

CARIBBEAN FINANCIAL ACTION TASK FORCE



## Eleventh Follow-Up Report of St. Maarten

For Approval by the Round-Robin Process  
July 3<sup>rd</sup>, 2020

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## I. INTRODUCTION

1. This report presents the CFATF Secretariat’s analysis of St. Maarten’s progress about correcting the deficiencies identified in its Mutual Evaluation Report (MER), as approved on November 2012 and subsequently by Round Robin on January 8<sup>th</sup>, 2013<sup>1</sup>.
2. St. Maarten received ratings of PC and NC on fourteen (14) of the sixteen (16) Core<sup>2</sup> and Key<sup>3</sup> Recommendations. Core Recommendation 1 and Key Recommendation 4 were rated LC. The following table shows these ratings:

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

3. Regarding the non-core and non-key Recommendations, St. Maarten was rated partially compliant or non-compliant, as indicated below:

Partially Compliant (PC)	Non-Compliant (NC)
R. 6 (Politically exposed persons)	R. 12 (DNFBPs – R. ,6,8-11)
R. 9 (Third parties and Introducers)	R. 16 (DNFBP-R. 13-15 &21)
R. 14 (Protection & no Tipping-off)	R. 24 (DNFBP-regulation, supervision and monitoring)
R. 17 (Sanctions)	R. 33 (Legal persons-beneficial owners)
R. 21 (Special attention for higher risk countries)	SR. VI (AML requirements for MVTS)
R. 25 (Guidelines & Feedback)	SR. VIII (NPOs)
R. 27 (Law enforcement authorities)	SR. IX (Cross-border Declaration & Disclosure)
R. 30 (Resources)	
R. 31 (National co-operation)	
R. 32 (Statistics)	
R. 38 (MLA on confiscation and freezing)	
R. 39 (Extradition)	
SR. VII (Wire transfer rules)	

4. Due to these results, St. Maarten was originally placed in the Regular-expedited follow-up process. Currently, St. Maarten is in Enhanced follow-up. This is the eleventh follow-up report on St. Maarten, based on a matrix of progress provided by the country on 5 May 2020, which is annexed to this report.

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

<sup>2</sup> The Core Recommendations as defined in the FATF procedures are R.1, R.5, R.10, R.13 and SR. II and IV.

<sup>3</sup> The Key Recommendations are R.3, R.4, R.23, R.26, R.35, R.36, R.40, SR. I, SR. III, and SR. V.



5. The following table is indented to assist in providing an insight into the level of risk in the main financial sectors in St. Maarten, as per 5 May 2020:

		<b>Banks (1)</b>	<b>Other Credit Institutions (2)</b>	<b>Securities</b>	<b>Insurance</b>	<b>TOTAL</b>
<b>No. of institutions</b>	<b>Total No.</b>	Local: 7	Specialized Credit Inst.: 1		8 (1)	<b>17</b>
		International: 1				
<b>Assets</b>	<b>US\$</b>	Local: 3,669,858	15,308		568,023 (2)	<b>4,605,776</b>
		International: 352,587				
<b>Deposits</b>	<b>Total: US\$</b>	Local: 3,391,840	0		105,511 (3)	<b>3,643,032</b>
		International: 145,681 (1)				
	<b>% Non-resident</b>	Local: 57.24%	n/a		0%	
		International: 100%				
<b>Intl. links</b>	<b>% Foreign owned</b>	Local: 71%	100%		1.3% (4)	
		International: 100%				
	<b>No. subsidiaries abroad</b>	Local: 3	0		4 (5)	<b>7</b>
		International: 0				

Notes:

**BANKS:**

(1) The figures of the banks, being local general banks, subsidiaries of foreign banks, branches of foreign banks, branches of local general banks and (non-) consolidated international banks, consist of figures as per June 30, 2019 (amounts in thousands).

(1) The figures of other credit institutions, being specialised credit institution, savings banks, credit union, savings and credit funds, savings and thrift funds, consist of figures as per June 30, 2019 (amounts in thousands).

**SECURITIES:**

(1) There are no local or foreign investment institutions under the Central Bank's supervision in St. Maarten.

**INSURANCE:**

(1) This total includes:

- 1 local life insurance company (locally established)
- 5 local non-life insurance companies (1 locally established 3 branches of foreign insurance companies and 1 subsidiary of a foreign insurance company)
- 2 pension funds (locally established)

(2) Total Assets as reported by the insurance companies and pension funds, mentioned in point 1, as per year-end 2018 (amounts in thousands).

(3) This amount is included in the Total Assets and represents the investments by the companies in (time) Deposits at (commercial) banks (amounts in thousands).

(4) Represents the Assets of branch offices and subsidiaries of foreign insurance companies in the percentage of Total Assets.

(5) Represents the number of subsidiaries abroad of local insurance companies.



## II. SCOPE OF THE REPORT

6. Section IV of this report focuses on Core Recommendations 5, 10, 13 SRs II and IV, and section V on Key Recommendations 3, 23, 26, 35, 36, 40, I, III, and SR. V. These Recommendations were rated as PC or NC in the MER.
7. Section VI provides updates on the actions taken by St. Maarten to address the deficiencies identified in relation to Recommendations 9, 12, 14, 16, 17, 21, 24, 25, 27, 30, 31, 32, 33, 38, 39, and Special Recommendations VI, VII, VIII and IX, which were rated as PC or NC in the MER.
8. This report does not include updates on Recommendations 1, 2, 4, 6, 7, 8, 11, 34 and 37 which were rated Largely Compliant, and Recommendations 15, 18, 19, 20, 22, 28, and 29 that were rated Compliant, in St. Maarten's MER.

## III. SUMMARY OF PROGRESS MADE BY ST. MAARTEN

9. On 20 November 2019, the amendments to the Penal Code entered into force and effect, which the Secretariat analysed to assess compliance with the outstanding recommended actions posed for SR.II. The results of this examination have cascaded positively into R.39 and SR.I. On the other hand, St. Maarten provided valuable clarifications on how its legal framework meets the recommended actions related to all Key Recommendations. Finally, the country also submitted updates and additional explanations for several other recommendations throughout the matrix annexed to this report, which are reflected in section VI.

## IV. CORE RECOMMENDATIONS

### Recommendation 5 - Customer due diligence

10. Article 2 of the "National Ordinance Combating ML/TF" (AB 2019 no. 25) covers a complete range of financial and non-financial activities and operations (see the 10<sup>th</sup> FUR for more details). *St. Maarten has met the recommended action.*
11. Article 3(1)(d) of the "National Ordinance Combating ML/TF" (AB 2019 no. 25) requires the implementation of CDD measures to electronic transfers whereby essential information about the client or beneficiary is lacking. Such rule is not consistent with the Interpretive Note to SR.VII, which require FIs to apply CDD measures when executing cross-border and domestic transfers and does not limit the application of the measures to cases in which there is a lack of identification information. *St. Maarten has not met the recommended action.*
12. Article 3(1)(e) of the "National Ordinance Combating ML/TF" (AB 2019 no. 25) requires financial service providers to undertake CDD measures when they have doubts about the veracity or adequacy of previously obtained customer identification data. *St. Maarten has met the recommended action.*
13. Article 3(1)(g) requires FIs to conduct CDD when there is a suspicion of ML/TF. The provision does not include exemptions and no threshold modifies it. *St. Maarten has met the recommended action.*
14. Article 7(1)(d) of the National Ordinance combating ML/TF (AB 2019 no. 25) requires financial service providers to conduct ongoing due diligence. *St. Maarten has met the recommended action.*
15. Article 4(2)(a) of the National Ordinance combating ML/TF (AB 2019 no. 25) is not consistent with allowing the verification of customer's identity after the establishment of the business



relationship in the circumstances specified in R.5 (criterion 5.12). *St. Maarten has not met the recommended action.*

16. Regarding the requirements related to insurance companies and insurance brokers to re-examine the relationship with the client to determine whether to terminate and whether to report to the MOT if doubts arise relating to the identity of the client after the client has been accepted and accounts have been opened., *St. Maarten has met the recommended action* with the following provisions of the “National Ordinance Combating ML/TF” (AB 2019 no. 25):
  - a. Article 5(4) covers the requirement for insurance companies and insurance brokers to terminate the business relationship after a re-examination of the business relationship.
  - b. Article 4(2)(b), (3) and (4) provides that if during the term of the life insurance suspicions are aroused in respect of ML/TF, the financial service provider must file a report.
17. According to this examination, recommended actions pertaining to (i) undertake CDD when carrying out occasional transactions that are wire transfers, as per the Interpretive Note to SR VII, and (ii) to allow for verification of the identity after the establishment of a business relationship in specified circumstances remain outstanding. *St. Maarten has mostly met the recommended actions for R. 5.*

#### **Recommendation 10 - Record-keeping**

18. Articles 22(2) and 23 of the “National Ordinance Combating ML/TF” (AB 2019 no. 25) set out that service providers must keep records on transactions, both domestic and international, for at least ten years after a transaction has been executed or a business relationship has been terminated. *St. Maarten has met the recommended action.*
19. Article 22(3) of the “National Ordinance Combating ML/TF” (AB 2019 no. 25) obliges service providers to keep commercial correspondence for at least ten years. *St. Maarten has met the recommended action.*
20. *St. Maarten has met all the recommended actions for R. 10.*

#### **Recommendation 13 - Suspicious transaction reporting**

21. *The 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> FURs show that St. Maarten has met all the recommended actions<sup>4</sup> regarding R.13.*

#### **Special Recommendation II - Criminalize terrorist financing**

22. The 5<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> FURs indicate that St. Maarten has made substantial progress concerning SR. II. Notwithstanding, previous FURs suggested that the penalty applicable to the TF offence was not proportionate and dissuasive. This section will focus on this remaining issue.
23. St. Maarten approved the “National Ordinance amending the Penal Code” (AB 2019, No. 41) on October 11<sup>th</sup>, 2019 and it entered into force and effect on November 20<sup>th</sup>, 2019. This new Ordinance repeals Article 2:55 and provides for a new TF offense in Article 2:408, which is punishable by eighteen (18) years of imprisonment. This new sanction appears proportionate and, in some instances, more severe, in relation to those set out for other serious offenses criminalised in the Penal Code, as shown in the table below:



Offense	Years of imprisonment (up to)
Trafficking in human beings (Article 2:154(1))	4
Deception (Article 2:305)	4
Theft (Article 2:288)	4
Money laundering (Article 2:404(1))	8*
Participation in an organized criminal group (Article 2:79(1))	8
Terrorism (Article 2:55(1))	8
Counterfeiting currency (Article 2:169)	9
Sexual exploitation (Article 2:239(1), (2) and (3))	12
Extortion (Article 2:194)	12
<b>Terrorism financing (Article 2:408)</b>	<b>18</b>
Manslaughter (Article 2:259)	24
Murder (Article 2:262)	30

\* *The National Ordinance to amend the Penal Code also amends the penalty for the ML offense, increasing the years of imprisonment from six (6) to eight (8).*

24. Throughout the 3<sup>rd</sup> Round of Mutual Evaluations, the CFATF identified a wide variety of penalties for the TF offense among its Members, ranging from six (6) months<sup>5</sup> of imprisonment (on summary conviction) up to life sentence<sup>6</sup>. Many countries punished TF with imprisonment not exceeding fourteen (14) years<sup>7</sup> (on conviction on indictment), while others set out fixed terms or terms not exceeding twenty (20), twenty-five (25), or thirty (30) years of imprisonment<sup>8</sup>. The new penalty of eighteen (18) years of imprisonment provided for in St. Maarten’s legislation is proportionate to those identified during the 3<sup>rd</sup> Round of Mutual Evaluations. *St. Maarten has met the recommended action.*
25. *St. Maarten has met all the recommended actions for SR.II.*

#### **Special Recommendation IV – Suspicious transaction reporting**

26. St. Maarten’s MER indicated that the recommended actions for SR IV were included in the recommended actions for R.13. Accordingly, *the country has met all the recommended actions as stated in the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> FURs.*

<sup>5</sup> See Montserrat, St. Kitts and Nevis, Turks and Caicos, and Virgin Islands’ 3<sup>rd</sup> Round MERs for reference.

<sup>6</sup> See Jamaica’s 3<sup>rd</sup> Round MER for reference.

<sup>7</sup> See Anguilla, Bermuda, Cayman Islands, St. Kitts and Nevis, Turks and Caicos, and Virgin Islands’ 3<sup>rd</sup> Round MERs for reference.

<sup>8</sup> See El Salvador, Grenada, St. Vincent, The Bahamas, and the Grenadines 3<sup>rd</sup> Round MERs for reference.



## V. KEY RECOMMENDATIONS

### Recommendation 3 - Confiscation and provisional measures

27. The 5<sup>th</sup> and 6<sup>th</sup> FURs indicate that St. Maarten amended the Penal Code to apply confiscation mechanisms to TF offences and all the designated categories of predicate offense. *St. Maarten has met the recommended action.*
28. Regarding the need of reviewing the confiscation measures under the Penal Code to allow for the pre-conviction and post-conviction measures to be imposed without notice, *St. Maarten has met the recommended action according to the following:*
  - a. Seizure and confiscation measures are always applied ex parte. No prior notice to the suspect(s) is required by law. Seizure is regulated in Title IX, Articles 119 to 154a, of the current Penal Procedure Code.
  - b. According to St. Maarten's authorities, the Dutch term "kennisgeving" in Articles 119, par. 3, and 119b, part a, should always be interpreted as a post-notice, not as an ex-ante notification, of the seizure from the crime investigation officer to the prosecutor (Articles 119, par. 3) or to the suspect (Article 119b, part a). Therefore, this is a notification after the seizure, never a prior notice or notification to the suspect or other (legal) persons from whom the goods have been seized. They will only receive, if possible, a proof of receipt of their confiscated goods (Articles 119, par. 3, 119c, part d, and 129b, par. 3).
29. In relation to the recommended action on ensuring that comprehensive statistics are maintained in relation to the investigation, prosecution, and conviction of ML related cases, in the previous FUR, please refer to paragraph 93 of this report corresponding to R.32, which indicates that *St. Maarten mostly meets the recommended action.*
30. St. Maarten still needs to address the remaining deficiencies related to R.32, specifically the issue of the availability of statistics regarding confiscation, to attain full compliance with *the actions prescribed for R.3, which, consequently, are mostly met.*

### Recommendation 23 - Regulation, supervision and monitoring

31. The 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 8<sup>th</sup> FURs explain the actions that the country has taken to close unlicensed MTCs. Furthermore, the National Ordinance on the Supervision of Money Transfer Companies entered into force on March 29<sup>th</sup>, 2018. The National Ordinance allows for the Central Bank to apply a wide range of sanctions to Money Transfer Companies. *St. Maarten has met the recommended action.*
32. *St. Maarten has met the recommended action* consisting of increasing the number of on-site inspections of MTCs. The Central Bank of Curaçao and Sint Maarten (CBCS) has indicated that:
  - a. The CBCS carried out one inspection in 2017. The inspection was performed from Curaçao and included operations in St. Maarten. The Central Bank postponed additional on-site supervisions in 2017 due to Hurricane Irma.
  - b. In 2018, CBCS did not conduct any on-site examinations at MTCs in St. Maarten since a reassessment of priorities led to a focus on banks established in St. Maarten.
  - c. In 2019, the CBCS performed two inspections to MTCs.
33. Article 2(1)(a)(13<sup>o</sup>) of the National Ordinance combating ML/TF (AB 2019 no. 25) requires factoring service providers to apply the AML/CFT preventive measures. Article 31 subjects these providers to the CBCS' supervisory regime. *St. Maarten has met the recommended action.*



34. *St. Maarten has met the recommended action* concerning the development of a risk-based approach system to determine the AML/CFT focus of onsite inspections. According to the information provided by the CBCS:
- a. Every, year, the CBCS performs a risk assessment of the supervised institutions. The AML/CFT risk is assessed on a general level, based on, among other sources of information, examination findings and the follow-up performed by the institutions on the resolution of the findings. The frequency, intensity and risk areas to be covered during onsite inspections are determined according to the results of the assessment. Additionally, the BSD has performed a risk assessment specifically for the AML/CFT area using statistics and results of previous AML/CFT examinations. Accordingly, supervised institutions have been rated Low, Medium or High in relation to ML/TF risk.
  - b. The Institutional Investors Department developed an AML survey which was sent to all life insurance companies and all insurance brokers intermediating in life insurance under supervision of the CBCS. The purpose is to gather as much information as possible on the business activities of these institutions and to attach risk factors to these activities, which will form the basis for the AML risk-based approach. Life insurers and insurance brokers intermediating in life insurance will be supervised and scheduled for onsite examination based on the risk classification determined by the Institutional Investors Department.
  - c. The Investment Institutions and Trust Supervision Department plans its AML onsite supervision visits with the aid of a risk matrix and professional judgement. This occurs twice a year. It is then decided what the scope will be, which institutions will be inspected and the schedule. The limited manpower resources versus the ML/TF risks identified related to entities or themes is also considered.
35. *The country has met the recommended action* regarding committing resources to have supervisory staff in St. Maarten for greater onsite monitoring of licensees. The CBCS has a total of 51 employees directly involved in supervision working for the respective departments. From these, two (2) members of staff are based in St. Maarten and forty-nine (49) in Curaçao. All Curaçao based supervisors are continuously involved with the supervision of the entities and sectors in St. Maarten that fall under the Central Bank's competence. Supervisors are flown in from Curaçao to conduct on-site inspections together with the St. Maarten based staff as well as to perform other supervisory activities. The staff of the supporting departments is currently 38.<sup>9</sup>

36. *St. Maarten has met the recommended actions for R. 23.*

#### **Recommendation 26 - The MOT**

37. As indicated in the 7<sup>th</sup> FUR, *recommended actions for R. 26 have been fully met*. St. Maarten has informed that National Ordinance MOT (AB 2019 no. 24) now regulates the MOT.

#### **Recommendation 35 - Conventions**

##### *Implementation under the Vienna and Palermo Conventions*

38. St. Maarten provided information indicating that all Articles of the Vienna and Palermo Conventions are automatically incorporated into its domestic legislation. Based on this information, the Secretariat concludes that:

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<sup>9</sup>This includes the departments that are indirectly involved in the supervision activities, such as the Integrity Unity for the screening of Management and Ultimate Beneficiary Owner of the supervised entities and persons, the Legal department, the International Affairs department, the Policy department and the Financial Stability and Resolution department.

- a. All treaties that the Kingdom of the Netherlands becomes a party of are binding for St. Maarten and their provisions become part of the domestic law automatically. Their "validity" in the national legal order is not dependent on any further implementing legislation. The Dutch Constitution does not formulate this principle; still, it has its basis on unwritten constitutional law.
  - b. Article 93 of the Constitution of the Kingdom of the Netherlands establishes the "direct effect" principle, by which the Netherlands can apply treaty provisions without the need of implementing domestic legislation if they meet two requirements:
    - They are sufficiently clear to function as "objective law" in the domestic legal order.
    - All persons to whom they apply know the provisions.
  - c. While the Kingdom of the Netherlands usually enacts legislation to transform treaty provisions into domestic law, the Netherlands' and St. Maarten's Parliament need not approve domestic legislation so their authorities can implement them in virtue of the "validity principle" described in paragraph a) above
  - d. All countries that integrate the Kingdom must apply these principles as they are all ruled by the Dutch Constitution. Therefore, St. Maarten has a legal basis for implementing Articles 10, 15, 17, and 19 of the Vienna Convention and Articles 29, 30, and 31 of the Palermo Convention whenever the case requires, and, if contested, the judicial branch will determine whether the authorities applied the treaty provisions in line with the direct effect principle. *Therefore, St. Maarten meets the recommended actions related to these treaty provisions.*
39. In relation to recommended actions on the implementation of Article 6 of the Vienna Convention and Article 26 of the Palermo Convention:
- a. The MER required St. Maarten to ensure the EDAC expressly addresses the matters of non-treaty-based requests for extradition, the expedition of extradition procedures, and simplification of evidentiary requirements. While the EDAC has not been amended, St. Maarten's authorities can execute non-treaty-based requests for extradition, abiding case law derived from rulings by the Supreme Court of the Kingdom. This view has been applied in the court decisions ECLI:NL:HR:2009:BF0837 and ECLI:NL:HR:2010:BL9130, in which, the court ruled that it was admissible to extradite individuals in relation to drug offences in the absence of an applicable treaty, taking Article 6 of the Vienna Convention as the legal basis. *This recommended action is met.*
  - b. The MER also required St. Maarten to set out measures to encourage persons who have participated in organised criminal groups, to cooperate with law enforcement, based on Article 26 of the Palermo Convention. In line with this action, the Public Prosecution Service (PPS) make use of "collaborators of justice" or "crown witnesses". These are witnesses who are also accused of one or more criminal offences or take other appropriate measures to encourage persons who have participated in organised criminal groups to cooperate with law enforcement. The Supreme Court of the Netherlands and the European Court on Human Rights has sanctioned the use of crown witnesses in the following rulings: HR 15 February 1994, NJ 1994, 322 (not digitally published); HR 9 March 1996, NJ 1997, 59 (not digitally published); HR 30 June 1998, NJ 1998, 799 (not digitally published); HR 6 April 1999, nr. 109.065 (not digitally published); and HR 14 December 1999, NJ 2000, 164 (digitally published as ECLI:NL:HR:1999:AA3864). *This recommended action is met.*

#### *Implementation under the Terrorist Financing Convention*

40. Article 2:55 of the Penal Code criminalises the indirect or unlawful provision of funding for the commission of a terrorism offence, as well as the wilful provision of funds to individual terrorists as set out in Article 2(a) of the Terrorist Financing Convention. *St. Maarten has met the recommended action.*



41. Regarding establishing mechanisms whereby forfeited funds are used to compensate the victims of terrorism, Article 1:78 of the Penal Code creates a mechanism to this end. *St. Maarten has met the recommended action.*
42. The Penal Procedures Code and Penal Code have not been amended to expressly address the matter of reciprocal confidentiality, as required by Article 12 (Assistance to other States) of the TF Convention. St. Maarten states that this subject is included in Article 45 of the draft Criminal Procedures Code. *St. Maarten has not met the recommended action.*
43. The Penal Procedures Code and Penal Code have not been amended to expressly address the terms under which an offender transferred to St. Maarten from a State will be returned to that State from which the offender was transferred and credited for the time spent in the custody of the State to which the offender was transferred. *St. Maarten has not met the recommended action.*
44. According to this examination, recommended actions pertaining (i) the implementation of Article 12 of the Terrorist Financing Convention and (ii) the terms under which an offender transferred to St. Maarten will be returned to the transferring State remain not met. Accordingly, *St. Maarten has mostly met the recommended actions for R. 35.*

#### **Recommendation 36 - Mutual Legal Assistance**

45. The MER recommended amending the Penal Code to address the deficiencies set out in the ratings table included in paragraph 1389 of the MER. The deficiencies are the following:
  - a. *The indirect or unlawful provision of funding for the commission of a terrorism offence is not criminalized:* This deficiency has been addressed with Article 2:55 of the Penal Code, as explained in the 6<sup>th</sup> FUR.
  - b. *There is a doubt as to the extent of assistance that could be provided in relation to matters which have not been confirmed as predicate offences (i.e. illicit arms trafficking, smuggling, insider trading market manipulation):* This deficiency has been addressed with Articles 2:321 and 2:322 of the Penal Code, in the National Ordinance on Firearms (AB 2013 CT No. 183), and Articles 233 A, B and C, of the National Ordinance on Import, Export and Transit (AB 2014 GT No.4), as explained in the 6<sup>th</sup> FUR.
  - c. *Terrorist financing is not criminalized in accordance with the TF Convention:* The actions related to this deficiency have been addressed in the section focused on Special Recommendation II.
46. *Recommended actions for R. 36 are met.*

#### **Recommendation 40 - Other forms of co-operation**

47. Regarding the review of the NOSBCI, RFETCSM, NOSIIA and NOSTCSP to allow the CBCS to undertake investigations on behalf of their foreign counterparts, the Harmonization Law (supervision of financial institutions) provides for foreign supervisors to operate under CBCS supervision. The National Ordinance Harmonization of Supervision Law jointly with the National Ordinance Money Remitter Companies have been approved by Parliament and entered into force in 2018. *St. Maarten has met the recommended action.*
48. The 7<sup>th</sup> FUR indicates that the authorities should maintain statistics on entities' spontaneous referrals of information as well as information supplied as a result of a request. *St. Maarten has met the recommended action.*



49. LEAs can provide legal assistance on an operational level pursuant to Title VIII of the Penal Procedure Code. No information was provided regarding spontaneous exchanges of information. However, Article 3(2)(c), (h), (i), and (j) and Article 7 of the National Ordinance MOT authorises the MOT to provide international cooperation with foreign counterparts. *This recommended action is mostly met.*
50. *The recommended actions for R. 40 are mostly met.*

### **Special Recommendation I - Implementation of UN instruments**

51. St. Maarten's MER recommended addressing actions for SRs. II and III to be fully compliant with SR. I. St. Maarten has met all recommended actions for SR.II, but needs to address the outstanding recommended actions for SR. III as explained below. *The recommended actions for SR.I are mostly met.*

### **Special Recommendation III - Freezing and confiscation of terrorist assets**

52. The substantive freezing mechanism for persons listed pursuant to Resolution 1267 of the United Nations Security Council is complied with since it has been included in the Sanctions National Decree which has been in force since April 22<sup>nd</sup>, 2016. In order to ensure that freezing mechanisms should be served without delay, a National Ordinance to amend the Sanctions Ordinance was enacted and has been in force since August 3<sup>rd</sup>, 2017. *St. Maarten has met the recommended action.*
53. The 9<sup>th</sup> FUR indicates that authorities have provided guidance about obligations in acting under the freezing mechanism. *St. Maarten has met the recommended action.*
54. Article 34(3) of the combating ML/TF (AB 2019 no. 25) amends the Sanctions National Ordinance by adding two new paragraphs to Article 2, which refer to assets jointly owned or controlled by designated persons, terrorists or terrorist organizations with third parties, and incorporates wording to clearly communicate the enforceability of sanctions against the entire asset which is held "in part" by a designated person, terrorist or terrorist organization. *St. Maarten has met the recommended action.*
55. Regarding incorporating the wording in the FATF Protocols, to reflect that compliance with these Protocols is mandatory and that breaches of the Protocols can be sanctioned by the Central Bank, the country did not provide any new information for this FUR. *The recommended action has not been met.*
56. St. Maarten still needs to ensure that compliance with freezing obligations is mandatory and non-compliance with them is subject to sanctions to achieve full compliance with the actions set out for SR. I and III. Accordingly, *the recommended actions for SR. III are mostly met.*

### **Special Recommendation V - International cooperation**

57. According to paragraph 1389 of the MER, the deficiencies noted for R. 36, also apply for SR V. As all deficiencies related to R. 36 have been solved, *the recommended actions for SR. V are met.*

## VI. OTHER RECOMMENDATIONS

### Recommendation 9 - Third parties and introducers

58. *The 2<sup>nd</sup>, 7<sup>th</sup>, and 9<sup>th</sup> FURs show that St. Maarten has met all recommended actions regarding this Recommendation.*

### Recommendation 12 - DNFBPs–R.5, 6, 8–11

59. Article 3(2)(d) of the National Ordinance combating ML/TF (AB 2019 no. 25) sets out that a non-financial service provider must conduct customer due diligence, when it relates to games of chance as referred to in the National Ordinance Games of Chance, the National Ordinance Offshore Games of Chance or the Lottery Ordinance, whereby transactions in excess of an amount of NAf 5.000,00 are paid for using cash, electronically or by means of other payment systems. *St. Maarten has met the recommended action.*
60. St. Maarten’s MER also highlighted the need to apply the AML/CFT requirements to internet casinos. Article 2(b)(4°)(b) of the National Ordinance Combatting ML/TF include games of chance as referred to in the National Ordinance Offshore Games as a non-financial service provider covered by its provisions. Authorities indicated that the National Ordinance Offshore Games entered into force on October 10<sup>th</sup>, 2010 and regulates the licensing of providers interested in exploiting hazard games on the international market through online services. *St. Maarten has met the recommended action.*
61. *St. Maarten partially complies with requiring DNFBPs to comply with essential criteria 5.2.c, 5.2.d, 5.2.e and 5.7 of Recommendation 5 with the following provisions of the “National Ordinance Combating ML/TF” (AB 2019 no. 25):*

Criteria	Provisions
5.2.c	Not covered
5.2.d	Article 3(2)(g)
5.2.e	Article 3(2)(h)
5.7.1	Article 7(1)(d)
5.7.2	Article 9

62. *St. Maarten mostly complies with requiring DNFBPs supervised by the MOT and casinos to comply with the requirements of criteria 5.5.2, 5.6 to 5.11, 5.16 and 5.17 of recommendation 5 with the following provisions of the “National Ordinance Combating ML/TF” (AB 2019 no. 25):*

Criteria	Provisions
5.5.2	Articles 1(ee); 7(1)(b); and 8(2)
5.6	Article 7(1)(c)
5.7	Article 7(1),(d), and article 9
5.8	Article 10(1)
5.9	Article 6(1)(a)(1°)
5.10	Article 6(1)(a)(2°)
5.11	Article 6(4)
5.16	Articles 5(4) and 9(2)
5.17	Not covered

63. Articles 22 and 23 of the “National Ordinance Combating ML/TF” (AB 2019 no. 25) on “the storage of data and information acquired by service providers” address the deficiencies mentioned in section 3.5<sup>10</sup> for Recommendation 10. *St. Maarten has met the recommended action.*
64. *St. Maarten has issued legislation for DNFBSs supervised by the MOT and casinos that includes most of the requirements of Recommendations 6, 8, 9 and 11 with the following provisions of the National Ordinance combating ML/TF (AB 2019 no. 25):*
- a. *Recommendation 6:* All the criteria set out in Recommendation 6 are covered with Article 1(1)(w) and (2)(a), (b) and (c), Article 10(2), and Article 11.
  - b. *Recommendation 8:* Article 20(3) covers criterion 8.1, but St. Maarten has not addressed criteria 8.2 and 8.2.1.
  - c. *Recommendation 9:* Articles 13 and 14 cover criteria 9.1, 9.2, 9.4 and 9.5. The 6<sup>th</sup> FUR shows that the Central Bank incorporated requirements regarding criterion 9.3 in the P&Gs for SAII and AII.
  - d. *Recommendation 11:* All the criteria set out in Recommendation 11 are covered with Article 12 of the National Ordinance combating ML/TF.
65. The 6<sup>th</sup> FUR shows that the Central Bank incorporated in the P&Gs for SAII and AII requirements regarding E.C 6.2 of Recommendation 6. *St. Maarten has met the recommended action.*
66. St. Maarten have met most of the recommended actions for R.12, but still needs to address criteria 8.2 and .8.2.1; therefore, *the recommended actions for R. 12 have been mostly met.*

#### **Recommendation 14 - Protection & no tipping-off**

67. The MER recommended making it clear that financial institutions, their directors, officers and employees (whether permanent or temporary) are prohibited by law from disclosing (“tipping off”) the fact that an STR or related information is being reported or provided to the MOT. Article 27(1)(a) and (b) of the “National Ordinance Combating ML/TF” (AB 2019 no. 25) implicitly extends the duty of confidentiality to encompass STRs or related information reported to the MOT. As provisions of this Ordinance apply both to FIs and DNBPs, *St. Maarten has met the recommended action.*
68. *St. Maarten has met the recommended action for R. 14.*

#### **Recommendation 16 - DNFBSs–R.13–15 & 21**

69. St. Maarten has addressed the recommended actions for R.16 as follows:
- a. *The deficiencies identified for Recs. 13 and 14 in section 3.7 for all DNFBSs should be addressed:* These deficiencies have been addressed according to paragraphs 21 and 68 of this report. *St. Maarten has met the recommended action.*
  - b. *The Authorities in Sint Maarten should issue legislation for DNFBSs supervised by the MOT and casinos that includes all the requirements of recommendations 15 and 21:* The National

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<sup>10</sup> The deficiencies identified were the following:

1. The obligation under essential criterion 10.1, which compels financial institutions to maintain all necessary records on transactions, is not clearly stipulated in law or regulation.
2. The obligation to maintain records of business correspondence for at least five years following the termination of an account or business relationship is not stated in law or regulation.
3. The obligation under E.C. 10.3 requiring that all customer and transaction records and information be available to competent authorities upon appropriate authority on a timely basis should be in law or regulation.

