds of crime commits an offence.* Whilst the legislative intention is understood and conversion or transfer is now included, the wording of the legislation makes it unclear as to the conduct that a person must engage in at (a) (b) (c) and (d) for the offence of money laundering to be committed. Once this has been clarified this Recommendation will be fully implemented. Until then it remains *outstanding*.
- As for **Recommendation 5**, Dominica is intending to address the examiners recommendations by way of Regulations 54(1) of the MLPA. The work on these Regulations is still ongoing. Consequently, this Recommendation remains *outstanding*.
- In applying a NC rating for **Recommendation 13** the examiners had noted that STR requirements were linked to complex, large and unusual transactions; there was no requirement to report attempted transactions; the obligation to report STRs did not cover

suspicious transactions that are linked to terrorism, the financing of terrorism, terrorist organizations and terrorist acts and the legislation did not require reporting entities to report STRs to the FIU. The MLPA at **s.19 (2)** now mandates that suspect transactions or attempted transactions be reported to the 'Unit' (FIU) where there is suspicion that any such transaction is related to a money laundering offence or the funds or property involved are the proceeds of crime. The recommendation that the reporting of STRs should also include the suspicious transactions that are linked to terrorism, the financing of terrorism, terrorist organizations and terrorist acts remains *outstanding*. Dominica has proffered that **s.19 A (2)** of SFTA 3 of 2003 as amended by **s.11** of the SFTAA as a cure for this shortcoming. **S.11** of the SFTAA has amended the SFTA 3 of 2003 by inserting a new **s.19A**. **S.19A (2) (a)** places an obligation on financial institutions to report suspicious transactions where there is reasonable grounds to suspect that a transaction, proposed transaction or attempted transaction is related to offences of terrorist financing. The SFTAA at **s.19A (2) (b)** however, attempts to link funds used which are connected to the transactions noted in **s.19(A) (2) (a)** as being required to be reported to the FIU where there is suspicion that such funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist groups. **S. 19A (2) (b)** however appears to incorrectly refer to paragraph (b) when it should have referred to paragraph (a). If this is clarified then the gap noted by the examiners would have been closed. Until then this Recommendation remains *outstanding*.

9. As for **Special Recommendation II, s.3 (e)** the SFTAA has amended the SFTA of 2003 to allow for the knowledge, intent and purpose required as an element of any offence under SFTA to be inferred from objective factual circumstances. As for the examiners recommendation that Dominican laws should be amended to permit the possibility of parallel criminal, civil or administrative proceedings where more than one form of liability is available, Dominica has indicate that such a provision would not be in accordance with normal jurisprudence in that jurisdiction. The examiners had noted that no civil or administrative penalties were defined in Dominica's legislation. According to **s.8 and 9** of the SFTAA, a court may, on conviction, order a written warning to be imposed, order the suspension or cancellation of the licence of the financial institution or impose a fine not greater than one million dollars. These sanctions can only be imposed following court proceedings and a conviction and are therefore considered to be criminal. With regards to the examiners recommendation that Dominica ensure that the definition of terrorist act and terrorism organizations are in line with the FATF definition, **s.3** of the SFTAA has included definitions which are clearly in line with FATF glossary of definitions.
10. The issue noted at paragraph 8 above in relation to an apparent incorrect/unclear citation for Recommendation 13 is also relevant for **Special Recommendation IV**. Consequently, this Special Recommendation remains *outstanding*.

Key Recommendations

11. There were two (2) recommendations made by the examiners and intended as cures for the gaps in **Recommendation 3**. The first required that Dominica's laws should allow for the initial application to freeze or seize property, subject to confiscation, to be made ex-parte or without prior notice. **S.29 (2)** of the MLPA now enables the Director of Public Prosecutions (DPP) to make such an application with or without notice. Such applications however, according to **s.29 (1)**, are in relation to the property of, or in the possession or under the control of a person charged or who is about to be charged with or is being investigated with a money laundering offence. It is unclear whether this provision can be exercised on property being held or owned by a third party.

12. In relation to the second recommendation concerning the voiding of actions involving the recovery of property which is subject to confiscation, Dominica has pointed to **sec. 11** of the Proceeds of Crime Act No. 4 of 1993, **s.38A** of the SFTA as amended by **s.16** of the SFTAA and **s.34** of the MLPA as cures for this deficiency.
13. **Sec. 11** of the Proceeds of Crime Act No. 4 of 1993, is concerned with voidable transfers and allows the Court, before making a forfeiture order in relation to tainted property or seized cash which is suspected to be a person's proceeds or is intended to be used for drug trafficking, or in relation to restrained property, to void any conveyance or transfer that occurred after the seizure of the property unless it was made for valuable consideration to a person acting in good faith.
14. **S.16** of the SFTAA is also concerned with voidable transfers in relation terrorism financing issues and will be covered at paragraph 19 of this report. As for **s.34** of the MLPA however, the Court may, before making a forfeiture order and in the case where a freezing order was made, set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the freezing order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice. The provisions noted here and also at paragraph 13 have the effect of closing the gap discerned by the examiner however the issue detailed at paragraph 11 must be taking into account and as a result the gap in this Recommendation remains *outstanding*.
15. **Recommendation 4** was rated as partially compliant because the examiners had discerned that there is an inability by competent authorities to share information in the absence of a MOU or court order. As a cure, they recommended that legislation be enacted to allow the Eastern Caribbean Central Bank (ECCB), Financial Services Unit (FSU), Money Laundering Supervisory Authority (MLSA) and registered agents to share information with other competent authorities. Dominica has responded by replacing **s.32** of the 2008 FSC Act with a new **s.32** which would allow the Director of the FSU to share information with the ECCB but only subject to a confidentially agreement and a MOU. At **s.32 (1) (b)** the Director of the FSU is permitted to share information without a MOU with other regulatory authorities both within and outside of Dominica. It is unclear to what extent this amendment positively affects the other competent authorities ability to access information they require to perform their AML/CFT functions.
16. The examiners had noted for **Recommendation 23** that there was no competent authority assigned the responsibility of monitoring and ensuring compliance with the AML/CFT requirements. They also noted that no specific body was entrusted with the responsibility for conducting onsite examinations and regular offsite monitoring. The FSU Act was enacted to, among other things, give effect to and establish the Financial Services Unit. **S. 6** of the FSUAA has endowed the Director of the FSU with the function of monitoring, through on site examinations, the compliance of *regulated persons* with the MLPA, such other Acts, Regulations, Guidelines or the Codes relating to the Money Laundering (Prevention) Act or the Suppression of the Financing of Terrorism Act. The Director is also empowered to conduct inspections which will enable monitoring and assessing of licensee's or former licensee's compliance with his obligations under the MLPA Regulations and Guidelines or Codes. As for the regulation of credit unions, **s.5 (2)** of the Co-operatives Society Act the Registrar of co-operatives societies is the Director of the FSU and so has the responsibility of carrying out the functions mentioned above. This is directly in line with the examiners recommendation that the FSU should be entrusted with the legal authority to ensure compliance with the MLPA, its Regulations and the Anti-Money Laundering Guidance Notes. This action by Dominica has resulted in closing some of the gaps discerned by the examiners. However, the structured work programme, aimed at ensuring on site and off site monitoring, recommended by the examiners, has not

as yet been implemented and so it is unclear whether onsite monitoring has commenced. It should be noted that the FSU Act makes no mention of offsite monitoring. Consequently this recommendation is still *outstanding*.

