



CARIBBEAN FINANCIAL
ACTION TASK FORCE

Fifth Follow-Up Report

St. Kitts and Nevis

April 26, 2012

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ST. KITTS & NEVIS: FIFTH FOLLOW-UP REPORT

I. Introduction

1. This report represents an analysis of St. Kitts and Nevis' report to the CFATF Plenary concerning the progress that it has made with regard to correcting the deficiencies that were identified in its third round Mutual Evaluation Report. The third round Mutual Evaluation Report of St. Kitts and Nevis was adopted by the CFATF Council of Ministers in May 2009, in Trinidad and Tobago. Based on the review of actions taken by St. Kitts and Nevis to meet the recommendations made by the Examiners, it was decided at the November 2011 Plenary meeting in Venezuela to leave St. Kitts and Nevis in expedited follow-up. Based on the current review, a recommendation would be made as to whether St. Kitts and Nevis would remain on expedited follow-up or be placed in another category of the follow-up process.

2. St. Kitts and Nevis received ratings of PC or NC on thirteen (13) of the sixteen (16) Core and Key Recommendations as follows:

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

3. With regard to the other non- core or key Recommendations, St. Kitts and Nevis was rated partially compliant or non-compliant, as indicated below.

Partially Compliant (PC)	Non-Compliant (NC)
R. 8 (New technologies and non-face-to-face business)	R. 16 (DNFBPs R. 13-15 and 21)
R. 9 (Third parties and introducers)	R. 17 (Sanctions)
R. 11 (Unusual transactions)	R. 24 (DNFBPs regulation, supervision and monitoring)
R. 12 (DNFBPs – R. ,6,8-11)	R. 27 (Law enforcement authorities)
R. 14 (Protection & no tipping off)	SR. IX (Cash couriers)
R. 15 (Internal controls, compliance & audit)	
R. 21 (Special attention for higher risk countries)	
R. 25 (Guidelines & feedback)	
R. 29 (Supervisors)	
R. 30 (Resources, integrity and training)	
R. 31 (National cooperation)	
R. 32 (Statistics)	
SR. VI (AML requirements for money/value transfer services)	
SR. VII (Wire transfers)	
SR. VIII (Non-profit organisations)	

4. The following table is intended to assist in providing an insight into the level of risk in the main financial sectors in St. Kitts and Nevis.

Size and integration of the jurisdiction's financial sector

		Banks	Development Bank	Credit Unions ¹	Securities	Captive and International Insurance	Domestic Insurance	TOTAL
Number of Institutions	Total #	7	1	4	2 ²	314 ³	15	342
Assets	US\$	1,860,682,500	89,977,662	47,793,703	0	641,021,566 ⁴	302,020,000	2,941,495,431
Deposits	Total: US\$	1,168,927,700	N/A	40,487,037	0	N/A	N/A	1,209,414,737
	% Non-resident	17.76% of deposits	N/A	Unknown	N/A	N/A	N/A	0.02%
International Links	% Foreign-owned:	N/A	N/A	N/A	N/A	100% of assets	27% of assets	26 %
	#Subsidiaries abroad	N/A	N/A	N/A	N/A	N/A	N/A	N/A

II. Scope of the current report

5. This report will only focus on Recommendations that remain outstanding and to which St. Kitts and Nevis have provided updates for. Based on the fourth follow-up report, St. Kitts and Nevis has fully complied with R. 1, 5, 13, and SR. IV, which are Core Recommendations, rated either 'PC' or 'NC'. With regard to the Key Recommendations R. 35, SR. 1 and SR. II were fully met⁵ and of the non Core and Key; R. 8, 14, 16, 21, 27, and 31 were fully met. Accordingly, there will be no update in this report with regard to the previously noted Recommendations. No additional information has been provided with regard to compliance with R. 23, 25, 29, 30, 32, 40, SR. V, VII and VIII and accordingly all the Examiners' recommendations that have not been previously met with regard to these Recommendations remain outstanding.

III. Summary of progress made by St. Kitts and Nevis

¹ Financial data reported for two of the four credit unions.

² The two institutions which are licensed by the ECSRC to conduct securities business are both commercial banks whose total assets and total deposits are already included under the 'bank' column.

³ Includes insurers registered up to 2010

⁴ Represents available figures up to 2009 for 202 registered insurers.

⁵ For the Core Recommendations rated 'PC' or 'NC', SR.II has been partially complied with. For the Key Recommendations rated 'PC' or 'NC', R. 3 and 26 have been substantially met, while R. 40, SR.III and SR. V have been partially met and R. 23 has been substantially not met. For the non Core and Key Recommendations, R. 30, 32, SR. VI, VIII and SR. IX have been substantially met; R. 11, 15, 24, 25 and 29 have been partially met and R. 12 and 17 have been substantially not met.

6. Since the Fourth Follow-Up Report, the St. Kitts and Nevis Authorities have amended the Anti-Terrorism Act in February 2012. The amendment of the Act is intended to address outstanding issues relating to R. 3, SR. II and SR. III. Additionally, with regard to achieving compliance with SR. III, the Anti-Terrorism (De-Listing Procedures) Regulations, No. 62 of 2011 were published. Draft Anti-Money Laundering (Amendment) Regulations and draft Prevention of Terrorist Financing (Amendment) Regulations have been prepared to address R. 11 and 15 issues. Guidance to the financial sector has also been posted on the Financial Services Commission website. St. Kitts and Nevis has also enacted the Proceeds of Crime (Amendment of Schedule) Order, 2012, which addresses a deficiency noted in R. 12.

Core Recommendations⁶

Special Recommendation II

7. In order to address the issue with regard to the open-endedness of the fines for a body corporate or unincorporated body, St. Kitts and Nevis amended the Anti-Terrorism Act (ATA) in February 2012. Sections⁷ 12 to 15, 17, 27 and 28 have been amended to provide for in most instances a maximum penalty for the relevant offences i.e. a fine not exceeding either \$150,000 or \$250,000. Section 15(2), which pertains to engaging in ML for terrorist purposes specifically provides for a penalty of \$250,000 against a body corporate or unincorporated body. The maximum penalties provide a range for the Courts to work within. As sanctions are imposed it would be interesting to see where within the range the Court falls when penalizing legal persons under the ATA. Until the time that such statistics are available, the maximum range of penalties available appears to be sufficiently dissuasive. The fact that there is a range means that a Court can make it proportionate to the specific offences at the time the penalty is imposed. While the Examiners' recommendation with regard to adequate stipulated penalties for legal persons under the ATA has been met, as noted the actual penalties imposed in the future should be reviewed for adequacy. The Examiners' recommendations for SR. II have been fully met.

Key Recommendations

Recommendation 3

8. With regard to this Recommendation as noted in the previous follow-up report, there is only one recommendation outstanding. This pertains to having a stated procedure under the ATA for the forfeiture and confiscation of property. Accordingly, the February 2012 amendment to the ATA provides at Section 14 procedures for the forfeiture of property. The Section provide that the DPP may apply to the Court for the forfeiture of any property that was seized pursuant to Section 33 of the Act. The new measures also provides for the rights of persons from whom the property was seized and or who might be connected with the property. The Court after reviewing the merits of the case will determine whether or not the

⁶ Recommendation 10 and Special Recommendation IV have been fully complied with by St. Kitts and Nevis.

⁷ The amended sections of the ATA pertains to various offences as follows: Section 12 – criminalises fundraising for terrorist purposes, Section 13 – use or possession of property for terrorist purposes, Section 14 – entering into funding arrangements for terrorist purposes, Section 17 – duty to disclose information relating to a person who has committed a terrorist financing offence, Section 27 – possession of articles for terrorist purposes and Section 28 – intelligence gathering for terrorist activity.

property will be confiscated. This provision meets the Examiners requirements and accordingly, R. 3 has been fully met⁸ by St. Kitts and Nevis.

Recommendation 26

9. As noted in the previous report, the outstanding recommendations pertain to the establishment of the FIU in accordance with Section 3(1) of the FIU Act and the issue of the recruitment of staff to the FIU and the independence and autonomy of the FIU as it pertains to policy making and staff recruitment of consultants without the consensus of the FIU Director or the FIU body⁹. The Authorities have noted that towards establishing the FIU in accordance with Section 3(1) of the FIU Act, the members of the FIU Board have been approved and it is anticipated that the Board will be appointed shortly.

Special Recommendation III

10. The Examiners' recommendation with regard to the freezing of funds, which was only partially addressed, has been met with the amendment of Section 43 of the ATA (the ATA amendment, No. 3 of 2012). The amendment provides that an application by the DPP to the Court for a freezing order for terrorist funds may be made 'ex parte but in any case shall be made without delay'. The Authorities note that this amendment 'places an obligation on the DPP to proceed with alacrity to secure the funds in question.' With regard to the delisting of terrorist and terrorist groups, the Anti-Terrorism (De-Listing Procedures) Regulations, No. 62 of 2011 were published on December 22, 2011 and established procedures for the removal of any person or group of persons listed as a terrorist to apply to the Minister to be de-listed. The Regulations further provide that the application should be accompanied by the reasons in writing for the request. The Minister, pursuant to Reg. 4 is empowered to appoint a Special Committee to hear requests for de-listing, while Reg. 5 provides for a hearing to be held with regard to the de-listing request and gives the applicant permission to appear before the Special Committee to present his or her case in person. Regulation 6 makes provision for an Appeal process. These new provisions also assist with the public sensitization¹⁰ since the procedures for de-listing is now known. Similar provisions for un-

⁸ Please note that there appears to be an inconsistency in the use of terms at Section 14 (5)(b) where the term 'property' is used in the first part of the paragraph and the term 'money' is used in the second part. It is recommended that this inconsistency be amended as soon as possible. There is also repetition of the words 'to the satisfaction' which do not cause any confusion to the sense of the paragraph but which can also be considered for correction at the same time.

⁹ The St. Kitts and Nevis Authorities previously stated that the FIU director is fully involved in the recruitment process. This includes participation in the interviews and making recommendations to the Minister on final personnel selection. However, as noted in paragraph 272 of the MER, the ultimate decision with regard to the recruitment of staff rests with the Minister and the Examiners felt that this was a situation that could affect the autonomy of the FIU. Based on the fact that the ultimate decision still resides with the Minister, it is felt that the risk to the autonomy of the FIU still exists.

¹⁰ Regulation 16 of the Anti-Terrorism (Prevention of Terrorist Financing) Regulations, 2011 (ATR) states that 'A person or group which is designated as a terrorist or terrorist group pursuant to section 4 of the Act shall, within one week of the gazetting of the Order, be informed by the Minister of that designation including a notification of the procedure for having such designation revoked.' Additionally, within one month of the gazetting of the designation order the fact of the designation along with the relevant procedures for revoking the designation shall be published in at least one local newspaper within the Federation.

freezing of assets is contained in Section 43 of the ATA. The Examiners requirements for SR. III have been fully met.

Other Recommendations¹¹

Recommendation 9

11. The outstanding deficiencies for this Recommendation pertain to the ability to obtain information on the introducer or intermediary's CDD process and to obtain that information with out delay. The Anti-Terrorism (Prevention of Terrorist Financing ((Amendment) Regulations, 2012 provide at regulation 5 that a relevant person shall obtain immediately the relevant CDD information on the intermediary or introducer's CDD process This provision also addresses the issue of having the information provided without delay. Based on the aforementioned, St. Kitts and Nevis have met the outstanding deficiencies for R.9, which is now fully met.

Recommendation 11

12. Having noted in the fourth follow-up report that there was no provision to make unusual transaction records available to auditors, the St. Kitts and Nevis Authorities have enacted an amendment to the Anti-Money Laundering Regulations (Anti-Money Laundering (Amendment) Regulations), which will provide for relevant persons to ensure that records of unusual and complex transactions are maintained for a period of a least five years and that such records are made available upon requests to competent authorities and auditors. There is now full compliance with R. 11.