Ordinance combating ML/TF (AB 2019 no. 25) includes provisions that partially address the requirement of issuing legislation for DNFBPs supervised by the MOT and casinos that includes all the requirements of recommendations 15 and 21, as the following table shows:

Criteria	Provisions
15.1	Article 20(1) and (2)
15.1.1	Article 20(1) and (2) and 21
15.1.2	Not covered
15.2	Not covered
15.3	Article 21(1) partially covers this criterion as it does not require service providers to establish ongoing employee training to ensure that employees are kept informed of new developments, including information on current ML and FT techniques, methods and trends.
21.1	Article 12(1)(a)
21.1.1	Article 12(2) partially covers this criterion as it does not require service providers to make available their written findings to competent authorities (e.g. supervisors, law enforcement agencies and the FIU).
21.2	Article 12(2)
21.3	Not covered

70. Article 10(2)(h) of the National Ordinance combating ML/TF (AB 2019 no. 25) requires DNFBPs to apply enhanced customer due diligence before the business relationship is entered into or the transaction executed, as well as during the business relationship, if it relates to natural persons, legal entities, trusts and comparable entities which are registered or based in a country or jurisdiction which does not, or does not sufficiently, comply with internationally accepted standards for the prevention and combatting of ML/TF. *St. Maarten has met the recommended action.*

71. *The recommended actions for R. 16 are mostly met.*

### **Recommendation 17 - Sanctions**

72. Article 33(5) of the National Ordinance combating ML/TF (AB 2019 no. 25) provides for the application of sanctions against directors and executives, irrespective of whether these are natural persons, legal entities, groups of natural persons or legal entities, or organisations. *St. Maarten has met the recommended action.*

73. Regarding the need to develop an approach concerning the operation of MTCs without licenses, paragraph 24 of the 8<sup>th</sup> FUR details various actions taken. *St. Maarten has met the recommended action.*

74. Article 31(3) of the National Ordinance combating ML/TF (AB 2019 no. 25) sets out that the Office for Disclosure and the Central Bank are authorised to impose a sanction, an enforcement action, or an administrative penalty, and that the National Ordinance Administrative Enforcement applies to both the Office for Disclosure and the Bank, provided that the administrative penalty, referred to in Article 55 of that national ordinance, amounts to no more than ANG 4,000,000. *St. Maarten has met the recommended action.*

75. *The recommended actions for R. 17 are met.*

### **Recommendation 21 - Special attention for higher risk countries**



76. The 7<sup>th</sup> FUR indicates that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of all countries specified by the FATF, not only those countries for which the FATF calls for action. *St. Maarten has met the recommended action.*
77. The National Ordinance of December 29, 2017, adds, among other amendments, Articles 6a and 6c to The National Ordinance on the Supervision of Banking and Credit Institutions. Article 6a(3) enables the Central Bank of Curacao and St. Maarten to issue technical and organisational regulations to give effect to recommendations and rules of international or intergovernmental organisations. Article 6c(3) allows the Bank to publish any public warnings given by a foreign or intergovernmental organisation. The National Ordinance of December 29, 2017 adds the same provisions for the insurance industry (Articles 15b and 18a), stock exchanges (Articles 3a and 3c), investment institutions and administrators (Articles 5b and 9), trust service providers (Articles 11 and 11b) and insurance brokerage companies (Articles 8a and 8b). Giving effect to recommendations and replicating public warnings do not suffice the requirement of setting out countermeasures applicable to countries that do not implement or insufficiently implement the FATF Recommendations. Criterion 21.3 provide examples of possible countermeasures that may be of use for St. Maarten. *The country does not meet the recommended action.*
78. *The recommended actions for Rec. 21 are partially met.*

#### **Recommendation 24 - DNFBPs - Regulation, supervision and monitoring**

79. Article 2(b)(4<sup>o</sup>) of the National Ordinance combating ML/TF (AB 2019 no. 25) sets out that those offering the opportunity to participate in games of chance or a lottery are non-financial services providers. Articles 3-14, 19-23, and 25-27 set a wide range of AML/CFT obligations for these service providers. Article 31(1) subjects them to the AML/CFT regulatory and supervisory regime of the Office for Disclosures. Article 33 authorises the Office of Disclosures to sanction them. *St. Maarten has met the recommended action.*
80. Regarding the implementation of an AML/CFT regime for internet casinos, please refer to paragraph 60 of this report. *St. Maarten has met the recommended action.*
81. Article 3(2) of the National Ordinance MOT sets out that the FIU is responsible for the enforcement of the National Ordinances on reporting unusual transactions and monitoring the compliance of non-financial service providers with these National Ordinances. Articles 1(o); 4(2); 5(5), (6), and 8; 16; and 20, also develop the supervisory role of the MOT. On the other hand, Article 14 of the same Ordinance refers to providing the MOT with the resources to fulfil its roles, including supervision. *St. Maarten has met the recommended action.*
82. Regarding the need to address all the deficiencies identified in section 3.10 (R. 29 and 17) of the MER, please refer to paragraphs 8 and 75 of this report. *St. Maarten has met the recommended action.*
83. *The recommended actions for Rec. 24 are met.*

#### **Recommendation 25 - Guidelines & Feedback**

84. The 7<sup>th</sup> FUR indicates that *St. Maarten has met most of the recommended actions.* However, the country has not provided updated information on the issuance of guidance to providers of factoring services and this issue accordingly remains not met. *St. Maarten has not met the recommended action. The recommended actions for R. 25 are mostly met.*



### **Recommendation 27 - Law enforcement authorities**

85. The authorities did not provide new information regarding financial resources designated to provide training to ensure that recruited officers are appropriately trained in ML and TF and are kept up to date in the recent developments in financial investigations; therefore, *the recommended action has not been met*. The information provided for the 9<sup>th</sup> FUR remains the same:
- a. The Authorities have indicated that the MOT has secured funds for the AML/CFT training of the LEAs. It is required to provide information on the training received by the Police Department and the Landsrecherche (Ministry of Justice).
  - b. For the 7<sup>th</sup> FUR report, the Authorities also referred to the Annual reports of 2011-2012, 2013 and 2014; however, the reports don't include information on training provided to law enforcement authorities during the indicated period.
  - c. Two (2) public prosecutors and three (3) financial services detectives were recruited.
  - d. There was a training scheduled for 2016 that was postponed to 2017.
  - e. In 2016, the local financial services detectives received training from experienced Dutch financial services detectives who were recruited by the Attorney General.
86. Regarding the need to develop an approach concerning the operation of MTCs without licenses, paragraph 24 of the 8<sup>th</sup> FUR details various actions taken; furthermore, the National Ordinance on the Supervision of Money Transfer Companies entered into force on March 29<sup>th</sup>, 2018. The National Ordinance allows for the Central Bank to apply a wide range of sanctions to Money Transfer Companies. *St. Maarten has met the recommended action*.
87. *The recommended actions for R. 27 are partly met.*

### **Recommendation 30 - Resources, integrity, and training**

88. The 7<sup>th</sup> FUR indicates that *St. Maarten has met most of the recommended actions*, but
89. *St. Maarten has not provided new information about obtaining relevant resources for the MOT. St. Maarten has not met the recommended action.*
90. *The recommended actions for R. 30 are mostly met.*

### **Recommendation 31 - National co-operation**

91. *The 7<sup>th</sup> FUR indicates that St. Maarten has met all the recommended actions for R. 31.*

### **Recommendation 32 - Statistics**

92. The 7<sup>th</sup> FUR indicates that *St. Maarten has met most of the recommended actions*.
93. Regarding the need to ensure that comprehensive statistics are maintained in relation to the investigation, prosecution, and conviction of ML related cases, the Public Prosecutor's Office (PPO) indicated its data system does not allow for the extraction and aggregation of data on specific topics, and this information is extracted manually. The PPO also indicated that the data system was being currently updated to allow for the collection of aggregated data for statistical purposes. For the 9<sup>th</sup> FUR, *St. Maarten* provided information indicating that the PPO conducted nine (9) investigations on ML in 2018, two (2) cases went to trial; one (1) case was not prosecuted; fines of \$90,000 were imposed in two (2) cases; and the remaining four (4) cases were still being evaluated. It is not clear whether these manual statistics are kept annually as required in criterion 32.2 and whether they are used to review the effectiveness of the AML/CFT system as expected



according to criterion 32.1, which are subjects that may be further reviewed in the 4<sup>th</sup> Round of Mutual Evaluations. *St Maarten has mostly met the recommended action.*

94. *The recommended actions for R. 32 are mostly met.*

### **Recommendation 33 - Legal persons–beneficial owners**

95. The MER recommends St. Maarten to establish a system to ensure access to the ultimate beneficiary information of legal persons. Regarding this, Article 35 of the National Ordinance combating ML/TF (AB 2019 no. 25) amends the Commercial Registers Decree to oblige the registration of the personal details of the ultimate beneficiary, which, according to Article 1(ee) is a natural person who can exercise effective control in or on behalf of the client, and client is a concept that includes legal persons in Article 1(e). *St. Maarten has met the recommended action.*

96. The country did not provide new information on mechanisms to guarantee that competent authorities can obtain and have access promptly to accurate and current ultimate beneficiary information. *The recommended action remains outstanding.*

97. Title 5, Section 1, Article 100(1) of the National Ordinance to amend Book 2 of the Civil Code, in force since November 2019, prohibits the issuance of bearer shares., *St. Maarten has met the recommended action.*

98. Article 10(2)(g) of the combating ML/TF (AB 2019 no. 25) requires service providers to apply enhanced customer due diligence before the business relationship is entered into or the transaction executed, as well as during the business relationship, if it relates to companies and comparable entities in which the shares are registered shares held for the benefit of a third party. Article 10(4)(a) clarifies that at a minimum, enhanced customer due diligence shall consist of standard customer due diligence, supplemented with additional information about the client and the ultimate beneficiary. *St. Maarten has met the recommended action.*

99. *The recommended actions for R. 33 are mostly met.*

### **Recommendation 38 - MLA on confiscation and freezing**

100. The MER recommends amending the Penal Code to address the deficiencies set out in the ratings table included in paragraph 1389 of the MER. This same action was propounded for Recommendation 36, which, likewise, is connected to SR. II. *The country has met the recommended action* as the amendments to the Penal Code analysed in paragraphs 23 and 24 of this report indicate that the sanction for FT is proportionate and dissuasive. Therefore, *the recommended actions for R. 38 are met.*

### **Recommendation 39 - Extradition**

101. St. Maarten was required to attend to deficiencies related to R.36 and SR.II to achieve compliance with R.39. Paragraphs 23, 35 and 47 of this report show that the country has addressed them in full. *The recommended actions for SR. 39 are met.*

### **Special Recommendation VI – Money or value transfer services (MTCs)**

102. Regarding the need to shut the operations of unauthorised MTCs operating in St. Maarten, paragraph 24 of the 8<sup>th</sup> FUR details various actions taken. *St. Maarten has met the recommended action.*

103. The recommended action consisting of formally obliging MTCs to update the Central Bank on the number of agents and sub-agents has been met as indicated in 7<sup>th</sup> FUR. *St. Maarten has met the recommended action.*

104. *The recommended actions for SR. VI are met.*

### Special Recommendation VII - Wire transfer rules

105. St. Maarten's MER recommended the country to detail the requirements concerning SR. VII for the relevant financial institutions instead of relying on the general provision in the P&G for CI to observe the latest Interpretive Note to SR VII. For the 9<sup>th</sup> FUR, St. Maarten informed that the recommended action would be addressed with the National Ordinance combatting ML/TF (AB 2019 no. 25). After reviewing the Ordinance now in force, the Secretariat has determined that the compliance with SR. VII requirements is as follows:

Criteria	Provisions
VII.1	Article 22(1) covers the criterion partially as it does not specify what information services providers must obtain concerning the originator.
VII.2	Article 22(1) covers the criterion partially as it does not indicate what information services providers must include in the transfer message, in case of a cross-border wire transfer.
VII.3	Article 22(1) covers the criterion partially as it does not detail what information services providers must include in the transfer message, in case of a domestic wire transfer.
VII.4	Not covered
VII.4.1	Not covered
VII.5	Not covered
VII.6	Not covered
VII.7	Articles 31(3) and 33(5)

106. *The recommended actions for SR. VIII remain partially met.*

### Special Recommendation VIII - NPOs

107. St. Maarten did not provide information on the execution of a new assessment of the risk of the NPO sector. *The recommended action is not met.*

108. Regarding the other outstanding recommended actions, St. Maarten has provided the following updates

- a. *Designation of an authority to monitor and supervise the NPO sector as required in criteria VIII.3:* Sint Maarten had scheduled a national risk assessment (NRA) to start in the end of March 2020. This NRA, that will include the NPO sector, will be rescheduled due to the COVID-19 pandemic (exact date to be established in due time). One outcome of the NRA will be the designation of an authority to monitor and supervise the NPO sector. *The recommended action remains not met.*
- b. *Provision of appropriate sanctions for NPOs:* The sanctions for non-compliance by the NPOs will be established with the institution of the authority. *The recommended action remains not met.*



- c. *Requirement for NPOs to maintain transaction records for a minimum period of five (5) years:* The referred authority will institute an outreach program for NPOs to maintain transaction records for a minimum period of five (5) years and implement other obligations. *The recommended action remains not met.*
- d. *Procedures in place to ensure that authorities can effectively investigate and gather information on NPOs and Procedures to allow for timely and effective sharing of information on NPOs, both domestically and internationally:* The procedures to ensure that law enforcement can effectively investigate and gather information on NPOs are already in place in the current Penal Procedures Code. Law enforcement does have procedures in place that allow for timely and effective sharing of information on, amongst others, NPOs, both domestically and internationally. NPOs are not considered different than any other subject of investigation. *The recommended action is met.*
- e. *Institution of an outreach program to provide adequate AML/CFT awareness about the risk of NPOs to TF:* The referred authority will also implement the outreach program to provide adequate AML/CFT awareness about the risk of NPOs. *The recommended action remains not met.*
- f. Issuance of guidance specifically pertaining to the NPO sector: With the establishment of the authority to supervise NPOs, guidance will be issued pertaining to this sector. *The recommended action remains not met.*

109. *The recommended actions for SR. VIII are largely not partly met.*

### **Special Recommendation IX - Cross-Border Declaration & Disclosure**

110. The MER required St. Maarten's authorities to set out a declaration system for cross-border transportation of currency and bearer negotiable instruments to be completed by all passengers instead of the ad hoc disclosure system that was in place. The recommended action has been met based on the following information:

- a. "National Ordinance to amend the National Ordinance cross-border money transfers AB 2019 no. 26" revised Article 2 of "The National Ordinance Reporting Cross-Border Cash Transports" and makes it compulsory for persons entering or leaving St. Maarten to declare money, precious metals, jewellery or other objects worth NAf 25,000 or more to Customs officials.
- b. The declaration must be made by submitting a declaration signed by the applicant in accordance with a model to be determined by the Minister. This model was approved in the "Regulation of the Minister of Justice of 22 May 2015 No. 12 establishing the model for the declaration form, referred to in Article 2, second paragraph, of the National Ordinance on the Notification of Cross-Border Money Transport Regulations".
- c. The annex to the regulation contains the model of the declaration form in Dutch, English, Spanish, and French.

111. Disposition I of the National Ordinance to amend the National Ordinance cross-border money transfers (AB 2019 no. 26) amends Article 5(2)(e) of the National Ordinance Duty to Report Cross-Border Cash Transports to provide for the seizing where there is suspicion ML or TF as referred to in Article 2:55 of the Criminal Code. *St. Maarten has met this recommended action.*

112. Disposition I of the National Ordinance to amend the National Ordinance cross-border money transfers (AB 2019 no. 26) adds a tenth paragraph to Article 5 of the National Ordinance Duty to Report Cross-Border Cash Transports to require the Minister of Justice to publish statistics before 1<sup>st</sup> April each year for the previous calendar year regarding international customs cooperation in



the implementation of the legislation for the prevention and combatting of ML/TF. *St. Maarten has met this recommended action.*

113. Regarding establishing a process for confiscation of currency and negotiable instruments when implementing UNSCRs 1373 and 1267, the information remains the same as described in the 9<sup>th</sup> FUR: the Sanctions National Decree of 17<sup>th</sup> of February 2016 (AB 2016 No. 10) establishes in Article 1 its applicability for the implementation of UNSCRs 1373 and 1267, among others. Article 6(1)-(4) establishes the following: a) process to designate persons or organizations referred to in UNSCR 1373, b) freezing of resources belonging to them, c) prohibition of the provision of financial services and d) prohibition of making the funds available for such persons or organizations. Apparently, the described process does not apply to UNSCR 1267, since there is no reference to UNSCR 1267 in Art. 6 of AB 2016 No. 10. *This recommended action is partially met.*
114. Regarding the need to establish a system to identify the source, destination and purpose of movement of gold or other precious metals and stones, the “National Ordinance to amend the National Ordinance cross-border money transfers AB 2019 no. 26” amends Articles 2(2) and Article 3 of the “The National Ordinance Reporting Cross-Border Cash Transports” so that all persons entering and leaving country report (a) the identity and home address of the person making the report and the owner of the money, precious metals, jewellery or other objects that are being reported; (b) the size, origin and destination of the money, precious metals, jewellery or other objects; and (c) the reason for the chosen mode of transport of the money, precious metals, jewellery or other. *The recommended action has been met.*
115. The 6<sup>th</sup> FUR indicates that the country has implemented a structure for the training and targeted programmes for Customs. *St. Maarten has met the recommended action.*
116. Disposition H of the National Ordinance to amend the National Ordinance cross-border money transfers (AB 2019 no. 26) amends Article 4 of the National Ordinance Duty to Report Cross-Border Cash Transports to require Customs’ officials to forward every suspicion of ML/TF to the MOT. The officials shall report the business information recorded in an official report as referred to in paragraph 2, under b and c, and the business information concerning suspicions of ML/TF electronically to the MOT. *St. Maarten has met this recommended action.*

117. *The recommended actions for SR. IX are mostly met.*

## VII. CONCLUSIONS

118. St. Maarten’s 10<sup>th</sup> FUR recommended the issuance of a formal public statement urging the country to immediately address its AML/CFT deficiencies including bringing the necessary legislation into force and effect due to the outstanding deficiencies related to Core Recommendation SR.II and Key Recommendations Rs. 3, 23, 35, 36, 40, and SRs. I, III and V, and several other recommendations whose actions remained as partially met or not met.
119. The results presented in this FUR attest the considerable effort made by St. Maarten on providing additional documents and clarifications concerning its legal system, which denote that the country has addressed its deficiencies relative to the Core and Key Recommendations to a satisfactory level. The recommended actions posed for Core Recommendations Rs. 10, 13 and SR.II and IV are met while those related to R.5 are mostly met. Similarly, the recommended actions for Key Recommendations Rs. 23, 26, 36 and SR.V are met in full, while those pertaining Rs.3, 35 and 40 and SR.I and III are mostly met.
120. Regarding the remaining standards under follow-up, St. Maarten has met all recommended actions regarding R.9, 14, 17, 24, 31, 38 and 39 and SR.VI and has mostly met those related to R. 12, 16,



25, 30, 32, 33 and SR.IX, which are notable improvements in comparison to previous FURs. Nonetheless, the country has partly met the actions posed for Rs.21 and 27 and SR. VIII.

121. Given St. Maarten's significant steps to meet the requirements of the actions listed in its MER, the Secretariat recommends the Plenary to consider removing the country from the third stage of Enhanced Follow-Up. Furthermore, taking into account that St. Maarten has achieved high levels of compliance with the recommended actions of all of the Core and Key Recommendations, the Secretariat recommends the country to apply for its exit from the Third Round Follow-Up Process according to the procedures approved by the CFATF Plenary in May 2014.

CFATF Secretariat  
July 3<sup>rd</sup>, 2020

**Matrix with ratings and follow-up action plan 3<sup>rd</sup> round Mutual Evaluation St. Maarten**  
**Changes since last Report in November 2019, are highlighted in bold.**

Forty Recommendations	Rating	Summary of factors underlying rating <sup>11</sup>	Recommended Action	Undertaken Action
<b>Legal systems</b>				
<b>1. ML offence</b>	LC	<ul style="list-style-type: none"> <li>• No confirmation that illicit arms trafficking, smuggling, insider trading and market manipulation are criminalised as ML predicate offenses.</li> <li>• The Penal Code is not applicable to anyone who outside of Sint Maarten committed the crimes of ML; TF and most of the non-terrorist related predicate offences.</li> </ul>	<ul style="list-style-type: none"> <li>• The Authorities should ensure criminalization of the following predicate offenses: illicit arms trafficking, smuggling, insider trading and market manipulation.</li> <li>• The Penal Code should be amended to ensure that most of the non-terrorist related predicate offences for ML, ML and TF occurred in a foreign country can be prosecuted in Sint Maarten.</li> </ul>	<p>Article 1:5 of the proposed PC SXM creates jurisdiction in cases of TF (currently article 4 and 4a PC). The money laundering offences apply to All crimes (articles 2:404, 2:405, 2:406 Penal Code SXM, currently punishable in articles 435a, 435b, 435c Penal Code), thus including the mentioned ones. Next to that the proposed article 2:54 and 2:55 PC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime (currently dealt with in the articles articles 435a, 435b, 435c Penal Code combined with 48a paragraph three (with explicitly mentions the financing of terrorism). The Proposed article 2:55 the financing of crime is punishable as a severe crime. The switching provision of 2:224 (currently 96) makes the general provisions of the first book of the Penal Code applicable to all other Criminal laws</p> <p>The Introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice. The Council of Ministers is preparing submission of the IO to Parliament for approval.</p> <p>The Introduction Ordinance (IO) to enact the Penal Code has been by Parliament on February 27<sup>th</sup>, 2015. Both recommended actions concerning FATF rec 1 are hereby incorporated in the Penal Code.</p> <p><b>THE PENAL CODE ENTERED INTO FORCE ON JUNE 1, 2015. ALL PREDICATE OFFENSES HAVE BEEN INCORPORATED INTO THE PENAL CODE AND OTHER ORDINANCES (info sent to CFATF secretariat).</b></p> <p>This deficiency has been resolved in the Penal Code article 2:404 up until and including article 2:407.</p> <p>Criminal Code article 2:404 and article 1:127</p> <p>Criminal Code articles 2:404, 2:405, 2:406 (ML offence). Money laundering is a punishable act that is based on a predicate offence that generates money, such as illegal arms trafficking, insider trading and market manipulation. Article 1:3 and article 1:4 under c, of the Criminal Code stipulate that these offences committed outside of Sint Maarten, can be prosecuted in Sint Maarten.</p> <p>Draft national ordinance to amend the Criminal Code article 2:404 (include money under property of any description and to increase the punishment from 6 to 8 years).</p> <p><b>Both recommended actions are incorporated in the – Penal Code (PC) as enacted by AB 2015, no. 9 and amended by AB 2019, no. 41. The latter</b></p>

<sup>11</sup> These factors are only required to be set out when the rating is less than Compliant.