17. Relative to **Recommendation 26**, the FIU now has the responsibility for receiving, requesting, analyzing, investigating and disseminating information concerning all suspected proceeds of crime and suspicious transactions, thereby abrogating the previous function in this regard, which was held by the Money Laundering Supervisory Authority (MLSA). This FIU's function is found at **s. 4 (1) (a)** of the FIUA which also references "information relating to the property of terrorist groups and terrorist financing". It is unclear however what the function of the FIU is in relation to such property. In response to the examiners recommendation that the FIU should prepare annual reports which they would be able to disseminate to the public which would enhance awareness: **s.9** of the FIUA has been enacted to mandate the director of the FIU to prepare annual reports for submission to the Minister who would then lay such reports in the jurisdiction's House of Assembly. Although the legislation mandates that this annual report contain elements of a review of the work of the FIU, the newness of the legislation suggests that there is no precedent for annual reporting and as such no report is available upon which a determination can be made on whether annual reports by the FIU do contain the requisite information i.e. statistics, typologies and trends. The other recommendations in relation to budgeting and backup of the FIU's database is receiving *administrative consideration*, consequently, this Recommendation remains *outstanding*.
18. Work in relation to **Recommendation 35** and **Special Recommendation I** are still in progress and as such this Recommendation is still *outstanding*.
19. As for **Special Recommendation III**, **s.10** of the SFTAA has inserted **s.12(C)** into the 2003 SFTA. According to this new section, the court "*may*", on an application by the competent authority, receive a request from the court of another State to freeze the accounts, funds or property, connected to terrorist, terrorist act or terrorist group that was the subject of the freezing mechanism of the requesting State. This amendment was enacted pursuant to the examiners recommendation that Dominica strengthen their legislation to enable procedures which would examine and give effect to the actions initiated under the freezing mechanisms of other jurisdictions. It appears however that this amendment falls short of the requirement because even though it refers to the accounts, funds or property that was the subject of the freezing mechanism of the requesting State, there seems to be a discretionary obligation as to whether the court may "receive" the application from the competent authority. Additionally it is quite unclear as to what is intended by "receive a request". Further, no procedures are outlined which will give effect to any such action by the court. Dominica has not as yet implemented effective mechanisms for communicating actions taken under their freezing mechanism. Instead, the jurisdiction has pointed to **s.9** of the SFTAA as satisfying the examiners recommendation. That section is concerned with freezing orders and the Attorney General's responsibilities to order financial institutions to freeze any account, funds or property, following the publication of a designation order. It should be noted that a designation order is an Order published in Dominica's gazette specifying the name of any person designated as a terrorist or terrorist group. Dominica has not as yet created the appropriate procedures, recommended by the examiners, for authorising access to funds or other assets that were frozen pursuant to S/RES/1267 (1999). The jurisdiction has instead pointed to legislative provisions at **s.10** of the SFTAA which has amended the substantive SFTA of 2003 by inserting **s.12**. At **s.12 (B)** the Court may give directions with regard to the disposal of accounts, funds or property: in respect of making a determination where there is any ownership dispute; giving directions which will lead to the proper administration of such accounts, funds or property, whilst it is frozen by the jurisdiction; and also directing the payment of money for the reasonable subsistence of

the subject of the freezing and his family. It should be noted however that the appropriate procedures in line with S/RES1452 (2002) have not as yet been created by Dominica. Finally for this Special Recommendation, Dominica's third round MER had noted that no guidance was issued to financial institutions and persons that may be in possession of targeted funds or assets. No such guidance has as yet been issued. Dominica has however amended the SFTA of 2003 by enacting a new **s.47**. At **s.47 (1)** there is now an obligation for the FSU to issue guidelines to financial institutions or persons in possession of "*such funds and assets*". There is no indication whether such funds and assets are in any way related to action taken under Dominica's freezing regime. This Special Recommendation remains *outstanding*.

20. With regards to **Special Recommendation V** the SFTAA at **s.14** now clearly provides for cooperation by mandating that, Subject to the provisions of Dominica's Constitution, requests for information disclosed pursuant to a person's duty to disclose information to prevent commission of a terrorist act or securing the arrest or prosecution of another person for an offence under the SFTA, shall be fulfilled, notwithstanding any obligations as to secrecy, confidentiality or other restriction upon disclosure of information imposed by any law or otherwise, except where the information sought is held in circumstances where legal professional privilege exists. Dominica's action clearly closes the gap, in this regard, noted by the examiners. No action has however been taken by Dominica in relation to having laws and procedures which would ensure that there is effective and timely response to mutual legal assistance requests by foreign countries where the requests relate to property of corresponding value. It is still unclear whether Dominica could have arrangements for co-coordinating seizure and confiscation with other countries. In this regard Dominica has pointed to **s.10** of the SFTAA which, as was noted at paragraph 19, seems to have imposed a discretionary obligation on the court to receive requests from the court of another State. This section of the SFTAA in no way elucidates whether the jurisdiction does in fact have any practices that will facilitate the development of effective arrangements for co-coordinating freezing, seizing and confiscation procedures. Dominica now has a legislative obligation to ensure that requests for extradition received by its Competent Authority are fulfilled without undue delay. This obligation is found at **s.13** of the SFTAA. The procedures which are to be adopted to ensure that this in fact occurs are however still not in place. This Special Recommendation continues to be *outstanding*.
21. **Recommendations 6, 7, 8 and 9, 12, 15, 18, 19, 20, 21, 22, 25, 27, 28, 30, 32, 33, 34, and Special Recommendations VI, VII, VIII and IX** have not as yet been addressed by Dominica.
22. The examiners had noted for **Recommendation 11** that there is no legal obligation requiring financial institutions to examine the background and purpose of complex, unusual large transactions or unusual patterns of transaction, that have no apparent or visible economic or lawful purpose and to set forth those findings in writing. Dominica has pointed to **s.19** MLPA which is concerned with suspicious transactions reporting. Therefore where such transactions are not related to a money laundering offence or the proceeds of crime a financial institution or person carrying on a scheduled business does not have to do anything. This Recommendation remains *outstanding*.
23. Pursuant to the gaps noted for **Recommendation 16** and the examiners recommendations, the MLPA has established the FSU as the Money Laundering Supervisory Authority. Its functions include supervising all financial institutions and persons carrying on a scheduled business and conducting inspections of any financial institution or scheduled business whenever, in its judgment, an inspection is necessary or expedient to determine compliance by the financial institution or scheduled business with the requirements of the

MLPA, its Regulations, or any instructions relating to money laundering given by the said FSU. This action by Dominica now ensures that there is the legislative requirement which mandates the same level of supervision across all financial institutions and DNFBPs thereby significantly closing the gap discerned. Dominica has however not provided any statistics to demonstrate that the FSU has been carrying out these functions.

24. As for **Recommendation 17**, the MLSA (FSU) is now empowered to impose administrative sanctions and civil (pecuniary) fines on a financial institution or person carrying on a scheduled business in respect of: fit and proper requirements; failure to comply with the AML guidelines issued by the FSU; failure to comply with a directive to cease engaging in any activity or to take remedial measures and contravention of the MLPA. **S.11 and 12** of the MLPA makes provisions for the penalties and also defines the process which has to be employed for applying them. This action has the effect of significantly closing the gap noted for this Recommendation.
25. Casinos are listed under Part II of the Schedule of the MLPA and consequently are deemed to be scheduled businesses. **S. 7** of the MLPA establishes the FSU as the MLSA whilst **s.8** of the MLPA creates its functions which include the supervision of scheduled businesses (including casinos). The FSUA at **s.6** empowers the FSU to monitor and ensure the compliance of regulated persons, through onsite examinations, with the provisions of Dominica AML/CFT legislative regime. By now empowering the FSU as the supervisor of scheduled businesses/regulated persons, casinos business is automatically captured having the effect of significantly closing the gap for **Recommendation 24**.
26. The examiners had noted in the MER that relative to **Recommendation 29**, the FSU did not have the authority to conduct inspections of financial institutions, including on-site inspections to ensure effective monitoring and compliance. The FSUA applies to all commercial banks in Dominica to the extent necessary to ensure compliance with the jurisdiction's AML/CFT regime. The Director of the FSU at **s.9 (1) (b)** of the FSU Act of 2008 has among his functions the responsibility for monitoring compliance by regulated persons with the Money Laundering (Prevention) Act and such other Acts, Regulations, Guidelines or the Codes relating to the Money Laundering (Prevention) Act or the Suppression of the Financing of Terrorism Act. The Director may according to **s.21** FSU Act of 2008 inspect the premises and business of a relevant person. This inspection can be initiated for, among other reasons, the purpose of monitoring and assessing the licensee's or former licensee's compliance with his obligations under the Money Laundering Prevention Act or Regulations and guidelines or Codes. At **s.21 (2) (c)** the Director can examine and make copies of documents belonging to or in the possession or control of a relevant person that, in the opinion of the Director, relate to the carrying on of financial services business by the relevant person. At **s.21 (2) (d)** the Director can require oral or written information from the licensees or any officer of the licensees. These provisions have the effect of significantly closing the gap noted by the examiners.
27. As for **Recommendation 31**, the MLPA at **s.15 (1)** has made provision for the establishment of an Anti-Money Laundering Advisory Committee responsible for the general oversight of the AML policy of Dominica and promoting effective collaboration between regulators and law enforcement agencies, among others responsibilities. There is no indication as to whether this committee has in fact been formed. Additionally, no information to support the implementation of any of the examiners recommendations was provided.
28. For **Recommendation 38**, **s.36** of the MLPA creates the legislative infrastructure for the establishment of an asset forfeiture fund, under the control of the Minister of Finance in consultation with the Director of the FSU. Where a person is convicted for a money

