CARIBBEAN FINANCIAL
ACTION TASK FORCE

Eight Follow-Up Report

Dominica

November 10, 2014

MUTUAL EVALUATION OF DOMINICA: EIGHT FOLLOW-UP REPORT

Application to move from regular follow-up to biennial updates

Key decision: Does the plenary agree that Dominica has taken sufficient action to be moved from regular follow-up to biennial updating?

I. INTRODUCTION

1. This is Dominica's eight follow-up report. However pursuant to paragraph 68 of the CFATF 2007 Process and Procedures (As amended) the Jurisdiction has indicated that it is of the opinion that it had met the criteria necessary for removal from regular follow-up to biennial updates. Consequently, on an analysis of the progress made by Dominica since the adoption of its MER on October 2009, the Plenary is being asked to decide that the Jurisdiction has taken sufficient action to be considered for removal from regular follow-up as noted above**.**

2. As prescribed by the CFATF Mutual Evaluation Programme - Process and Procedures (As amended), Dominica provided the Secretariat with a full report on its progress. The Secretariat has drafted a detailed analysis of the progress made for Recommendations 1, 3, 4, 5, 13, 23, 26, 35, SR.I, SR.II, SR.III SR.IV and SR.IV and the Other Recommendations. The draft report was provided to Dominica for its review and comments were received. The comments from Dominica were taken into account in the final draft. During the process, Dominica provided the Secretariat all the information the Secretariat requested.

3. The analysis of this report was predicated on the basis of information provided by Dominica is inherently a desk evaluation. As a result, the level and nature of information provided and accepted in many instances is inherently different to that which would have been accepted during an onsite visit.

II. SCOPE OF THIS REPORT

4. This report is written in accordance with the procedure for removal from regular follow-up to biennial updating, detailed at paragraph 67 of the CFATF Mutual Evaluation Programme - Process and Procedures May 2nd 2007 (As amended) and the Plenary decision of May 2014. It contains a description and detailed analysis of the actions Dominica has taken to close the gaps for the Key and Core Recommendations rated non-compliant (NC), partially compliant (PC) and largely compliant (LC) and a description and analysis of the Other Recommendation rated PC and NC.

5. The May 2014 Plenary has set the following criteria for exiting the follow-up process as follows:

   i. Achieving the level of C/LC in all of their Core and Key Recommendations that were rated PC/NC in their MERs; or

   ii. Achieving the level of C/LC in all their Core Recommendations, but have one (1) or more Key Recommendations that were rated PC/NC and still have not achieved the level of C/LC in those recommendations to apply to exit once they have achieved substantial compliance (the large majority of non-Core and Key Recommendations have been addressed) in their non-Core or Key Recommendations that were rated PC/NC in their MER.

6. Dominica received ratings of PC or NC on thirteen (13) of the sixteen (16) Core and Key Recommendations as follows:

Table 1: Ratings for Core and Key Recommendations

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

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

Table 2: 'Other' Recommendations rated as PC and NC

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)

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

Table 3: Size and integration of Dominica's financial sector as at June 2013

		Banks	Other Credit Institutions*	Securities	Insurance	TOTAL
Number of institutions	Total #	12	11	Nil	17	38
sets	US$	721,546	286,591	Nil	63,512	1,071,649
Deposits	Total: US$	602,394	186,234	Nil	91,267	179,895
	% Non-resident	% of deposits 23	Nil	N/A	N/A	23
International Links	% Foreign-owned:	% of assets N/A	% of assets N/A	% of assets N/A	% of assets N/A	% of assets N/A
	#Subsidiaries abroad	N/A	N/A	N/A	N/A	N/A

Table 4: Definition of abbreviations used in this follow-up report

ABBREVIATION	DEFINITION
Code	Anti-Money Laundering and Suppression of Terrorist Financing Code of Practice 2014
CTR	Currency Transactions Reporting
ECCB	Eastern Caribbean Central Bank
FIU	Financial Intelligence Unit
FIUA	Financial Intelligence Unit Act, 7 of 2011
FSU	Financial Services Unit
FSU(A)2013	Financial Services Unit (Amendment) Act, 2013
FSUAA	Financial Services Unit (Amendment) Act, 10 of 2011
MACMA	Mutual Assistance in Criminal Matters Act 18 Chap: 12:19
MER	Mutual evaluation report
ML(P)R 2013	Money Laundering (Prevention) Regulations
MLPA	Money Laundering Prevention Act, 8 of 2011
MLSA	Money Laundering Supervisory Authority
NPO	Non-profit Organisation
POCA	Proceeds of Crime Act 4 of 1993
POCAA	Proceeds of Crime (Amendment) Act
SFT(A)2013)	Suppression of the Financing of Terrorism (Amendment) Act 2013
SFTA	Suppression of the Financing of Terrorism Act 2003
SFTAA	Suppression of the Financing of Terrorism (Amendment) Act, 9 of 2011
SWP	Structured Work Programme

III. MAIN CONCLUSION AND RECOMMENDATIONS TO THE PLENARY

Core and Key Recommendations

9. Dominica's recent legislative action have addressed all the deficiencies for the Core and Key Recommendations 1, 3, 4, 5, 13, 23, 26, 35, I, II, III, IV, and V.

Other Recommendations

10. Dominica has progressed to the point where only Recommendation 32, 33 and SRIX can be considered to be outstanding. Recommendations 9 and 30 have been significantly addressed and now have just very minor shortcomings. All of the Other Recommendations which were rated as PC and NC have been fully rectified.

11. Based on all of the above it is recommended that Dominica's request for removal from Regular follow-up to biennial updates be accepted.

IV. SUMMARY OF PROGRESS MADE BY DOMINICA

Overview of the main changes since the adoption of the MER

12. Since publication of the MER in 2009 Dominica has set about strengthening its AML/CFT legislative and supervisory framework through the enactment of several laws. In June 2010 Dominica brought the Piracy Act into force in order to criminalise piracy (pirates at sea). In October 20th, 2010 the Customs Act 2010 was enacted to revise and amend the laws relating to the operation of the Customs Department and to provide for related consequential matters. 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.

13. On February 21, 2013, Dominica Gazetted the Money Laundering (Prevention) Regulations ML(P)R 2013 which set out customer due diligence (CDD) provisions for a person carrying on a relevant business. The ML (P)R 2013 was brought into being through a Parliamentary process under Dominica's constitutional framework. The ML(P)R 2013 were made by the Minister of Legal Affairs in accordance to **s.54 (1)** of the MLPA, subject to negative resolution of Dominica's Parliament. Following gazetting on February 21, 2013, they were presented to Parliament on February 28, 2013. Consequently, pursuant to Section 30(2) &(3), Chapter 3:01, of Dominica Revised Laws 1990, the ML(P)R 2013 became part of the laws of Dominica.

14. The mandatory language used in the ML(P)R 2013 clearly sets out customer due diligence provisions which a person carrying on a 'relevant business' is bound to comply with. The mandatory language is supported by Regulation 3 (2) where it is an offence for a person, whilst conducting a relevant business, forming a business relationship or carrying out any transaction with or for another person, to not have:

a. Identification procedures in accordance with regulations 8, 9, 10 and 15;

b. Record-keeping procedures in accordance with regulation 24 ;

c. Internal reporting and internal controls procedures for preventing money laundering, in accordance with regulation 24 and 26 ;

d. An audit function to test compliance with AML measures;

e. Screening of employees when hiring; and

f. Training of staff

15. The penalty for a breach of **r.3 (2)** has been set at a forty thousand dollar fine or imprisonment not exceeding two years. These criminal sanctions are predicated on **s.54 (2)** of the MLPA which empowers the Minister to make regulations prescribing penalties to be imposed, on summary conviction, for contravention of a regulation. The Minister is confined to sanctions of either a fifty thousand dollar fine or three-year imprisonment. The sanctions are not proportional in that there is a one-size-fit-all approach irrespective of the nature of the breach. Additionally, whilst there may be some measure of dissuasiveness on the part of individuals or the smaller persons, in terms of asset size, carrying on relevant business activities, the applicable fine may not be dissuasive for corporate or larger relevant businesses. Notwithstanding, all of the above the ML(P)R 2013 is part of the laws of Dominica and is therefore enforceable.

16. Additionally, on March 11, 2013, the Money Laundering (Prevention) (Amendment) Act 2013, ML(P)(A)2013 and Suppression of the Financing of Terrorism (Amendment) Act 2013 (SFT(A)2013) were passed by the Dominica Parliament.

17. On May 16, 2013 Dominica enacted the Proceeds of Crime (Amendment) Act; the Transnational Organized Crime (Prevention and Control) Act, the Money Laundering (Prevention) (Amendment) Act, the Criminal Law and Procedure (Amendment) Act, the Financial Services Unit (Amendment) Act, 2013 and the Suppression of the Financing of Terrorism (Amendment) Act. The said legislation also, amongst other things, incorporated provisions of the Palermo Convention and the SFT Conventions into the domestic legislative framework.

18. The Anti-Money Laundering and Suppression of Terrorist Financing Code of Practice 2014 became law on May 1st 2014 and affects several of the 'other' Recommendations. There are several objectives which the Code is intended to achieve including, outlining and providing guidance on the relevant requirements of the Drug (Prevention of Misuse) Act, the FIU Act, the MLPA and its regulations and the SFTA and to ensuring that financial institutions and persons carrying on a relevant business put appropriate systems and controls in place so as to enable them to detect and prevent money laundering and terrorist financing. The mandatory language used in the Code clearly sets out provisions which relevant entities are bound to comply with. The mandatory language is bolstered by **s.59 (1)** which has created offences and penalties for contravention or failure to comply with specified provisions detailed at Schedule 3 of the said Code. The Code is enforced by the FSU which can impose administrative sanctions for non-compliance and breaches of the provisions set out at Schedule 3.

19. On March 19, 2014 the Criminal Law and Procedure (Amendment) Act No. 3 of 2014 was enacted to enable the use of controlled deliveries for gathering evidence and identifying persons involved in the commission of an offence and also to facilitate prosecution of offences. The Proceeds of

Crime (Amendment) Act 2014 which positively affected several Recommendations was enacted. On May 1, 2014 the Trusts and Non-profit Organisations Regulations, 2014, made by the Attorney General, pursuant to **s.72A of the POCA,** became law.

V REVIEW OF MEASURES TAKEN IN RELATION TO THE CORE RECOMMENDATIONS

20. **Recommendation 1 was rated as PC.** There were two inherent weaknesses discerned by Dominica's MEVAL Assessors. These weaknesses related to the fact that the legislation, at the time of the evaluation, did not cover conversion or transfers as two physical and material elements of the money laundering offence and piracy (pirates at sea) and extortion were not criminalized. The Assessors made to two recommendations as follows:

i. *Cover conversion or transfer as two additional physical and material elements of the money laundering offence* - The MLPA at **s.3 (1)** has cured 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.* Consequently once a person is involved in the act of conversion or transfer of property that is the proceeds of crime, then he has committed a money laundering offence. This gap is ***closed.***

ii. *Criminalize all the designated categories of offences and in particular Piracy (Pirates at Sea) and Extortion* – **S.3** of Piracy Act No. 11 of 2010 criminalized piracy whilst **s.3** of the Theft (Amendment) Act No. 12 of 2010 criminalized extortion. Both offences were added to the schedule of offences related to proceeds of crime. This gap is ***closed.***

Recommendation 1 overall conclusion

21. The two (2) deficiencies of the MER have been closed resulting in this Recommendation being ***fully rectified.***

22. **Recommendation 5 was rated NC** and the assessors recommended eight actions to close the deficiencies noted in the MER.

i. *The legislation should entail requirement to undertake CDD measures according to recommendation 5* - The requirement to undertake CDD measures are contained in regulations 8, 9, 10 and 11 of the ML(P)R 2013. This gap is ***closed.***

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.* - This has been specifically addressed by the regulation 25A ML(P)(A)R 2013. Here a person carrying on a relevant business is mandated to keep the documents, data and information collected pursuant to these said regulations (CDD information) up to date by carrying out reviews of existing records. As noted above, the ML(P)R 2013 is enforceable.

iii. *Requirement for on-going due diligence on the business relationships should be enforceable*.- **r.11** of the ML(P)R 2013 addresses the obligation for relevant businesses to the employ ongoing CDD measures with respect to every business relationship. As noted above, the ML(P)R 2013 is enforceable. This gap is ***closed.***

iv. *Requirement to take reasonable measures to determine who are the ultimate beneficial owners or exercise the ultimate effective control should be enforceable.* - At r.**10** of the ML(P)R a person carrying on a relevant business is obligated to identify the beneficial owner and take reasonable identification verification measures when conducting a transaction on behalf of a legal person. At **r.16** of the ML(P)R a person carrying on a relevant business is obligated to

establish the true identity of any person on whose behalf for whose ultimately benefit an applicant for business is acting. As noted above, the ML(P)R 2013 is enforceable. This gap is ***closed.***

v. *The Guidance Notes should include additional guidance with regards to identification and verification of the underlying principals, persons other than the policyholders with regards to insurance companies.*- The FSU has issued AML guidelines pursuant to **s.9** of the **MLPA** which has resulted in this gap being ***closed***. At paragraph 41 of section VI of these guidelines insurance companies or intermediaries are required to have CDD procedures which seek to:

- Identify the underlying principal(s) or beneficial owner of the customer, and take reasonable measures to verify the identity of the underlying principal(s) or beneficial owner such that the insurance company or intermediary is satisfied that it knows who the underlying principal(s) or beneficial owner is.

- Identify and verify the identity of the beneficiary of the insurance contract at or before the time of pay-out or the time when the beneficiary intends to exercise vested rights under the policy.

- Obtain appropriate additional information to understand the customer's circumstances and business, including the purpose and the expected nature of the relationship.

vi. *Financial institutions should to perform enhanced due diligence for higher risk customers* - **r.12** of the ML(P)R 2013 is concerned with enhanced due diligence and ongoing enhanced due diligence in any situation which presents a higher risk of money laundering. **S.22 (1)** of the Code is concerned with enhanced due diligence in relation to an applicant for business, a business relationship, or a one-off transaction. At **s.22 (2) & (3)** of the Code, obligations for enhanced due diligence in relation to higher risk applicant for business, customer or transaction are provided. At **s.22 (4)** of the Code details instances where enhanced due diligence should be considered. These provisions provide the legislative measures required to ensure that enhanced due diligence is applied in situations involving transactions and individual considered to be of higher risk to ML and therefore closes the deficiency noted here. This gap is ***closed***

vii. *Financial institutions are not required to perform CDD measures on existing clients if they have anonymous accounts.* - The CDD measures prescribed in the ML(P)R 2013 makes it impossible for someone to establish a business relationship anonymously. Additionally, **r.22** of the ML(P)R 2013 has mandated that retrospective due diligence be conducted on existing customers, within six (6) months from Gazetting the said regulations, and where the identity of a customer cannot be verified, the relevant business must terminate the business relationship. An extension of time may be granted only on application to the Financial Services Unit (FSU), the Supervisory Authority with oversight over these matters, for a period of six (6) months. However, where there is failure by the financial institution or DNFBP to obtain the necessary data to sufficiently identify any customer, the regulation mandates that the relationship shall be terminated. This action on the part of Dominica has the effect of ensuring that all existing accounts meet the CDD standards prescribed by the ML (P)R 2013. This gap is ***closed.***

viii. *The bank should not keep an exempted list for business clients so that they do not require to fill out a source of funds declaration form for each deposit* - This recommendation has its genesis at paragraphs 300 and 327 of the MER where it was noted that Dominican financial institutions kept business customers on an exempted list which precluded such customers having to declare their source of funds for deposits above the threshold. By letter dated March 15, 2013, the Director of the FSU wrote to the commercial banks in the Jurisdiction and drew the provisions

of **r.11** of the ML(P)R 2013 (ongoing due diligence) to the attention of the relevant Managers of the said banks and advised them that business clients were not exempted from completing source of funds declaration forms for their deposits. Copies of this communication were provided to the Secretariat. In the context that the Director of the FSU is the AML/CFT Supervisory Authority in Dominica this action demonstrates the implementation of **r.11** and closure of this deficiency**.** This gap is ***closed.***

Recommendation 5, overall conclusion.

23. The MER identified eight (8) deficiencies for Recommendation 5. The positive legislative action taken by Dominica has the effect of ***fully resolving all the noted deficiencies.***

24. For **Recommendation 13**, a **NC** rating was applied for the four (4) deficiencies noted in the MER with four (4) recommended actions intended to cure them.

i. *The financial institutions should be required to report STRs to the FIU* – The deficiency here was due to the fact that suspicious transactions reporting was in relation to complex, unusual and large transactions. This deficiency is now closed because 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 where funds or property involved are the proceeds of crime. This gap is ***closed.***

ii. *The requirement for financial institutions to report suspicious transactions should also be applicable to attempted transactions.*- As noted at I above, the MLPA at **s.19** has linked the reporting of suspicious transactions to attempted transactions thereby effectively closing this deficiency. This gap is ***closed.***

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* – Suspicious transactions reporting is linked to money laundering, and property suspected to be the proceeds of crime. Proceeds of crime is defined as any property derived from or obtained directly or indirectly through the commission of an indictable or hybrid offence whether committed in Dominica or elsewhere. Based on this definition, all offences which constitute a predicate offence are included and consequently this gap is ***closed.***

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.* **- S.19A (2) (a)** of the SFTAA 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. At **s.19A (2) (b)** funds used which are connected to the transactions noted in **s.19(A) (2) (a)** are 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. This gap is ***closed.***

Recommendation 13 overall conclusion.

25. The four (4) deficiencies for Recommendation 13 are now closed through a legislative amendment. Recommendation 13 is now ***fully rectified.***

26. **Special Recommendation II was rated PC** *and the Assessors made six (6) recommendations to amend the laws in order to close the noted deficiencies as follows:*

i. *State that Terrorist financing offences do not require funds be linked to a specific terrorist act(s)* – S.4 of the SFT(A)2013, allows for the offence of terrorist financing to occur even if there is no nexus to a specific terrorist act. Here the offence of terrorist financing is provided for where a person by any means, directly or indirectly, unlawfully and wilfully provides or collect funds with the intention or in the knowledge that such funds shall be used in order to carry out a terrorist act, or by a terrorist group, or by a terrorist. This has the effect of clearly providing that it is not necessary for funds to be actually used in the commission of a terrorist act for a terrorist financing offence to be committed. This gap is ***closed.***

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(s) occurred/will occur* – S.3 of the Suppression of the Financing of Terrorism (Amendment) Act 2011 (SFT(A)2011) has amended s.2 of the SFTA by including a new definition of "terrorist act". This new definition includes conduct, whether occurring inside or outside Dominica, as conduct which can constitute a terrorist act in Dominica. This gap is ***closed.***

iii. *Permit the intentional element of the Terrorist financing offence to be inferred from objective factual circumstance* – S.3 (e) of 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. This gap is ***closed.***

iv. *To permit the possibility of parallel criminal, civil or administrative proceedings where more than one form of liability is available* – Although there is no express provision within the Suppression of the Financing of Terrorism Act, which stipulates that civil, criminal and administrative proceedings may be instituted concurrently where there, may be more than one form of liability available, there is absolutely no prohibition within the Dominican legislation on taking such a course of action. Nevertheless, it must be noted that it is not normal legal practice that criminal, and civil proceedings would run concurrently. The matters may be both filed at the court Registry however upon notice by the other party that both civil and criminal proceeds have been filed it is almost always the case that a stay of proceedings would be applied for. The Court will generally grant a stay of proceedings and allow one matter to proceed and allow for resumption of the other subsequently. Administrative proceedings may always be instituted concurrently with civil or criminal proceedings. This gap is ***closed.***

v. *To address civil or administrative penalties* –The provisions for sanctions in relation to terrorist financing offences can be found at s.5 and s.7 of the SFT(A)2011. S.5 is concerned with the criminal sanctions applicable to terrorist financing offences committed by individuals whilst s.7 is concerned with a range of sanctions applicable to financial institutions committing any offence under the SFTA. All of these penalties become applicable following conviction by a Dominican court and are thus considered to be criminal. As for administrative penalties, s.18 of the SFT(A)2011 amended the SFTA to provide for the prescribing of sanctions which may be imposed by the FSU where it discovers a breach of a regulation. There are five (5) sanctions here ranging from the issuing of written notices to the suspension or revocation of the license of the financial institution committing the breach. This gap is ***closed.***

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* – S.3 of the SFTAA has included definitions which are clearly in line with the FATF glossary. This gap is ***closed***.

Special Recommendation II overall conclusion.

27. The two (2) amendments to the SFTA have had the combined effect of significantly affecting the legislative infrastructure for SR.II in a positive way. Given all of the above, Special Recommendation II is ***fully rectified.***

28. **For Special Recommendation III,** Dominica was rated as **PC** and the examiners made four (4) recommendations to close the gaps they discerned.

i. *Strengthen their legislation to enable procedures which would examine and give effect to the actions initiated under the freezing mechanisms of other jurisdictions* –This has been addressed at **s.8** of the **SFT(A) 2013.** Accordingly the Court or other competent authority may receive a request from the court of another State to identify, freeze, seize, confiscate, or forfeit the property, or any property of corresponding values, proceeds or instrumentalities, connected to an offence under the SFTA or any other enactment. This gap is ***closed.***

ii. *Implement effective mechanisms for communicating actions taken under the freezing mechanisms*–The Central Authority Procedures details the procedures that will be employed upon receipt of a freeze order from another jurisdiction. Immediately upon receipt of the names of persons designated by the UN as terrorists or terrorist organisations, the Ministry of Foreign Affairs is required to forward such names to the FIU and FSU who are required to cooperate with each other in order verify the information so as to initiate Dominica's designation process. As soon as this designation process begins the FSU is required to immediately forward via email, facsimile, post or hand delivery (*whichever is most time efficient),* the UN designated names to all Financial Institutions and DNFBPs for their urgent and immediate action. This gap is ***closed.***

iii. *Create appropriate procedures for authorizing access to funds or other assets that were frozen pursuant to S/RES/1267 (1999)*–This is achieved through the Central Authority Procedures. At page 28 "Access to Funds" the procedures to be employed by someone wishing to gain access to funds or other assets frozen pursuant to Security Council Resolution 1267 (1999) an*d its successor Resolution 1373 (2001)* are detailed. Accordingly, the Court upon application may give directions with regard to the disposal of the accounts, funds or property in respect of the payment of money to a person who is the subject of a freezing order, for the reasonable subsistence of that person and his family. This gap is ***closed.***

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.* Dominica has 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 funds related to a terrorist or terrorist group, including funds which are the subject of a freezing order. The FSU has issued guidelines which it re-circulated to the financial sector on November 14, 2013 and provided the Secretariat with a copy of the communication. Additionally, these guidelines have been published on the FSU's website1 are publicly available. This gap is ***closed.***

Special Recommendation III overall conclusion.

28. Dominica has implemented the four (4) recommendations made by the examiners thereby closing the deficiencies noted in the MER. Special Recommendation III is now ***fully rectified.***

29. For **Special Recommendation IV which was rated NC,** because the Assessors had concluded that the *reporting of STRs does not include suspicion of terrorist organizations, terrorism, terrorist acts or those who finance terrorism.* The comments for Recommendation 13 above are relevant in that **s.19A (2) (a)** of the SFTAA places an obligation on financial institutions to report suspicious transactions where there is reasonable grounds to suspect that such a transaction, proposed transaction or attempted transaction is related to offences of terrorist financing. At **s.19A (2) (b)** funds used which are connected to the transactions noted in **s.19(A) (2) (a)** are 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. This gap is closed and consequently Special Recommendation IV is now ***fully rectified***.

1 http://www.fsu.gov.dm/index.php/news/news/19-full-story/34-procedures-for-freezing-assets-of-designated-terrorist-or-terrorist-organisations

VI REVIEW OF MEASURES TAKEN IN RELATION TO THE KEY RECOMMENDATIONS

30. **Recommendation 3 was rated as PC** and there were three (3) deficiencies and two (2) recommended actions intended as cures.

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* - **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, 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. At **s.3** of the ML(P)(A) a gift made either directly or indirectly by a person after the commission of a money laundering offence is captured. Consequently, the provisions can be exercised on property held by either a criminal defendant or a third party. This gap is ***closed***.

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* - **S. 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. **S. 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. **S.16** of the SFTAA mirrors the provisions of **s.11** but in relation to terrorism financing issues. 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. This gap is ***closed.***

Recommendation 3 overall conclusion.

31. Dominica has enacted the necessary amendments to the MLPA and the SFTA to give full effect to the Assessor recommendation and close the two (2) deficiencies. Recommendation 3 is now ***fully rectified***.

32. **Recommendation 4 was rated as PC** because of an *inability of the competent authority to share information without an MOU or court order*. As a cure to this deficiency the Assessors recommended that *Dominica should enact provisions allowing the ECCB, FSU, the MLSA and the registered agents to share information with other competent authorities*- There are two (2) competent authorities performing AML/CFT functions viz. the FSU (regulatory and supervisory functions) and the FIU (analytical and investigative functions). Dominica replaced **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. Even though the Examiners had recommended that these provisions be extended to the then MLSA and registered agents, neither the MLSA nor the registered agents are competent authorities with AML/CFT responsibilities in the Jurisdiction. The

FSU was made the supervisory authority for financial institutions and DNFBPs (persons carrying on a scheduled business) by **s.7** of **Act 8 of 2011.** The FIU**,** in carrying out its functions is empowered at **s.4** of the FIUA to liaise with ML/TF intelligence agencies outside Dominica. This Recommendation is ***fully rectified.***

33. **Recommendation 23 was rated as NC** because there was 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.* As a cure to this lone deficiency the Assessors made two recommendations as follows:

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 as 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. The FSU Act was enacted to, among other things, give effect to and establish the FSU. **S. 6** of the FSU(A)A 2011 has given the Director of the FSU the functions 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 ML(P)A 2011 or the SFTA. The FSU(A)A 2011 has defined regulated person to mean a financial institution or person carrying out a 'scheduled business'. The Director of the FSU is also empowered to conduct inspections which will enable the monitoring and assessing of licensee's or former licensee's compliance with his obligations under the ML(P)A Regulations and Guidelines or Codes. At Part I of the ML(P)A, schedule business includes both financial institutions and DNFBPs. Specifically for the regulation of credit unions, at **s.5 (2)** of the Co-operatives Society Act, the Registrar of co-operatives societies is the Director of the FSU and so he also has the responsibility of carrying out the functions mentioned above. Here DNFBPs are referred to as 'Other Business Activities'. The term regulated business is thus all encompassing. The FSU has established a structured work programme in August 2012. The structured work program focused essentially on inspections which includes onsite monitoring and offsite surveillance of scheduled entities. These entities include all financial Institutions and all relevant DNFBPs. The FSU has developed an onsite inspection manual specific to AML/CFT. This manual has been shared with the Secretariat and contains comprehensive details of the inspection processes which are to be followed by the FSU's inspectors when engaging its stakeholders. The FSU has conducted both onsite and offsite examinations of the various financial institutions to examine compliance with the MLPA/SFTA and the guidance notes and to satisfy itself that there is sound compliance by the sector with the legislative requirements. Details of these inspections have been provided to the Secretariat. During July 31 to August 28, 2014 the FSU conducted on-site examinations of the Insurance Sector. All of the insurance companies have been examined. The FSU will be conducting on-site examinations of the commercial banks, money transmission businesses and credit unions. This commenced in July 2014 and is expected to be completed in August 2015. With regard to fit and proper criteria and the enforcement of these measures, the FSU's inspectors are guided by **s.27** of the **FSU Act of 2008** which is concerned with the fitness of persons carrying on a licensed financial business. In fact **s.27 (2)** details several criteria which can be used to determine whether a person is fit and proper. At **s.27 (3)** evidence of certain previous conduct may be used in coming to a determination. With regard to offsite monitoring, by virtue of **s.10 (c)** of the FSU Act, the Director, for the purpose of carrying out his functions, has the power to demand periodic reports from his licensees in a form determined by him and with information which he, as the Director of the FSU, decides. Offsite monitoring is also directly and

specifically legislated in Dominica. The Director's functions in this regard include monitoring regulated persons for AML/CFT compliance. The AML/CFT compliance programs of supervisees were submitted to the FSU during the period August 2012 to December 2013 where an offsite evaluation has been conducted to assess the level of compliance that exists at those institutions. During this evaluation the following areas were assessed: the institutions risk profile; volume of business; nature of business; customer base; product and services offered; training program; effectiveness of compliance officer; reporting and record keeping; customer due diligence; know your employees and customers and customer identification programs. Moreover, during the period June 2013 to present, offsite surveillance of the sectors continues as mandated by legislation. At present, all the institutions' AML/CFT policies have been received and reviewed by the FSU and recommendations have been made where necessary. Relative to the manpower, financial and technical resources and expertise of the FSU's examiners, Dominica has provided the Secretariat with documents showing details of the qualifications and expertise of all its examiners. This document has not been made available because of the confidential nature of the information it contained. Notwithstanding, the Jurisdiction has reported that the FSU inspectors have been be undergoing CAM certification to bolster their current skillset. Based on the above and the comments of the previous follow-up reports, it can be seen that the Jurisdiction has made a deliberate and concerted effort to improve both the legislative and operational support for the FSU and its structured work programme is a work in progress. This gap is ***closed.***

Recommendation 23 overall conclusion

34. Dominica has made a deliberate and concerted effort to improve both the legislative and operational support for the FSU and has provided data to demonstrate that these measure are being actively implemented. The noted deficiency is now closed and Recommendation 23 is ***fully rectified***.

35. **For Recommendation 26 which was rated as PC** there were six (6) deficiencies noted in the MER and four (4) recommended actions aimed at closing those deficiencies.

i. *The FIU should be made the central authority for the receipt of STRs from reporting entities as it relates to both Money Laundering and Terrorist Financing* - 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 function is found at **s. 4 (1) (a) of the FIUA**. **S.19 (2) of the MLPA** dictates that suspicious transactions be reported to the FIU in a form approved by the Director of the FIU. **S.19A (2) of the SFTA** as amended by **s.11** of the SFTAA states that suspicious transactions as it relates to money laundering and terrorist financing "shall promptly" be reported to the FIU. So both the MLPA and the SFTA acknowledges the FIU as the central authority for the receipt of STRs. Finally here, **s.7 of the AML/CFT code** of practice stipulates that the FIU is in fact the Reporting Authority of Dominica in matters relating to suspicious transaction reports concerning money laundering and terrorist financing. This gap is ***closed.***

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* - Dominica has explained the process for the allocation of funds for its operations. According to Dominica "Whenever, the FIU needs to expend budgetary resources, a request is made by the Director of the FIU to the Permanent Secretary of the Ministry of Legal Affairs for endorsement of expenditure under the aegis of the budgetary allocation related to a specific expenditure head." Dominica further reports that "Requests have always been endorsed by the Permanent Secretary" in his/her capacity

as Accounting Officer, to ensure that the FIU remains within its budgetary provisions. The budgetary allocation for fiscal years 2011/2012, 2012/2013 and 2013/2014 amounted to $273,542; $370,386 and $368,345 respectively and the Director of the FIU has reported that in instances where the FIU had expended its allocated budget, additional funds were made available to it. This situation, as is now described by Dominica, is exactly as it were during the onsite and is what lead to the examiners noting it as a deficiency which could affect the operational independence of the FIU. Even though the FIU is reporting that the Permanent Secretary has always endorsed its requests. This established procedure for the control of and allocation of funds to a department of a government ministry is not unlike what exists in several other CFATF jurisdictions and is part of the strict checks and balances which exists for the management of financial resources. In light of this and the forgoing explanations proffered by Dominica it can be seen that the intended effect of the recommended action is already in place.

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* -This is reported to have been addressed through the acquisition of physical offsite storage where copies of the FIU's database are secured. The FIU has received from the US Government, a modern server and other computing peripherals to assist in upgrading its IT systems. The old IT system accommodated regular tape backups but these were stored onsite and as such were not protected against fire or other natural disasters. However, with the new system daily differential and full backups are run of the data stored on the FIU's server. The differential backups are run during the day and the full backups after working hours. The drives housing the differential backups and full backups are stored onsite for immediate access. With respect to the offsite storage, a metal enclosure has been secured and immobilized at a secure government facility within which a smaller safe is secured. Additionally, an external drive secured with keypad access has been procured and is used to store weekly full backups that are physically transported to that that facility. The FIU's server allows for full redundancy both with respect to the operating system and the storage drives which allows for continuous operations in case a system or storage drive fails. Access to this system is restricted only to the System Administrator and the Director. This gap is ***closed***.

iv. *The FIU should prepare annual reports which they would be able to disseminate to the public which would enhance awareness* – The FIU has been preparing annual reports. Beginning from 2012, the annual report was been laid before the Dominican Parliament and is now publicly available from the government printer and was also circulated to all Egmont members. The 2014 Annual Report for the period 2013-2014 was provided to the Secretariat but has not as yet been seen by the Parliament at which point it would be laid and become a public document. This gap is ***closed.***

Recommendation 26 overall conclusion

36. There were six (6) deficiencies noted in the MER and four (4) recommended actions aimed at closing those deficiencies. Dominica has completely addressed four (4) of the recommended actions and provided detailed explanations which shows that the positive effect intended by implementing the other recommendation is already in place. This Recommendation is ***fully rectified.***

37. **For Recommendation 35 and Special Recommendation I ratings of PC** were applied and identical deficiencies discerned. The recommended action was that *the Commonwealth of Dominica should become a party to The 2000 United Nation Convention Against Trans-national Organized Crime – (The Palermo Convention) 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). Dominica acceded to the United Nation Convention Against Trans-national Organized Crime on May 17, 2013 therefore the related gap is ***closed.***

38. The Vienna Convention has been implemented through domestic legislation. The legislation includes The Transnational Organized Crime (Prevention and Control) Act, The Drugs (Prevention of Misuse) Act, the Money Laundering (Prevention) Act, the Proceeds of Crime Act, the Financial Services Unit Act, the Mutual Assistance in Criminal Matters Act, the Integrity in Public Office Act, the Extradition Act, Protection of Witnesses Act. This gap is ***closed***.