				<p><b>(National Ordinance Amending the Penal Code (NOAPC) came into effect in November 2019.</b></p> <p><b>Article 1:5 PC creates jurisdiction in cases of TF. Article 2:54 PC creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime. The provision of 1:224 PC makes the general provisions of the First Book of the Penal Code applicable to all other (specific) Criminal laws.</b></p> <p><b>Also, to exclude that parallel criminal, civil or administrative proceedings may exclude liability of (legal) persons, groups of (legal) persons, and organizations, the NOAPC includes a new and generally applicable paragraph 4 in Article 1: 143 PC (See Article I, Part C, of the NOAPC). This new paragraph 4 contains a nuance on the "principle of ne bis in idem" (prohibition of double jeopardy).</b></p> <p><b>The money laundering offences apply to all crimes. Money laundering is criminalized in the PC: see Articles 2:404, 2:405, 2:406. The term "from any serious offence" in Articles 2:404 and 2:406 includes all serious offences. In this context, one should think of (also) the so-called "predicate offenses". These predicate offenses are incorporated and punishable in the PC and in other (specific) ordinances. These are successively (with the addition of the relevant article in the Penal Code):</b></p> <ul style="list-style-type: none"><li><b>-participating in a criminal organization (Articles 2:57, 2:80, 2:127 and 2:252);</b></li><li><b>-extortion (Articles 2:294 – 2:297);</b></li><li><b>-terrorism, including financing of terrorism (Article 2:54, 2:408 and 2:409);</b></li><li><b>-human trafficking and smuggling of human beings (Articles 2:154 and 2:239);</b></li><li><b>-sexual exploitation, i.a. sexual exploitation of children (Article 2:239);</b></li><li><b>-Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Article 1:118, onder d, juncto Article 3 of the the National Ordinance on opium and other narcotic drugs (Opiates Ordinance);</b></li><li><b>-illegal arms trade (Article 1:118, onder e juncto Article 6 of the Fire Arms Ordinance and Article 1 of the Weapon Ordinance);</b></li><li><b>-intentional handling of stolen property (Articles 2:397 and 2:399);</b></li><li><b>-corruption and bribery (Articles 2:314, 2:350, 2:351 and 2:352);</b></li><li><b>-fraud (Article 2:305);</b></li><li><b>-counterfeiting money (valsmunterij) (Articles 2:169 tot 2:172);</b></li><li><b>-piracy and counterfeiting of products (Article 2:307);</b></li></ul>
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				<p>-environmental crime (Article 52 of the National Ordinance on Waste Water, Article 33 of the National Ordinance on Environmental Management and Protection, Article 38 of the National Ordinance for the Prevention of Pollution from ships and Article 81 of the National Ordinance Maritime Management);</p> <p>-murder and grievous bodily harm (Articles 2:259, 2:262, 2:273 t/m 2:276);</p> <p>-abduction, unlawful deprivation of liberty and hostage-taking (Articles 2:245, 2:246, 2:249 and 2:250);</p> <p>-robbery and theft (Articles 2:288 tot and met 2:291);</p> <p>-tax offenses (including with regard to customs and excise duties and tax) (Article 49, par. 2, of the General National Ordinance on National Taxes, and Articles 233, 233A, 233B and 235, par. 2, of the National Ordinance Import, Export and Transit.);</p> <p>-piracy (Articles 2:365 and 2:366); and,</p> <p>-insider trading and market manipulation (Articles 2:311 and 2:321, and Articles 8 and 9, juncto Article 15 of the National Ordinance Supervision Stock Markets).</p> <p>Via the NOAPC several ‘terrorist offences’ are mentioned more explicitly in the PC and the punishment for financing of terrorism is more strict. A (legal) person is now punishable by a term of imprisonment of up to 18 years - before the amendment this used to be much lower. (See Art. I, Part A, B, E, F, I, J, K, Q of the NOPC).</p> <p>But to fully live up to the FATF recommendations a new Title - Title XXXII Financing of Terrorism – is added to Book Two of the Penal Code. (See Art. I, Part Q of the NOPC.) Title XXXII consist of two new articles: one criminalizing the financing of terrorism (Article 2:408), and the other making it possible to disqualify a person, who is convicted for terrorism financing, from certain rights (Article 2:409).</p> <p>To put an end to all doubt as to if in the Penal Code “means” also entails: money, a new provision (paragraph 2) is added to Article 2:54, stipulating that “means” shall be understood to mean all property of any description, whether corporeal or incorporeal, including money. This is also the case in the Articles 2:404 and 2:406. (See Art. I, Parts F, O and P of the NOPC).</p>
<p><b>2. ML offence – mental element and corporate liability</b></p>	<p>LC</p>	<ul style="list-style-type: none"> <li>• No evidence that parallel civil and criminal proceedings are possible.</li> <li>• The manner in which the data was captured did not</li> </ul>	<ul style="list-style-type: none"> <li>• Amend the Penal Code to ensure that parallel criminal and civil proceedings are possible The penalty applicable for a person</li> </ul>	<p>Culpable ML in the proposed article 2:406 PC SXM (currently article 435c PC) is punishable with 4 years. Due to this duration of the penalty other effective measures are possible for the prosecution. The switching provision of 2:224 (currently 96) makes the general provisions of the first book of the Penal Code applicable to all other Criminal laws</p>



		<p>allow for proper assessment of the effectiveness of ML prosecutorial efforts.</p> <ul style="list-style-type: none"> <li>Penalty applicable to culpable ML is not sufficiently dissuasive</li> </ul>	<p>convicted for culpable ML should be revised to ensure it is effective, dissuasive and proportionate</p>	<p>The Introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice. The Council of Ministers is preparing submission of the IO to Parliament for approval.</p> <p>The Introduction Ordinance (IO) to enact the Penal Code has been by Parliament on February 27<sup>th</sup>, 2015. The recommended action concerning FATF rec 2 is hereby incorporated in the Penal Code.</p> <p>PENAL CODE ENTERED INTO FORCE ON JUNE 1, 2015. THE PENALTY APPLICABLE FOR A PERSON CONVICTED FOR CULPABLE ML HAS BEEN REVISED TO ENSURE ITS EFFECTIVENESS, DISSUASIVENESS AND PROPORTIONATENESS.</p> <p>This deficiency has been resolved in the Penal Code article 2:406</p> <p>Draft Criminal Code article 1:143 (make possible parallel criminal and civil proceedings)</p> <p>Draft Criminal Code article 2:54 (dissuasiveness)</p> <p>Draft Criminal Code article 1:143 (does not prohibit parallel criminal and civil proceedings). One cannot be punished twice for the same offence, so a contrario a criminal and civil/administrative procedure against a criminal act is possible.</p> <p>Draft Criminal Code article 2:54 (dissuasiveness)</p> <p><b>The PC is revised and amended by the NOAPC.</b></p> <p><b>Pursuant to Article 2:406 PC culpable ML is punishable with 4 years. Due to this duration of the penalty other effective measures are possible for the prosecution. Via the connecting provision of Article 1:224 all the general provisions of the PC's First Book PCare applicable to all other (specific) criminal laws.</b></p> <p><b>To exclude that parallel criminal, civil or administrative proceedings may exclude liability of (legal) persons, groups of (legal) persons, and organizations, See Article I, Part C, of the NOAPC: this includes a new and generally applicable paragraph four in Article 1: 143 of the Penal Code. That new fourth paragraph contains a nuance on the "principle of ne bis in idem".</b></p> <p><b>Also the term of imprisonment for money laundering is raised from six to eight years (see Article I, Part O, NOAPC).</b></p>
<p><b>3. Confiscation and provisional measures</b></p>	<p>PC</p>	<p>Effectiveness issues</p> <ul style="list-style-type: none"> <li>The powers to confiscate or take provisional measures in relation to terrorist financing or some predicate offences</li> </ul>	<ul style="list-style-type: none"> <li>The Penal Code should ensure the effective applicability of Sint Maarten's confiscation mechanisms to Terrorist</li> </ul>	<p>In the proposed PC SXM the articles 2:54 and 2:55 criminalize TF. Via the proposed article of 1:77 (currently 38e) (a separate and/or parallel procedure to the criminal proceedings) Post-conviction measures can be imposed. The pre-conviction measures have been added to the new draft Criminal Procedure Code of CUR, AUA, SXM and the BES-islands. The switching</p>



		<p>for ML are limited (please see ratings R1 and SRII)</p> <ul style="list-style-type: none"> <li>• Confiscation measures (under both pre-conviction and post-conviction circumstances) in the Penal Code do not allow for the measures to be imposed without notice.</li> <li>• Based on the insufficient statistics effectiveness of the confiscation regime could not be confirmed.</li> </ul>	<p>Financing offences according to the TF Convention and all the designated categories of predicate offenses (refer to paragraph 277).</p> <ul style="list-style-type: none"> <li>• The Authorities should ensure that comprehensive statistics are maintained in relation to the investigation, prosecution, and conviction of ML related cases.</li> <li>• The confiscation measures under the Penal Code should be revised to allow for the pre-conviction and post-conviction measures to be imposed without notice.</li> </ul>	<p>provision of 2:224 (currently 96) makes the general provisions of the first book of the Penal Code applicable to all other Criminal laws.</p> <p>The Introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice. The Council of Ministers is preparing submission of the IO to Parliament for approval.</p> <p>The Introduction Ordinance (IO) to enact the Penal Code has been by Parliament on February 27<sup>th</sup>, 2015. The recommended actions concerning FATF rec 3 are hereby incorporated in the Penal Code.</p> <p>PENAL CODE ENTERED INTO FORCE ON JUNE 1, 2015. CONFISCATION MECHANISMS HAVE BEEN REVISED AND UPDATED. POST-CONFISCATION MEASURES ARE NOW IN PLACE (SEE ABOVE ELUCIDATION). THE DRAFT CRIMINAL PROCEDURES CODE HAS BEEN REVIEWED BY THE COUNCIL FOR ADVICE AND THE MINISTER OF JUSTICE IS MAKING THE ADAPTATION IN CONFORMITY WITH THE ADVICES RECEIVED. HEREAFTER IT WILL BE SUBMITTED AGAIN TO THE COUNCIL OF MINISTERS AND THEREAFTER TO PARLIAMENT.</p> <p>ALL LAW ENFORCEMENT AUTHORITIES HAVE BEEN INFORMED BY THE HEAD OF THE FIU THAT STATISTICS MUST BE MAINTAINED.</p> <p>The confiscation mechanisms to Terrorist Financing offences according to the TF Convention and all the designated categories of predicate offenses</p> <p><u>Criminal Procedures Code</u></p> <p>Freezing: article 119 and article 119a. Confiscation: article 1:74, article 1:75, article 1:76 and article 1:77.</p> <p><u>Draft Criminal Procedures Code (additions)</u></p> <p>Broadening of the possibility of confiscation under article 119a; Broadening of the confiscation regulation under article 120 and further; The possibility to freeze the proceeds until the authorized persons have arrived under article 121; The possibility to conduct a search without the physical presence of an examining magistrate (with the need for authorization when the search is at a dwelling or in another privacy-sensitive area) under article 122; The consideration to claim documents and search offices or dwellings of persons with a right to legal privilege and journalists under article 125 paragraph 3; The conducting of searches by the examining magistrate under paragraph 130; Broadening of the complaint regulation in connection with the special investigative powers and the digital era under article 150;</p>
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				<p>Adjustment of the search authorization in automated works under article 167.</p> <p>The possibilities to proceed with seizure are broadened. (Title IX Criminal Procedure Code)</p> <p>All objects that may serve to reveal the truth or demonstrate unlawfully obtained gains shall be liable to seizure. Also, all objects whose confiscation or withdrawal from circulation may be ordered shall be liable to seizure. (Article 119)</p> <p>Furthermore objects intended to preserve the right of redress to pay the unlawfully obtained benefit or the purpose of preserving the right of recovery for payment of a fine or of a victim-measure can be seized. (Article 119a)</p> <p>The seizure regulation has been extensively adjusted (Article 120 and further). The possibility of freezing the situation until the authorized persons have arrived is added (Article 121).</p> <p>The term "House search" is replaced with the term "search". A search can take place without the physical presence of the examining magistrate on the condition that he has granted authorization in the event that a home or other privacy-sensitive space must be searched (Article 122).</p> <p>The consideration for demanding extradition of documents and searching for offices or houses of journalists requires special attention (for example, Article 125 paragraph 3).</p> <p>In appropriate cases, the examining magistrate may conduct a search himself (Article 130).</p> <p>Instructions are given in the monthly Tripartite Meetings between the PPO, and the Chief of Police, to make sure to collect data for statistics.</p> <p>The seizure and confiscation measures take place without prior notification to the subject (Article 119 paragraph 3). The issuance of the notification forms part of the procedures during the criminal investigation and is of importance for the criminal file. The subject of whom assets are seized/confiscated will receive a notification after the fact, of the assets that have been seized/confiscated.</p> <p><b>The recommended action as regards to confiscation measures “to be imposed without notice” has been met. This finding is based on a misinterpretation of the English text of the PC; therefore can be seen as “a case of lost in translation”.</b></p> <p><b>Seizure and confiscation measures are always applied ex parte. No prior notice to the suspect(s) is required by law.</b></p>
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				<p><b>Seizure is regulated in Title IX (Articles 119 to 154a ) of both the current Penal Procedure Code (PPC) and the draft new Penal Procedure Code (draft-PPC).</b></p> <p><b>The Dutch term “kennisgeving” (in Articles 119, par. 3, and 119b, part a,) may have been translated in English as ‘notice’ or ‘notification’ but these English terms should always be interpreted as a post-notice (not as an ex-ante notification) of the seizure from the (crime) investigation officer to the prosecutor (Articles 119, par. 3) or to the suspect (Article 119b, part a). Therefore as a notification after the seizure, never as a prior-notice/ notification to the suspect or other (legal) persons from whom the goods have been seized. They will only receive, if possible, a proof of receipt of their confiscated goods (Articles 119, par. 3, 119c, part d, and 129b, par. 3).</b></p> <p><b>The law enforcement agencies do keep statistics as part of their work processes, i.a. for risk based research and as a management and budgeting tool.</b></p>
<b>Preventive measures</b>				
<b>4. Secrecy laws consistent with the Recommendations</b>	LC	<ul style="list-style-type: none"> <li>No clear provision for the MOT as supervisor to exchange information with other foreign supervisors.</li> </ul>	<ul style="list-style-type: none"> <li>MOT as supervisor should have the possibility to exchange information with other local and international supervisory authorities</li> </ul>	<p>MOT as supervisor does have the possibility to exchange information on the reporting behaviour with other local supervisors. This can be done based on article 6, paragraph 2 of the NORUT.</p> <p>The MOT is preparing a draft law in which the NORUT and the NOIS are merged and updated. In this new law the possibility of sharing information with foreign supervisors will be included.</p> <p>STATUS QUO; NO NEW UPDATE</p> <p>THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016.</p> <p>Draft National Ordinance combatting ML/TF Article 27</p> <p>Draft National Ordinance on the MOT article 5 paragraph 8</p> <p>National Ordinance establishing the FIU article 5 and article 6</p> <p><b>A supervisor who, in the performance of his/her duties, discovers facts or offences which could be construed as money laundering or terrorist financing shall inform the FIU without delay, if necessary by way of derogation from the applicable statutory duty of confidentiality (Article 16 paragraph 2 of National Ordinance combatting ML/TF)</b></p>

				<p>The FIU is also authorised to permit a foreign authority that is responsible for supervision of non-financial service providers or is recognised by the Egmont Group to conduct investigations of service providers established in Sint Maarten. The FIU will, where appropriate, set conditions in advance in an administrative agreement in respect of or give instructions for the performance of these supervisory activities. The officials of the foreign authority who conduct an investigation as referred to in the first sentence shall be obliged to follow strictly the instructions given by the FIU. (Article 5 paragraph 8 National Ordinance on the MOT)</p> <p>The FIU can independently enter into covenants or administrative agreements with regard to the exchange of data and intelligence with foreign authorities that have a similar task as the FIU. Art. 7 (AB 2019, no. 24).</p>
<p><b>5. Customer due diligence</b></p>	<p>PC</p>	<ul style="list-style-type: none"> <li>• The current version versions of the NOIS and NORUT do not adequately cover the scope of financial services activities and operations conducted by financial institutions that are subject to AML/CFT requirements. Activities and operations not covered include: <ul style="list-style-type: none"> <li>○ Lending (factoring)</li> <li>○ Financial leasing</li> <li>○ Financial guarantees and commitments</li> <li>○ Trading in money market instruments</li> <li>○ Participation in securities issues and the provision of financial services related to such issues</li> <li>○ Individual and collective portfolio management</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Sint Maarten should urgently amend the NOIS and NORUT to incorporate the full range of activities and operations of financial institutions, including explicit wording with respect to lending; financial leasing; financial guarantees and commitments; trading in a) money market instruments, b) foreign exchange, c) transferable securities, commodity futures; participation in securities issues and the provision of financial services related to such issues; individual and collective portfolio management; factoring services and insurance activities conducted by agents. Furthermore, all intermediaries operating in the Curacao Stock Exchange</li> </ul>	<p>The NOIS and the NORUT are being revised to reflect the recommended changes. The actions under <del>bullet points</del> letters a through c 1 through 6 will be addressed in the new draft law consisting of the merged and updated NORUT and NOIS.</p> <p>Please note that these issues are moreover already incorporated in the P&amp;Gs.</p> <p>Please be referred to: page 11 of the P&amp;G CI under CDD. Page 22 of the P&amp;G IC under Wire transfer. Page 11 of the P&amp;G MTC third bullet of the third paragraph under CDD.</p> <p>Please be referred to: page 12 of the P&amp;G CI paragraph CDD under Resident customer. Page 13 of the P&amp;G SAI under Verification of identity. Page 13 of the P&amp;G TSP under Verification of the identity of resident individuals. Page 13 of the P&amp;G IC under Resident customers.</p> <p>Please be referred to: page 11 of the P&amp;G CI under CDD fifth paragraph. Page 12 of the P&amp;G IC under CDD fifth bullet. Page 11 of the P&amp;G MTC 2nd paragraph. Page 11 of the P&amp;G SAI under II.2.A Detection and deterrence of money.</p> <p>Please be referred to: page 12 of the P&amp;G IC under CDD third paragraph. Laundering. Page 11 P&amp;G CTSP 2nd paragraph.</p>

	<ul style="list-style-type: none"> <li>• Certain categories of financial services providers are not covered in the scope of the NOIS and NORUT:             <ul style="list-style-type: none"> <li>○ Intermediaries operating in the Curacao Stock Exchange (DCSX)</li> <li>○ Life insurance agents</li> </ul> </li> <li>• Ministerial Decree for the Implementation of the NOIS (N.G. 2010, no. 11) does not specify or cross-reference any threshold for occasional transactions that are wire transfers, and it is unclear whether Article 4 of the Ministerial Decree (referencing article 1, paragraph one, section b., under 7, of the NOIS) apply to wire transfers.</li> <li>• There are no provisions in law or regulation for a financial institution to undertake CDD measures when it has doubts about the veracity or adequacy of previously obtained customer identification data.</li> <li>• The basic obligation to conduct CDD when there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds that are referred to elsewhere under the</li> </ul>	<p>(DCSX) should be covered by these national ordinances.</p> <ul style="list-style-type: none"> <li>• There should be explicit requirements in law or regulation for CDD to be undertaken when carrying out occasional transactions that are wire transfers, as per the Interpretive Note to SR VII.</li> <li>• Require financial institutions, through law or regulation, to undertake CDD measures when they have doubts about the veracity or adequacy of previously obtained customer identification data.</li> <li>• Require financial institutions, through law or regulation, to conduct CDD when there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations.</li> <li>• Require financial institutions, through law or regulation, to conduct ongoing due diligence.</li> <li>• The requirement to verify the identity of customers and beneficial owners before the establishment of business relations is not always practical. Sint Maarten</li> </ul>	<p>The NOIS and the NORUT will be merged and updated to reflect all recommended actions concerning FATF rec 5.</p> <p>STATUS QUO; NO NEW UPDATE. The P&amp;G have been updated by the CBCS to reflect the recommended actions concerning FATF rec 5.</p> <p>THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016.</p> <p>Draft National Ordinance combatting ML/TF Article 3 up to and including Article 17          Draft National Ordinance combatting ML/TF article 3 up to and including article 17.          National Ordinance combatting ML/TF Chapter II, article 3 up to and including article 17.</p> <p><b>The actions under letters a through c have been addressed in article 2 paragraph 1, 5°, 8°, 12°, 13° and 14° National Ordinance combatting ML/TF</b></p> <p><b>The actions under the bullet points are also addressed in Article 3 up to and including Article 17 of the National Ordinance combatting ML/TF.</b></p>
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<p><b>6. Politically exposed persons.</b></p>	<p>LC</p>	<ul style="list-style-type: none"> <li>• No clear requirements within the P&amp;Gs for financial institutions to put in place appropriate risk management system to determine whether a potential customer, customer or beneficial owner is a PEP.</li> </ul>	<ul style="list-style-type: none"> <li>• Amend the P&amp;Gs to state that FIs should put in place appropriate risk management system to determine whether a potential customer, customer or beneficial owner is a PEP.</li> </ul>	<p>The recommended action has been incorporated in the P&amp;G for IC &amp; IB. For your convenience the amended section is highlighted in yellow.</p> <p>STATUS QUO; NO NEW UPDATE. The P&amp;G have been updated by the CBCS to reflect the recommended action concerning FATF rec 6.</p> <p><b>THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016.</b></p> <p>Draft National Ordinance combatting ML/TF Article 11  Draft National Ordinance combatting ML/TF article 10 paragraph 2, and article 11 in conjunction with article 1.  National Ordinance combatting ML/TF article 1, sub w; article 2, sub a, sub b, and sub c; article 10, paragraph 2, sub i, and article 11.</p> <p><b>Article 11 of the National Ordinance combatting ML/TF also states:</b></p>

				<p><b>1. A service provider shall conduct an adequate policy and have risk assessment procedures to establish whether a client, a prospective client, an ultimate beneficiary or a beneficiary of a life insurance policy is a politically prominent person. Moreover, a service provider shall have procedures to enable it to establish the origins of the assets and bank balances of its clients and the ultimate beneficiaries who, on the basis of the first complete sentence, are designated politically prominent persons.</b></p>
<p><b>7. Correspondent banking</b></p>	LC	<ul style="list-style-type: none"> <li>• Only the P&amp;G for CI contain specific provisions on correspondent banking activities. No similar provisions exist for other types of financial institutions.</li> <li>• There are no provisions for financial institutions to assess the respondent institution's AML/CFT controls, and to ascertain that they are adequate and effective.</li> </ul>	<ul style="list-style-type: none"> <li>• Correspondent activities provisions should be incorporated in all the other P&amp;Gs, similar to the P&amp;G for CI, which contains specific provisions on correspondent banking activities.</li> <li>• The P&amp;Gs should require the respondent institution's AML/CFT controls, and to ascertain that they are adequate and effective.</li> </ul>	<p>Where relevant the recommended action has been incorporated in the P&amp;Gs. For your convenience the amended section is highlighted in yellow.</p> <p>STATUS QUO; NO NEW UPDATE. The P&amp;G have been updated by the CBCS to reflect the recommended actions concerning FATF rec 7. THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016.</p> <p>Draft National Ordinance combatting ML/TF Article 15 and Article 16 Draft National Ordinance combatting ML/TF article 15 and article 16. National Ordinance combatting ML/TF article 15 and article 16.</p> <p><b>Article 15 of the National Ordinance combatting ML/TF also states:</b></p> <p><b>1. A financial service provider operating as a bank which intends to enter into a correspondent bank relationship shall ensure that:</b></p> <p><b>a. it gathers sufficient information about the relevant correspondent bank to obtain a full picture of the nature of its activities and can, on the basis of publicly available information, establish the reputation of the correspondent bank and the quality of the supervision exercised over that bank, including information about any investigations into money laundering and the financing of terrorism and of any measures taken in respect of the supervision;</b></p> <p><b>b. it assesses procedures and measures taken by the bank involved to prevent and combat money laundering and the financing of terrorism, and establishes that these are adequate and effective; and,</b></p> <p><b>c. it fully understands the responsibilities of both banks in the area of preventing and combatting money laundering and the financing of terrorism, and records these in writing.</b></p>
<p><b>8. Non face to face and new technologies.</b></p>	LC	<ul style="list-style-type: none"> <li>• There is no requirement for MTC to comply with criteria 8.2 and 8.2.1</li> </ul>	<ul style="list-style-type: none"> <li>• P&amp;Gs for MTCs should incorporate requirements</li> </ul>	<p>The recommended action has been incorporated in the P&amp;G for MTC. For your convenience the amended section is highlighted in yellow.</p>



			<p>regarding E.C 8.2 and EC 8.2.1</p>	<p>STATUS QUO; NO NEW UPDATE. The P&amp;G have been updated by the CBCS to reflect the recommended action concerning FATF rec 8.  <b>THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016.</b>          Draft National Ordinance combatting ML/TF Article 20 paragraph 3          Draft National Ordinance combatting ML/TF article 3 paragraph 2, under l, m, and n; and article 20 paragraph 3.          National Ordinance combatting ML/TF article 20 paragraph 3.</p> <p><b>Article 20 paragraph of the National Ordinance combatting ML/TF also states:</b>  <b>. A service provider shall conduct an adequate policy and have adequate procedures which focus on preventing the abuse of new technological developments, new products, new business practices and instruments for the benefit of money laundering and the financing of terrorism. The procedures, referred to in the first complete sentence, also relate to risk assessments prior to the launch of the new products and business practices, and to the use of new or developing technologies.</b></p>
<p><b>9. Third parties and introducers</b></p>	<p>PC</p>	<ul style="list-style-type: none"> <li>• The “adequately supervised” criterion in the P&amp;Gs is not in line with the requirements of essential criteria 9.3.</li> <li>• The sources through which financial institutions should satisfy themselves that a third party is adequately regulated is limited to Mutual Evaluation Reports.</li> <li>• There are no requirements for MTC to comply with Recommendation 9</li> </ul>	<ul style="list-style-type: none"> <li>• Amend the “adequately supervised” provisions of the P&amp;Gs, in line with the requirements of essential criteria 9.2, which requires that financial institutions satisfy themselves that the third party is regulated and supervised (in accordance with Recommendation 23, 24 and 29) and has measures in place to comply with the CDD requirements set out in Recommendation 5 and Recommen 10.</li> <li>• Amend the P&amp;G’s to require that financial institutions satisfy themselves that the third party adequately regulated and supervised by referring more broadly to</li> </ul>	<p>The recommended action has been incorporated in the P&amp;Gs. For your convenience the amended section is highlighted in yellow.</p> <p>The recommended action has been incorporated in the P&amp;Gs. For your convenience the amended section is highlighted in yellow.</p> <p>The recommended action has been incorporated in the P&amp;G for MTC. For your convenience the amended section is highlighted in yellow.</p> <p>STATUS QUO; NO NEW UPDATE. The P&amp;G have been updated by the CBCS to reflect the recommended actions concerning FATF rec 9.  <b>THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016.</b>          Draft National Ordinance combatting ML/TF Article 6 paragraph 1, sub b under 4<sup>o</sup>          Draft National Ordinance combatting ML/TF article 6 paragraph 1 under b sub 4<sup>o</sup>.          National Ordinance combatting ML/TF article 13.</p>

			<p>reports assessments and reviews of reports produced by the FATF, IMF or FSRBs, rather than specifically to Mutual Evaluation Reports.</p> <ul style="list-style-type: none"> <li>•P&amp;Gs for MTC should incorporate requirements to comply with Recommendation 9.</li> </ul>	<p><i>With regards to provisions of the P&amp;Gs, in line with the requirements of essential criteria 9.3, which requires that financial institutions satisfy themselves that the third party is regulated and supervised (in accordance with Recommendation 23, 24 and 29) and has measures in place to comply with the CDD requirements set out in Recommendation 5 and 10; Section 2.8 of P&amp;Gs requires service providers to satisfy themselves that the third party is regulated, supervised or monitored for, and has measures in place for compliance with, CDD and record-keeping requirements in line with Recommendations 10 and 11. This recommended action has been met.</i></p> <p><i>2. Regarding amendments to the P&amp;Gs to require that financial institutions satisfy themselves that the third party adequately regulates and supervises by referring more broadly to reports assessments and reviews of reports produced by the FATF, IMF or FSRBs, rather than specifically to Mutual Evaluation Reports; the Authorities indicated that this was incorporated in the P&amp;Gs and in the draft Harmonization and Money Remitter Supervision Law. However, further citation of the P&amp;Gs is required. The deficiency will be discussed with the CBCS. This recommended action has not been met.</i></p> <p><i>3. On the recommended action with regards to incorporate requirements in the P&amp;Gs for MTC, in order to comply with Recommendation 9; the Authorities provided references in the P&amp;Gs. However, this recommended action requires a review of the criteria related to Rec. 10; which analysis will be further addressed in the next FUR. This recommended action has not been met.</i></p> <p><i>4. For this report, the Authorities have indicated that the outstanding recommended actions are expected to be complied through article 6 paragraph 1 under b sub 4° of National Ordinance combatting ML/TF. The compliance with the recommended action will be determined once the Draft Ordinance be enforceable.</i></p> <p><i>5. The overall compliance of Recommendation 9 remains outstanding.</i></p> <p><b>In the first FUR of Sint Maarten it was indicated which actions were going to be undertaken to address the recommended actions. With regard to recommended actions mentioned under bullets 1 and 2 above</b></p>
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				<p>it was indicated that the P&amp;Gs for CI and IC &amp; IB were being revised to implement the recommended actions. Specifically with regard to the recommended action to incorporate requirements in the P&amp;G for MTCs to comply with R. 9 (bullet 3 above), we indicated that “The P&amp;G for MTC’s is being amended to prohibit the non-face to face transactions at MTC’s.” Contrary to bullet 2 above, in undertaken actions stated for R. 9 we did not mention the draft Harmonization and Money Remitter Supervision Law.</p> <p>Furthermore, paragraph 28 of the second FUR of Sint Maarten states:” the P&amp;Gs also refer more broadly to reports, assessments and reviews of reports produced by the FATEF, IMF or FSRBs and not only Mutual Evaluation Reports, as means of consultation to assess risks and determine where a third party that meets the required conditions can be based (criteria 9.4) And also: “With regard to MTC’s P&amp;Gs, modifications included do not include a section or provisions on Reliance on Third Parties; Authorities explained that this is due to MTCs not being able to rely on third parties, all relationships should be conducted face to face, directly by the MTC.” The modification entailed inclusion of the following prohibition in the P&amp;G for MTCs: “MTCs are not permitted to process payment instructions provided by non-face-to-face customers/business relation.”</p> <p>Therefore, CDD reliance on third parties is not permitted. See attached P&amp;Gs for MTVs page 12. Our apologies if this was not (made) clear before.</p> <p>Furthermore, please, refer to bullet 3 above and clarify the relevancy of the criteria of R.10 if MTCs are not allowed to rely on intermediaries or other third parties (R.9).</p> <p>Finally, the second FUR of Sint Maarten, contains a matrix that starts on page 10 of the FUR. On page 13 of the report (in the matrix) it is concluded for R. 9: “From a desk review perspective, provisions are compliant with Recommendation 9.” Recommendation 9 is therefore met.</p> <p>In view of the above explanation we kindly request you to adapt mentioned paragraphs which were clearly based on an oversight and apologize for any inconvenience in this regard.</p>
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<p><b>10. Record-keeping</b></p>	<p>PC</p>	<ul style="list-style-type: none"> <li>• The obligation under E.C. 10.1, which compels financial institutions to maintain all necessary records on transactions, is not clearly stipulated in law or regulation.</li> <li>• The obligation to maintain records of business correspondence for at least five years following the termination of an account or business relationship is not stated in law or regulation.</li> <li>• The obligation under E.C. 10.3 requiring that all customer and transaction records and information be available to competent authorities upon appropriate authority on a timely basis should be in law or regulation</li> </ul>	<ul style="list-style-type: none"> <li>• The NOIS should be amended to reflect the obligation to maintain all necessary records on transactions, both domestic and international for five years following the termination of an account or business relationship (or longer if requested by the competent authority in specific cases and upon proper authority).</li> <li>• The NOIS should be amended to reflect the obligation to maintain records of business correspondence for at least five years following the termination of an account or business relationship</li> </ul>	<p>The NOIS is being amended to reflect the recommended actions under the first and second bullet points.</p> <p>The MOT is preparing a draft law in which the NORUT and the NOIS are merged and updated. In this new law the obligation to maintain all necessary records on transactions, both domestic and international for a period of five years following the termination of an account or business relationship is included.</p> <p>STATUS QUO; NO NEW UPDATE.</p> <p>THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016.</p> <p>Draft National Ordinance combatting ML/TF Article 22 and article 23  Draft National Ordinance combatting ML/TF article 22 paragraph 1, paragraph 2, and paragraph 3; and article 23; and article 31.  Draft National Ordinance on the MOT article 5.  National Ordinance combatting ML/TF article 22 paragraphs 2 and 3; and article 23. The period of time has been increased from 5 to 10 years.</p> <p><b>Articles 22 and 23 of the National Ordinance combatting ML/TF states:</b></p> <p><b>Article 22</b></p> <p><b>1. When electronically transferring funds and messages related to the transfers, a financial service provider shall attach accurate data relating to both the client and the beneficiary; this data is necessary for the whole payment chain.</b></p> <p><b>2 For at least ten years after a transaction has been executed, a service provider should retain all the data related to the transaction, on both a national and international level, which could be necessary to be able to comply with a request for information from a competent authority without delay. The data shall be stored in such a way that individual transactions can at all times be reconstructed and used as evidence for the prosecution of criminal offences.</b></p> <p><b>3. For at least ten years after a business relationship has been terminated or a transaction executed, a service provider should retain all the data acquired through customer due diligence, the accounts, commercial correspondence, as referred to in article 3, paragraph 3, as well as the results of the analyses of any unusual transactions which are necessary to be able to comply with a request for information from a</b></p>
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				<p><b>competent authority without delay. The data shall be stored in such a way that individual transactions can at all times be reconstructed and used as evidence for the prosecution of criminal offences.</b></p> <p><b>4. A financial service provider shall maintain a register in which the data related to transactions and data acquired during customer due diligence is registered and can be easily accessed.</b></p> <p><b>Article 23</b></p> <p><b>For at least ten years after a business relationship has been terminated, a service provider should retain the copies, referred to in article 17, paragraph 6, in an accessible manner and on request provide these to a competent authority without delay.</b></p>
<p><b>11. Unusual transactions</b></p>	LC	<ul style="list-style-type: none"> <li>• There are no specific provisions in the P&amp;Gs for financial institutions to keep documented findings regarding complex, unusual large transactions, or unusual patterns of transactions, available for competent authorities and auditors for at least five years.</li> </ul>	<ul style="list-style-type: none"> <li>• The P&amp;Gs should be amended to incorporate specific provisions for FIs to keep documented findings of their findings regarding complex, unusual large transactions, or unusual patterns of transactions, available for competent authorities and auditors for at least five years.</li> </ul>	<p>The P&amp;Gs have been amended to incorporate the recommended action. For your convenience the amended section is highlighted in yellow.</p> <p>STATUS QUO; NO NEW UPDATE. The P&amp;G have been updated by the CBCS to reflect the recommended action concerning FATF rec 11.</p> <p>THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016.</p> <p>This recommendation has been dropped. New recommendation is rec. 20 ‘reporting of suspicious transactions’.</p> <p>Provisions and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing for Credit Institutions paragraph II.2.A.1 Recognition, documentation, and reporting of unusual transactions (page 19-20).</p> <p>Provisions and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing for Credit Institutions paragraph II.2.A.1 Recognition, documentation, and reporting of unusual transactions (page 19-20).</p> <p><b>Article 25 of the National Ordinance combatting ML/TF.</b></p>
<p><b>12. DNFBP–R.5, 6, 8–11</b></p>	NC	<ul style="list-style-type: none"> <li>• The threshold for identification requirements for casinos is not in accordance FATF standard.</li> <li>• No AML/CFT requirements for internet casinos.</li> <li>• No requirements, by law or regulation for DNFBPs</li> </ul>	<ul style="list-style-type: none"> <li>• The threshold for identification requirements for casinos in legislation should be amended in accordance with the FATF standard.</li> </ul>	<p>The NOIS and the NORUT are being amended to incorporate the recommended actions under the first two bullet points.</p> <p>The MOT is preparing a draft law in which the NORUT and the NOIS are merged and updated. In this new law the threshold for identification requirements for casinos in accordance with the FATF standard is included.</p>