Recommendation 12

13. While as noted by the St. Kitts and Nevis Authorities the provisions of the new AMLR 2011 are applicable to casinos as a regulated entity, the concern of the Examiners noted at paragraph 971 (a) of the MER was that the 'regulation and supervision of casinos for AML/CFT purposes needs to be strengthened. Casinos have not been inspected and are generally unaware of the CDD requirements of the AMLR (Anti-Money Laundering Regulations) and the GN' (Guidance Notes). The noted reference to feedback being provided to the relevant DNFBP sectors by the FIU in the discussion of R. 25 in the previous follow-up report gives no indication that the casino sector's application and adherence to CDD has been strengthened. In fact, it is noted that there are still no sector specific guidance for DNFBPs which will include casinos even though classified as a regulated business activity by St. Kitts and Nevis. As a regulated business entity, the St. Kitts and Nevis Authorities have noted that General Advisories have been issued to these entities, which includes casinos. The latest issued Advisory supplied by the Authorities (dated March 26, 2012) informs all regulated entities that they are required to maintain internal controls and communication procedures for forestalling and preventing ML and FT. A list of internal control measures are also provided with the notation that internal controls include but are not limited to the listed measures. While this provides a certain degree of sensitization to casinos with regard to their AML/CFT responsibilities, measures indicating the regulation and supervision of casinos by the FSC or Gaming Board should be presented. Accordingly, the Examiners' recommendation in this regard has been partially met. With

¹¹ Recommendation 31 has been fully complied with by the St. Kitts and Nevis Authorities.

regard to ensuring that the relevant activities for accountants and auditors in the POCA are in keeping with E.C. 12.1(d), St. Kitts and Nevis has through an amendment to the POCA Schedule (Proceeds of Crime (Amendment of Schedule) Order, 2012) met the Examiners requirement. The amended schedule now clearly lists the activities that accountants and auditors engage in to be subject to AML/CFT measures. The amendment to the Anti-Terrorist Financing Regulations noted above in the discussions on R. 9, which allowed compliance with the requirements for timely CDD information for intermediaries and introducers has resulted in compliance with the Examiners' recommendation requiring third parties to be regulated and supervised in accordance with Recs. 23, 24 and 29 and to have measures in place to comply with Recs. 5 and 10.

Recommendation 15

14. With regard to the ambiguity created by Regulation 3(1)(a)(iv) and 3(5)(d) of the ATR pertaining to the requirement that there should be 'internal controls and communication procedures as may be necessary for the purpose of forestalling and preventing terrorist financing', the Authorities have enacted Prevention of Terrorist Financing (Amendment) Regulations. The amendment to the regulations requires that regulated persons should have procedures in place that would ensure independent auditing, proper screening of prospective employees and provisions for monitoring of transactions. There is now compliance with the Examiners' recommendation on this issue. With regard to considering providing further guidance on internal testing procedures and requiring that the functions be independent and adequately resourced, the Authorities have indicated that guidance in the form of an Advisory on the Financial Services website has been posted to make service providers aware of what the requirements are. This recommendation has been met. Accordingly, R. 15 has been fully complied with.

Recommendation 17

15. The amendment to the penalties under the ATA has addressed the Examiners' recommendation. See. Discussion above at R. 3. There has been no update provided with regard to other outstanding issues under this Recommendation.

Recommendation 24

16. With regard to the outstanding recommendation pertaining to a comprehensive regulatory and supervisory regime and regulatory requirement to establish beneficial ownership of casinos, the Authorities have noted that the Government of St. Kitts and Nevis has engaged in the services of a consultant to review gaming standards. Specifically, the review includes an examination of the legislation. The Authorities anticipate that the existing gaming legislation will be amended before the end of 2012 and that significant steps would have been made towards revamping the regulatory structure from a prudential and AML perspective. R. 24 remains not met at this time.

IV. Conclusion

17. Based on the review of legislation and other measures put in place, St. Kitts and Nevis is now fully compliant with the Key Recommendations 3, 35, SR. 11 and SR. III. Recommendations 9, 11 and 15, which are non Core or Key, have also been fully met.

Outstanding issues also remain with regard to R. 12, 17, 23, 24, 25, 26, 29, 30, 32, 40, SR. V, VII, VIII and SR. IX.

18. Based on the aforementioned, St. Kitts and Nevis has done well with regard to compliance with the Core Recommendations, and compliance with the Key Recommendations has improved, with now only four out of the eight Key Recommendations rated 'PC or 'NC' having outstanding recommendations. However, St. Kitts and Nevis should continue to address full compliance with the remaining Key Recommendations as a priority, since as noted in the previous report, St. Kitts and Nevis meets the criteria for ICRG prima facie review with regard to the number of 'PCs' and 'NCs' in the Core and Key Recommendations. Accordingly, it is recommended that St. Kitts and Nevis remain on expedited follow-up and be required to report back to the November 2012 Plenary.

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
Legal systems				
1. ML offense	PC	<p>Recent amendments have affected ability to assess effectiveness of implementation.</p> <p>Terrorist financing is not a predicate offence for money laundering.</p> <p>No one has been charged or prosecuted under the POCA.</p> <p>Insufficient training for investigators and prosecutors</p>	<ul style="list-style-type: none"> The recent amendments to the POCA have resulted in little time to assess the effectiveness of its implementation. The penalty for financing of terrorism on summary conviction should be amended so that the offence falls within the definition of serious offence. 	<p>The term of imprisonment has been increased to 5 years and the fine made an unlimited one See Section 4 of the Anti-Terrorism (Amendment) Act, 2009 (No 13 of 2009)</p>
2. ML offense–mental element and corporate liability	LC	<p>No one has been charged or prosecuted under the POCA.</p>	<ul style="list-style-type: none"> Training should be provided to all the relevant parties who are responsible for investigating and prosecuting ML and FT offences with the aim of increasing the number of investigations and prosecutions for these offences. 	<p>Significant training has been provided to personnel in the Office of the DPP, the Royal St. Christopher/Nevis Police Force and to the Judiciary as detailed in attached Schedule 1</p>
3. Confiscation and provisional measures	PC	<p>No provision in the POCA for the confiscation of instrumentalities intended for use in the commission of an offence.</p> <p>No provision in the ATA for the seizure of instrumentalities used in or intended for use in the commission of an offence.</p> <p>No stated procedure under the ATA for the forfeiture and confiscation of property.</p> <p>No seizures, freezing or confiscation of property relative to the offences of ML and FT therefore unable to determine how effective the Recommendation has been implemented.</p>	<ul style="list-style-type: none"> Amendments should be made to the POCA so that there would be clear provision for the seizure of instrumentalities intended for use in the commission of an offence under the Act and a predicate offence. An amendment to the ATA should be made so that there would be provision for the seizure of instrumentalities used in or intended for use in the commission of an offence in the ATA. The ATA should be amended to provide a stated procedure for the forfeiture and confiscation of property. 	<p>The definition of property in POCA has been expanded to include "...proceeds from, instrumentalities used in and instrumentalities intended for use in the commission of any money laundering or related offence....." See Section 3 of the Proceeds of Crime (Amendment) Act , 2009 (No 34 of 2009)</p> <p>The definition of "property" in the ATA has been expanded to include "...proceeds from, instrumentalities used in and instrumentalities intended for use in the commission of any terrorist financing offence....." See Section 3 of the Anti-Terrorism (Amendment) Act, 2009 (No 13 of 2009)</p> <p>Provisions of Sections 36 to 42 of the ATA in relation to the seizure, detention and disposal of terrorist cash are now made of equal applicability to instrumentalities used in or intended for use in the commission of an offence under the Act. See Section</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

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				<p>12 of the Anti-Terrorism (Amendment) Act, 2009 (No 13 of 2009) The ATA Amendment No. 3 of 2012 sets out in section 14, procedures for the forfeiture and confiscation of property. The section provides that the DPP may apply to the Court for the forfeiture of any property that was seized pursuant to section 33 of the Act. The section places an obligation on the DPP to give notice to any person from whom the property was seized or who might be connected with the property in question. Persons interested in the property would have a right to appear at the forfeiture hearing. The Court would examine all the merits of the case and if a decision is made to forfeit the property in question, then the property would become the property of the State. A right to appeal the decision of the Court is afforded to any person who has an interest in the property.</p> <p>In terms of procedures for the unfreezing of property, section 43 of the ATA provides adequately for this process by providing details on what actions a person could take in seeking to have property unfrozen. Application is made to the court by a person having a relevant interest in the matter and the ATA notes the nature of the matters that the court would take into consideration before a determination is made concerning the property. Procedures contemplated involve the possibility of variation or revocation of the original freezing order. Additionally the procedures in relation to unfreezing have been published as an advisory on the Financial Services Regulatory Commission website.</p>
Preventive measures				
4. Secrecy laws consistent with the Recommendations	C	This Recommendation has been fully observed.		
5. Customer due diligence	NC	The AMLR may not extend to terrorism financing obligations.	<ul style="list-style-type: none"> The Authorities should resolve the issue as to whether the AMLR can legally refer to matters relating to the financing of 	See Regs 3, 4 and 5 of the Anti-Terrorism (Prevention of Terrorist Financing) Regulations, 2011 addressing the financing of terrorism.