39. The procedure to give effect to Terrorist Financing Convention and S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001) has been created in the Central Authority Procedure. It was previously noted that **s.8** of the **SFT(A) 2013** provides for the freezing of funds connected to an offence under the SFTA or any other enactment. For S/RES/1267(1999) the procedure for freezing would be initiated by the financial institution or DNFBP which is required to immediately place a temporary hold, for a period not exceeding three (3) business days, on the account on any client that the UN has designated as a terrorist or terrorist organisation. The financial institution or DNFBP is required to immediately inform the FIU, the FSU and the Attorney General. Following verification, the FIU is required to promptly provide the Minister of National Security with the name of the confirmed terrorist or terrorist organisation, The Minister of National Security is then required to immediately begin the preparation of a designation order which is made pursuant to **s.11(2)** of the **SFTA.** Once a designation order is made the Minister of National Security is required to publish, no later than the second business day, in the Gazette, the names of the terrorist or terrorist organisation. Upon such publication the Attorney General is required, within two (2) hours, or before the expiration of the three (3) day temporary hold, to issue in writing to the financial institutions in Dominica an order to freeze the account. For S/RES/1373(2001) the procedures as outlined for freezing initiated by the financial institution or DNFBP are also applicable in this situation. This process is initiated by the Attorney General following receipt, from the United Nations, of the names of persons designated by the said United Nations as terrorists or terrorist organisations.

Recommendation 35 and Special Recommendation I overall conclusion

40. Dominica has closed the lone deficiency and established the procedures which gave effect to S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001 consequently Recommendation 35 and Special Recommendation I *are* ***fully rectified.***

41. For **Special Recommendation V** the examiners applied a **PC** rating and noted four (4) deficiencies for which corrective action were required.

    i. **The first deficiency** was related to the examiners determination that Dominica's laws in relation to MLA requests by foreign countries were unclear where the request was related to property of corresponding value. Dominica has pointed to **s.14 of the POCA** where the Court can order a person to pay to the state an equal amount, part or interest to the value of property where the state is satisfied that that a forfeiture order should be made in respect of such property, of a person who is convicted of a scheduled offence, but the property in question cannot be made subject to such an order because it cannot be located; has been transferred to a third party in circumstances which do not give rise to any inference that such a transfer was done to avoid forfeiture; is located outside Dominica; the value was significantly diminished; or was comingled to the extent that division would be inherently difficult. This gap is ***closed.***

ii. **The second deficiency** relating to clarity as to whether Dominica could have arrangements for coordinating seizure and confiscation actions with other countries has been addressed through **s.28 (1)** of Dominica's MACMA. Where the Central Authority for a Commonwealth country transmits to the Central Authority for Dominica a request for assistance to the effect that in the requesting country an order has been made or is likely to be made which will have the effect of confiscating property derived or obtained directly or indirectly from the commission of a specified serious offence or imposing on that named person a pecuniary penalty calculated by reference to the value of the property so derived, the Attorney General shall cause an order to be made as he deems necessary to secure the making of an order of the kind required. Even though the reference here is to a Commonwealth country **s.30 (1)** of the MACMA allows Regulations to made to give effect to Regulations for bilateral mutual assistance with countries specified in the said regulations and such Regulations may in particular direct that the MACMA shall apply in relation to the country named in the Regulation as though it was a Commonwealth country. This gap is ***closed.***

iii. **The third deficiency** where the examiners discerned that there were 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 has been addressed through Part B of volume one of the Central Authority Procedures pages 40-43. The administrative procedures set out for extradition requests articulates clear timelines that all parties involved in the process are bound by. At paragraph 19 the overriding principle of urgency in these matters is clearly stipulated. Paragraph 19 states "*All requests for extradition shall be handled promptly. However, all requests for the extradition of persons in relation to terrorism offences shall be given priority over all other requests for extradition and are to be dealt with the highest level of urgency."* **S.31 of the SFTA** states that notwithstanding anything in any other law, no offence under this Act shall be regarded as a fiscal offence for the purposes of extradition or mutual legal assistance. This gap is ***closed.***

iv. **The fourth deficiency** where the examiners reported they could find no reason that requests for cooperation would not be refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBP has been specifically addressed through **s.14 of the SFT(A) 2011**. Here requests for information must be fulfilled notwithstanding any obligation to secrecy confidentiality or any other legal restriction except where legal professional privileges exists. This gap is ***closed.***

Special Recommendation V overall conclusion

42. Dominica has addressed all the deficiencies which led to the application of the PC rating and consequently Special Recommendation V is ***fully rectified***.

VII DEVELOPMENTS REGARDING THE OTHER RECOMMENDATIONS RATED PC OR NC: R6, R7, R8, R9, R11, R12, R15, R16, R17, R18, R19, R20, R21, R22, R24, R25, R27, R28, R29, R30, R31, R32, R33, R34, R38, SRVI, SRVII, SRVIII, and SRIX.

43. **Recommendation 6 was rated NC.** At the time of the onsite, the PEP obligations were outlined in the Guidance Notes and the MER had concluded that the Guidance Notes *"are not other enforceable means as defined or envisaged under the FATF Methodology".* Dominica has addressed this deficiency through the ML(P)R 2013, which as has already been noted in this report, is part of the laws of Dominica. PEP obligations are found at Regulation 19 of the ML(P)R 2013. At **r.19 (2) (d)** there is the obligation for a person carrying on a relevant business to conduct regular enhanced monitoring of the PEP business relationship. This action by Dominica has the effect of fully closing the two (2) gaps for this Recommendation and as such Recommendation 6 is now ***fully rectified.***

44. **Recommendation 7 was rated NC** and the Assessors made five (5) recommendations to cure the gaps they discerned. These recommendations and Dominica's action aimed at closing them are analysed below:

i. The specific requirement to understand and document the nature 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. – This gap has been closed through **r.20 (1) (a) and (c)** of the ML(P)R 2013 where a bank, in relation to a cross-border correspondent banking and other similar relationships, has a responsibility to identify and verify the respondent institution and determine from publicly available information the reputation of the said respondent institution and the quality of its AML/CFT supervision including whether it has been subject to either a money laundering of other supervisory action. This gap is ***closed.***

ii. Financial institutions should be required to assess all the AML/CFT controls of respondent. At **r.20 (1) (d)** of the ML(P)R 2013 a bank is now required to assess the anti-money laundering controls of its respondent and ascertain that they are adequate and effective. This gap is ***closed.***

iii. The financial institutions should document the AML/CTF responsibility of each institution in a correspondent relationship - At **r.20 (1) (f)** of the ML(P)R 2013 a bank is required to document the responsibilities of both parties involved in the correspondent/respondent relationship. This gap is ***closed.***

iv. Financial institutions should require senior management approval before establishing new correspondent relationships. At **r.20 (1) (e)** of the ML(P)R 2013 senior management approval is a pre-requisite to the establishment of a new correspondent relationship. This gap is ***closed.***

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. Dominica has addressed this deficiency through **r.20 (2) (a)** and **(b)** of the ML(P)R 2013. The obligation here is almost directly in line with EC 7.5 but with the added requirement that the CDD obligation on the part of the respondent be ongoing. The necessity for ongoing CDD here seems to go beyond the requirement envisaged by EC 7. Notwithstanding, this gap is ***closed.***

45. R.20 of the ML(P)R 2013 has closed all the deficiencies in the MER noted by the examiners. Consequently, Recommendation 7 is ***fully rectified.***

46. **Recommendation 8 was rated NC** and the Assessors noted that there were "*No provisions which require the financial institutions to have measures aimed at preventing misuse of technology developments in money laundering and terrorist financing".* A partial cure is actually found at **r.23** which clearly mandates the establishment of policies and "measures necessary" to prevent the misuse of technological development in money laundering and also to address specific risks associated with non-face to face relationships or transactions. Even though this measure relates to money laundering only, it has been bolstered by **s.13 of the AML/CFT code of practice** which created a provision which specifically refers to both money laundering and terrorist financing. Recommendation 8 ***fully rectified.***

47. **Recommendation 9 was rated PC** and the Assessors made three (3) recommendations aimed at closing the deficiencies in the MER. Dominica's has pointed to the regulation 13 of the ML(P)R 2013 as the cure for these deficiencies. The related analyses are as follows:

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.* – This deficiency has been addressed by regulation 13, paragraph (a). Accordingly, when a person carrying on a relevant business relies on an intermediary or third party to undertake its obligations under regulations 8, 9, 10 or 19 or to introduce business to it *shall immediately request from the third party the evidence, documents and information required under regulation 8, 9, 10 and 19.* This gap is ***closed.***

ii. *The requirement that financial service providers be ultimately responsible for obtaining documentary evidence of identity of all clients should me made enforceable.* - This deficiency has been addressed through the **s.2 (4) of the** Code which, as noted earlier in this report, is enforceable. This gap is ***closed.***

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.* – **S.54(1)** of the Code places a responsibility on all entities engaging in business relationships and transactions to pay special attention to whether the jurisdiction of that foreign party sufficiently applies the FAFT recommendations with respect to money laundering and terrorist financing. At **s.54 (2)** the FSU is mandated to publish, on its website, a list of jurisdictions for the purposes of the Code, the ML(P)R 2013 and the SFTA that are recognised as jurisdictions which apply FAFT recommendations. Additionally the FSU is also mandated to issue advisory warnings to entities and professionals, advising them about weaknesses in the anti-money laundering and terrorist financing systems of other jurisdictions. On January 9, 2014 the FSU issued its most recent advisory about Guyana and Belize. Additionally, the FSU has published the latest (June 2014) FATF public statement2 on its website which is publicly available. This gap is ***closed***.

48. Dominica has taken legislative action which has created the necessary infrastructure to implement Rec.9. Additional the FSU has issued notices and publish information on its website. Recommendation 9 is ***fully rectified***.

2 http://www.fatf-gafi.org/documents/documents/public-statement-june-2014.html

49. With regard to **Recommendation 11 which was rated PC**, there was one (1) deficiency noted by the Assessors in that there was *no requirement for financial institutions to examine as far as possible the background and purpose of complex, unusual large transactions and to set their findings in writing.* Dominica has amended the MLPA by adding **s.19 (1A) and (1B).** At **19 (1A**) the obligation to examine as far as possible the background and purpose of all specified transactions, and to keep a written record of the finding of such examinations, is imposed on a financial institution or person carrying on a scheduled business. At 19(1B) the obligation to keep such records for seven (7) years and to make them available to 'its auditors' has been imposed. This amendment has the effect of closing the gap discerned by the examiners and as such Recommendation 11 is now ***fully rectified***.

50. For **Recommendation 12**, **Dominica was rated as NC** the examiners had made four (4) recommendations intended as cures for the deficiencies identified in the MER. Dominica's actions to close those gaps are detailed below:

i. *The deficiencies identified for all financial institutions for Recs.5, R.6, and Recs.8-11 in the relevant sections of this report are also applicable to DNFBPs.* - Prior to this report the only outstanding actions were in relation to Rec. 8 and 9. This (the 8th follow-up report) has already chronicled the positive action by Dominica which has resulted Rec. 8 and 9 being closed. The related gaps here are ***closed.***

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* – The actions by Dominica which has resulted in Rec. 23 being closed are relevant here in that Section 9 (1) (b) of the FSU Act No. 18 of 2008 as amended by section 6 of Act No. 10 of 2011 mandates that the principal functions of the Director of the FSU are to monitor compliance with the MLPA and such other Acts, Regulations, Guidelines or the Codes relating to the MLPA or SFTA. The FSU Act is in force and the director FSU continues to carry out supervisory and monitoring functions prescribed therein. Table 4 above was provided to demonstrate implementation of the FSU's onsite inspection obligations. This gap is ***closed.***

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* – Licenced /registered Agents are included in Part II of the schedule to the MLPA Act as well as within the definition of Relevant business in section 2 of the ML(P)R 2013. As such the FSU is under a legal obligation to monitor Registered Agents for compliance with Anti-Money Laundering and countering of Terrorist Financing legislation. The FSU has developed a Structured Work Programme (SWP) to ensure that the Registered Agents (Licensed Agents) will be subject to continued monitoring for compliance with the provisions of the AML/CFT Code of Practice during the current financial year. Whilst the legislative measures are in place, the actual monitoring of licensed agents have not as yet begun. This gap is ***open.***

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* – The FSU has an offsite monitoring process in place. This process redounds to the receipt of AML/CFT Policies and future amendments made to these policies which are forwarded to the FSU for their consideration. Analyses of these policies can assist the FSU in determining its approach to the onsite inspection bearing in mind the content of such policies. This gap is ***closed.***

51. Dominica's action at closing the deficiencies for Rec. 12 has resulted in significant positive improvement. Here the legislative and supervisory infrastructure are in place but for the minor shortcoming relating to the actual onsite monitoring of Registered Agents. Recommendation 12 is ***significantly improved***.

52. For **Recommendations 15** the examiners had made two (2) recommended actions aimed at improving the **PC** rating which they had applied.

53. The first recommendation requiring financial institutions to maintain independent audit functions to test compliance with procedures, policies and controls has now been fully addressed through s.12 (4) of the Code. Here every entity and professional is required to establish and maintain an independent audit function that is adequately resourced to test compliance, including sample testing, with its or his written system of internal controls and the other provisions of the MLPA or the ML(P)R 2013 made thereunder, SFTA and the Code. This gap is ***closed.*** The second recommendation requiring financial institutions to also have internal procedures relative to terrorist financing has been addressed at s.12 (1) of the Code accordingly an entity or professional is required to establish and maintain a written and effective system of internal controls which provides appropriate policies, processes and procedures for detecting and preventing activities of money laundering and terrorist financing. Subsection (2) of **s.12** fleshes out in detail the matters which the internal control and procedures are required to address. Recommendation 15 is ***fully rectified.***

54. **Recommendation 16** which was rated **NC** and the Assessors made two (2) recommended actions to cure the deficiencies they noted:

The first deficiency that *"there is no specific body charged with the duty of applying sanctions to DNFBPs without requiring a court order"* has been addressed. S.10 of the MLPA provides that the FSU may give Directives to persons carrying on a scheduled business to cease engaging in any activity, behaviour or practice and to take remedial measures or action as it deems necessary to ensure compliance. The time for compliance may be stipulated by the FSU itself. S.**11 and 12** of the MLPAA also makes provisions for the imposition of further administrative sanctions on financial institutions and scheduled entities. These sanctions may be effectively imposed without a Court Order include the following. This gap is ***closed.***

55. The second deficiency was that *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, 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* there was *no effective application of R 13-14, R 15 and 21* has been addressed. 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. Data provided by Dominica shows that the FSU is in fact carrying out its supervisory functions. It can be seen that four (4) of the eight (8) entities for whom onsite inspections were conducted were DNFBPs (trusts service providers). Additionally, a copy of the notification of January 9, 2014 evidencing the FSU's advisory about Guyana and Belize, pursuant to Rec. 21, was provided to the

Secretariat. All the deficiencies for Rec. 16 have been closed whilst Dominica has demonstrated that implementation is ongoing. This gap is ***closed*** and ***Recommendation*** 16 is now ***fully rectified.***

56. As for **Recommendation 17 which was rated NC**, the lone deficiency was *lack of a designated regulatory body to apply sanctions/fines and the absence of a clearly defined process in the law or guidance notes.* 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 deficiency is closed and Recommendation 17 is now ***fully rectified***.

57. **Recommendation 18** was rated as **NC** and there were two (2) recommended actions to close deficiencies noted in the MER. (1) *Financial institutions should not be permitted to enter into, or continue correspondent banking relationship with shell banks and* (2) *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.* The first recommended action is now addressed at **r.20 (3)** of the ML(P)R 2013 where a bank is prohibited from maintaining a business relationship with banks that do not maintain a physical presence under the laws of which they were established, unless they are part of a financial group subject to effective consolidated supervision. The first gap is ***closed.*** The second recommended action is fully addressed in **s.37(1)(a)** of the Code which places certain restrictions on correspondent banking by prescribing that a bank that is or that proposes to be a correspondent bank shall not enter into or maintain a relationship with a respondent bank that provides correspondent banking services to a shell bank. This gap is **closed** and consequently Recommendation 18 is now ***fully rectified.***

58. **Recommendation 19** was rated as **NC.** On February 25, 2014 formal consideration was given to the implementation of a CTR system by Dominica's AML/CFT Technical Working Group. This group is comprised of experts from the Office of the Attorney General, the FIU, the FSU, Dominica's Police Force, and Customs. The meeting of the group was called to discuss draft legislation and to also consider implementing a CTR system, consistent with Recommendation 19, in Dominica. A technical analysis of the legal and financial implications involved in implementing such a system was done by the FIU, and presented for discussions by members of the team. After the discussions it was decided that even though a CTR system would add value to the work of the FIU, the recurring financial resources needed to successfully implement and maintain it would yield higher returns if invested in strengthening the current STR system. As such the team decided that Dominica will not be implementing a CTR system at this time. This Recommendation is ***fully rectified.***

59. For **Recommendation 20 which was rated as PC** because the Assessors noted that *procedures adopted for modern secure techniques are ineffective* - Dominica reported that there are five (5) major banks in Commonwealth with a total of 28 ABMs. Mobile banking was introduced in Dominica to facilitate secure transactions. Additionally, Dominica reported that over the last five (5) years all the financial institutions have increased the number of ABMs available to clients. This Recommendation is ***fully rectified.***

60. Relative to **Recommendation 21 which was rated NC,** there were two (2) recommendations made by the Assessors to cure the deficiencies in the MER. The actions taken by Dominica to close these gaps are noted as follows:

i. *Effective measures should be established to ensure that financial institutions are advised of concerns about AML/CFT weaknesses in other countries* – As noted in the comments for Rec. 8, the FSU is also mandated to issue advisory warnings to entities and professionals, advising them about weaknesses in the anti-money laundering and terrorist financing systems of other jurisdictions. The obligation in this regard is found at **s.54 (5)** of the Code. On January 9, 2014 the FSU issued its most recent advisory about Guyana and Belize. This gap is ***closed.***

ii. *There should be requirements to allow for the application of counter-measures to countries that do not or insufficiently apply the FATF Recommendations.* – This is addressed at **s.56** of the Code whereby the FSU is allowed to apply any countermeasure it deems fit in relation to a jurisdiction which does not or insufficiently applies the FATF Recommendations, has received an unsatisfactory or poor rating from the FATF, or has no specific regulatory body or agency corresponding to Dominica's FSU or FIU. This gap is ***closed.***

61. Recommendation 21 is now fully ***rectified.***

62. **Recommendation 22** was rated **PC** and the Examiners made the lone recommendation for financial institutions to be required to *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* – Here Dominica has pointed to **s.55** of the Code to satisfy this requirement. **S.55 (5)** of the Code mandates any entity that has branches subsidiaries or representative offices operating in foreign jurisdictions to notify the FIU and FSU in writing if any of its branches subsidiaries or representative offices is unable to observe appropriate anti-money laundering and terrorist financing measures on account of the fact that such observance is prohibited by the laws, policies or other measures of the foreign jurisdiction in which it operates. **S.55(6)** provides for the entity that reported at 55(5) to consider the desirability of continuing the operation of the branch subsidiary or representative office and mandates the FIU and FSU to liaise and consider the further steps that may be necessary to effectively address the notification. Dominica has fully complied with the recommendation of the Examiners here and consequently this gap is ***closed***. Recommendation 22 is fully ***rectified.***

63. At regard to **Recommendation 24 which was rated as NC**, the lone deficiency was that *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 compliance with AML/CFT requirements* - 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. The ability of the FSU to impose sanctions are noted under the comments for Recommendation 17. This Recommendation ***fully rectified.***

64. Recommendation 24 now has a very minor shortcoming remaining, that is really linked to implementation of the measures taken to close the noted deficiency.

65. As for **Recommendation 25 which was rated as NC,** there were two recommended actions made by the assessors. Recommended action 1, *the Authority should provide financial institutions and DNFBPs with adequate and appropriate feedback on the STRs* has been addressed by **s.8** of the Code which requires the FIU to promptly acknowledge receipt, in writing, of any STR filed by

reporting entities or professionals. This measure also provides for the manner in which feedback on STRs is to be provided to the said reporting entities and professionals. The provisions here include the obligation for the FIU to keep the reporting entity or professional informed of the interim and final results of any investigation conducted subsequent to the filing of an STR. This form of feedback is an acceptable best practice and as such this related gap is ***closed.*** Recommended action 2, *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*. Dominica reported that the FSU is currently in the process of creating guidelines to assist financial institutions and DNFBPs to effectively apply the provisions of the MLPA. Notwithstanding, Dominica has already created the infrastructure necessary to implement this Recommendation by enacting the 2013 guidelines, which have already been discussed in the sixth follow-up report. This gap is ***closed*** and Recommendation 25 is now ***fully rectified.***

66. For **Recommendation 27 which was rated as PC,** there were three (3) Examiners recommendations intended as cures for the deficiencies noted in the MER. Dominica's action to close these deficiencies are as follows: *Provisions should be made in domestic legislation that allow authorities investigating 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* - The Criminal Law and Procedure (Amendment) Act No. 3 of 2014 inserted a new section 13A into the Criminal law and Procedure Act Chap 12:01 allowing money or property suspected to have been used or being used to commit an offence under the said Criminal law and Procedure Act to enter leave or move through Dominica. This section also provides protection from criminal and civil liability for the authorised officers involved. This gap is ***closed.*** The other two (2) recommended actions by the Examiners are additional elements and therefore not relevant for the follow-up process. Recommendation 27 is now ***fully rectified.***

67. **For Recommendation 28 which was rated as PC** there were two (2) recommended actions. Recommended action 1, *the SFTA should be amended to provide investigators with the ability to compel the production of business transaction records* has been addressed. Dominica has noted that by **s.41 (b)** of the **POCA**, provides for a police officer to obtain a production order where he has reasonable grounds to suspect that a person has committed a scheduled offence (an offence of terrorism) and that a person has possession or control of any documents relevant to identifying, locating or quantifying property of the person who committed the offence or to identifying or to locating a document necessary for the transfer or property of the person who committed the offence. Even though the recommendation by the Examiners was for the SFTA to be amended to provide investigators with the ability to compel the production of business transaction records, the 2010 amendment of the POCA (Act 10 of 2010) replaced the list of offences with Schedule 1 which included the terrorism and the financing of terrorism. Consequently, investigators pursuing terrorism and terrorism financing offences can now compel the production business transaction records. This gap is ***closed***. Recommended action 2, *there should be explicit legal provisions for the investigators of predicate offences to be able to obtain search warrants which would enable them seize and obtain business transaction records* has been address through **s.46 of the** POCA whereby a police officer who has reasonable grounds for suspecting that a person has committed a scheduled offence, may apply to the Judge of the High Court for a search warrant to seize necessary documents in an effort to facilitate an investigation. The 5th follow-up report had noted that *Scheduled offences, according to the POCA amendment No. 10 of 2010, does not appear to include the offences of piracy (pirates at sea) which was originally not covered in Dominican legislation as a predicate offence to money laundering but which were subsequently captured through the Piracy Act of 2010*. By virtue of the Proceeds of Crime (Amendment) Act No.7 of 2013, the offence of piracy was added to that list. In fact **s.22 of** the Proceeds of Crime (Amendment) Act No.7 of

2013 amended Schedule I of the POCA by inserting Piracy to the offences listed as predicates in Dominica. This gap is ***closed*** and Recommendation 28 is now ***fully rectified.***

68. **Recommendation 29 was rated as PC** and the Assessors noted one (1) deficiency in that *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 fully closing the gap noted by the Assessors. Recommendation 29 is now ***fully rectified.***

69. For **Recommendation 30,** the examiners made ten (10) recommendations aimed at closing the gaps in the MER.

i. *The staff of the Unit (FIU) should be expanded to include a database administrator* – The FIU now reportedly has a complement of (6) officers and one of them doubles as the database administrator. This gap is ***closed.***

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 its regulatory and supervisory functions can be discharged effectively* – The FSU currently has a staff compliment of 3 Senior Examiners, 4 Junior Examiners and a Secretary. There are two (2) dedicated Examiners with exclusive responsibility for AML/CFT supervision. However, all other Examiners perform AML/CFT supervision of their respective sectors during their on-site and off-site inspections. Dominica is in the process of filling the position of Director of the FSU.

iii. *The FSU should consider the establishment of databases to allow for effective off-site supervision* – In October of 2013, a database, which was created by the Information Communication and Telecommunication Unit, was installed and handed over to the FSU to assist them in storing and analysing AML/CFT data. Additionally, in February 2014, the FSU's website was handed over to the Unit. This website will be used to assist in the Unit's outreach and supervisory functions. Training of the FSU staff in the use of the website is currently ongoing prior to it being launched. This gap is ***closed.***

iv. *Technical resource- The Police Force should be provided with better communication equipment* – Dominica has provided the Secretariat with a copy of a report from the jurisdiction's Chief of Police. This report articulates the status of the communication apparatus of the CDPF in Dominica. Currently the CDPF utilises a land line telephone network which incorporates voice and internet services. The jurisdiction's information and communication technology unit has also incorporated voice over internet protocol services

which has been extended to the CDPF. There is also wireless communications utilizing hand held, base and car radios which utilises a series of repeater stations throughout the island. These radios are reportedly *'always in short supply'*

v. *With the increased demand on the Police the numbers in the police contingent should be increased* - The establishment of the Commonwealth of Dominica Police Force was increased to five (500) hundred by a Cabinet decision dated March 2, 2010 by the creation of fifty (50) new Police Constables positions. The present strength is four hundred and sixty with forty (40) vacancies which is mostly due to attrition. Some thirty eight (38) Police Recruits commenced training at the Police Training School on March 1, 2013 and are expected to join the ranks of the Police Force by September 2013. The Government of Dominica has given a commitment to further increase the establishment of the Police Force by the creation of an additional one hundred (100) new positions. No information has been provided to substantiate this action. This gap is ***closed.***

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* - Not yet taken on board by Dominica. This gap remains ***open.***

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* - The CDPF has reportedly trained a cadre of police officers in financial investigations, money laundering, terrorist financing and cyber-crime investigations. Additionally, in September 2013 a Major Crimes Unit was established within the police force to augment and enhance the investigations of serious crimes. This Unit focuses on the investigation of major crimes in the jurisdiction and compliments the work of the FIU with the investigation of predicate offences (major crimes) to money laundering. The Unit's current complement is 21 police officers stationed at various sections and departments of the Police Force and are called on a needs basis. It is headed by an Assistant Superintendent of Police and includes officers that have benefited from ongoing training at REDTRAC in Jamaica. This gap is ***closed.***

viii. *There should be regular inter agency meetings among all the agencies that are charged with ensuring the effectiveness of the AML/CFT regime* – The comments for Recommendation 31 and the analysis of the measures taken to implement the three (3) deficiencies are relevant here. This gap is ***closed.***

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*- In 2011 The Dominica Police Force introduced polygraph testing as part of its vetting process of persons who work in sensitive or specialized sections such as the CID, Anti-crime Task Force, Drug Squad, Special Branch, and NJIC. The polygraph testing of the ranks of the Police Force is being done on a voluntary basis. The vetting process is coordinated by the Regional Security System (RSS) and funded by the US Embassy in Barbados. The US only provides funding for the vetting of persons in specialized sections or areas. Between November 2012 and February 2013 some sixty eight (68) police officers were vetted comprising of senior managers, middle managers and lower ranks. Other sensitive personnel and other ranks will be vetted if funding is available. Outside funding will have to be sourced for personnel not in specialized or sensitive areas and new entrants into the Police Force. This gap is ***closed.***

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* – In February 2014, the Dominica Police Force installed a new database at its headquarters in Roseau. It is currently in the process of conducting data entry activities at the Administration Section, The Criminal Investigation Department and the Charge Office**.** Data on personnel, outstanding warrants, land and sea patrols, motor vehicle licenses, firearm license among other data types are among some of the information that is being populated in the new database. The databases operated at the FSU are shared among the Police, Customs, Central Authority, DPP, FIU, Inland Revenue Division, Dominica Social Security and other pertinent government departments. This gap is ***closed.***

70. Based on Dominica's actions, Rec. 30 now has two very minor shortcomings. This represents a significant improvement in the overall implementation of Recommendation 30.

71. **Recommendation 31 was rated as PC** with three (3) deficiencies as follows:

72. Deficiency one *there are no joint meetings dedicated to developing policies and strategies relating to AML/CFT;* Deficiency two *the Supervisory Authority does not adequately supervise the DNFBPs and other entities in the financial sector at this time; and Deficiency* three *there should be measures in place so that the authorities can coordinate with each other concerning the development and implementation of policies and activities to combat ML and FT.* Dominica has reported that By virtue of S.15 (1) of the MLP Act No. 8 of 2011, the Minister of Legal Affairs has appointed an Anti-Money Laundering Advisory Committee. This committee consists of The Attorney General (Chairman), The Financial Secretary (Deputy Chairman), The Commissioner of Police, The Comptroller of Customs, The Comptroller of Inland Revenue, The Director of FSU and The Director of FIU. The functions of this committee as stated in the Act include the following:

1. Promoting effective collaboration between regulators and law enforcement agencies and,
2. Monitoring interaction and co-operation with overseas regulators
3. Overseeing and inspecting the work of the Authority
4. The general oversight of the anti-money laundering policy of the government. Etc.

73. This Advisory Committee conducts monthly meetings and is also supported by the local AML/CFT technical working group which consists of representatives of all relevant agencies. This technical working group also conducts regular monthly meeting to ensure the effectiveness of Dominica's AML/CFT regime. There has been proven to be effective cooperation / coordination among local agencies such as the Customs, Police, FIU in regard to money laundering and terrorism financing and other designated category of offences. The Customs is part of the Technical Working Group which also comprises of Police, FIU, FSU, and Legal. There has been frequent coordination between the police, Customs and FIU as is highlighted in Recommendation 32 where exercises were carried out between the Customs and various units in the Police Force. As indicated above, due to the effective functioning of the AML/CFT Advisory Committee and that of the Local Technical working group, developments regarding Anti Money Laundering and the suppression of the financing of terrorism are well coordinated in Dominica and involve the participation of all relevant government agencies and departments. Based on the above, it can be seen that national cooperation in Dominica is legislated and enabled through the Advisory Committee and the Technical Working Group. These two groups operate at different levels and the functions they perform in actually advancing Dominica's AML/CFT efforts have had the effect of fully closing the deficiencies noted. Recommendation 31 is ***fully rectified***.

74. **Recommendation 32 was rated as NC** with two (2) recommended actions for the competent authorities to *maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing* and *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.* As noted at Recommendation 4, there are two competent authorities in Dominica, the FSU and the FIU. Neither competent authority has produced statistics of the type anticipated by Rec.32. The Central Authority has a new database which allows it to track incoming and outgoing requests and other data including the date the request was received, the actions taken, the time the action was taken and the status of the requests. On April 16, 2014, Dominica submitted a table showing the MLAT requests it received from July to October 2013. This demonstrates that the Central Authority can glean statistics from its database and appears to addresses the second recommended action. This Recommendation is still ***outstanding.***

75. For **Recommendation 33, which was rated as PC** the examiners made three (3) recommendations to cure the gaps the discerned in the MER. Dominica's action at closing these gaps are detailed below:

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* – The legislative infrastructure to ensure this is achieved has been created by the enactment of the Code on May 1, 2014. Here **s.28 (2)** of the Code prescribes that the licensed agents must take reasonable measures to verify the beneficial owners or controllers of a legal person and update information on any changes to the beneficial ownership or control. As noted in the comments for Recommendation 12, the FSU which supervises the licensed agents has not as yet begun the process of monitoring licensed agents. This gap is ***open.***

ii. Recommended action two: *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.* Here the comments at Recommendation 23 are relevant as they relate to its functions and ongoing monitoring of financial institutions and DNFBPs. This process has been detailed in the Structured Work Programme and Examiners Inspections Manual which were submitted to the Secretariat Again, the weakness here is in relation the fact that the actual monitoring of licensed agents have not as yet begun. This is ***open.***

iii. Third recommended action: *there should be measures to ensure that bearer shares are not misused for money laundering.* Here the FSU issued 2013 guidelines include related measures detailed at paragraphs 47, 62, 71 and 72. At paragraph 47 there is the requirement for special procedures should to be developed for dealing with corporate clients that issue Bearer Shares to ensure that the beneficial ownership is always known to the Financial Services Providers. At paragraph 62 when a financial service provider is conducting business with companies with bearer shares, if the financial services provider is unable to identify the beneficial owner, then he is advised not to proceed with (establishing) the relationship. At paragraph 71, where a company's stock has been issued to a "bearer stock" company the financial service provider is advised that it would be prudent in such circumstances for the bearer certificates to be held by the financial service provider. At paragraph 71, where it is not practical for the Financial Services Provider to have physical custody of the bearer shares, it may be reasonable to accept that the shares are held by another custodian of good repute, such as a bank that is well known to the Provider. This is however only acceptable where the reputable custodian has given a written undertaking that custody of the bearer shares will not be released, and that no change

to any beneficial ownership interests or rights will be effected, without the prior knowledge and consent of the financial service provider. This gap is ***closed.***

76. Of the three (3) recommended actions for this Recommendation, two have not as yet been implemented resulting in the Recommendation 33 being ***outstanding.***

77. For **Recommendation 34, which was rated as NC** the examiners made three (3) recommendations to cure the gaps the discerned in the MER. Dominica's action at closing these gaps are detailed below:

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* – Regulation 72A of the Proceeds of Crime (Amendment) Act 2014 provides for the Attorney General to make regulations for the control of trusts in Dominica. On May 1, 2014 the Trusts and Non-profit Organisations Regulations, 2014, made by the Attorney General became law. At regulation **4 (1)** of the Trusts and Non-profit Organisations Regulations, 2014 the FSU has been designated as the Trusts and NPO supervisor. The functions of the FSU in this regard include acting as the registration, supervision and enforcement authority for trusts and protecting trusts and NPOs from being used for the financing of terrorism and ensuring compliance by Dominica with the FATF Recommendations applicable to trusts. At regulation **6 (1)** of the Trusts and Non-profit Organisations Regulations, 2014 the FSU as trusts and NPO Supervisor is required to establish a register of trusts and NPOs. That register must contain the following information:

   a. the name, address in Dominica and the telephone number and e-mail address, if any, of the trust or non-profit organisation;
   b. the nature, purpose, objectives and activities of the trust or non-profit organisation;
   c. the identity of the persons who own, control or direct the trust or non-profit organisation;
   d. the date of registration and, if applicable, deregistration of the trust or non-profit organisation;
   e. any other information that the Trusts and NPO Supervisor considers appropriate.