		<p>regarding criteria 5.2.c. 5.2.d, 5.2.e and 5.7</p> <ul style="list-style-type: none"> <li>• No requirements for DNFBPs supervised by the MOT and casinos regarding criteria 5.6 to 5.11, 5.16 and 5.17</li> <li>• The deficiencies in section 3.5 for Rec. 10 which are applicable to all DNFBPs</li> <li>• No legislation i.e. law or guidelines for DNFBPs supervised by the MOT and casinos that includes all the requirements of recommendations 6, 8, 9 and 11.</li> <li>• No requirements for SAII and AII regarding criteria 6.1 and 9.3</li> </ul>	<ul style="list-style-type: none"> <li>• AML/CFT requirements should apply to internet casinos.</li> <li>• DNFBPs should be required by law or regulation to comply with 5.2.c. 5.2.d, 5.2.e and 5.7 of Recommendation 5</li> <li>• Authorities should put legislation for DNFBPs supervised by the MOT and casinos with the requirements of criteria 5.5.2, 5.6 to 5.11, 5.16 and 5.17 of recommendation 5.</li> <li>• The deficiencies in section 3.5 for Recommendation 10 which are applicable to all DNFBPs should be remedied.</li> <li>• The Authorities in Sint Maarten should issue legislation for DNFBPs supervised by the MOT and casinos that includes all the requirements of recommendations 6, 8, 9 and 11.</li> <li>• Central Bank should incorporate in the P&amp;Gs for SAII and AII requirements regarding E.C 6.2 of Recommendation 6 and E.C 9.3 of Recommendation 9</li> </ul>	<p>THE MOT IS BUSY WITH THE MERGING OF THE NORUT AND THE NOIS IN WHICH THE RECOMMENDED ACTIONS WILL BE INCORPORATED.</p> <p>The P&amp;Gs for DNFBPs have been amended to incorporate recommendation 5. You are referred to the enclosed P&amp;Gs of the DNFBPs:  Car dealers and Jewellers: pages 9-22 8-25. Real Estate Agents: pages: 9-24 8-25. Professionals: pages 11-24 9-26.</p> <p>5.2c-5.2d-5.2e Car dealers and jewellers: page 8  Real Estate: page 8  Professionals: page 9</p> <p>5.5.2  Car dealers and jewellers: page 9 b + re.a + re.b  Real Estate: page 9 b + re.a + re.b  Professionals: page 10 b + re.a + re.b</p> <p>5.6  Car dealers and jewellers: page 9.c  Real Estate: page 9.c  Professionals: page 10.c</p> <p>5.7  Car dealers and jewellers: page 9.d  Real Estate: page 9.d  Professionals: page 10.d</p> <p>5.11  Car dealers and jewellers: page 17  Real Estate: page 17  Professionals: page 18</p> <p>5.16  Car dealers and jewellers: page 10  Real Estate: page 10  Professionals: page 11</p>
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				<p>5.17 Car dealers and jewellers: page 8 Real Estate: page 8 Professionals: page 9</p> <p>6.1 Car dealers and jewellers: page 20 Real Estate: page 20 Professionals: page 21</p> <p>9.3 Car dealers and jewellers: page 14 Real Estate: page 14 Professionals: page 15</p> <p>The P&amp;Gs for DNFBPs have been amended to incorporate recommendation 10. You are referred to the enclosed P&amp;Gs of the DNFBPs: Car dealers and Jewellers: pages 16-17 15-16 + 29. Real Estate Agents: pages 17-18 14-16 + 29. Professionals: page 18 15-17 + 30.</p> <p>The P&amp;Gs for DNFBPs have been amended to incorporate recommendation 6. You are referred to the enclosed P&amp;Gs of the DNFBPs: Car dealers and Jewellers: pages 19-20 19-20 + 25. Real Estate Agents: pages 21-22 19-20 + 25. Professionals: pages 21-22 20-21 + 26.</p> <p>For the incorporation of recommendation 9 you are referred to the P&amp;Gs for DNFBPs: Car dealers and Jewellers: pages 14-15 14. Real Estate Agents: pages 15-16 14. Professionals: pages 16-17 15.</p> <p>STATUS QUO; NO NEW UPDATE. The P&amp;G have been updated by the MOT to reflect the recommended actions concerning FATF rec 12.</p>
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				<p>The MDIUT (AB 2013 no. 489) article 2 states:</p> <p>3. Contrary to the first paragraph, parts c and d, as an indicator for the reporting of transactions executed or intended by casinos, internet casinos and lotteries, every transaction by or for the benefit of their customers worth NAf 5,000 or the equivalent thereof in foreign currency, or more.</p> <p>National Ordinance combating ML/TF, article 2, sub 4°:</p> <p>4°. to offer the opportunity to participate in:</p> <ul style="list-style-type: none"> <li>a. games of chance as referred to in the National Ordinance games of chance;</li> <li>b. games of chance as referred to in the National Ordinance offshore games of chance; or,</li> <li>c. a lottery as referred to in the Lottery Ordinance;</li> </ul> <p>Rec. 10: Customer Due Diligence: National Ordinance combating ML/TF: Chapter 3, Customer Due Diligence, articles 3-17.</p> <p>Rec 6: Politically Exposed Persons National Ordinance combating ML/TF: Article 10, paragraph 2, under i, and article 11</p> <p>The P&amp;G have been updated by the CBCS to reflect the recommended actions concerning FATF rec 12. The P&amp;G for SAII and AII were updated to include EC 5.3 to 5.6, the deficiencies identified in section 3 and the deficiencies in section 3.5 for Rec 10. The P&amp;G for SAII and AII were amended to implement the recommended actions.</p>
<p><b>13. Suspicious transaction reporting</b></p>	<p>NC</p>	<ul style="list-style-type: none"> <li>• The scope of UTR reporting may not be as extensive as required by FATF as some designated categories of</li> </ul>	<ul style="list-style-type: none"> <li>• Sint Maarten should ensure that all designated categories of predicate offenses for ML are covered in order to</li> </ul>	<p>All designated categories of predicate offenses for ML are covered in the new Penal Code. The comments (which were all non-ML and TF) have been processed in the Penal Code and the ordinance to introduce the PC should be ready and in force by the end of March 2014 Penal Code.</p>

		<p>predicate offenses for ML are not covered in Sint Maarten (see R1).</p> <ul style="list-style-type: none"> <li>• It is unclear that suspicious transactions apply regardless of whether they involve tax matters.</li> </ul> <p><i>Effectiveness issues</i></p> <ul style="list-style-type: none"> <li>• Heavy reliance on objective indicators (i.e threshold).</li> <li>• The burden of reporting subjective (rules based) indicators could detract from the FIs reporting genuine suspicious transactions.</li> </ul>	<p>eliminate the restrictions in the UTR reporting system in this regard (refer to paragraph 277)</p> <ul style="list-style-type: none"> <li>• Sint Maarten should consider express provisions in law regulation or other enforceable means to require that suspicious transactions should be reported regardless of whether they involve tax matters.</li> <li>• The MDIUT should be amended to allow the reporting entities to identify suspicion of ML or FT and avoid reliance on the prescriptive indicators.</li> </ul>	<p>The IO to introduce the Penal Code will be enacted by the end of the year 2014.</p> <p>THE INTRODUCTION ORDINANCE (IO) WAS APPROVED BY PARLIAMENT ON FEBRUARY 27<sup>th</sup> 2015.</p> <p>The Ministerial Decree on indicators, although not explicitly mentioned, does not exclude tax matters when reporting a suspicious transaction. Suspicious UTR takes place whether or not it involves a tax matter.</p> <p>The MDIUT will be amended to allow reporting entities to identify suspicion of ML or FT to avoid reliance only on the prescriptive indicators. The amended MDIUT will go into force in November 2014.</p> <p>STATUS QUO; THE MDIUT IS EXPECTED TO BE UPDATED IN APRIL 2015.</p> <p>THE DRAFT MDIUT IS READY TO BE SUBMITTED TO THE MINISTER OF JUSTICE FOR APPROVAL AND SIGNING. EXPECTED DATE OF THE MDIUT TO ENTER INTO FORCE: MAY 1, 2016.</p> <p>Draft National Ordinance combatting ML/TF Article 25  Draft National Ordinance combatting ML/TF article 2 paragraph 1 under b sub 3<sup>o</sup>, article 24, article 25, article 40 paragraph 3.  National Ordinance combatting ML/TF article 25;  Ministerial Decree (AB 2016 no. 12) on Indicators article 3.</p> <p><b>National Ordinance combatting ML/TF Article 25;  Ministerial Decree on Indicators article 3 (AB 2016 no. 12).</b></p> <p><b>The predicate offenses are incorporated and punishable in the PC and in other (specific) ordinances.<sup>12</sup> These are successively (with the addition of the relevant article in the Penal Code):</b></p> <ul style="list-style-type: none"> <li>• participating in a criminal organization (Articles 2:57, 2:80, 2:127 and 2:252);</li> <li>• extortion (Articles 2:294 – 2:297);</li> <li>• terrorism, including financing of terrorism (Article 2:54, 2:408 and 2:409);</li> <li>• human trafficking and smuggling of human beings (Articles 2:154 and 2:239);</li> </ul>
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<sup>12</sup> See Annex V for a translation of the applicable legal provisions.



				<p>sexual exploitation, i.a. sexual exploitation of children (Article 2:239); Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Article 1:118, onder d, juncto Article 3 of the the National Ordinance on opium and other narcotic drugs (<u>Opiates Ordinance</u>); illegal arms trade (Article 1:118, onder e juncto Article 6 of the Fire Arms Ordinance and Article 1 of the <u>Weaponordnance</u>); intentional handling of stolen property (Articles 2:397 and 2:399); corruption and bribery (Articles 2:314, 2:350, 2:351 and 2:352); fraud (Article 2:305); counterfeiting money (<i>valsmunterij</i>) (Articles 2:169 tot 2:172); piracy and counterfeiting of products (Article 2:307); environmental crime (Article 52 of the <u>National Ordinance on Waste Water</u>, Article 33 of the National Ordinance on Environmental Management and Protection, Article 38 of the <u>National Ordinance for the Prevention of Pollution from ships</u> and Article 81 of the <u>National Ordinance Maritime Management</u>); murder and grievous bodily harm (Articles 2:259, 2:262, 2:273 t/m 2:276); abduction, unlawful deprivation of liberty and hostage-taking (Articles 2:245, 2:246, 2:249 and 2:250); robbery and theft (Articles 2:288 tot and met 2:291); tax offenses (including with regard to customs and excise duties and tax) (Article 49, par. 2, of the <u>General National Ordinance on National Taxes</u>, and Articles 233, 233A, 233B and 235, par. 2, of the <u>National Ordinance Import, Export and Transit</u>.); piracy (Articles 2:365 and 2:366); and, - insider trading and market manipulation (Articles 2:311 and 2:321, and Articles 8 and 9, juncto Article 15 of the <u>National Ordinance Supervision Stock Markets</u>).</p> <p>Ministerial Regulation on Indicators (AB 2013 no. 489): Article 3 <i>Subjective indicators</i> Without prejudice to the provisions of Article 2, the following shall be deemed to be indicators of executed or intended unusual transactions: - transactions that differ from the client's profile; and - transactions that give rise to the suspicion that these may be related to money laundering or financing of terrorism.</p>
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				<p><b>Suspicious transactions are reported regardless of whether they involve tax matters:</b></p> <p><b>Refer to article 3 of the MDIUT and tax offenses (including with regard to customs and excise duties and tax) (Article 49, par. 2, of the <u>General National Ordinance on National Taxes</u>, and Articles 233, 233A, 233B and 235, par. 2, of the <u>National Ordinance Import, Export and Transit</u>.) are included in the list of predicate offenses.</b></p>
<p><b>14. Protection &amp; no tipping-off</b></p>	<p>PC</p>	<ul style="list-style-type: none"> <li>It is not clear that this prohibition covers financial institutions and their directors officers and employees (permanent or temporary).</li> </ul>	<ul style="list-style-type: none"> <li>Make it clear that financial institutions, their directors, officers and employees (whether permanent or temporary) are prohibited by law from disclosing (“tipping off”) the fact that an STR or related information is being reported or provided to the MOT.</li> </ul>	<p>According to the Civil law system which Sint Maarten is part of and contrary to the Common law system the wording “<i>een ieder</i>“ in article 20 of the NORUT implies that each and every one is subject to the sphere of action when the law is enacted, including directors, officers and employees (permanent or temporary) of financial institutions. It is not customary in our legal system that all different addressees of the law regulating an issue are mentioned separately one by one.</p> <p>This issue will be included in the draft law in which the NORUT and the NOIS are merged and updated. This new law will include the specific mention of the directors, officers and employees of financial institutions.</p> <p>THE MOT IS BUSY WITH THE MERGING OF THE NORUT AND THE NOIS IN WHICH THE RECOMMENDED ACTION CONCERNING FATF REC 14 WILL BE INCORPORATED.</p> <p>THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016.</p> <p>Draft National Ordinance combatting ML/TF Article 9 and article 27</p> <p>Draft National Ordinance combatting ML/TF article 27 paragraph 1 under a in conjunction with article 33 paragraph 1 - paragraph 2 – paragraph 3, article 29.</p> <p>Draft National Ordinance on the MOT article 25, article 26, and article 27.</p> <p>National Ordinance combatting ML/TF article 27, paragraph 1, under b.</p> <p><a href="#">National Ordinance combatting ML/TF article 27, paragraph 1, under a and b.</a></p>
<p><b>15. Internal policies and controls</b></p>	<p>C</p>			



<p><b>16. DNFBP–R.13–15 &amp; 21</b></p>	<p>NC</p>	<ul style="list-style-type: none"> <li>• The deficiencies identified for Recs. 13 and 14 in section 3.7 apply to all DNFBPs.</li> <li>• No legislation i.e. law or guidelines for DNFBPs supervised by the MOT and casinos that includes all the requirements of recommendations 15 and 21.</li> <li>• DNFBPs supervised by the Central Bank are not required to apply counter-measures to countries which do not or insufficiently apply FATF Recommendations.</li> <li>• UTR reporting by DNFBPs is ineffective.</li> </ul>	<ul style="list-style-type: none"> <li>• The deficiencies identified for Recs. 13 and 14 in section 3.7 for all DNFBPs should be addressed.</li> <li>• The Authorities in Sint Maarten should issue legislation for DNFBPs supervised by the MOT and casinos that includes all the requirements of recommendations 15 and 21.</li> <li>• DNFBPs supervised by the Central Bank should be required to apply counter-measures to countries which do not or insufficiently apply FATF Recommendations.</li> </ul>	<p>The P&amp;Gs for DNFBPs have been amended to incorporate recommendations 13 and 14. You are referred to the enclosed P&amp;Gs of the DNFBPs: Car dealers and Jewellers: pages 23-27. Real Estate Agents: pages 26-29. Professionals: pages 25-28.</p> <p>Rec 13 – section 3.7 Car dealers and jewellers: page 27 Real Estate: page 27 Professionals: page 28</p> <p>Rec 14 – sections 3.7 Car dealers and jewellers: page 29 + 30 Real Estate: page 29 + 30 Professionals: page 30 + 31</p> <p>The P&amp;Gs for DNFBPs have been amended to incorporate recommendation 15. You are referred to the enclosed P&amp;Gs of the DNFBPs: Car dealers and Jewellers: pages 27-30 26-30. Real Estate Agents: pages 30-34 26-30. Professionals: pages 29-33 27-31.</p> <p>Rec 15 Car dealers and jewellers: page 31 Real Estate: page 31 Professionals: page 32</p> <p>Rec 21 Car dealers and jewellers: page 21 Real Estate: page 21 Professionals: page 22</p> <p>For the incorporation of recommendation 21 you are referred to the P&amp;Gs for DNFBPs: Car dealers and Jewellers: pages 18-19 21-22. Real Estate Agents: page 20 21-22. Professionals: page 20 22-23.</p> <p>STATUS QUO; NO NEW UPDATE. THE P&amp;G HAVE BEEN UPDATED BY THE MOT TO REFLECT THE RECOMMENDED ACTIONS CONCERNING FATF REC 16.</p>
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				<p>The Minister of Justice has received a proposal for the setup of the Gaming Control Board for approval. The legislation and guidelines to supervise casinos and internet gambling will be presented in the second half of 2014 introduced mid 2015.</p> <p>THE FIRST DRAFT OF THE LEGISLATION FOR THE GCB HAS BEEN SUBMITTED TO THE MINISTERS OF JUSTICE AND ECONOMIC AFFAIRS AND TOURISM FOR DISCUSSION. THE PROPOSAL IS TO HAVE THE AML/CTF SUPERVISION OF THE GAMING INDUSTRY FALL UNDER THE MOT.</p> <p>The deficiencies for Recommendations 13 and 14 have been updated and included in the P&amp;Gs. For your convenience the amended section is highlighted in yellow. STATUS QUO; NO NEW UPDATE. The P&amp;G have been updated by the CBCS to reflect the recommended action concerning FATF rec 16. THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016. Draft National Ordinance combatting ML/TF Article 3 paragraph 2, up to and including Article 17 Draft National Ordinance combatting ML/TF article 19 and article 20 (internal controls and foreign branches and subsidiaries); article 10 paragraph 2 under h and m, article 12 paragraph 1 under a and article 14 paragraph 1 and paragraph 2, article 19 paragraph 2 and paragraph 3 (higher risk countries); Draft National Ordinance on MOT article 2 paragraph 3. National Ordinance combatting ML/TF article 18 and 19 (internal control and foreign branches and subsidiaries), article 14 (higher risk an non-cooperative jurisdictions).</p> <p><b>The deficiencies for Recommendations 13 and 14 have been updated and included in the P&amp;Gs.</b> <b>For your convenience the amended section is highlighted in yellow.</b> <b>The P&amp;G have been updated by the CBCS to reflect the recommended action concerning FATF rec 16.</b> <b>Financial institutions are continually advised of concerns about weaknesses in the AML/CFT systems of all countries specified by the</b></p>
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				<p>FATF by the Central Bank via i.a. the representative organizations moreover via publication on its website.</p> <p><b>Article V Harmonization law:</b>  <b>The National Ordinance on the Supervision of Trust Service Providers will be amended as follows:</b>  <b>Article 11 (page 128)</b>  <b>3. In order to give effect to recommendations and regulations of international or intergovernmental organizations, the Bank may, by ordinance, issue generally binding regulations of a technical and organizational nature intended for the trust offices and natural persons with dispensation that are under its supervision by virtue of this National Ordinance.</b>  <b>Article 11b (page 129)</b>  <b>2. The authority to issue a public warning as referred to in paragraph 1 is without prejudice to the Bank's authority to publish, in Sint Maarten, any public warnings given by an international or intergovernmental organization.</b></p> <p><b>National Ordinance combatting ML/TF Article 3 paragraph 2, up to and including Article 17</b>  <b>National Ordinance combatting ML/TF article 19 and article 20 (internal controls and foreign branches and subsidiaries);</b>  <b>Article 10 paragraph 2 under h and m, article 12 paragraph 1 under a and article 14 paragraph 1 and paragraph 2, article 19 paragraph 2 and paragraph 3 (higher risk countries);</b>  <b>National Ordinance on MOT article 2 paragraph 3.</b></p>
<p><b>17. Sanctions</b></p>	<p>PC</p>	<ul style="list-style-type: none"> <li>• Outside of the Civil and Penal Codes, there are no indications that sanctions could apply to directors and senior management of financial institutions.</li> <li>• Sanctions not effective against MTCs that continue to operate without licenses.</li> <li>• Sanctions appear to be used sparingly.</li> </ul>	<ul style="list-style-type: none"> <li>• Include explicit provisions in the NOIS and NORUT to indicate that sanctions apply to directors and senior management of financial institutions.</li> <li>• Take immediate action against directors and senior management of unauthorised MTCs.</li> <li>• The Central Bank should have a wide range of</li> </ul>	<p>In accordance with our legal system, sanctions against directors and senior management are already in place in Sint Maarten. Please, refer to Sint Maarten's answer to E.C. 17.3 in section 3.10 of the MEQ: <i>The power of enforcement to act against financial institutions and their directors can be derived from a general statutory provision in the Penal Code. Article 53 of the Penal Code provides that offences can be committed by natural persons and legal persons. When an offence is committed by a legal person, prosecution can be instituted and the penal sanctions and measures provided for in general ordinances, if eligible, can be pronounced: a. against the legal person, or b. against those who ordered the execution of the offence as well as against those who actually lead the execution of the prohibited conduct, or c. against the ones mentioned in section a and b jointly.</i></p>



			<p>sanctions and should be prepared to use them.</p>	<p><i>The above mentioned provision makes it possible to act against directors or senior management, because the director or senior management are the ones who give the orders on the work floor and because there is a so called switch provision (article 96) of the Penal Code that provides for the application of article 53 of the Penal Code to other facts which are penalized by other general ordinances, unless the general ordinances provide otherwise. Therefore the administrative fines of the NOIS and NORUT are also applicable to the financial institutions and their directors.</i></p> <p>However, as this legal mechanism was not understood, the matter will be further examined in order to ensure the correct understanding of this legal mechanism.</p> <p>Explicit provisions will be included in the new law (merged and updated NORUT-NOIS) to indicate that sanctions apply to directors and senior management of financial institutions.</p> <p>The power to apply a wide range of sanctions has already been addressed in the draft Harmonization Law which is in legislative process. The central bank issues notifications on sanctions on a regular basis.</p> <p>STATUS QUO; NO NEW UPDATE. THE PPO IS ADDRESSING THE ISSUE OF THE ILLEGAL MTC.</p> <p>THE MOT IS BUSY WITH THE MERGING OF THE NORUT AND THE NOIS IN WHICH THE RECOMMENDED ACTION CONCERNING FATF REC 17 BE ADDRESSED.</p> <p>THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016. THE NEW ORDINANCE WILL INCLUDE THE PROVISION TO INDICATE THAT SANCTIONS APPLY TO DIRECTORS AND SENIOR MANAGEMENT OF FINANCIAL INSTITUTIONS. THIS PROVISION HAS BEEN INCLUDED IN THE DRAFT ORDINANCES FOR THE SUPERVISION OF THE MTC's AND THE HARMONIZATION ORDINANCE.</p> <p>Draft National Ordinance combatting ML/TF Article 34  Draft National Ordinance on Administrative Enforcement Article 46 up to and including Article 57  Draft National Ordinance combatting ML/TF article 33 paragraph 1.  Draft National Ordinance on MOT article 2 paragraph 5.  National Ordinance updating and  Harmonization of supervision laws of the Central Bank of Curaçao and Sint Maarten;</p>
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				<p>National Ordinance supervision money remittance companies; National Ordinance combatting ML/TF article 33 paragraph 4 (sanctions apply to directors and senior management of organizations, groups of natural persons, or legal persons); National Ordinance combatting ML/TF article 21 paragraph 3 (sanctions regime FIU and Central Bank)</p> <p><b>National Ordinance combatting ML/TF article 33 paragraph 5: 5. The party committing the act is punishable, as well as the directors and executives, irrespective of whether these are natural persons, legal entities, groups of natural persons or legal entities, or organisations.</b></p> <p><b>The illegal operating MTCs have been closed down by the PPO.</b></p>
<b>18. Shell Banks</b>	C			
<b>19. Reports of Currency transactions</b>	C			
<b>20. Other DNFBP &amp; secure transaction techniques</b>	C			
<b>21. Special attention for higher risk countries</b>	PC	<ul style="list-style-type: none"> <li>• Notices with respect to strategic deficiencies are limited to jurisdictions for which the FATF calls for action.</li> <li>• Countermeasures are not clearly specified with respect to countries that do not apply or insufficiently apply the FATF Recommendations.</li> </ul>	<ul style="list-style-type: none"> <li>• Ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of all countries specified by the FATF, not only those countries for which the FATF calls for action.</li> <li>• Ensure that Sint Maarten has the ability to apply countermeasures to countries that continue not to apply or insufficiently apply the FATF Recommendations.</li> </ul>	<p>The P&amp;Gs for CI (page 17), MTC (page 13), SAI &amp; AII (page 23), IC &amp; IB (page 21), and TSP (page 19) indicate that the supervised institutions are required to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries that do not or insufficiently apply the FATF Recommendations including high-risk and non-cooperative jurisdictions.</p> <p><b>STATUS QUO; NO NEW UPDATE. THE P&amp;G HAVE BEEN UPDATED BY THE CBCS TO REFLECT THE RECOMMENDED ACTION CONCERNING FATF REC 21.</b></p> <p>The NOIS is being revised to implement the recommended actions. The new draft law (merged NORUT-NOIS) will reflect the counter-measures with respect to countries that do not apply or insufficiently apply the FATF recommendations.</p> <p><b>STATUS QUO; NO NEW UPDATE.</b></p>