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
		<p>No requirement for CDD on de minimis transactions if TF is suspected.</p> <p>Guidance re: money transfer business does not apply to banks.</p> <p>Requirements re: occasional transfers are not in law or regulations.</p> <p>Requirements for the use of independent documentation are not in law or regulations.</p> <p>The requirement to identify and verify the beneficial owner using data from a reliable source not in law or regulations.</p> <p>No direct requirement to verify authority of person purporting to act for a principal.</p> <p>Enhanced due diligence measures do not take into account cases and circumstances cited in the Basel CDD paper.</p> <p>No direct obligation to ascertain legal status of party to legal arrangement/ trust arrangement.</p> <p>There is no prohibition of the use of reduced due diligence where there is a suspicion of TF.</p> <p>No reference to special risk management procedures that should take place where a customer is allowed to utilise a business relationship prior to verification.</p> <p>Measures for on going due diligence does not include scrutiny that ensures that transactions are consistent</p>	<p>terrorism. As a consequence, there may be valid challenges that may be mounted against several of the measures in the Regulations or Guidance Notes which seek to address the financing of terrorism.</p> <ul style="list-style-type: none"> The Guidance Notes are not considered to be law or regulations and thus the requirements in the Guidance Notes relating to the treatment of occasional transfers should be placed in the law. The Regulations or Guidance Notes should either prohibit numbered accounts or specify how they are to be treated. The important issue of using independent documentation to verify identity should be inserted into the law. The requirement to identify and verify beneficial owner using data from a reliable source should be inserted into the law. The Authorities should amend the laws appropriately to deal with the requirement for carrying out identification procedures where there is a suspicion that the transaction involves the financing of terrorism. The Regulations or Guidance Notes should impose a requirement for carrying out identification procedures where there is a suspicion that the transaction involves the financing of terrorism. For clarity the requirements applicable to 	<p>See Reg 6(9).</p> <p>The language in the Guidance Notes has been adjusted to make it mandatory in nature and adequately covers the issues relating to occasional transfers. See Paragraphs 122 and 123.</p> <p>AML Regulations and Guidance Notes address these issues</p> <p>See section 4 generally, in the AML Regs and the TF Regs and specifically Reg s 4(2) and 4(4)</p> <p>See Regulation 4(1)(c)(i) of the Anti-Terrorism (Prevention of Terrorist Financing) Regulations, 2011.</p> <p>See Reg 4(4) of the TF Regulations</p> <p>See Regulation 4(1)(c)(i) of the Anti-Terrorism (Prevention of Terrorist Financing) Regulations, 2011.</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
		<p>with the source of funds.</p> <p>Effectiveness cannot be assessed due to the recent passage of Regulations and Guidance Notes and the limited knowledge of the supervised constituents about the new requirements.</p> <p>Concern relating to verification of compliance with this recommendation by Captive and International Insurers, given the fact that the bulk of their activities occur offshore.</p>	<p>money services businesses that relate to originator information should extend to banks that carry out wire transfers.</p> <ul style="list-style-type: none"> • The Regulations or Guidance Notes should refer to a direct obligation to verify the authority of the person to act on behalf of the principal. • The Regulations or Guidance Notes should address the requirements for verifying the legal status of the parties involved in trust/legal arrangements. • The Regulations should specifically prohibit reduced due diligence in circumstances where the relevant person suspects the financing of terrorism. 	<p>See Paragraph 123 of the GN.</p> <p>see paragraph s 4(2) of the AML and TF Regulations and Guidance Notes</p> <p>See Regulation 6(9) of the Anti-Terrorism (Prevention of Terrorist Financing) Regulations, 2011.</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
6. Politically exposed persons	LC	The Regulation is not clear as to whether the requirement for establishing source of funds/wealth applies where the PEP is found to be the beneficial owner and not necessarily the customer with whom the financial institution is transacting.	<ul style="list-style-type: none"> The Regulations or the Guidance Notes should make it clear as to whether the requirement for establishing of source of funds/wealth applies where the PEP is found to be the beneficial owner and not necessarily the customer with whom the financial institution is transacting. 	See Reg 5(5) of the AML and APTF Regulations and paragraph 40 of the Guidance Notes
	LC	The GN whilst considered OEM for ML purposes does not cover TF issues. Thus cannot properly cover correspondent banks carrying out assessments of TF measures in respondent jurisdictions.	<ul style="list-style-type: none"> As the Regulations or the Guidance Notes cannot cover issues relating to terrorism financing, the measures relating to assessing a respondent institution's measures to combat TF would have to be provided for in the appropriate law or regulation. 	See Regulation 4(12)(c) of the Anti-Terrorism (Prevention of Terrorist Financing) Regulations, 2011.
8. New technologies & non face-to-face business	PC	The AMLR do not extend to TF obligations. Neither the Regulations nor the Guidance Notes provide for specific and effective CDD measures that financial institutions should apply to cases of non face-to face business.	<ul style="list-style-type: none"> The Regulations or the Guidance Notes should provide for the specific and effective CDD measures that financial institutions should apply to cases of non face-to-face business. The Authorities should take greater steps in familiarising their supervised constituents about the new requirements of the law to ensure a smoother transition to the new regime. 	See reg 4 of the AML Regulations and the APTF Regs. Guidance Notes Paragraph 84 with the subheading Non-Face-to-Face Business Since November 2008, the Authorities have conducted ongoing meetings and seminars with supervised constituents as detailed on attached Schedule 2. Recent SIP training workshops has involved further training and exposure across the board for regulated persons
9. Third parties and introducers	PC	No requirement for regulated business to immediately get necessary information from introducers re: elements of the CDD process. No requirements for Introducers and intermediaries to follow appropriate CDD measures (e.g. using independent evidence for verification). No requirement for financial institutions to be satisfied that information undertaken to be provided will be provided without delay.	<ul style="list-style-type: none"> Regulated businesses should be required to obtain information on introducers/intermediaries' CDD processes. Where undertakings are given to provide information, financial institutions should be satisfied that the information will be provided without delay. The Authorities should ensure that introducers and intermediaries are required to use independent documents to verify identification information, and to ensure that the authority of a customer purporting to act for another is valid, and ascertaining the 	See Reg 7 of the AML Regulations and APTF Regs and in the Guidance Notes, Paragraphs 38 to 96 generally on verification but specifically provision is made in paragraphs 59 -61 and 84, 85

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FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
		<p>Regulated businesses should ensure that the authority of a customer purporting to act for another is valid, and ascertaining the nature of the customers business.</p> <p>Introducers and Intermediaries are not required to be subject to CFT obligations.</p> <p>Ambiguity regarding whether introducers are required to be supervised under FATF requirements.</p> <p>Lack of industry compliance to requirements relating to ensuring that introducers and intermediaries are subject to AML/CFT supervisory regime.</p>	<p>nature of the customers business.</p> <ul style="list-style-type: none"> • Introducers and intermediaries should be subject to CFT measures. • There should be greater guidance to regulated businesses with regard to ascertaining whether an introducer's/intermediary's home country has adequately applied the FATF Recommendations. • The Authorities should clarify the identified inconsistencies between the Regulations and the Guidance Notes with regard to whether introducers are to be subject to the FATF Recommendations. • The inconsistencies in the regime are evidenced by reliance on introducers that are not subject to the FATF requirements as required by the Regulations. These inconsistencies should be resolved. 	<p>See reg 7 of the APFT Regs see Regulation 7(6) APFT Regulations, 2011.</p> <p>See reg 15(2) of the AML and the APFT Regs.</p> <p>See Reg 7(2) and (3) of the AML Regulations The Prevention of Terrorist Financing (Amendment) Regulations have been approved and are now in force. Regulation 7 of the Amendment Regulations now provides that a relevant person "shall satisfy itself by immediately obtaining from an introducer or intermediary the necessary information concerning the introducer or intermediary's customer due diligence processes..."</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
10. Record keeping	LC	Concerns re: verifying levels of compliance with the record-keeping obligations established in the law by Captive and International Insurance Companies.	<ul style="list-style-type: none"> The Authorities should consider measures to ensure that supervisory authorities are able to verify that captive insurance and international insurance companies are properly complying with the record keeping obligations established in the law. 	Addressed within the ambit of the recently passed Financial Services Regulatory Commission Act, (No. 22 of 2009) Section 4(1).
11. Unusual transactions	PC	<p>There is ambiguity between the GN and the Regulations with regard to the appropriate treatment of unusual transactions.</p> <p>The law does not state that unusual transactions should be available for competent authorities or auditors.</p> <p>There is a concern as to whether Supervisory Authorities are able to properly verify that Captive and International Insurance companies are fully complying with the requirements for treating with unusual transactions.</p>	<ul style="list-style-type: none"> The Authorities should consider measures that would allow the Commission to properly verify that captive and international insurance companies are fully complying with the requirements relating to complex and unusual transactions specified in the laws. . The Authorities should resolve the ambiguity between the treatment of unusual and complex transactions in the law and in the Guidance Notes. The Authorities should consider specifying that financial institutions should make their unusual transaction records available for competent authorities and auditors. 	<p>Addressed within the ambit of the recently passed Financial Services Regulatory Commission Act, (No. 22 of 2009) Section 3 and Section 4(1) as well as Schedule 1.</p> <p>See section 3(3) of the AML and APFT Regulations The Anti-Money Laundering (Amendment) Regulations have been approved Regulation 7 of the Amendment Regulations amends subregulation (2) by inserting a new paragraph (c) that provides that a relevant person “shall satisfy itself by immediately obtaining from an introducer or intermediary the necessary information concerning the introducer or intermediary’s customer due diligence processes...”</p> <p>19.</p>
12. DNFBP–R.5, 6, 8-11	PC	<p>Deficiencies identified for all financial institutions for R.5, R.6, R.8-R.11 in sections 3.2.3, 3.3.3, 3.5.3 and 3.6.3 of this report are also applicable to DNFBPs</p> <p>The powers of the FSC under the FSC Act extend only to financial services.</p> <p>There is no evidence of effective supervision of</p>	<ul style="list-style-type: none"> Deficiencies identified for all financial institutions for R.5, R.6, and R.8-11 in the relevant sections of this report also apply to DNFBPs. Implementation of the specific recommendations in the relevant sections of this report will also apply to DNFBPs. The Authorities should consider amending the FSC Act to give the Commission 	<p>See responses at R5, R6 and R8-11 above as they pertain to the redrafting of the AMLR and Guidance Notes.</p> <p>The FSC has been revamped to expand its powers. Within its new ambit, the Commission is responsible for most DNFBP’s. Section 4 (2) (d) of the Financial</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
		<p>Casinos for AML/CFT purposes.</p> <p>The relevant activities specified for accountants and auditors in the POCA are not in line with E.C. 12.1(d).</p> <p>Assessment of the effectiveness of CDD measures for legal professionals as well as jewellers and dealers of precious stones and metals is not possible due to recent additions to Schedule 1 of the POCA.</p> <p>There are no requirements for third parties to be regulated and supervised in accordance with Recommendations 23, 24 and 29 and have measures in place to comply with Recommendations 5 and 10.</p>	<p>explicit powers to supervise and regulate for AML/CFT purposes. The FSC Act should be also be amended to give the Commission explicit powers over DNFBPs</p> <ul style="list-style-type: none"> • St. Kitts and Nevis should implement a robust system of regulation and supervision for casinos. Casinos should also be sensitised about their CDD obligations under the AMLR and GN. • Schedule 1 of the POCA should be amended to specify the relevant activities of accountants and auditors, in line with E.C. 12.1(d). • The AMLR should be amended to ensure that third parties are regulated and supervised in accordance with Recommendation 23, 24, and 29, and have measures in place to comply with Recommendations 5 and 10. <ul style="list-style-type: none"> • Implement a robust system of regulation and supervision for casinos. • Sensitise the Gaming industry of its CDD obligations under the AMLR • Specify the activities of accountants and auditors to bring them in line with 	<p>Services Regulatory Commission Act, 2009 (No 22 of 2009) provides that the Commission shall monitor compliance by regulated persons with the Proceeds of Crime Act, the Anti-Terrorism Act and such other Acts, regulations, codes or guidelines relating to ML or FT.</p> <p>The Schedule to POCA has been amended so that section 2(a) of that amendment provides for the specific business of accountants as required by the Regulations.</p> <p>An amendment to Schedule 1 of the POCA has been approved. Section 2(a) of the amendment provides language in keeping with the recommendation. Lawyers, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their client concerning the activities of buying and selling of real estate; managing of client money, securities or other assets; management of bank, savings or securities accounts; organization of contributions for the creation, operation or management of companies; creation, operation or management of legal persons or arrangements, and buying and selling of business entities”;</p> <p>The FSC has been revamped to expand its powers. Within its new ambit, the Commission is responsible for regulation of most DNFBP’s. This includes accountants and auditors. See Section 4(1) of the Financial Services Regulatory Commission Act, 2009 (No. 22 of 2009).</p> <p>Sanctions may be applied by the Commission pursuant to sections 40 and 44 of that Act.</p> <p>The Gaming Sector has been provided with guidelines on a consistent basis and has been made aware of what its CDD obligations are. Since 2009, information has been disseminated to the sector on a regular basis.</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
			<ul style="list-style-type: none"> • FATF E.C. 12(1)(d) Require third parties to be regulated and supervised in accordance with Recommendation 23, 24, and 29, and have measures in place to comply with Recommendations 5 and 10. • Amend section 10 of the AMLR to make “business correspondence” to be available for at least five years. • Amend paragraph 72 of the GN to specify that documented findings regarding complex, unusual or large transactions should be made available upon request. 	<p align="center">AML Regulations and Guidance Notes have</p> <p align="center">See paragraph 118 of the Guidance Notes</p> <p>Paragraph 69 of the Guidance Notes, Regs 8 and 9 of the AMLR Regs and APTF Regs</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
13. Suspicious transaction reporting	NC	<p>The suspicious transaction reporting requirements under the AMLR and the ATA are not in keeping with the FATF requirements.</p> <p>Sanctions under AMLR are not proportionate and may affect effectiveness for more serious offences.</p> <p>Sanctions for failing to report possession of terrorist property is less severe than other reporting breaches under the ATA</p>	<ul style="list-style-type: none"> The requirement for suspicious transaction reporting under the AML Regulations needs to be aligned with the issue of funds being the proceeds of criminal activity in accordance with the requirements of Recommendation 13. The Authorities should de-link the connection between unusual transactions and suspicious transactions, as they represent two separate obligations under the FATF Recommendations. The requirement for suspicious transaction reporting under the ATA needs to be aligned with the issue of funds being linked to or related to terrorism, terrorist acts or terrorist organisations or financiers in accordance with the requirements of Special Recommendation IV. All offences under the AML Regulations carry the same penalty of EC\$50,000. The Authorities should re-examine this as a “one-size” fits all approach to sanctions under the regulations could inhibit effectiveness especially for the more serious sanctions. 	<p>AML Regulations and Guidance Notes</p> <p>The reporting requirement under Section 17 of the ATA has been amended accordingly. See Section 8(a) of the Anti-Terrorism (Amendment) Act, 2009 (No. 13 of 2009)</p> <p>See Regs 3(7), 4(2) (e), 4(9) (l); 4(13); 5(6); 8(10); 11(2) (d); 11(2) (e); 11(4); 14(1). of the AML Regulations</p>
14. Protection & no tipping-off	PC	<p>Requirement limited to ML investigations</p> <p>No requirement with regard to the reporting of a STR or related information to the FIU which could lead to a ML or FT investigation.</p>	<ul style="list-style-type: none"> Section 5 of the POCA (tipping-off offence) should be amended to provide for information about a STR or general information and not just ML investigations. The POCA and ATA should be amended to 	