According to regulation **7(1)** of the Trusts and Non-profit Organisations Regulations, 2014 every trust or NPO must be registered in the Register once it has been incorporated, formed or otherwise established in Dominica or administered in or from Dominica. This information must be stored electronically and may be accessed by anyone during normal business hours. There is no requirement for the trustee to grant consent to anyone accessing information in the register. This gap is ***closed.***

ii. *Competent Authorities should be able to gain access to information on beneficial ownership of Trusts in a timely fashion* - As noted above, anyone, including the FIU, has access to the register of trusts and NPOs during normal business hours. This gap is ***closed.***

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* – The comments at paragraph 47 above are relevant here. This gap is ***closed.***

78. Dominica has addressed all the deficiencies noted by the Assessors consequently Recommendation 34 which is now ***fully rectified.***

79. For **Recommendation 38, which was rated as PC** the examiners made four (4) recommendations to cure the gaps they discerned in the MER. Dominica's action at closing these gaps are detailed below:

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 other appropriate purposes* - **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 FIU. 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. This gap is ***closed.***

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* - At **s.37** of the MLPA, the Government of Dominica may share property, which has been confiscated of forfeited, as a result of coordinated law enforcement action, with another State. This action is also in direct compliance with the examiners recommendation resulting in this gap being ***closed.***

iii. *The laws should clarify whether the requirement in Criterion 38.1 is met where the request relates to property of corresponding value* – The comments at SR.V are relevant here. According to **s.14 of the POCA** where the Court can order a person to pay to the state an equal amount, part or interest to the value of property where the state is satisfied that that a forfeiture order should be made in respect of such property, of a person who is convicted of a scheduled offence, but the property in question cannot be made subject to such an order because it cannot be located; has been transferred to a third party in circumstances which do not give rise to any inference that such a transfer was done to avoid forfeiture; is located outside Dominica; the value was significantly diminished; or was comingled to the extent that division would be inherently difficult. This gap is ***closed***

iv. *The laws should clarify whether the Commonwealth of Dominica could have arrangements for co-ordinating seizure and confiscation actions with other countries*- This has been addressed at **s.28 (1)** of Dominica's MACMA. Accordingly, where the Central Authority for a Commonwealth country transmits to the Central Authority for Dominica a request for assistance to the effect that in the requesting country an order has been made or is likely to be made which will have the effect of confiscating property derived or obtained directly or indirectly from the commission of a specified serious offence or imposing on that named person a pecuniary penalty calculated by reference to the value of the property so derived, the Attorney General shall cause an order to be made as he deems necessary to secure the making of an order of the kind required. Even though the reference here is to a Commonwealth country **s.30 (1)** of the MACMA allows Regulations to be made to give effect to Regulations for bilateral mutual assistance with countries specified in the said regulations and such

Regulations may in particular direct that the MACMA shall apply in relation to the country named in the Regulation as though it was a Commonwealth country. This gap is ***closed.***

80. The four (4) recommended actions have been directly addressed resulting in Recommendation 38 being ***fully rectified.***

81. For **Special Recommendation VI which was rated as NC,** the examiners had made four (4) recommendations to close the noted deficiencies. The analyses at Rec. 23 are relevant in so far as they relate to the Minister of Finance being responsible for licensing MVTs pursuant to **s.4 (1)** of the MSBA**.** Consequently the first gap is **closed**. With regard to the second recommendation about no specific regulator authority being charged with the responsibility of monitoring and ensuring compliance with the provisions of the AML/CFT regime, the analyses of Rec. 23 are again relevant in so far as they relate to the FSU being granted the function of monitoring through onsite examinations, the compliance of regulated persons with the MLPA, such Acts, Regulations, Guideline or the Codes relating to the ML(P)A 2011 or the SFTA. This gap is ***closed.*** The comments for Recommendation 23 are relevant here as it relates to the FSU being entrusted with the responsibility for ensuring monitoring and compliance with the requirements of the AML/CFT regime. The third gap is **closed.** The fourth recommendation requiring the FSU to institute a programme of offsite and onsite monitoring for other regulatory and supervisory purposes has been addressed. Here the second and third follow-up reports are relevant. This Special Recommendation is now ***fully rectified.***

82. **Special Recommendation VII was rated NC** with three (3) deficiencies and one recommended action. Dominica's action at closing these gaps are detailed below:

No measures in place to cover domestic, cross-border and non-routine wire transfers – **S.39-43**, **PART V of the Code** addresses the deficiencies identified by the Assessors. It provides for among other things:

- The regulation of the transfer of funds in any currency which are sent or received by a payment service provider that is established in Dominica.
- Mandatory requirements for payment service providers to ensure that every transfer of funds is accompanied by full originator information.
- Maintenance of records of full originator information on the payer that accompanies the transfer of funds for a period of seven years.
- The requirement that domestic wire transfers be accompanied by an account number or unique identifier that allows the transactions to be traced back to the payer, where the payer does not have an account.
- The creation of an offence for non-compliance with the requirements to keep and provide full originator information when requested by the payment service provider of the payee and when requested by the FSU.
- Filing of an STR where full originator information is absent from a wire transfer or is not provided.
- Mandating that the absence of full originator information be a factor in the risk-based assessment of the payment service provider.

- Rules regarding the responsibilities of the intermediary service provider to ensure that the full originator information accompanies a wire transfer that is received by the payment service provided.
- A mechanism that mandates that payment service providers of the payee and payer shall communicate with each other in the event that a wire transfer is received with missing originator information.

83. *There are no requirements for intermediary and beneficial financial institutions handling wire transfers* – **S.43 of the Code** is concerned with the obligations applicable to intermediary payment service providers. Included here is an obligation to ensure that any information, received on a payer, which accompanies a transfer is kept with that transfer. Where technical limitations prevent the information on the payer from accompanying the transfer, the service provider is required to keep records of all information on the payer that it received for seven (7) years. At **s.42 of the Code,** a payment service provider of the payee is required to put effective procedures in place to detect missing or incomplete originator information. According to **s.42.(5) of the Code** a missing or incomplete information shall be a factor in the risk-based assessment of a payment service provider of the payee as to whether a transfer of funds or any related transaction should be reported to the FIU. It should be noted that the term 'payment service provider' means a person whose business includes the provision of transfer of funds service. Contextually therefore obligations of both intermediary and beneficial institutions are subsumed in the related measures. This gap is ***closed.***

84. *No measures in place to effectively monitor compliance with the requirements of SR VII* – The measures in place to effectively monitor compliance of payment service providers with the Code have been articulated at Rec. 23 and are centred on the FSU in its capacity as the competent authority charged with the responsibility for monitoring financial institutions and DNFBPs. In this regard, the FSU through its onsite monitoring carries out sample testing of incoming and outgoing wire transfers to include full originator information as well information to identify the payee of the said wire transfer. This gap is ***closed.***

85. The enactment of the Code has endowed Dominica with the legislative measures required to close all the deficiencies noted by the Assessors resulting in Special Recommendation VII being ***fully rectified.***

86. **Special Recommendation VIII was rated as NC.** The NPOs were made subject to the AML/CFT regime of Dominica and all the legislation which regulates it, by virtue of the said Non-Profit Organisations Regulations. These Regulations are aimed at addressing some of the deficiencies identified under this recommendation. There were 13 recommended actions made by the Assessors to cure the deficiencies in the MER as follows:

i. *The Social Welfare Department should be charged with the supervision of the NGOs and be adequately staffed to take on this task* - Regulation 3 provides that the FSU is designated as the Trust and NPO supervisor. The duties and functions of the Trust and NPO Supervisor are laid out in Regulation 4 and are in addition to and not in derogation of any other powers or duties conferred or imposed on the NPO supervisor by any other Act. This gap is ***closed.***

ii. *Sanctions should be put in place for non-compliance as it relates to the annual reporting requirements* - Regulation 15(1) places an obligation on NPOs to report to and produce records to the NPO Supervisor upon receipt of a written Notice. The Regulation also provides for sanctions to be imposed in the event that there is non-compliance with these provisions on reporting. By virtue of Regulation 15(5), a registered Non-Profit Organisation that fails to

comply with a notice issued under sub regulation (1) commits an offence and is liable on summary conviction, to a fine not exceeding fifty thousand dollars. Regulation 12(1) also provides for de-registration of a registered NPO if the organisation is convicted of an offence under the POCA, the SFTA the Regulations. This gap is ***closed.***

iii. *NGOs should be required to report unusual donations to the Supervisory Authority* – The FSU is the supervisory authority for NPOs and being charged with this responsibility empowered to request information on the size and other relevant activities of the NPO. Schedule I of the Code empowers the FSU to ensure that records are kept in the appropriate manner and easily retrievable. As part of the mandate the FSU ensures that entities schedule under the MLPA do carry out periodical risk assessment to identify potential threats and vulnerabilities as it relates to Money laundering and Terrorism Financing activities and NPO's are part of the many institutions that are expected to comply. According to the Work Plan submitted to the Secretariat the FSU has schedule onsite inspections of the sector for the new financial year July 2014-June-2015. Notwithstanding that the Assessors recommendation was for NGOs to report unusual donations, the measures implemented by Dominica are actually consistent with criterion VIII.I. This gap is ***closed.***

iv. *NGOs should be sensitized to the issues of AML/CFT including how they could be used for terrorist financing* -The FSU has commenced its sensitization of the sector as it relates to the risk of terrorist abuse and another sensitization workshop is schedule for this quarter; in October 2014.

v. *NGOs should be encouraged to apply fit and proper standards to officers and persons working in and for the NGO* – Schedule 1 of the Code details best practices for charities and NPOs. The NPOs are required to adopt strict preventative measures as outlined therein. This means that they should not enter in any terrorism related activities and by virtue of those measures should be protected from terrorist abuse. The recommendation for the application of fit and proper standards to officers and persons working in the sector appear to be outside of the FATF best practices. This gap is ***closed.***

vi. *The requirements of the MLPA, its Regulations and the Guidance Notes should be extended to NPOs and their activities* – See iii above. This gap is ***closed.***

vii. *The Authorities should undertake a review of the domestic laws and regulations that relate to Non-profit organizations* – This review resulted in the enactment related provisions of the Code. This gap is ***closed.***

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* – See iii above. This gap is ***closed.***

ix. *Reassessments of new information on the sector's potential vulnerabilities to terrorist activities should be conducted* - See iii above. This gap is ***closed.***

x. *The Authorities should monitor the NPOs and their international activities* – This is part of the monitoring functions of the FSU. See iii above. This gap is ***closed.***

xi. *Training sessions should be implemented to raise the awareness in the NPO sector about the risks of terrorist abuse* – See iv above. This gap is ***closed.***

xii. *There should be measures to protect NPOs from terrorist abuse* – The application of the Code including the measures under Schedule 1 and the functions of the FSU is intended to redound to the protection sought here. This gap is ***closed.***

xiii. *There should be sanctions for violation rules in the NPO sector* – See ii above. This gap is ***closed***.

87. The enactment of the Code has endowed Dominica with the legislative measures required to close all the deficiencies noted by the Assessors resulting in Special Recommendation VIII being ***fully rectified.***

88. **Special Recommendation IX was rated as PC** and the Assessors made five (5) recommended actions to close the deficiencies they noted in the MER. The enactment of the Customs Act of 2010 has positively affected the deficiencies in the MER as follows:

i. *Customs should be given the authority to request further information relative to the origin of currency or bearer negotiable instruments* - Dominica has advanced **s.19 of the Customs Act** as the measure to address this recommended action. Here a passenger on a vessel or aircraft which has arrived in Dominica or which is departing Dominica is required to answer any questions put to him by a proper officer and at the request of the proper officer, produce any documents within that person's possession or control relating to any person or *'goods'* which are or have been carried by the vessel or aircraft. There are two issues to me noted here. The first issue related to the definition of goods which can be found at **s.2 of the Customs Act.** Accordingly, goods means personal property including livestock, conveyance, stores, baggage, and currency. Bearer negotiable instruments have not been captured. The second issue relate to the fact that the person being questioned is required to answer questions relating to goods being carried by the vessel or aircraft so it appears that good being carried on his person may not be captured. This gap is ***open.***

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.* Not yet addressed by Dominica. This gap is ***open.***

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* - Dominica reports that the legislative provisions are not in place. In practice however where a suspicion arises at customs in relation to ML and TF it is automatically transferred to the FIU. The FIU inputs all the information into their database and then they will proceed to commence their investigations into the matter. The Customs make frequent cash seizures but bearer negotiable instruments appear not to be covered.

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* – **S.186 of the Customs Act** provides for criminal sanctions only. Here a person who makes a false declaration is liable to be convicted on summary conviction to a fine of $100,000 or equivalent to three times the value of the goods in relation to which the document or statement was made, signed or submitted, whichever is greater or to imprisonment for 5 years. According to **s.2** of the General Interpretation and Clause Act Chap. 3:01 person includes a public body, company, partnership, trust, association or body of persons whether corporate or unincorporated. This gap is ***closed.***

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.* – By deduction and based on the above it appears that this is not covered because bearer negotiable instruments are not captured in the Customs Act and sanctions are strictly criminal in nature.

89. This Special Recommendation has been significantly improved however as noted above there are still some deficiencies requiring legislative and administrative attention.

CFATF Secretariat
November 10, 2014

Forty Recommendations	Rating	Recommended Actions	Action Undertaken	Remaining Actions to be taken
Rec. 1 ML offence	PC	The laws of the Commonwealth of Dominica should be amended to: 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.	Section 3 of the Money Laundering (Prevention) Act No. 8 of 2011 now specifically includes conversion and transfer. Once a person is involved in the act of conversion or transfer of property that is the proceeds of crime, then he has committed a money laundering offence. Section 3 of Piracy Act No. 11 of 2010 criminalizes Piracy. It reads "A *person who engages in piracy commits an offence."* 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 criminalizes extortion. Section 22 (a) (1) outlines the behavioural activity which constitutes extortion and subsection 3 states the penalty. By virtue of section 22 of the Proceeds of Crime (Amendment) Act, Act7 of 2013 **"Piracy"** was also added to list of scheduled offences for the purposes of identifying the proceeds of crime. Extortion is already part of the list of offences contained in schedule 1 of the Proceeds of Crime Act as amended by the Proceeds of Crime (Amendment) Act 10 of 2010. Section 3(1) has been amended by section 4 of the Money Laundering (Prevention) (Amendment) Act No. 5 of 2013 to reflect that 'property *that is the proceeds of crime, knowing or*	

			believing the property to be the proceeds of crime commits an offence'. Money Laundering is criminalised in section 3 of the Money Laundering (Prevention) Act, Act 8 of 2011(as amended) as follows: *(1) " 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*." As indicated in the legislative provision above, property for the purposes of the Money Laundering Offence is not restricted and therefore extends to any type of property, regardless of its value and whether the property directly or indirectly represents the proceeds of crime. In fact, the definition of *'Property'* is stated in section 2 of the Act as follows: *"**Property** includes money, investments, holdings, possessions, assets and all other property real or personal, heritable or moveable including things in action and other intangible or incorporeal property wherever situate, whether in Dominica or elsewhere, and includes any interest in such property."* There is no requirement in the ML(P)Act to prove that a person has been convicted of a predicate offence in order to establish that property is the proceeds of crime. It is only necessary that the property derived from the commission of an offence irrespective of whether there is a conviction or not. Section 2 of the Act defines Proceeds of Crime as follows*:*	

			*"**Proceeds of crime** means any property derived from or obtained directly or indirectly through the commission of an indictable or hybrid offence whether committed in Dominica or elsewhere."* It follows that every possible indictable and hybrid offence recognised by national laws would fall within the category/threshold of offences required for the purposes of a charge of the Money Laundering offences. This effectively covers all serious offences under the laws of the Commonwealth of Dominica and therefore covers an extremely wide range of offences. It is also clear from the above provision of the Act that the predicate offences for money laundering extend to conduct which occurred not only in Dominica but conduct which took place elsewhere as well. By virtue of section 3(2) of the ML (P) Act ancillary offences are created to adequately cover persons who are involved in the money laundering offence by virtue of association with, conspiracy to commit, aiding, abetting or attempting to commit the offence. Subsection 2 provides as follows: (2) *"A person who attempts, aids, abets, counsels or procures the commission of , or conspires to commit, an offence under subsection(1) omits an offence*."	
Rec. 2 ML offence – mental element and corporate liability	LC	i. Adequately detail what administrative proceedings may be employed in dealing with legal persons who have been found criminally liable;	These deficiencies have been cured by the MLPA No.8 of 2011. Section 7 of this Act which establishes the Financial Services Unit as the Money Laundering Supervisory Authority. Section 10 provides the authority with the power to give directives by written notice where there is contravention of the Act. These directives include : A) To cease engaging in any activity, behaviour or practice for a specified period B) To take remedial measures or action that the Authority considers necessary for the financial institution to be in compliance with the Act.	

		ii. Provide for civil and administrative sanctions; iii. Adopt an approach that would result in more effective use of existing legislation	Section 11 of the Act further gives the Authority the powers to administer the administrative sanctions. Section 11 (2) and 12 deals with the sanctions which can be imposed. The section states:11(2) " The Authority may, pursuant to subsection (1)- a) issue a warning or reprimand to the financial institution or person carrying on a scheduled business; b) give directives as seen appropriate c) impose on the financial institution or person carrying on a scheduled business, in accordance with section 13, a pecuniary penalty; or d) recommend, in accordance with section 12- i) the suspension of any or all of the activities that the financial institution or person carrying on a scheduled business may have otherwise conducted pursuant to the license of the financial institution or person carrying on a scheduled business; or\ ii) the suspension or revocation of the licence of the financial institution or person carrying on a schedule business. iii) By written notice, recommend to the relevant regulatory authority that it A. suspends any or all of the activities of that financial institution or person carrying on a scheduled business; or B. suspend or revoke the licence of the financial institution or carrying on the scheduled business, In circumstances where the relevant authority is satisfied that a legal person has contravened a guideline or have failed to comply with the directives issued under this Act, section 13 ML (P) Act also gives the power to the Authority to impose certain pecuniary penalties on them.	

			2.1 The offence of Money Laundering applies to all persons (natural /legal) that **knowingly** engage in Money Laundering activities. This can be gleaned from section 4 of the Money Laundering (Prevention) (Amendment) Act 5 2013 which amended section 3 of the 2011 Act. As indicted above, it provides that: *S.3(1)" 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*." The word *"person"* is defined in section 2 as follows: '*Person includes an entity, natural or juridical, a corporation partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organization or group, capable of acquiring rights or entering into obligations.'* 2.2 The Ml (P) Act also permits the intentional element of this offence of Money Laundering to be inferred from objective factual circumstances. This is provided for in section 4(1) of the Act as follows: *"A person commits an offence if –* *(a) He knows, suspects or has reasonable grounds to suspect that another person is engaged in a money laundering offence;* *(b) The information , or the other matter on which that knowledge or suspicion is based came to his attention in*	

			the course of his trade profession, business or employment; and *(c) He does not disclose the information or other matter to the Unit as soon as is reasonably practicable after it comes to his attention."* <u>2.3</u> The Money Laundering (Prevention) Act does not exclude any group or type of person from the provisions of the Act and so criminal liability effectively extends to legal persons that engage in the activities referred to under section3 (referred to above). In fact , the definition of "person" in section 2 of the Act is as follows: "*Person includes an entity, natural or judicial, a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organization or group capable of acquiring rights or entering into obligations."* <u>2.4</u> There is no legislative provision in the Laws of Dominica which precludes the possibility of parallel criminal, civil or administrative proceedings (against legal persons subject to criminal liability) in countries in which more than one form of liability is available. <u>2.5</u> The criminal, civil and administrative sanctions for Money laundering are effective, proportionate and dissuasive. This is evidenced by the provisions of ML(P) Act itself Section 3(3) of the Act provides an extremely dissuasive penalty for the commission of a money laundering offence:	

			"A person who commits an offence under subsection (1) and (2) is liable on conviction, to a fine not exceeding five million dollars, and to imprisonment for a term not exceeding ten years." This however, is a maximum penalty and therefore, the court has discretion to be reasonable and to make a determination as to what sentence is proportionate based on the particular circumstances of the case before it. Additionally, where the failure to disclose knowledge or suspicion of the money laundering is concerned, section 4(2) provides: "*A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding two hundred and fifty thousand dollars and to imprisonment for a term not exceeding three years or to both."* Other administrative sanctions which may be applied are already indicated above.	
Rec. 3 Confiscation and provisional measures	PC	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.	Sec. 29 (1) of the MLP Act No. 8 of 2011 allows the D.P.P to make an application to the court for an order to freeze or seize property subject to confiscation in relation to a money laundering offence. Section 29(1) as amended states that: "*The Director of Public Prosecutions may make an application to the Court for* ***<u>an order to freeze</u>***- *a) Property of, or in the possession or under the control of a person charged or who is about to be charged or is being investigated for a money laundering offence;* *b) Any property possessed by a person to whom a person referred to in paragraph (a) has directly or indirectly made a gift."*	

			Subsection (2) provides that an application made under subsection (1) may be made **without notice**. By virtue of section 31, the Order to Freeze under the Act is subject to the confiscation of the assets if the individual is later convicted. Section 31 provides: *"When a person is convicted of a money Laundering offence, the court shall order that the property, proceeds or instrumentalities derived from or connected or related to the offence, **are forfeited to the Government of Dominica."*** Though the word *'forfeited'* is used instead of *'confiscated'*, the two terms have been accepted to have largely the same meaning and is used in the legislation to mean the *'loss of right to something'*.	
		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.	Where a person 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, it would mean that they would no longer be considered "innocent" third parties. It would mean that they are accomplices or offenders in accordance to Section 4 of the Money Laundering (Prevention) (Amendment) Act and as such the authorities would have the power to seize their assets and there would be no need to void the transaction. However, legislation does provide for the voiding of transactions in certain situations. Section 11 of the Proceeds of Crime Act No. 4 of 1993, Section 38A of the SFTA 3 of 2003 as amended by section 16 of the SFT (Amendment) Act No. 9 of the 2011 and Section 34 of the MLP Act. Sec. 11 of the Proceeds of Crime Act No. 4 of 1993, provides for the ability of the Court to set aside any conveyance or transfer of property that occurred after the seizure of the property or the service of the restraining order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice.	

			Section 34 of the MLP Act No. 8 of 2011 also provides that: " *The court may –* *(a) Before making a forfeiture order; and* *(b) In case of property in respect of which a freezing order was made and where the order was duly served,* *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."* Sec. 38A of the SFTA 3 of 2003 as amended by Section 16 of the SFT (Amendment) Act No. 9 of 2011 also contains an identical provision to give the authority to void transactions which are likely to prejudice the ability of the state to recover property subject to confiscation. In all instances while the authority to render transactions void, is present, it is clear that the legislative provisions in Dominica guarantee the protection of the rights of all bonafide third parties. **N. B**. The provision can be exercised on property being held or owned by a third party. Since the DPP can provide evidence to the Court by way of an application that the property is related to a person charged or who is about to be charged with or is being investigated with a money laundering offence, the DPP may make an application to the Court for an Order to freeze the property. Rights of bona fide third parties are captured at Section 35 of Act No. 8 of 2011 In July 2010, the FIU secured a Freeze Order on a House, its contents and motor vehicles. In the same case, in August 2012, the FIU secured a supplementary Freeze Order on Bank Accounts and other assets. Copies of the Freeze Orders are submitted herewith.	

			If the property held by the third party satisfies the broad definition of money laundering as stated in Section 3 of the Money Laundering (Prevention) Act No. 8 of 2011 that third party will be charged for money laundering and the property will be subject to a Freeze Order. Section 35 of Act No. 8 of 2011 requires the DPP to publish Freeze Orders. This Section also provides for bona fide third parties to apply to the Court for recourse. The Money Laundering (Prevention) Amendment Act No.8 of 2013 repealed and replaced section 29 of the Parent Act and in so doing made provision to demonstrate that in Dominica, the existing confiscation measures may be effectively exercised on property held or owned by a third party where that third party has not been charged for a criminal offence. For example a recipient of a gift." The new section 29(1)(b) of provides that the DPP may make an application to the Court for an order to Freeze – (b) *Any property possessed by a person to whom a person referred to in paragraph (a) has directly or indirectly made a gift.* Competent authorities are also equipped with the power to identify and trace property that is, or may become subject to confiscation or is suspected of being the proceeds of crime. Section of 59B(1) of the Proceeds of Crime Act provides that the purposes of this part of the Proceeds of Crime Act are:- *(a) To enable the Attorney General to recover in civil proceedings before the Court, property which is or represents property-* *i) Obtained through unlawful conduct or* *ii) That has been used in, or in connection with, or is intended to be used in or in connection with unlawful conduct; and* *(b) Enable cash which is, or represents property obtained through unlawful conduct or which is intended to be used*	

			in unlawful conduct, to be forfeited in civil proceedings before the magistrates' Court; *(c) Ensures that powers conferred by this Part which is exercisable in relation to any property, including cash are exercisable whether or not any proceeding have been brought for an offence in connection with the property.* The Proceeds of Crime Act further equips competent authorities with the power to **follow and trace** property obtained through unlawful conduct (*Recoverable Property*) or the Proceeds of crime. The Proceeds of Crime (Amendment)Act, Act 7 of 2013 inserted new provisions into the Parent Act to address such matters: Section 59D provides that:- *(1) Property obtained through unlawful conduct, or tainted property is recoverable property but if property obtained though unlawful conduct or tainted property has been disposed of since it was obtained, it is recoverable property only if it is held by a person in whose hands it may be followed.* *(2) Recoverable property may be **followed** into the hands of a person obtaining it on a disposal –* *(a) In the case of property obtained through unlawful conduct, the person who through the conduct obtained the property;* *(b) In the case of tainted property, any person who had possession of the property for the purposes, or with the intent, of using the property for unlawful conduct; or* *(c) A person into whose hands it may, by virtue of this subsection, be followed.* With respect to the **tracing of property**, Section 59E provides as follows*:*	

			(1) Where property obtained through unlawful conduct or tainted property is or has been recoverable property, property which represents the original property is also recoverable property. *(2) Where a person enters into a transaction by which he –* *a) Disposes of recoverable property, whether the original property or property which by virtue of this Part, represents the original property; and* *b) Obtains other property in place of it,* *The other property represents the original property.* *(3) Where a person disposes of recoverable property which represents the original property, the property may be followed into the hands of the person who obtains it, and it continues to represent the original property.* Section 17 – 21 of the Proceeds of Crime Act Chap 12:29 contains detailed provisions on the procedure for making an application for a confiscation order , the rules for determining benefits and assessing value of property subject to confiscation. Section 20 specifically deals with the amounts that may be recovered under a confiscation order and section 21 deals with the variation of confiscation orders.	
Rec. 4 Secrecy laws consistent with the Recommendations	PC	i. Dominica should enact provisions allowing the ECCB, FSU, the MLSA, the registered agents to share information with other competent authorities	The FSU is the Money Laundering Supervisory Authority by virtue of section 7 of the Money Laundering (Prevention) Act No.8 of 2011. Sec. 32 of the FSU Act No. 18 of 2008 as amended by Section 11 of the FSU (Amendment) Act No. 10 of 2011 makes provisions for the sharing of information with other competent authorities. It states: *" In discharging his functions under the Act the Director may-*	

			a) *Seek assistance, share or request information from the Central Bank subject to a confidentiality agreement and a memorandum of understanding; or* b) *Seek assistance, share or request information, from other regulatory authority including a foreign regulatory authority*." There are two competent authorities performing AML/CFT functions viz. the FSU (regulatory functions) and the FIU (analytical and investigative functions). The FSU's regulatory functions are captured at Section 9 (1) (b) of Act No. 18 of 2008, as amended by Section 6 (a) of Act No. 10 of 2011. As per Section 7 of Act No. 8 of 2011, the FSU is established as the MLSA. The FIU's analytical and investigative functions are captured at Section 4 (1) (a) of Act No. 7 of 2011. By virtue of section 4 of the Financial Intelligence Act, Act 7 of 2011, the FIU's functions include the following:- The FIU:- 1. is responsible for receiving, requesting, analysing, investigating and disseminating information concerning all suspected proceeds of crime and suspicious transactions as provided for under this Act, and information relating to the property of terrorist groups and terrorist financing; 2. shall liaise with the money laundering and terrorist financing intelligence agencies outside Dominica; 3. may instruct any financial institution or person carrying on a scheduled business, to take steps it considers appropriate to facilitate any investigation anticipated by the Unit 4. may consult with any person, institution or organization within or outside Dominica for the purposes of the exercise of its powers and duties under this Act;	

			5. Shall pass on any relevant information relating to money laundering, terrorist financing or any other financial crime, to the Director of Public Prosecution with a view to taking appropriate action.	
Rec. 5 Customer due diligence	NC	ix. The legislation should entail requirement to undertake CDD measures according to recommendation 5.	The Money Laundering (Prevention) Regulations SRO.4 of 2013 deals with Customer Due Diligence in great detail. Regulation 8(1) deals with identification procedures as it pertains to business relationships and transactions. In summary , it provides that:- *"…….Identification procedures are deemed to be in accordance with the regulations if they require as soon as is reasonably practicable after contact is first made between a person an applicant for business concerning any particular business relationship or transaction –* *a) The production by the applicant for business of satisfactory evidence of identity; or* b) *The taking of measures specified in the procedures as will produce evidence of identity and where that evidence is not obtained, the procedures shall require that the business in question shall not proceed."* According to sub regulation 8(4), evidence of identity is deemed to be satisfactory if – *a) It is reasonably capable of establishing that the applicant is the person he claims to be; and* *b) The person who obtains the evidence is satisfied, in accordance with the established internal procedures and policies of the business concerned, that it does establish that fact.*	

			Sub regulation 8(5) also provides that the following should be taken into account in determining what is reasonably practicable in relation to a particular business relationship: *a) The nature of the business relationship or transaction;* *b) The geographical locations of the parties;* *c) Whether it is possible to obtain the evidence before commitments are entered into or before money is exchanged* <u>Regulation 9</u> provides that : *A person carrying on a relevant business shall establish and verify the identity of a customer by requiring the customer to produce an identification record or other reliable and independent source document when –* *(a) It establishes a business relationship;* *(b) In the absence of a business relationship, conducts-* *i. A transaction of an amount of at least ten thousand dollars whether conducted as a single transaction or several transactions…..* *ii. An electronic funds transfer referred to in regulation 21;* *(c) There is suspicion of money laundering; OR* *(d) It has doubts about the veracity or adequacy of previously obtained customer identification data.* Additionally, <u>Regulation 10</u> places further CDD obligations on a person carrying on a relevant business to obtain further information from the client and also dictates measures to be taken in relation to the business relationship. *The requirements of Regulation are as follows:* *(a) When establishing a business relationship, obtain information on the purpose and nature of the business relationship;*	

		x. 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.	*(b) If a transaction is conducted by a natural person adequately identify and verify his identity including-* *i. Name and address* *ii. Social security card, passport or other official identifying document;* *(c) If a transaction is conducted by a legal entity, adequately identify the beneficial owner of the entity and take reasonable measures to identify and verify its ownership and control structure including -* *i. The customer's name, legal form, head office address and identities of directors;* *ii. The principal owners and beneficiaries and control structure;* *iii. Provisions regulating the power to bind the entity;* *And to verify that any person purporting to act on behalf of the customer is so authorised, and identify those persons.* <u>Regulation 11</u> requires that on-going due diligence is done by all the entities. This regulation provides that :- *"A person carrying on a relevant business shall employ ongoing customer due diligence measures with respect to every business relationship and closely examine the transactions conducted in the course of a business relationship to determine whether the transactions are consistent with its knowledge of the relevant customer, his commercial activities, if any, and risk profile and, where required, the source of his funds."* **<u>Section 21 of the AML/CFT Code of Practice</u>** contained in Proceeds of Crime SRO 10 of 2014 also contains in great detail the requirements of Customer due diligence and exactly what the due diligence process to be undertaken by every entity or DNFBP should entail. Subsection (4) also stipulates the circumstances in which an entity shall undertake customer due diligence. The	

			provisions are very lengthy and so they can be viewed in the attached copy of the Code. The Money Laundering (Prevention)(Amendment) Regulations SRO 14 of 2013 inserted a new section **25A** into the substantive Money Laundering (Prevention) Regulations which provides for the information collected under the CDD process to be kept up to date. Regulation 25A provides as follows: *"A person carrying on a relevant business shall keep documents, data or information collected under these Regulations up to date and relevant by undertaking reviews of existing records."* These Money Laundering (Prevention) (Amendment) Regulations and the substantive Regulations are legally enforceable in Dominica by virtue of section 54 of the Money Laundering (Prevention) Act, Act 8 of 2011 which gave the Minister the power to make these Regulations. Section 7 of the MLPA No. 8 of 2011 establishes the Financial Services Unit as the Money Laundering Supervisory Authority. Provisions of the MLPA and Regulations are enforceable using the section quoted above along with section 10 which allows the Authority (FSU) to give directives to financial institutions. Section 11 of the Act gives the Authority the powers to administer the administrative sanctions. Section 11 (2) and 12 deals with the sanctions which can be imposed. Section 10 (1) (c) of the Money Laundering (Prevention) S.R.O 4 provides for the taking of reasonable measures to determine beneficial owners. This is in compliance with CDD measures outlined in the FATF recommendations.	

		xi. Requirement for on-going due diligence on the business relationships should be enforceable.	Additionally, section 23 of the AML/CFT Code of Practice (Proceeds of Crime SRO 10 of 2014) provides for the updating of customer Due diligence information as follows: (1)"Where an entity or a professional makes a determination that a business relationship presents a higher risk, it shall review and keep up-to-date the customer due diligence information in respect of the relevant customer at least once every year. (2) In cases where the business relationship is assessed to present a normal or low risk, an entity or professional with whom the relationship exists shall review and keep up to date the customer due diligence information in respect of that customer at least once every three years. As indicated above, Regulation 11 places an obligation on relevant businesses to employ ongoing customer due diligence measures with respect to every business relationship: *"A person carrying on a relevant business shall employ ongoing customer due diligence measures with respect to every business relationship and closely examine the transactions conducted in the course of a business relationship to determine whether the transactions are consistent with its knowledge of the relevant customer, his commercial activities, if any, and risk profile and, where required, the source of his funds."* Section 8, 10, 11, 12 & 22 of the Money Laundering (Prevention) Regulations of 2013 provide for enhanced due diligence for higher risk customers.	