				<p>THE MOT IS BUSY WITH THE MERGING OF THE NORUT AND THE NOIS IN WHICH THE RECOMMENDED ACTION CONCERNING FATF REC 21 BE ADDRESSED.</p> <p>THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016.</p> <p>THIS PROVISION HAS BEEN INCLUDED IN THE DRAFT ORDINANCES FOR THE SUPERVISION OF THE MTC's AND THE HARMONIZATION ORDINANCE.</p> <p>Update:</p> <p>The draft Harmonization law has been submitted by the Council of Ministers to the Advisory Council on June 8, 2016. The draft National Ordinance Money Remitter Companies has been approved by the Council of Ministers on June 2, 2016, and will soon be submitted to the Advisory Board.</p> <p>Draft National Ordinance combatting ML/TF Article 14</p> <p>Draft National Ordinance combatting ML/TF article 10 paragraph 2 under h and m, article 12 paragraph 1 under a and article 14 paragraph 1 and paragraph 2, article 19 paragraph 2 and paragraph 3.</p> <p>National Ordinance combatting ML/TF article 10, paragraph 2, under h; article 12, paragraph 1, under a and paragraph 2; article 14, paragraph 1; article 19, paragraphs 2 and 3</p> <p><b>Regarding the Central Bank: The power to apply a wide range of sanctions has been addressed in the Harmonization Law (A.B. 2018 no 5) which came into force on March 29 2018: fines, penalties and publications have been incorporated in all supervision ordinances for the violation of the aml/cft P&amp;Gs.</b></p> <p><b>The P&amp;Gs for CI (page 17), MTC (page 13), SAI &amp; AII (page 23), IC &amp; IB (page 21), and TSP (page 19) indicate that the supervised institutions are required to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries that do not or insufficiently apply the FATF Recommendations including high-risk and non-cooperative jurisdictions.</b></p> <p><b>THE P&amp;G HAVE BEEN UPDATED BY THE CBCS TO REFLECT THE RECOMMENDED ACTION CONCERNING FATF REC 21.</b></p>
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				<p>Financial institutions are continually advised of concerns about weaknesses in the AML/CFT systems of all countries specified by the FATF by the Central Bank via i.a. the representative organizations moreover via publication on its website.</p> <p>The following provisions have been included in the Harmonization Ordinance:</p> <p><b>Article I</b> The National Ordinance on the Supervision of the Bank and Credit Institutions of 1994 is hereby amended as follows:</p> <p><b>Article 6a (page 6)</b> 3. In order to give effect to recommendations and regulations of international or intergovernmental organizations, the Bank may, by ordinance, issue generally binding regulations of a technical and organizational nature intended for the credit institutions that are under its supervision by virtue of this National Ordinance.</p> <p><b>Article 6c (page 7)</b> 3. The authority to issue a public warning as referred to in the first and second paragraphs is without prejudice to the Bank's authority to publish, in Sint Maarten, any public warnings given by an international or intergovernmental organization.</p> <p><b>Article II</b> The National Ordinance on the Supervision of the Insurance Industry will be amended as follows:</p> <p><b>Article 15b (page 38)</b> 2. The authority to issue a public warning as referred to in the first paragraph is without prejudice to the Bank's authority to publish, in Sint Maarten, any public warnings given by an international or intergovernmental organization.</p> <p><b>Article 18a (page 40)</b> 3. In order to give effect to recommendations and regulations issued by international or intergovernmental organizations, the Bank may, by ordinance, issue generally binding regulations of a technical and organizational nature intended for the institutions that are under its supervision by virtue of this National Ordinance.</p> <p><b>Article III</b> The National Ordinance on supervision of stock exchanges will be amended as follows:</p> <p><b>Article 3a (page 71)</b></p>
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				<p><b>3. In order to give effect to recommendations and regulations of international or intergovernmental organizations, the Bank may, by ordinance, issue generally binding regulations of a technical and organizational nature intended for the institutions that are under its supervision by virtue of this National Ordinance, and these will be under the obligation to comply, and to continue to comply, with said regulations.</b> Article 3c (page 72)</p> <p><b>2. The authority to issue a public warning as referred to in paragraph 1 is without prejudice to the Bank's authority to publish, in Sint Maarten, any public warnings given by an international or intergovernmental organization.</b> Article IV The National Ordinance on supervision of investment institutions and administrators will be amended as follows: Article 5b (page 94)</p> <p><b>2. The authority to issue a public warning as referred to in paragraph 1 is without prejudice to the Bank's authority to publish, in Sint Maarten, any public warnings given by an international or intergovernmental organization.</b> Article 9 (page 96)</p> <p><b>3. In order to give effect to recommendations and regulations of international or intergovernmental organizations, the Bank may, by ordinance, issue generally binding of a technical and organizational nature intended for the institutions that are under its supervision by virtue of this National Ordinance.</b> Article 18 (page 102)</p> <p><b>3. In order to give effect to recommendations and regulations of international or intergovernmental organizations, the Bank may, by ordinance, issue generally binding regulations of a technical and organizational nature intended for the administrators that are under its supervision by virtue of this National Ordinance.</b> Article V The National Ordinance on the Supervision of Trust Service Providers will be amended as follows: Article 11 (page 128)</p> <p><b>3. In order to give effect to recommendations and regulations of international or intergovernmental organizations, the Bank may, by ordinance, issue generally binding regulations of a technical and organizational nature intended for the trust offices and natural persons</b></p>
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				<p>with dispensation that are under its supervision by virtue of this National Ordinance.</p> <p><b>Article 11b (page 129)</b></p> <p><b>2. The authority to issue a public warning as referred to in paragraph 1 is without prejudice to the Bank's authority to publish, in Sint Maarten, any public warnings given by an international or intergovernmental organization.</b></p> <p><b>Article VI</b></p> <p><b>The National Ordinance on Insurance Brokerage Companies will be amended as follows:</b></p> <p><b>Article 8a (page 156)</b></p> <p><b>2. The authority to issue a public warning as referred to in paragraph 1 is without prejudice to the Bank's authority to publish, in Sint Maarten, any public warnings given by an international or intergovernmental organization.</b></p> <p><b>Article 8b (page 157)</b></p> <p><b>3. In order to give effect to recommendations and regulations of international or intergovernmental organizations, the Bank may, by ordinance, issue generally binding regulations of a technical and organizational nature intended for the institutions that are under its supervision by virtue of this National Ordinance. Such institutions will be under the obligation to comply, and to continue to comply, with said regulations.</b></p> <p><b>In the National Ordinance on the Supervision of MTCs: article 10 paragraph 1 and article 10a paragraph 2</b></p> <p><b>Regarding the FIU, the power to apply sanctions to the DNFBPs has been established in the National Ordinance FIU (AB 2019 no. 24) article 19;</b></p> <p><b>And also in the National Ordinance combating ML/TF (AB 2019 no. 25) article 31 paragraph 3.</b></p>
<b>22. Branches and subsidiaries</b>	C			
<b>23. Regulation, supervision and monitoring</b>	PC	<ul style="list-style-type: none"> <li>• Unlicensed MTCs continue to operate within Sint Maarten, impacting on effectiveness with respect to</li> </ul>	<ul style="list-style-type: none"> <li>• Take immediate action to close unlicensed MTCs.</li> <li>• Increase on-site inspections of MTCs.</li> </ul>	<p>Unlicensed MTC's will be shut down by the PPO.</p> <p>The matter concerning unlicensed MTC's will be revisited by the MOT with the minister of Justice and the PPO.</p> <p>THE DRAFT NATIONAL ORDINANCE FOR SUPERVISION ON MTC HAS BEEN SUBMITTED TO THE LEGAL DEPARTMENT FOR</p>



		<p>E.C. 23.1, E.C 23.5 and E.C. 23.6.</p> <ul style="list-style-type: none"> <li>• Low number of on-site inspections for MTCs.</li> <li>• Factoring services are yet to be subject to Central Bank supervision under the NOIS and NORUT.</li> <li>• The RBA is not calibrated for AML/CFT risks.</li> </ul>	<ul style="list-style-type: none"> <li>• Implement a regulatory and supervisory regime for factoring services.</li> <li>• Develop a risk based approach system to determine the AML/CFT focus of onsite inspections.</li> <li>• Commit resources to having supervisory staff in Sint Maarten for greater onsite monitoring of licensees.</li> </ul>	<p>PROCESSING. A PROVISION HAS BEEN INCLUDED IN THE DRAFT FOR THE CBCS TO CLOSED DOWN MTC THAT OPERATE WITHOUT A LICENSE OR THAT DO NOT COMPLY WITH THE LICENSE ISSUED BY THE CBCS.</p> <p>Update: The draft National Ordinance Money Remitter Companies has been approved by the Council of Ministers on June 2, 2016, and will soon be submitted to the Advisory Board.</p> <p>In 2013 the Central Bank has performed 3 on-site visits to MTCs established in Sint Maarten. In 2016 the Central Bank performed 1 on-site visit at the largest MTC established in Sint Maarten.</p> <p>The Central Bank has conducted a thorough risk assessment of the factoring services provided on Sint Maarten and has reached the conclusion that the business is exposed to very low risk with reference to AML/CFT. Currently, there is one (1) representative of a small factoring service provider operating in Sint Maarten with its head-office in Curacao.</p> <p>The implementation of a risk based approach has started.</p> <p>As per August 2012 one (1) supervisory staff has been hired by the CBCS to improve the monitoring of licensees in Sint Maarten.</p> <p>STATUS QUO; NO NEW UPDATE. THE PPO IS BUSY REVIEWING THE CASE ON THE ILLEGAL MTC. THE UNLICENSED MTC HAS STARTED A CASE AGAINST THE CBCS WHICH THE MTC HAS LOST IN FIRST INSTANCE AS WELL AS THE APPEAL. This case is a matter for the Public Prosecutor to summon the mentioned MTC to comply with the court orders and to stop their illegal activities.</p> <p>Draft National Ordinance combatting ML/TF Article 4 Draft National Ordinance combatting ML/TF article 1 under k, article 1 under aa sub 1° (regulatory and supervisory regime for factoring services); Article 18 and article 20 (risk based approach); Draft National Ordinance on MOT article 3 paragraph 2 under k, 1 and m (risk based approach).</p>
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				<p>National Ordinance updating and Harmonization of supervision laws of the Central Bank of Curaçao and Sint Maarten; National Ordinance supervision money remittance companies.</p> <p><b>The following is an overview of the on-site inspections conducted at MTCs by the Central Bank during the period 2013 -2019:</b></p> <table border="1" data-bbox="1178 436 1986 691"> <thead> <tr> <th>Year</th> <th>Quantity of existing MTCs</th> <th>Quantity of on-site inspections</th> </tr> </thead> <tbody> <tr> <td>2013</td> <td>3</td> <td>3</td> </tr> <tr> <td>2014</td> <td>3</td> <td>0</td> </tr> <tr> <td>2015</td> <td>3</td> <td>0</td> </tr> <tr> <td>2016</td> <td>3</td> <td>1</td> </tr> <tr> <td>2017</td> <td>3</td> <td>1<sup>13</sup></td> </tr> <tr> <td>2018</td> <td>3</td> <td>0</td> </tr> <tr> <td>2019</td> <td>3</td> <td>2</td> </tr> </tbody> </table> <p>The Central Bank has conducted a thorough risk assessment of the factoring services provided on Sint Maarten and has reached the conclusion that the business is exposed to very low risk with reference to AML/CFT. Currently, there is one (1) representative of a small factoring service provider operating in Sint Maarten with its head-office in Curacao.</p> <p>The implementation of a risk based approach has started.</p> <p>The following is the RBA as applied by each supervision department responsible for AML/CFT supervision.</p> <p>1. On a yearly basis the Banking Supervision Department (“BSD”) determines the institutional profile and performs a risk assessment of the supervised institutions. As part of this process the AML/CFT risk is assessed on a general level, which assessment is based amongst other on examination findings and the follow up performed by the institutions on the resolution of the findings. Based on the assessment of the AML/CFT risk, the frequency,</p>	Year	Quantity of existing MTCs	Quantity of on-site inspections	2013	3	3	2014	3	0	2015	3	0	2016	3	1	2017	3	1 <sup>13</sup>	2018	3	0	2019	3	2
Year	Quantity of existing MTCs	Quantity of on-site inspections																										
2013	3	3																										
2014	3	0																										
2015	3	0																										
2016	3	1																										
2017	3	1 <sup>13</sup>																										
2018	3	0																										
2019	3	2																										

<sup>13</sup> This examination was performed from Curaçao and included the operations in Sint Maarten.



				<p>intensity and risk areas to be covered during onsite inspections are determined.</p> <p><b>2. In addition to the above BSD has performed a risk assessment specifically for the AML/CFT area based on a.o. the statistics and results of previous AML/CFT examinations. Based on this risk assessment the institutions have been risk rated Low, Medium or High for AML/CFT.</b></p> <p>The Institutional Investors Department developed an AML survey which was sent to all life insurance companies and all insurance brokers intermediating in life insurance under supervision of the Central Bank. The purpose is to gather as much information as possible on the business activities of these institutions and to attach risk factors to these activities, which will form the basis for the AML risk based approach. Life insurers and insurance brokers intermediating in life insurance will be supervised and e.g. scheduled for onsite examination based on the risk classification determined by the Institutional Investors Department.</p> <p><b>3. The Investment Institutions and Trust Supervision Department plans its AML supervision concerning specifically onsite visits with the aid of a risk matrix and professional judgement. This occurs twice a year. It is then decided what the scope will be, which institutions will be inspected and when these will be scheduled, considering the limited manpower resources versus the (AML/CFT) risks identified related to entities or themes.</b></p> <p>Sint Maarten and Curaçao together form a monetary union. The Central Bank is the supervisory authority of (financial) institutions in both jurisdictions. The Central Bank employs a total of 51 fte's working for the respective departments that are directly involved in supervision. From these fte's, 2 are based in Sint Maarten and 49 in Curaçao. All 49 Curaçao based fte's are continuously involved with the supervision of the entities and sectors in Sint Maarten that fall under the Central Bank. They are flown in from Curaçao to</p>
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				<p><b>conduct on-site inspections together with the Sint Maarten based staff as well as to perform other supervisory activities.</b></p> <p><b>Moreover, the staffing of the supporting departments (the departments that are indirectly involved in the supervision activities such as the Integrity Unity for the screening of Management and UBOs of the supervised entities and persons, the Legal department, the International Affairs department for i.a. sanctions, the Policy department and the Financial Stability and Resolution department) is currently 38.</b></p>
<p><b>24. DNFBP - regulation, supervision and monitoring</b></p>	<p>NC</p>	<ul style="list-style-type: none"> <li>• There is no adequate AML/CFT regulation and supervision of casinos</li> <li>• No supervisory regimen for Internet casinos.</li> <li>• The MOT as supervisory authority has not started yet.</li> <li>• The MOT does not have adequate resources to fulfil their supervisory role.</li> <li>• The deficiency identified in section 3.10 (R. 29 and R17) with regard to the supervisory function of the Central Bank applied.</li> </ul>	<ul style="list-style-type: none"> <li>• The Authorities in St. Maarten should immediately implement adequate AML/CFT regulation and supervision of casinos in compliance with E.C. 24.1. Casinos in St. Maarten are not effectively regulated or monitored.</li> <li>• The Authorities should implement an AML/CFT regime for Internet casinos.</li> <li>• The MOT should implement an effective supervisory regime and should be given resources to fulfil their supervisory role for the relevant DNFBP sector.</li> <li>• The deficiency identified in section 3.10 (R. 29 and R17) with regard to the supervisory function of the Central Bank should be cured.</li> </ul>	<p>Adequate AML/CFT regulation for casinos and internet casinos will be developed. The Ministry of Justice is busy with the setup of the GCB. An outline for the regulatory body has been submitted to the Minister of Justice for approval.</p> <p>The ministry of Justice expects to submit draft legislation on the regulation and supervision of the gaming industry to the minister of Justice mid 2015.</p> <p><b>THE COUNCIL OF MINISTERS HAS DECIDED TO HAVE THE MOT CARRY OUT THE AML/CTF SUPERVISION ON CASINOS. THIS WILL BE INCLUDED IN THE DRAFT OF THE MERGED NORUT/NOIS.</b></p> <p>The MOT is setting up the supervision of the DNFBP sector. The registration of the DNFBPs is ongoing. Two legal experts have been recruited and are busy with the setup of the administrative organization of the Supervision Department.</p> <p>The MOT has started with the registration fo the businesses and professions. The inventories of the Jewellers and Real Estate Companies and Agents is complete. The first info sessions have been held in July 2014 (financial institutions) and August 2014 (Jewellers and Real Estate Companies and Agents).</p> <p>The MOT has started with the management meetings with aforementioned companies in September 2014 through December 2014.</p> <p>In accordance with the legal system, sanctions against directors and senior management are already in place in Sint Maarten. Please be referred to the comment under Undertaken Action re. Rec 17.</p> <p><b>THE MOT SUBMITTED THE FIRST DRAFT OF THE LEGISLATION FOR THE GCB TO THE MINISTERS OF JUSTICE AND ECONOMIC AFFAIRS AND TOURISM. THE PROPOSAL IS FOR THE MOT TO CARRY OUT THE AML/CTF SUPERVISION OF THE GAMING INDUSTRY.</b></p>



				<p>THE MOT HAS STARTED WITH THE 2015 INFORMATION SESSIONS FOR THE DNFBP IN MARCH AND APRIL 2015 THE REAL ESTATE COMPANIES, THE CAR DEALERSHIPS AND THE ACCOUNTANTS. THE MOT SUPERVISION IS ONGOING AND BEING EXPANDED TO INCLUDE ALL DNFBP. THE LAST GROUP THAT WILL BE INFORMED OF THE AML/CTF LEGISLATION ARE THE JUDICIAL SERVICE PROVIDERS.</p> <p>Draft National Ordinance combatting ML/TF Article 35 paragraphs 3 and 4  Draft National Ordinance on Administrative Enforcement Article 4  Draft National Ordinance combatting ML/TF article 2 paragraph 1 under b sub 5°;  article 1 under aa sub 2°;  article 31 paragraph 1 and paragraph 3.  National Ordinance combatting ML/TF article 2 paragraph 1 under b sub 4°;  article 1 under aa sub 2°; article 31 paragraphs 1, 2 and 3.</p> <p><b>National Ordinance combatting ML/TF (supervision):  article 2 paragraph 1 under b sub 4°;  article 1 under aa sub 2°;  article 31 paragraphs 1, 2 and 3.</b></p>
<p><b>25. Guidelines &amp; Feedback</b></p>	<p>PC</p>	<ul style="list-style-type: none"> <li>• Not much guidance is given to financial institutions on TF techniques and methods.</li> <li>• P&amp;G for providers of factoring services is not in place.</li> <li>• DNFbps supervised by the MOT and do not receive sufficient guidance to DNFbps on complying with AML/CFT requirements</li> </ul>	<ul style="list-style-type: none"> <li>•The MOT should provide feedback with respect to typologies or sanitized cases, and on specific cases that have been closed.</li> <li>•MOT is strongly encouraged to continue its outreach programme to <u>specifically</u> encompass both feedback and guidance related to UTRs.</li> <li>•Provide guidance to financial institutions with respect to terrorism financing.</li> <li>• Issue guidance to providers of factoring services.</li> <li>• The Competent Authorities in Sint Maarten should provide adequate guidance to DNFbps supervised by</li> </ul>	<p>MOT and the PPO are analysing the typologies and all sanitized and specific cases. This process will be carried out periodically and when completed, feedback will be given to the financial institutions.</p> <p>MOT does feedback with and guide the financial institutions related to UTRs.</p> <p>More guidance will be provided to financial institutions with respect to TF. A training programme for all stakeholders (MOT, law enforcement, PPO, Reporters, DNFbps) has been developed and approved by the Minister of Justice. The execution of the training program will start in March 2014. Guidance to financial institutions with regard to TF will take place in 2015. The MOT received and is still receiving training from the former head of the FIU Curaçao. The reporters/DNFbps get regular info sessions and can call and visit the MOT at all times to receive information. They must include in their compliance regime that they will get training minimal once (1) a year. The only outstanding group is law enforcement (Police, RST, Landsrecherche, PPO and Customs); they will be trained in the first half of 2015. The programme is ready.</p>



			<p>the MOT and Casinos regarding AML/CFT requirements.</p> <ul style="list-style-type: none"> <li>• MOT should issue its own P&amp;Gs.</li> </ul>	<p>The laws are being amended to incorporate factoring services. The new draft law (merged and updated NORUT-NOIS) includes factoring services.</p> <p>The MOT routinely disseminates information to the DNFBPs supervised by the MOT regarding AML/TF requirements. The MOT developed P&amp;Gs for DNFBPs.</p> <p>STATUS QUO; NO NEW UPDATE. TRAINING PROGRAM II WAS SUBMITTED IN NOVEMBER 2014 TO THE MINISTER OF JUSTICE FOR APPROVAL. THE MOT IS STILL PROVIDING GUIDANCE TO THE REPORTING INSTITUTIONS REGARDING STR. THE AML/CTF TRAINING PROGRAM II HAS BEEN APPROVED BY THE MINISTER AND THE EXECUTION THEREOF STARTED IN AUGUST 2015. SINCE, THE CUSTOMS DEPARTMENT HAS RECEIVED TRAINING ON THE EXECUTION OF THE NATIONAL ORDINANCE BORDERCROSSING MONEY TRANSFERS. THE POLICE DEPARTMENT AND THE LANDSRECHERCHE WILL RECEIVE TRAINING BEFORE THE END OF THE YEAR 2015. Draft National Ordinance combatting ML/TF Article 36 paragraph 2 under h Draft National Ordinance on MOT article 3 paragraph 2 under g P&amp;G's for DNFBPs have been issued and a copy thereof submitted to CFATF secretariat. National Ordinance on MOT article 3 paragraph 2 under g; P&amp;G's for DNFBPs have been issued and posted on the MOT website.</p> <p><b>The MOT disseminates information to the DNFBPs supervised by the MOT regarding AML/TF requirements. The MOT developed P&amp;Gs for DNFBPs.</b></p> <p><b>The MOT presents typologies and sanitized cases that have been closed in its annual reports.</b></p>
<b>Institutional and other measures</b>				
<b>26. The MOT</b>	NC	<ul style="list-style-type: none"> <li>• The legal basis for the establishment of the MOT is not clear.</li> <li>• There is an absence of a permanent MOT Head physically present in the MOT on a daily basis.</li> </ul>	<ul style="list-style-type: none"> <li>• The authorities should ensure that the legal underpinnings for the establishment of the MOT are sound. It should be clear in the law as to the Ministry under which it falls.</li> </ul>	<p>The legal basis for the MOT are formed by:</p> <ol style="list-style-type: none"> <li>1. The national ordinance structure and organisation of the national government (AB 2010, No. 6) – article 9</li> <li>2. The national decree containing general measures to be subdivided and worked out in further detail by the ministry of Justice (AB 2010, No. 11) – article 17.</li> </ol>

	<ul style="list-style-type: none"> <li>• Not all reporting entities are aware of the existence of the MOT in Sint Maarten. Inadequate training and guidance sessions for reporting entities.</li> <li>• Articles 4, 8, 16 and 22 of NORUT present a risk to the operational autonomy of the MOT and create opportunities for undue interference and influence.</li> <li>• There is a low number of investigative reports forwarded by the MOT to the PPO.</li> <li>• The security of the MOT information, the premises and employees requires improvement.</li> <li>• The authorities should produce and publish the outstanding Annual Report for 2011 and ensure that it contains information relating to the typologies and trends for ML and TF for Sint Maarten.</li> <li>• Effectiveness of the MOT could not be confirmed</li> </ul>	<ul style="list-style-type: none"> <li>• The authorities should move swiftly to appoint an MOT Head.</li> <li>• The MOT should seek to clarify the manner and procedures for reporting, improve the relationship between itself and its stakeholders and provide guidance on the manner and procedures for reporting. The MOT should increase awareness within its stakeholders of the existence of the MOT.</li> <li>• Articles 4, 8, 16 and 22 of NORUT should be amended in order to ensure operational autonomy of the MOT and avoid opportunities for undue interference and influence.</li> <li>• As the number of investigative reports forwarded by the MOT is low compared to the number of UTRs recovered, the MOT should reassess its internal process to ensure an adequate number of investigative reports are forwarded to the PPO.</li> <li>• The MOT should implement measures to improve the physical security of manual files, electronic data, premises and the employees of the MOT. The MOT should produce and publish Annual Reports</li> </ul>	<p>Both laws are enclosed for review. The NORUT (AB 2013 No 479) was amended on April 25<sup>th</sup>, 2014, to establish the operational autonomy of the MOT. The amended law was enacted on September 4<sup>th</sup>, 2014. I refer to the AB 2014 No 51, which was sent to the CFATF Secretariat on October 3<sup>rd</sup>, 2014.</p> <p>With the abovementioned amendment of the NORUT MOT Sint Maarten was inducted into the Egmont Group of FIUs as is recommended in recommendation 40.</p> <p>The MOT has a permanent director in place as of January 1, 2013.</p> <p>The MOT is disseminating information to the reporters. The DNFBBs are being registered and receive information on the laws and existence of the MOT. Also reference is made of the website of the MOT Sint Maarten (<a href="http://www.fiu-sxm.net">www.fiu-sxm.net</a>)</p> <p>The NORUT has been amended (draft to be submitted to and approved by parliament end of March 2014) to establish the operational autonomy of the MOT. In practice the MOT already operates autonomously.</p> <p>The internal procedures of the MOT are being reviewed. More qualified personnel needs to be hired. This will increase the number of investigated reports that are sent to the PPO.</p> <p>The physical security of the personnel, the files, and the databases is in place. The next step is to <del>hire qualified (and screened) personnel</del> compile the data from the analyst department to <del>assist in the production of</del> produce the annual reports 2011, 2012 and 2013 of the MOT. Annual reports will be produced in the first 3 months of 2015.</p> <p>STATUS QUO; NO NEW UPDATE. THE MOT EXPECTS TO START WITH THE ANNUAL REPORTS 2010-2014 IN MAY 2015. A START HAS BEEN MADE WITH THE DRAFTING OF THE ANNUAL REPORTS. THE EXPECTED DATE OF COMPLETION AND PRESENTATION TO THE MINISTER OF JUSTICE AND PLACEMENT ON THE WEBSITE IS JANUARY 2016.</p> <p>Draft National Ordinance combatting ML/TF Article 35 and Article 36</p> <p><b>The MOT has been established by law in 2014 and has been operational since. This has been confirmed in paragraph 40 of the the 7<sup>th</sup> FUR.</b></p>
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			<p>and ensure that it includes full information on ML and TF trends and typologies.</p>	
<p><b>27. Law enforcement authorities</b></p>	<p>PC</p>	<p><i>Effectiveness:</i></p> <ul style="list-style-type: none"> <li>• No financial resources have been allocated for ML and TF training for the local law enforcement agencies</li> <li>• There is a shortage of suitably qualified law enforcement officers generally to execute effective ML investigations.</li> <li>• No specific training for TF or ML for several of the law enforcement authorities.</li> <li>• Unlicensed MTCs continue to operate within Sint Maarten</li> </ul>	<ul style="list-style-type: none"> <li>• Relevant financial resources should be directed to ensure that recruited officers are appropriately trained in ML and TF and are kept up to date in the recent developments in financial investigations. These challenges identified will therefore affect the proper investigation of ML and TF offences.</li> <li>• There should be a decisive approach with respect to the operation of certain MTCs without licenses in contravention of the law.</li> </ul>	<p>The MOT has secured funds for the ML/TF training of the law enforcement agencies. THE POLICE DEPARTMENT AND THE LANDSRECHERCHE WILL RECEIVE TRAINING BEFORE THE END OF THE YEAR 2015.</p> <p>STATUS QUO; NO NEW UPDATE.</p> <p>The MOT has discussed the issue of the unlicensed MTCs with the PPO. One MTC is busy with the application for an operational license at the CBCS. The CBCS has discontinued the licensing process with the MTC in question. The PPO has once again been informed by the CBCS of the illegally operation MTC.</p> <p>The MOT is responsible for the reporting of unusual transactions by service providers. From this perspective the MOT approaches all MTC's to urge them to report the unusual transactions. The issue will again be discussed with the minister of Justice.</p> <p>STATUS QUO; NO NEW UPDATE. THE PPO IS BUSY REVIEWING THE CASE ON THE ILLEGAL MTC. THE UNLICENSED MTC HAS STARTED A CASE AGAINST THE CBCS WHICH THE MTC HAS LOST IN FIRST INSTANCE. NOW THE CASE IS IN REVIEW AT THE APPEALS COURT. APPEAL WILL BE HANDLED BEFORE THE END OF 2015.</p> <p>The amount of public prosecutors and financial crimes detectives has been increased by respectively 2 and 3 persons. The case of the unlicensed MTC has again been put forward to the PPO. A decision will be taken before the next plenary meetings.</p> <p>Recommendation 29 (old rec. 26) was declared 'fully met' under the seventh follow up report of June 2016.</p> <p>Furthermore, Sint Maarten has established a new National Ordinance on the FIU (AB 2019 no. 24).</p> <p><b>The PPO staff has been increased, one extra PPO specialized in ML/TF cases added, and an increase of eight (8) financial investigators (law enforcement).</b></p>



				<b>Every year the MOT trains the law enforcement in ML/TF in the recent developments.</b>
<b>28. Document production, search and seizure</b>	C			
<b>29. Supervisors</b>	C			
<b>30. Resources, integrity, and training</b>	PC	<ul style="list-style-type: none"> <li>• The MOT lacks of staff to adequately perform its functions (including the Head of MOT</li> <li>• The staff of the MOT does not have adequate and relevant training for combatting ML &amp; TF.</li> <li>• The MOT lacks of analytical tools such as Analyst Notebook to assist in the analysis of UTRs.</li> <li>• The MOT lacks of resources to protect the MOT data, premises and staff; eg. Offsite electronic data fireproof safe, fire extinguishers, etc.</li> <li>• Several of the law enforcement agencies possess a shortage of suitably qualified officers trained in ML investigations.</li> <li>• Inadequate training for ML and TF.</li> <li>• No allocation of financial resources for ML and TF.</li> <li>• Inadequate space for the Court of First Instance to properly execute its functions</li> </ul>	<ul style="list-style-type: none"> <li>•The authorities should increase the staff complement of the MOT.</li> <li>•The authorities should acquire additional tools such as Analyst Notebook to assist in the analysis of UTRs.</li> <li>•Sufficient financial resources should be reserved that in order that the staff may be adequately trained for ML and TF.</li> <li>•The MOT should obtain the relevant resources eg. Offsite electronic data fireproof safe, fire extinguishers, etc to further protect its information, premises and employees.</li> <li>•The authorities should seek to quickly employ robust recruiting programmes to fill the vacancies in the law enforcement agencies such as the KPSM.</li> <li>•The authorities should ensure that all relevant entities including the Tax Department, Landsrecherche, Customs, Coast Guard and the KPSM are adequately and regularly trained in money laundering and counter</li> </ul>	<p>The director of the MOT has described the full time equivalent of the MOT functions. This established the staff complement of the MOT. The recruitment of a strategic analyst is underway. The strategic analyst/co-ordinator of the analyst department has started working at the MOT as of July 1<sup>st</sup>, 2014.</p> <p>The ML/TF training of MOT personnel has started in January 2014. The training ends November 2014. The second part of the training starts in December 2014 for 6 months.</p> <p>The connections for offsite electronic data backup are expected to be completed in the second half of 2014. A fireproof safe and fire extinguishers are already in place at the MOT. The offsite back-up will be completed in the first half of 2015.</p> <p>The authorities have been busy recruiting personnel for the law enforcement agencies such as the KPSM.</p> <p>The MOT has developed the ML/TF training program for all stakeholders (MOT, Police, Customs, PPO, <i>Landsrecherche</i>, Tax Office and National Security Agency) which was approved and financed by the Minister of Justice (Crime Fund). The training will start in January 2015.</p> <p>STATUS QUO; NO NEW UPDATE. TRAINING PROGRAM WAS SUBMITTED IN NOVEMBER 2014 AND IS AWAITING APPROVAL.</p> <p>The Courts of Justice is using the extra facilities provided. THE AML/CTF TRAINING PROGRAM II HAS BEEN APPROVED BY THE MINISTER AND THE EXECUTION THEREOF STARTED IN AUGUST 2015. SINCE, THE CUSTOMS DEPARTMENT HAS RECEIVED TRAINING ON THE EXECUTION OF THE NATIONAL ORDINANCE BORDERCROSSING MONEY TRANSFERS. THE</p>