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
			<p>provide for the tipping-off offence as it relates to reporting of STRs or related information to the FIU which would lead to a ML or FT investigation.</p> <ul style="list-style-type: none"> • 	

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
15. Internal controls, compliance & audit	PC	<p>Requirements regarding internal audit and testing, compliance officers and staff training may only apply to ML (and not to TF issues) under the AML Regulations.</p> <p>No requirement that internal testing should be independent and adequately resourced</p>	<ul style="list-style-type: none"> The Examiners take the view that the AMLR cannot extend to obligations relating to terrorism financing. Thus the internal control measures prescribed by the AMLR cannot apply to the area of financing of terrorism. This would impact key areas such as internal auditing, the compliance officer and staff training, notwithstanding the fact that these areas in practice do cover terrorism financing issues. The St. Kitts and Nevis Authorities should take legislative measures that would ensure that the obligations under Recommendation 15 apply to the financing of terrorism. The Authorities should consider providing further guidance on internal testing procedures and requiring that these functions be independent and appropriately resourced. There is a fundamental issue of concern relating to properly ascertaining the level of compliance with regard to suspicious transaction reporting requirements that is achieved by the resident insurance manager operating under the Captive Insurance Act and the Nevis International Insurance. Given that the vast majority of these transactions occur offshore, there is an issue as to how the Regulators are able to properly and independently verify that all transactions are being captured. 	<p>See Regulation 3(1)(a)(iv) & 3(5)(d) of the Anti-Terrorism (Prevention of Terrorist Financing) Regulations, 2011.</p> <p>Prevention of Terrorist Financing (Amendment) Regulations have been prepared and are expected to be approved shortly. The proposed amendment addresses this issue by inserting a new subregulation 3 (8) which provides an explanation of what is encompassed by internal controls and procedures to prevent or forestall terrorist financing. The provision contemplates a requirement that regulated persons should have procedures in place that would ensure independent auditing, proper screening of prospective employees and provisions for monitoring of transactions.</p> <p>Additionally, guidance in the form of an advisory on the Financial Services website has been posted to give further guidance to regulated persons on what the requirements are for internal testing and procedures.</p> <p>The FSC has been revamped to expand its powers. Within its new ambit, the Commission is responsible for regulation of most DNFBP's. See Section 4(1) of the Financial Services Regulatory Commission Act, 2009 (No. 22 of 2009).</p>
16. DNFBP-R.13-15	NC	Deficiencies identified for financial institutions for	<ul style="list-style-type: none"> The AMLR should be amended to mandate 	Reg 11 of the AML Regulations

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
& 21		R13, R15, and R21 in sections 3.7.3, 3.8.3, and 3.6.3 of this report are also applicable to DNFBBs.	<p>direct legal obligation on DNFBBs to report suspicious transaction to the FIU when they suspect or have reasonable grounds to suspect that funds are the proceeds of criminal activity, irrespective of whether the transaction is complex, unusual, or large.</p> <ul style="list-style-type: none"> Amend the AMLR mandate that attempted transactions be reported, regardless of the amount. 	<p>AML Regulations .Reg 11 of the aAMLR does not impose any limitations in respect of the size of the transaction involved.</p>
17. Sanctions	NC	<p>Key offences under the AMLR carry homogenous penalties and thus are not proportionate, dissuasive or effective.</p> <p>Penalties for reporting offences under the ATA vary widely.</p> <p>Offences under the AMLR are not applicable to senior managers.</p> <p>The FSC has not applied the range of sanctions provided by the FSC Act and the AMLR.</p> <p>The ECSRC does not have power to sanction for AML/CFT breaches.</p> <p>The ECCB may only apply sanctions of breaches uncovered via examination.</p>	<ul style="list-style-type: none"> The sanctions under the AML Regulations are all homogenous and therefore not proportionate, and in the case of the more serious offences not dissuasive or effective. The Authorities should re-examine the obligations and assign the appropriate penalties. The Authorities should also re-examine the penalties in the ATA to ensure that the assigned penalties are commensurate with the breach involved. The ECCB should consider widening their power to apply sanctions to circumstances where breaches are discovered outside of the context of an examination. The Authorities should re-examine the regime for securities firms to ensure that the appropriate supervisory body can impose appropriate AML/CFT sanctions for breaches. There needs to be greater use made of the new powers granted under the FSC Act by the Authorities to bolster the effectiveness of the system. 	<p>See Regs 3(7), 4(2) (e), 4(9) (1); 4(13); 5(6); 8(10); 11(2) (d); 11(2) (e); 11(4); 14(1). AML Regulations AML Regulations.</p> <p>Amendment of the ATA enables the alignment of penalties to the breaches including providing for unlimited fines. See Anti-Terrorism (Amendment) Act, 2009 (No. 13 of 2009) Fines in the ATA have since been amended and the unlimited fines have been replaced with appropriate penalties that are more proportionate and should be sufficiently dissuasive, effective and proportionate.</p> <p>In keeping with the policy of developing harmonized legislation for ECCU member territories, consideration for amendments to the Banking and Securities Acts will have to be done as a regional exercise.</p> <p>See examples of regulatory action taken during 2009 on attached Schedule 3.</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
18. Shell banks	C	This Recommendation has been fully observed.		
19. Other forms of reporting	C	This Recommendation is fully observed.		
20. Other NFBP & secure transaction techniques	C	This Recommendation is fully observed.		
21. Special attention for higher risk countries	PC	<p>There is a concern as to whether Supervisory Authorities are able to properly verify that Captive and International Insurance companies are fully complying with the requirements.</p> <p>Financial institutions only required to apply enhanced CDD regarding dealings with and transactions with countries with weak AML/CFT systems.</p> <p>Apparent inability to enforce measures as they relate to CFT issues.</p> <p>Wider range of counter measures needed against countries that fail to apply sufficient AML/CFT standards.</p>	<ul style="list-style-type: none"> • The Authorities should consider measures to ensure that the FSC is able to verify the level of compliance by International and Captive Insurers with the requirements of Recommendation 21. • The Authorities should consider a wider range of countermeasures that should be taken against countries that fail to apply appropriate AML/CFT Standards. • Apparent inability to enforce measures as they relate to CFT issues. • Wider range of counter measures needed against countries that fail to apply sufficient AML/CFT standards. 	<p>Addressed within the ambit of the recently passed Financial Services Regulatory Commission Act, (No. 22 of 2009) Section 4(1).</p> <p>The Supervisory Authority regularly posts advisories in relation to countries that have not sufficiently adopted or implemented the FATF 40 + 9.</p> <p>Anti-Terrorism (Prevention of Terrorist Financing) Regulations Generally see Regs 3 and 3 but see especially Reg 14. See also sanctions under the FSRC Act generally but especially sections 40 and 44.</p> <p>AML Regulations</p> <p>The Supervisory Authority regularly posts advisories in relation to countries that have not sufficiently adopted or implemented the FATF 40 + 9.</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
22. Foreign branches & subsidiaries	C	This Recommendation has been fully observed.		
23. Regulation, supervision and monitoring	PC	<p>“Fit and proper” requirements do not apply currently to credit unions, domestic insurance companies and money service providers (insofar as the Money Services Act has not yet been implemented).</p> <p>Fit and Proper requirements under the FSRO are not imposed on directors or managers of institutions covered by that Order.</p> <p>There are no fit and proper requirements under CICA for owners or directors.</p> <p>Offshore and Domestic insurance are not supervised on a group wide basis.</p> <p>ECCB powers to inspect for AML/CFT not expressed in the Banking Act.</p> <p>The Offshore Banking law is does not provide for</p>	<ul style="list-style-type: none"> The Authorities need to provide additional resources for all Supervisors in the system, including the FSC, the ECCB and the ECSRC. In particular the ECSRC should commence its programme for examination of licensees to ensure compliance with the Securities laws and other governing statutes. 	<p>The ECCB has engaged Advisors within the Banking Supervision Department to provide technical support and expertise in matters related to the regulation of the insurance, offshore and financial cooperatives sectors. An additional Financial Inspector and an Assistant Regulator were recruited to the FSC Regulatory Departments and two inspectors obtained certification as AML Specialists. The ECSRC project for the development of a risk based regime and manual for the risk assessment of broker dealers was completed in August 2010. During the project a risk basing exercise was carried out for broker dealers in the Federation which facilitated the development of the supervisory regime for broker dealer licensees. Completion of a similar exercise for all licensees during 2011 would denote the full implementation of the new regime. During 2010 the ECSRC added an Analyst and a Legal Officer to its staff and so the ECSRC Secretariat is now established outside of the ECCB management structure staffed by two (2) Analysts, one (1) Attorney, one (1) Administrator and a Secretary.</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
		<p>senior managers to be fit and proper, nor for consolidated supervision.</p> <p>The Supervisory Authorities face difficulties in verifying levels of compliance by international and captive insurers.</p> <p>ECSRC lacks powers to inspect and sanction for AML/CFT measures.</p> <p>Supervisory authorities require more resources.</p>	<ul style="list-style-type: none"> The ECSRC should be vested with the appropriate authority to supervise its licensees re: AML/CFT issues including examination and sanction powers. The Authorities should consider measures that would strengthen the FSC's ability to fully monitor the activities of Captive and International Insurance companies and verify levels of compliance. The Banking Act should provide that the ECCB can examine licensees to ascertain compliance with other statutes that apply to these entities (e.g. those relating to AML/CFT). The Banking Act should clarify that the ECCB can apply sanctions for AML/CFT breaches including those that do not arise from an examination. Fit and proper requirements should extend to the owners, directors and, managers and domestic Insurance Companies. Fit and proper requirements should apply to Insurance Managers under the International Insurance Act. The current requirement speaks to 'good standing' relative to professional bodies. 	<p>In keeping with the policy of developing harmonized legislation for ECCU member territories, consideration for amendments to the Securities Act will have to be done as a regional exercise.</p> <p>The Money Services Bill was in force from January of 2009 and provides for a fit and proper test to be utilized.</p> <p>The Insurance Act was passed and brought into force</p> <p>In consultation with the ECCU, the Cooperatives Bill was passed on the 4th of October 2011 and provides for a fit and proper test for cooperatives and credit unions.</p> <p>Section 53(4) of the Harmonized Co-operatives Bill for the OECS provides for fit and proper requirements for directors and senior management.</p> <p>In keeping with the policy of developing harmonized legislation for ECCU member territories, consideration for amendments to the Banking Act will have to be done as a regional exercise.</p> <p>Fit and proper requirements are incorporated in the new Insurance Act, 2009 (No. 8 of 2009) which has now come into force.</p> <p>Section 24(2) of the Nevis International Insurance Ordinance, 2004 (No. 1 of 2004) provides for fit and proper evaluation of applicants for Insurance</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
			<ul style="list-style-type: none"> • Fit and proper requirements should apply to directors and managers of all institutions captured under the Financial Services Commission Order. • Fit and proper requirements should also extend to credit unions and their directors and senior managers. • The licensing process under the Money Services statute should commence. • The laws relating to insurance (both international/captive and domestic) should provide for group supervision as provided for in the IAIS principles. • The Nevis Offshore Bank Ordinance should provide for consolidated supervision. • The Money Services statute should be implemented as soon as possible. • The new Insurance statute should be finalised and passed into law. • The Authorities should strengthen the ability of supervisors to verify levels of compliance of captive and international insurance companies. • The Authorities should finalise 	<p>Managers. The Ordinance can be accessed at: http://nevisfinance.com/PDFS/The%20Nevis%20International%20Insurance%20Ordinance.%202004.pdf</p> <p>Further, the Nevis International Insurance Regulations , 2004 (SRO No. 6 of 2004) issued pursuant to the Ordinance contain the Insurance Manager's Application Form (Form 1) and the Personal Questionnaire for Directors and Other Control Persons (Form 2) which applicants are required to complete. The Regulations can be accessed at: http://nevisfinance.com/PDFS/Nevis%20International%20Insurance%20Regulations%202004.pdf</p> <p>Thus applicants for Insurance Managers' licenses under this international insurance regime are subject to fit and proper evaluation.</p> <p>Section 53(4) of the Harmonized Co-operatives Bill for the OECS provides for fit and proper requirements for directors and senior management.</p> <p>Licensing commenced in 2009 with five (5) issued in St. Kitts and four (4) in Nevis.</p> <p>The Money Services Business Act, 2008 was fully implemented and licenses issued for the year 2009.</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
			arrangements for the transfer of regulatory responsibility regarding credit unions to the Commission.	The new Insurance Act, 2009 (No. 8 of 2009) was passed into law in March 2009. Section 5(2) of the Harmonized Co-operatives Bill for the OECS provides for credit unions to be regulated by the Financial Services Regulatory Commission.