			To further ensure that financial institutions are not permitted to keep anonymous accounts or accounts in fictitious names, Regulation 22 required entities carrying on a relevant business to i) verify the identity of its existing customers within six months of the commencement of the Act; ii) Notwithstanding sub regulation (1), the Authority may in special circumstances, extend the period for a further period of six months. Anonymous accounts are not permitted in Dominica due to the identification requirements mandated by the MLP Regulations referred to. Regulations 3, 5, 6, 7, 8 & 9 of S.R.O. 14 of 2001 implicitly prevent the opening of anonymous accounts (current regulations). These provisions are carried forward in the new MLP Regulations at section 3 and Part III of the MLP S.R.O. No Customer is exempted from these requirements. Part III of the Money Laundering (Prevention) Regulations No. 4 of 2013 provides for *inter alia* the mandatory requirement for the production of sufficient evidence of identity with respect to both natural and legal persons. In the absence of the production of that information by the applicant for business the Regulations mandate that the relation should not proceed. In addition, information is required on the purpose and nature of the business relationship. Additional CDD control measures can be found at section 3 of the Money Laundering (Prevention) Regulations which makes it mandatory for FIs and DNFBPs to maintain identification procedures in accordance with regulations 8, 9, 10 and 15; as well as record keeping, internal reporting (regulation (26), internal controls and communication procedures, an audit function to test compliance, screening procedures when hiring customers and	
		xii. Requirement to take reasonable measures to	initial and refreshers training policies. A penalty of forty	

		determine who are the ultimate beneficial owners or exercise the ultimate effective control should be enforceable.	thousand dollars and a term of imprisonment not exceeding two (2) years is possible in default of compliance. Non-compliance with the Money Laundering (Prevention) Act and Regulations made thereunder will invoke the powers of the Money Laundering Supervisory Authority established at section 7 of the Money Laundering (Prevention) Act No. 8 of 2011. A range of sanctions are at the disposal of the said Authority at section 8, 10, 11, 12 and 13 of the Money Laundering (Prevention) Act for non-compliance These sanctions range from warning letters, issuance of directives and guidelines with regards to measures to be implemented by FIs and DNFBPs, imposition of pecuniary penalties, suspension of activities, revocation of license or issuance of a reprimand.	
		xiii. The Guidance Notes should include additional guidance with regards to identification and verification of the underlying principals, persons other than the policyholders with regards to insurance companies. xiv. Financial institutions should to perform enhanced due diligence for higher risk customers	An additional element of the required CDD measures is captured at section 10 of the Money Laundering (Prevention) Regulations regarding certain activities a FIs or DNFBP must do when establishing a business relationship. They include obtaining information on the purpose and nature of the business relationship; evidence of identity when the transaction is carried by either a natural or legal person. Mandatory on-going due diligence measures captured at section 11 of the Regulations provides for the execution of due diligence measures by financial institutions and DNFBPs with regards to every transaction conducted during the course of the business relationship. As indicated above, Regulation 10 (1)(c) provides that a person carrying on a relevant business shall if a transaction is conducted by a legal entity adequately identify the beneficial owner of the	

			entity and take reasonable measures to identify and verify its ownership and control structures including – *i. The customer's name, legal form, head office address and identities of directors;* *ii. The principal owners and beneficiaries and control structure;* *iii. Provisions regulating the power to bind the entity;* *And to verify that any person purporting to act on behalf of the customer is so authorised, and identify those persons.* The reference made to CDD requirements to be obtained by the financial institution and DNFBPs including the identity of the beneficial owners of legal persons must be sufficient to identify the ownership and control structure of same. This includes incorporation documents, the identities of directors, the principal owners and beneficial owners and any authorised to act on behalf of the company including their identities. The FSU has issued the Anti-Money Laundering Guidelines of 2013. Paragraph 41 of the guidelines deal with identification and verification of the underlying principals, persons other than the policyholders with regards to insurance companies. These guidelines are attached for your guidance.	
		xv. Financial institutions are not required to perform CDD measures on existing clients if they have anonymous accounts.	Regulation 12 provides that a person carrying on relevant business shall apply on a risk-sensitive basis enhanced customer due diligence measures and enhanced ongoing due diligence under regulation 11 in any situation which by its nature can present a higher risk of money laundering.	

			Section 22(1) of the AML/CFT Code of Practice provides that enhanced due diligence refers to the steps additional to due diligence which an entity or a professional is required to perform in dealings with an applicant for business or a customer in relation to a business relationship or one-off transaction in order to forestall and prevent money laundering, terrorist financing and other financial crime. Subsection (2) of the code provides that every entity or profession shall engage in enhanced customer due diligence in its or his dealings with an applicant for business or a customer who, or in respect of a transaction which is determined to be a higher risk applicant for business or customer, or transaction, irrespective of the nature or form of the relationship or transaction. Subsection 4 of the code provides that where a business relationship or transaction involves – a) A politically exposed person, b) A business activity, ownership structure, anticipated, or volume or type of transaction that is complex or unusual, having regard to the risk profile of the applicant for business or customer or where the business activity involves an unusual pattern of transactions or does not demonstrate any apparent or visible economic or lawful purpose; or c) A person is located in a country that is either considered or identified as a high risk country or that has international sanctions, embargos or other restrictions imposed on it, An entity or a professional shall consider the application for business or customer to present a higher risk in respect of whom enhanced due diligence shall be performed. Existing customers are captured in Regulation 22 where a period of six (6) months is given to the financial institution and DBFBPs to verify the identity of the customers failing which, the	

			relationship should be terminated. An extension of time may be granted only on application to the Financial Services Unit, the Supervisory Authority with oversight over these matters, for a period of six (6) months. However, failure by the financial institution or DNFBP to obtain the necessary data o sufficiently identify the identity of its customers, the regulation mandates that the relationship shall be terminated.	
		xvi. The bank should not keep an exempted list for business clients so that they do not require to fill out a source of funds declaration form for each deposit	Section 23(4) of the AML/CFT code of practice, provides that notwithstanding anything contained in the section of the code which covers customer due diligence, where an entity or a professional forms an opinion upon careful assessment that an existing customer presents a high risk or engages in transactions that are of such material nature as to pose a high risk, it or he shall apply customer due diligence or, where necessary, enhanced customer due diligence, measures and review and keep up to date the existing customer's due diligence information. All clients of FIs and DNFBPs, including existing clients are required to produce sufficient information as relates to their identity. This is mandated in particular in regulations 8 and 22 – Existing Clients. All FIs and DNFBPs are given at a maximum one (1) year to update all records of existing clients. Six (6) months in the first instance and an additional six (6) months on application approved by the Authority. The regulations further states that failure to update these records should result in the termination of the business relationship. It can be deduced from the range of CDD measures that FIs and DFBPS are obligated by law to comply, when establishing business relationships or continuing previously established business relationships. Anonymous accounts are therefore not allowed within the jurisdiction. Regulation 18 provides that in only two very limited circumstances identification procedures may not be required	

			when conducting a transaction. These circumstances are as follows: a. *Where a customer is a person carrying on a relevant business which has been licensed or registered, and is supervised, and is supervised for anti-money laundering by the Authority and the Authority has satisfied itself as to the adequacy of the measures to prevent money laundering; or* b. *Where there is a transaction or a series of transactions taking place in the course of a business relationship, in respect of which the customer has already produced satisfactory evidence of identity.* Regulation 11 of the Money Laundering (Prevention) Regulations requires that banks having knowledge of their customers and the nature of their commercial activities should closely examine transactions conducted in light of the knowledge of the risk profile and where necessary, the source of Funds. There is no express or implied provision which exempts certain business clients form the being asked to declare their source of funds. The provision states as follows: *"A person carrying on a relevant business shall employ ongoing customer due diligence measures with respect to every business relationship and closely examine the transactions conducted in the course of a business relationship to determine whether the transactions are consistent with its knowledge of the relevant customer, his commercial activities, if any, and risk profile and, where required, the source of his funds."* Section 19(2) of the Money Laundering (Prevention) Act 8, 2011 places an obligation on all financial institutions carrying on a scheduled business and suspects or has reasonable grounds to suspect that a transaction, proposed transaction or attempted transaction, is related to a money laundering offence or that the	

			funds or property are proceeds of crime, to promptly report the transaction to the Unit in a form approved by the Director of the Unit. According to subsection (3) of the Act a financial institution that fails to comply with subsection (2) commits an offence. By virtue of subsection (4) a report filed must: a. Set out all the particulars known by the financial institution regarding the transaction; b. Contain a statement of the grounds on which the financial institution holds the suspicion; and c. Be signed or otherwise authenticated by the financial or scheduled business	
Rec. 6 Politically exposed persons	NC	i. Recommendation 6 should be enforceable on the financial institutions. ii. Financial institutions should apply risk based approach on their PEPs clients, and continue to do enhanced due diligence on them.	All the following provisions and all those contained throughout this document currently have the force of law. This means that they have taken effect and are in operation in the Commonwealth of Dominica in accordance with section 10 of the Interpretation and General Clauses Act Chap3:01. As such, they are enforceable on any and all financial institutions within the scope of their provisions. Regulation 19 (1) of the Money Laundering (Prevention) Regulations SRO No. 4 of 2013 requires relevant businesses to put appropriate risk management systems in place to determine if a customer or beneficial owner is a PEP. section 19(2) further states that "*where a person carrying on a relevant business determines that a customer is a politically exposed person it shall-* *(a) adequately identify and verify his identity in accordance with regulations 9 and 10;*	

			(b) require its officers and employees to obtain the approval of senior management before establishing or continuing a business relationship with the person; *(c) take reasonable measures to establish the source of funds and source of property; and* *(d) Conduct regular enhanced monitoring of the business relationship."* The Proceeds of crime Act has been amended by virtue of the inclusion of a new s.60 which gives the Minister of Finance the power to issue a code of practice in respect of money laundering and Terrorist Financing. This amendment contained in the Proceeds of Crime (Amendment) Act, Act 2 of 2014. Section 22 of the said AML/CFT Code of Practice which came into force on May 1st 2014, provides for steps additional to the customer due diligence already carried out by entities and professionals in dealing with an applicant for business or a customer in relation to a business relationship or one-off transaction in order to forestall and prevent money laundering, terrorist financing and other financial crimes. It mandates in subsection (2) that every entity or professional shall engage in enhanced due diligence in its or his dealings with an applicant for business or a customer who, or in respect of a transaction which, is determined to be a higher risk applicant for business or customer, or transaction, irrespective of the nature or form of the relationship or transaction. Section 22 (3) and (4) details various additional enhanced due diligence measures that an entity or professional shall adopt with respect to higher risk business relationships, customers or transactions. **Section 24 (1) (a) of the AML/CFT Code of Practice** makes it mandatory that every entity or professional shall have, as part of	

			its or his internal control systems, appropriate risk-based policies, processes and procedures for determining whether an applicant for business or a customer is a politically exposed person. Several additional mandatory risk based approaches are contained in the remaining provisions from 24 (1) (b) through to section 24 (5) specifically regarding PEPS. ***See attached AML/CFT Code for detailed provisions.***	
Rec. 7 Correspondent banking	NC	The specific requirement to understand and document the nature 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. Financial institutions should be required to assess all the AML/CFT controls of respondent. vi. The financial institutions should document the AML/CTF responsibility of each institution in a correspondent relationship	Regulation 20(1) of the Money Laundering (Prevention) (MLP) Regulations of 2013 specifies the requirements for financial institutions with regards to cross border correspondent banking relationships and similar relationships. This section outlines the requirement for customer identification, assessment of the entity's anti–money laundering controls to ascertain that they are adequate and effective, and that ongoing customer due diligence is carried out. Regulation 20 (1) (a),(b) &(c) and subsection (3) of the MLP Regulations SRO No. 4 of 2013 requires banks to adequately identify and verify respondent banks, gather sufficient information to determine their reputation and their quality of supervision as well as whether the respondent bank has been subject to money laundering investigations or regulatory action. Regulation 20 (1) (d) of SRO No. 4 of 2013 also requires banks to assess a respondent bank's anti money laundering controls and ascertain that they are adequate and effective. Regulation 20(1)(f) requires banks engaging in cross border correspondent banking relationships to document the responsibilities of these correspondent financial institutions.	

		vii. Financial institutions should require senior management approval before establishing new correspondent relationships. viii. 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.	Regulation 20(1)(e) requires the in relation to cross- border correspondent banking, that a bank must first obtain the approval from senior management before establishing a new correspondent relationship. Regulation 20(2) addresses concern 7.5. It provides for necessary measures related to payable through accounts. The section states:- *"Where a cross-border correspondent banking relationship involves the maintenance of payable- accounts, the bank or the financial institutions shall ensure that the person or entity with whom it has established the relationship-* *a. has verified the identity of and performed on-going due diligence on such of that person's customers that have direct access to accounts of the financial institution; and* *b. is able to provide the relevant customer identification data upon request to the financial institution."* **Section 37 of the AML/CFT code of practice** further regulates the conduct of a bank which proposes to begin or maintain a correspondent relationship with another bank. It is clearly stipulated in this legislative provision that a bank shall not maintain a relationship with a respondent Bank that provides banking services to a shell bank. A local bank is also required by paragraph (b) of this section to undertake customer due diligence measures and where necessary,	

			enhanced customer due diligence measures in respect of a respondent bank in order to : i. to fully and properly understand the nature of the respondent bank's business; ii. to make a determination from information and documents available, regarding the reputation of the bank and whether it is appropriately regulated; and iii. to establish whether or not the respondent bank is or has been the subject of a regulatory enforcement action or any money laundering, terrorist financing or other financial crime investigation In respect of the documentation of the AML/CFT responsibility of institutions in a correspondent relationship, section 37(f) of the code requires that banks- a. ensure that the respective anti-money laundering and terrorist financing measures of each party to a correspondent banking relationship is fully understood and properly recorded; and that they b. adopt such measures as they considers necessary to demonstrate that any documentation or other information obtained in compliance with the requirements of this subsection is held for current and new correspondent banking relationships. **Section 38 of the code** effectively places a responsibility upon financial institutions to ensure that normal CDD obligations are adhered to by the correspondent banks which provide customers with direct access to its services by way of payable through accounts. By virtue of this section, financial institutions are obligated to ensure that they:	

			a. Undertake appropriate customer due diligence and, where applicable, enhanced customer due diligence in respect of customer that have direct access to the correspondent bank's services; and *b. Are able to provide relevant customer due diligence information and verification evidence to the correspondent bank upon request.*	
Rec. 8 New technologies & non face-to-face	NC	i. Financial institutions should be required to have measures aimed to prevent the misuse of technological developments.	**Section 13 of the AML/CFT Code of Practice** addresses this deficiency by creating a provision that states that "an entity or professional shall adopt and maintain such policies, procedures and other measures considered appropriate to prevent the misuse of technological developments for the purposes of money laundering or terrorist financing. Regulation 23 of the Money Laundering (Prevention) Regulations states that a person carrying on a relevant business shall put policies in place and take measures necessary to address any specific risks associated with non-face-to-face business relationships or transactions. Section 15 of the AML/CFT Code of Practice mandates that an entity or a professional shall exercise constant vigilance in its dealings with an applicant for business or with a customer, and in entering into any business relationship or one-off transaction, as a means of deterring persons from making use of its or his facilities for the purpose of money laundering and terrorism financing. The section further elucidates several additional CDD roles and duties of an entity or a professional to include: • Verification of its customers • Keeping vigilance over any suspicious transactions • Ensuring compliance with reporting requirements to FIU • Record keeping	

			• Putting in place a mechanism as part of its internal control to enable it to: o Determining confirmation of true identity of customers o Recognition of suspicious transactions and the reporting of same to the FIU Ensure that reports to the FIU are made in a timely manner where a proposed or existing business relationship or one-off transaction with a politically exposed person gives grounds for suspicion. Section 31 of the AML/CFT Code of Practice Addresses the issue of non- face to face transactions as follows: Subsection (2) provides that where an entity or professional enters into a business relationship with an applicant for business or a customer whose presence is not possible, the entity or professional shall adopt the measures outlined in the code and such additional measures as it or he may consider relevant having regard to the appropriate risk assessments, to identify and verify the applicant for business or customer. Subsection (4) further provides that where the identity is verified electronically or copies of documents are relied on in relation to non-face to face application for business, an entity or a professional shall apply an additional verification check, including the enhanced customer due diligence measures to manage the potential risk of identity fraud.	
Rec. 9 Third parties and introducers	PC	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	This final deficiency under Recommendation 9.1 has been recently fully addressed by the inclusion of a new obligation in Regulation 13 of the Money Laundering (Prevention) Regulations, S.R.O. 4 of 2013. This is contained in the new paragraph (a) of Regulation 13 which reads as follows:	

			detailed in Recommendation 5.3 to 5.6.	*"Where a person carrying on a relevant business relies on an intermediary or third party to undertake its obligations under regulations 8, 9,10 or 19 or to introduce business to it-* *a) It shall immediately request from the third party the evidence, documents and information required under regulation 8,9,10 and19;"* **This new paragraph now places an obligation on the financial institutions to immediately ensure receipt of the necessary information concerning the element of the CDD process. Recommendation 9.2 and 9.3 are satisfied as follows: *(c) It must be satisfied that the third party is able to provide copies of identification data and other documents relating to the obligation of due diligence under regulations 8,9,10 or19 without delay;* *(d) it shall satisfy itself that the third party or intermediary is regulated and supervised, and has measures in place to comply with the requirements set out in regulations 8,9,10,19,20 and 24.*	
		ii.	The requirement that financial service providers be ultimately responsible for obtaining documentary evidence of identity of all clients should be made enforceable	Section 2(4) of the AML/CFT Code of practice provides that notwithstanding anything contained within the code, the ultimate responsibility for complying with the requirements of the code rests with the entity or professional to whom the code applies.	
		iii.	Competent authorities should take into account information on countries which apply FATF Recommendations in determining in which	Section 54(1) of the AML/CFT Code of Practice places a responsibility on all entities engaging in business relationships and transactions to pay special attention to whether the jurisdiction of that foreign party sufficiently applies the FAFT	

		country the third party can be based.	recommendations with respect to money laundering and terrorist financing. Subsection (2) also mandates that the Financial Services Unit (FSU) publishes on its website a list of jurisdictions for the purposes of the Code of practice, the Money Laundering (Prevention) Regulations 2013 and the Suppression of Financing of Terrorism Act 2003, that are recognised as jurisdictions which: a) Apply FATF recommendations and those which FSU considers for the purpose of subsection(1) apply or sufficiently apply those recommendations; and b) Whose anti-money laundering and terrorist financing laws are equivalent with the provisions of the AML and CFT laws in Dominica By virtue of subsection 5, the FSU may from time to time issue advisories to entities to advise on the weaknesses in the Anti-money Laundering and Terrorist Financing systems of other jurisdictions. This will effectively assist financial institutions in making informed decisions when determining which Third party institutions they should utilise. To date the FSU has been in compliance with that provision of the Code. The recently published website of the Financial Services Unit(FSU) is www.fsu.gov.dm	
Rec. 10 Record keeping	C		Money Laundering (Prevention) Act 8 of 2011 places an **obligation** upon all financial institutions and persons carrying on a scheduled business to keep records. Section 16(1) of the Act provides that A financial institution or person carrying on a scheduled business shall keep business transaction records of all business transactions for a period of seven (7) years after the termination of the business transaction recorded. Subsection (2) provides that a financial institution or	

			person carrying on a scheduled business who wilfully fails to comply with subsection (1) commits an offence. The **record keeping procedures** are explained in detail in Part IV (sections 24-25) of the Money Laundering (Prevention) S.R.O 4 of 2013. Section 24 is lengthy and can therefore be referred to in attached SRO. Section 25 provides that: *(1) A person carrying on a relevant business shall ensure that any records required to be maintained under the Act and these Regulations are capable of retrieval in legible form without undue delay.* *(2) A person carrying on a relevant business may rely on the records of a third party in respect of the details of payments and transactions by customers, provided that the third party is willing and able to retain and, if asked, to produce in legible form copies of the records required.* Part VI of the AML/CFT Code of Practice 2014 further states that the record keeping requirements under the 2013 regulations **must** be complied with by all relevant entities and professionals. Section 44(1) places an obligation on all entities and professionals to comply with the record keeping requirements in the 2013 Regulation as well as the new AML/CFT Code of Practice. Section 44(2) provides that the records of a business relationship or transaction must be maintained in a form which can be easily retrievable. This part of the Code goes on to stipulate in section 44(3) that a *"retrievable form"* in respect of a record may consist of the following: a) an original copy or a certified copy of the original; b) microform; c) a computerised or other electronic data; or	

			d) a scanned document of the original document which is certified where necessary. Section 46 provides for the maintenance of records regarding due diligence and identity. Section 47 provides in detail what the transaction records should include. These include: *a) the name and address of the customer;* *b) the kind of currency involved;* *c) the beneficiary of a monetary transaction, including the name and address;* *d) the account number, name and other identifier with respect to the account* *e) Date of the transaction;* *f) Nature of the transaction;* *g) In the case of electronic transfers, sufficient detail to establish identity of the customer remitting the funds;* *h) Account files and business correspondence with respect to transactions.* The AML/CFT code is attached and for perusal of other provisions of Part VI which deals with the Record keeping requirements.	
Rec. 11 Unusual transactions	PC	i. The Commonwealth of Dominica should consider amending its legislation so as to mandate financial 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	Section 19 of the MLP Act No. 8 of 2011 as amended by section 6 of the Money Laundering (Prevention) (Amendment) Act 5 of 2013 places an obligation on financial institutions or persons carrying on a scheduled business to pay special attention to all complex, unusually large transaction's or unusual patterns of transaction. **Section 19(1)(a) (ii)and (iii) state that:** *"A financial institution or person carrying on a scheduled business shall pay attention to-* *(i) All complex, unusual or large business transactions, whether completed or not;*	

		no apparent or visible economic or lawful purpose. 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 fort their findings in writing and to make such findings available to competent authorities and auditors.	*(ii) all unusual patterns of transactions, whether completed or not;* *(iii) insignificant put periodic transactions, that have no apparent or visible economic or lawful purpose:'* Further, section 19(1A) states that :- *"A financial institution or person carrying on a scheduled business shall examine as far as possible the background and purpose of transactions under subsection (1) and shall keep a written record of their findings for at least seven years.* Section 19(1B) states that: "*A financial institution or person carrying on a scheduled business shall make the records kept under subsection (1A) available to its auditor."* This deficiency is further addressed by the virtue of the AML/CFT Code of Practice as follows: Section 15(1) of the Code provides that: "*An entity or a professional shall exercise constant vigilance in its dealings with an applicant for business or with a customer, and in entering into a business relationship or one-off transaction, as a means of deterring persons from making use of any of its facilities for the purpose of money laundering and suppression of terrorist financing activities."* Pursuant to this particular provision, it is provided in **section 15(2)(h)** of the Code that:- *"An entity or a professional shall identify and pay special attention to, and examine as far as possible, the background and purpose of any complex or unusually large or unusual pattern of*	

			transaction or transaction that does not demonstrate any apparent or visible economic or lawful purpose or which is unusual having regard to the pattern of business or known sources of an applicant for business or a customer." **Section15(2)(i)** also expressly mandates that an entity has an obligation to record its findings in relation to any examination carried out pursuant to paragraph (h) above, and make such findings available to the FIU, and the auditors of the entity for a period of at least seven years. Additionally, section 19(1-2) of the AML/CFT Code of Practice further places a duty on the **Compliance Officer** of an entity to make a report to the **FIU.** Therefore this ensures that information regarding unusual transactions will be brought to the attention of a competent authority. Failure to perform such an obligation amounts to the commission of an offence to which a penalty attaches **Section 15(2)(d)** of the code also ensures that data is kept concerning same and that report are made to the FIU. The provision reads as follows: (ii) *recognise and report to the FIU, a transaction which raises suspicion that the money involved may be a proceed of money laundering or may relate to a financing of terrorist activity;* *(iii) Keep records of its dealings with a customer and of reports submitted to the FIU for the period prescribed under the ML(P)A 2011, the Regulations made thereunder and the Code.*	
Rec. 12 DNFBP – R.5, 6, 8-11	NC	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	Section 2 of the MLPA No. 8 of 2011 defines 'Scheduled Business' as any activity listed in PART II of the Schedule to the MLPA. Part II of Schedule II of the Money Laundering (Prevention) Act, Act 8 of 2011 as amended by the Money Laundering (Prevention) (Amendment) Acts 5 and 8 of 2013	

		also applicable to DNFBPs. The implementation of the specific recommendations in the relevant sections of this report will also be applicable to DNFBPs.	includes all relevant DNFBPs. Therefore, the provisions referred to under recommendation 5, 6 and 8- 11 apply equally to DNFBPs. The definition of *'relevant business* in section 2 of the Money Laundering (Prevention) Regulations SRO 4 of 2013 includes all the relevant DNFBPs. Accordingly, the CDD measures outlined in the ML (P) Regulations also extend to all DNFBPs. Section 2 of the AML/CFT Code of Practice provides that the word *"Entity"* which is used throughout the code means – a) A person or institution that is engaged in a relevant business within the meaning of regulation 2(1) of the Money Laundering (Prevention) regulations, 2013; **or** b) A person that is engaged in a relevant non-financial business activity listed in Part II of Schedule II to the Act.	
		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.	Section 7 of the MLP Act No. 8 of 2011 establishes the Financial Services Unit (FSU) as the Money Laundering Supervisory Authority. Therefore the FSU is and continues to be the authority responsible for monitoring compliance with the ML(P)A 2011. Section 9 (1) (b) of the FSU Act No. 18 of 2008 as amended by section 6 of Act No. 10 of 2011 mandates that the principal functions of the Director of the FSU are to monitor compliance with the Money Laundering (Prevention) Act and such other Acts, Regulations, Guidelines or the Codes relating to the money laundering (Prevention) Act or Suppression of the Financing of terrorism Act. Additionally, section 9 of the AML/CFT Code of Practice makes it the duty of the FSU to monitor compliance by its licenses and other persons who are subject to compliance measures, with the Code and any other enactment (including any other code,	

			guidance notes and any guidelines) relating to money laundering or terrorist financing as my be prescribed by the Code or any other enactment.	
		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.	All Entities and Professionals are required to comply with the CDD requirements of PARTS II, III and VI of the AML/CFT Code of Practice. Non-compliance may result in the application of penalties referenced at sections 60 (5), (6) and (8) of the Proceeds of Crime (Amendment) Act No. 2 of 2014. Licenced /registered Agents are included in Part II of the schedule to the ML(P) Act as well as within the definition of Relevant business in section 2 of the Money Laundering (Prevention) Regulations 2013. As such the FSU is under a legal obligation to monitor Registered Agents for compliance with Anti-Money Laundering and countering of Terrorist Financing legislation. The FSU has developed a Structured Work Programme (SWP) that ensures that the Registered Agents (Licensed Agents)will be subject to continued monitoring for compliance with the provisions of the AML/CFT Code of Practice during the current financial year	
		iv. There should be some form of data capture during the year by the	All STRs are currently being filed directly to the FIU as per section 4 (1) of the Financial Intelligence Unit Act No. 7 of 2011. Notwithstanding, the Financial Services Unit receives from various institutions and companies it regulates the following information which includes but is not limited to: • Financial Statements • Licensing Applications • Monthly Balance sheet and Income Statement	

		FSU outside of the reporting of STRs as required by the MPLA to the MLSA.	Monthly statement of assets and liabilities • Quarterly, the Financial Services Unit receives the following data from the following sector: 1. Comprehensive quarterly return 2. Quarterly financial return • Annually, the Financial Services Unit receives audited financial statements from all regulated financial institutions. • AML/CFT Policies and future amendments made to these policies, are forwarded to the FSU for their consideration The FSU, upon receiving the additional information mentioned above from the FI's does an analysis of the financial reports. This data is then imputed into an excel page and stored by the respective examiners according to their portfolio. In respect to the DNFBPs the FSU has included in its structured work programme for 2014-2015 a schedule of onsite examination for this sector to capture the car dealership, registered agents, jewellers and gaming houses. Note that a copy of the structured work programe has been submitted for review The FSU has conducted sensitization workshops on two occasions where representatives of the DNFBP sector were invited and in fact attended, also The public statements and other relevant AML/CFT information to include new legislative enactments have been forwarded to the sector and copies of those documents are submitted for ease of reference. Currently, there is no designated threshold within the AML/CFT Code of Practice or any other relevant legislation as it pertains to Car dealers and casinos. In fact, these entities are now required to pay close attention to and report, all unusually large or suspicious	

			transactions. However, to facilitate the ease of business, consideration is being given to the inclusion of certain thresholds in the Dominican legislation as follows: • Casinos - USD $2000; • Dealers in precious metals and stones - USD $10,000	
Rec. 13 Suspicious transaction reporting	NC	v. The financial institutions should be required to report STRs to the FIU. vi. The requirement for financial institutions to report suspicious transactions should also be applicable to attempted transactions.	Sec. 19 (1) and (2) of the MLP Act No. 8 of 2011 makes provision for the reporting of all transactions, proposed transaction or attempted transactions that raise reasonable suspicion of being related to money laundering offences or proceeds of crime to the Director of the FIU. The text of section 19(1) is as follows: *"A Financial institution shall pay attention to –* *A. (i) all complex , unusual or large transactions, whether completed or not;* *(ii) all unusual patterns of transactions, whether completed or not;* *(iii)Insignificant but periodic transactions,* *That have no apparent or visible economic or lawful purpose,* *B. Electronic funds transfers that do not contain complete originator information* *C. Relations and transactions with persons, including business another financial institutions, from countries that have not adopted comprehensive anti-Money laundering legislation.* Subsection (2) provides: ***"Subject to Regulations, where a financial institution or person carrying on a scheduled business suspects or has reasonable grounds to suspect that a transaction, proposed transaction or attempted transaction, is related to a money laundering offence or that the funds or property are the proceeds of crime, it shall***	

		vii. The obligation to make a STR related to money laundering should apply to all offences to be included as predicate offences under Recommendation 1. viii. The reporting of STRs should also include the suspicious transactions that are linked to terrorism, the financing of terrorism, terrorist organizations and terrorist acts.	***promptly report the transaction to the Unit in a form approved by the Director of the Unit."*** Based on the above provision, and the fact that it is so widely drafted, the offence of Money Laundering as well as all offences which constitute a predicate offence for money laundering are included. The definition of Proceeds of Crime, in accordance with section 2 of the of the ML(P)A as amended is *" any property derived from or obtained directly or indirectly through the commission of an indictable or hybrid offence whether committed in Dominica or elsewhere."* Section 19A (1) and S. 19A (2) of the Suppression of the Financing of Terrorist Act, 2003 as amended by the 2011 and 2013 Amendment Acts (Act 9 of 2011 and Act 6 of 2013), contains like provisions in relation to the Financing of Terrorism: Section 19(A)(2) of SFTA No. 3 of 2003 as amended by Section 11 of the SFT (Amendment) Act No.9 of 2011 provides as follows: "*Where a financial institution suspects or has reasonable grounds to suspect that -* *(a) a transaction, proposed transaction or attempted transaction, is related to offences of terrorist financing;* *(b) funds which are the subject of a transaction referred to in paragraph (a) are linked or related to, or to be used for terrorism, terrorist acts or by terrorist groups,* *it shall promptly report the transaction to the unit."*	
Rec. 14 Protection & no tipping-off	LC	i. The offence with regards to tipping-off should be extended to directors, officers and	Sec. 5 of the MLP Act No. 8 of 2011 does not limit the applicability of the section to any person or group of persons. It states "*A person who has reasonable grounds to believe that an investigation into a money laundering offence has been, is being*	

		employees of financial institutions.	*or is about to be made shall not prejudice the investigation by divulging the fact to another person."* Additionally, section 21 of the MLPA No. 8 of 2011 states: " A director, officer or employee of a financial institution or person carrying on a scheduled business who has made a suspicious transaction report shall not disclose that fact or any information regarding the contents of a suspicious transaction report to any other person, including the person in respect of whom the suspicious transaction report has been made, otherwise than for the purpose of - *(a)* carrying out the provisions of this Act; *(b)* legal proceedings, including any proceeding before a judge in chambers; *(c)* complying with the terms of an Order of a Court; or *(d)* the Authority carrying out its powers and duties under the Financial Services Unit Act, 2008. (2) A director, officer or employee of a financial institution or person carrying on a scheduled business who contravenes subsection (1), commits an offence and is liable on conviction to a fine of five hundred thousand dollars and to imprisonment for a term not exceeding five years." Sec. 5 of the MLP Act No. 8 of 2011 does not limit the applicability of the section to any person or group of persons. It states: "*A person who has reasonable grounds to believe that an investigation into a money laundering offence has been, is being or is about to be made shall not prejudice the investigation by divulging the fact to another person."*	

			The 'tipping off' provision in Section 5 of the MLP Act No. 8 of 2011 references 'a person' which is very broadly defined at Section 2 (1) of the said Act and therefore, includes directors, officers and employees of financial institutions. As indicated above, it I is clear that section 21(1)(a) of Act No. 8 of 2011 specifically refers to directors, officers and employees of Financial Institutions. This provision expressly provides that such persons shall not disclose information regarding the existence or contents of a suspicious transaction report to any other person including the person in respect of whom the report has been made otherwise than for certain specified purposes listed in paragraphs (a-d). Subsection (2) further provides that if such Directors, Officers and Employees of financial institutions contravene subsection (1), he commits an offence and is liable on conviction to a fine of five hundred thousand dollars and to imprisonment for a term not exceeding five years. These provisions effectively ensure that the directors, officers and employees of financial institutions are not excluded from liability in respect of 'Tipping off'. R.14.1 Exemption from liability for compliance with section 19 of the MLPA(reporting suspicious transactions to the FIU): Section 23 of the MLPA 2011 provides as follows: *"Where a suspicious transactions report is made in good faith the financial institution, its employees, staff directors, owners or other authorized representatives or a person carrying on a scheduled business are exempt from criminal, civil or administrative liability for complying with section 19 or for breach of any restriction on disclosure of information imposed by*	

			contract or by any legislative, regulatory or administrative provision, regardless of the result of the communication." Section 19E of the Suppression of the Financing of Terrorism Act 2003 as amended by the amendment Act 9 of 2011 also provides as follows: "Where on a report Under section 19A (stated above), is made in good faith the financial institution, its employees, staff, directors, owners or other authorized representatives are exempt from criminal, civil or administrative liability for complying with section or for breach of any restriction on disclosure…."	
Rec. 15 Internal controls, compliance & audit	PC	i. The requirement to maintain independent audit functions to test compliance with procedures, policies and controls should be adhered to. ii. Requirement of the financial institutions to have internal procedures with regards to money laundering should also include terrorist financing.	Regulation 3 (1) (a) (v) of SRO No. 4 of 2013 requires a person carrying on a relevant business to maintain an audit function to test compliance with its anti-money laundering procedures, policies and controls. Section 3 (1) (a) (vi) of the cited SRO also requires the maintenance of screening procedures to ensure high standards when hiring employees The deficiencies concerning the absence of an obligation that the audit function be independent and adequately resourced and the requirement that Financial Institutions have internal procedures regarding Money Laundering has been addressed in the AML/CFT code of Practice: Section 12(4) of the AML/CFT code of practice (S.R.O 10 of 2014) now places a clear obligation on every entity and professional as follows: *" Every entity and professional shall establish and maintain an independent audit function that is adequately resourced to test compliance, including sample testing, with its or his written system of internal controls and the other provisions of the Money Laundering (Prevention) Act 2011 or the Regulations made*	

			thereunder, and the suppression of Financing of Terrorism Act 2013, and this Code." Section 12(5) provides that an entity or professional that fails to establish a written system of internal controls in accordance with the requirements of the code commits an offence and is liable to be proceeded against pursuant to section 60(5) of the Act. The requirements of such an internal control system are voluminous, but they are all clearly and comprehensively stipulated in ***sections 12(2) and 12(3)*** the AML/CFT code of practice which is attached to this report. These requirements are not limited to the following: *i. Record Keeping;* *ii. CDD obligations;* *iii. Controls for higher risk customers;* *iv. Identification of reportable transactions;* *v. Training of all key staff including front office staff, etc.* **Section 14** of the Code speaks to the duty of Entities to carry out risk assessments. **Section 15** of the Code also contains detailed provisions on the obligations of entities and professionals in respect of verification of customers and being vigilante when dealing with suspicious transactions. This section also speaks to record keeping and the prompt reporting of suspicious transactions to the FIU. The obligation of an entity to appoint a Compliance Officer and certain necessary qualifications that compliance Officer who must be of *"sufficient seniority"* are stipulated in **sections 18 and 19** of the AML/CFT Code of Practice. **NB:** All provisions within the AML/CFT Code apply to both Money Laundering and Terrorist Financing.	