			<p>financing of terrorism like the RST.</p> <ul style="list-style-type: none"> <li>• Improved facilities should be provided for the Courts of Justice</li> </ul>	<p>POLICE DEPARTMENT AND THE LANDSRECHERCHE WILL RECEIVE TRAINING BEFORE THE END OF THE YEAR 2015.</p> <p>The staff of the MOT has attended the supervision training held in May 2016 in Trinidad. The ACAMS certificate training for the analysts is pending. The Customs have received a compact training from the MOT staff.</p> <p>The integrity training and other requirements are an ongoing process and structural part of the tasks of the MOT.</p> <p><b>Recruitment of personnel and training of personnel takes place annually in the Justice Ministry. The MOT trains the new recruits on the latest ML/TF developments.</b></p>
<p><b>31. National co-operation</b></p>	<p>PC</p>	<ul style="list-style-type: none"> <li>• The CIWG needs to be formally established.</li> <li>• Many of the national coordination mechanisms (such as the national AML Committee - CIWG; and Trainings to be undertaken by the PPO) are not yet in operation.</li> </ul>	<ul style="list-style-type: none"> <li>• The CIWG needs to be formally established.</li> <li>• The Authorities should ensure the implementation of the mechanism for coordination that were informed to the Team.</li> </ul>	<p>The anti-money laundering and terrorism financing committee was formally established by national decree dated June 8<sup>th</sup>, 2012. Due to a problem of dysfunctioning of the committee, the minister of Justice decided to replace the committee by a National Co-ordinator AML/CTF. This function is carried out by the (Head of the) MOT.</p> <p>The function of the national co-ordinator has been included in the amended NORUT (AB 2014 no 51) is the authority who based on rec 31 co-ordinates policy co-operation across all relevant competent authorities; this includes operational co-operation between authorities at the law enforcement, FIU level including Customs authorities and where appropriate between FIU, law enforcement and supervisors. Discussions with ALL stakeholders have already started.</p> <p>STATUS QUO; NO NEW UPDATE. THE NATIONAL CO-ORDINATOR IS IN CONSULTATION WITH THE STAKEHOLDERS ON THE UPDATE OF THE LEGISLATION.</p> <p>IN 2014 SINT MAARTEN UPDATED ITS NORUT AND CHOSE TO IMPLEMENT THE NATIONAL AML/CTF CO-ORDINATOR SINCE IT SEES CONFLICT OF INTEREST WITH A AML/CTF COMMITTEE FORMAT (IN WHICH STAKEHOLDERS HAVE REPRESENTATION). THE NATIONAL CO-ORDINATOR MEETS WITH THE RELEVANT STAKEHOLDERS DURING THE DRAFTING OF THE MERGED NORUT AND NOIS TO GET THEIR INPUT. THE NATIONAL CO-ORDINATOR HAS MET WITH THE LAW ENFORCEMENT REPRESENTATIVES TO START PREPARATIONS FOR THE NRA. INFORMATION SHARING WITH ALL STAKEHOLDERS WILL TAKE PLACE NEXT YEAR.</p>



				<p>The function of the national co-ordinator has been included in the draft national ordinance on combatting ML/TF in its Article 36 paragraph 2 under k.</p> <p>Sint Maarten decided in June 2014 to include the functions of the CIWG under the tasks of the MOT into a national coordinator, article 3 under h. In the draft National Ordinance on the MOT, the task is included in article 3 under j.</p> <p>National Ordinance establishing the MOT article 12 (the guidance committee)</p> <p><b>The committee to combat ML/TF was established by national decree of June 2012.</b></p>
32. Statistics	PC	<ul style="list-style-type: none"> <li>No statistics available relating to requests to overseas MOTs.</li> <li>No statistics available for requests for additional information by the MOT to reporting entities.</li> <li>Several reporting entities have not filed UTRs for either subjective or objective indicators and appear not to understand or know their responsibility to report.</li> </ul>	<ul style="list-style-type: none"> <li>The Authorities should ensure that comprehensive statistics are maintained in relation to the investigation, prosecution, and conviction of ML related cases</li> <li>The authorities should ensure that relevant statistics are maintained for Sint Maarten with respect to requests for additional information by the MOT.</li> <li>The MOT should host training sessions on ML and TF for the reporting entities to ensure that the financial entities report as required.</li> <li>The MOT should also maintain statistics regarding the number of requests made to foreign MOTs.</li> </ul>	<p>Statistics on requests made to and from overseas FIUs are available. Requests for information from FIUs: 35. Requests for information to FIUs: 15.</p> <p>2014: REQUESTS FOR INFORMATION RECEIVED FROM FIUs: 13 2014: RESPONSES TO FIUs: 11 2014: REQUESTS SENT TO FIUs: 9 2014: POSITIVE RESPONSES RECEIVED: 4 2014: NEGATIVE RESPONSES RECEIVED: 5 2015 (up to October 5<sup>th</sup>, 2015): REQUESTS RECEIVED FROM FIUs (INCLUDING SPONTANEOUS DISSEMINATIONS): 27 2015 (up to October 5<sup>th</sup>, 2015): REQUESTS SENT TO FIUs (INCLUDING SPONTANEOUS DISSEMINATIONS): 16</p> <p>The MOT will host training sessions on ML/TF for the reporting entities and DNFBPs. Already five sessions have been organized by the MOT, including sessions with individual companies and businesses and professions. The info sessions included the FATF information, case material, CDD, compliance regime, unusual transactions reporting, including the reporting of suspicious transactions by making use of the subjective indicator, and sanctions.</p> <p>Dates sessions: for financial institutions on July 9<sup>th</sup>, 2014, for the real estate agents on August 21<sup>st</sup>, 2014, for Jewellers on August 22<sup>nd</sup>, 2014. For notaries: October 22<sup>nd</sup>, 2014.</p> <p>INFO SESSION FOR JUDICIAL SERVICE PROVIDERS PLANNED FOR JANUARY 2016.</p> <p>STATUS QUO; NO NEW UPDATE.</p>

				<p>ONE ON ONE INFO SESSIONS WITH JEWELLERS AND REAL ESTATE AGENTS AND NOTARIES.  STATISTICS ON ML RELATED CASES: 18 CASES AND 18 CASES AND 12 CONVICTIONS UP TO 12 MARCH 2015.  See Annual reports 2010-2014. Annual report 2015 pending.  The annual report (AR) 2015 has been posted on the site of the MOT. The draft AR 2016 and 2017 are ready and being reviewed before posting.</p> <p>The training and information sessions organized by the MOT for the financial institutions and DNFBPs are ongoing (core task of the MOT – article 3).</p> <p>The MOT has the data always readily available on information exchange with foreign FIUs.</p> <p><b>The MOT maintains the statistics on information exchange with foreign FIUs for the bi-annual census of the Egmont Group of FIUs.</b></p>
<p><b>33. Legal persons–beneficial owners</b></p>	<p>NC</p>	<ul style="list-style-type: none"> <li>• There is no system in place to ensure access to the UBO information.</li> <li>• Not all competent authorities have access in timely fashion to adequate, accurate and current UBO information.</li> <li>• The requirement for bearer shares to be transformed into registered shares operates at the discretion of the shareholder and is therefore not mandatory.</li> <li>• The NDCBSC does not require the capture and retention of the ultimate beneficial ownership details of the legal person on whose behalf the bearer shares are kept or held.</li> </ul>	<ul style="list-style-type: none"> <li>• Sint Maarten should establish a system to ensure access to the UBO information of legal persons.</li> <li>• There should be mechanisms in place to guarantee that competent authorities are able to obtain and have access in a timely manner to accurate and current UBO information.</li> <li>• Article 105 3<sup>rd</sup> paragraphs reflects that bearer shares shall be transformed by the company into registered shares if this is requested by the holder of the bearer shares that this be done. This aspect of the CC must be amended to either make the transformation</li> </ul>	<p>At this point in time the legal person is not obligated by law to submit its UBO information to the Chamber of Commerce. The law (CoC) will be revised to guarantee that authorities have access to UBO information. This subject matter will be addressed in the new draft law (merged and updated NORUT-NOIS). This subject matter will be further examined by the judicial affairs department of the ministry of Justice. When registering the DNFBPs the MOT requests the businesses and professions to submit the UBO information.</p> <p>Registration of UBO information:  The MOT has a form that is accessible on its website. Entities fill this in with information about the company, its director(s) and the UBO(s). Authorities can request this information at the MOT.</p> <p>STATUS QUO; NO NEW UPDATE. THE MOT IS REGISTERING THE DNFBP WITH THEIR UBO INFORMATION. THE CHAMBER LEGISLATION WILL BE UPDATED TO REFLECT THIS RECOMMENDATION.</p> <p>THE OBLIGATION TO SUBMIT UBO INFORMATION WILL BE INCLUDED IN THE MERGED NORUT-NOIS ORDINANCE. THE UBO</p>



			<p>mandatory or mandate the registration of the UBO details in relation to the bearer shares and express mechanisms incorporate either in the Code or elsewhere to achieve this registration.</p> <ul style="list-style-type: none"> <li>Amend the NDCBSC so that the is wording requires that beneficial ownership information must also be captured for the ultimate beneficial owners of the legal person on whose behalf the bearer shares are kept or held</li> </ul>	<p>INFORMATION WILL THEN BECOME ACCESSIBLE TO LAW ENFORCEMENT.</p> <p>This subject matter will be further examined by the judicial affairs department of the ministry of Justice.</p> <p>Draft National Ordinance on Combatting ML/TF Article 7  Draft National Ordinance on Combatting ML/TF Chapter II and article 25, article 18 paragraph 2, article 17 paragraph 6, article 22, article 23, article 31, paragraph 3, article 35, article 36.  Draft National Ordinance on the MOT article 2 paragraph 5, article 5 paragraph 1, article 20, article 7 paragraph 1 and paragraph 2 (conduct investigations o.b.o. foreign entities that have a similar task as the MOT).</p> <p>Registration of UBO information:</p> <p>National Ordinance Chamber of Commerce article article 1 under ee; article 16, under f; article 17 under h; article 18 paragraph 1, under g; article 19, paragraph 1 under f; article 20, paragraph 1 under e; article 21, paragraph 1 under f; article 22, paragraph 1 under g.</p> <p>The MOT registers the UBO information of its supervised entities. The supervisors of the MOT can request any and all information of the supervised entities (National Ordinance establishing the MOT article 31).</p> <p>Draft National Ordinance to amend Book 2 of the Civil Code: prohibition to give out bearer shares (Title 5: the public limited company, section 1: general provisions - article 100, paragraph 1)</p> <p><b>Registration of UBO information:</b></p> <p><b>Article 35 of the National Ordinance combating ML/TF (AB 2019 no. 25) amends the Commercial Registers Decree to obligate the registration of the personal details of the ultimate beneficiary, which, according to Article 1(ee) is a natural person who can exercise effective control in or on behalf of the client, and client is a concept that includes legal persons in Article 1(e).</b></p> <p><b>Amended articles of the Commercial Registers Decree, to include the UBO registration obligation:</b></p>
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				<p><b>Commercial Registers Decree article 1 under ee; article 16, under f; article 17 under h; article 18 paragraph 1, under g; article 19, paragraph 1 under f; article 20, paragraph 1 under e; article 21, paragraph 1 under f; article 22, paragraph 1 under g.</b></p> <p><b>National Ordinance to amend Book 2 of the Civil Code: prohibition to give out bearer shares (Title 5: the public limited company, section 1: general provisions - article 100, paragraph 1)</b></p>
<p><b>34. Legal arrangements – beneficial owners</b></p>	<p>LC</p>	<ul style="list-style-type: none"> <li>• There is no certainty that all Competent Authorities have timely access to UBO information.</li> </ul>	<ul style="list-style-type: none"> <li>•</li> </ul>	<p>This subject matter will be further examined by the judicial affairs department of the ministry of Justice. The new draft law (merged and updated NORUT-NOIS) will address this issue.</p> <p>STATUS QUO; NO NEW UPDATE. THE MOT IS REGISTERING THE DNFBP WITH THEIR UBO INFORMATION. THE CHAMBER LEGISLATION WILL BE UPDATED TO REFLECT THIS RECOMMENDATION.</p> <p>THE OBLIGATION TO SUBMIT UBO INFORMATION WILL BE INCLUDED IN THE MERGED NORUT-NOIS ORDINANCE. THE UBO INFORMATION WILL THEN BECOME ACCESSIBLE TO LAW ENFORCEMENT.</p> <p>Draft National Ordinance on Combatting ML/TF Article 8  Draft National Ordinance on Combatting ML/TF article 2 paragraph 1 under b sub 2°, article 3 paragraph 2 under c, article 22, article 31 paragraph 3.  Draft National Ordinance on the MOT article 2 paragraph 5, article 7 paragraph 1 and paragraph 2.  National Ordinance Chamber of Commerce article article 1 under ee; article 16, under f; article 17 under h; article 18 paragraph 1, under g; article 19, paragraph 1 under f; article 20, paragraph 1 under e; article 21, paragraph 1 under f; article 22, paragraph 1 under g.</p> <p>Furthermore, the registry of the Chamber of Commerce is public.</p> <p><b>Amended articles of the Commercial Registers Decree, to include the UBO registration obligation:</b></p> <p><b>Commercial Registers Decree article 1 under ee; article 16, under f; article 17 under h; article 18 paragraph 1, under g; article 19, paragraph 1 under f; article 20, paragraph 1 under e; article 21, paragraph 1 under f; article 22, paragraph 1 under g.</b></p>

				<b>National Ordinance to amend Book 2 of the Civil Code: prohibition to give out bearer shares (Title 5: the public limited company, section 1: general provisions - article 100, paragraph 1)</b>
<b>International Cooperation</b>				
<b>35. Conventions</b>	PC	<p><i>Implementation in accordance with the Vienna Convention</i></p> <ul style="list-style-type: none"> <li>• No specific provision was identified in relation to non-treaty based requests for extradition, expedition of extradition procedures and simplification of evidentiary requirements,</li> <li>• The framework under the criminal laws provided is not indicative of Sint Maarten having the ability to extend cooperation and assistance to Transit States as contemplated by article 10 of this Convention.</li> <li>• No evidence of implementation of controlled delivery techniques by the Authorities.</li> <li>• No specific provisions have been identified from the laws provided or advised in relation to special arrangements with Commercial Carriers precautionary measures implemented to ensure commercial carriers are not used for the commission of offences</li> </ul>	<ul style="list-style-type: none"> <li>• Authorities must ensure the EDACs expressly addresses the matters of non-treaty based requests for extradition; ,expedition of extradition procedures and simplification of evidentiary requirements</li> <li>• The international cooperation framework under the criminal laws should expressly address Sint Maarten’s ability to extend cooperation and assistance to Transit States as contemplated by article 10 of the Vienna Convention.</li> <li>• The criminal laws must expressly impose obligations on Commercial Carriers to ensure these carriers are not used for the commission of article 3 offences set out in the Vienna Convention.</li> <li>• The criminal laws must expressly address mechanisms required by article 17 (illicit traffic at sea) and required by article 19 (illicit use of mails) of the Vienna Convention.</li> <li>• The Penal Code and Penal Procedures Code should be</li> </ul>	<p>The issue of the offences set out in the Vienna Convention is already partly dealt with in the Opium Legislation which currently is the <i>Opiumlandsverordening 1960</i>. This Act will have to be revised.</p> <p>The general provisions as set out in the Penal Code are applicable on all other Criminal laws, thus on the Opium Legislation through the switching provision of 2:224 (currently 96)</p> <p>The treaty of San Jose covers the combating of illicit traffic at sea and the use of mails for illicit traffic.</p> <p>The issue of the offences set out in the Vienna Convention is already partly dealt with in the Opium Legislation which currently is the <i>Opiumlandsverordening 1960</i>. This Act will have to be revised. This Act will have to be revised.</p> <p>The general provisions as set out in the Penal Code are applicable on all other Criminal laws, thus on the Opium Legislation through the switching provision of 2:224 (currently 96).</p> <p>With the introduction of the new Penal Code of SXM all offences set out in the Palermo Convention as well as the recommended offences will be criminalized.</p>

	<ul style="list-style-type: none"> <li>• No provisions have been identified in the laws provided which cover the Illicit Traffic at Sea</li> <li>• No provisions identified regarding measures to suppress the use of mails for illicit traffic.</li> </ul> <p><i>Implementation in accordance with the Palermo Convention</i></p> <ul style="list-style-type: none"> <li>• No measures were identified in the law in relation to having appropriate measures to encourage persons who have participated in organized criminal groups to cooperate with law enforcement.</li> <li>• The advised training initiatives do not appear to cover control techniques in free trade zones and free ports; modern law enforcement equipment and techniques, electronic surveillance, combating organized crime through the use of computers, telecommunications networks or other forms of modern technology and bilateral and multilateral arrangements to maximize operational and training activities of article 29 of the Palermo Convention.</li> <li>• No laws or measures identified regarding the</li> </ul>	<p>revised to address the shortfalls identified in the ratings Table below in relation to the Palermo Convention</p> <ul style="list-style-type: none"> <li>• The Penal Code should be revised to expressly criminalize the indirect or unlawful provision of funding for the commission of a terrorism offence, as well as the wilful provision of funds etc. to individual terrorists set out in article 2(a) of the Terrorist Financing Convention.</li> <li>• The Penal Procedures Code and/or Penal Code should be amended to expressly address             <ul style="list-style-type: none"> <li>• the matter of reciprocal confidentiality (as required by article 12 (Assistance to other States) of the TF Convention;</li> <li>• establishing mechanisms whereby forfeited funds are used to compensate the victims of terrorist offences or their families, and matters of custody arrangements, terms under which an offender transferred to Sint marten from a State will be returned to that State from which the offender was transferred, credit for time spent in custody of</li> </ul> </li> </ul>	<p>The introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice and is now ready to be submitted to Parliament for approval. Expected enactment of the Penal Code by the IO: December 2014.</p> <p>Next to that the proposed article 2:54 and 2:55 PC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime. In article 2:55 the financing of crime is punishable as a severe crime. Next to that article 1:120 PC SXM (currently article 48a) criminalizes the aiding and abetting of the crimes mentioned in article 2:54 and 2:55. Of course criminal attempts are punishable under 1:119 PC SXM (currently article 47)</p> <p>The matter reciprocal confidentiality is dealt with in the current CPC SXM article 555 and further (International Mutual Assistance) but will be more expressively mentioned and regulated more detailed in the new (draft) Criminal Procedure Code.</p> <p>As for establishing mechanisms whereby forfeited funds are used to compensate the victims of terrorist the proposed article 1:78 PC SXM creates a mechanism to compensate victims and is also applicable to victims of terrorist acts As far as the Criminal laws are concerned the switching provision of 2:224 (currently 96) makes the general provisions of the first book of the Penal Code applicable to all other Criminal laws.</p> <p>THE RECOMMENDED ACTIONS HAVE BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27<sup>TH</sup>, 2015.</p> <p>THE DRAFT OF THE <i>OPIUMLANDSVERORDENING 1960</i> IS STILL PENDING.</p> <p>THE DRAFT OF THE CRIMINAL PROCEDURES CODE IS ON REVIEW AT THE COUNCIL OF ADVICE.</p> <p>THE DRAFT OF THE CRIMINAL PROCEDURES CODE INCLUDES THE OFFENCES IN AFOREMENTIONED CONVENTIONS.</p>
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	<p>matter of coordinated efforts bilaterally and multilaterally to provide assistance to developing countries in their efforts to combat transnational organized crime.</p> <ul style="list-style-type: none"> <li>• Verification of whether the laws addressed –             <ol style="list-style-type: none"> <li>a) The establishment of national records of persons disqualified from acting as directors of legal persons, and</li> <li>b) The exchange of information contained in the abovementioned national records with the competent authorities of other State Parties.</li> </ol> <p>Could not be done as the relevant articles were not provided for assessment.</p> </li> <li>• Laws do not address Prevention of the misuse by organized criminal groups of Government tender processes and of subsidies and licenses granted by public authorities.</li> <li>• Laws and framework do not address             <ol style="list-style-type: none"> <li>a) The promotion of</li> </ol> </li> </ul>	<p>State to which the offender was transferred</p>	<p>THE DRAFT OF THE OPIUM NATIONAL ORDINANCE IS PENDING. UPDATE WILL START WHEN OTHER DRAFTS IN PROCEDURE ARE FINALIZED.</p> <p>Constitution of Sint Maarten states in the following articles that:</p> <p>Article 3 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.</p> <p>Article 4 1. No one shall be held in slavery or servitude. 2. No one may perform forced or compulsory labor, other than as a community service. [<i>Note: voluntary community service</i>] 3. Trafficking in human beings is prohibited.</p> <p>Article 26 With the establishment of his civil rights and obligations and when prosecuted for a criminal offense a person is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. By ordinance, the public nature of the treatment can be reduced.</p> <p>Article 27 1. Everyone has the right to personal liberty. No one shall be deprived of his liberty except according to legislation as referred to in Article 81 b, f and g, to adopt rules in case of:             <ol style="list-style-type: none"> <li>a. lawful detention after conviction by a competent court;</li> <li>b. lawful arrest or detention for refusing to execute a similar legislation of a court injunction or to follow or to secure the fulfillment of any express obligation prescribed by legislation;</li> <li>c. lawful arrest or detention to be brought before the competent court if there are reasonable grounds to suspect that he has committed a criminal offense or if it is reasonably necessary to prevent his committing an offense or fleeing after having committed a criminal offense;</li> </ol> </p>
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		<p>public awareness regarding the existence, gravity of and threat posed by transnational organized crime;</p> <p>b) Informing the Secretary General of the UN of the authority/authorities that can assist other State Parties in developing measures to prevent transnational organized crime, and</p> <p>c) Collaboration with other States (apart from the already advised joint cooperation and other collaborative efforts discussed above) including participation in international projects aimed at the prevention of transnational organized crime.</p> <p><i>Implementation in accordance with the Terrorist Financing Convention</i></p> <ul style="list-style-type: none"> <li>• Wilful provision of funds etc. to individual terrorists does not appear to be covered by the approach to terrorist financing in the Penal Code.</li> </ul>		<p>d. lawful detention of a minor for the purpose of intervening in his upbringing or in the case of his lawful detention for the purpose of bringing him before the competent authority;</p> <p>e. lawful custody of persons deprived of liberty and law that might spread a contagious disease, of unsound mind, addicted to alcohol or drugs;</p> <p>f. lawful detention of persons in order to prevent them from effecting an unauthorized entry into the country or to prolong their stay illegally;</p> <p>g. lawful arrest or detention of persons against them if a deportation or extradition.</p> <p>2. Everyone who is arrested or detained in accordance with paragraph c of this Article, shall be brought promptly before a judge and the law tried to be brought or pending to be the process in freedom within a reasonable period.</p> <p>3. Any person deprived of liberty shall have the right:</p> <p>a. to ask the court to enable it to decide without delay on the lawfulness of his detention and his release ordered if the detention is not lawful;</p> <p>b. promptly in a language which he understands, to be informed of the nature and cause of his detention, his right to refrain from answering and its power to make himself a lawyer.</p> <p>4. Anyone who has been the victim of a deprivation of liberty contrary to the provisions of this article shall have an enforceable right to compensation.</p> <p>5. A person who has been lawfully deprived of liberty may be restricted in the exercise of fundamental rights insofar as it is not compatible with the deprivation of liberty.</p> <p>Article 28</p> <p>1. No offense is punishable than by virtue of a preceding statutory penal provision.</p> <p>2. Everyone charged with an offense is presumed innocent until proved guilty according to national ordinance.</p> <p>3. No person shall be prosecuted or punished a second time for an offense in respect of which he is irrevocably adjudicated by the court.</p> <p>4. Anyone charged with an offense has the following rights:</p>
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	<ul style="list-style-type: none"> <li>• No specific penalty is indicated for the offence of TF, appropriateness of this penalty in relation to this Article therefore cannot be assessed.</li> <li>• TF is not criminalized in accordance with the FT Convention. There is some doubt as to whether freezing mechanism could be invoked in response to a requesting foreign State's freezing requirement arising in relation to a terrorist financing offence.</li> <li>• No law or measure identified regarding the use of forfeited funds to compensate the victims of terrorist offences or their families.</li> <li>• Not all terrorism offences referenced in Annex 1 to the TF Convention are criminalized as required.</li> <li>• Reciprocal confidentiality (as required by article 12 (Assistance to other States) is not addressed in the Penal Code or Penal Procedures Code.</li> <li>• No provisions addressing the matters of custody arrangements, terms under which an offender transferred to Sint marten from a State will be returned to that State from which the offender was</li> </ul>		<p>a. promptly, in a language which he understands and in detail, to be informed of the nature and cause of the charges against him, of his right to refrain from answering and to seek assistance by a lawyer;</p> <p>b. to have the free assistance of an interpreter if he does not understand or speak the language used in court;</p> <p>c. To have adequate time and facilities to prepare his defense;</p> <p>d. to defend himself;</p> <p>e. to question witnesses or to have examined the attendance and examination of witnesses on his behalf, to pass the same conditions as is the case with the prosecution witnesses.</p> <p>Article 29</p> <p>1. Everyone may be legally represented in civil, criminal and administrative proceedings.</p> <p>2. In National ordinance will be laid down the rules on the granting of legal aid to persons of limited means.</p> <p>Article 30</p> <p>1. All persons who are deprived of their liberty will be treated with humanity and with respect for the inherent dignity of the human person.</p> <p>2. Suspects are exceptional circumstances aside, segregated from convicted persons and are entitled to a separate treatment appropriate to their status as unconvicted persons.</p> <p>3. Juvenile suspects are held separately from adults and arraigned as soon as possible before the court.</p> <p>4. The prison system provides for a treatment of prisoners with the essential aim of reformation and social rehabilitation. Juvenile detainees are held separately from adults and are treated in accordance with their age and legal status.</p> <p>This recommendation has been dropped.</p> <p>In operation for Sint Maarten:</p> <p>Vienna 1988. See: <a href="https://treatydatabase.overheid.nl/en/Verdrag/Details/003363">https://treatydatabase.overheid.nl/en/Verdrag/Details/003363</a></p> <p>Palermo 2000. See: <a href="https://treatydatabase.overheid.nl/en/Verdrag/Details/009348">https://treatydatabase.overheid.nl/en/Verdrag/Details/009348</a></p>
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	<p>transferred, credit for time spent in custody of State to which the offender was transferred, were identified in the Penal Code or Penal Procedures Code.</p> <ul style="list-style-type: none"> <li>• No laws were identified on the matter of the guarantee of fair treatment of persons in custody.</li> <li>• There is a strong possibility therefore that the TCSP owners, directors and some managers not falling within the definition of staff, may be exposed to criminal liability for breaches of the NOSTSP in respect of reports made by the TCSP pursuant to the NORUT</li> </ul>		<p>Terrorist Financing Convention. See: <a href="https://treatydatabase.overheid.nl/en/Verdrag/Details/009247">https://treatydatabase.overheid.nl/en/Verdrag/Details/009247</a></p> <p>The necessary implementing legislation has already been incorporated into existing legislation (Criminal Code) and regulations.</p> <p>Sint Maarten is not a party to:</p> <p>Europe convention on cyber crime. See: <a href="https://treatydatabase.overheid.nl/en/Verdrag/Details/009852">https://treatydatabase.overheid.nl/en/Verdrag/Details/009852</a></p> <p>Inter-American Convention against Terrorism. See: <a href="http://www.oas.org/juridico/english/sigs/a-66.html">http://www.oas.org/juridico/english/sigs/a-66.html</a></p> <p>Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on Financing of Terrorism, 2005. See: <a href="https://treatydatabase.overheid.nl/en/Verdrag/Details/011299">https://treatydatabase.overheid.nl/en/Verdrag/Details/011299</a>.</p> <p>The UN Convention against Corruption 2003 has not yet entered into force for Sint Maarten, although the Netherlands Antilles indicated at the time that they wanted co-notification. See <a href="https://treatydatabase.overheid.nl/en/Verdrag/Details/010077">https://treatydatabase.overheid.nl/en/Verdrag/Details/010077</a>. A missing part of the required legislation is added under article 38 of the draft National Ordinance combatting ML/TF.</p> <p>The Vienna Convention can form the basis for extradition with countries that are a party to that convention, but with which Sint Maarten does not have a signed treaty. Furthermore, extradition can take place without a signed treaty, only the procedure is lengthier.</p> <p>The Extradition Decree of Curaçao, Sint Maarten and Aruba is a Kingdom Decree and the amendment thereof is not in the hands of Sint Maarten, but is carried out by the parliaments of the Netherlands. The same point that is raised here for Sint Maarten also counts for Curaçao and Aruba.</p> <p>The international mutual legal assistance is applicable to all foreign states, it therefore also includes transit states.</p> <p>The Criminal Code establishes the obligation for commercial carriers natural persons and legal persons and is therefore automatically applicable to commercial carriers; a commercial carriers is prosecutable and punishable according to the Criminal Code and the Criminal Procedures Code for drug-</p>
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				<p>related offences. See also article 11 paragraph 4 of the National Ordinance on psycho tropic substance drugs.</p> <p>The same as immediately above is applicable in the case of illicit trafficking by sea carried out by legal persons that are shipping companies.</p> <p>The shortfalls concerning human smuggling/-trafficking in relation to the Palermo Convention were corrected in article 2:154 of the Criminal Code.</p> <p>Also in the draft National Ordinance to amend the Criminal Code, article 1 under Q a new Title XXXI ‘Financing of Terrorism’ is introduced to expressly criminalize the indirect or unlawful provision of funding for the commission of a terrorism offence, as well as the willful provision of funds etc. to individual terrorists set out in article 2(a) of the Terrorist Financing Convention.</p> <p>Draft Criminal Procedures Code article 45 (reciprocal confidentiality). A victim of a crime must seek compensation in a civil lawsuit.</p> <p><b>- Though the EDAC does not (explicitly) regulate the non-treaty based requests for extradition, <u>non-treaty based extradition is also legally allowed in Sint Maarten.</u><sup>14</sup> Sint Maarten, as part of the Kingdom of the Netherlands, is not a country which requires detailed (national) legislation in order to use the Vienna Convention as a legal basis.<sup>15</sup> It is constitutionally regulated that provisions of treaties and decisions of organizations under international law, which according to their content can bind everyone, have binding force after they have been published. As Sint Maarten is party to the Vienna Convention 1988, in case of the absence of an extradition treaty between Sint Maarten and another country, the Vienna Convention (or other treaties) may serve as grounds for the extradition in respect of the offences mentioned in this Convention. (Vide Article 6, Paragraph 3, jo. Article 3, Paragraph 1, of the Vienna Convention 1988).</b></p> <p><b><u>This was also (already) judicially established by the Supreme Court of the Netherlands (i.a. in 2010: ECLI:NL:HR:2010:BL9130), the highest court for both the European and the Caribbean part of the Dutch Kingdom countries in the fields of criminal, civil, and tax law.</u></b></p> <p><b>- Sint Maarten is not a country which requires detailed legislation in order to use Article 10 of the Vienna Convention 1988 as the legal basis to extend cooperation and assistance to Transit States.<sup>16</sup></b></p>
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<sup>14</sup> See for a more elaborate explanation Annex I (Case Law pertaining to extradition in the absent of a bilateral treaty).