laundering offence, all property, proceeds and instrumentalities derived from or connected to the offence are liable to be forfeited to the Government of Dominica and paid into this fund. Money paid to Dominica by a foreign jurisdiction in respect of forfeited assets shall also be paid into this fund. **S.36 (3)** authorises the Minister of Finance to make disbursements including for law enforcement, drug prevention and rehabilitation and education. This action fully implements the examiners recommendation in this regard. At **s.37** of the MLPA, the Government of Dominica may share property, which has been confiscated or forfeited, as a result of coordinated law enforcement action, with another State. This action is also in direct compliance with the examiners recommendation. However the other recommendations by the examiners appear to have not as yet been taken on board and so this Recommendation remains *outstanding*.

III. CONCLUSION

29. Dominica has begun the legislative process towards closing the gaps discerned in its third round MER. Since the November 2011 Plenary one (1) additional person was charged for money laundering offences thus bringing to a total of six (6) the number of persons, involving three (3) separate money laundering cases, currently before Dominican courts. The laying of these charges involved the interaction between and among several elements of the jurisdiction's AML infrastructure including its reporting entities, freezing mechanism, the FIU and Courts. This demonstrates the willingness and ability on the part of local authorities to take action in furtherance of its AML obligations. Notwithstanding, this report has enunciated what appears to be several deficiencies in the new legislation that needs attention. Additionally, because of the phased approach adopted by Dominica towards fixing its third round MER deficiencies, most of the 'other' Recommendations continue to remain outstanding. Dominica should be encouraged to continue its AML legislative reform and to accelerate the pace at which it is executing its phased approach towards the implementation of the examiners recommendations. In this regard plenary is being asked to allow Dominica to remain in the expedited phase of the follow-up process and report back to the November 2012 Plenary.

CFATF Secretariat
May 2012

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
The Commonwealth of Dominica January 2012**

Forty Recommendations	Rating	Summary of factors underlying rating¹	Recommended Action	Action Undertaken
Legal systems				
1. ML offence	PC	<ul style="list-style-type: none"> The physical and material elements of the money laundering offence in the Commonwealth of Dominica do not cover conversion or transfer. Designated categories of offences, Piracy (Pirates at Sea) and Extortion not criminalized. 	<p>The laws of the Commonwealth of Dominica should be amended to:</p> <ul style="list-style-type: none"> i. Cover conversion or transfer as two additional physical and material elements of the money laundering offence; ii. Criminalize all the designated categories of offences and in particular Piracy (Pirates at Sea) and Extortion. 	<p>Sec. 3(1) (c) MLP Act No. 8 of 2011</p> <p>Section 3 of Piracy Act No. 11 of 2010</p> <p>Section 22A of the Theft Act Chap: 10:33 of the D.R.L. of 1990 as amended by Section 3 of the Theft (Amendment) Act No. 12 of 2010</p>
2. ML offence – mental element and corporate liability	LC	<ul style="list-style-type: none"> The Money Laundering (Prevention) Act, 2000 (Chapter 40:07), does not adequately detail what administrative proceedings that may be employed in dealing with legal persons who have been 	<ul style="list-style-type: none"> i. Adequately detail what administrative proceedings may be employed in dealing with legal persons who have been found criminally liable; ii. Provide for civil and administrative 	<p>Section 12 (1) of the MLP Act No. 8 of 2011</p>

¹ These factors are only required to be set out when the rating is less than Compliant.

		<p>found criminally liable.</p> <ul style="list-style-type: none"> • No civil or administrative sanctions are provided for ML. • No powers are given to administer administrative sanctions. 	<p>sanctions;</p> <p>iii. Adopt an approach that would result in more effective use of existing legislation</p>	
3. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> • In the Commonwealth of Dominica the laws do not allow the initial application to freeze or seize property subject to confiscation to be made ex-parte or without prior notice. • Law enforcement agencies, the FIU or other competent authorities in the Commonwealth of Dominica do not have adequate powers to identify and trace property that is, or may become subject to confiscation or is suspected of being the proceeds of crime. • There is little authority in The Commonwealth of Dominica to take steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to 	<p>i. The laws or measures in the Commonwealth of Dominica should allow an initial application to freeze or seize property subject to confiscation to be made ex-parte or without prior notice, unless this is inconsistent with fundamental principles of domestic law.</p> <p>ii. There should be authority to take steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.</p>	<p>Sec. 29 (2) of the MLP Act No. 8 of 2011</p> <p>Sec. 11 of the Proceeds of Crime Act No. 4 of 1993</p> <p>Sec. 38A of the SFTA 3 of 2003 as amended by Section 16 of the SFT (Amendment) Act No. 9 of 2011</p> <p>Section 34 of the MLP Act No. 8 of 2011</p>

		recover property subject to confiscation.		
Preventive measures				
4. Secrecy laws consistent with the Recommendations	PC	<ul style="list-style-type: none"> • Inability of the competent authorities to share information without an MOU or court order 	i. Dominica should enact provisions allowing the ECCB, FSU, the MLSA, the registered agents to share information with other competent authorities	Sec. 32 of the FSU Act No. 18 of 2008 as amended by Section 11 of the FSU (Amendment) Act No. 10 of 2011.
5. Customer due diligence	NC	<ul style="list-style-type: none"> • The requirements that documents, data or information collected under the CDD process should be kept up to date by the financial institution is not enforceable. • The obligation that financial institutions should perform ongoing due diligence on the business relationships is not enforceable. • The determination by the financial institution as to who are the ultimate beneficial owners is not enforceable. • No guidance for the insurance companies with regards to identification and verification of the underlying principals, persons other than the policyholders. 	<ul style="list-style-type: none"> i. The legislation should entail requirement to undertake CDD measures according to recommendation 5. ii. The requirement for financial institutions to ensure that documents, data or information collected under the CDD process is kept up to date should be enforceable. iii. Requirement for ongoing due diligence on the business relationships should be enforceable. iv. Requirement to take reasonable measures to determine who are the ultimate beneficial owners or exercise the ultimate effective control should be enforceable. v. The Guidance Notes should include 	These matters are being addressed by appropriate amendments to the MLP Regulations

		<ul style="list-style-type: none"> • Financial institutions do not perform enhanced due diligence for higher risk customers. • Financial institutions are not required to perform CDD measures on existing clients if they have anonymous accounts. • The business clients on the exempted list of the banks do not submit a source of fund declaration for each transaction. 	<p>additional guidance with regards to identification and verification of the underlying principals, persons other than the policyholders with regards to insurance companies.</p> <p>vi. Financial institutions should to perform enhanced due diligence for higher risk customers</p> <p>vii. Financial institutions are not required to perform CDD measures on existing clients if they have anonymous accounts.</p> <p>viii. The bank should not keep an exempted list for business clients so that they do not require to fill out a source of fund declaration form for each deposit</p>	
6. Politically exposed persons	NC	<ul style="list-style-type: none"> • It should be enforceable on the financial institutions that they apply enhanced and ongoing due diligence on their PEPs. 	<p>i. Recommendation 6 should be enforceable on the financial institutions.</p> <p>ii. Financial institutions should apply risk based approach on their PEPs clients, and continue to do enhanced due diligence on them.</p>	This matter is addressed in the MLP Regulations 2011
7. Correspondent banking	NC	<ul style="list-style-type: none"> • No requirement to determine the nature of business reputation of a 	<p>i. The specific requirement to understand and document the nature</p>	