Rec. 16 DNFBP – R.13-15 & 21	NC	i. There is no specific body charged with the duty of applying sanctions to DNFBPs without requiring a court order. ii. As well the FSU does not conduct ongoing monitoring and compliance checks on these entities or persons to ensure that the	By virtue of section 7 of the MLP Act No. 8 of 2011 the FSU established as the Money Laundering Supervisory Authority. All relevant DNFBPs are part of the list of business activities contained in the Schedule to the MLP Act as amended and are therefore under the supervision of the FSU. FSU is by virtue of this Act, charged with the duty of applying sanctions to the DFNBPs even without first requiring a court order. In fact, **Sections 10-13** of the Act outline certain administrative sanctions which the Authority (FSU) may take. None of the courses of action stipulated in these sections require a court order. Section 10 of the MLPA provides that the FSU may give Directives to persons carrying on a scheduled business to cease engaging in any activity, behaviour or practice and to take remedial measures or action as it deems necessary to ensure compliance. The time for compliance may be stipulated by the FSU itself. **Section 11 and 12** of the MLP ACT No.8 of 2011 as amended, also makes provisions for the imposition of further administrative sanctions on financial institutions and scheduled entities. These sanctions which may be effectively imposed without a Court Order include the following: • Warnings; • Reprimands; • Directives; • Pecuniary penalties; • Suspension of business activities of the entity; • Suspension of licences; and • Revocation of licences. 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 deals with	

		requirements of R 13-14, R 15 and 21 are complied with, 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 on-going monitor and compliance.	onsite monitoring by FSU of scheduled entities and financial institutions. The amended section provides that one of the principal functions of the Director of the FSU is to: *"Monitor, through on site examinations, the compliance of regulated persons with the Money Laundering (Prevention) Act 2011, the Suppression of the Financing of Terrorism Act 2003 and any other Act, Regulations, Code or Guidelines relating the prevention of Money Laundering and the suppression of the financing of Terrorism."* In accordance with this legislative provision, the FSU has established a structured work programme which includes onsite monitoring and offsite surveillance of scheduled entities (these include all relevant DNFBPs). DNFBPs were formally placed under the supervision of the FSU by virtue of recent legislative amendments including the AML/CFT Code of practice which obtained legal force on May 1st 2014. Accordingly, onsite monitoring of DNFBPs have now been included in the current Structured Work Plan of the FSU for the period 2014-2015. This will include license agents, car dealerships, Jewellery Business etc. FSU's SWP for 2014-2015 is attached. The FSU is expected to begin monitoring and the conducting of compliance checks on DNFPS in the coming year in accordance with the newly enacted legislation and the new code of Practice. **See Recommendation 23** for details of the entities visited and the exact periods during which these checks were conducted. A report from FSU evidencing same is attached for your consideration The requirement of Recommendation 13 that financial institutions report suspicious transactions (STRs) to the FIU applies equally to all DNFBPs. This is because **section 19(1) and**	

			(2) of the Money Laundering (Prevention) Act 8 of 2011 which creates the obligation to report suspicious transaction to the FIU, places this obligation not only on financial institutions but on all scheduled business. All relevant DNFBPs are currently listed in the schedule to the Act. Accordingly, there is an obligation upon DNFBPs to report STRs to the FIU. No thresholds have been set for particular DNFBPs in respect of reporting STRs to the FIU. Instead, as it stands, all DNFBPs including real estate agents, Jewellers and lawyers who are involved in the buying and selling of real estate are required by law, to pay attention to all complex and unusually large transactions with no apparent economic or lawful purpose and to report all these transactions to the Financial intelligence Unit(FIU).	
Rec. 17 Sanctions	NC	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.	Section 7 of the MLP Act No.8 of 2011 and Section 9 (1) (b) of the FSU Act No. 18 of 2008 has established the FSU as the Money Laundering Supervisory Authority for all scheduled entities. Scheduled entities include all financial institutions and the DNFBPs. Under section 9 of the Act, the Unit has the authority to issue directives and section 10-12 gives the unit the authority to impose administrative and other sanctions on financial institutions and scheduled entities for non-compliance with the requirements of the Act and Regulations which reflect the requirements of AML//CFT. The sections also clearly define the process for applying these sanctions. Sections 11, 12 and 13 of the MLP Act No. 8 of 2011 authorize the FSU to apply administrative sanctions on scheduled entities. Additionally, Section 47 (1) of the Suppression of the Financing of Terrorism (Act) No. 3 of 2003 as amended by Section 17 of the SFT (Amendment) Act No. 9 of 2011 also gives the FSU the power to administer the following sanctions: *a) Written warnings to financial institutions;*	

			b) Issuing of instructions to comply within a specific time; and *c) Suspend, or revoke the licence of financial institutions* This latter Act and the powers therein, are in respect of terrorist financing activities. Section 60(1) of the Proceeds of Crime Act Chap 12:29 also provides very dissuasive criminal sanctions which may be imposed upon legal and natural persons who commit the indictable offence of Money laundering. A natural person may be liable to a fine of two hundred thousand Dollars and imprisonment for twenty years. A body corporate may be liable to a fine of five Hundred Thousand Dollars. Additionally, The Proceeds of Crime S.R.O. 10 of 2014 (AML/CFT Code of Practice) further provides, in section 59(1) that a person (legal /natural) that fails to comply with the provisions of the Code specified in column 1 of schedule 3 commits the corresponding offence specified in column 2 of that schedule and is liable up to the maximum of the penalty stated in column 3(Entities) and column 4(individuals). The said schedule may be referred to in the attached code.	
Rec. 18 Shell banks	NC	i. Financial institutions should not be permitted to enter into, or continue correspondent banking relationship with shell banks i. 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.	Regulation 20(3) of the Money Laundering (Prevention) S.R.O. 4 of 2013 prohibits banking relationships with shell banks. The section states: *"A bank shall not maintain a business relationship with banks that do not maintain a physical presence under the laws of which they were established, unless they are part of a financial group subject to effective consolidated supervision….."* This regulation is further supported by section 36(1)(a) of the AML/CFT Code of practice(S.R.O. 10 of 2014) which contains an outright prohibition against any entity entering into or maintaining a correspondent relationship with a shell bank or any other bank unless the entity is satisfied that the bank is subject to an appropriate level of regulation.	

			Contravention of this subsection is deemed an offence under subsection (3) and any entity found liable will be proceeded against under section 60(5) of the Proceeds of Crime Act Chap 12:29. The requirement that banks satisfy themselves that their respondent financial institutions do not permit their accounts to be used as shell banks is fully addressed in section 37(1)(a) of the code which places certain restrictions on correspondent banking. The provision is as follows: *"A bank that is or that proposes to be a correspondent bank shall not enter into or maintain a relationship with a respondent bank that provides correspondent banking services to a shell bank."*	
Rec. 19 Other forms of reporting	NC	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 analysing the information.	The Financial Intelligence Unit has made contact with Curacao FIU in sourcing information re: the Currency Reporting System. The Communication and Information Technology Unit of the Government of Dominica have also been contacted re the feasibility and utility of such a system. A detail report with the specific recommendations and details for implementing such a system has been generated and submitted to the Director of the FIU for his consideration. A report from the Director of the was appended to the analysis and submitted to the AML/CFT Technical Working Group chaired by the Honourable Attorney General for its consideration. The AML/CFT Technical Working Group endorsed the recommendations made by the Director of the FIU with respect to this recommendation. (See attached documents) It was decided that it would not be feasible at this time to implement a system as the one referred to in Recommendation	

			19. In the interim, reliance will be placed on the Director's Written Request for information which can be used as a tool to source the same information for any period requested. Additionally, the information contained on the STRs filed by FIs and DNFBPs will also assist in the Unit's data collection and analysis efforts relative to transactions above a particular threshold.	
Rec. 20 Other NFBP & secure transaction techniques	PC	i. More on-site inspections are required. i. Modern secured transaction techniques should be scheduled under the Money Laundering (Prevention) Act, 2000 (Chapter 40:07),	The FSU continues to conduct onsite inspections on a regular basis. The information regarding the institutions inspected and the evidence of the observations made and the relevant dates can be seen in the attached document from the FSU and under Recommendation 23. In Dominica, there is an absence of any legislative or other restrictions on the efforts of financial institution to develop current procedures and make use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering. Separate and apart from this absence of restrictions, Financial Institutions are further encouraged to ensure that there are safeguards to prevent the misuse of technology for the purposes of money laundering and terrorist financing. S.13 of the AML/CFT code of Practice provides as follows: "***An entity or a professional shall adopt and maintain such policies and procedures and their measures considered appropriate to prevent the misuse of technological developments for the purposes of money laundering and terrorist financing***." Financial Institutions, being unrestricted, have made some strides in the development and use of modern and secure techniques for conducting financial tractions.	

			In fact, there are five major banking institutions Dominica with a total of twenty eight (28) Automated Banking Machines (ATMs). The National Bank of Dominica for example, has the most with twenty one (21) ATMs. The National Bank of Dominica introduced Mo-Banking in 2009. MoBanking is convenient and a secured way of banking on your mobile phone. This new wave of banking can be accessed via text or a web browser on a cell phone, laptop or PC and facilitates reduced reliance on cash and makes available to customers a secured automated transfer system. Over the last five years all of the Financial institutions in Dominica have also increased the number of ATMs access to clients, Recommendations 5, 6, 8-11, 13-15,17 and 21 have been made applicable to Non-Financial businesses and Professions by virtue of the fact that schedule of business activities in the Money Laundering (Prevention) Act has been amended to include all relevant DNFBPs. Additionally the AML/CFT Code of Practice makes reference to "entities". The word "entity" is defined in section 2 of the code as follows: " Entity means- (a) A person or institute that is engaged in a relevant business within the meaning of Regulation 2(1) of the Money Laundering (Prevention) Regulations, 2013; or **(b) A person that is engaged in a relevant non-financial business activity listed in Part II of schedule II to the Act."**	

			By virtue of these provisions all the information provided in respect of the named recommendations are applicable to DNFBPs as well.	
Rec. 21 Special attention for higher risk countries	NC	i. Effective measures should be established to ensure that financial institutions are advised of concerns about AML/CFT weaknesses in other countries.	Section 53 and 54 of the Code of Practice addresses this issue by encouraging dialogue between the FIU and FSU with the private sector and financial institutions. Section 53 (2)states : *" the FIU and the FSU shall either through the Joint Anti-money Laundering and Suppression of Terrorist Financing Advisory Committee or directly, encourage and promote dialogue with private sector entities and professionals with a view* *a) To establishing a broad-based understanding and awareness of issues concerning money laundering and terrorist financing; and* *b) To promoting the exchange of information on money laundering and terrorist financing matters."* S.54. (1) : Every entity and professional shall pay special attention to a business relationship and transaction that relates to a person from jurisdictions which the FSU considers does not apply or	

			insufficiently applies the FATF Recommendations with respect to money laundering and terrorist financing. (2) the FSU shall publish on its website a list of jurisdictions for the purposes of this Code, the Money Laundering (prevention) Regulations, 2013, the Suppression of the Financing of Terrorism Act, 2003, that are recognized as jurisdiction a) Which apply the FATF Recommendations and which the FSU considers, for the purposes of subsection (1), apply or sufficiently apply those Recommendations; and Whose anti-money laundering and terrorist financing laws are equivalent with the provisions of the Money Laundering (Prevention) Regulations, 2013, the Suppression of Financing of Terrorism Act, 2003, and this Code. **Section 56(1)** of the Code adequately addresses this issue, as the FSU is provided with the authority to impose sanctions on foreign jurisdictions which do not apply or insufficiently apply the FATF Recommendation. The section states: " Where the FSU forms the opinion that a jurisdiction in relation to which Dominica engages in business or the provision of any service through an entity or a professional- a) does not apply or insufficiently applies the FATF Recommendations, b) has received an unsatisfactory or poor rating form the FATF, CFATF or any other similar organisation reviewing the jurisdiction's ant money laundering and terrorist financing regime, or c) has no specific regulatory body or agency corresponding to the FSU or FIU which renders assistance on request to authorities in Dominica with respect to money laundering an terrorist financing activities	
		i. There should be requirements to allow for the application of counter-measures to countries		

		that do not or insufficiently apply the FATF Recommendations.	the FSU may apply such counter-measures as it deems fit in relation to that jurisdiction. **Section 56(2)** of the Code provides a list of several of the counter measures which the FSU may impose in relation to jurisdictions which are non-compliant. Some of the counter measures stipulated in this legislative provision are as follows: (a) issuing advisories; (b) applying stringent requirements for identification and verification of applicants for business, customers in that jurisdiction as well as beneficial owners of legal persons; (c) requiring enhanced reporting mechanisms; (d) limiting business relationships; and (e) Prohibiting an entity or a professional from engaging in business relationships emanating from such jurisdictions. Further **section 56(3)** makes it an offence to contravene a counter measure imposed by FSU pursuant to section 56(1) of the Code and an entity or professional is liable to be proceeded against under section 60 (5) of the Proceeds of Crime Act. **Section 58 o**f the Code provides that guidance on establishing the types of activities or transactions which may give rise to the suspicion of money laundering can be obtained in **schedule 2** of the Code. The financial Intelligence Unit is able to obtain information regarding transactions with no apparent lawful purpose by virtue of the obligation on entities to submit a report in writing to the FIU in the form stipulated in **section 57(1)** of the Code.	

Rec. 22 Foreign branches & subsidiaries	PC	i. 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.	Section 55 of the Code directly addresses this deficiency: Sub-Section 55 states that- *"(5) "An entity that has branches, subsidiaries or representative offices operating in foreign jurisdictions shall notify the FIU and the FSU in writing if any of the entity's branches, subsidiaries or representative offices is unable to observe appropriate anti-money laundering and terrorist financing measures on account of the fact that such observance is prohibited by the laws, policies or other measures of the foreign jurisdiction in which it operates.* *(6) Where a notification is provided pursuant to subsection (5)-* *a) The entity concerned may consider the desirability of continuing the operation of the branch, subsidiary or representative office in the foreign jurisdiction and act accordingly; and* *b) The FIU and FSU shall liaise and consider what steps, if any, need to be adopted to properly and efficiently deal with the notification, including the need or otherwise of providing necessary advice to the entity concerned* All the other Essential Requirements of this recommendation have been addressed in the Code of Practice as follows*:* Section 55 provides: *1) Where an entity that is regulated in Dominica has branches, subsidiaries or representative offices operating in a foreign jurisdiction, it shall ensure that those Branches, subsidiaries or representative offices in other jurisdictions, observe standards that are at least equivalent to the Money Laundering (Prevention) Regulations, 2013 and this Code.*	

			2) *An entity shall in particular, ensure that the requirement of subsection(1) is observed by the branches, subsidiaries or representative offices that operate in foreign jurisdictions which do not or which insufficiently apply anti money laundering and terrorist financing standards equivalent to those of the ML(P) Regulations 2013 and this code.* 3) *Where the established standards of compliance under Dominica's laws, rules or Policies differ from those of the jurisdiction in which the entity's branches, subsidiaries or representative offices observe the higher standards, established in their jurisdiction of operation.*	
Rec. 23 Regulation, supervision and monitoring	NC	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 as the Unit should implement a structured work programme, approved by the Financial Director to ensure ongoing on-site and off-site monitoring. ii. 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	By virtue of **section 7 Money Laundering (Prevention) Act No.8 of 2011** the FSU was established as the Money Laundering Supervisory Authority. The functions of this supervisory authority are clearly stipulated in **section 8 of** the MLPA as follows: • The supervision of all financial institutions and persons carrying on scheduled business; • Developing anti-money laundering strategies for Dominica; • Advising the Minister with regard to any matter relating to money laundering; • Creating and promoting training requirements for financial institutions and persons carrying on scheduled businesses; • Conducting inspections of any financial institutions or scheduled businesses whenever it is necessary to do so to ensure compliance with requirements of the MLP Act, the Regulations and any other instructions relating to Money laundering given by the Authority.	

		under the purview of the ECCB.	• Sending of information received from inspection to the Unit where it is believed that a money laundering offence has been committed. Section 9(1) also provides that the Authority may issue Guidelines in respect of standards to be observed and measures to be implemented by financial institutions or persons carrying on a scheduled business to detect and prevent the abuse of the financial institutions or a scheduled business for the purpose of money laundering. These guidelines were issued by the FSU and have been forwarded all to financial institutions and DNFBPs. Training sessions were also conducted by the FSU on the use an application of these guidelines. **Sec. 9 (1) (b) of the FSU Act 18 of 2008 as amended by the relevant Amendment Acts (Act 10 of 2011 and Act 10 of 2013)** also provides that one of the Principal functions of the Director of the FSU is to monitor through on site examinations and offsite surveillance, the compliance of regulated persons with the ML(P)Act 2011, the SFTA 2003 and any other Act, Regulation, code or guidelines relating to AML and CFT. Section 6 (2) Money Services Business Act No. 8 of 2010. Notwithstanding that the Minister is the one who actually issues the licence; the FSU is the one who is charged with the important task of conducting the investigations to ascertain the nature of the business of applicants, that the applicant is a fit and proper person to conduct business among other things. As such the FSU plays a fundamental role in the issuing of licenses to Money service businesses. By virtue of the Regulation 4 of Trusts and Non-Profit Organisations Regulations 2014 *(Proceeds of Crime S.R.O 11 of 2014),* the Financial Services Unit shall also act as the registration, supervision monitoring and enforcement Authority for **Trusts and Non-Profit Organisations** in the Commonwealth	

			of Dominica. Accordingly, these institutions which are not regulated by the Eastern Caribbean Central Ban are monitored by the FSU. The FSU has established a structured work programme in August 2012, which includes onsite monitoring and offsite surveillance of scheduled entities. These entities include all financial Institutions and all relevant DNFBPs. The FSU has conducted onsite inspections of the commercial banks and offshore banks. Information concerning same inclusive of the names of the institutions examined and the relevant dates have been forwarded to the CFATF Secretariat. The FSU Structured Work Program (SWP) established in August 2012 focused essentially on inspections. As indicated above, the Financial Services Unit Act of 2008 was amended in 2013 to provide for offsite surveillance in accordance with the requirements of this recommendation. **An updated Financial Services Unit Structured AML/CFT Work Programme for 2014/2015 is submitted herewith.** <u>Examinations</u> The FSU has conducted both onsite and offsite examinations of the various financial institutions set out in Part I and Part II of the Schedule of Act No. 8 of 2011 and Schedule 2 of Act No. 9 of 2011 to examine compliance with the MLPA/CFTA and the guidance notes and to satisfy itself that there is sound compliance by the sector with the legislative requirements. The following is a list of the onsite examination which was done: <The names of individual private sector institutions were removed for confidentiality reasons>	

			Currently, the Financial Services Unit is conducting AML/CFT on-site examinations of the Insurance Sector. These examinations are scheduled from July 31 to August 28th, 2014. To date, all of the insurance companies have been examined. During the period July 2014 to August 2015, the Financial Services Unit will be conducting on-site examinations of the Commercial Banks, money transmission businesses and Credit Unions. <u>Offsite Examinations</u> • The Institutions AML/CFT compliance program was submitted to the Financial Services Unit during the period August 2012 to December 2013 where an offsite evaluation has been conducted to assess the level of prudence and compliance that exists at various institutions as it relates to combating money laundering and terrorist financing. During this evaluation the following areas were ; the institutions risk profile, volume of business, nature of business, customer base, product and services offered, training program, effectiveness of compliance officer, reporting and record keeping, customer due diligence, know your employees and customers and customer identification programs. • Moreover, during the period June 2013 to present, off site surveillance of the sectors continues as mandated by legislation. At present, all the institutions' AML/CFT policies have been received and reviewed by the FSU and recommendations have been made where necessary. • A sensitization workshop was conducted to include the scheduled entities and financial institutions on July 28 & 29, 2013. *Additionally, on June 25th, 2014 the FSU*	

			conducted a follow up sensitization workshop for the Car Dealers, Jewelers, Building and Loan Societies, and gaming entities. During the next quarter the FSU will conduct a sensitization and information session on the AML/CFT Code of Practice and Best Practices and Guidelines on using the Risk Based Approach to include the real Estate Agents, Jewelers and DNFBP's. • *Training was provided for staff and management of Barnett Capital Bank, Brilla Bank, ASA Bank and Trust, iBank Corporation, car dealers, jewelers, First Domestic Insurance, Easy Money Financial, Western Union, Ready Cash (National Development Foundation of Dominica), West Coast Cooperative Credit Union, Arton Bank Corporation, Sagicor insurances and the Credit Union Sector. The FSU continues to provide training to the Sectors upon request and on a need basis.* • *The FSU has implemented a database solely designed for capturing and storing information relating strictly to AML/CFT. The database is administered by the Senior Examiner and one other AML/CFT examiner.* • *On May 28th, 2014 The Financial Services Unit launched its website. Correspondence was sent to the scheduled entities to that effect.* • *After the May 2014 Plenary, correspondence was sent to the scheduled entities reporting on the Plenary and advising them of Actions taking at the Plenary and Public Statements.*	

			As part of the structured work program of the Financial Services Unit, it is expected that during the year 2014/2015 the follow up process of both onsite and offsite evaluation of all the Schedule entities will be conducted and emphasis placed on continued evaluation of these institutions. During this financial year members of the FSU which is responsible for conducting onsite inspections will be undergoing CAM certification in order to equip the staff with more useful tools for conducting inspections. This will also help in the area of demonstrating that the FSU has adequate expertise in terms of training of its examiners. The FSU has also made some improvements to its work program in attempt to provide the necessary information required from the examiners. A copy of the structured work program and the inspection manual is attached herewith. R.23.3- is fully addressed in the Banking Act as follows: **Section 26(1) of the Banking Act, Act 16 of 2005** provides that – *"Every person who is, or is likely to be a director, controlling shareholder, or manager of a licensed financial institution must be a **fit and proper person** to hold that particular position which he holds or is likely to hold."* The minimum criteria for determining whether a person is a fit and proper person is laid out in detail in subsections (2) and (3). This criterion is based on the competence and expertise of the individual as well as the integrity and criminal background of him/her.	

Rec. 24 DNFBP - regulation, supervision and monitoring	NC	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 discharge that function as well as to apply relevant sanctions/fines for non-compliance. i. 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. i. The AML/CFT legislation should also detail the process	Section 7 of the MLP Act No.8 of 2011 has established the FSU as the Money Laundering Supervisory Authority in the Commonwealth of Dominica. Section 8 of the ML(P)A stipulates the functions of the FSU which includes the supervision, regulation, inspection and training of Scheduled business in matters relating to Money laundering. As indicated above, Scheduled Businesses currently include all the relevant DNFBPs stipulated by FATF. With respect to sanctions, under section 9 of the Act, the Unit has the authority to issue directives and section 10-12 gives the unit the authority to impose administrative and other sanctions on financial institutions for non-compliance with the requirements of the Act and Regulations which reflect the requirements of AML//CFT. The sections also define the process for applying these sanctions. **See discussion on sanctions under Recommendation 17 above**. Section 9(1) of the Code of Practice(S.R.O. 10 of 2014) provides that:- " It is the duty of the FSU to Monitor compliance by its licensees and other persons who are subject to compliance measures, with the code and any other enactment (including any other code, guidance notes and any guidelines) relating to money laundering and terrorist financing as may be prescribed by this code or any other enactment." 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 also deals with onsite monitoring of regulated persons.	

		to be adopted when applying sanctions.	**See discussion on sanctions under Recommendation 17 above**. **<u>24.1.2</u>** Casinos and Gaming Houses are included in the schedule of businesses in the Money Laundering (Prevention) Act, Act 8 of 2011 and are therefore subject to the same regulatory measures as the other DNFBPs.	
Rec. 25 Guidelines & Feedback	NC	i. The Authority should provide financial institutions and DNFBPs with adequate and appropriate feedback on the STRs. i. 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.	This recommendation requires that the FIU provides financial institutions and DNFBPs with adequate and appropriate feedback having regard to FATF best practices. In accordance with this requirement, <u>section 8</u> of the code stipulates the required conduct of the FIU in respect of matters not limited to acknowledgment of receipt and reporting, upon the receipt of STRs. The code states as follows: "The FIU should on receipt of a report, promptly acknowledge the receipt of the report in writing addressed to the entity which, or professional who, made the report and- *a) Assign it to such investigating officer of as the director of FIU determines;* *b) Through the investigating officer, conduct inquiries to ascertain the basis for the suspicion;* *c) Ensure the customer who is subject to the inquiry is as far as possible, never approached during the conduct of inquiries;* *d) Maintain the integrity of a confidential relationship between FIU, other law enforcement agencies and the reporting entities and professionals and any person acting for , through or on behalf of the entities or professionals;*	

			e) Keep the reporting entity or professional informed of the interim and final result of any investigation consequent to the reporting of a suspicion to the FIU; *f) On the request of the reporting entity or professional, promptly confirm the current status of an investigation with respect to a matter reported to the FIU and ;* *g) Endeavour to issue an interim report to the institution at regular intervals and in any event to issue the first interim report within three months of a report being made to the FIU.* Section 8 (e) of the Code places an obligation on the FIU to provide financial institutions and DNFBP's with interim and final results of any investigation consequent to the reporting of a suspicion to the FIU. These reports would provide the institutions with necessary feedback. Section 8 of the Code adequately deals with the requirements of recommendation 25 as it relates to FATF Best Practices. FSU has created guidance notes to assist financial institutions and DNFBPs to effectively apply the provisions of the MLPA. These Guidance note are attached to this report.	
Institutional and other measures				
Rec. 26 The FIU	PC	i. The FIU should be made the central authority for the receipt of STRs from reporting entities as it relates to both Money Laundering and Terrorist Financing.	Sec. 4 (1) (a) of the FIU Act No. 7 of 2011 makes the FIU the central authority for receiving, requesting analysing , investigating and disseminating information concerning all suspicious Transactions (STR reporting) and information relating to the property of terrorist groups and terrorist financing. Sec. 19 (2) of the MLP Act No. 8 of 2011 dictates that suspicious transactions be reported to the FIU in a form approved by the Director of the Unit.	

			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 clearly states that suspicious transactions as it relates to money laundering and terrorist financing "shall promptly" be reported to the "Unit". Unit in this section refers to the FIU. So both the MLPA and the SFTA acknowledges the FIU as the central authority for the receipt of STRs. Section 7 of the AML/CFT code of practice also stipulates that the FIU is in fact the Reporting Authority of Dominica in matters relating to suspicious transaction reports concerning money laundering and terrorist financing. The FIU is also responsible for keeping records of reports received by it in the manner stated in this section. See. Code attached. Section 7(2) of the Code provides guidance to the financial institutions regarding the specifications of the forms for reporting to the FIU: 26.2- The Financial Intelligence Unit has issued a new Suspicious Transaction Reporting form to financial institutions to facilitate the filing of STRs (See Attached Form). However, during the passage of the Money Laundering (Prevention) Regulations S.R.O. No. 14 of 2001, a STR form was appended to the same. This form has been updated and is currently being used by FIs and DNFBPs for filing STRs. Section 13 of the FIU Act, Act 7 of 2011 places an obligation on the FIU to issue Suspicious transaction guidelines in a manner determined by the director. These guidelines have been created by the FIU and are attached. Essential Criteria 26.3 requires that the FIU to have access to information held by law enforcement, financial institutions and	

			administrative bodies on a timely basis in order to obtain additional information to properly undertake its functions. The FIU pursuant to section 17 (1) of the MLP Act No. 8 of 2011 provides the FIU with the ability to seek additional information from FIs and DNFBPs by way of Director's written request for information. This power when exercised allows the FIU to access the entire record and ask questions in relation to the same; make copies of the whole or part of the document and takes notes of the whole or part of the document. Additionally, the FIU may also use a more formal route and apply for a production (property tracking) order pursuant to section 25 and a monitoring order pursuant to section 26 of the of the MLP Act No. 8 of 2011. These powers when exercised allows for the production of the records kept by FIs and DNFBPs. The Unit may also apply to a Judge of the High Court for a search warrant pursuant to section 24 of the MLP Act if it has reasonable grounds to suspect that the certain aspects of the Act are being breached. Section 53 of the MLP Act makes is possible for the Unit to apply Part II and III of the Proceeds of Crime Act No. 4 of 1993. These Parts contains various investigative tools which can be utilized by the Unit when conducting investigations. Some of these tools include search warrants (section 24), productions orders (section 41), monitoring orders (section 47) and inspection orders (section 41).	
		ii. The FIU should have more control over its budget since the control currently maintained by the Ministry	The FIU may also exercise powers conferred on it by section8(2) of the Code of Practice which reads as follows: *"The FIU may seek further information from the reporting entity or professional."*	

		could impact the Unit's operation and to some extent its independence.	Essential Criteria 26.1 states *"…The FIU can be established either as an independent governmental authority or within an existing authority or authorities."* As such, Dominica has established its FIU within an existing governmental authority namely the Ministry of Tourism & Legal Affairs. The FIU has its own budget which is under the control of the Director of the FIU. All expenditures from the FIU's budget are controlled and authorized by the said Director. Section 10 of the FIU Act, 2011 requires that the Director of the FIU submit this budget of revenue and expenditure to the Minister at least four months prior to the commencement of the financial Year. Accordingly, the preparation of the FIU budget is entirely within the Purview of the Director of the FIU without inference from the Minister. The funds and Resources of the FIU are provided by Parliament (S. 11 of the FIU Act) If the Unit has exhausted its budget for any financial year, a virement warrant can be applied for an issued by the head Ministry for the allocation of additional funding to meet the additional expenditure needs of the Unit. The Ministry has always acceded to such requests without difficulty.	
		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.	The FIU currently conducts differential backups every two (2) hours and a full back up at the end of every working week. An additional full back up is done and saved to a secure password protected drive and stored offsite at a secure location. Additionally, the FIU system is configured in such a way that it supports full redundancy for both the operating system and storage files. Hence, in the event that a system or storage drive fails, the second drive is immediately activated allowing for troubling shooting of the faulty drive without any down time.	

		iv. The FIU should prepare annual reports which they would be able to disseminate to the public which would enhance awareness.	It must be noted that the FIU can apply for Seizure and Restraint Orders under the of Section 37 (1) of Act No. 3 of 2003 and Forfeiture Orders under the aegis of Section 8 of Act No. 3 of 2003 in relation to property of terrorists and terrorist groups. The FIU continues to maintain comprehensive and secured databases on the Microsoft SQL Platform in accordance with essential criteria 32.2 of Recommendation 32. In 2012, the FIU received 87 STRs, 15 requests from the Police Service, 6 requests from Regional FIUs and 6 requests from Members of the Egmont Group. The FIU made two requests of Egmont Members. All requests were fulfilled. The FIU has an active case portfolio of 42 cases with 16 cases at the Magistrate's Court. R. 26.9: The Financial Intelligence Unit of the Commonwealth of Dominica became a member of the Egmont Group in July 2003. Section 9 of the FIU Act No. 7 of 2011 places an obligation on the Director of the FIU to prepare and submit to the Minister of Legal Affairs at the end of each financial Year an annual report reviewing the work of the Unit. The Minister shall lay or cause to be laid a copy of every annual report on the table of the House of Assembly. The FIU has completed its 2014 Annual Report for the period 2013-2014 **(See Attached)**. Parliament has not sat as yet which would allow for the laying of the said report on the table of Parliament (making the report public).	

Rec. 27 Law enforcement authorities	PC	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.	By virtue of the Criminal Law and Procedure (Amendment) Act No. 3 of 2014 which inserted a new section into the Criminal law and Procedure Act Chap 12:01, this deficiency has been addressed. The new section 13A provides as follows: *" For the Purpose of gathering evidence to identify a person involved in the commission of an offence or to facilitate a prosecution for an offence, the minister may by regulations provide for :* *a. Money or property that authorised officers reasonably suspect has been, is being or may be used to commit an offence under the Act , to enter leave or move through Dominica; and* *b. The protection of authorised officers from criminal and civil liability for acts performed under paragraph (a) in good faith in the exercise of their duties.*	
		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.	Section 13A (3) also provides that an authorised officer does not commit an offence if- *a. The authorised officer is engaged in investigation of a suspected offence; and* *b. The offence involves money or property that the authorised reasonably suspects has been, is being or may be used to commit an offence.* This aspect of using controlled deliveries as an investigative technique has been addressed by an amendment to the Criminal Law and Procedure Act. The Criminal Law and Procedure (Amendment) Act was passed in Parliament on March 19th 2014 and has fully addressed this issue. Guidelines have also been created to deal with the procedures to govern controlled deliveries. These guidelines are attached to this report for your guidance.	
		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.	As part of its strategic approach to assisting in the efforts to deter, prevent and thwart money laundering, the CDPF has trained a cadre of police officers in financial investigations, money laundering, terrorist financing and cyber-crime investigations. Between 2008 and 2012 some twenty eight (28) police officers have been trained to facilitate the detection, prevention and deterrence of money laundering and the financing of terrorist activities. As part of our the mandate of the Money Laundering Supervisory Authority, the FSU is responsible for providing training and assisting the sector in efficiently structuring and educating its staff and those directly involved in the financial services sector. The following training has been provided, both internally and externally; 1. May 2012, In house education on Money Laundering and Terrorist Financing by Mr. Artherton Nesty, Senior Examiner 2. July 2012, Training provide to the Money Services Business Sector, on Combating Money laundering and Terrorist Financing and familiarization with the various pieces of legislation. 3. September 10,17 and 24 2012, training provided to Financial Services Inc.(Fast Cash), Money laundering and Terrorist Financing by Mr. Artherton Nesty 4. October 2012, Training provided to Easy Money Financial Corporation on Combating Money Laundering. 5. November 2012, Training provided to the Credit Union Sector on Terrorist Financing and Money Laundering 6. February 2013, training provided to Archipelago Trading/Cambio Man, Money Gram on the familiarization with the AML/CFT Act and the combating of Money Laundering.	