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
24. DNFBP - regulation, supervision and monitoring	NC	<p>Casinos are not subject to a comprehensive regulatory and supervisory regime that ensures effective implementation of AML/CFT measures.</p> <p>The FSC Act does not explicitly give powers to the FSC for the supervision and regulation of non-financial services.</p> <p>Lawyers have challenged the FSC's authority to conduct on-site inspections for AML/CFT purposes.</p>	<ul style="list-style-type: none"> The FSC Act should clarify the powers of the FSC to regulate and supervise DNFBPs. Casinos should be subjected to a comprehensive regulatory and supervisory regime that ensures effective implementation of AML/CFT measures. If the FSC were designated as the authority to supervise casinos for ALM/CFT purposes, then the FSC Act should be amended to give the FSC those powers. Furthermore, there should be documented regulatory requirements to establish beneficial ownership for Casinos. 	<p>The FSC has been revamped to expand its powers. Within its new ambit, the Commission is responsible for most DNFBP's. See Section 4(1) of the Financial Services Regulatory Commission Act, 2009 (No. 22 of 2009).</p> <p>Fines in the ATA have since been amended and the unlimited fines have been replaced with appropriate penalties that are more proportionate and should be sufficiently dissuasive, effective and proportionate.</p> <p>The Government of St. Kitts and Nevis has engaged the services of a consultant to review gaming standards. Specifically, the review includes an examination of the legislation. The Authorities anticipate that the existing gaming legislation will be amended before the end of 2012 and that significant steps would have been made towards revamping the regulatory structure from a prudential and AML perspective.</p>
25. Guidelines & Feedback	PC	<p>No feedback given with regard to AML/CFT trends and typologies.</p> <p>The GN are legally constrained to ML issues.</p> <p>The deficiencies identified for financial services for R 25 at sections 3.7, 3.10, and 4.3 apply to DNFBPs.</p> <p>FIU has not provided feedback with respect to disclosures and sanitised cases to DNFBPs.</p> <p>There is no sector-specific AML/CFT guidance applicable to DNFBPs, except for trust and company service providers.</p>	<ul style="list-style-type: none"> The FIU should provide feedback in the form of AML/CFT trends and typologies to regulated sectors. The Authorities should carry out the necessary amendments to ensure that the Guidance Notes can properly cover CFT issues. The FIU should provide feedback to DNFBPs on disclosures and sanitised cases. Additionally, there should be sector specific guidance for DNFBPs with respect to AML/CFT. 	<p>The FIU published and distributed its 2008 Annual Report which contains typologies and statistics. Additionally, the Unit also distributed literature on 'hacking' to assist financial institutions in securing their IT systems as well as produced and distributed a flyer captioned 'What's our Grade', a tool for regulated businesses to conduct in-house self assessment of how they grade on AML/CFT reporting guidelines. In May 2009 and February 2010 the FIU made presentations and discussed Trends & Typologies with regulated sectors at Nevis' annual AML/CFT Seminars. The FIU has also published guidelines on terrorist financing reporting through a brochure entitled "Road Map-Terrorist Financing Reporting" and distributed to gaming, insurance, banking, credit union, money remittance institutions. Sector specific guidelines also issued to two casinos on how and what to report.</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
				<p>Anti-Terrorism (Prevention of Terrorist Financing) Regulations has been approved and covers CFT issues.</p> <p>A significant number of participants at Nevis' annual AML/CFT Seminars held in May 2009 and February 2010 were DNFBP's and they had the benefit of the FIU's presentations and discussions on Trends & Typologies.</p>
Institutional and other measures				
26. The FIU	PC	<p>No specified time period for the making of reports on TF.</p> <p>A number of reporting entities have not received training in relation to the reporting guidelines and are unaware of their obligations under the POCA.</p> <p>The FIU's independence and autonomy can be unduly influence by its Director's inability to recruit appropriate and competent staff.</p> <p>The Minister is given too much authority under the Act as he is responsible for the Policy making and the appointment of consultants to the FIU decision making functions. (Sec 6 FIU Act).</p> <p>The FIU does not prepare and disseminate trends and typologies to relevant reporting entities.</p> <p>Information held by the FIU is not sufficiently secured and protected.</p>	<ul style="list-style-type: none"> St. Kitts and Nevis Authorities should consider amending section 17(6)(b) of the ATA as amended to give reporting entities a specific time period to submit report of terrorist financing to the FIU. St. Kitts and Nevis should consider establishing a structured training schedule, in the short term, to target those entities that have not received training in the manner of reporting and identifying suspicious transactions. Continuous dialogue and training should be maintained with reporting bodies with the view of evaluating their reporting pattern so that weaknesses can be identified and addressed accordingly. The St. Kitts and Nevis Authorities may need to review the manner in which staff is recruited at the Financial Intelligence Unit to allow the Director to have some form of authority as to the quality of the staff that is recruited. The St. Kitts and Nevis Authorities may need to review the powers given to the 	<p>Amendment to the ATA now specifies a 24-hour time period for submission of reports to the FIU. See Section 8(a) of the Anti-Terrorism (Amendment) Act, 2009 (No 13 of 2009)</p> <p>During 2009, the FIU established a structured training schedule for targeted entities and executed this through presentations and meetings with relevant personnel as detailed on Schedule 4. The Nevis annual AML/CFT seminar also provides a forum for training and dialogue with regulated sectors, providing clarification to participants on reporting requirements etc.</p> <p>FIU training has been ongoing for 2010. The intelligence analysts attended the Nevis AML/CFT training workshop in Nevis and in July attended the Second Sub-Regional Workshop for Caribbean Countries on Counter-Terrorism Financing in Nassau Bahamas. See also attached Schedule of Additional Training since November 2010.</p> <p>In terms of Training and guidance provided to regulated entities, Credit Unions were addressed for the months of June, July and August, where Meetings were held with the Compliance Officer of a Credit Union, and the Senior Managers of the Credit Unions</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
		<p>There is no standard reporting time in which reporting entities are required to file STRs to the FIU.</p> <p>No guidance on the filing of STRs in relation to TF has been issued by the FIU.</p> <p>The FIU has not been fully constituted in accordance with the FIU Act.</p>	<p>Minister, such as policy making and the recruitment of consultants to the Financial Intelligence Unit, without the consensus of the Director of the FIU or the FIU body, as this does not reflect enough independence and autonomy.</p> <ul style="list-style-type: none"> • The FIU needs to prepare and circulate ML and TF trends and typologies to the reporting entities, so that they can adapt appropriate measures and strategies. These trends and typologies should also be • included in the Annual Report. • The building that presently houses the FIU needs to be more adequately secured through the use of security features such as electronic security systems. • A data back up system for the storage of information should be implemented both on site at the FIU and at an offsite secure location and reconsideration given to the storage of information on memory sticks and DVDs as these items can sometimes be easily misplaced. • St. Kitts and Nevis Authorities should consider amending sec 15 (1) of the AMLR as it relates to the reporting of STRs to ML to give reporting entities clear directives as to the time in which they are required to file STRs to the FIU. • The FIU should provide guidance with regard to filing STRs with regard to TF. • St. Kitts and Nevis should move quickly to establish the FIU in accordance with section 	<p>respectively focusing mainly on creating greater awareness of suspicious transaction reporting and emphasizing reporting obligations generally, and to bring greater awareness of the AML and CFT laws.</p> <p>A Terrorist Property Report was created by the FIU and distributed to help with the more detailed and specific information that is needed to assist financial institutions with their reporting obligations. A new security system has been installed with an electronic key pad, video entrance monitor and burglar alarm.</p> <p>The FIU Director is fully involved in the recruitment process, including participating in the interviews and making recommendations to the Minister on final personnel selection.</p> <p>The FIU published and distributed its 2008 Annual Report which contains typologies and statistics. In May 2009 and February 2010 the FIU made presentations and had discussions on AML/CFT Trends & Typologies with regulated sectors at Nevis' annual AML/CFT Seminars.</p> <p>The FIU moved to adequately secured premises in November 2008. Data is currently being stored on an external drive as a backup system. With the recruitment of the IT/FI Analyst, work is in progress to create an enhanced database. Upon completion, the data will be stored on the database server in which the database application resides with adequate offsite backup. See 11(1) (e) of the AML Regulations and APTF Regulations</p> <p>All training presentations and meetings conducted by the FIU with regulated businesses cover STR reporting for both ML and TF.</p> <p>The members of the FIU Board have been approved and it is expected that the Board would be constituted shortly.</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
			3(1) of the FIU Act.	