<sup>15</sup> See also Annex II (Self-execution of Treaty provisions within the Kingdom of the Netherlands)

<sup>16</sup> Idem.



				<p>- The offences set forth in i.a. article 3 of the Vienna convention has been implemented in the Penal Code (and the Opiates Ordinance. These laws are applicable to both legal persons and natural persons (vide Article 1:127, par. 1, of the Penal Code), thus also to airline companies, their personnel, passengers and suppliers. The investigative officers are given specific authorities and privileges to prevent that airlines and their aircrafts are being used for the offences mentioned in article 3 of the Vienna Convention. (See i.a. Articles 9a to 10c of the Opium Ordinance and the international legal assistance provisions of the Penal Procedure Code.)</p> <p>Also all commercial carriers, in order to be issued with an AOC (air operator’s certificate), should screen and train their personnel and also have security protocols and guidelines in place to i.a. ensure that they are not used for illegal activities.</p> <p>- It is pointed out that revising the Penal Procedure Code to i.a. <u>implement Article 26 of the Palermo Convention is actually only codifying something that is already (legally) applied by the Public Prosecution Service on the basis of case law, therefore is already legal practice in Sint Maarten (just like Aruba and Curacao).</u> Already since the nineties prosecutors (may) make use of so called ‘crown witnesses’ or take other appropriate measures to encourage persons who have participated in organized criminal groups to become collaborators of justice. Both the Supreme Court of the Netherlands (the highest court for the Kingdom on i.a. Criminal Law cases) and the European Court on Human Rights have legally sanctioned the use of Crown Witnesses.<sup>17</sup></p> <p>With regard to the establishment of national records of persons disqualified from acting as directors of legal persons it is pointed out that Article 25 of Book Two of the Civil Code (which came in effect in November 2019) regulates the disqualification of directors of legal persons.</p> <p>- As mentioned above ML/TF is regulated in the Penal Code (as amended by the <u>National Ordinance amending the Penal Code (AB 2019 no. 41).</u></p> <p>- The <u>Opium Ordinance</u> is applicable to transport by land, air or sea: vide Articles 10b and 11d, of the Opium Ordinance.<sup>18</sup></p>
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<sup>17</sup> See Annex III.

<sup>18</sup> See Annex V, p. 2.



				<p>Combatting illicit trafficking by sea is also regulated in the Kingdom Law Coast Guard.</p> <p>The Coast Guard for i.a. Aruba, Curacao and Sint Maarten is established by the Dutch Kingdom countries. The Coast Guard was established on the basis of the <u>Kingdom Act Coast Guard</u> and has various tasks, including an criminal investigative task pertaining to i.a. trafficking of narcotics. (See Articles 2 and 3.)</p> <p>The Opium Ordinance is applicable to all kind of packed goods. See also Article 127, 128 and 140 of the (current and draft new) Penal Procedure Code.</p> <p>Customs officers are enforcing the laws on illicit trafficking also via the <u>National Ordinance on Import, Export and Transit</u> (See i.a. Articles 114 and 173), which deals with the inspection of mail (letter post and parcel post).</p> <p>All law enforcement officers are civil servants. For civil servants the <u>National Ordinance substantive civil servants law (LMA)</u> is applicable. Confidentiality is regulated in Articles 61 and 62 of the LMA. For sanctions, see Articles 86 and 87, par. 1, of the LMA (disciplinary measures) and also Article 116 of the Penal Code (PC).<sup>19</sup></p> <p>Also, in the (Government) Employee Handbook the following is written under section D (Integrity), more specific D-2:</p> <p><i>“Confidentiality Employees are bound to secrecy in their position. This confidentiality exists so that Government can control the flow of information to the outside non-government world and can hold employees legally accountable for disseminating (potentially damaging) information without prior permission from their managers. It is also forbidden to abuse information one comes across in the execution of ones job.”</i></p> <p>- With respect to the control techniques in free trade zones one should keep in mind that Sint Maarten, its whole territory, is a free trade zone. The free trade status sets Sint Maarten apart from the other three Dutch Kingdom countries (Aruba, Curacao and the Netherlands) and from several other, if not all CFATF Member States.</p> <p>So, all “modern law enforcement equipment and techniques, electronic surveillance, combating organized crime through the use of</p>
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<sup>19</sup> See annex V.



				<p><b>computers, telecommunications networks or other forms of modern technology and bilateral and multilateral arrangements to maximize operational and training activities of article 29 of the Palermo Convention” in Sint Maarten are being used in the context of Sint Maarten being a free trade zone.</b></p> <p><b>Ad Enforcement equipment, techniques and computers:</b> Sint Maarten law enforcement agencies, like the Police, Customs, Coast Guard, Royal Dutch Marechaussee, work effectively and efficiently together in the multi-disciplinary “Alpha Team”, which is led by the Sint Maarten Police Force, to combat i.a. transnational organized crime.</p> <p>Sint Maarten also has an Asset Recovery Team which seizes illicit generated assets (e.g. money, real estate, cars and boats) is an example of such a new approach while tackling organized crime. This team is under the supervision of the Public Prosecutor's Office comprises of officers of the Sint Maarten Police Force, Customs, the Coast Guard and the Tax Office. It is using an integral work approach, is result orientated and creative.</p> <p>Aforementioned law enforcement agencies have their own CID (Criminal Information Database) and have signed an agreement to centralize data on serious crimes (predicate offences) and also make use of ICT systems for data exchange with other law enforcement agencies like ACTPOL for the Police, BMS (Border Management System) and FMS (Foreigner Management System), for border control. The FIU uses the Unusual Transactions Registry. The Public Prosecutor Service uses PRIEM (Prosecutor's (Office) Registration and Information Management System). The Justice Organizations in the Caribbean parts of the Kingdom share one ICT organization (Foundation ICT Management Law Enforcement).</p> <p><b>Ad Electronic Surveillance:</b> Camera Surveillance on the Island has been implemented since 2016 and is monitored centrally by a special Camera Monitoring Unit of the Police Force of Sint Maarten. The Coast Guard uses surveillance (and interceptor) boats, helicopters and planes and also mobile radars for continues coastal surveillance.</p> <p><b>Ad Telecommunications networks or other forms of modern technology:</b> Sint Maarten has two telecom providers which are both used by the</p>
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				<p>law enforcement agencies for their mobile radio networks and internet/wifi. Satellite communication is also being used.</p> <p>Ad Bilateral and multilateral arrangements  Sint Maarten has i.a. the <u>Franco-Dutch treaty</u><sup>20</sup> and a <u>Police Cooperation Treaty with France</u><sup>21</sup>. On the basis of the latter treaty law enforcement officers from both the French and Dutch side of the island are able to conduct patrols on either sides of the island and foster better exchange of information and cooperation. Officers of the law are also able to do controls jointly on both sides.</p> <p>There is also a MoU with the United States of America on law enforcement in the region. Sint Maarten, as part of the Kingdom, has signed the <u>Agreement establishing the Caribbean Customs Organization and on Mutual Administrative Assistance in Customs Matters</u>.</p> <p>Also, Interpol has an office in Sint Maarten.</p> <p>The exchange of information contained in national records with the competent authorities of other State Parties  On the basis of Articles 63 and 64 of the National Ordinance on personal data protection it is in general possible for a legal (administrative or civil law) person to exchange information. In Article 20 of the National Ordinance on Police Data it is regulated how and when police data may be exchanged.</p> <p>Informal and swift mutual assistance on an operational level can in general be provided pursuant to article 555 of the (current) Penal Procedure Code PPC).<sup>22</sup></p>
<p><b>36. MLA</b></p>	<p>PC</p>	<p>The extent of Mutual Legal Assistance that may be extended by Sint Maarten is limited by the following deficiencies identified:</p> <ul style="list-style-type: none"> <li>• The indirect or unlawful provision of funding for the commission of a terrorism offence is not criminalized.</li> </ul>	<p>Amend the Penal Code to address the deficiencies set out in the ratings table.</p>	<p>Next to that the proposed article 2:54 and 2:55 PC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime. In article 2:55 the financing of crime is punishable as a severe crime. Next to that article 1:120 PC SXM (currently article 48a) criminalizes the aiding and abetting of the crimes mentioned in article 2:54 and 2:55. Of course criminal attempts are punishable under 1:119 PC SXM (article 47). The matter of Mutual Assistance is dealt with in the current CPC SXM (article 555 and further (International Mutual Assistance) but will be more</p>

<sup>20</sup> Treaty between the Kingdom of the Netherlands and the French Republic on the control of persons entering Saint Martin through the airports.

<sup>21</sup> Treaty between the Government of the Kingdom of the Netherlands and the Government of the French Republic on island-wide police cooperation in Sint Maarten.

<sup>22</sup> See Annex V.



	<ul style="list-style-type: none"> <li>• Terrorist financing is not criminalized in accordance with the FT Convention.</li> <li>• There is a doubt as to the extent of assistance that could be provided in relation to matters which have not been confirmed as predicate offences (i.e. Illicit Arms Trafficking, Smuggling, Insider Trading market manipulation).</li> </ul>		<p>expressively mentioned and regulated more detailed in the new (draft) Criminal Procedure Code.</p> <p>THE RECOMMENDED ACTION ON THE EXTENT OF THE MLA HAS BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27<sup>TH</sup>, 2015.</p> <p>THE DRAFT OF THE CRIMINAL PROCEDURES CODE IS ON REVIEW AT THE COUNCIL OF ADVICE. THE PENAL CODE ENTERED INTO FORCE ON JUNE 1, 2015. TF IS NOW CRIMINALIZED.</p> <p>This recommendation has been incorporated in the Criminal procedures Code: pending.</p> <p>Draft Criminal Procedures Code article 554a (separate claim withdrawal from circulation), article 556 paragraph 3 (handling of an MLAT request by the PPO instead of the Courts), article 563 (the primacy of the treaties is underlined by the cancellation of the leave procedure at the Court when making available the results of the desired investigation), article 565a (the other changes mainly concern modernization of the law based on the constantly changing Dutch legislation, such as the introduction of special investigation methods), article 593a and beyond (the possibility of setting up joint joint investigation teams is regulated, which is particularly important for Sint Maarten because of the close relationship with the French part of the island), articles 596a and 596b (the transfer of enforcement of criminal judgments scheme is also being adjusted: arrangements concerning execution in the country of the verdict given in absentia, and on the execution of a verdict rendered in absentia in a foreign state).</p> <p>Draft Criminal Procedures Code Title XIII article 5:55 up to and including article 5:65e, on mutual legal assistance in criminal cases.</p> <p>All universal offenses (a.o. illicit Arms Trafficking, Smuggling, Insider Trading market manipulation) that are punishable in other countries are also punishable in Sint Maarten; see draft Criminal Procedures Code Title XIII article 2:55 up to and including article 2:65e.</p> <p><b>Reference is made to what is mentioned above as undertaken action under R.1, on how TF is now regulated in the Penal Code as amended by the National Ordinance Amending the Penal Code (NOAPC). Informal and swift mutual assistance on an operational level can in</b></p>
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				<b>general be provided pursuant to article 555 of the (current) Penal Procedure Code PPC).</b>
<b>37. Dual criminality</b>	LC	It is not clear whether the assistance provided by Sint Maarten occurred regardless of the existence of dual criminality.		<p>THE DRAFT CRIMINAL PROCEDURES CODE HAS BEEN REVIEWED BY THE COUNCIL FOR ADVICE AND THE MINISTER OF JUSTICE IS MAKING THE ADAPTATION IN CONFORMITY WITH THE ADVICES RECEIVED. HEREAFTER IT WILL BE SUBMITTED AGAIN TO THE COUNCIL OF MINISTERS AND THEREAFTER TO PARLIAMENT.</p> <p>This recommendation has been dropped. The contents however has been incorporated in the Criminal Procedures Code; pending.</p> <p>Extradition Decree Aruba, Curaçao and Sint Maarten article 1.</p> <p>In practice Sint Maarten extends MLA to countries with which it does not have a signed treaty. That covers dual criminality.</p>
<b>38. MLA on confiscation and freezing</b>	PC	The deficiencies in R36 impact Sint Maarten's ability to extend mutual legal assistance	Amend the Penal Code to address the deficiencies set out in the ratings table	<p>Already dealt with but more specific legislation is under construction as mentioned under R36.</p> <p>THE RECOMMENDED ACTION ON THE EXTENT OF THE MLA HAS BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27<sup>TH</sup>, 2015.</p> <p>THE DRAFT OF THE CRIMINAL PROCEDURES CODE IS ON REVIEW AT THE COUNCIL OF ADVICE.</p> <p>THE PENAL CODE ENTERED INTO FORCE ON JUNE 1, 2015.</p> <p>THE DRAFT CRIMINAL PROCEDURES CODE HAS BEEN REVIEWED BY THE COUNCIL FOR ADVICE AND THE MINISTER OF JUSTICE IS MAKING THE ADAPTATION IN CONFORMITY WITH THE ADVICES RECEIVED.</p> <p>This recommendation has been incorporated in the Criminal procedures Code: pending.</p> <p><u>Draft Criminal Procedures Code (additions)</u></p> <p>Broadening of the possibility of confiscation under article 119a;</p> <p>Broadening of the confiscation regulation under article 120 and further;</p> <p>The possibility to freeze the proceeds until the authorized persons have arrived under article 121;</p> <p>The possibility to conduct a search without the physical presence of an examining magistrate (with the need for authorization when the search is at a dwelling or in another privacy-sensitive area) under article 122;</p>



				<p>The consideration to claim documents and search offices or dwellings of persons with a right to legal privilege and journalists under article 125 paragraph 3;</p> <p>The conducting of searches by the examining magistrate under paragraph 130;</p> <p>Broadening of the complaint regulation in connection with the special investigative powers and the digital era under article 150;</p> <p>Adjustment of the search authorization in automated works under article 167</p> <p>Criminal Procedures Code article 555 up to and including article 565e (international mutual legal assistance) and article 564, article 564a (confiscation and seizure stipulations), in combination with Title IX article 119 up to and including article 154a (stipulations on what procedures must be followed when seizing and confiscating assets).</p> <p><b>Reference is made to what is mentioned above as undertaken action under R.1, on how TF is now regulated in the PC, as amended by the NOAPC.</b></p> <p><b>Informal and swift mutual assistance on an operational level can in general be provided pursuant to article 555 of the (current) Penal Procedure Code PPC).</b></p>
39. Extradition	PC	The deficiencies in R36 impact Sint Maarten's ability to extend mutual legal assistance through extradition.	Implement the recommended actions outlined in relation to SRII.	<p>Already dealt with but more specific legislation is under construction, as far as the CPC SXM is concerned, and in legislative process as far as CC SXM is concerned.</p> <p>THE RECOMMENDED ACTION ON THE EXTENT OF THE MLA HAS BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27<sup>TH</sup>, 2015.</p> <p>THE DRAFT OF THE CRIMINAL PROCEDURES CODE IS ON REVIEW AT THE COUNCIL OF ADVICE.</p> <p>THE DRAFT CRIMINAL PROCEDURES CODE HAS BEEN REVIEWED BY THE COUNCIL FOR ADVICE AND THE MINISTER OF JUSTICE IS MAKING THE ADAPTATION IN CONFORMITY WITH THE ADVICES RECEIVED. HEREAFTER IT WILL BE SUBMITTED AGAIN TO THE COUNCIL OF MINISTERS AND THEREAFTER TO PARLIAMENT.</p>

				<p>This recommendation has been incorporated in the Criminal procedures Code: pending.</p> <p><u>Extradition decree Aruba, Curaçao and Sint Maarten</u> article 1.</p> <p><u>Draft Criminal Procedures</u> Code article 43 introduces the criminal summary proceedings (to speed up the extradition procedure)</p> <p>Draft Criminal Procedures Code Title XIII on MLA through extradition.</p> <p>Furthermore, the Extradition Decree of Curaçao, Sint Maarten and Aruba is a Kingdom Decree and the amendment thereof is not in the hands of Sint Maarten, but is carried out by the parliaments of the Netherlands. The same point that is raised here for Sint Maarten also counts for Curaçao and Aruba.</p> <p><b>Reference is made to what is mentioned above under R.35 – i.e. non-treaty based extradition is legally allowed within the Kingdom of the Netherlands, therefore also in Sint Maarten - and under R. 36.</b></p>
<p><b>40. Other forms of co-operation</b></p>	<p>PC</p>	<ul style="list-style-type: none"> <li>• The Extract General Regulation Import, Export and Transit of 1908 NG 1949 No. 62 (In relation to Customs) and all domestic legislation with respect to the law enforcement entities should provide for international cooperation with their counterparts</li> <li>• No provisions have been identified under NOSBBI, RFETCSM, NOSIIA or the NOSTCSP which reflect that the Central Bank can undertake investigations on behalf of their foreign counterparts.</li> <li>• Statistics have not been provided with respect to spontaneous referrals of information as well as to information supplies on</li> </ul>	<ul style="list-style-type: none"> <li>• Authorities should consider revising the respective Ordinances (NOSBBI, RFETCSM, NOSIIA, NOSTCSP to expressly allow for the CBCS to undertake investigations on behalf of their foreign counterparts. Consequential amendments to the Charter governing the powers of the CBCS may also be necessary to allow for the amendment of the Ordinances as recommended.</li> <li>• The authorities should maintain statistics on entities' spontaneous referrals of information as well as information supplied as a result of a request. This system can be used at a policy and operational level to adequately assess the</li> </ul>	<p>Sint Maarten can hereby inform that its domestic laws with the exception of the RFETCSM or the CBCS charter do not allow for the CBCS to undertake investigations on behalf of their foreign counterparts. The draft Harmonization law (supervision of financial institutions) provides for foreign supervisors to operate under CBCS supervision. The Supervision law on MTC's also provides for this.</p> <p>THE TWO DRAFTS OF THE CBCS SUPERVISION LEGISLATION OF THE FINANCIAL INSTITUTIONS (1. SUPERVISION OF THE MTC AND 2. THE HARMONIZATION OF THE SUPERVISION DO INCORPORATE AMENDMENT TO ALLOW THE CBCS TO CARRY OUT INVESTIGATIONS ON BEHALF OF THEIR FOREIGN COUNTERPARTS. THE DRAFTS ARE BEING FINALIZED FOR SUBMISSION TO THE MINISTER OF JUSTICE.</p> <p>BOTH ABOVEMENTIONED DRAFT SUPERVISION ORDINANCES HAVE BEEN SENT TO THE LEGAL DEPARTMENT FOR PROCESSING AND SUBMITTING FOR DECISIONMAKING BY THE COUNCIL OF MINISTERS.</p> <p>Update: The draft Harmonization law has been submitted by the Council of Ministers to the Advisory Council on June 8, 2016. The draft National Ordinance Money Remitter Companies has been approved by the Council</p>



		<p>request in order that there can be an adequate assessment of the implementation of this criteria</p>	<p>country's international cooperation efforts for AML/CFT.</p> <ul style="list-style-type: none"> <li>• Sint Maarten's domestic legislation for all law enforcement entities should specifically provide for international cooperation with their foreign counterparts.</li> </ul>	<p>of Ministers on June 2, 2016, and will soon be submitted to the Advisory Board.</p> <p>Articles 183, 184 and 185 of the CPC ensure international cooperation between law enforcement entities and their counterparts. The international cooperation is regulated in the articles 521 and 522 of the CPC. All law enforcement entities mean Customs, Police, Coastguard and <i>Landsrecherche</i>. Also the fraud unit of the Tax Office and all others who have been authorized to investigate offences. The NORUT already in its article seven has this arrangement. The other domestic laws do not have this provision for the CBCS.</p> <p>THE DRAFT OF THE CRIMINAL PROCEDURES CODE IS ON REVIEW AT THE COUNCIL OF ADVICE. THE DRAFT CRIMINAL PROCEDURES CODE HAS BEEN REVIEWED BY THE COUNCIL FOR ADVICE AND THE MINISTER OF JUSTICE IS MAKING THE ADAPTATION IN CONFORMITY WITH THE ADVICES RECEIVED. HEREAFTER IT WILL BE SUBMITTED AGAIN TO THE COUNCIL OF MINISTERS AND THEREAFTER TO PARLIAMENT.</p> <p>This recommendation has been incorporated in the Criminal procedures Code: pending.</p> <p><u>Draft Criminal Procedures Code</u> introduces in its Book 7 a new Title VIII: International Legal Assistance in Criminal Cases. Article 555 (the introduction of the term 'Country' (within the Kingdom), article 555 paragraph 1 (legal assistance can be provided in the context of the investigation, prosecution, trial of criminal offenses or the execution of sentences abroad), article 556 and article 557 (legal assistance requests to foreign states, article 558 (the central role of the Attorney General, article 559 (the grounds for refusal), article 560 (the execution of a legal assistance request), article 562 and article 563 (rules concerning the execution of the legal assistance request), article 564 (transfer of the results of the legal assistance request), article 565a up to and including 565e (these articles concern the procedure for the international cooperation in criminal cases).</p> <p><u>Draft National Ordinance on the MOT</u> article 3 paragraph 2 under c (the exchange of information with foreign entities in conformity with the regulation under the draft National Ordinance combatting ML/TF, the draft National Ordinance cross-border money transfers and the Sanctions National Ordinance;</p>
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				<p>Article 3 paragraph 2 under k (the national coordination to implement the FATF recommendations);</p> <p>Article 5 paragraph 8 (foreign supervisor to conduct audits in Sint Maarten at providers of financial services, under the supervision of the MOT);</p> <p>Article 6 paragraph 6 (information on the manner in which the MOT reaches a suspicion of ML/TF will not be proof in a criminal case (proof as stipulated in the Title I of the draft Criminal Procedures Code));</p> <p>Article 7 paragraph 1 and paragraph 2 (the submitting of information from the registry of unusual (suspicious) transactions and the conditions on how this must be executed and the need of an MOU).</p> <p>The National Ordinance updating and Harmonizing the supervision laws of the Central Bank of Curaçao and Sint Maarten (article 41 for international cooperation);</p> <p>National Ordinance supervision money remittance companies. (article 19 for international cooperation).</p> <p><u>Draft Criminal Procedures Code</u> introduces in its Book 7 a new Title VIII: International Legal Assistance in Criminal Cases. Article 555 (the introduction of the term ‘Country’ (within the Kingdom), article 555 paragraph 1 (legal assistance can be provided in the context of the investigation, prosecution, trial of criminal offenses or the execution of sentences abroad), article 556 and article 557 (legal assistance requests to foreign states, article 558 (the central role of the Attorney General, article 559 (the grounds for refusal), article 560 (the execution of a legal assistance request), article 562 and article 563 (rules concerning the execution of the legal assistance request), article 564 (transfer of the results of the legal assistance request), article 565a up to and including 565e (these articles concern the procedure for the international cooperation in criminal cases).</p> <p>National Ordinance on the MOT article 5 paragraph 8 (foreign supervisor to conduct audits in Sint Maarten at providers of financial services, under the supervision of the MOT).</p> <p><b>The Harmonization law) provides for foreign supervisors to operate under CBCS supervision. The Supervision law on MTC’s also provides for this (article 20).</b></p> <p><b>Based on article 7 of the National Ordinance FIU (AB 2019 no. 24), the FIU is authorized to exchange information with international organizations that have the same tasks as the FIU.</b></p>
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				<b>Informal and swift mutual assistance on an operational level of law enforcement can be provided pursuant to article 555 of the (current) Penal Procedure Code PPC).</b>
<b>Nine Special Recommendations</b>				
<b>SR.I Implement UN instruments</b>	PC	Refer to the ratings Table at Sections 2.2 and 2.4 of this Report.		<p>This special recommendation has been dropped. The contents however has been incorporated in the Penal Code.</p> <p>Draft Criminal Procedures Code article 554a (separate claim withdrawal from circulation), article 556 paragraph 3 (handling of an MLAT request by the PPO instead of the Courts), article 563 (the primacy of the treaties is underlined by the cancellation of the leave procedure at the Court when making available the results of the desired investigation), article 565a (the other changes mainly concern modernization of the law based on the constantly changing Dutch legislation, such as the introduction of special investigation methods), article 593a and beyond (the possibility of setting up joint joint investigation teams is regulated, which is particularly important for Sint Maarten because of the close relationship with the French part of the island), articles 596a and 596b (the transfer of enforcement of criminal judgments scheme is also being adjusted: arrangements concerning execution in the country of the verdict given in absentia, and on the execution of a verdict rendered in absentia in a foreign state).</p> <p>Draft Criminal Procedures Code article 554a (separate claim withdrawal from circulation), article 556 paragraph 3 (handling of an MLAT request by the PPO instead of the Courts), article 563 (the primacy of the treaties is underlined by the cancellation of the leave procedure at the Court when making available the results of the desired investigation), article 565a (the other changes mainly concern modernization of the law based on the constantly changing Dutch legislation, such as the introduction of special investigation methods), article 593a and beyond (the possibility of setting up joint joint investigation teams is regulated, which is particularly important for Sint Maarten because of the close relationship with the French part of the island), articles 596a and 596b (the transfer of enforcement of criminal judgments scheme is also being adjusted: arrangements concerning execution in the country of the verdict given in absentia, and on the execution of a verdict rendered in absentia in a foreign state).</p>

				<p><b>Reference is made to what is mentioned above as undertaken action under R.1, on how TF is now regulated in the PC, as amended by the NOAPC.</b></p>
<p><b>SR.II Criminalize terrorist financing</b></p>	<p>NC</p>	<ul style="list-style-type: none"> <li>• No specific penalty is reflected in the Penal Code for the offence of TF.</li> <li>• The indirect or unlawful provision of funding for the commission of a terrorism offence is not criminalized.</li> <li>• The wilful provision of funds etc. to individual terrorists is not criminalized.</li> <li>• TF is not independently criminalized and therefore there is no comprehensive treatment of terrorist financing in the Penal Code as required by the TF Convention.</li> <li>• The Penal Code does not specify a penalty for the legal person which participates in an organization aimed at committing terrorist offences.</li> <li>• Not all terrorism offences referenced in Annex 1 to the TF Convention are criminalized as required.</li> </ul>	<ul style="list-style-type: none"> <li>• Article 48a of the Penal Code should be revised to expressly criminalise the indirect or unlawful provision of funding for the commission of a terrorism offence as set out in article 2(a) of the Terrorist Financing Convention.</li> <li>• Article 48a of the Penal Code should be revised to expressly criminalize the wilful provision of funds etc. to individual terrorists.</li> <li>• Penal Code should be revised to independently criminalize Terrorism Financing should be effected without delay.</li> <li>• Penal Code should be amended to incorporate specific penalties for the offence of TF.</li> <li>• Article 146a of the Penal Code (which extends to participating in a terrorist organization) should be revised to specify a penalty for the legal person who participates in such an organization.</li> </ul>	<p>Next to that the proposed article 2:54 and 2:55 PC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime. In article 2:55 the financing of crime is punishable as a severe crime. Next to that article 1:120 PC SXM (currently article 48a) criminalizes the aiding and abetting of the crimes mentioned in article 2:54 and 2:55. Of course criminal attempts are punishable under 1:119 PC SXM (currently article 47).</p> <p>As far as legal persons are concerned the proposed article 1:127 (currently article 53) states that legal persons can commit a criminal acts mentioned in the PC SXM. Next to that is should be pointed out that paragraph 7 of the proposed article 1:54 PC (currently creates a possibility to punish legal persons more harshly. Next to that the paragraph 2 and 3 of the mentioned proposed article 1:127 PC SXM (article 53) makes de facto leaders of the legal person punishable as well</p> <p>With the adaption of the new PC SXM all offence in the mentioned Conventions will be criminalized.</p> <p><b>THE RECOMMENDED ACTIONS ON THE CRIMINALIZATION OF TERRORISM FINANCING HAVE BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27<sup>TH</sup>, 2015.</b></p> <p><b>THE PENAL CODE ENTERED INTO FORCE ON JUNE 1, 2015. TF HAS BEEN CRIMINALIZED.</b></p> <p><b>THE DRAFT OF THE CRIMINAL PROCEDURES CODE IS ON REVIEW AT THE COUNCIL OF ADVICE.</b></p> <p>The introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice and is now ready to be submitted to Parliament for approval. Expected enactment of the Penal Code by the IO: December 2014.</p> <p><b>THE RECOMMENDED ACTIONS ON THE CRIMINALIZATION OF TERRORISM FINANCING HAVE BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27<sup>TH</sup>, 2015.</b></p>