			The Financial Services Unit continue to ensure that the financial sector is properly educated as it relates to combating money laundering and terrorist financing and in this drive have put in place a structured work programme for 2013 which will place much emphasis on Training, offsite and onsite examination and prudential benchmarks related to AML/CFT in the Commonwealth of Dominica. A policy has been drafted which deals with the use of controlled deliveries as an investigative tool in both money laundering and terrorist financing cases. Dominica is currently in the process of the drafting of MOU's between itself and its Caribbean counterparts which allow the use of Controlled deliveries regionally.	
Rec. 28 Powers of competent authorities	PC	i. The SFTA should be amended to provide investigators with the ability to compel the production of business transaction records.	By virtue of section 4 of the Proceeds of Crime (Amendment) Act 10 of 2010, Terrorism and Financing of Terrorism are scheduled offences. By section 41(b) of POCA, a production order may be applied for by a police officer to a Judge in Chambers, where he has reasonable grounds to suspect that a person has committed a scheduled offence (an offence of terrorism and Money Laundering) and that a person has possession or control of any documents relevant to identifying, locating or quantifying property of the person who committed the offence or to identifying or to locating a document necessary for the transfer or property of the person who committed the offence. Section 41(a) allows for the same application to be made but post-conviction. Therefore, Production orders are available as both pre and post investigative tools that allow access to and production of records by persons to a designated competent authority, in a specific form.	

		ii. There should be explicit legal provisions for the investigators of predicate offences to be able to obtain search warrants which would enable them seize and obtain business transaction records.	The Financial Intelligence Unit (FIU) may also compel production of documents and other relevant information by exercising their powers under section 25 and 26 of the Money Laundering (Prevention) Act, 8 2011. See Act attached. Section 46 of POCA #4 of 1993 makes provisions that:- i. Where a person is convicted of a scheduled offence; or ii. Where the police officer has reasonable grounds for suspecting that a person has committed a scheduled offence, a police officer may apply to the Judge of the High Court for a search warrant to seize necessary documents in an effort to facilitate an investigation.	
Rec. 29 Supervisors	PC	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.	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 Section 7 of the MLP Act No. 8 of 2011 *of the Act establishes the FSU as the Money Laundering Supervisory Authority.* *Section 8 of the MLPA Act No. 8 of 2011 outlines the functions of the Authority. Section 9 of the Act provides the FSU with the authority to issue guidelines in respect of standards to be observed and measures to be implemented by financial institutions.* *Section 10-12 entrusts the FSU with adequate powers of enforcement against scheduled entities and financial institutions which include the powers to issue directives as contained in section 10; the power to impose administrative sanctions as captured by section 11; and to provide for the suspension of activities and suspension and revocation of licensees as contained in section 12 of the Act.* Section 9 of the FSU Act No. 18 of 2008 entrusts the FSU with the authority to monitor and ensure compliance with the	

			AML/CFT requirements. Sections 9(1) (a-d) specifically deal with monitoring compliance. Section 9 as amended by section 6 of the Financial Services Unit (Amendment) Act 10 of 2011 and Amendment Act 10 of 2013, makes provision for onsite and off-site monitoring. The powers of Competent Authorities to compel the production of or to access records or relevant documents by obtaining a Court Order *(already discussed above)* also apply here. Even in the absence of a court Order, The FIU is empowered to obtain required information or documents from relevant entities. Section 17 of the MLPA provides as follows: "*The Unit for the Purpose of securing assistance with its analysis and investigations , request a financial institution or person carrying on a scheduled business, to allow any member of the Unit or person authorised by the Unit, to enter its business premises during normal working hours to –* *a) Examine the business transactions records;* *b) Take notes of the whole or any part of the business transaction records;* *c) Make a copy of the whole or part of the business transaction records where the circumstances require that copies;* *d) Ask questions of the financial institution or person carrying on a scheduled business in relation to its business transaction records* *A financial institution or person carrying on a schedules business is under an obligation to permit a member of the Unit to enter the premises and take necessary action: subsection (2). An entity which fails to comply commits an offence(subsec.(4))"*	

Rec. 30 Resources, integrity and training	NC	i. The staff of the Unit should be expanded to include a database administrator. 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 its regulatory and supervisory functions can be discharged effectively. iii. The FSU should consider the establishment of databases to allow for effective off-site supervision.	As at August 1, 2012; the FIU has a permanent staff of 6 officers. A primary responsibility of one of these officers is data base management. The FSU currently has a staff compliment of 3 Senior Examiners, 4 Junior Examiners and a Secretary. There are two (2) dedicated Examiners with exclusive responsibility for AML/CFT supervision. However, all other Examiners perform AML/CFT supervision of their respective sectors during their on-site and off-site inspections. In October of 2013, a database which was created by the Information Communication and Telecommunication Unit was installed and handed over to the FSU to assist them in storing and analysing AML/CFT data.	

			Additionally, in February 2014, a Financial Services Unit website was handed over to the FSU, which will be used to assist in its outreach and supervisory functions. Training is ongoing with the officers of the FSU. Training of the FSU staff in the use of the website is currently ongoing even after the launching of the website The FIU continues to maintain comprehensive and secured databases on the Microsoft SQL Server Platform in accordance with essential criteria 32.2 of Recommendation 32. In 2012, The FIU received technical assistance from ECFIAT in case management and capacity building and from NAS of the US Embassy in capacity building. OAS CICAD and CICTE and UNODC had given the FIU technical assistance in October 2011 and is considering the delivery of further technical assistance	
		iv. Technical resource- The Police Force should be provided with better communication equipment. v. With the increased demand on the Police the numbers in the police contingent should be increased.	The Commonwealth of Dominica Police Force is well equipped with all the necessary communication equipment to carry out its duties efficiently. The details evidencing same are contained in the **attached document** signed by the Chief of Police of the Commonwealth of Dominica Police force. The establishment of the Commonwealth of Dominica Police Force was increased to five (500) hundred by a Cabinet decision dated March 2, 2010 by the creation of fifty (50) new Police Constables positions. Currently there are five hundred and one (501) positions in the police Force. Some thirty eight (38) Police Recruits underwent training at the Police Training School at Morne Bruce from March 1, 2013 and joined the ranks of the Police Force in September 2013. The Government of Dominica has given a commitment to further increase the establishment of	

		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	the Police Force by the creation of an additional one hundred (100) new positions. As part of its strategic approach to assist in the efforts to deter, prevent and thwart money laundering, the CDPF has trained a cadre of police officers in financial investigations, money laundering, terrorist financing and cyber-crime investigations. Between 2008 and 2012 some twenty eight (28) police officers have been trained to facilitate the detection, prevention and deterrence of money laundering and the financing of terrorist activities. Recently, some of these trained police officers were able to provide support for the FIU during a major money laundering investigations.	
		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.	As part of Dominica Police Force's approach to effective criminal intelligence gathering, the NJIC is charged with the responsibility to deal with intelligence gathering as it pertains to national security issues and not the investigations of money laundering and terrorist financing cases. The Commonwealth of Dominica Police Force established a Major Crimes Unit within the police force to augment and enhance the investigations of serious crimes in the Commonwealth of Dominica in September 2013. The Unit's current complement is 21 police officers stationed at various sections and departments of the Police Force and are called on a needs basis. It is headed by an Assistant Superintendent of Police and includes officers that have benefited from ongoing training at REDTRAC in Jamaica. Thus far, six (6)	

			officers have benefited from computer forensics and financial investigations training at REDTRAC. As the name suggest, this Unit focuses on the investigation of major crimes in the jurisdiction and compliments the work of the Financial Intelligence Unit with the investigation of predicate offences (major crimes) to money laundering. **<u>Customs Department</u>** Custom and Excise personnel is also an important part of the law enforcement apparatus. There are several units in this department that are responsible for investigations into money laundering, terrorism financing and FATF 20 designated categories of offences. These units are the Intelligence Unit, Investigation Unit, Mobile Unit, Risk Management Unit and the Canine Unit. The enforcement unit of the Customs Department has at present ten officers who include the Mobile, Investigations, Intelligence and Canine (K9) teams. <u>MOBILE</u> Mobile comprises of a Grade two (2) and two Grade three (3) officers. One four wheel drive vehicle is also assigned to the team for execution of their duties. They are issued equipment including firearms during the execution of their duties which includes exercising many controls, patrolling, assisting colleagues e.g. they play a very critical part in assisting the Investigations team in the transfer of cash seizures or detentions for FIU and or Customs investigations. They serve as deterrents by making sporadic and timely appearances at unguarded locations. This is specifically aimed at discouraging illegal activity, including drugs trafficking and the illegal transportation of currency. The Unit also provides information where either there is compliance or where illegal activity is detected or suspected. Enforcement actions where appropriate.	

		viii. There should be regular inter agency meetings among all the agencies that are charged with ensuring the effectiveness of the AML/CFT regime.	***Intelligence*** One Grade two(2) and a Grade three(3) are responsible for the functions of the Intelligence team of course one must bear in mind that all officers are responsible for gathering information relevant to Customs, identify sources of information, develop and collect material from filing systems and databases, and meet and interview people who may be sources of information, within and outside Customs, to obtain information useful to Customs, Organise , group, correlate all form of information, analyse, draw conclusions, Recommend course of action to either improve controls, sending the file to Investigations, Audit and other sections or for closing of the files. Particulars of intelligence gathered are entered in the Customs information systems. ***Investigations*** Three (3) officers Grades1, 2 and 3 who are responsible for the activities at the Investigations section. The team has in addition to other equipment One(1) 4WD vehicle, they are also equipped with firearms during the execution of their duties. This department is responsible for reviewing all allegations of illegality, Gathering of evidence to substantiate or negate the allegation, report the findings; explain the process taken and results obtained, list exhibits, report, recommend, and take justifiable enforcement action, lay charges for prosecution, and testify in Court. The investigations team works very closely with the FIU in matters pertaining to currency seizures, money laundering and proceeds of crime matters. ***Canine (k9) Unit*** The K9 team comprising two (2) dogs, two handlers and one assistant handler. One (1) 4WD vehicle is assigned to the team, in addition to other equipment; they are also issued with firearms during the execution of their duties. The dogs have been trained	

		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	to indicate the presence of drugs, firearms, ammunition and currency. The CDPF, particularly the Drug Squad, Task Force and Marine Units have conducted regular exercises in execution of searches for drugs, firearms and currency. The team operates at all Sea Ports, Airports, bays and unmanned locations where illegal activities are detected. In addition to other agencies, joint exercises with the teams in the enforcement unit are a regular feature for the Mobile team. The permanent staff of the Office of the Director of Public Prosecutions is also involved in the process. The officers consist of the Director of Public Prosecutions and two State Attorneys. By virtue of Section 15 (1) of the MLP Act No. 8 of 2011, the Minister of Legal Affairs has appointed an Anti-Money Laundering Advisory Committee. This committee consists of: • The Attorney General (Chairman) • The Financial Secretary (Deputy Chairman) • The Commissioner of Police • The Comptroller of Customs • The Comptroller of Inland Revenue • The Director of FSU • The Director of FIU The functions of this committee as stated in the Act include the following: 5. Promoting effective collaboration between regulators and law enforcement agencies and, 6. Monitoring interaction and co-operation with overseas regulators 7. Overseeing and inspecting the work of the Authority	

		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.	8. The general oversight of the anti-money laundering policy of the government. Etc. This Advisory Committee conducts monthly meetings and is also supported by the local AML/CFT technical working group which consists of representatives of all relevant agencies. This technical working group also conducts regular monthly meeting to ensure the effectiveness of Dominica's AML/CFT regime. There has been proven to be effective cooperation / coordination among local agencies such as the Customs, Police, FIU in regards to money laundering. Terrorism financing and other designated category of offences. The Customs is part of the Technical Working Group which also comprises of Police, FIU, FSU, and Legal. There has been frequent coordination between the police, Customs and FIU as is highlighted in Recommendation 32 where exercises were carried out between the Customs and various units in the Police Force The Dominica Police Force introduced polygraph testing as part of its vetting process of persons who work in sensitive or specialized sections such as the CID, Anti-crime Task Force, Drug Squad, Special Branch, and NJIC in 2011. The polygraph testing of the ranks of the Police Force is being done on a voluntary basis. The vetting process is coordinated by the Regional Security System (RSS) and funded by the US Embassy in Barbados. The US only provides funding for the vetting of persons in specialized sections or areas. Between November 2012 and February 2013 some sixty eight (68) police officers were vetted comprising of senior managers, middle managers and lower ranks. Other sensitive personnel and other ranks will be vetting if funding is available. Outside funding	

			will have to be sourced for personnel not in specialized or sensitive areas and new entrants into the Police Force. In February 2014, the Dominica Police Force installed a new database at its headquarters in Roseau. It is currently in the process of conducting data entry activities at the Administration Section, The Criminal Investigation Department and the Charge Office. Data on personnel, outstanding warrants, land and sea patrols, motor vehicle licenses, firearm license among other data types are among some of the information that is being populated in the new database. All district police stations will be given access to the database via the Police Wide Area Network (WAN). It is envisioned that in the future, the database will be able to connect to the Regional Integrated Ballistic Information Network (RIBIN). The Regional Integrated Ballistic Information Network, also known as RIBIN, is a network that can capture, store, and rapidly compare digital images of bullets and cartridge casings. It generally supports the sharing of ballistic information. Attached to this report is a document bearing the title *" CFATF-customs perspective*" which contains the statistics collected by the customs department in respect of cash seizures and other related AML matters.	

Rec. 31 National co-operation	PC	i. There should be regular inter agency meetings among all the agencies that are charged with ensuring the effectiveness of the AML/CFT regime. ii. The Supervisory Authority needs to expand its activity so as to ensure that all entities that may be susceptible to be used for Money laundering or Terrorist Financing are aware of these dangers and take the necessary precautions. iii. There should be established and maintained regular inter-agency meetings where policies and actions are developed.	By virtue of Section 15 (1) of the MLP Act No. 8 of 2011, the Minister of Legal Affairs has appointed an Anti-Money Laundering Advisory Committee. This committee consists of: • The Attorney General (Chairman) • The Financial Secretary (Deputy Chairman) • The Commissioner of Police • The Comptroller of Customs • The Comptroller of Inland Revenue • The Director of FSU • The Director of FIU The functions of this committee as stated in the Act include the following: 9. Promoting effective collaboration between regulators and law enforcement agencies and, 10. Monitoring interaction and co-operation with overseas regulators 11. Overseeing and inspecting the work of the Authority 12. The general oversight of the anti-money laundering policy of the government. Etc. This Advisory Committee conducts monthly meetings and is also supported by the local AML/CFT technical working group which consists of representatives of all relevant agencies. This technical working group also conducts regular monthly meeting to ensure the effectiveness of Dominica's AML/CFT regime. There has been proven to be effective cooperation / coordination among local agencies such as the Customs, Police, FIU in regards to money laundering. Terrorism financing and other designated category of offences. The Customs is part of the Technical Working Group which also comprises of Police, FIU, FSU, and Legal. There has been frequent coordination between the police, Customs and FIU as is highlighted in Recommendation 32 where	

		iv. There should be a closer link between the Supervisory Authority and the DNFBPs. 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.	exercises were carried out between the Customs and various units in the Police Force There is a very close link between the FSU (Supervisory Authority). The FSU supervises all DNFBPs, conducts inspections on their premises and also conducts training programmes for them in respect of their obligations and responsibilities regarding Money laundering and terrorist financing. **See:** Section 7 &8 of the MLPA, 2011 and evidence of sensitisation activities conducted by the FSU. As indicated above, due to the effective functioning of the AML/CFT Advisory Committee and that of the Local Technical working group, developments regarding Anti Money Laundering and the suppression of the financing of terrorism is well coordinated in Dominica and involves the participation of all relevant government agencies and departments. Section 52 of the AML/CFT code of Practices also places an obligation on the FSU and the FIU to establish a system of dialogue with key public authorities in Dominica as a means of creating and enhancing and promoting public awareness of issues relating to Money Laundering and Terrorist Financing. The director of the FSU in consultation with the director of the FIU may also convene meeting with the public authorities as may be necessary: (*subsec.(4).*	
Rec. 32 Statistics	NC	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.	The police have installed a brand new database system that captures all reports from inception to completion. It is currently installed at police headquarters and is being rolled out to other departments within the police force and outstations. With time as more statistics are collated, a report may then be generated to substantiate same.	

		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.	The CA has a new system that allows it to capture all incoming and outgoing requests. It tracks all information pertaining to the requests including the date the request was received, the actions taken, the date the action was taken and the status of the matter. A new column has been added to capture the Nature of all requests received and made. **See** attached a report generated to demonstrate that data is in fact collected in respect of all Mutual Legal Assistance Requests The FIU continues to maintain comprehensive and secured databases on the Microsoft SQL Server Platform in accordance with essential criteria 32.2. In 2012, the FIU has commenced two new cases in the Magistrate's Court under the aegis of the Proceeds of Crime Act No. 4 of 1993 in collaboration with the Dominica Police Force and conducted to cash seizure investigations in consonance with the Customs and Excise Division. Currently, the FIU has six cases involving fourteen persons before the Magistrate's Court. An application for Paper Committal has been made at the Magistrate's Court for one of these cases. The Statistics for Customs as maintain and generated from their ASYCUDA world computer program system indicates the following: 2010/2011 the currency seizure amounted to EC$20,158.50 for that same period there were fines imposed by Custom for various offences amounted to $239,701.40. In the period 2011/2012, there were currency seizures amounted to $736,375.70. For that same period, a total of EC$461,467.33 was received as fines imposed for various offences. For the period 2012 to date there have been currency seizures amounted to $269,038.93 and fines imposed for various offences for that period amounted to $413,874.25.	

			The statistics compiled by the Canine Unit of the Customs which was established in April 2011 indicates that, from July 2011 to present there have been twenty two (22) joint operations with the police which resulted in over ninety (90) kilograms of cocaine, Two Thousand One Hundred and Sixty Two (2162) pounds of Cannabis, Two Thousand Seven Hundred and Eighty Five (2785) Cannabis trees, seven firearms and large quantities of ammunition have been detained.	
Rec. 33 Legal persons – beneficial owners	PC	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	The requirement of ensuring that licensed agents maintain up to date information on beneficial owners and other controllers is addressed in section 28(2) of the AML/CFT code; which provides that an entity or professional *'shall in any case take reasonable measures to verify the beneficial owners or controllers of a legal person and update information on any changes to the beneficial ownership or control'.* Subsection 3 ensures compliance with and enforcement of this provision by further providing that where any entity or professional fails to comply with this requirement, he commits an offence and is liable to be proceeded against under section 60(5) of the Proceeds of Crime Act. To facilitate and ensure continuous monitoring and supervision as required by this recommendation, section 29(3) of the said code provides as follows: *"An entity or professional shall ensure that –* *a) A change in an underlying principal or beneficial owner or controller of the underlying principal is properly recorded; and* *b) The identity of the new underlying principal or the beneficial owner or controller of the principal is appropriately verified.*	

		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.	The Evidence of the ongoing monitoring conducted by the FSU based on their structured work programme is attached. Concentration on the supervision of licensed agents and most of the DNFBPs will be seen as we move forward in this new financial year 2014-2015. This will be done in accordance with the new legislative amendments and the AML/CFT Code of Practice which became law on May 1st 2014. The FSU has developed a set of revised Anti-Money laundering Guidelines to give practical guidance to financial Institutions and other Scheduled entities in Dominica; aimed specifically at the prevention, detection and reporting of money laundering activities. This document is attached and includes clear guidance to entities to avoid bearer shares being misused for money laundering purposes. See: paragraphs 47, 62 71 and 72 of the said attached document which are all aimed at addressing this deficiency. The methods of obtaining financial information discussed above equally here. And may therefore be used by competent authorities to gain timely access to information on beneficial ownership as well.	

Rec. 34 Legal arrangements – beneficial owners	NC	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.	The Proceeds of Crime Act has been amended by the Proceeds of Crime (Amendment) Act, Act 2 of 2014 which by virtue of section 72A gave the Attorney General the power to provide Regulations for – a) The designation of a person or body as the registration and supervisory body for trusts; b) The functions, duties and powers of the Trusts Supervisor, including with respect to the supervision, the gathering and disclosure of information ; c) The registration of trusts including by electronic means or otherwise; d) Enforcement of actions that may be taken by trusts for failure by trusts to comply with the regulations and code of practice e) The maintenance of records by trusts; f) The monitoring by the Trusts and NPO Supervisor; g) The circumstances in which the Trust and NPO supervisor may conduct or employ an examiner to conduct an investigation of a trust. Regulations **(Non-Profit Organisations Regulations SRO No 11 of 2014)** have been created pursuant to this provision and the Financial Services Unit (FSU) has been designated as the supervisory authority for trusts. The Said SRO is attached for your perusal. The FSU is thereby made responsible for the registration, supervision and enforcement of trusts. The unit is also charged with the responsibility of monitoring compliance with FAFTF recommendations and the effectiveness of trusts legislation in ensuring that trusts registered in Dominica are not being used for the financing of terrorism. The Regulations which are now legally enforceable (May 1st 2014), also clearly stipulate how each of the matters listed above (Para. a-g) will be carried out in respect to Trusts registered in	

			Dominica. They also provide in detail, the manner in which all relevant information regarding trusts will be gathered upon registration, stored, updated and disclosed where necessary. Since the Regulations provide that the Trusts and NPO Supervisor shall also perform the functions of Registrar of Trusts, there will not only be a system of central registration but all trust information will be centrally located. This will inevitably facilitate access to such information by Competent Authorities such as the FSU as the Registrar of Trusts. This deficiency is cured by virtue of the Fact that the said SRO provides for access to information by competent authorities such as the FSU and the FIU to be facilitated rather than hindered as follows: Firstly, by virtue of Regulation 6(4) access is allowed to the entire public as follows: *"A person may during normal business hours, require the Trusts and NPO Supervisor to provide details of the information entered on the Trusts and NPO Register in respect of a registered Non-profit Organisation."* Additionally, Regulation 15 further provides special access to the Trust and NPO Supervisor as follows: "*The Trust and NPO Supervisor may –* *A. On the grounds specified in paragraph (b), by written notice to a registered trust or non-profit organisation, require it to produce any record that the trust or non-profit organisation is required to keep under regulation 14(above).* *B. Give notice only where it reasonably requires the records specified in the notice to assess the extent, of any to which the registered trust or non-profit organisation is being*	
		ii. Competent Authorities should be able to gain access to information on beneficial		

		ownership of Trusts in a timely fashion. 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.	*used, or may in future be used, for or to assist in financing of terrorism.* There is no legislative requirement to obtain the consent of the trustee. Likewise, the Financial Investigative Unit (FIU) which possesses a combination of investigative, law enforcement, regulatory and supervisory powers, is also guaranteed access to information on trusts registered in Dominica by virtue of the Money Laundering (Prevention) Act 2011: "Trust Business" is a scheduled business in accordance with Part 1 of the schedule to the MLPA. Section 17 of the MLPA gives power to the FIU for the purpose of securing assistance with its analysis and investigations, to request that a person carrying on a scheduled business allow any member of the Unit or a person authorised by the Unit to enter its business premises during working hours to examine, take notes, make copies or make enquires as they deem fit. This provision in addition to the FIU's power to obtain in respect of a scheduled business, a Search Warrant (Sec. 24) and a Monitoring Order (Sec. 26) ensures that competent authorities possess sufficiently strong compulsory powers for the purpose of obtaining relevant information on Trusts registered in Dominica. Regulation 14 of the Trusts and Non-Profit Organisations Regulations provides that a registered trust shall keep a record of its type, purpose, objectives and activities. Each registered trust is also mandated to keep a record of the identity of the persons who benefit from, control or direct its activities including the settlors, trustees, beneficiaries and protectors.	
International Co-operation				

Rec. 35 Conventions	PC	i. The Commonwealth of Dominica should become a party to The 2000 United Nation Convention Against Trans-national Organized Crime – *(The Palermo Convention) 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)	Consideration of becoming a party to the Palermo Convention and analysis of domestic legislation to determine deficiencies in the satisfaction of the Palermo, Vienna and Terrorist Financing Conventions. <u>Palermo Convention</u> <u>Article 5</u> With the passage of the Transnational Organized Crime (Prevention and Control) Act, 13 of 2013, Dominica is in full compliance with Article 5. Part II of the Transnational Organized Crime (Prevention and Control) Act 13 of 2013 criminalizes organized criminal activity. Section 3 of the Act particularly deals with the criminalization of organized crime. Dominica is now a party to the Palermo convention. Also, legislative amendments have been made which facilitate the objectives of the Convention. Section 4 of the Money Laundering (Prevention) (Amendment) Act, 5 of 2013 has made concealing, disguising, transferring, converting, disposing of and engaging in transaction which involves property that is the proceeds of crime, knowing or believing the property to be the proceeds of crime, a criminal offence. This section meets the requirement of article 6 (1) (a&b) of the Palermo Convention. <u>Article 7</u> Dominica is already in compliance with Article 7 of this convention as the FSU and FIU work hand in hand to provide a supervisory regime for banks and non-bank financial institutions. Further the FIU is the central authority for reporting of STRs and the FSU is responsible for onsite and offsite monitoring of financial institutions. The Money Laundering Regulation on a whole effectively deals with customer due diligence, customer identification and record-keeping in keeping with requirements of article 7(a).	

			In relation to article 7(b), information sharing and cooperation amongst law enforcement and other authorities on the domestic plain, Dominica is compliant, as there is networking and sharing of information between the FIU, FSU, Customs and Police, being the main entities involved in combating money laundering and terrorist financing. Article 7(1) (b) – Section 19(1) and 20 of the Mutual Assistance in Criminal Matters Act 18 Chap: 12:19 provides for law enforcement and other authorities dedicated to combating money-laundering to be able to cooperate and exchange information at the international level. Section 3 of the FIU Act establishes the FIU unit and section 4 details the function of the FIU unit which is to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering. <u>Article 8.</u> Corruption has already been criminalized in Dominica. Section 38, 39 and 40 of the Integrity in Public Office, Act 6 of 2003 creates the offence of bribery. Section 45 of the Act deals with the presumption of corruption. Section 41 of the Act makes it an offence for a person to aid, abet or facilitate another person in the commission of any offence under this Act in accordance with Article 8(3) of the Convention. <u>Article 9</u> The IPO is designed to deal with the requirements of Article 9(1). Section 9(3) deals with the functions of the commission, section 11 deals with the powers of the commission which are necessary for combatting corruption. As it relates to article 9(2), section 43-48 of the Act deals with the penalties associated with breach of the Act.	

			Section 13 of the IPO Act provides the commission with the necessary adequate independence to deter the exertion of inappropriate influence on their actions. <u>Article 10.</u> Section, 39 and 40 of the Integrity in Public Office, Act 6 of 2003 creates the offence of bribery, which by virtue of the Interpretation and General Clauses Act Chapter 3:01 applies to legal persons. According to the Act "person includes a company." Further, the Money Laundering (Prevention) Act also puts it beyond doubt that a "person" for the purpose of the Act includes a company. Article 6 and 8 offences also apply to legal persons. The Transnational Organized Crime (Prevention and Control) Act 13 of 2013 also refers to the liability of "a person" engaged in organized criminal activity. Section 3 of the Act establishes the liability of a person involved in organized crime. As explained above, the word 'person' refers both to natural and legal persons. As such liability of legal person is captured as it relates to organized crime. Provision is made for the criminalization of laundering of proceeds of crime as stated in Article 6 of the Convention in Section 3 of the MLPA 8 of 2011. Section 3(3) of the Act provides for the sanctions associated with Article 6. The severity of the sentence implies that the gravity of the offence was taken into consideration. Section 43 of the IPO Act provides sanctions for the offence of corruption. <u>Article 11</u> Part iv section 11 of the Transnational Organized Crime (Prevention and Control) Act 13 of 2013 provides the penalty for the commission of a section 3 offence(which is the criminalization of participation in an organized group) which is	

			an Article 5 offence. It states "A person who is convicted of an offence under *section 3 is liable on conviction on indictment to a fine of $3,000,000 or to imprisonment for 25years or to both*." Given the harsh nature of the penalty it is safe to say that the penalty has taken into account the gravity of the offence. Section 3(3) of the Money Laundering (Prevention) Act 8 of 2011 provides the sanction for an Article 6 offence (criminalization of laundering proceeds of crime). The section takes into consideration the gravity of that offence and states:" *A person who commits an offence under subsection (10 or (2) is liable, on conviction, to a fine not exceeding five million dollars, and to imprisonment for a term not exceeding ten years."* Section 43 of the IPO Act provides sanctions for the offence of corruption which is an Article 8 offence. It states " *A person who commits an offence under this Part is liable-* (a) On conviction on indictment to a fine of twenty-five thousand dollars or to imprisonment for a term of ten years or to both such fine and imprisonment; and (b) On summary conviction, to affine five thousand dollars or to imprisonment for a term of two years or to both such fine and imprisonment, And shall be ordered to pay to such public body and in such manner as the Court directs, the amount or value of any advantage received by him, or such part thereof as the Court may specify." Further, section 44 of the Act makes provisions for alternative convictions and amending particulars. As it relates to the offence of obstruction of justice which is an Article 23 offence, Section of 12 of the Transnational Organized Crime (Prevention and Control) Act 13 of 2013 takes into account the gravity of the offence in establishing the sanction. It states "*A person who is convicted of the offence of obstruction of justice under section 6 is liable on conviction on indictment to a fine of $700,000 or to imprisonment for 10 years or both".*	

			<u>Article 12</u> In relation to Article 12(1-5), Section 17-23 of the Proceeds of Crime Act N0. 4 of 1993 outlines the procedures that deal with confiscation of the proceeds of crime of the offences listed in the Convention. Section 30 of the Proceeds of Crime Act No. 4 of 1993 provides for the Director of Public Prosecutions to apply to the Court for a restraining order against any realisable property held by the defendant or specified realisable property held by a person other than the defendant. Article 12(6)- Section 41 of the Proceeds of Crime Act No. 4 of 1993 gives police officers the authority to compel the production of documents by way of production order from any person. It must also be noted that the word "person" in this section also refers to legal persons. Section 59 of the Act makes provisions for the D.P.P to apply to the courts for an order enabling Government departments to disclose information and documents held by them which the Court considers relevant to any into, or proceedings relating to a scheduled offence. Section 47 of the Act also makes provision for monitoring orders which can be used to obtain information held by financial institutions for a particular period. Further, section 48 of the Money Laundering Act No.8 of 2011 overrides secrecy obligations. Section of 17 of the MLPA 8 of 2011 allows the Director of the FIU to make a written requests to financial institutions and persons carrying on a scheduled business to obtain access to and make copies of (if necessary) all information held by the institution.	

			The provision of Article 12(7) has been satisfied by section 18(3) of POCA Act 4 of 1993 and section 31(2) of the MLPA No.8 of 2011 which places the onus on the person who has benefited from the commission of the scheduled offence to prove the lawful origin of the property. <u>Article 13</u> Article 13(1)- Sections 27-28 of the Mutual Assistance in Criminal Matters adequately deals with providing assistance to designated foreign countries in relation to confiscation orders. In addition, section 71 of POCA Act 4 of 1993 deals with the execution and registering of external forfeiture and confiscation orders. Also section 16 of the Transnational Organized Crime (Prevention and Control) Act 13 of 2013 specifically states that the Mutual Assistance in Criminal Matters Act applies to the Transnational Act in "relation to an offence under this Act as if the offence were a serious offence within the meaning of section 2 of the Act; and the assistance to be afforded may be requested for any of the purposes specified in Article 18 of the Convention" Article 13(2)- Section 20 of the Mutual Assistance in Criminal Matters Act generally provides for the giving of assistance to a designated country in obtaining evidence or information relevant to a criminal matter. Section 22 of the Act provides for assistance to a country in obtaining an article or thing, by search and seizure if necessary once the request is accepted. Section 26 of the Act provides for assistance to a designated country in identifying, locating, tracing or assessing the value of property derived or obtained, directly or indirectly from the commission of a specified serious offence. <u>Article 14</u>	

			The Money Laundering Prevention Act 8 of 2011 as amended by Section 36 of the Money Laundering (Prevention) Act 8 of 2013makes provisions for sharing funds derived from the sale of confiscated proceeds of crime with other states. Section 36 of the Money Laundering (Prevention) Act makes it clear that property, assets, funds seized under the Proceeds of Crime Act will be deposited into the assurance fund. Sections 36(b) of the Act specifically provides for the payment of money out of the fund to satisfy an obligation to a foreign state in respect of confiscated assets. Section 36(c) provides for the sharing of confiscated property with another State. However, our domestic law does not give priority consideration to the returning the confiscated proceeds of crime to the requesting State. <u>Article</u> 15 Section 14 of the Transnational Organized Crime (Prevention and Control) Act 13 of 2013 deals with jurisdiction for offences under the Act. This would mean that the section applies to Article 5,6 &23 offences. Article 15 (1) (a)- Section 14 (e) & (f) corresponds to Article 15(1)(b) Section 14(b) corresponds to Article 15(2)(a) Section 14(a)&(d) corresponds to Article 15(2)(b) Section 59 of the International Maritime Act No. 9 of 2000 Section 59 states- "59(2) At all times during the period that a vessel has the right to fly the Flag of Dominica, the vessel shall be subject to the exclusive jurisdiction and control of Dominica the Flag State, in accordance with the applicable international conventions Agreements and with provisions of this Act and any Regulation made thereunder. In relation to Article 15 normally principles of international law pertaining to jurisdiction will apply.	