		<p>respondent and the quality of supervision.</p> <ul style="list-style-type: none"> • No assessment of a respondent AML/CFT controls and responsibilities. • No provision to obtain senior management approval before establishing new correspondent relationships. • No condition to document respective AML/CFT responsibilities in correspondent relationships. • No requirement for financial institutions with correspondent relationships involving “payable through accounts” to be satisfied that the respondent. • Financial institutions have not performed all normal CDD obligations on its customers that have access to the accounts. • No requirement for the financial institution to satisfy themselves that the respondent institution can provide reliable customer 	<p>of the respondent bank’s business and reputation, supervision of the institution and if they have been subjected to money laundering or terrorist financing activities or regulatory action.</p> <ul style="list-style-type: none"> ii. Financial institutions should be required to assess all the AML/CFT controls of respondent. iii. The financial institutions should document the AML/CTF responsibility of each institution in a correspondent relationship iv. Financial institutions should require senior management approval before establishing new correspondent relationships. v. Financial institutions should ensure that the correspondent relationships if involved in payable through accounts that they normal CDD obligations as set out in R5 have been adhered to and they are able to provide relevant customer identification upon request. 	
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		identification data upon request.		
8. New technologies & non face-to-face business	NC	<ul style="list-style-type: none"> • There are no provisions which require the financial institutions to have measures aimed at preventing misuse of technology developments in money laundering and terrorist financing. 	i. Financial institutions should be required to have measures aimed to prevent the misuse of technological developments.	
9. Third parties and introducers	PC	<ul style="list-style-type: none"> • No requirement for financial institutions to immediately obtain from all third parties necessary information concerning certain elements of the CDD process referenced in Recommendation 5.3 to 5.6 • The requirement that financial service providers be ultimately responsible for obtaining documentary evidence of identity of all clients is not enforceable. • Competent authorities should give guidance with regards to countries in which the third party can be based. 	<ul style="list-style-type: none"> i. Financial institutions relying on a third party should be required to immediately obtain from the third party the necessary information concerning the elements of the CDD process detailed in Recommendation 5.3 to 5.6. ii. The requirement that financial service providers be ultimately responsible for obtaining documentary evidence of identity of all clients should be made not enforceable. iii. Competent authorities should take into account information on countries which apply FATF Recommendations in determining in which country the third party can be based. 	
10. Record keeping	C			
11. Unusual transactions	PC	<ul style="list-style-type: none"> • No requirement for financial institutions to examine as far as possible the background and 	i. The Commonwealth of Dominica should consider amending its legislation so as to mandate financial	Sec. 19 of the MLP Act No. 8 of 2011

		<p>purpose of complex, unusual large transactions and to set their findings in writing.</p>	<p>institutions to examine the background and purpose of all complex, unusual or large business transactions whether completed or not, all unusual patterns of transactions which have no apparent or visible economic or lawful purpose.</p> <p>ii. The Commonwealth of Dominica should consider amending its legislation so that the financial institutions would be mandated to examine the background and purpose of all complex, unusual or large business transactions whether completed or not, all unusual patterns of transactions which have no apparent or visible economic or lawful purpose and set forth their findings in writing and to make such findings available to competent authorities and auditors.</p>	
12. DNFBP – R.5, 6, 8-11	NC	<ul style="list-style-type: none"> The requirements of Recommendations 5, 6, 8 to 11 are not adequately enforced on DNFBPs. 	<p>i. The deficiencies identified for all financial institutions for R.5, R.6, and R.8-11 in the relevant sections of this report are also applicable to DNFBPs. The implementation of the specific recommendations in the relevant sections of this report will also be applicable to DNFBPs.</p>	

			<p>ii. While Dominica has passed legislation capturing DNFBPs under its AML/CFT regime, there is no competent authority that ensures these entities are subject to monitoring and compliance with the requirements of the MPLA or the Guidance Notes.</p> <p>iii. The licensed agents should be subject to ongoing monitoring and compliance given the role that they play in the keeping of and maintenance of beneficial owners' information for IBC's and other companies that they register.</p> <p>iv. There should be some form of data capture during the year by the FSU outside of the reporting of STRs as required by the MPLA to the MLSA.</p>	Section 7 of the MLP Act No. 8 of 2011
13. Suspicious transaction reporting	NC	<ul style="list-style-type: none"> • The requirement to report suspicious transactions should be linked to all transactions and not only to complex, large, unusual. • No requirement to report attempted transactions. • The reporting of an STR does not include transactions that are linked to terrorism financing, terrorism, terrorism acts, and 	<p>i. The financial institutions should be required to report STRs to the FIU.</p> <p>ii. The requirement for financial institutions to report suspicious transactions should also be applicable to attempted transactions.</p> <p>iii. The obligation to make a STR related to money laundering should apply to all offences to be included as predicate offences under Recommendation 1.</p>	<p>Sec. 19 (2) of the MLP Act No. 8 of 2011</p> <p>Sec. 19 (2) of the MLP Act No. 8 of 2011</p> <p>Criminalization of Extortion and Piracy as per cited Acts</p>

		<p>terrorist organizations.</p> <ul style="list-style-type: none"> The legislation does not require the STR be reported to the FIU. 	<p>iv. The reporting of STRs should also include the suspicious transactions that are linked to terrorism, the financing of terrorism, terrorist organizations and terrorist acts.</p>	<p>Sec. 19 A (2) of SFTA 3 of 2003 as amended by Section 11 of the SFT (Amendment) Act No. 9 of 2011.</p>
14. Protection & no tipping-off	LC	<ul style="list-style-type: none"> The prohibition against tipping-off does not extend to the directors, officers and employees of financial institutions. 	<p>i. The offence with regards to tipping-off should be extended to directors, officers and employees of financial institutions.</p>	<p>Sec. 5 of the MLP Act No. 8 of 2011</p>
15. Internal controls, compliance & audit	PC	<ul style="list-style-type: none"> Financial institutions do not maintain an independent audit function to test compliance with policies, procedures and controls Internal procedures do not include terrorist financing. 	<p>i. The requirement to maintain independent audit functions to test compliance with procedures, policies and controls should be adhered to.</p> <p>ii. Requirement of the financial institutions to have internal procedures with regards to money laundering should also include terrorist financing.</p>	
16. DNFBP – R.13-15 & 21	NC	<ul style="list-style-type: none"> No effective application of R 13-14, R 15 and 21. No competent body to impose sanctions/fines. 	<p>i. There is no specific body charged with the duty of applying sanctions to DNFBPs without requiring a court order.</p> <p>ii. As well the FSU does not conduct ongoing monitoring and compliance checks on these entities or persons to ensure that the requirements of R 13-14, R 15 and 21 are complied with,</p>	<p>Section 7 of the MLP Act No. 8 of 2011</p> <p>Section 11 and 12 of the MLP Act No. 8 of 2011</p> <p>Section 9(1) (b) of the FSU Act</p>

			particularly as regards the money remitters and licensed agents. It is recommended that a competent authority (FSU) be entrusted with the legal responsibility of imposing sanctions or fines as well as conducting ongoing monitoring and compliance.	No. 18 of 2008 as amended by Section 6 of the FSU (Amendment) Act No. 10 of 2011
17. Sanctions	NC	<ul style="list-style-type: none"> • Lack of a designated regulatory body to apply sanctions/fines and the absence of a clearly defined process in the law or guidance notes. 	<ul style="list-style-type: none"> i. There should be a competent body designated to impose administrative and civil sanctions/fines for non-compliance with the requirements of the AML/CFT legislation/regime. As well the legislation should define the process for applying these sanctions. 	<p>Section 7 of the MLP Act No.8 of 2011</p> <p>Section 11 and 12 of the MLP Act No. 8 of 2011</p>
18. Shell banks	NC	<ul style="list-style-type: none"> • The requirement for domestic and offshore banks not to enter into correspondent banking relationship with shell banks is not enforceable. • No requirement for financial institution to satisfy themselves that the respondent financial institutions do not permit their accounts to be used by shell banks. 	<ul style="list-style-type: none"> i. Financial institutions should not be permitted to enter into, or continue correspondent banking relationship with shell banks ii. Financial institutions should be required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. 	
19. Other forms of reporting	NC	<ul style="list-style-type: none"> • No evidence that Dominica has considered the feasibility and utility of implementing a fixed threshold currency reporting system. 	<ul style="list-style-type: none"> i. The Commonwealth of Dominica is advised to consider the implementation of a system where all (cash) transactions above a fixed threshold are required to be reported to the FIU. In this regard the 	