			<ul style="list-style-type: none"> <li>The Authorities should amend the Penal Code to criminalize all the offences referenced in the Conventions and Protocols referenced at Annex 1 to the TF Convention.</li> </ul>	<p>THE PENAL CODE ENTERED INTO FORCE ON JUNE 1, 2015. TF HAS BEEN CRIMINALIZED.</p> <p>This special recommendation has been dropped. The contents however has been incorporated in the Penal Code.</p> <p>Criminal Code article 2:54 and article 2:55 (since June 2015).</p> <p>Criminal Code article 2:54 and article 2:55 (since June 2015).</p> <p><b>See Article I, parts F, G and Q, of the NOAPC: Terrorist financing was already criminalized and punishable under Articles 2:54 and 2:55 of the Penal Code (PC).</b></p> <p><b>Article I, Part F, of the NOAPC adds a new paragraph 2 to article 2:54, of the PC which makes it clear that “funds” shall mean all property of any description, whether corporeal or incorporeal, <u>including money</u>. A (legal) person is now punishable by a term of imprisonment not exceeding fifteen years (before the amendment this used to be eight years).</b></p> <p><b>Article 2:55 PC is deleted (see Article I, Part G, NOAPC) and replaced by the new articles 2:408 and 2:409 - see Article I, Part Q, of the NOAPC - which regulate the financing of terrorism in accordance with the International Convention on the financing of terrorism. Crimes against internationally protected persons and acts involving nuclear material and weapons of mass destruction have been stipulated more in detail, as well as the financing of travel for the purpose of committing a terrorist crime. The maximum term of imprisonment is raised from eight to eighteen years.</b></p> <p><b>The provision of 1:224 PC makes the general provisions of the First Book of the Penal Code applicable to all other (specific) criminal laws. And the PC, but also all other criminal laws are applicable to both legal persons and natural persons (vide Article 1:127, par. 1, PC).</b></p>
<p><b>SR.III Freeze and confiscate terrorist assets</b></p>	<p>PC</p>	<ul style="list-style-type: none"> <li>The framework does not support an ability to invoke freezing mechanisms in response to a requesting foreign State’s freezing requirement.</li> <li>The substantive freezing mechanism for persons listed pursuant to UN</li> </ul>	<ul style="list-style-type: none"> <li>The substantive freezing mechanism for persons listed pursuant to UN Resolution 1267 (1999) should be reviewed and appropriate adjustments made to ensure that the requirement of acting ‘without delay’ will be met in relation to</li> </ul>	<p>The matter of Mutual Assistance is dealt with in the current CPC SXM article 555 and further (International Mutual Assistance) but will be more expressively mentioned and regulated more detailed in the new (draft) Criminal Procedure Code.</p> <p>The draft article 560 CPC creates a possibility to respond immediately to a request, when regulated by International Treaties combatting Terrorism and the Financing of Terrorism (and other International Treaties. In the draft Explanatory Memorandum it is clearly and expressively mentioned that the</p>

	<p>Resolution 1267 (1999) would not meet the ‘without delay’ requirement based on the intervening legislative process between listing by the UN and issue of the requisite Sanctions National Decree which compels the freezing.</p> <ul style="list-style-type: none"> <li>• There is no clear guidance specially to other persons and entities concerning their obligations in taking action under the freezing mechanism.</li> <li>• The Sanctions National Decree does not expressly refer to assets jointly held by designated persons, terrorists or terrorist organizations with third parties. The wording of the Decree also raises issues of enforceability of sanctions against the entire asset which is held “in part” by designated persons, terrorists or terrorist organizations.</li> <li>• There is no wording in the FATT Protocols which indicate compliance with these Protocols is mandatory or that breaches of the Protocols can be sanctioned by the Central Bank.</li> </ul>	<p>subsequent freezing obligations that arise pursuant to terrorist related UN Resolutions that are issued.</p> <ul style="list-style-type: none"> <li>• The Sanctions National Decree should also expressly refer to assets jointly owned or controlled by designated persons, terrorists or terrorist organizations with third parties, and should incorporate wording to clearly communicate the enforceability of sanctions against the entire asset which is held “in part” by a designated person, terrorist or terrorist organization.</li> <li>• Sint Maarten should provide guidance to all persons and entities with regard to obligations in taking action under the freezing mechanism.</li> <li>• The FATT Protocols should incorporate wording to clearly reflect that compliance with these Protocols is mandatory and that breaches of the Protocols can be sanctioned by the Central Bank.</li> </ul>	<p>article is amended to expressively state that this article offers this possibility to the authorities.</p> <p>When the request is received the freezing of assets and freezing mechanisms are dealt with in the articles 119 until 173 draft CC. Besides that the possibility of further Financial Investigation in the Criminal Procedure is dealt with in Title XVI of the Criminal Procedure Code.</p> <p>THE RECOMMENDED ACTION ON FATF SR III CONCERNING THE FREEZING AND CONFISCATION OF ASSETS HAVE BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27<sup>TH</sup>, 2015.</p> <p>THE DRAFT OF THE CRIMINAL PROCEDURES CODE IS ON REVIEW AT THE COUNCIL OF ADVICE.</p> <p>THE DRAFT CRIMINAL PROCEDURES CODE HAS BEEN REVIEWED BY THE COUNCIL FOR ADVICE AND THE MINISTER OF JUSTICE IS MAKING THE ADAPTATION IN CONFORMITY WITH THE ADVICES RECEIVED. HEREAFTER IT WILL BE SUBMITTED AGAIN TO THE COUNCIL OF MINISTERS AND THEREAFTER TO PARLIAMENT.</p> <p>This special recommendation has been dropped. The contents however has been incorporated in the Penal Code.</p> <p>Sanctions National Decree article 1, article 2, article 3, article 4; Draft National Ordinance combatting ML/TF article 34; Draft Criminal Code article 2:410.</p> <p>Sanctions National Decree article 1, article 2, article 3, article 4; Draft National Ordinance combatting ML/TF article 34; Draft Criminal Code article 2:410.</p> <p><b>Reference is made to what is mentioned above as undertaken action under R. 3. Seizure and confiscation is regulated in Title IX (Articles 119 to 154a) of the (current) Penal Procedure Code (PPC).<sup>23</sup> St. Maarten is on the basis of this legal framework for freezing and confiscating criminal assets able to adequately and effectively act as regards the freezing obligations that may arise pursuant to the terrorist related UN Resolutions. Informal</b></p>
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<sup>23</sup> See Annex IV (Seizure as regulated in Title IX of the current Penal Procedure Code (PPC)).

				<p><b>and swift mutual assistance on an operational level can in general be provided pursuant to article 555 of the (current) Penal Procedure Code PPC).</b><sup>24</sup></p>
<p><b>SR.IV Suspicious transaction reporting</b></p>	<p>NC</p>	<p>Rating factors in R13 apply to this Recommendation.</p>		<p>The new draft law (merged and updated NORUT-NOIS) will specifically address the issue of suspicious transaction reporting.</p> <p>THE MOT IS BUSY WITH THE MERGING OF THE NORUT AND THE NOIS IN WHICH THE RECOMMENDED ACTION CONCERNING FATF SR IV ON SUSPICIOUS TRANSACTIONS WILL BE INCORPORATED.</p> <p>THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016.</p> <p>Draft National Ordinance on Combatting ML/TF Article 25 National Ordinance combatting ML/TF article 25.</p> <p><b>Ministerial Regulation on Indicators (AB 2013 no. 489):</b> <b>Article 3 Subjective indicators</b> <b>Without prejudice to the provisions of Article 2, the following shall be deemed to be indicators of executed or intended unusual transactions:</b> <b>transactions that differ from the client’s profile; and</b> <b>transactions that give rise to the suspicion that these may be related to money laundering or financing of terrorism.</b></p>
<p><b>SR.V. International cooperation</b></p>	<p>PC</p>	<ul style="list-style-type: none"> <li>• The deficiencies in R36 impact Sint Maarten’s ability to extend mutual legal assistance through extradition.</li> <li>• The deficiencies in SRII impact Sint Maarten’s ability to extend assistance in connection with combating TF and terrorist acts.</li> <li>• The deficiencies in R40 would impact Sint Maarten’s to the exchange of information regarding TF.</li> </ul>	<ul style="list-style-type: none"> <li>• Amend the Penal Code to address the deficiencies set out in the ratings table.</li> <li>• Implement the recommended actions outlined in relation to SRII</li> </ul>	<p>Next to that the proposed article 2:54 and 2:55 CC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime. In article 2:55 the financing of crime is punishable as a severe crime. Next to that article 1:120 CC SXM (currently article 48a) criminalizes the aiding and abetting of the crimes mentioned in article 2:54 and 2:55. Of course criminal attempts are punishable under 1:119 CC SXM (currently article 47)</p> <p>Mutual Assistance furthermore is (article 555 and further CPC) and will be more specifically be regulated in the new (draft) CPC SXM is concerned, and as far as the new PC SXM is concerned.</p> <p>The introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice and is now ready to be submitted to Parliament for approval. Expected enactment of the Penal Code by the IO: December 2014.</p>

<sup>24</sup> See Annex IV, p. 13



				<p>THE RECOMMENDED ACTIONS ON FATF SR V CONCERNING INTERNATIONAL CO-OPERATION HAVE BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27<sup>TH</sup>, 2015.</p> <p>THE PENAL CODE ENTERED INTO FORCE ON JUNE 1, 2015. THE DRAFT CRIMINAL PROCEDURES CODE HAS BEEN REVIEWED BY THE COUNCIL FOR ADVICE AND THE MINISTER OF JUSTICE IS MAKING THE ADAPTATION IN CONFORMITY WITH THE ADVICES RECEIVED.</p> <p>This recommendation has been incorporated in the Criminal procedures Code: pending.</p> <p>Draft Criminal Procedures Code article 554a (separate claim withdrawal from circulation), article 556 paragraph 3 (handling of an MLAT request by the PPO instead of the Courts), article 563 (the primacy of the treaties is underlined by the cancellation of the leave procedure at the Court when making available the results of the desired investigation), article 565a (the other changes mainly concern modernization of the law based on the constantly changing Dutch legislation, such as the introduction of special investigation methods), article 593a and beyond (the possibility of setting up joint joint investigation teams is regulated, which is particularly important for Sint Maarten because of the close relationship with the French part of the island), articles 596a and 596b (the transfer of enforcement of criminal judgments scheme is also being adjusted: arrangements concerning execution in the country of the verdict given in absentia, and on the execution of a verdict rendered in absentia in a foreign state).</p> <p>Draft Criminal Procedures Code article 554a (separate claim withdrawal from circulation), article 556 paragraph 3 (handling of an MLAT request by the PPO instead of the Courts), article 563 (the primacy of the treaties is underlined by the cancellation of the leave procedure at the Court when making available the results of the desired investigation), article 565a (the other changes mainly concern modernization of the law based on the constantly changing Dutch legislation, such as the introduction of special investigation methods), article 593a and beyond (the possibility of setting up joint joint investigation teams is regulated, which is particularly important for Sint Maarten because of the close relationship with the French part of the island), articles 596a and 596b (the transfer of enforcement of criminal judgments scheme is also being adjusted: arrangements concerning execution</p>
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				<p>in the country of the verdict given in absentia, and on the execution of a verdict rendered in absentia in a foreign state).</p> <p><b>Reference is made to what is mentioned above as undertaken action under SR.II.</b></p>
<p><b>SR.VI</b></p> <p><b>AML/CFT requirements for money/value transfer services</b></p>	<p>NC</p>	<ul style="list-style-type: none"> <li>• There continue to be MTCs operating within Sint Maarten without licenses from the Central Bank.</li> <li>• Provisions for MTCs to update the Central Bank on the number of agents and sub-agents should be formalised.</li> </ul>	<ul style="list-style-type: none"> <li>• Shut the operations of unauthorised MTCs operation in Sint Maarten.</li> <li>• Provisions for MTCs to update the Central Bank on the number of agents and sub agents should be formalised.</li> </ul>	<p>The MTCs operating without a license will be shut down by the PPO. One MTC is busy with an application for a license at the CBCS.</p> <p>The MOT is responsible for the reporting of unusual transactions by service providers. From this perspective the MOT approaches all MTC's to urge them to report the unusual transactions. The issue will again be discussed with the minister of Justice.</p> <p><b>THE PPO IS BUSY WITH THE REVIEW OF THE ILLEGAL MTC CASE.</b></p> <p><b>THE PROVISIONS FOR THE MTC TO UPDATE THE CBCS ON THE NUMBER OF AGENTS AND SUB AGENTS HAS BEEN FORMALIZED IN THE NEW DRAFT LEGISLATION ON SUPERVISION OF MTC.</b></p> <p><b>THE UNLICENSED MTC HAS STARTED A CASE AGAINST THE CBCS WHICH THE MTC HAS LOST IN FIRST INSTANCE. NOW THE CASE IS IN REVIEW AT THE APPEALS COURT. APPEAL WILL BE HANDLED BEFORE THE END OF 2015.</b></p> <p>The case of the unlicensed MTC has again been put forward to the PPO. A decision will be taken before the next plenary meetings.</p> <p>National Ordinance Supervision Money Transaction Offices article 2 and article 3 and further.</p> <p>National Ordinance Supervision Money Remittance Offices article 2 and article 3 and further.</p> <p><b>All illegal operating MTCs have been closed by the PPO.</b></p> <p><b>National Ordinance Supervision Money Transaction Offices article 2 and article 3 and further.</b></p> <p><b>National Ordinance Supervision Money Remittance Offices article 2 and article 3 and further.</b></p>
<p><b>SR.VII Wire transfer rules</b></p>	<p>PC</p>	<ul style="list-style-type: none"> <li>• The E.C. for wire transfers are not detailed in the relevant P&amp;Gs.</li> </ul>	<ul style="list-style-type: none"> <li>• Sint Maarten should detail the requirements with respect to SR VII for the</li> </ul>	<p>The P&amp;G for MTC has been amended to implement the recommended actions.</p>

		<ul style="list-style-type: none"> <li>• There are no explicit provisions in the P&amp;G for CI to be risk-based.</li> </ul>	<p>relevant financial institutions instead of relying on the general provision in the P&amp;G for CI to observe the latest Interpretive Note to SR VII</p>	<p>STATUS QUO; NO NEW UPDATE. THE P&amp;G HAVE BEEN UPDATED BY THE CBCS TO REFLECT THE RECOMMENDED ACTION CONCERNING FATF SR VII ON WIRE TRANSFER RULES. THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016.</p> <p>Draft National Ordinance on Combatting ML/TF Article 1 under k and article 3 paragraph 1 under d.</p> <p>Draft National Ordinance combatting ML/TF article 22 paragraph 1, article 10 paragraph 2 under l, article 3 paragraph 2 under d and e, article 2 paragraph 1 under b sub 3°, article 24 and article 34 (to complete the Sanctions National Ordinance).</p> <p>National Ordinance combatting ML/TF article 22 paragraph 1, article 10 paragraph 2 under l, article 3 paragraph 2 under d and e, article 2 paragraph 1 under b sub 3°, article 24 and article 34.</p> <p><b>National Ordinance combatting ML/TF article 22 paragraph 1, article 10 paragraph 2 under a, article 3 paragraph 2 under d and e, °, and article 34.</b></p>
<p><b>SR.VIII NPOs</b></p>	<p>NC</p>	<ul style="list-style-type: none"> <li>• No recent assessment on the on the risk with regard NPO sector.</li> <li>• There is no oversight or supervisory regime for NPOs.</li> <li>• No requirement for NPO sector to keep financial information.</li> <li>• No procedures in place to ensure that they are able to effectively investigate and gather information on NPOs.</li> <li>• No training sessions or sensitization forum held for NPOs</li> </ul>	<ul style="list-style-type: none"> <li>• Sint Maarten should conduct a new assessment on the risk with regard NPO sector.</li> <li>• The Authorities should consider designating an authority to monitor and supervise the NPO sector.</li> <li>• Sint. Maarten should institute an outreach program which provides adequate AML/CFT awareness about the risk of NPOs to terrorist financing.</li> <li>• There should be appropriate sanctions available for those NPOs</li> <li>• NPOs should be required to maintain transaction</li> </ul>	<p>This subject matter will be further examined by the judicial department of the ministry of Justice.</p> <p>STATUS QUO; NO NEW UPDATE. AS SOON AS THE MAJORITY OF THE KEY AND CORE RECS HAVE BEEN MET, THE MOT WILL START ANALYZING THE MATTER OF THE NPO AS STATED UNDER SR VIII.</p> <p>Draft National Ordinance on Combatting ML/TF Article 57a</p> <p><u>Draft National Ordinance to amend Book 2 of the Civil Code</u>  Article 4 (to establish a legal person), article 5 (notary registers the legal person at the chamber of commerce), article 15 (the obligation of the legal person to produce financial statements), article 24 (the authority of the court to dissolve the legal person if this is contrary to public order and safety), article 55 (the director of the legal person can be removed upon request of the PPO or a beneficial owner), article 272 paragraph 2 (the PPO can request the court to give permission to carry out an investigation at the legal person),</p>



			<p>records for a minimum period of five (5) years.</p> <ul style="list-style-type: none"> <li>• The Authorities in St. Marten should be procedures in place to ensure that they are able to effectively investigate and gather information on NPOs.</li> <li>• There should be procedures in place which allow for timely and effective sharing of information on NPOs both domestically and internationally.</li> <li>• The Authorities should consider issuing guidance specifically pertain to the NPO sector.</li> </ul>	<p>article 25 (the authorization of the Chamber of Commerce to annul an inactive legal person).</p> <p><u>Draft National Ordinance combatting ML/TF</u> article 18 (establishing a national policy on risk assessment), article 36 (gives the chamber of commerce the authority to annul the legal person if the MOT has reported that the legal person has suspicious transactions). In article 36 it is also stipulated that the legal person is obligated to produce an annual report.</p> <p><u>Draft National Ordinance on the MOT</u> article 3 paragraph 2 under l and m (the task of the MOT to identify, assess and establish the risks for Sint Maarten).</p> <p><u>Draft National Ordinance to amend Book 2 of the Civil Code</u> Article 4 (to establish a legal person), article 5 (notary registers the legal person at the chamber of commerce), article 15 (the obligation of the legal person to produce financial statements), article 24 (the authority of the court to dissolve the legal person if this is contrary to public order and safety), article 55 (the director of the legal person can be removed upon request of the PPO or a beneficial owner), article 272 paragraph 2 (the PPO can request the court to give permission to carry out an investigation at the legal person), article 25 (the authorization of the Chamber of Commerce to annul an inactive legal person).</p> <p><u>National Ordinance combatting ML/TF</u> article 18 (establishing a national policy on risk assessment), article 36 (gives the chamber of commerce the authority to annul the legal person if the MOT has reported that the legal person has suspicious transactions). In article 36 it is also stipulated that the legal person is obligated to produce an annual report.</p> <p><u>National Ordinance on the MOT</u> article 3 paragraph 2 under l and m (the task of the MOT to identify, assess and establish the risks for Sint Maarten).</p> <ul style="list-style-type: none"> <li>• <b>Sint Maarten had scheduled a national risk assessment (NRA) to start in the end of March 2020. This NRA, that will include the NPO sector, will be rescheduled due to the COVID-19 pandemic (exact date to be established in due time).</b></li> <li>• <b>One outcome of the NRA will be the designation of an authority to monitor and supervise the NPO sector; this authority will, amongst</b></li> </ul>
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				<p><b>other things, institute an outreach program which provides adequate AML/CFT awareness about the risk of NPOs to terrorist financing and see to it that the NPOs maintain transaction records for a minimum period of five (5) years.</b></p> <ul style="list-style-type: none"> <li>• <b>Sanctions have already been establish for financial service providers and DNFbps. The sanctions for non-compliance by the NPOs will be established with the institution of the authority.</b></li> <li>• <b>The procedures to ensure that law enforcement is able to effectively investigate and gather information on NPOs are already in place in the current Penal Procedures Code (see articles 119 and further on confiscation).</b></li> <li>• <b>The law enforcement does have procedures in place that allow for timely and effective sharing of information on, amongst others, NPOs, both domestically and internationally. NPOs are <u>not</u> considered different than any other subject of investigation.</b></li> <li>• <b>With the establishment of the authority to supervise NPOs, guidance will be issued pertaining to this sector.</b></li> </ul>
<p><b>SR.IX Cross-Border Declaration &amp; Disclosure</b></p>	<p>PC</p>	<ul style="list-style-type: none"> <li>• An ad hoc system is in place for the disclosure of the physical cross-border transportation of currency.</li> <li>• There is no system to restrain currency where there is a suspicion of ML or TF.</li> <li>• There are no statistics evidencing Customs' effectiveness in the area of international cooperation.</li> <li>• There are no statistics regarding the number of false declarations and investigations forwarded to the PPO.</li> <li>• There is no process for confiscating currency or negotiable instruments for persons listed in accordance with UNSCR 1373 and 1267.</li> </ul>	<ul style="list-style-type: none"> <li>• The authorities should ensure that they pursue the proposed declaration system to be completed by all passengers instead of the ad hoc disclosure system currently in place.</li> <li>• The Authorities should consider implementing the system to restrain currency where there is a suspicion of ML or TF.</li> <li>• The authorities should maintain statistics evidencing Customs' effectiveness in the area of international cooperation.</li> <li>• The Sint Maarten authorities should maintain the process for confiscating currency or negotiable instruments in</li> </ul>	<p>This subject matter will be further examined by the judicial department of the ministry of Justice.</p> <p>The law on cross-border transportation of currency will be amended to address all outstanding issues in December 2014. The proposed declaration system is already in place.</p> <p>A system to restrain currency is already in place.</p> <p>The Customs Department already has the software to generate statistics and a database to store this data.</p> <p>THE OUTSTANDING ISSUES HAVE BEEN INCORPORATED IN THE DRAFT AMENDMENT OF THE NATIONAL ORDINANCE ON CROSS-BORDER TRANSPORTATION OF CURRENCY. THE DRAFT IS NOW ON REVIEW TOGETHER AT THE CUSTOMS DEPARTMENT.</p> <p>THE DRAFT NATIONAL ORDINANCE ON CROSS-BORDER TRANSPORTATION OF CURRENCY IS AT THE LEGAL</p>



	<ul style="list-style-type: none"> <li>• There are no statistics relating to shipments of gold or other precious metals and stones.</li> <li>• There is no structure established for the training and targeted programmes for Customs.</li> <li>• No current information available with respect to the timeliness of the dissemination of the information relating to suspicious cash declarations/disclosures.</li> </ul>	<p>implementing the UNSCR 1373 and 1267.</p> <ul style="list-style-type: none"> <li>• The authorities should maintain a system to identify the source, destination and purpose of movement of gold or other precious metals and stones.</li> <li>• A structure should be established for the training and targeted programmes for Customs.</li> <li>• The authorities should ensure that the relevant authorities possess timely access to suspicious cash declarations or disclosures, or intentional lack of disclosures information.</li> </ul>	<p>DEPARTMENT FOR PROCESSING AND SUBMITTING TO THE COUNCIL OF MINISTERS.</p> <p>The MOT has developed a training program for all the Law Enforcement Agencies.</p> <p>STATUS QUO; NO NEW UPDATE. THE TRAINING PROGRAM HAS BEEN SUBMITTED TO THE MINISTER OF JUSTICE. THE AML/CTF TRAINING PROGRAM II HAS BEEN APPROVED BY THE MINISTER AND THE EXECUTION THEREOF STARTED IN AUGUST 2015. THE CUSTOMS DEPARTMENT HAS RECEIVED TRAINING IN SEPTEMBER 2015.</p> <p>National Ordinance on the Obligation to Report Cross-border Money Transfer: Article 6</p> <p><u>Regulation (Ministerial Decree containing general measures) on cross-border cash transport declaration forms (AB 2015, no. 12 article 1 and the enclosure to the regulation, containing the 4 models of the declaration form in Dutch, English, Spanish, and French.</u></p> <p><u>Draft National Ordinance to amend the National Ordinance on the obligation to report cross-border money transports article 1 (to amend article 2 of the abovementioned ordinance, to establish the model of the declaration form by Ministerial Regulation (holding general measures);</u>  Article 1 under B amends article 1 of the ordinance to include under paragraph 2 gold and other precious metals and stones and to amend article 2 paragraph 3 to obligate the sender of the money, gold, precious metals, jewelry or other objects of high value, to declare this transport to Customs ultimately at the moment of import or export of the money, gold, precious metals, jewelry or other objects of high value, by making use of the model declaration form;  Article 4 (article 5 of the Ordinance is amended to restrain currency when there is a suspicion of ML/TF);</p>
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				<p>Article II of the draft ordinance proposes to amend the National Ordinance import, transport and export to authorize Customs to restrain currency and the other objects;</p> <p>Article 4 of the aforementioned draft amends article 5 paragraph 2 under e, to include the confiscation of currency or negotiable instruments in implementing the UNSCR 1373 and 1267 when there is a suspicion of ML as is intended under Title XXXI of the Criminal Code or when there is a suspicion of TF as is intended under article 2:55 of the Criminal Code;</p> <p>Article 4 of the aforementioned draft also amends article 5 of the ordinance, to include the obligation of Customs to produce statistics;</p> <p>The government entered into an agreement with the Dutch government after the hurricanes of 2017, to have the Dutch Customs provide technical assistance and training, together with the MOT, to the Customs officials;</p> <p>The amendment of article 4 of the aforementioned ordinance establishes timely access of Customs and MOT to suspicious cash declarations or disclosures, or intentional lack of disclosures information.</p> <p><u>Regulation (Ministerial Decree containing general measures) on cross-border cash transport declaration forms (AB 2015, no. 12 article 1 and the enclosure to the regulation, containing the 4 models of the declaration form in Dutch, English, Spanish, and French.</u></p> <p><u>National Ordinance to amend the National Ordinance on the obligation to report cross-border money transports</u> article 1 under B amends article 1 of the ordinance to include under paragraph 2 gold and other precious metals and stones and to amend article 2 paragraph 3 to obligate the sender of the money, gold, precious metals, jewelry or other objects of high value, to declare this transport to Customs ultimately at the moment of import or export of the money, gold, precious metals, jewelry or other objects of high value, by making use of the model declaration form;</p> <p>Article 4 (article 5 of the Ordinance is amended to restrain currency when there is a suspicion of ML/TF);</p> <p>Article II of the Ordinance proposes to amend the National Ordinance import, transport and export to authorize Customs to restrain currency and the other objects;</p> <p>Article 4 of the aforementioned Ordinance amends article 5 paragraph 2 under e, to include the confiscation of currency or negotiable instruments in implementing the UNSCR 1373 and 1267 when there is a suspicion of ML</p>
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				<p>as is intended under Title XXXI of the Criminal Code or when there is a suspicion of TF as is intended under article 2:55 of the Criminal Code; Article 4 of the aforementioned draft also amends article 5 of the ordinance, to include the obligation of Customs to produce statistics; The Dutch Customs and the MOT are still providing technical assistance and training, to the Customs officials; The amendment of article 4 of the aforementioned ordinance establishes timely access of Customs and MOT to suspicious cash declarations or disclosures, or intentional lack of disclosures information.</p> <p><b>Passengers do have the obligation to disclose the cross-border transportation of money or other negotiable instruments. Furthermore the passenger is obligated to disclose to the Immigration authorities in their immigration form if they carry a designated amount of money when traveling in or out of Sint Maarten.</b></p> <p><b><u>Regulation (Ministerial Decree containing general measures) on cross-border cash transport declaration forms (AB 2015, no. 12) article 1 and the annex to the regulation, containing the 4 models of the declaration form in Dutch, English, Spanish, and French.</u></b></p> <p><b><u>The National Ordinance on the obligation to report cross-border money transports (AB 2019 no. 26) article 1 paragraph 2 includes the obligation of the passenger to declare, apart from money, also the transport of gold and other precious metals and stones.</u></b> Article 2 paragraph 3 of abovementioned National Ordinance obligates the passenger to declare the transport of money, gold, precious metals, jewelry or other objects of high value, to Customs ultimately at the moment of import or export of the money, gold, precious metals, jewelry or other objects of high value, by making use of the model declaration form; Article 5 of the abovementioned Ordinance is amended to restrain currency when there is a suspicion of ML/TF).</p> <p><b>The National Ordinance import, transport and export article 217, paragraph 1, and article 218, paragraph 1, authorize Customs to restrain currency and gold and other precious metals and stones;</b></p> <p><b>Article 5 paragraph 2 under e, of the National Ordinance on the obligation to report cross-border money transports (AB 2019 no. 26)</b></p>
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				<p><b>includes the confiscation of currency or negotiable instruments to carry out UNSCR 1373 and 1267 when there is a suspicion of ML as is intended under Title XXXI of the Criminal Code or when there is a suspicion of TF as is intended under Title VIII of the Criminal Code;</b></p> <p><b>Article 5 of the National Ordinance on the obligation to report cross-border money transports (AB 2019 no. 26)_ includes the obligation of Customs to produce statistics;</b></p> <p><b>The Dutch Customs and the MOT provide technical assistance and training, to the local Customs;</b> <b>The amendment of article 4 of the aforementioned ordinance establishes timely access of Customs and MOT to suspicious cash declarations or disclosures, or intentional lack of disclosures information.</b></p>
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