			Article 16(3) of the Convention has been addressed in Schedule 3 of the Transnational Organized Crime Act 13 (Prevention and Control) Act No.13 of 2013. The offences under this Act have been made extraditable offences. <u>Article 16</u> Section 6 of the Extradition Act of Dominica makes provision for the apprehension and surrender of a fugitive. Section 14(1) of the Extradition Act makes provision for the detention of a fugitive apprehended in Dominica pending determination of extradition proceedings. All references made to the "Act" in this section refers to the Mutual Assistance in Criminal Matters Act Chap. 12:19. <u>Article 18</u> The Mutual Assistance Criminal Matters Chap. 12:19 deals with Article 18. Division 2 of the Act makes provisions for general assistance under the Act, particularly sections 20-25. Section 19 deals with the acceptance or refusal of requests under the Act. Further, section 16 of the Transnational Organized Crime (Prevention and Control) Act 13 of 2013 states that the Mutual Assistance in Criminal Matters Act applies to the Transnational Organized Crime Act. Article 18 (3) (a)- section 7(a) & (c)of the Mutual Assistance in Criminal Matters Act deals with the taking of evidence or statements from persons. Section 12 of the Act deals with effecting service of judicial documents.	

			Section 9 of the Act addresses the issue of executing searches and seizures, and freezing. It states *"where there are reasonable grounds to believe that an article or thing is in a Commonwealth Country could give or provide evidence or assistance relevant to any criminal matter, a request may be transmitted requesting that assistance be given by the country in arranging the attendance of the person in Dominica to give or provide that evidence, or, as the case may be, assistance."* Section 7(f) of the Act deals with obtaining samples of any matter or thing taken, examined or tested. Subsection (g) of that section makes provision for obtaining any information relevant to building, place or thing viewed or photographed. Section 7 (d) of the Act makes provisions for the obtaining of copies of judicial records or official records which have been examined. Section 15 of the Act deals with providing assistance to a designated foreign country in identifying, locating or assessing the value or amount of any property derived or obtained directly or indirectly forms the commission of a serious offence. Section 10 of the Act deals with the giving of assistance in arranging the attendance of person who could give or provided evidence or assistance relevant in a criminal matter. The requirements of Article 18(11) & 18(12) are met by section 24(3) of the Mutual Assistance in Criminal Matters Chap. 12:19 which provides the central authority of Dominica with the authority to set conditions subject to which a prisoner is be transferred, including conditions with respect to the custody, release or return of the prisoner. <u>Article23</u>	

			Section 6 of the Transnational Organized Crime (Prevention and Control) Act 13 of 2013 establishes the criminal offence of obstruction of justice. The section states "A person, who, in relation to a witness or justice system participant involved in criminal proceedings to which this Act applies- a) Uses or threatens to use physical force; b) Intimidates; or c) Promises or offers a financial or other material benefit, For the purpose of interfering with the judicial process an in the case of witness, of the purposes specified in subsection (2), commits an offence. <u>Article 24</u> Protection of Witnesses Act No. 4 2013 which will assist in that regard to protection of witnesses. Section 4 of the Act is geared at securing witness anonymity. Section 6 of the Act assists in meeting the objectives of section 4 by providing for the application for a witness anonymity order. Section 11 of the Act caters to the need of keeping the address of the witness private. Section 12 provides for the eligibility of witnesses to be given assistance on the grounds of fear or distress in testifying. Section 16 makes provision for a witness to give evidence by 'live link'. Section 17 makes provision for witness to give evidence in private, section 18 provides for video recorded evidence and section makes 19 allows for video recorded cross examinations or re-examinations. Section 20 provides for examination of witness through an intermediary. <u>Article 27</u> Article 9 of the schedule to the Security Assistance Among Caricom States Act 6 of 2007 addresses the provisions of this Article. It provides for contracting parties to agree to cooperate in the areas of combating threats to national and regional security, minimizing the incidence of serious crimes etc.	

			Protocol *to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime:* Article 5 Part III, Section 8 of the Transnational Organized Crime Act no.13 of 2013 creates the offences relating trafficking and smuggling of persons. Article 6 Section 10(3) of the Transnational Organized Crime (Prevention and Control) Act 13 f 2013 states that "Notwithstanding the provisions of any other law, all legal proceedings conducted in relation to the offence of trafficking in persons shall be conducted in camera." This is a measure taken in an attempt to protect the privacy and identity of victims of trafficking in persons. Article 6(6) Section 13(3) of the Transnational Organized Crime Act makes provision for this. It states (Where a person is convicted of the offence of trafficking in persons, the court may, in addition to any penalty imposed under this section, order that person to pay restitution to the victim." Section 13(4) indicates what the restitution must compensate for and section 13(5) states that (Notwithstanding subsection (3), where the property of a person convicted under this Act is forfeited, under the Proceeds of Crime Act or any other relevant Act, restitution shall be paid to the victim as far as possible, from that property or the proceeds thereof." Article 8	

			In relation to Article 8(1) section 17 of the Immigration and Passport Act of Dominica makes provisions for prohibited immigrants to leave the state. Section 33 and 35 of the Act can also be of assistance. <u>Article 9</u> Sections of the Immigration and Passport Act listed below deal with Article 9. Section 6 of the Act deals with passports. Section 8 deals with the prohibition of immigrants from entering the state. <u>Article 10</u> Provisions of this article can be dealt with using the mutual assistance in criminal matters Act. <u>Article 11</u> Section 3 of the Immigration and Passport Act which deals with the power to search and section 12 deal with the provisions of article 11(2)-11(4). Section 12A as amended by section 4 of the Act which deals with power to board and search ships. Section 20 Protocol against the illicit Manufacturing of and Trafficking in Firearms, Their parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime. <u>Article 5</u> Section 9 of the Firearms Act Chap. 15:31 creates the offences relating to selling or transferring firearms or ammunition. Section 15 deals with the prohibition on manufacture of firearms or ammunition. Section 10 deals with special offences as to possession of firearms in certain circumstances.	

			Terrorist Financing Dominica is in compliance with this Article. Section 3 of the Suppression of the Financing of Terrorism (Amendment) Act, Act No.9 of 2011 amended section 2 of the parent Act. The definition of the word "terrorist" was substituted with the following: "*an individual who:-* a) *Commits or attempts to commit, a terrorist act by means, directly or indirectly unlawfully and wilfully;* b) *Participates as an accomplice in a terrorist act;* c) *Organises or directs others to commit terrorists acts; or* d) *Contributes to the commission of terrorist acts by a group of persons acting with common purpose where contribution is made intentionally and with the aim of furthering a terrorist act……."* Article 2- Dominica is in compliance with Article 2 by virtue of section 4 of SFTA which provides for the act of terrorist financing. Section 4(1) of the Suppression of the Financing of Terrorism Act 3 of 2003 as amended by Suppression of the Financing of Terrorism (Amendment) Act 6 of 2013, with the offence of terrorist financing. The section now reads: "A person commits an offence within the meaning of 1999 Convention, if that person by means, directly or indirectly, unlawfully and wilfully provides or collect funds with the intention or in the knowledge that such funds shall be used in full or part - (a) in order to carry out a terrorist act (b) by a terrorist group; or (c) by a terrorist."	

			Section 4 (3) is in compliance with Article 2(5)(a)&(b). "A person commits an offence within the meaning of subsection 1 if that person knowingly or intentionally- a) attempts to commit the offence b) participates as an accomplice in the commission of the offence referred to in paragraph (a) of this subsection c) organizes or directs others to commit the offence or to participate as an accomplice in the commission of an offence under this subsection; or d) Contributes to the commission of an offence referred to in paragraph (a), (b), or(c). Section (4) of the Act is in compliance with section 3(5) (c). Section 14 of the Act further stipulates activities which are forbidden. **Article 4-** Section 4 establishes as criminal offences under domestic law, the offences set forth in article 2 of the convention. Section 5 of the Act stipulates the penalties for a person convicted of a section 4 offence. Section 7 deals with penalties for a financial institution found guilty of a section 4 offence.. Article 5 Section 5(1) (b) of the Act *(see Amendment Act 9 of 2011*), deals with the liability of section 4 offence in relation to legal entities. According to section 5(1). (b) an entity that commits a terrorist act commits an offence and is liable to a fine of one(1) million dollars Section 5(2) states that the liability is incurred without prejudice to the criminal liability of individuals having committed the offence.	

			Sections 45 of the SFTA No.3 of 2003 deals with the general penalties and section 46 deals with offences committed by entities. By virtue of the interpretation section of that Act ' a person' includes "an entity" In accordance to section 7 of the Act, as amended by Act No. 9 of 2011, upon the conviction of a financial institution of an offence under this Act the court may order a written warning be imposed on the directors or employees of the institution, the financial institution's license is liable to be suspended cancelled and a fine not exceeding one million dollars may be imposed on the financial institution. <u>Article 7</u> Section 10(1) and 10(2) of SFTA Act No. 3 of 2003 deals with provisions of Article 7. This Articles addresses the issue of jurisdiction. Dominica has jurisdiction to try offences under this Act when it is committed - *(a)* in Dominica; *(b)* by a national or citizen of Dominica; *(c)* on board a vessel flying the flag of Dominica or an aircraft registered under the laws of Dominica at the time of the commission of the offence. Section 10(3) deals with the provisions of Article 7(2)(d)&(e). Article 7(4) is dealt with by section 33 of the Suppression of Financing of Terrorism Act 3 of 2003 which states: "*Where a person who commits an offence under this Act is present in Dominica and that person is not extradited to a State which establishes jurisdiction over that person, the Director of Public Prosecutions shall prosecute the person for the commission of the offence."* <u>Article 8</u> Section 12 of the Act addresses the concerns of Article 8(1`) in terms of freezing assets. It states; " *The Attorney General shall,*	

			on the publication of a designation order, in writing issue an order to a financial institution in the State requiring it to freeze any account, funds or property held by that financial institution on behalf of a person who or terrorist group which is the subject of a designation Order." Section 23(1)of the Act provides the police with power to seize property used in the commission of terrorist act. It states: "*The* Commissioner of Police may seize any property where he has reasonable grounds for suspecting that the property has been or is being used to commit the offence under this Act." In respect of the identification of funds used or allocated for the purpose of committing the offences set forth in article 2 section 11B (a) &(b)of the Suppression of the Financing of Terrorism (Amendment) Act 9 of 2013 can be utilized. The section outlines to the financial institutions the procedures which ought to be applied when they have received the list of designated entities and they realize that individuals on the list have funds with the financial institutions. Section 11C of the Act deals with detention in that upon receipt of information from the financial institutions in accordance with 11B, the Financial Investigative "Unit shall immediately conduct necessary investigations to verify the accuracy of the information provided by the financial institution." Section 30 of the Proceeds of Crime Act Chap. 12:29 as amended by section 12 of the Proceeds of Crime (Amendment) Act 7 of 2013 states: *"The director of Public Prosecutions may apply to the Court for a restraining order against any realisable property held by a defendant or specified realisable property held by a person other than the defendant."* Section 32 of the Act as amended by section 13 of the Proceeds of Crime (Amendment) Act No.7 of 2013 also deals with restraining orders which can be made ex parte.	

			Further, section 59 B -59I of the Act make it possible for the State to recover in civil proceedings before the Court, property which is, or represents property obtained through unlawful conduct . Section 59L states that the "*Attorney General may apply to the Court for a recovery order against any person who the Attorney General believes holds recoverable property."* Article 8(2) Section 8. (1)Where a person is convicted of an offence under this Part, in addition to any penalty the Court may impose, the Court may order forfeiture to the State of - (a) the funds collected or retained by that person or by any other person on behalf of the convicted person for the commission of the offence; (b) any property used for, or in connection with the commission of the offence; and (c) any funds, property or asset derived from any transaction by the convicted person or in relation to which the offence is committed. (2) Before making an order under subsection (1), the Court shall give every person appearing to have an interest in the funds, property or assets in respect of which the order is proposed to be made, an opportunity of being heard. (3) Property, funds and assets forfeited to the State under subsection (1) shall vest automatically in the State - (a) if an appeal has been made against the order, on the final determination of the appeal; and (b) if no appeal has been made against the order, at the end of the period within which an appeal may be made against the order. It must be noted that section 8 is complimented by section 37 of the Act. Section 38(1) further states: " The Attorney General may apply to a Judge for an order of forfeiture in respect of-	

			(a) property owned or controlled by, or on behalf of a terrorist or terrorist group; or (b) property that has been, is being or will be used, in whole or in part to commit or facilitate the commission of a terrorist act. Section 4 of the Proceeds of Crime Act Chap:12:29 as amended by section 5 of the Proceeds of Crime (Amendment) Act 7 of 2013 states: "*Where a person is convicted of a scheduled offence committed after the coming into force of this Act, on the application of the Director of Public Prosecutions or if the Court considers it appropriate to do so, the Court may make one or both of the following orders-* *(a) a forfeiture order against property that is tainted property in respect of a scheduled offence;* *(b) a confiscation order against the person in respect of benefits derived by the person from the commission of a scheduled offence or any other criminal conduct."* Section 17 (1) of the Proceeds of Crime Act as amended by section 6 of the Proceeds of Crime (Amendment) Act No. 7 of 2013 which states that: "*Subject to this section, where the Director of Public Prosecutions applies to the Court for a confiscation order against a person in respect of that person's conviction for a scheduled offence, the Court shall, if it is satisfied that the person has benefited from the scheduled offence or any other criminal conduct, order him to pay to the State an amount equal to the value of the benefits, or such lesser amount as the Court certifies in accordance with section 20 to be the amount that might be realised a the time the confiscation order is made."* Section 7 & 8 of that Act makes provision for the Court to determine whether or not a person has benefited from a scheduled offence or any other criminal conduct and for assessing the value of that benefit.	

			Article 8(4) Section 12C of the Suppression of the Financing of Terrorism (Amendment) Act 9 of 2011 goes a step further than provision 8(1) of the Article in that it makes provision for the court, upon application, by the competent authority, to receive a request from the court of another State to freeze the accounts, funds or property connected to a terrorist, terrorist group, that was the subject of the freezing mechanism of the requesting state. Article 9 Part 6 of the Act adequately provides provisions to deal with investigations of alleged offences under the Act. Section 20 of the Act empowers the "Unit" with the authority to investigate certain dealings. Where the Commissioner of Police receives information that a person who committed or is alleged to have committed an offence under this Act or an offence under the corresponding Act of any other State, and that person is present in Dominica, section 21 of the Act empowers the Commissioner of Police to investigate the facts contained in such information. Section 21 of the Act adequately addresses the provisions of Article 9 of the Convention as its sections deal with – i) the investigation and presence of offenders in Dominica ii) ensuring the presence of the person present in Dominica for the purpose of prosecution and extradition iii) entitlement of person regarding whom the measures referred to in paragraph 2 of Article 9 of the Convention	

			section 22 of the Act deals with the notification to appropriate states in accordance with the convention. <u>Article 10</u> Section 33 of the Act fully addresses provisions of this Article as it providers for offenders who are present in Dominica who have not been extradited to be prosecuted. <u>Article 11 (1)-</u> Section 25 of this Act amends the schedule to the Extradition Act which sets out the extradition crimes by the insertion of " 29. *An offence against the law relating to the suppression of financing of terrorism."* Section 27 as amended by the Suppression of Financing of Terrorism (Amendment) Act 9 of 2011 makes provisions for the request for extradition to be considered whether or not there is an extradition treaty between Dominica and the requesting state. Section 29 of the SFTA states- "Notwithstanding anything in the Extradition Act or in any other enactment, all extradition treaties entered by Dominica with any State or extended to Dominica shall be deemed amended to the extent necessary to give effect to the 1999 Convention." Article 11 (4)- Section 28 of the SFT Act 3 of 2003 deals with the scope of jurisdiction for extradition. The offences set forth in article 2 shall be deemed as if it had been committed not only in the place in which it occurred but also in any state or territory which establishes jurisdiction in accordance with the provisions of this Act in respect of the offence.	

			Article 12 Article 12 (1) Section 34 of the Act governs the exchange of information relating to terrorists, terrorist groups and terrorist acts and activities provided that a request is made by the appropriate foreign state for the necessary information. Section as amended by section 36B of the Suppression of the Financing of Terrorism (Amendment) Act makes provision for information sharing with foreign counterpart agency in relation to the commission of an offence under the Act. Section 36Callows for the Unit to use memorandum of understandings with foreign counterpart agencies that perform similar functions to that of the Unit where the Director considers it necessary for the discharge or performance of the functions of the Unit. Section 14(2) of the Suppression of the Financing of Terrorism (Amendment) Act 9 0f 2011 provides for the sharing of information notwithstanding any obligations as to secrecy , confidentiality or other restriction upon disclosure of information imposed by any law. Article 13 Section 31 SFTA 3 of 2003 of the Act corresponds with this Article Article 14 Section 30 SFTA 3 of 2003 of the Act corresponds with this article. Article 16	

			Section 32 of the SFTA 3 of 2003 deals with conditions for transfer of persons detained in the requested state. It adequately deals with Article 16 (1) (a&b). <u>Article 17</u> Section 8 of the Constitution of the Commonwealth of Dominica enshrines the principle of natural justice which guarantees fair treatment . <u>Article 18</u> A new Part VA has been included in the SFTA No.9 of 2011 which places an obligation on financial institutions to report to the Unit all complex, unusual or large business transactions whether completed or not. <u>Protection of Victims of Trafficking in Persons</u> <u>Article 5</u> Section 8 of the Transnational Organized Crime (Prevention and Control) Act 13 of 2013 establishes as criminal offences the conduct set forth in article 3 of this Protocol. <u>Article 6(1)</u> Section 10(3) of the Transnational Organized Crime (Prevention and Control) Act No.13 of 2013 makes provisions for all legal proceedings conducted in relation to the offence of trafficking in persons <u>Article 6(6)</u> Section 13(3) of the Transnational Organized Crime (Prevention and Control) Act No.13 of 2013 offers the victims of trafficking persons the possibility of obtaining compensation for damaged suffered. The section states: "*Where a person I convicted of the offence of trafficking in persons, in addition to any penalty imposed under this section, order that person to pay restitution to the victim."* Section 13(4) speaks to the type of restitution which may be obtained by the victim.	

			Subsection 13(5) makes it possible to pay a victim from the forfeited funds and or property of the convicted person. <u>Article 8</u> Section 17 of the Immigration and Passport Act to some extent provides for repatriation of prohibited immigrants. <u>Article 9(a)</u> In an attempt to prevent and combat trafficking in persons, Dominica has take legislative action which involves: 1. the criminalization of human trafficking by section 27B(1) of the Immigration And Passport (Amendment) Act No. 19 of 2003 and the imposition of a fine of $100,000. By section 27B(2) upon conviction. 2. The criminalization of :- a) Providing false or misleading information on a passport b) Omitting of a matter or thing without which a statement or information is misleading in a material particular c) Furnishing of a document which is false or misleading in a material particular to an immigration officer, or department in connection with an application for extension or renewal of a passport d) Intentionally defacing or damaging a passport issued under this Act e) The forging of a passport f) Being in possession of a passport which a person knows to be forged or fraudulently or illegally obtained g) The selling, exchanging, or giving to another or dealing with a forged passport by virtue of section 28C(1) of the Immigration and Passport (Amendment) Act No. 19 of 2010.	

			Section 28C(2) of the Act provides for the sanctions to imposed where an offence has been committed. Further, section 35A makes it an offence to assist unlawful immigration to another state and provides the penalties for the offence. 3. The imposition of restrains on persons who are not citizens of Dominica by section 27C of the Act. 4. The granting of powers of search to immigration officers which allows them to board and search any vessel arriving in the State. 5. Deeming persons who enter the State without a passport as prohibited immigrants by virtue of section 6 of the Immigration and Passport Act Chap. 18:01. 6. Prohibiting the entrance of prohibited immigrants into the state by virtue of section 8 of the Immigration and Passport Act Chap. 18:01. Section 20 the Act goes further to require a person held to be a prohibited immigrant or to whom a permit is issued to, if so required by the immigration officer, submit to his finger-prints and photograph being taken by the immigration officer. 7. Requiring the master of a vessel arriving form any place outside the State or departing from the State to furnish to the competent authority the relevant advance passenger information data set out in Schedule 1, in respect to the vessel and each person on board in accordance to section 12 of the Immigration and Passport Act Chap. 18:01 as amended by section 4 of the Immigration and Passport (Amendment) Act No.11 of 2007. <u>Article 11 (3)</u> Section 3 of the Immigration and Passport Act Chap. 18:01 as amended by section 4 of the Immigration and Passport (Amendment) Act No. 11 of 2007 and section 35 of the Act establishes the offence and section 36 of the Act as amended by	

			Immigration and Passport (Amendment) Act No. 19 of 2003 deals with the appropriate sanctions. **<u>Vienna Convention</u>** <u>Article 3</u> The provisions of Article 3 are dealt with in the Drugs (Prevention of Misuse Act) Chap. 40:07. <u>Article 3</u> Sections 3-10 of the Act deals with Article 3(1) Section 2 of the Money Laundering Prevention Act deals with Article3(b) Sections 17 & 20 of the Misuse Act deals with Article 3(c). <u>Article 3(2)</u> Sections 7-8 of the Misuse Act deals with the restriction of the possession of controlled drugs and the restriction of cultivation of cannabis plant respectfully. <u>Article 3(3)</u> <u>S</u>ection 2(2) of the Money Laundering Prevention Act addresses this Article. Provisions of this Article have already been addressed in Proceeds of Crime Act No. 4 of 1993 and have been explained earlier. This has also been dealt with by the "Central Authority Procedures. Amendments have also been made to the central authority procedure in attempt to bring it up to date with the requirements of CFATF. A copy of the document is attached.	
Rec. 36	LC	i. To avoid conflicts of jurisdiction, the Commonwealth of Dominica	36.7 Administrative Consideration	

		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.	Determined by court practice <u>R.36.1:</u> By virtue of Part III of the Mutual Assistance in Criminal Matters Act Chap 12:19 as amended, the Commonwealth of Dominica is able to provide legal assistance to Commonwealth Countries, upon receipt of a request for assistance by the Central Authority. The Mutual Assistance in Criminal Matters (Amendment) Act, Act 16 of 2002 also expanded the scope of the parent Act by replacing section 30 of the Act to provide further that, ' *the provisions of the parent Act applies mutatis mutandis to:* *a. Any country which has a bilateral treaty with Dominica in respect of mutual legal Assistance ; and* *b. Any country which is a party to the United Nations Convention against illicit traffic in Narcotic Drugs and psychotropic substances.'* Under the Act, mutual legal assistance can be provided to other countries in very wide range of instances where criminal matters are concerned: Part VI of the Money Laundering (Prevention) Act, Act 8 of 2011 makes clear provision for international cooperation in matters pertaining to the prevention of Money Laundering. Section 39 provides: *"The court or the Central Authority may receive a request from the court of another state to identify, trace, freeze, seize, confiscate or forfeit-* *a. The property* *b. Any property of corresponding value* *c. Proceeds; or* *d. Instrumentalities,*	

			Connected to money laundering offences and may take appropriate action……" Section 40 provides: *" The Unit (FIU) may, on request share information relating to the commission of a money laundering offence with a foreign counterpart agency, subject to reciprocity, and any conditions as may be considered appropriate by the Director, but the Unit shall not refuse a request on the ground that it involves matters of a fiscal nature."* The Act provides in Part III for Mutual Legal Assistance to be given to foreign jurisdictions in a wide range of instances: **For Example:** 1. Assistance in obtaining evidence; 2. Assistance in locating or identifying persons; 3. Assistance in obtaining article or thing by search and seizure if necessary; 4. Assistance in arranging attendance of persons; 5. Assistance by transferring a prisoner; 6. Assistance in serving documents; 7. Assistance in tracing property; 8. Assistance in relation to certain orders; 9. Assistance in obtaining a restraining order; Procedures for dealing with request for Mutual legal assistance have been development and adopted by Dominica to ensure that responses to requests for mutual legal assistance are submitted in a **timely, constructive and effective manner.** These procedures can be found in Part A of the *'Central Authority Procedures'* on pages 16 -23. 36.2	

			Mutual Legal Assistance is neither prohibited in Dominica nor is it made subject to unreasonable, disproportionate or unduly restrictive conditions. Section 19(2) of the Mutual Assistance in Criminal Matters Act Chap12:19 provide the limited instances in which the Central Authority is mandated to refuse a request for assistance. This provision only provides for a mandatory refusal in the following circumstances: a) The requests relates to the prosecution or punishment for an alleged offence of a political character; b) There are substantial grounds for believing that the purpose for prosecuting or otherwise punishing a person is on account of their race, sex, religion, nationality, place of origin or political opinions; c) The request relates to the prosecution or punishment of a person for conduct which would not constitute an offence in Dominica; d) The request is contrary to the constitution of Dominica; e) The request is for a kind which cannot be given under the Act. <u>36.4</u> There is no provision in the relevant legislation or rule of practice in Dominica, that a request for mutual legal Assistance should be refused on the sole ground that the offence is considered to involve fiscal matters *(a fiscal offence*). The situations in which it is mandatory to refuse a request are indicated above and the full provision can be viewed in section 19 of the Act. In accordance with the requirements Section 40 of the Money Laundering (Prevention) Act which deals with information sharing with foreign counterpart agencies provides as follows: *" The Financial Intelligence Unit may on request share information relating to the commission of a money laundering*	

			offence with a foreign counterpart agency, subject to reciprocity and any other conditions as may be considered appropriate by the director, ***but the Unit shall not refuse a request on the ground that it involves matters of a fiscal nature.*** <u>36.5</u> The Mutual Assistance in Criminal Matters Act does not require that a request for Mutual Legal Assistance should be refused on the ground of laws that impose secrecy or confidentiality requirements. Sections 19 of the Mutual Assistance in Criminal matters Act Chap 12:19 which speaks to the refusal of requests is void of any such limitation on the provision of assistance to foreign states. Additionally, where sensitive financial information is required in order to respond to a request for mutual legal assistance, the Central Authority seeks the assistance of the Financial Intelligence Unit to utilise its powers under the Money Laundering (Prevention) Act 8 of 2011 (as amended) in order to investigate and supply such information for transmission to the requesting party. The Money Laundering (Prevention) Act, provides in section 48 that: *"Subject to the constitution, the provisions of this Act have effect not withstanding any obligations to secrecy or other restriction on disclosure of information imposed by any law or otherwise."* <u>36.6</u> The powers of Competent Authorities to compel production, search persons or premises, seize and obtain transaction records, etc. *(referred to under Recommendation 28*) are available for use in response to requests for mutual legal assistance.	

			As referred to above, search and seizure are expressly provided for under the Mutual Legal Assistance in Criminal Matters Act. The power to obtain a production order, is provided for under sections 25 of the Money Laundering (Prevention) Act. In accordance with the legislation, it is the usual practice that the FIU uses its power under this provision to facilitate responses to requests for mutual legal assistance from foreign jurisdictions.	
Rec. 37 Dual criminality	C		37.1 Currently, in the Commonwealth of Dominica, Mutual Legal Assistance is rendered only rendered where there is dual criminality. **See:** section 19(2)(d) of the Mutual Assistance in Criminal Matters Act Chap 12:19 37.2 Accordingly, there is generally no legal or practical impediment to rendering assistance for extradition and those forms of mutual legal assistance where both countries criminalise the conduct underlying the offence. Generally, technical differences between the laws in the requesting country and the commonwealth of Dominica, such as differences in the manner in which each country categorises or denominates the offence, do not impose and impediment to the provision of mutual legal assistance.	
Rec. 38 MLA on confiscation and freezing	PC	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 other appropriate purposes. ii. The Commonwealth of Dominica should consider	Sec. 36 of the MLP Act of No. 8 of 2011 "There shall be established an Asset Forfeiture Fund under the administration and control of the Minister of Finance in consultation with the Director. The Asset forfeiture fund has been created and is currently being utilised. Subsection 3 of the said section of the MLPA deals with the purposes for which the funds would be used which is in accordance with recommendation38.This deficiency has been wholly addressed.	

		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.	**Sec. 37** of the MLP Act No. 8 of 2011"The Government of Dominica may share with another State, on terms and conditions to be agreed in writing, property which has been directly or indirectly confiscated or forfeited as a result of coordinated law enforcement action between Dominica and the other State." **Section 39** of the Money Laundering Prevention Act No. 8 of 2011 provides for the requirement in 38.1 where the request relates to property of Corresponding value. The section states " The Court or the central authority may receive a request form the court of another State to identify, trace, freeze, seize, confiscate or forfeit a) the property; b) any property of corresponding values; c) proceeds; d) instrumentalities, Connected to money laundering offences, and may take appropriate action including those specified in sections 30 and 31. *The criterion in 38.1 is met. Section 27 (1) (a)(ii) of the Mutual Assistance in Criminal Matters states* *"This section applies where-* (a) *An order is made in a commonwealth country* *ii) imposing on the person against whom the order is made a pecuniary penalty calculated by reference to the value of property so derived or obtained;"* *section 27(b) goes on further to state that "property available for the satisfaction of the order or the pecuniary penalty under the order, or to which the order would apply, as the case may be, is suspected on reasonable grounds, to be in Dominica;"*	

			Section 28 outlines the procedure to be taken for the assistance to the foreign country spoken of in section 27. *Further, section 71 of the Proceeds of Crime Act should be read in conjunction with section 14 of the Proceeds of Crime Act No.4 of 1993 as amended by Act No. 4 of 2010. The Act has included terrorism and financing of terrorism as scheduled offences. This would now mean that in certain situations where the court is satisfied that a forfeiture order should be made in respect of property of a person convicted of a scheduled offence the Court may, instead of ordering the property or part thereof or interest therein to be forfeited, order the person to pay to the State an amount equal to the value of the property, part of interest. Section 14 of the of the Proceeds of Crime Act.*	
		iv. The laws should clarify whether the Commonwealth of Dominica could have arrangements for co-ordinating seizure and confiscation actions with other countries.	Section 41 of the MLPA makes provision for coordinating seizure and confiscations actions with other countries. It states the purpose of section 40 the Unit may enter into an agreement or arrangement in writing, with a foreign counterpart, agency, that performs similar functions and is subject to similar secrecy obligations which the Director considers necessary or desirable for the discharge or performance of the functions of the Unit. This section (S.41) is complimented and clarified by section 39 of the Act (above) which allows the Central Authority of Dominica to receive requests to provide assistance to foreign jurisdictions. It states " The Court or the central authority may receive a request from the court of another State to identify, trace, freeze, seize, confiscate or forfeit- a) Property; b) Any property of corresponding values; c) Proceeds; or d) Instrumentalities, Connected to money laundering offence, and may take appropriate action, including those specified in sections 30 and 31.	

Rec. 39 Extradition	LC	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 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.	The Central Authority Procedures which are attached adequately outline the procedure which must be undertaken to deal with extradition requests. These procedures aim to ensure that requests are handled without undue delay. Time limits for every step of the process have been instituted which ensure that the requests are handled efficiently. The said procedures including expressly stated timeframes can be found in Part B of the document on pages 37-47. The laws do not prohibit the extradition of nationals. There is no section in the Extradition Act which prohibits the extradition of Dominican nationals. Sec. 27(1) and (2) of the SFTA 3 of 2003 as amended by Section 13 of the SFT (Amendment) Act No. 9 of 2011 provides for the requirements of this recommendation. The Act provides: 1. *"Where a competent Authority in Dominica receives a request from another state to extradite a person over whom that other State establishes jurisdiction in accordance with the provisions of this Act for the commission of an offence in that other State, the request shall be considered whether or not there is an extradition treaty between Dominica and the State.*	

			2. *Where the competent Authority receives a request for extradition under subsection (1), that request shall be fulfilled without undue delay.* ***<u>39.1</u>*** The offence of Money laundering is an extraditable offence in the Commonwealth of Dominica: Section 43 of the Money Laundering (Prevention) Act 8 of 2011 provides as follows: *"A money laundering offence is for the purposes of the extradition Act an extraditable offence and this section applies whether or not there is an extradition treaty with the requesting state."* The Extradition procedures contained in the document referred to above are applicable here as well.	
Rec. 40 Other forms of co-operation	LC	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.	Section 40 of Act No. 8 of 2011 provides for international cooperation and states that the FIU shall not refuse a request on the ground that it involves matters of a fiscal nature. Section 19 (2) of the Mutual Assistance in Criminal Matters Act No. 9 of 1990 states the conditions where requests for cooperation can be refused. Fiscal matters are not cited in this Section. Section 36B of the Suppression of the Financing of Terrorism Act as amended by section 8 of the Suppression of the Financing of Terrorism (Amendment) Act No.9 of 2013 makes provision for information sharing. The section states: "*The Unit may, on request, share information relating to the commission of an offence under this Act with a foreign counterpart agency, subject to reciprocity, and any conditions as may be considered appropriate by the Director, but the Unit shall*	

			not refused a request on the ground that it involves matters of a fiscal nature." As it relates the sharing of information which relates to terrorist financing section 14(2) of the Suppression of the Financing of Terrorism (Amendment) Act 9 0f 2011 provides for the sharing of information notwithstanding any obligations as to secrecy , confidentiality or other restriction upon disclosure of information imposed by any law. This section states: *"Subject to the provisions of the Constitution, requests for information under this Part, shall be fulfilled, notwithstanding any obligations as to secrecy, confidentiality or other restriction upon disclosure of information imposed by any law of otherwise, except where the information sought under subsection(1) is held in circumstances where legal professional privilege exists."* Section 29 of the Money Laundering (prevention) Act 20 of 2000 also makes allowance for the overriding of secrecy obligations. It states: *"Subject to the provisions of the Constitution, the visions of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise."* *As referred to under* ***recommendation 36,*** *(See above) competent authorities are able to provide international cooperation in a wide range of areas. The legislation and the procedures which have been adopted as Central Authority procedures' provides for this to be done in a rapid, constructive and effective manner****. See attached.*** Additionally, note that Part VI of the Money Laundering (Prevention) Act, Act 8 of 2011 provides for other forms of	

			International Cooperation and information sharing in respect of all Money Laundering offences. See sections 38-44 of the Act. Section 40 of the Act also provides the necessary safeguards to ensure that the use that information received by a competent Authority is put to, is authorised by the relevant party. The section provides as follows: *Unit shall use any information provided to it under section 40 of the Act (referred to above) for the purposes of combatting money laundering, with consent of the foreign counterpart agency."* **R. 40.5- 40.8 are already addressed under Recommendation 36 above.**	
Nine Special Recommendations	Rating			
SR. I Implementation UN instruments	PC	i. The Commonwealth of Dominica should become a party to The 2000 United Nation Convention Against Trans-national Organized Crime – *(The Palermo Convention) 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)	Dominica is now a party to the Palermo convention, the Terrorist Financing Convention and the successor resolutions. All the necessary legislative amendments have been made which facilitate the objectives of these Conventions. **See details in Recommendation 35 above.** The step by step procedure for the freezing of assets of designated terrorists or terrorist organizations in accordance with S/RES 1373 have been issued and a contained within the Central Authority Procedures. These new procedures are highlighted in red in the document for ease of reference. ***See on pages 12-13 of the attached document***. These procedures have been published on the website of the Financial Services unit.	