			Commonwealth of Dominica should include as part of their consideration any possible increases in the amount of STRs filed, the size of this increase compared to resources available for analyzing the information.	
20. Other NFBP & secure transaction techniques	PC	<ul style="list-style-type: none"> Procedures adopted for modern secure techniques are ineffective 	<ul style="list-style-type: none"> More on-site inspections are required. Modern secured transaction techniques should be scheduled under the Money Laundering (Prevention) Act, 2000 (Chapter 40:07), 	
21. Special attention for higher risk countries	NC	<ul style="list-style-type: none"> There are no measures that require competent authorities to ensure that financial institutions are notified about AML/CFT weaknesses in other countries. There are no provisions that allow competent authorities to apply counter-measures to countries that do not or insufficiently apply the FATF Recommendations. 	<ul style="list-style-type: none"> Effective measures should be established to ensure that financial institutions are advised of concerns about AML/CFT weaknesses in other countries. There should be requirements to allow for the application of counter-measures to countries that do not or insufficiently apply the FATF Recommendations. 	
22. Foreign branches & subsidiaries	PC	<ul style="list-style-type: none"> Requirement to inform the home country supervisor when local laws and guidelines prohibit the implementation. 	<ul style="list-style-type: none"> Inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CTF measures because this is prohibited by local laws, regulations and measures. 	

23. Regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> No competent authority assigned the responsibility of monitoring and ensuring compliance with AML/CFT requirements. No specific body entrusted with the responsibility for conducting on-site examinations and regular off-site monitoring. 	<p>i. The FSU should be entrusted with the legal authority to ensure compliance with the MLPA, its Regulations and the Anti-Money Laundering Guidance Notes. As well the Unit should implement a structured work programme, approved by the Financial Director to ensure ongoing on-site and off-site monitoring. These measures should be applicable to all institutions under the regulation and supervision of the FSU. The Unit should also be legally entrusted with the responsibility to license or register DNFBP'S and those financial institutions not under the purview of the ECCB.</p>	<p>Sec. 9 (1) (b) of the FSU Act as amended by Section 6 of the SFT (Amendment) Amendment Act No. 10 of 2011</p> <p>Section 6 (2) Money Services Business Act No. 8 of 2010</p> <p>Section 39 of the IBC Act No. 10 of 1996. Schedule V the Financial Services Unit Act No. 18 of 2008 (item 4)</p> <p>Sections 4 and 5 (2) of the Cooperatives Societies Act No. 2 of 2011</p>
24. DNFBP - regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> No regulatory/supervisory measure are in place to ascertain compliance with AML/CFT laws and guidelines nor, is the FSU charged with the responsibility of monitoring and ensuring 	<p>i. There is no comprehensive regulatory and supervisory regime that ensures compliance by casinos and other DNFBPs with the AML/CFT regime that is in place. As well, there is no designated regulatory body to</p>	<p>Section 7 and 8 of the MLP Act No. 8 of 2011</p> <p>Section 9 of the FSU Act No. 18 of 2008</p>

		compliance with AML/CFT requirements.	<p>discharge that function as well as to apply relevant sanctions/fines for non-compliance.</p> <p>ii. It is recommended that a competent body, the FSU be charged with the responsibility of monitoring and ensuring compliance with the requirements of the regime as well as imposing sanctions.</p> <p>iii. The AML/CFT legislation should also detail the process to be adopted when applying sanctions.</p>	Section 9 (1) (b) of the FSU Act No. 18 of 2008 as amended by section 6 of the FSU (Amendment) Act No. 10 of 2011
25. Guidelines & Feedback	NC	<ul style="list-style-type: none"> • Non issuance of specific guidelines to assist DNFBPs and other financial institutions with implementing the requirements of the AML/CFT regime. • Non issuance of guidelines by SROs and other competent authority (FSU) for DNFBPs. • The authority has not provided the financial sector with adequate and appropriate feedback on the STRs 	<p>i. The Authority should provide financial institutions and DNFBPs with adequate and appropriate feedback on the STRs.</p> <p>ii. The FSU in addition to the MLSA should issue specific guidance notes or other targeted guidelines that can assist financial institutions other than domestic commercial banks, as well as DNFBPs to effectively apply the provisions of the MPLA, and its Regulations.</p>	
Institutional and other measures				
26. The FIU		• The FIU is not the central	i. The FIU should be made the central	Sec. 4 (1) (a) of the FIU Act No.

	PC	<p>authority for the receipt of STRs from reporting entities.</p> <ul style="list-style-type: none"> • In practice STRs are filed with the MLSA and copies are made available to the FIU. • The FIU does not have total control over the STRs it maintains on behalf of the MLSA. • Although the FIU has almost immediate access to the STRs submitted by the Financial Institutions and other scheduled entities, the MLPA charges that the STRs should be sent to the Money Laundering Supervisory Authority (MLSA) who is then charged with sending it to the FIU. At the same time the legislation requires that STRs relating to the TF should be sent to the Commissioner of Police. • The data held by the FIU however, all backup data are housed on site which effectively defeats the purpose of having the backup done. • To the extent that the budget of the 	<p>authority for the receipt of STRs from reporting entities as it relates to both Money Laundering and Terrorist Financing.</p> <p>ii. The FIU should have more control over its budget since the control currently maintained by the Ministry could impact the Unit's operation and to some extent its independence.</p> <p>iii. Although the security of the database seems adequate, backup data should be housed off-site to ensure that in the event of a catastrophe at the Unit there would be the opportunity for the recovery of data.</p> <p>iv. The FIU should prepare annual reports which they would be able to disseminate to the public which would enhance awareness.</p>	<p>7 of 2011</p> <p>Sec. 19 (2) of the MLP Act No. 8 of 2011</p> <p>Section 19A (2) of the SFT Act No. 3 of 2003 as amended by Section 11 of the SFT (Amendment) Act No. 9 of 2011.</p> <p>Administrative Consideration</p> <p>Administrative Consideration</p> <p>Sec. 9 of the FIU Act No. 7 of 2011.</p>
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		<p>FIU is controlled by the Ministry this could impact on its ability to be operationally independent.</p> <ul style="list-style-type: none"> • The annual report prepared by the Unit is not made public. 		
27. Law enforcement authorities	PC	<ul style="list-style-type: none"> • No consideration of taking measures providing for the postponement or waiving of arrest of suspects or seizure of money for the purpose of identifying suspects or for evidence gathering. • There is no group specialized in investigating the proceeds of crime. 	<ul style="list-style-type: none"> i. Provisions should be made in domestic legislation that allow authorities investigation ML cases to postpone or waive the arrest of suspected persons and/or the seizure of money for the purpose of identifying persons involved in such activities or for evidence gathering. ii. Legislation should be put in place to provide investigators of Money Laundering and Terrorist Financing cases with a wide range of investigative techniques including controlled delivery. iii. There should be a group of officers who would be trained in investigating the proceeds of crime, perhaps in the NJIC, who would supplement the efforts of the FIU. 	
28. Powers of competent authorities	PC	<ul style="list-style-type: none"> • No provision in the SFTA which affords the FIU or the Commissioner of Police the ability to compel the production of business transaction records, in pursuit of TF investigations. 	<ul style="list-style-type: none"> i. The SFTA should be amended to provide investigators with the ability to compel the production of business transaction records. ii. There should be explicit legal 	