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
27. Law enforcement authorities	NC	<p>St. Kitts and Nevis has not considered enacting legislation or putting measures in place to waive or postpone the arrest of suspected persons and /or the seizure of cash with the view to identify persons involve.</p> <p>No clear indication that money laundering and terrorist financing are properly investigated.</p>	<ul style="list-style-type: none"> St. Kitts and Nevis Authorities should consider implementing legislation or measures that would allow law enforcement authorities, to postpone or waive the arrest of suspected person and /or the seizure of cash so as to identify other persons involved in the offence. The FIU Royal St. Christopher and Nevis Police Force should put measures in place to ensure that persons responsible for the proper investigation of ML & TF have sole responsibility in this regard, as ML & TF are usually complex crimes and require dedication and comprehensive investigation with utmost circumspect. 	<p>In February 2011, POCA amended to give greater flexibility in terms of the investigative process. The Court now has the capacity to make periodic orders for detention of moneys (being imported to or exported from the Federation) for at least six (6) months.</p> <p>The White Collar Crime Unit (WCCU) was established within the Royal St. Christopher-Nevis Police Force in June 2009 as the designated unit with responsibility for investigating ML and TF. Three (3) experienced officers are assigned to the Unit. The Unit is housed in the same secure premises in which the FIU is now located and is fully equipped (from proceeds of the Forfeiture Fund) with the physical and technical resources it needs to perform its functions. Another Officer was assigned to the Unit in November 2010 bringing the staff complement to four (4) in addition to an Inspector who heads the unit.</p> <p>The WCCU is currently investigating 116 STRs transmitted by the FIU to establish enforceable evidence of ML where applicable. There have been three (3) cases where three (3) individuals have been charged with Fraud offences and recommendations have been made for ML charges to be laid.</p>
28. Powers of competent authorities	LC	<p>The level of enforcement and effectiveness of implementing the tools available to law enforcement cannot be clearly ascertained.</p>	<ul style="list-style-type: none"> The Royal St .Christopher and Nevis Police Force, the Office of the DPP and the FIU should consider developing and reviewing their strategy in combating ML and TF with the view to adapting a more aggressive approach to generate ML and TF investigations, prosecution and possible convictions and utilizing the investigative tools such as Production Orders provided for in the POCA. There is a need for speedier granting of orders by the Court, in particular production orders. 	<p>The WCCU is currently investigating 116 STRs transmitted by the FIU to establish enforceable evidence of ML where applicable. There have been three (3) cases where three (3) individuals have been charged with Fraud offences and recommendations have been made for ML charges to be laid.</p> <p>In February 2011, POCA amended to give greater flexibility in terms of the investigative process. The Court now has the capacity to make periodic orders for detention of moneys (being imported to or exported from the Federation) for at least six (6) months. The amendment also introduces the possibility of forfeiture of moneys without a conviction where the court is satisfied that such moneys constitute the proceeds of</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

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				crime. (Copy of Bill attached) Investigative activities of the WCCU between October 2010 and February 2011 include:- Five (5) Drug trafficking cases (3 - subjects convicted & sentenced; 2 -cases adjournment to later date). Application for confiscation made to the Court in three (3) of these drug cases is pending; Three (3) Fraud cases (1-awaiting Preliminary Investigation; 1-subject to be served; 1-awaiting further instructions from DPP). Ten (10) Production Order Applications made to the Court (7- received & 3-pending).
29. Supervisors	PC	<p>The powers of the ECCB to inspect do not directly extend to AML/CFT.</p> <p>The ECSRC lacks power to inspect for AML/CFT measures.</p> <p>Limitation on sanctions under the AMLR and the ATA.</p>	<ul style="list-style-type: none"> The ECCB/ECSRC should be vested with examination and sanction powers where AML/CT is concerned. The penalties under the AMLR and the ATA should be more effective, proportionate and dissuasive. 	<p>In keeping with the policy of developing harmonized legislation for ECCU member territories, consideration for amendments to the Securities and Banking Acts will have to be done as a regional exercise.</p> <p>Penalties under the ATA have already been addressed in the Anti-Terrorism (Amendment) Act, 2009 (No 13 of 2009. and APTF See Regs 3(7), 4(2) (e), 4(9) (l); 4(13); 5(6); 8(10); 11(2) (d); 11(2) (e); 11(4); 14(1). Those under AMLR are captured in 3(7), 4(2) (e), 4(9) (l); 4(13); 5(6); 8(10); 11(2) (d); 11(2) (e); 11(4); 14(1).</p>
30. Resources, integrity and training	PC	<p>Inadequate staff in the Office of the DPP.</p> <p>Lack of AML/CFT training for staff in the Office of the DPP.</p> <p>There is no law library in the Office of the DPP available for the use of law officers.</p> <p>There is a lack of both human and technical resources in the Police Force, the FIU and Customs and Excise (Enforcement Division).</p> <p>The procedures in place in the FIU and the Customs and Excise Department are not adequate to ensure that staff maintains a high level of integrity and confidentiality.</p>	<ul style="list-style-type: none"> St. Kitts and Nevis should put adequate mechanisms in place to ensure that staff recruited at the FIU maintains a high level of integrity and confidentiality. The FIU should be provided additional human and technical resources for it to adequately and efficiently carry out its functions. More training should be sourced and provided to the personnel of the FIU. St. Kitts and Nevis should consider filling the vacant posts within the Police Force in order to strengthen its human resource capabilities, so that there would be an adequate allocation of human resources for the proper investigation of crimes in general 	<p>In February 2009 polygraph testing commenced for all FIU personnel except ancillary staff.</p> <p>During 2009 the two vacant positions at the FIU were filled with the recruitment of another Financial Intelligence Analyst and an IT/Financial Intelligence Analyst. The Unit also procured additional technical resources (e.g. two (2) computer systems, i2 Analyst Notebook Software etc.) in 2009. Additionally, the 2009 budgetary expenditure was increased by \$115,000 over 2008. FIU received an additional laptop computer in 2010.</p> <p>FIU personnel have participated in a number of external training activities between November 2008 and December 2009 as detailed on Schedule 1.</p> <p>During 2009 the Royal St. Christopher – Nevis Police</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
		<p>Need for more training in relation to ML/TF matters for members of the Police Force and Customs and Excise.</p>	<p>and ML and FT specifically.</p> <ul style="list-style-type: none"> • The budgetary resources of the Police Force should be increased to adequately cover, purchasing of additional resources and the hiring of qualified staff to enable it to adequately perform its functions • The Police Force should consider providing more training particularly in the area of ML investigation and other relevant areas. This could also be done in-house and provision should be made to have it inducted within the regular police training programme for new recruits. • There is a need for more Law officers in the office of the Director of Public Prosecutions • There is an urgent need for AML/CFT training of all officers in the Office of the DPP. This Training should include the seizing, freezing, forfeiture and confiscation of assets. • A law library in the Office of the DPP should be considered as a matter of priority since this would greatly assist the office of the DPP as well as the Officers in the Ministry of Legal Affairs in accessing reference materials. • The St. Kitts and Nevis Authorities should consider providing the Customs and Excise Department with adequate resources to undertake its functions; such resources should include vehicles, firearms and computers. 	<p>Force embarked on a targeted recruitment drive with several advertisements being placed with both print and electronic media. A total of twenty-nine (29) new Constables have been recruited to the Police Force as a result of this drive. In addition the Island Constables Act, 2009 (No. 31 of 2009) provides for the appointment of auxiliary constables to augment the Police Force.</p> <p>Customs has participated in several REDTRAC Training Activities in 2010. These include the Financial Intelligence Course – July, 2010, Advanced Narcotic Investigation Course – May 2010, Techniques of Financial Investigation Course – July 2010.</p> <p>Seventeen new officers were trained under the CICLEC programme in this year. Police personnel have participated in a number of external and internal training activities between February and December 2009 as detailed on Schedule 1.</p> <p>Personnel from the Office of the DPP have participated in a number of external training activities between February and December 2009 as detailed on Schedule 1.</p> <p>The DPP's Office has received an additional member of staff.</p> <p>The Authorities have paid significant attention to allocating resources to the Customs Department and in particular the Customs Enforcement Divisions (CED) in both islands. In 2009 of greatest significance are the</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

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			<ul style="list-style-type: none"> • The St. Kitts and Nevis Customs and Excise Department should put adequate measures in place so as to ensure staffs are properly vetted so as to maintain a high level of integrity and confidentiality, more specifically staff in key areas such as the Enforcement and the Intelligence Divisions/Units. • The St. Kitts and Nevis Customs and Excise Department should ensure that staffs are provided with adequate training in relation to ML and TF, especially persons in key areas and in particular officers attached to the Nevis Department. 	<p>two (2) additional motor vehicles provided to the St. Kitts CED AND the four (4) firearms, 10,000 rounds of ammunition as well as two (2) coffin-like containers to facilitate thorough examination of goods imported in barrels, provided to the Nevis CED. A K-9 Unit has been established for Customs which conducts operations at the warehouse in St. Kitts and weekly operations at the warehouse in Nevis. The 2010 budget has provisions for the acquisition of investigative software.</p> <p>All candidates for employment within the Customs and Fourteen (14) cases of strs were forwarded to the FIU. In one case Customs recovered a fine of \$5000.00. There are currently two cases being investigated by Customs in conjunction with the white collar crime unit concerning the movement of unusually large sums of money under suspicious circumstances.</p> <p>Excise Department are now vetted by the Comptroller and Deputy Comptroller of Customs.</p> <p>Since September 2009 and with the assistance of CARTAC, the Customs Department has developed and implemented a discrete Intelligence Unit within the Customs Enforcement Division which serves to enhance confidentiality.</p> <p>Personnel from the Customs Departments of St. Kitts and Nevis have participated in several external and internal training activities between November 2008 and December 2009 as detailed on Schedule 1. Of note is the fact that during 2009 four (4) additional officers were trained in financial investigations bringing the number of accredited financial investigators in ML/TF within Customs to eight (8). In addition, in June 2009, a Senior Customs Manager was trained as a CFTAF Mutual Evaluation Examiner thus providing the Department with greater capacity in effecting and guiding its policies in respect of ML and TF matters. Between October 2010 and February 2011 Customs</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

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31. National cooperation	PC	<p>There is insufficient cooperation and consultation between the DPP and the Police when investigating possible money laundering and terrorist financing offences.</p> <p>No pro-active role taken by the DPP with regard to giving guidance to the police in relation to their AML/CFT investigations.</p>	<ul style="list-style-type: none"> The Authorities need to foster a greater level of cooperation pursuant to the MOU which was signed in 2007. The DPP should play a pro-active role in giving guidance to the police in relation to AML/CFT investigations. 	<p>Dept detained cash amts of US\$52,788 & US\$38,901 which are pending civil forfeiture.</p> <p>Inter-agency meetings are being held on an 'as needed' basis between the FIU, Customs, Police and other competent authorities and this has improved cooperation. Joint discussions were held to identify and develop a collective training needs package for these agencies and the execution of this initiative is evidenced on the attached Schedule 1. Also, in November 2009, the FIU organized and conducted an 'Information Exchange & Tactical Analysis Overview Seminar' to further strengthen collaboration initiatives amongst the agencies.</p> <p>The LEA's have improved significantly in their levels of communication – having had several successful jointly-conducted investigations. The mentorship programme sponsored by the UK is ongoing and has assisted considerably in this regard.</p>
32. Statistics	PC	<p>There is no comprehensive and independent statistics maintained by the FIU in relation to international wire transfers.</p> <p>There are no complete statistics kept by the FIU on production orders, monitoring orders and restraint orders, so as to show the effectiveness of the of the AML/CFT framework.</p> <p>Customs and Excise does not keep any comprehensive statistics on cross border seizures.</p> <p>No statistics maintained by Customs and Excise on matters that were referred to other Agencies such as the FIU for investigations.</p> <p>The statistics on mutual legal assistance is limited, in that it does not explain the nature of the requests and what processes were used to obtain the funds.</p> <p>The statistics on extradition and the mutual legal</p>	<ul style="list-style-type: none"> The FIU should implement procedures for keeping statistics on international wire transfers, as these statistics are not kept by any other agency. The FIU should move to establish a system whereby proper records relating to the investigation of ML & TF are properly recorded, the system could include proper records of production orders, monitoring orders and restraint orders. The Customs and Excise Department should keep adequate and comprehensive statistics in relation to cross border seizure of currency and bearer negotiable instruments and the number of these reports that were forwarded to the FIU. The statistics provided should state the nature of assistance sought and rendered and what orders were used to obtain the 	<p>The FIU has set up a separate register for recording international wire transfer reports.</p> <p>The FIU has established a proper system to maintain records relating to ML & TF investigations with the responsibility for maintaining these records assigned to a specific officer.</p> <p>The Customs Department has established a proper database system to maintain statistics on cross border seizures and information forwarded to the FIU. This database is managed and maintained by an Intelligence Analyst within the newly created Intelligence Unit. The database is a combination of ACCESS and Cargo Management Program.</p> <p>The FIU maintains proper statistical info on the nature of MLAT requests and responses including production, freeze and forfeiture orders.</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
		assistance do not include the response time.	funds which were repatriated to the USA.	