SR. II Criminalise terrorist financing	PC	The laws should be amended to: i. State that Terrorist financing offences do not require funds be linked to a specific terrorist act(s); ii. State that Terrorist financi offences apply l regardless whether the person alleged to hav committed the offence(s) is in T Commonwealth of Dominica o different country from the one in which the terrorist(s)/terro organisation(s) is located or terrorist act(s) occurred/will occu	Section 4 of the SFTA No. 3 of 2003, as amended by section 4 of the SFT (A) Act No. 6 of 2013, is amended to allow for the offence of terrorist financing to occur even if there is no nexus to a specific terrorist act. The offence of Terrorist Financing is provided for in the Act as follows: "*A person commits an offence within the meaning of 1999 Convention, if that person by means, directly or indirectly, unlawfully and wilfully provides or collect funds with the intention or in the knowledge that such funds shall be used in full or part -* *(a) in order to carry out a terrorist act* *(b) by a terrorist group; or* *(c) by a terrorist."* The definition of Funds as contained in section 2 is consistent with FATF's recommended definition. The SFTA provides as follows: *" Funds means assets of every kind, whether tangible or intangible, movable or immovable, however acquired and legal documents or instruments in any form , including electronic or digital evidencing title to o interest in, such assets including but not limited to bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit."* Sec. 2 of the SFTA 3 of 2003 as amended by Section 3 of the SFT (Amendment) Act No. 9 of 2011 and Act 6 of 2013 addresses this deficiency. Section 2(b) of the Act states as follows: *"terrorist act means-*	

			an act or omission, whether committed in or outside Dominica, which constitutes an offence within the scope of a counter terrorism convention;" The cited section references acts or omissions whether committed in or outside of Dominica but constitutes an offence within the scope of the counter terrorism convention. These acts or omissions can be fully investigated at section 20 (4) of the SFTA No. 3 of 2003 as amended by the Suppression of Financing of Terrorism Act No. 9 of 2011.	
		iii. Permit the intentional element of the Terrorist financing offence to be inferred from objective factual circumstance;	Section 20 of Act no. 3 of 2003 as amended by section 12 of No.9 of 2011 by *(insertion of a new subsection 4)* allows for the investigation by the Unit (Financial Intelligence Unit) or a person authorised by the Unit of an offence under this SFTA whether it occurred in Dominica or in any other territorial jurisdiction.	
		iv. To permit the possibility of parallel criminal, civil or administrative proceedings where more than one form of liability is available.	Sec. 2(3) of the SFTA 3 of 2003 as amended by Section 3 of the SFT (Amendment) Act No. 9 2011 states: *"The knowledge, intent, purpose required as an element of any offence under this Act may be inferred from objective, factual circumstances."*	
		v. To address civil or administrative penalties; and;	As previously indicated, Sec. 2 of the SFTA 3 of 2003 as amended by Section 3 of the SFT (Amendment) Act No. 9 of 2011provides for a new definition of terrorist & terrorist act in keeping with the definitions recommended by FATF. The Financial Services Unit (FSU), having been designated as the regulator for terrorism financing at section 9 of the the Financial Services Unit Act No. 18 of 2008, have been given additional	

			regulatory enforcement powers under the Suppression of Financing of Terrorism (Amendment) Act No. 9 of 2011. Section 47 of Act No. 3 of 2003 as amended by Section 17 of Act No. 9 of 2011 provides for sanctions which may be imposed on a financial institution who fails to comply with guidance notes issued by the Financial services Unit. Some of the sanctions now available to the FSU include the issuance of written warnings, issuance of specific instructions to institutions or persons who may be in possession of targeted funds and the suspension or revocation of the institution's licence. In addition to the new SFTA enforcement powers given to the FSU, additional inherent powers from the FSU Act are still available to the FSU when carrying out its functions. Some of the powers include a requisition for the production of documents, inspections, requiring the FIs and DNFBPs to submit periodic reports in the form and with the content to be determined by the Director of the FSU. Under Section 48 of the Act as amended by section 18 of the Suppression of the Financing of Terrorism (Amendment) Act No.9 of 2011 the Minister may prescribe sanctions and/ or penalties, to be imposed on a financial institution by the FSU Sec. *2* of the SFTA 3 of 2003 as amended by Section 3 of the SFT (Amendment) Act No. 9 2011 provides for a new definition of terrorist and terrorist act which is in keeping FATF recommendation. The definition given to "terrorist" is consistent with the definition found in the Glossary of Definitions in the FATF 2009 Methodology. The same approach has been taken for "terrorist act". The term *"terrorist group"* is the term used within the Dominican Legislation. However, the definition given to it is consistent with	

			the definition of "terrorist organisation" found in the Glossary of Definition of the FATF 2009 Methodology. This definition can be found at section 2 of the SFTA as amended by section 3 of the Act No. 9 of 2011. It means a group of terrorist that *(a) commit, or attempt to commit terrorist acts by any means, directly or indirectly, unlawfully and wilfully; (b) participates as an accomplice in terrorist acts; (c) organizes or directs others to commit terrorist acts; or (d) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act with knowledge of the intention of the group to commit a terrorist act.*	
		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	Hence, the substance of the definition of terrorist group is the same as per the definition of terrorist organisation. The sections referenced, both in the parent Act and the Amendment Act penalises terrorism financing activities by a person who directly or indirectly, unlawfully and wilfully provides or collects funds with the intention or in the knowledge that such funds shall be used in full or part • in order to commit a terrorist act • by a terrorist group; or • by a terrorist. This amendment removes the previous limitation of section 4 of the parent Act No. 3 of 2003 and criminalises the activity of providing funding to a terrorist group or terrorist, irrespective of whether the funds were used to carry out a terrorist act. The definitions have been amended to attain full compliance. See above.	

			FSU has developed appropriate Guidance Notes which are available to be used by the financial sector in order to take steps to immediately report **terrorist and/or terrorist groups' funds** to the FIU and the FSU. See guidelines attached.	
SR. III Freeze and confiscate terrorist assets	PC	The Commonwealth of Dominica should: i. Strengthen their legislation to enable procedures which would examine and give effect to the actions initiated under the freezing mechanisms of other jurisdictions	Section 39 of the Money Laundering (Prevention) Act, 8 of 2011, provides that the Court of Central Authority in Dominica may receive requests from the court of another state to identify, trace, freeze, seize, confiscate or forfeit – *(a) the property;* *(b) any property of corresponding values;* *(c) proceeds; or* *(d) instrumentalities,* *connected to money laundering offences, and may take appropriate action, including those specifies in sections 30 and 31.* Sec. 12C of the SFTA 3 of 2003 as amended by Section 10 of the SFT (Amendment) Act No. 9 of 2011also allows for the Central Authority of Dominica to receive a request from the Court of another state to freeze the accounts, funds or property connected to a terrorist, terrorist act or terrorist group, that was the subject of the freezing mechanism of the requesting state. The "Central Authority Procedures" document at **pages 23-30** provides the procedure for giving effect to the actions initiated under the freezing mechanisms of other jurisdictions. **A copy of this document is hereto attached** and is a codification of the legislative provisions which are legally enforceable in Dominica and drafted in accordance with the relevant UN resolutions. Additionally, the Minister of National Security has been given legal authority pursuant to section 11 of the SFTA Act No. 3 of 2003, to designate any person a terrorist or terrorist group. Having so designated the person a terrorist or terrorist group, the Attorney General can, after publication of the Designation Order,	

			order financial institutions in Dominica to freeze any account, funds or property held by that financial institution on behalf of a person designated a terrorist or a terrorist group. The law at section 13 of the SFTA No. 3 of 2003, further provides for a mechanism that would allow for the varying and if necessary discharging of the Order if an applicant proves that the person who is subject of the designation order is not a terrorist or terrorist group, or the funds or the property which is the subject of the freezing order is legally and beneficially owned by him and is not subject to any interest held by the terrorist group named in the designation order. Section as amended by section 4 of Act No. 10 of 2010, provides for terrorism in the schedule as an offence.	
		ii. Implement effective mechanisms for communicating actions taken under the freezing mechanisms	Pursuant to section 71 of the POCA No. 4 of 1993, the Attorney General may apply to the Court in Dominica for the registration of an external confiscation or forfeiture order from a designated country. In giving effect to an external forfeiture and confiscation order under this section, sections 30 to 37 of the POCA No. 4 of 1993 shall have effect, subject to such modifications as may be specified in the Order. The '*Central Authority Procedures'* which is attached to this report also contains on **pages 12- 15**, a clear step by step procedure for the freezing of the assets of designated terrorists or terrorist organisations . This document has been posted on the website of the FSU and has been provided to the relevant Financial Institutions. Section 36A(1) of the Suppression of the Financing of Terrorism Act as amended by section 8 of the Suppression of the Financing of Terrorism (Amendment) act No.9 of 2013 states that "*The Court or the competent authority may receive a request from the*	

			court of another State to identify, freeze, seize, confiscate or forfeit- *. a)the property;* *b)any property of corresponding values;* *c) proceeds; or* *d)instrumentalities,* *connected to offences under this Act, and may take appropriate action under this Act or any other enactments, including those specified in sections 8,12 and 38 or any other enactment."* Under section 11 of the SFTA 3 of No.3 the Minister is given the authority to designate a person a terrorist or a terrorist group. Section 11 of the Act has been amended by section 5 of the Suppression of the Financing of Terrorism (Amendment) Act No.9 of 2013 by inserting a new section 11A(1) which provides a definition to the term 'designated entities'. Section 11A (2) outlines the responsibilities of the FIU as it relates to 'designated entities'. Special attention should be paid to section 11A(2) (e) which states that the FIU must maintain "a consolidated list of all Orders issued by the Minister under section 11 and circulating the same by facsimile and any other electronic transmission to all financial institutions and listed businesses immediately at intervals of three months". This ensures that all financial institutions will be made of aware of persons designated as terrorist or terrorist groups. 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. Section 12 of the parent Act no. 4 of 1993 has been repealed and replaced with a new section 12 that allows for the publication of a designation order by the Attorney General and in writing allows him to issue an order to financial institutions in the State to freeze any account, funds or property held by that financial institution on behalf of a person who or terrorist group which has been subject to a designation Order. Failure by the financial institution to freeze	

			the account results in the commission of an offence by the financial institution. The holder of the account shall as soon as possible be notified in writing after the fact that their account has been frozen. *See details in freezing procedure*. Sec. 12B of the SFTA No. 3 of 2003 as amended by Section 10 of the SFT (Amendment) Act No. 9 of 2011. Access to funds frozen pursuant to a freeze order is allowed under section 12B of the SFTA No. 3 of 2003 as amended by Act No. 9 of 2011, and allows the Court to give directions relative to any dispute, ownership of accounts or property or any part thereof; the administration of the property during the period of freezing; the payment of debts due to creditors prior to the order; and the payment of money to a person for reasonable subsistence of that person and his family. Sec. 47 (1) of the SFTA No. 3 of 2003 as amended by Section 17 of the SFT (Amendment) Act No. 9 of 2011 provides the Financial Services Unit with the authority to issue guidance to financial institutions or persons who may be in possession of targeted funds or assets. The Freezing procedures have been published on the FSU website and also disseminated to all financial Institutions. Sec. 36 of the SFTA No. 3 of 2003 places a duty on persons to disclose information in regards to property in their possession or control which is to their knowledge owned or controlled by terrorist groups. Sub-section 3 also places a duty "on financial institutions to report to the Commissioner of Police every transaction which occurs within the course of its activities and in respect of which there are reasonable grounds to suspect that the transaction is related to the commission of a terrorist act."	
		iii. Create appropriate procedures for authorizing access to funds or other assets that were frozen pursuant to S/RES/1267 (1999)		

		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.	Section 19A (2) of the SFTA 3 of 2003 as amended by Section 11 of SFT (Amendment) Act No. 9 of 2011 provides for the reporting of suspicious business transactions to the Financial Intelligence Unit. N.B. Section 47 of Act No. 3 of 2003 as amended by Section 17 of Act No. 9 of 2011 applies to funds and assets inclusive of funds and assets related to the freezing regime. Section 10 of the Suppression of the Financing of Terrorism (Amendment) Act 2013 amends Section 47 (a) (ii) of the Suppression of the Financing of Terrorism Act to make it applicable to funds which are subject to the Freezing regime As indicated above, Freezing procedures regarding Terrorists and Terrorist groups have been created and are contain within the Central Authority Procedures in compliance with this recommendation. See attached The said Freezing procedures were created in a step by step format which is clear, easy to understand and easy to follow. These guidelines have been published on the FSU website and all financial institutions are knowledgeable of them and have access to them.	
SR. IV Suspicious transaction reporting	NC	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 provides that:- *"A financial institution shall pay attention to-* (a) *All complex, unusual or large business transactions, whether completed or not;* (b) *All unusual patterns of transactions;* (c) *Relations and transactions with persons, including business and other financial institutions from countries which have not adopted comprehensive legislation to prevent or deter offences of terrorist financing.*	

			2. where a financial institution suspects or has reasonable grounds to suspect that- a) *a transaction, proposed transaction or attempted transaction, is related to offences of terrorist financing; or* b) *funds which are the subject of a transaction referred to in paragraph (b) are linked or related to, or to be used for terrorism, terrorist acts or by terrorist groups, it shall promptly report transaction to the Unit."* *The prescribed form for reporting suspicion of money laundering or terrorist Financing has been devised by the FIU and is attached.* *The FIU has also issued guidelines to the financial sector on the procedures to report suspicious transaction. These guidelines are also attached to this report.*	
SR V International Cooperation	PC	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).	As it relates to the sharing of information which relates to terrorist financing Section **14(2) of the Suppression of the Financing of Terrorism (Amendment) Act 9 of 2011** provides for the sharing of information notwithstanding any obligations as to secrecy, confidentiality or other restriction upon disclosure of information imposed by any law. This section states: *"Subject to the provisions of the Constitution, requests for information under this Part shall be fulfilled, notwithstanding any obligations as to secrecy, confidentiality or other restriction upon disclosure of information imposed by any law of otherwise, except where the information sought under subsection (1) is held in circumstances where legal professional privilege exists."* Additionally, **section 48 of the Money Laundering (Prevention) Act 8 of 2011** also makes allowance for the overriding of secrecy obligations. The provision states: *"Subject to the provisions of the Constitution, the provisions of this Act shall have effect notwithstanding any obligation as to*	

			secrecy or other restriction upon the disclosure of information imposed by any law or otherwise." **See also**: The details under recommendations 36, 37, 38, 39 and 40 are repeated here. The Proceeds of Crime (Amendment) Act No. 10 of 2010 at Schedule 1 list Terrorism and Financing of Terrorism as scheduled offences. Section 12C of the SFTA 3 of 2003 as amended by Section 10 of the SFT (Amendment) Act No. 9 of 2011 states that 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 a terrorist, terrorist act or terrorist group, that was the subject of the freezing mechanism of the requesting State. Section 4 of the Proceeds of Crime Act No. 4 of 1993 states that where a person is convicted of a scheduled offence committed after the coming into force of this Act, the DPP may apply to the forfeiture and confiscation orders. **Sections 27 and 28 of the Mutual Assistance in Criminal Matters Act** Chap 12:19 sets out the arrangements for co-ordinating actions with other countries. Section 30 (1) (b) of the Mutual Assistance in Criminal Matters (Amendment) Act No. 16 of 2002 extends the application of this Act to all parties of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. Section 27 of the SFTA 3 of 2003 as amended by Section 13 of the SFT (Amendment) Act No. 9 of 2011 states that where the Competent Authority in Dominica receives a request from another State to extradite a person over whom that other State	

			establishes jurisdiction in accordance with the provisions of this Act for the commission of an offence in that other State, the request shall be considered whether or not there is an extradition treaty between Dominica and that State. Where the Competent Authority receives a request for extradition that request should be fulfilled without undue delay. **<u>Extradition Procedures and Timelines:</u>** Sections 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 of the Extradition Act Chap 12:04 as amended, describes the extradition procedure in great detail. A copy of this Act is attached. Additionally detailed procedures for facilitating extradition requests have been developed and adopted by Dominica and are contained in Part B of volume one (1) of the Central Authority Procedures which is also attached. A look at the *'Administrative Procedures'* portion of this document on pages 40-47 will reveal clear timeframes for dealing with extradition a request from moment it gets into the hands of the Honourable Attorney General(Central Authority). See in particular paragraphs four(4) on page 41 through to page 44. In addition to the strict timeframes required in these procedures The overriding principle of urgency in these matters is clearly stipulated at paragraph 19 on page 43 as follows: "*All requests for extradition shall be handled promptly. However, all requests for the extradition of persons in relation to terrorism offences shall be given priority over all other requests for extradition and are to be dealt with the highest level of urgency."* Section 31 of the Suppression of the Financing of Terrorism Act No. 3 of 2003 states that notwithstanding anything in any other	

			law, no offence under this Act shall be regarded as a fiscal offence for the purposes of extradition or mutual legal assistance. Sec. 35 (2) of the SFTA 3 of 2003 as amended by Section 14 of SFT (Amendment) Act No. 9 of 2011. N. B. Section 27 and 28 of the Mutual Assistance in Criminal Matters Act Chap. 12:19 together with Section 14 of the Proceeds of Crime Act No. 4 of 1993 as amended by Act No. 10 of 2010 addresses requests by foreign countries where the requests relate to property of corresponding value. Act No. 10 of 2010 includes terrorism and financing of terrorism as Scheduled Offences falling within the ambit of the Proceeds of Crime Act No. 4 of 1993. Sections 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 of the Extradition Act Chap. 12:04 (Act No. 6 of 1981) of the Revised Laws of Dominica address the Extradition Procedure.	
SR. VI AML requirements for money/value transfer services	NC	i. With the exception of MVT service providers that are supervised and regulated under the Baking 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.	The Money Services Business Act No.8 of 2010 was enacted to license and regulate money services businesses and to make provision for related matters. This gives the Unit the legal basis to enforce and discharge its functions. Section 4 (1) Money Services Business Act No.8 of 2010 states: *"Subject to subsections (2) and (5) a person shall not carry on money services business in Dominica unless that person holds a licence."* The Money Services Business Act also provides for penalties to be imposed on entities conducting money services business without the necessary licence as stipulated in Section 5 of the MSB Act. Section 4 (4) of the Money Services Business Act No.8 of 2010 states:-	

		ii. There is no specific regulatory authority charged with the responsibility of monitoring and ensuring compliance with the provisions of the AML/CFT regime.	"*A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of fifty thousand dollars or to imprisonment for a term of two years or both such fine and imprisonment.*" Furthermore, Authority is given to the Financial Services Unit in Section 6(2) of the Money Services Business Act No. 8 of 2010 to conduct investigations with a view to informing the decision to issue a licence. Notwithstanding that the Minister of finance is the one who actually issues the licence; the FSU is the one who is charged with the important task of conducting the investigations to ascertain the nature of the business of applicants, the validity of the documents submitted, whether the applicant is a fit and proper person to conduct business among other things. As such the FSU plays a fundamental role and perhaps the most integral role, in issuance of licenses to Money Service Businesses and in their overall regulations and supervision. By virtue of **section 7 Money Laundering (Prevention) Act No.8 of 2011** the FSU was established as the Money Laundering Supervisory Authority. A person engaged in money /value transfer service is captured under the Money Laundering (Prevention) Act No. 8 of 2011 as a business activity listed in Part I of Schedule I. The functions of this supervisory authority are clearly stipulated in **section 8 of** the MLPA as follows: • The supervision of all financial institutions and persons carrying on scheduled business; • Developing anti-money laundering strategies for Dominica; • Advising the Minister with regard to any matter relating to money laundering; • Creating and promoting training requirements for financial institutions and persons carrying on scheduled businesses;	

		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.	• Conducting inspections of any financial institutions or scheduled businesses whenever it is necessary to do so to ensure compliance with requirements of the MLP Act, the Regulations and any other instructions relating to Money laundering given by the Authority. • Sending of information received from inspection to the Unit where it is believed that a money laundering offence has been committed. Section 9 (1) of the AML/CFT Code of Practice, 2014 states "It is the duty of the FSU to monitor compliance by its licensees and other persons who are subject to compliance measures, with this Code and any other enactment (including any other code, guidance notes and any guidelines) relating to money laundering or terrorist financing as may be prescribed by this Code or any other enactment." The FSU as stated above, license and regulates these entities under the Money Services Business Act No.8 of 2010. There is on-going supervision and monitoring of the money services businesses as captured in the FSU Work programme. **Sec. 9 (1) (b) of the FSU Act 18 of 2008 as amended by the relevant Amendment Acts (Act 10 of 2011 and Act 10 of 2013)** also provides that one of the Principal functions of the Director of the FSU is to monitor through on site examinations and offsite surveillance, the compliance of regulated persons with the ML(P)Act 2011, the SFTA 2003 and any other Act, Regulation, code or guidelines relating to AML and CFT. In addition, Section 22 Money Services Business Act No. 8 of 2010 gives the Financial Services Unit authority to conduct on-site examinations of licensees for the purpose of determining the condition of a licensee and its compliance with the Act and all other respective legislations.	

		iv. The FSU should be required to institute a programme of on-going onsite and off-site monitoring for other regulatory and supervisory purposes.	According to Section 10 (1) of the AML/CFT Code of Practice, 2014; as part of its prudential inspection of an entity that it regulates, the FSU is expected to review the entity's risk assessments on money laundering and terrorist financing, including the entity's policies, processes, procedures and control systems in order to make an objective assessment of - a. the risk profile of the entity; b. the adequacy or otherwise of the entity's mitigation measures; c. the entity's compliance with the requirements of the Act, the Money Laundering (Prevention) Act, 2011 and Regulations made thereunder, the Suppression of the Financing of Terrorism Act, 2003, this Code and any other code, guideline, guidance note, direction or directive practice that the FSU issues, including any other enactment that applies to such an entity. The FSU has established a structured work programme in August 2012, which includes onsite monitoring and offsite surveillance of scheduled entities. These entities include all financial Institutions (to include money services businesses) and all relevant DNFBPs. The FSU has conducted onsite inspections of some money services business. Information concerning same inclusive of the names of the institutions examined and the relevant dates have been forwarded to the CFATF Secretariat. As captured in the FSU work programme 2014/2015, the FSU will be conducting AML/CFT on-site examinations on the remaining money services business especially those engaged in money transmissions. The FSU Structured Work Program (SWP) established in August 2012 focused essentially on inspections. As indicated above, the Financial Services Unit Act of 2008 was amended in 2013 to provide for offsite surveillance in accordance with the	

			requirements of this recommendation. **An updated Financial Services Unit Structured AML/CFT Work Programme for 2014/2015 is submitted herewith.** Section 18 of the Money Services Business Act No. 8 of 2010 gives an obligation on the licensee to keep records, establish and maintain systems for inspection and report. Moreover, Section 21 (1) MSB Act No.8 of 2010 states "a licensee shall retain for a period of at least seven years from the date of creation of each particular record, all records created and obtained by them, including records of each transaction executed by them, records of each outstanding transaction, bank reconciliation records and bank statements received during the course of operation and administration of its money services business. <u>Off-Site Monitoring:</u> In relation to off-site monitoring, as stipulated in Section 19 of the Money Services Business Act no. 8 of 2010, the holder of a class A (money transmission) or class B (issuance, sale and redemption of payment instruments) are require to submit a quarterly return to the FSU within fifteen days of the end of the quarter, along with a written declaration that the information is correct. These returns are recorded and analysed by the Unit. All of the money services businesses' AML/CFT compliance program was submitted to the Financial Services Unit during the period August 2012 to December 2013 where an offsite evaluation has been conducted to assess the level of prudence and compliance that exists at these institutions as it relates to combating money laundering and terrorist financing. During this evaluation the following areas were ; the institutions risk profile, volume of business, nature of business, customer base, product and services offered, training program, effectiveness of	

			compliance officer, reporting and record keeping, customer due diligence, know your employees and customers and customer identification programs. At present, all the AML/CFT policies have been received and reviewed by the FSU and recommendations have been made where necessary. In addition, the Financial Services Unit has provide several training to the different money services businesses to include; Western Union, Fast Cash, Easy Money Financial, and Money Gram.	
SR. VII Wire transfer rules	NC	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.	**PART V of the AML/CFT Code of Practice (Proceeds of Crime S.RO 10 of 2014)** which became law on May 1st 2014, addresses the deficiencies identified by the Examiners. It provides for among other things: • The regulation of the transfer of funds in any currency which are sent or received by a payment service provider that is established in Dominica. • Mandatory requirements for payment service providers to ensure that every transfer of funds is accompanied by full originator information. • Maintenance of records of full originator information on the payer that accompanies the transfer of funds for a period of seven years. • The requirement that domestic wire transfers be accompanied by an account number or unique identifier that allows the transactions to be traced back to the payer, where the payer does not have an account. • The creation of an offence for non-compliance with the requirements to keep and provide full originator information when requested by the payment service provider of the payee and when requested by the Financial Services Unit.	

			• Filing of an STR where full originator information is absent from a wire transfer or is not provided. • Mandating that the absence of full originator information be a factor in the risk-based assessment of the payment service provider. • Rules regarding the responsibilities of the intermediary service provider to ensure that the full originator information accompanies a wire transfer that is received by the payment service provided. • A mechanism that mandates that payment service providers of the payee and payer shall communicate with each in the event that a wire transfer is received with missing originator information. Section 39 -43 which comprises Part V of the code is specifically aimed at providing effective measures to monitor the compliance of financial institutions with the rules and regulations implementing SRVII. The FSU through its onsite monitoring carries out sample testing of incoming and outgoing wire transfers to include full originator information as well information to identify the payee of the said wire transfer. Section 42 of the Code addresses the issue of missing originator information as follows: *(2)The payment service provider shall put in place effective procedures for the detection of any missing or incomplete full originator information.* *(4) Where the payment service provider of the payee becomes aware that the full originator information on the payer is missing or incomplete when receiving transfers of funds, the payment service provider of the payee shall:-* *a) Reject the transfer*	

			b) Request for full originator information on the payer, or *c) Take such course of action as the FSU directs, after it has been notified of the deficiency discovered with respect to the full originator information of the payer,* *(5)"A missing or incomplete information shall be a factor in the risk-based assessment of payment service provider of the payee as to whether a transfer of funds or any related transaction is to be reported to the FIU as a suspicious transaction or activity with respect to money laundering or terrorist financing."*	
SR. VIII Non-profit organisations	NC	i. The Social Welfare Department should be charged with the supervision of the NGOs and be adequately staffed to take on this task. 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	By virtue of Section 72A of the Proceeds of Crime (Amendment) Act No.2 2014 the Attorney General has the authority to issue Regulations for the governance of Trusts and Non-Profit Organisations. The Trusts and NPO regulations have been issued by the Honourable Attorney General. NPOs were made subject to the AML/CFT regime and all the legislation which regulates it, by virtue of the said Non-Profit Organisations Regulations. Since then, the Trust and Non-Profit Organisations Regulations, S.R.O 11 of 2014 have been passed in Parliament and became law on May 1st 2014. Therefore they are now legally enforceable in the Commonwealth of Dominica. These Regulations are aimed at addressing some of the deficiencies identified under this recommendation as well as others. The said S.R.O is attached for your perusal. Regulation 3 provides that the Financial Services Unit (FSU) is designated as the Trust and NPO supervisor. The duties and functions of the Trust and NPO Supervisor are laid out in Regulation 4 and are in addition to and not in derogation of any other powers or duties conferred or imposed on the NPO supervisor by any other Act.	

		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. 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. ix. Reassessments of new information on the sector's potential vulnerabilities to terrorist activities should be conducted. x. The Authorities should monitor the NPOs and their international activities.	Regulation 15(1) places an obligation on NPOs to report to and produce records to the NPO Supervisor upon receipt of a written Notice. The Regulation also provides for sanctions to be imposed in the event that there is non-compliance with these provisions on reporting. By virtue of Regulation 15(5), a registered Non-Profit Organisation that fails to comply with a notice issued under sub regulation (1) commits an offence and is liable on summary conviction, to a fine not exceeding fifty thousand dollars. Regulation 12(1) also provides for the De-registration of a registered Non-profit organisation if the organisation is convicted of an offence under the Proceeds of Crime Act, the Suppression of Financing of Terrorism Act 2003 or the Regulations The FSU being charged with the supervisory responsibility for NPO's is also empowered to request information on the size and other relevant activities of the non-profit sector. Schedule I of the Proceeds of Crime Code of Practice of 2014 empowers the supervisor to ensure records are kept in the appropriate manner and easily retrievable. As part of the mandate the FSU ensures that entities schedule under the MLPA do carry out periodical risk assessment to identify potential threats and vulnerabilities as it relates to Money laundering and Terrorism Financing activities and NPO's are part of the many institutions that are expected to comply. The Financial Services Unit is the supervisory authorities for NPO's and have schedule onsite inspections of the sector for the new financial year July 2014-June-2015. See work plan attached.	

		xi. Training sessions should be implemented to raise the awareness in the NPO sector about the risks of terrorist abuse. xii. There should be measures to protect NPOs from terrorist abuse. xiii. There should be sanctions for violation rules in the NPO sector	In accordance with the Trust and NPO regulations which were recently enacted, the FSU has commenced its sensitization of the sector as it relates to the risk of terrorist abuse and another sensitization workshop is schedule for this quarter; in October 2014. The NPOs are to adopt strict preventative measures as outlined in Schedule I of the Code of Practice of 2014, which means that they should not enter in any terrorism related activities and by virtue of those measures should be protected from terrorist abuse. Part 5 of the of the Trusts and Non-Profit Organisations Regulations S.R.O 11 of 2014 sets out the available sanctions which may be imposed upon the relevant NPOs s for false and misleading information which may lead to abuse in the sector. Note that Part II of the Regulations deals in detail with the registration of NPOs	
SR. IX Cross Border Declaration & Disclosure	PC	i. Customs should be given the authority to request further information relative to the origin of currency or bearer negotiable instruments.	Section 19 of the Customs Act 2010- **Requirement to answer questions** A passenger on a vessel or aircraft which has arrived in Dominica or which is Departing Dominica is required to answer any questions put to him by a proper officer and at the request of the proper officer, produce any documents within that person's possession or control relating to any person or goods which are or have been carried by the vessel or aircraft. (Section 19(1) and (2) Customs Act 2010) A person who refuses to answer a question posed under section 19(2) or who knowingly gives a false answer to the question or fails to comply with a request made commits and offence. (section 19(3))	

		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	Section 160 Customs Act 2010- Detention of goods suspected to be illegally obtained. 160 (1) Where a customs officer or an authorised person has reasonable grounds to believe that goods were obtained in contravention of any law, the customs officer or authorised person may, without warrant, seize and detain such goods if the goods- a) Are in Dominica and the customs officer or authorised person is satisfied that the goods- i) Are being imported or have been imported; or ii) Are being imported or have been imported; or b) Come to the attention or into the possession of the customs officer or authorised person, during a search, inspection, audit or examination under this Act or any enactment which related to the reporting of imports or exports of currency. (2) a proper officer may use reasonable force if it is necessary to seize or detain goods under this section. (3) if the person from whom goods have been seized and detained under this section is identified but is not present when such seizure and detention occur, the Comptroller shall, as soon as practicable- a) notify that person of the detention and seizure of the goods; and b)issue to that person a receipt in respect of the seized and detained goods. (4) Subject to section 163, the proper officer or authorised person shall- a. Take any goods detained under this section; or b. Cause any goods detained under this section to be taken, To a secure place for safekeeping as directed by the proper officer or authorised person. Section 2 Customs act- "goods" includes currency.	

		instruments and the identification data of the bearer to be retained in circumstances involving suspicion of ML of TF.	Although there is no legislative provisions that would allow the identification data of the bearer of cash or bearer negotiable instruments to be retained in circumstances involving suspicion of ML or TF, this is already being done in Dominica. What obtains in Dominica is that where a suspicion arises at customs in relation to ML and TF it is automatically transferred to the FIU. The FIU inputs all the information into their database and then they will proceed to commence their investigations into the matter. The information is stored for an indefinite period. As long as the FIU system/database is operational, the information is kept.	
		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.	Section 186 of the Customs Act 20 of 2010 provides for effective proportionate and dissuasive criminal, civil or administrative sanction, which can be applied to persons who make false declarations. The section states: (1) Notwithstanding anything contained in any enactment to the contrary, where a person, in connection with an assigned matter, knowingly or recklessly- (a) Makes or signs, or causes to be made or signed, any declaration, notice, certificate or other document which is false in a material particular; (b) Submits, or causes to be submitted, to the Comptroller or a proper officer, any declaration, notice, certificate or other document which is false in a material particular; or (c) Makes any statement, in an answer to any question put to him by a proper officer which the person is required under any written law to answer, which is false in a material particular.	

			The person commits an offence and is liable on summary conviction to a fine of $100,000 or equivalent to three times they value of the goods in relation to which the document or statement was made, signed or submitted, whichever is greater or to imprisonment for 5 years. (2) The goods in relation to which the document or statement referred to in subsection (1) was made, signed or submitted are liable to forfeiture. <u>International Cooperation</u> **<u>Caribbean Customs Law Enforcement Council (CCLEC)</u>** The Caribbean Customs Law Enforcement Council (CCLEC) is a regional body representing the various Customs Administration of the Caribbean with link to the US, Canadian, UK and Dutch Customs. CCLEC is also associated with the World Customs Organization and serves as the medium through which communication and networking is established with regional Customs Administrations. This body is funded by annual subventions from all the counties including Dominica and maintains an office in St. Lucia headed by the Permanent Secretary. An MOU is in effect regarding the mutual assistance and cooperation for the prevention and repression of Customs offense	

			in the Caribbean zone. Noted in the MOU is the recognition that the geographical position of the countries of the Caribbean zone and neighbouring countries facilitate smuggling, particularly smuggling of narcotics, weapons, currency, archaeological relics and protected species. And that each Administration will make every effort to facilitate the exchange of information and in particular: *(a) to report promptly and regularly to any other Administration on persons, companies and means of transportation belonging to the state or territory of such administration which are known to be engaged or suspected to be engaged in illicit activity*. At the local level, in addition to the technical working group activities and the frequent meeting among organizations, there are some MOUs already established between customs and other government organizations while others are in draft form.	