		<ul style="list-style-type: none"> No explicit legal provision for predicate offences investigators to obtain search warrants to seize and obtain business transaction records. 	<p>provisions for the investigators of predicate offences to be able to obtain search warrants which would enable them seize and obtain business transaction records.</p>	
29. Supervisors	PC	<ul style="list-style-type: none"> FSU does not have the authority to conduct inspections of financial institutions, including on-site inspections to ensure effective monitoring and compliance. 	<p>i. The FSU should be legally entrusted with the authority to monitor and ensure compliance with the AML/CFT requirements. As well the Unit should be able to conduct on-sites, request off site information and should be entrusted also with adequate powers of enforcement against its licensees and registrants that are not subject to the Off Shore Banking Act or the Banking Act.</p>	<p>Section 1 (3) of the FSU Act No. 18 of 2008 as amended by Section 3 of the FSU (Amendment) Act No. 10 of 2011</p> <p>Section 7 of the MLP Act No. 8 of 2011</p> <p>Section 9 of the FSU Act No. 18 of 2008</p> <p>Section 9 (1) (b) of the FSU Act No. 18 of 2008 as amended by Section 6 of the FSU (Amendment) Act No. 10 of 2011</p>
30. Resources, integrity and training	NC	<ul style="list-style-type: none"> The staff of the FIU consists of only four persons where the Senior investigator functions as the systems administrator who in the absence of the Director also has to take on those duties. There is not a sufficient staff compliment in the Police, the FIU 	<p>i. The staff of the Unit should be expanded to include a database administrator.</p> <p>ii. The FSU is not adequately staffed. The Unit's request for additional staff should be adhered to. It is also recommended that a restructuring of the Unit should be considered so that</p>	

		<p>and the Supervisory Authority to be able to completely deal with issues relating to ML, FT and other predicate offences.</p> <ul style="list-style-type: none"> • There is also only limited continuous vetting of officers to ensure that the highest level of integrity is maintained. • The FSU should be adequately staffed to discharge its functions. • The staff, and budget and Anti-money laundering/combating of terrorist financing training of the staff in the DPP Office is in adequate 	<p>its regulatory and supervisory functions can be discharged effectively.</p> <p>iii. The FSU should consider the establishment of databases to allow for effective off-site supervision.</p> <p>iv. Technical resource- The Police Force should be provided with better communication equipment.</p> <p>v. With the increased demand on the Police the numbers in the police contingent should be increased.</p> <p>vi. Special training in money laundering and terrorist financing should be provided to magistrates and judges to ensure they are familiar with the provisions for dealing with the seizure, freezing and confiscation of property</p> <p>vii. There should be a group of officers who would be trained in investigating the proceeds of crime, perhaps in the NJIC, who would supplement the efforts of the FIU.</p> <p>viii. There should be regular inter agency meetings among all the agencies that are charged with ensuring the</p>	
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			<p>effectiveness of the AML/CFT regime.</p> <p>ix. There should be put in place some measures to vet the officers in these agencies to ensure that they maintain a high level of integrity</p> <p>x. Databases should be established which can be shared by all authorities responsible for monitoring and ensuring compliance with the AML/CFT regime in Dominica.</p>	
31. National co-operation	PC	<ul style="list-style-type: none"> • There are no joint meetings dedicated to developing policies and strategies relating to AML/CFT • The Supervisory Authority does not adequately supervise the DNFBPs and other entities in the financial sector at this time. • There should be measures in place so that the authorities can There are, coordinate with each other concerning the development and implementation of policies and activities to combat ML and FT. 	<p>i. There should be regular inter agency meetings among all the agencies that are charged with ensuring the effectiveness of the AML/CFT regime.</p> <p>ii. The Supervisory Authority needs to expand its activity so as to ensure that all entities who may be susceptible to be used for Money laundering or Terrorist Financing are aware of these dangers and take the necessary precautions.</p> <p>iii. There should be established and maintained regular inter-agency meetings where policies and actions are developed.</p> <p>iv. There should be a closer link between</p>	Section 15 (1) of the MLP Act No. 8 of 2011

			<p>the Supervisory Authority and the DNFBPs.</p> <p>v. There should be measures to allow the authorities to coordinate in Dominica with each other concerning developments with regards to money laundering and terrorist financing.</p>	
32. Statistics	NC	<ul style="list-style-type: none"> • Competent authorities appear to have limited opportunity to maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing specifically in relation to Money Laundering & Financing of Terrorist investigations-prosecutions and convictions- and on property frozen; seized and confiscated. • Competent authorities appear to have limited opportunity to maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing specifically in relation to Terrorist financing freezing data. 	<p>i. The competent authorities should maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing.</p> <p>ii. With respect to MLA and other international request the Commonwealth Dominica should maintain statistics on the nature of such requests and the time frame for responding.</p>	

		<ul style="list-style-type: none"> • In the Commonwealth of Dominica the Competent authorities do not maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing. Annual statistics are however maintained on Mutual legal assistance or other international requests for co-operation and all mutual legal assistance and extradition requests (including requests relating to freezing, seizing and confiscation) that are made or received, relating to ML, the predicate offences and FT, including whether it was granted or refused but no statistics maintained on the nature of the request and the time frame for responding. • While the examiners found that statistics were kept, the examiners finds that the competent authorities should maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing. 		
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		<ul style="list-style-type: none"> • There are no statistics kept on formal requests made or received by law enforcement authorities relating to ML and FT, including whether the request was granted or refused. • No statistics are kept on on-site examinations conducted by supervisors relating to AML/CFT and the sanctions applied. • There is no statistics available on formal requests for assistance made or received by supervisors relating to or including AML/CFT including whether the request was granted or refused. • Lack of databases to facilitate sharing of information between authorities responsible for discharging AML/CFT requirements. • The Supervisory Authority is not effective in relation to some entities in the financial sector. • The effectiveness of the money laundering and terrorist financing system in Dominica should be 		
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		<p>reviewed on a regular basis.</p> <ul style="list-style-type: none"> No comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing. 		
33. Legal persons – beneficial owners	PC	<ul style="list-style-type: none"> Lack of ongoing monitoring and compliance. The FSU should implement such a programme for AML/CFT purposes as well as general supervision and regulation. Measures should be in place to make sure that the bearer shares are not misused for money laundering 	<ul style="list-style-type: none"> i. There is a need to ensure that licensed agents are subjected to ongoing monitoring and supervision in such areas as maintenance of up-to-date information on beneficial owners, licensing and registration, particularly for IBC's incorporated by the agent. ii. It is recommended that the FSU institute the process of ongoing monitoring and compliance for both AML/CFT purposes and for general supervisory and regulatory purposes. iii. There should be measures to ensure that bearer shares are not misused for money laundering. 	
34. Legal arrangements – beneficial owners	NC	<ul style="list-style-type: none"> The Authorities should include current and accurate information of the beneficial ownership and control as part of the register information on international trusts. Registration of Trusts does not 	<ul style="list-style-type: none"> i. Information on the settlors, trustees and beneficiaries of Trusts should be made available to the Registrar or if not recorded there should be available from the registered agent on request without the written consent of the Trustee. 	

		<p>include information of the settler and other parties to a Trust.</p> <ul style="list-style-type: none"> Competent Authorities do not have access to information on the settler, trustees or beneficiaries of a Trust. 	<p>ii. Competent Authorities should be able to gain access to information on beneficial ownership of Trusts in a timely fashion.</p> <p>iii. Even though currently there are no trust activities in Dominica, the authorities in Dominica should include adequate, accurate and current information on the beneficial ownership and control of legal arrangements as part of the register information on international trust.</p>	
International Co-operation				
35. Conventions	PC	<ul style="list-style-type: none"> The Commonwealth of Dominica is not a party to The 2000 UNC Against Transnational Organized Crime – <i>(The Palermo Convention)</i>. In The Commonwealth of Dominica many but not all of the following articles of the Vienna Convention (Articles 3-11, 15, 17 and 19) have been fully implemented. In The Commonwealth of Dominica some but not all aspects of Articles 5-7, 10-16, 18-20, 24-27, 	<p>i. The Commonwealth of Dominica should become a party to The 2000 United Nation Convention Against Trans-national Organized Crime – <i>(The Palermo Convention)</i> and fully implement article Articles 3-11, 15, 17 and 19) of the Vienna Convention, Articles 5-7, 10-16, 18-20, 24-27, 29-31, & 34 of the Palermo Convention, Articles 2- 18 of the Terrorist Financing Convention and S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001)</p>	<p>Requisite Actions are being taken in relation to the Palermo, Vienna and Terrorist Financing Conventions</p>