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
33. Legal persons– beneficial owners	LC	No provision in the Companies Act with regard to beneficial ownership or control.	<ul style="list-style-type: none"> The Authorities should amend the Companies Act to include measures that would provide for information on beneficial ownership and control of legal persons. 	
34. Legal arrangements – beneficial owners	LC	Inability to access whether information on private trusts is adequate and accurate.	<ul style="list-style-type: none"> The St. Kitts and Nevis Authorities should put provisions in place that would facilitate obtaining relevant information with regard to private trusts. 	
International Cooperation				
35. Conventions	PC	All relevant Articles of the Conventions have not been fully implemented.		This Recommendation has been satisfied where St. Kitts and Nevis is now compliant with all the relevant provisions of the Conventions.
36. Mutual legal assistance (MLA)	C	This Recommendation is fully observed.		The MACMA was amended in November of 2011 to provide for the identification, freezing and seizing or confiscation of instrumentalities used in or intended for use in the commission of an offence.
37. Dual criminality	C	This Recommendation is fully observed.		
38. MLA on confiscation and freezing	LC	<p>No arrangement is in place for the sharing of assets under the ATA.</p> <p>No provision in the MACMA with regard to instrumentalities used in or intended for use in the commission of an offence.</p>	<ul style="list-style-type: none"> Mechanisms should be put in place to deal with matters which may cause dual jurisdictional conflict. Arrangements should be put in place for the sharing of assets under the ATA. The Mutual Legal Assistance in Criminal Matter Act should be amended to provide for the identification, freezing seizure or confiscation of the instrumentalities used in or intended for use in the commission of an offence. 	<p>The Forfeiture Fund that was established pursuant to an Amendment to the Proceeds of Crime Act in 2008 (see Act attached), covers the sharing of proceeds from all crimes as well as crimes that would fall under the ambit of the Organised Crime (Prevention and Control Act). Any funds or properties confiscated or forfeited under the ATA would therefore automatically be diverted to the Forfeiture Fund.</p> <p>The MACMA was amended in November of 2011 to provide for the identification, freezing and seizing or confiscation of instrumentalities used in or intended for use in the commission of an offence.</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
39. Extradition	C	The Recommendation is fully observed		
40. Other forms of co-operation	PC	<p>Law enforcement is not authorized to conduct investigation on behalf of its foreign counterparts.</p> <p>The ECSRC would not be able to share information about AML issues as it does not supervise for AML purposes.</p>	<ul style="list-style-type: none"> St. Kitts and Nevis Authorities should move to put measures in place to enable law enforcement to conduct investigations on the behalf of their foreign counterparts. The Authorities should consider expanding the ECSRC's mandate to supervising compliance with both AML and CFT requirements, which would then permit the Commission to share information on these matters. 	<p>Between November 2008 and December 2009, the Royal St. Christopher – Nevis Police Force provided assistance to USA and Slovak Republic law enforcement counterparts in a number of matters including locating and interviewing witnesses, service of court production orders, retrieval of telephone records and locating a person of interest and so existing mechanisms allow law enforcement to provide cooperation to foreign counterparts. The provisions of the Police Act and the Mutual Legal Assistance in Criminal Matters authorize the Police to conduct investigation on behalf their foreign counterparts.</p> <p>A Regulatory Oversight Committee has been formed comprising the ECSRC, ECCB and regulatory units of the ECCU countries. A Draft MOU providing for cooperation and sharing of information among the parties has already been circulated and reviewed and is expected to be signed shortly. (See Draft MOU attached)</p>
9 Special Recommendations				
SR.I Implement UN instruments	PC	<p>The ATA does not provide for the freezing of funds belonging to Al-Qaida, the Taliban or their associates or other persons designated by the U.N Security Council.</p> <p>No designations have been made under UNSCR 1373.</p> <p>The limitation period for commencing prosecution for money laundering offences is too short.</p> <p>There is no provision for extending the statute of</p>	<ul style="list-style-type: none"> The ATA should be amended to make provision for the freezing of funds of Al-Qaida, Osama Bin Laden, the Taliban and their associates and other persons designated by the U.N Security Council. The St. Kitts and Nevis Authorities should ensure that legislation should provide specifically for an aircraft to be denied permission to land if it belongs to Al-Qaida, the Taliban or their associates. 	<p>Section 43(1)(b) of the ATA has been amended to make provision for the freezing of funds of Al-Qaida, Taliban and other designated terrorists. See Section 13 of the Anti-Terrorism (Amendment) Act, 2009 (No. 13 of 2009)</p> <p>The ATA has been amended to provide for denial of landing permission to designated terrorists' aircraft. See Section 15 of the Anti-Terrorism (Amendment) Act, 2009 (No 13 of 2009) and Section 3 of the Anti-Terrorism (Amendment)(No. 2)Act, 2009 (No. of 2009)</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
		<p>limitation where a person deliberately tries to escape from prosecution.</p> <p>No legislative provision for any aircraft belonging to Al-Qaida, the Taliban or their associates to be denied permission to land.</p>	<ul style="list-style-type: none"> The statute of limitation for commencing money laundering offences should be extended and unless the limitation is removed altogether, where a person is a fugitive from justice then the limitation period should be longer. 	

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
SR.II Criminalize terrorist financing	PC	<p>Terrorist financing does not meet the requirements to be considered a predicate offence.</p> <p>There are inadequate stipulated penalties for legal persons under the ATA.</p>	<ul style="list-style-type: none"> • The penalty for summary conviction of terrorist financing under Section 12 of the ATA should be at least one year in order for terrorist financing to be considered a predicate offence. • St. Kitts and Nevis needs to amend the ATA legislation in order to clearly reflect the liability of legal persons by quantifying the fines where necessary. 	<p>Section 12 of the ATA has been amended to increase the prison term to a maximum of five (5) years. See Section 4 of the Anti-Terrorism (Amendment) Act, 2009 (No 13 of 2009)</p> <p>Sections 12, 13, 14, 15 and 17 of the ATA have been amended to clearly reflect liability to legal persons by specifying fine unlimited. See Sections 4, 5, 6, 7 & 8 of the Anti-Terrorism (Amendment) Act, 2009 (No 13 of 2009)</p> <p>The ATA Act was amended in February of 2012 to address inter alia the inconclusiveness of the open-ended fines. Section 12 of the Act which criminalises fundraising for terrorist purposes was amended in subsection (6) paragraphs (a), (b) and (c) to provide for specific quantification of fines. Paragraph (c) penalised activities of a corporate or unincorporated body by imposing a fine of two hundred and fifty thousand dollars. In section 13(2), which deals with use or possession of property for terrorist purposes, a similar amendment was made in paragraph (C). The other amendments followed this trend and this was largely mirrored in sections 15(2) (c); 17(9) (c) which dealt respectively with engaging in money laundering for terrorist purposes and the duty to disclose information relating to a person who has committed a terrorist financing offence. Fines were also quantified in sections 27(1)(a) and 28(a). In all cases involving the culpability of a body corporate or unincorporated, the amended fines are in excess of one hundred thousand dollars.</p>
SR.III Freeze and confiscate terrorist assets	PC	<p>Section 43 of the ATA does not satisfy the requirement of S/RES/1267 for the freezing without delay of funds belonging to the Taliban and Al-Qaida.</p> <p>No regulations made with regard to the procedure for an application for de-listing as a terrorist or terrorist</p>	<ul style="list-style-type: none"> • Provision ought to be made for the freezing without delay of the funds or other assets of the Taliban and Al-Qaida. • • • 	<p>The ATA was amended by Act No. 3 of 2012. Section 43 of that Act now provides that an application by the Director of Public Prosecutions he ATA was amended by Act No. 3 of 2012. Section 43 of that Act now provides that an application by the Director of Public Prosecutions to the court for a freezing order for terrorist funds</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
		<p>group.</p> <p>There is no programme in place for informing the public of the procedure for de-listing.</p> <p>There is no programme in place to inform the public about the procedure for unfreezing funds or assets.</p> <p>No procedure in place for authorizing access to funds or other assets that are frozen under UNSCR 1267 and that are to be provided for basic expenses.</p> <p>There is no legislation in place to provide for the procedure for forwarding request for the release of funds or assets which have been frozen and which are required for basic living expenses to the Committee which has been established under S/RES/1452(2002).</p> <p>There is no provision for extraordinary expenses.</p> <p>There has been no implementation of SR. III provisions and accordingly the effectiveness of the measures cannot be determined.</p>	<ul style="list-style-type: none"> • The regulations for de-listing terrorist and terrorist groups should be published by the Minister of National Security. • • There ought to be a programme in place to sensitise the public of the procedure for de-listing of terrorist and terrorist organisation. • • Members of the public should be made aware of the procedure for applying to have funds and or assets unfrozen. • • The St. Kitts and Nevis Authorities should establish the procedure for authorizing access for basic expenses to funds or other assets that are frozen pursuant to UNSCR 1267. • • St Kitts and Nevis should put in place the procedure for forwarding request for the release of funds or assets which have been frozen and which are required for basic living expenses to the Committee which has been established under S/RES/1452 (2002) • • While there is provision for basic living, legal and business expenses there are no provisions for extraordinary expenses. These ought to be included under the ATA. 	<p>“may be made ex parte but in any case shall be made without delay”. This amendment to the Act thus places an obligation upon the DPP to proceed with alacrity to secure the funds in question. The ATA was amended in 2008 to expand the definition of funds to encompass assets of every kind.</p> <p>Section 43(1)(b) of the ATA has been amended to make provision for the freezing of funds of Al-Qaida, Taliban and other designated terrorists. See Section 13 of the Anti-Terrorism (Amendment) Act, 2009 (No. 13 of 2009)</p> <p>The Anti-Terrorism (Prevention of Terrorist Financing) Regulations include delisting procedures (Reg 16) and make provisions for these procedures to be published in at least one local newspaper as well as in the Official Gazette. Public awareness would be adequate once it is published in a local newspaper of general circulation. Further steps may later be taken administratively as part of a general sensitization of the public.</p> <p>Provisions for authoring access for basic expenses or other assets made in Regulation 17 of the Anti-Terrorism (Prevention of Terrorist Financing) Regulations, 2011.</p> <p>See 17(5) of the APTF Regs.</p> <p>Provisions for authoring access for basic and extraordinary expenses or other assets made in</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