		<p>29-31, & 34 of the Palermo Convention have been implemented.</p> <ul style="list-style-type: none"> • In The Commonwealth of Dominica many but not all of Articles 2- 18 of the Terrorist Financing Convention are fully implemented. • In the Commonwealth of Dominica, S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001) are not fully implemented. 		
36. Mutual legal assistance (MLA)	LC	<ul style="list-style-type: none"> • The Commonwealth of Dominica has not considered devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country. 	i. To avoid conflicts of jurisdiction, the Commonwealth of Dominica should consider devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country.	<p>Administrative Consideration</p> <p>Determined by court practice</p>
37. Dual criminality	C			
38. MLA on confiscation and freezing	PC	<ul style="list-style-type: none"> • Unclear legislation regarding request relating to property of corresponding value. • Unclear legislation regarding arrangements for co-ordinating 	i. Commonwealth of Dominica should consider establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education or	<p>Sec. 36 of the MLP Act of No. 8 of 2011</p>

		<p>seizure and confiscation actions with other countries.</p> <ul style="list-style-type: none"> • No consideration of the establishment of an asset forfeiture fund into which all or a portion of confiscated property will be deposited. • No consideration of authorising the sharing of assets confiscated when confiscation is directly or indirectly a result of co-ordinate law enforcement actions. 	<p>other appropriate purposes.</p> <ul style="list-style-type: none"> ii. The Commonwealth of Dominica should consider authorising the sharing of confiscated assets between them when confiscation is directly or indirectly a result of co-ordinate law enforcement actions. iii. The laws should clarify whether the requirement in Criterion 38.1 is met where the request relates to property of corresponding value. iv. The laws should clarify whether the Commonwealth of Dominica could have arrangements for co-ordinating seizure and confiscation actions with other countries. 	<p>Sec. 37 of the MLP Act No. 8 of 2011</p>
39. Extradition	LC	<ul style="list-style-type: none"> • The Commonwealth of Dominica do not have specific measures or procedures adopted to allow extradition requests and proceedings relating to Money Laundering to be handled without undue delay 	<ul style="list-style-type: none"> i. There should be in the Commonwealth of Dominica measures or procedures adopted to allow extradition requests and proceedings relating to money laundering to be handled without undue delay. ii. In the Commonwealth of Dominica the laws should not prohibit the extradition of nationals. iii. There should be measures or 	<p>Sections 43 and 44 of the MLP Act No. 8 of 2011</p>

			procedures adopted in the Commonwealth of Dominica that will allow extradition requests and proceedings relating to terrorist acts and the financing of terrorism offences to be handled without undue delay.	Sec. 27 of the SFTA 3 of 2003 as amended by Section 13 of the SFT (Amendment) Act No. 9 of 2011
40. Other forms of co-operation	LC	<ul style="list-style-type: none"> There is no evidence that in The Commonwealth of Dominica requests for cooperation would not be refused on the sole ground that the request is also considered to involve fiscal matters. 	i. In the Commonwealth of Dominica it should be made clear that a request for cooperation would not be refused on the sole ground that the request is also considered to involve fiscal matters.	Sec. 40 of the MLP Act No. 8 of 2011
Nine Special Recommendations	Rating	Summary of factors underlying rating		
SR.I Implementation UN instruments	PC	<ul style="list-style-type: none"> The Commonwealth of Dominica is not a party to The 2000 UNC Against Transnational Organized Crime – <i>(The Palermo Convention)</i>. In the Commonwealth of Dominica many but not all of the following articles of the Vienna Convention (Articles 3-11, 15, 17 and 19) have been fully implemented. In The Commonwealth of Dominica some but not all aspects of Articles 5-7, 10-16, 18-20, 24-27, 29-31, & 34 of the Palermo Convention have been implemented. 	i. The Commonwealth of Dominica should become a party to The 2000 United Nation Convention Against Trans-national Organized Crime – <i>(The Palermo Convention)</i> and fully implement article Articles 3-11, 15, 17 and 19) of the Vienna Convention, Articles 5-7, 10-16, 18-20, 24-27, 29-31, & 34 of the Palermo Convention, Articles 2- 18 of the Terrorist Financing Convention and S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001)	Requisite Actions are being taken in relation to the Palermo, Vienna and Terrorist Financing Conventions.

		<ul style="list-style-type: none"> • In The Commonwealth of Dominica many but not all of Articles 2- 18 of the Terrorist Financing Convention are fully implemented. • In the Commonwealth of Dominica, S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001) are not fully implemented. 		
SR.II Criminalise terrorist financing	PC	<ul style="list-style-type: none"> • The law is not clear that Terrorist financing offences apply, regardless of whether the person alleged to have committed the offence(s) is in The Commonwealth of Dominica or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur . • The law does not specifically permit the intentional element of the Terrorist financing offence to be inferred from objective factual circumstance. • The law does not specifically speak to the possibility of parallel criminal, civil or administrative proceedings where more than one 	<p>The laws should be amended to:</p> <ul style="list-style-type: none"> i. State that Terrorist financing offences do not require funds be linked to a specific terrorist act(s); ii. State that Terrorist financing offences apply, regardless of whether the person alleged to have committed the offence(s) is in The Commonwealth of Dominica or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act occurred/will occur ; iii. Permit the intentional element of the Terrorist financing offence to be inferred from objective factual circumstance; iv. To permit the possibility of parallel 	<p>Sec. 2 (b) (a) (x) of SFTA 3 of 2003 as amended by Section 3 of the SFT (Amendment) Act No. 9 of 2011.</p> <p>Sec. 2 (b) (b) of the SFTA 3 of 2003 as amended by Section 3 of the SFT (Amendment) Act No. 9 of 2011.</p> <p>Sec. 2 (3) of the SFTA 3 of 2003 as amended by Section 3 of the SFT (Amendment) Act No. 9 of 2011.</p>

		<p>form of liability is available.</p> <ul style="list-style-type: none"> • No civil or administrative penalties are defined in law. • The effectiveness of the regime has not been tested by actual cases. • The definition of terrorist, terrorist act and terrorist organization are not in line with the Glossary of Definitions used in the Methodology as the terms does not refer to the Convention for the Suppression of Unlawful Seizure of Aircraft (1970) and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971) 	<p>criminal, civil or administrative proceedings where more than one form of liability is available.</p> <p>v. To address civil or administrative penalties; and;</p> <p>vi. Ensure that the definition of terrorist, terrorist act and terrorist organization are in line with the term terrorist act as defined by the FATF</p>	<p>Not in accordance with normal jurisprudence in our jurisdiction</p> <p>Sec. 7 (a) and (b), 12 (4) (a) and 47 (2) of the SFTA 3 of 2003 as amended by Sections 8, 9 and 17 of the SFT (Amendment) Act No.9 of 2011, respectively.</p> <p>Sec. 2 of the SFTA 3 of 2003 as amended by Section 3 of the SFT (Amendment) Act No. 9 of 2011</p>
SR.III Freeze and confiscate terrorist assets	PC	<ul style="list-style-type: none"> • The Commonwealth of Dominica has limited and need adequate laws and procedures to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions. • The laws of the Commonwealth of Dominica do not speak to having an effective system for communicating actions taken under the freezing mechanisms 	<p>The Commonwealth of Dominica should:</p> <p>i. Strengthen their legislation to enable procedures which would examine and give effect to the actions initiated under the freezing mechanisms of other jurisdictions</p> <p>ii. Implement effective mechanisms for communicating actions taken under the freezing mechanisms</p>	<p>Sec. 12C of the SFTA 3 of 2003 as amended by Section 10 of the SFT (Amendment) Act No. 9 of 2011</p> <p>Sec. 12 (1) and (2) of the SFTA 3 of 2003 as amended by Section 9 of the SFT (Amendment) Act No. 9 of 2011.</p>

		<ul style="list-style-type: none"> • The Commonwealth of Dominica do not have appropriate procedures for authorising access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses • No guidance has been issued. 	<p>iii. Create appropriate procedures for authorizing access to funds or other assets that were frozen pursuant to S/RES/1267 (1999)</p> <p>iv. Issue clear guidance to financial institutions and persons that may be in possession of targeted funds or assets or may later come into possession of such funds or assets.</p>	<p>Sec. 12B of the SFTA No. 3 of 2003 as amended by Section 10 of the SFT (Amendment) Act No. 9 of 2011.</p> <p>Sec. 47 (1) of the SFTA No. 3 of 2003 as amended by Section 17 of the SFT (Amendment) Act No. 9 of 2011.</p> <p>Sec. 36 (1) and (2) of the SFTA No. 3 of 2003</p> <p>Section 19A (2) of the SFTA 3 of 2003 as amended by Section 11 of SFT (Amendment) Act No. 9 of 2011</p>
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SR.IV Suspicious transaction reporting	NC	<ul style="list-style-type: none"> The reporting of STRs does not include suspicion of terrorist organizations, terrorism, terrorist acts or those who finance terrorism. 	<ul style="list-style-type: none"> i. The reporting of STRs with regard to terrorism and the financing of terrorism should include suspicion of terrorist organizations or those who finance terrorism. 	Section 19A (2) of the SFTA No. 3 of 2003 as amended by Section 11 of SFT (Amendment) Act No. 9 of 2011
SR.V International co-operation	PC	<ul style="list-style-type: none"> Factors in Recommendations 37 and 38 are also applicable. Unclear laws as to whether the requirement in Criterion 38.1 is met where the request relates to property of corresponding value. Unclear as to whether the Commonwealth of Dominica could have arrangements for co-ordinating seizure and confiscation actions with other countries. 	<ul style="list-style-type: none"> i. The examiner could find no evidence that a requests for cooperation would not be refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBP (except where the relevant information that is sought is held in circumstances where legal professional privilege or legal professional secrecy applies). 	<p>Sec. 35 (2) of the SFTA 3 of 2003 as amended by Section 14 of SFT (Amendment) Act No. 9 of 2011.</p> <p>Section 14 of Proceeds of Crime Act No. 4 of 1993.</p> <p>Section 12C of the SFTA 3 of 2003 as amended by Section 10 of the SFT (Amendment) Act No. 9 of 2011</p>

		<ul style="list-style-type: none"> • No measures or procedures adopted to allow extradition requests and proceedings relating to terrorist acts and the financing of terrorism offences to be handled without undue delay. • No evidence that a requests for cooperation would not be refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBP (except where the relevant information that is sought is held in circumstances where legal professional privilege or legal professional secrecy applies). 		<p>Section 27 of the SFTA 3 of 2003 as amended by Section 13 of the SFT (Amendment) Act No. 9 of 2011</p> <p>Sec. 35 (2) of the SFTA 3 of 2003 as amended by Section 14 of SFT (Amendment) Act No. 9 of 2011</p>
SR VI AML requirements for money/value transfer services	NC	<ul style="list-style-type: none"> • Lack of an effective supervisory or regulatory regime. • No requirements for licensing and registration by the authorities. 	i. With the exception of MVT service providers that are supervised and regulated under the Banking Act, the Off Shore Banking Act and the Cooperative Societies Act, there is no specific requirement for these entities to be licensed or registered. The FSU is charged with the responsibility of supervising and regulating these institutions, however the Unit has no legal basis to enforce or discharge its functions.	

			<p>ii. There is no specific regulatory authority charged with the responsibility of monitoring and ensuring compliance with the provisions of the AML/CFT regime.</p> <p>iii. The FSU does not license or register these entities, nor does it provide ongoing supervision or monitoring. It is recommended that the FSU be entrusted with the responsibility of ensuring monitoring and compliance with the requirements of the AML/CFT regime.</p> <p>iv. The FSU should be required to institute a programme of on-going onsite and off site monitoring for other regulatory and supervisory purposes.</p>	
SR VII Wire transfer rules	NC	<ul style="list-style-type: none"> • No measures in place to cover domestic, cross-border and non-routine wire transfers. • There are no requirements for intermediary and beneficial financial institutions handling wire transfers. • No measures in place to effectively monitor compliance with the requirements of SR VII. 	<p>i. It is recommended that the review of Dominica's legislative and regulatory provision take consideration of all requirements of the Recommendation and appropriate legislation be enacted as soon as possible.</p>	
SR.VIII Non-	NC	<ul style="list-style-type: none"> • NPOs not subject to AML/CFT 	<p>i. The Social Welfare Department should</p>	

profit organisations		<p>regime.</p> <ul style="list-style-type: none"> • There is no proper supervision of NGOs. • There are no sanctions in place for non-compliance with the reporting requirements. • There are no guidelines to aid the NGO in selecting its management. • There are no requirements for the NGO to report unusual donations. • The NGOs have not been sensitized in issues of AML/CFT. • No review of the laws and regulations that relate to NPOs by the authorities. • No measures for conducting reviews of or capacity to obtain timely information on the activities, size and other relevant features of non-profit sectors for the purpose of identifying NPOs at risk of being misused for terrorist financing. • No assessments of new information on the sector's potential 	<p>be charged with the supervision of the NGOs and be adequately staffed to take on this task.</p> <ul style="list-style-type: none"> ii. Sanctions should be put in place for non-compliance as it relates to the annual reporting requirements. iii. NGOs should be required to report unusual donations to the Supervisory Authority iv. NGOs should be sensitized to the issues of AML/CFT including how they could be used for terrorist financing. v. NGOs should be encouraged to apply fit and proper standards to officers and persons working in and for the NGO. vi. The requirements of the MLPA, its Regulations and the Guidance Notes should be extended to NPOs and their activities. vii. The Authorities should undertake a review of the domestic laws and regulations that relate to Non-profit organizations. 	
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		<p>vulnerabilities to terrorist activities are conducted.</p> <ul style="list-style-type: none"> • No efforts at raising the awareness in the NPO sector about the risks of terrorist abuse and any available measures to protect NPOs from such abuse. • No sanctions for the violations of the rules in the NPO sector. • No monitoring of NPOs and their international activities. 	<p>viii. Measures for conducting domestic reviews of or capacity to obtain timely information on the activities, size and other relevant features of non-profit sectors for the purpose of identifying NPOs at risk of being misused for terrorist financing should be implemented.</p> <p>ix. Reassessments of new information on the sector's potential vulnerabilities to terrorist activities should be conducted.</p> <p>x. The Authorities should monitor the NPOs and their international activities.</p> <p>xi. Training sessions should be implemented to raise the awareness in the NPO sector about the risks of terrorist abuse.</p> <p>xii. There should be measures to protect NPOs from terrorist abuse.</p> <p>xiii. There should be sanctions for violation rules in the NPO sector</p>	
SR.IX Cross Border Declaration & Disclosure	PC	<ul style="list-style-type: none"> • No authority to conduct further investigations pursuant to false declaration. 	<p>i. Customs should be given the authority to request further information relative to the origin of currency or bearer</p>	

		<ul style="list-style-type: none"> • No dissuasive criminal civil or administrative sanctions are available for application where persons make false declarations. • No dissuasive criminal civil or administrative sanctions are available for application where persons are carrying out a physical cross-border transportation of currency or bearer negotiable instruments related to ML or TF. • The declaration system does not allow for the detention of currency or bearer negotiable instruments and the identification data of the bearer where there is suspicion of ML or TF. • There is no evidence that there are formal arrangements in place for the sharing of information with international counterparts in relation to cross border transactions. 	<p>negotiable instruments.</p> <ul style="list-style-type: none"> ii. Some formal arrangements should be entered into for the sharing of information on cross border transportation and seizures with International counter-parts and other competent authorities. iii. Provide the legislative provisions that would allow cash or bearer negotiable instruments and the identification data of the bearer to be retained in circumstances involving suspicion of ML of TF. iv. Make available a range of effective proportionate and dissuasive criminal, civil or administrative sanction, which can be applied to persons who make false declarations. v. Make available a range of effective proportionate and dissuasive criminal, civil or administrative sanctions, which can be applied to persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments related to ML or TF. 	
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