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				Regulation 19 of the Anti-Terrorism (Prevention of Terrorist Financing) Regulations, 2011.
SR.IV Suspicious transaction reporting	NC	<p>The suspicious transaction reporting requirements under the ATA are not in keeping with the FATF requirements.</p> <p>Sanctions for failing to report possession of terrorist property is less severe than other reporting breaches under the ATA.</p>	<ul style="list-style-type: none"> • Suspicious transaction reporting under the ATA should be made to the FIU. • • • Sanctions for failing to report possession of terrorist property should be more stringent. 	<p>Section 17 of the ATA amended to provide for reporting of STR's to be made to the FIU. See Sections 8(a) of the Anti-Terrorism (Amendment) Act, 2009 (No 13 of 2009)</p> <p>Section 19 of the ATA amended to increase term of imprisonment and fine for failing to report possession of terrorist property. See Section 10(b) of the Anti-Terrorism (Amendment) Act, 2009 (No 13 of 2009)</p>
SR.V International cooperation	PC	<p>The deficiencies noted in relation to Rec. 38 also affects SR. V.</p> <p>Law enforcement is not authorized to conduct investigation on behalf of its foreign counterparts.</p> <p>The ECSRC does not supervise for compliance relating to TF and would not be able to share information on this issue.</p>	<ul style="list-style-type: none"> • The Schedule of the Fugitive Offenders Act should be amended to include money laundering and terrorist financing as extraditable offences. • St .Kitts and Nevis Authorities should move to put measures in place to enable law enforcement to conduct investigations on the behalf of their foreign counterparts. • The Authorities should consider expanding the ECSRC's mandate to supervising compliance with both AML and CFT requirements, which would then permit the Commission to share information on these matters. 	<p>This was effected by an amendment to the POCA. See Proceeds of Crime (Amendment) Act, (No. 30 of 2008)</p> <p>Between November 2008 and December 2009, the Royal St. Christopher – Nevis Police Force provided assistance to USA and Slovak Republic law enforcement counterparts in a number of matters including locating and interviewing witnesses, service of court production orders, retrieval of telephone records and locating a person of interest and so existing mechanisms allow law enforcement to provide cooperation to foreign counterparts. The provisions of the Police Act and the Mutual Legal Assistance in Criminal Matters authorize the Police to conduct investigation on behalf their foreign counterparts.</p> <p>A Regulatory Oversight Committee has been formed comprising the ECSRC, ECCB and regulatory units of the ECCU countries. A Draft MOU providing for cooperation and sharing of information among the parties has already been circulated and reviewed and is expected to be signed shortly. (See Draft MOU</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

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SR.VI AML requirements for money and value transfer services	PC	<p>Money Services Business Act not yet implemented.</p> <p>Supervisors are not required to maintain listing of operators.</p> <p>Money Service providers are not required to maintain current lists of agents.</p> <p>Offences under both the AMLR and the Money Services Business Act are not proportionate.</p> <p>Sanctions under the FSC Act and the AMLR appear to be under utilised.</p> <p>Compliance obligations under the Money Services Business Act do not extend to TF issues.</p> <p>Issues relating to the scope of the AMLR and the deficiencies in reporting requirements under the AMLR and the ATA.</p>	<ul style="list-style-type: none"> The Money Services Business Act should be implemented as soon as possible. Money Services Providers should be required to maintain a current listing of agents for the inspection of the Authorities. The Supervisory Authorities should be required to maintain a current listing of operators. The penalties under the AMLR should be more proportionate to ensure effectiveness and dissuasiveness. The penalties in the Money Services Business Act (particularly as they relate to AML matters) should be more proportionate to ensure effectiveness and dissuasiveness. The Money Services Business Act should also refer to the compliance obligations of the licensees under the ATA. The FSC should make more use of the powers under the FSC Act and the AMLR. The effectiveness of the supervisory regime for money service providers would be affected by broader system issues such as the limited scope of the AMLR /GN to ML issues and not to TF issues as well as weaknesses in the suspicious transaction reporting requirements under both the AMLR and the ATA. These issues must be addressed to ensure that these providers properly comply with the FATF Recommendations. 	<p>attached)</p> <p>The Money Services Business Act, 2008 was fully Implemented. Under the MSB Act, 2008 MSB Providers are required to obtain separate licenses for all operating locations. All nine (9) operating MSB locations within the Federation were licensed as of 2009 and Supervisory Authorities maintain a current listing of operators under the new licensing regime.</p> <p>AML Regulations have been approved. Varying penalties stipulated.</p> <p>Overall obligations of these DNFbps are covered under the Guidance Notes and under the FSRC Act where all such regulated persons must have regard to the ATA and its relevant Regulations. See Sections 3 and 4 of the FSRC Act.</p> <p>Regulatory action taken since November 2008 is shown at Schedule 3.</p> <p>The Anti-Terrorism (Prevention of Terrorist Financing) Regulations has been prepared to cover CFT issues. See those Regs generally as well as Regulation 13 to 15 of the Regs. Amendment has been made to the ATA to address the identified weaknesses in suspicious transaction reporting. (See Anti-Terrorism (Amendment) Act, 2009 (No. 13 of 2009).</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

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SR.VII Wire transfer rules	PC	<p>Money Services Act and Payment System Act not implemented.</p> <p>Detailed originator information not expressly required for all types of transfers.</p> <p>No appropriate guidance to funds transfer businesses and banks with regard to treatment of fund transfer transactions that do not have sufficient originator information.</p> <p>Ambiguity regarding inspection and sanction powers against banks and offshore banks for AML/CFT issues.</p> <p>No requirements for financial institutions to take appropriate action when they receive a transfer accompanied with inadequate originator information.</p> <p>Criminal sanctions under AMLR and FSCA not proportionate.</p>	<ul style="list-style-type: none"> • Both the Money Services Act and the Payment Systems Act should be brought into effective implementation. • The full detailed originator information required for cross border transfers should be expressly required for all types of transfers. • There needs to be appropriate guidance provided to funds transfer businesses and banks with regard to the appropriate treatment of funds transfers transactions where sufficient originator information is not available. • The Authorities may wish to consider amending the Banking Act to definitively grant to the ECCB the power to inspect and sanction banks for breaches of AML/CFT obligations. • The Nevis Offshore Banking Ordinance should provide for sanctions, including revocation, for breaches of AML/CFT obligations; • The Nevis Offshore Banking Ordinance should expressly allow for examinations by the ECCB to deal with AML/CFT issues. • The criminal sanctions under the FSCA and the AMLR should be proportionate to the actual offence committed, which can affect dissuasiveness and effectiveness. 	<p>Both the MSB Act, 2008 and Payment Systems Act, 2008 (No 17 of 2008) were brought into force on January 1, 2009.</p> <p>In keeping with the policy of developing harmonized legislation for ECCU member territories, consideration for amendments to the Banking Act as a regional exercise.</p> <p>Criminal sanctions under the FSRC Act, (Sections 40 and 44) 2009 (No. 22 of 2009) provide for proportionate penalties. See also the AML Regulations. See Regs 3(7), 4(2) (e), 4(9) (1); 4(13); 5(6); 8(10); 11(2) (d); 11(2) (e); 11(4); 14(1).</p>
SR.VIII Nonprofit organizations	PC	<ul style="list-style-type: none"> • The purpose and objectives, and identity of persons who control the activities of non-profit organisations are not publicly available and there is no documented evidence of public availability. 	<ul style="list-style-type: none"> • While there is a system of registration of NGOs, and there are provisions under the NGOA for a Non-Governmental Organisation Commission to monitor compliance, the recent legislative changes 	

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
		<p>The recent issue of requirements to monitor compliance does not allow for sufficient time to test for effective implementation.</p>	<p>do not allow for sufficient time to allow or test for effective implementation</p> <ul style="list-style-type: none"> The purpose and objectives, and identity of persons who control the activities of non-profit organisations should be made public, and there should be documented evidence of public availability. However, the Authorities indicated that it is standard practice for all information on domestic entities to be publicly available at the general registry. 	<p>Under the new NGO registration system, organizations are required to provide more extensive information on control persons and activities. This information is available to the public by conducting a search of the file at the Registry.</p> <p>The Non-Governmental Organization Regulations approved in January 2011 which sets up the operational framework for the registration of NGOs and the terms under which the NGO Commission will function. (See SR&O No. 4 of 2011 attached)</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by St. Kitts & Nevis
SR.IX Cash Couriers	NC	<p>Cases of cross border seizures of cash and bearers instruments are not properly investigated.</p> <p>There is no coordination domestically between the relevant authorities in relation to the implementation of SR 9.</p> <p>There are no records kept on the seizure of cross border cash and bearer negotiable instruments.</p> <p>Need for greater information sharing and liaison between Customs Officials in St. Kitts and the originating country when there is a report of the seizure.</p> <p>No proper maintenance of records for the availability for AML/CFT purposes.</p> <p>Sanctions are not proportionate and difficult to assess effectiveness since there has been no implementation.</p>	<ul style="list-style-type: none"> • Customs, FIU and the Police should work closely together to investigate cases of cross border transportation of cash and bearer negotiable instruments in order to determine its origin, bearing in mind that such currency or instrument may be the proceeds of criminal conduct in the said country. • There is a need for regular inter-agency meetings between Customs, the Police, FIU and other competent authorities as it relates to the implementation of Special Recommendation IX. • Proper records and statistics should be kept by the Customs and Excise Department in relation to the seizure and disclosure of cross border transportation of cash and bearer negotiable instruments. • There is need for training of customs officers in relation to the identification of, precious metals and precious stones, as customs officers are unable to detect such objects if they are being smuggled. • There is a need for customs officials in St. Kitts and Nevis to inform and liaise with their counterparts in the originating country when there has been a seizure in relation to the transportation of cross border cash and bearer negotiable instruments and not solely rely on the FIU to disseminate such information. 	<p>The Customs Enforcement Division's Intelligence Unit maintains the database on seizure and disclosure of cross border transportation of cash and negotiable instruments and this information is forwarded to the FIU for analysis and thereafter to the Police's White Collar Crime Unit if investigations are to be conducted. The system has been working well. Between January – October 2009, eleven (11) cases were logged by Customs, all were forwarded to the FIU and upon analysis none were deemed to be of a suspicious or criminal nature.</p> <p>Inter-agency meetings are being held on an 'as needed' basis between the FIU, Customs, Police and other competent authorities and this has improved cooperation. In November 2009, the FIU organized an 'Information Exchange & Tactical Analysis Overview Seminar' for further strengthen collaboration initiatives amongst the agencies.</p> <p>The Customs Enforcement Division's Intelligence Unit maintains computerized database on seizure and disclosure of cross border transportation of cash and negotiable instruments. The database is a combination of ACCESS and Cargo Management Program.</p> <p>The Customs Department has engaged the services of a consultant to assist its officers in the identification of gems and precious stones. Training in this area is expected to commence shortly.</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

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			<ul style="list-style-type: none"> The Enforcement Section in Nevis should be given adequate resources including fireproof filing cabinets and the same procedures be implemented as in St. Kitts as it relates to the security of the Section. Information obtained as a result of the seizure of cross border currency and bearer negotiable instruments should be maintained in a computerized database and be readily available for AML/CFT purposes. 	<p>Additional resources have been provided to the Customs Enforcement Unit of Nevis including filing cabinets, four (4) firearms, 10,000 rounds of ammunition as well as two (2) coffin-like containers to facilitate thorough examination of goods imported in barrels.</p> <p>The recently established K-9 Unit conducts operations at the warehouse in Nevis on a weekly basis.</p> <p>An attachment programme has been established between the St. Kitts and Nevis Customs Departments and during 2009, five officers were exchanged each for a period of one month. This served to enhance synchronization of the procedures on both islands. The Authorities have also ensured that training opportunities are provided equally to officers in both islands as evidenced by the details on attached Schedule 1. In 2009, an additional officer was also employed to Nevis' Enforcement Unit.</p> <p>The Customs Enforcement Division's Intelligence Unit maintains computerized database on seizure and disclosure of cross border transportation of cash and negotiable instruments. The database is a combination of ACCESS and Cargo Management Program.</p>

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
St. Kitts & Nevis May 2012 Plenary**

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Other Measures				<p>In an effort to bolster the crime fighting effectiveness and capabilities of the Federation the following new pieces of legislation have been passed:</p> <ol style="list-style-type: none"> 1. Community Protection from certain Crimes Act, 2009 (No. 18 of 2009)(This is commonly referred to as anti-gang legislation) 2. Firearms (Amendment)(No. 2) Act, 2009 (No. 28 of 2009) widens the offence of the smuggling of firearms into the Federation. 3. Electronic Crimes Act, 2009 (No. 27 of 2009)(Covers matters relating to unauthorized access to computer systems and the related information.) 4. The Interception of Communications Act passed in February 2011 to assist investigators in the more efficient prediction of criminal activity and enhance the Police Force's crime detection capabilities. (Copy of Bill attached) 5. The Gang Prohibition and Prevention Bill – passed in October 2011 6. The Evidence Act, 2011

