



CARIBBEAN
FINANCIAL ACTION
TASK FORCE

Second Follow-Up Report

Sint Maarten
November 22, 2013

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Introduction

1. This report represents the CFATF Secretariat's analysis of Sint Maarten' progress with regard to correcting the deficiencies identified its Mutual Evaluation Report (**MER**), as approved on November 2012 and subsequent by Round Robin on January 8th, 2013¹. This is the second follow-up report, based on a matrix of progress provided by Sint Maarten on September 11th, 2013 (see the attached matrix of progress). Sint Maarten was placed in regular-expedited follow-up process.
2. Sint Maarten received ratings of PC and NC on fourteen (14) of the sixteen (16) Core and Key Recommendations respectively as follows. It also received rating of LC in two (2) Recommendations:

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

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

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

4. The following table is indented to assist in providing an insight into the level of risk in the main financial sectors in Sint Maarten, as per May and June 2013:

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

Size and integration of Sint Maarten financial sector

		Banks	Other Credit Institutions *	Securities	Insurance	TOTAL
Number of institutions	Total #	8 (7 local and 1 international bank)	1		6 ¹	
Assets	US\$	1, 597,470 is held in Local Banks and 143, 388 in the international bank	14, 758		318,000,000	
Deposits	Total: US\$	1,356,094 local banks 113,442 international banks	0		13,000,000 ⁴	
	% Non-resident	28% of deposits	0% of deposits		0% ⁵	
International Links	% Foreign-owned:	64.2% of assets	100% of assets	% of assets	1 % of assets ⁶	% of assets
	#Subsidiaries abroad	3	0		3 ⁷	

Notes:

¹ This total includes: 1) 1 local life insurance company, 2) 4 non-local life insurance companies and 1 pension fund.

² Total Assets as reported by the companies, mentioned in point 1, as per year end 2011.

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

⁴ Represents the investments by institutions in (time) deposits with foreign banks by the institutions in percentage of total (time) deposits.

⁵ Represents the Total Assets of branch offices and institutions with foreign shareholders in percentage of Total Assets.⁶ Represents the number of subsidiaries abroad of local institutions.

I. Scope of the Report

5. The Plenary in November 2012 in the Virgin Islands decided that countries in the expedited follow-up process, as in the case of Sint Maarten, would be required to achieve substantial progress on outstanding recommendations and report back to the Plenary in May 2013 and must ensure full compliance with all outstanding Core and Key recommendations by November 2013². Given the above, this report will focus on assessing whether Sint Maarten has achieved full compliance in its outstanding Core and Key Recommendations and the progress made in all other outstanding recommendations. Sint Maarten had no Core and Key Recommendations originally rated as “Compliant” (C), reason why all Core and Key Recommendations will be discussed.

II. Summary of progress made by Sint Maarten

6. Sint Maarten continued rectifying the deficiencies found in its AML-CFT systems reflected in the **MER**, successfully revised Provisions and Guidelines (hereinafter P&Gs), with regard to credit institutions (CI), insurance companies and intermediaries – insurance brokers (IC & IB), money transfer companies (MTC), administrators of investment institutions and self-administered of investment institutions (AII & SAI) and company trust service providers (TSP), and issued P&Gs for Designated Non-Financial Businesses and Professions (DNFBPs).
7. As informed in the previous follow-up report, Sint Maarten Penal Code was amended in June 2012, and is currently under review by the Constitutional Court. Additionally, Sint Maarten Authorities are working in amending the Criminal Procedures Code (CPC); the CPC was presented to the Ministry of Justice on October, 2013.
8. Revisions for amending the National Ordinance on the Reporting of Unusual Transactions (NORUT) and National Ordinance on Identification of Clients when rendering Services (NOIS) are underway.

Core and Key Recommendations

Outstanding Core Recommendations

Recommendation 1

9. With regard to full compliance with this Recommendation rated as LC, the status has not varied since the previous report; deficiencies remain outstanding. There is still a need to criminalize the following predicate offenses: illicit arms trafficking, smuggling, insider trading, and market manipulation. Also, as recommended by the Evaluator, the Penal Code needs to be amended to ensure that most of the non-terrorist related predicate offenses for ML, ML and TF, occurred in a foreign country, can be prosecuted in Sint Maarten. The Authorities indicated since the prior first follow-up report, that modifications to the Penal Code were underway and that the new Penal Code is being reviewed by the Constitutional Court. Authorities also indicated that the proposed Penal Code creates jurisdiction in cases of TF, which partly deals with the first deficiency.

² For further reference, please see the CFATF ICRG Co-Chairs report (cfatf_plen_xxxvi_2012-9-ann-1), as adopted by the November 2012 Plenary, page 8.

Recommendation 5

10. Recommendation was originally rated PC. Authorities have indicated on a previous report, that the NOIS and the P&Gs for IC & IB were being revised in order to address the deficiencies identified in the **MER** with regard to this specific Recommendation; status currently remains the same, deficiencies are outstanding.

Recommendation 10

11. Recommendation was originally rated PC. As mentioned in the first follow-up report, the NOIS is being revised to address actions recommended in the **MER**: a) Need to include obligation to keep all necessary records on transactions in a law or regulation (NOIS); b) 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; c) need to require all customer and transaction records and information available to competent Authorities upon appropriate authority on a timely basis, at a law or regulation level. Until the text of the amendment of NOIS is finalized it is not possible to make a proper assessment; deficiencies remain outstanding.

Recommendation 13 and Special Recommendation IV

12. With regard to compliance with these Recommendations, both rated as NC, outstanding deficiencies remain. One of the key elements impacting compliance, is that not all designated categories of predicate offenses for ML are covered in order to eliminate any restrictions on reporting. Sint Maarten was also to consider provisions in law, regulations or other enforceable means on requiring that suspicious transactions are reported, whether or not they involve tax matters (this deficiency was partly addressed as explained below, for DNFBPs as explained below under paragraphs pertaining to Recommendations 12, 16 and 24). It was also requested, to amend the Ministerial Decree containing the establishment of indicators of the Unusual Transactions National Ordinance (MDIUT) to allow reporting entities to identify suspicion of ML or TF, and avoid reliance on prescriptive factors. Authorities indicated that the Penal Code was being reviewed by the Constitutional Court and a decision was expected on September 2013. As for the previous report, Authorities explained for this report that even though the MDIUT does not explicitly mention it, it does not exclude tax matters when reporting a suspicious transaction. However, giving the prescriptive nature of the indicators as explained in the **MER** in paragraph 837, there is a need of an explicit provision to require that suspicious transactions be reported regardless of whether they involve tax matters (as envisioned by MDIUT modifications).

Outstanding Key Recommendations

Recommendation 3

13. As before on this report and in the previous follow-up report, the Authorities indicated that new Penal Code of Sint Maarten was passed and is under review by the Constitutional Court. Authorities also mentioned on the previous follow-up report, that the CPC is being drafted by a joint Committee revising the CPC of Curacao, Aruba, Sint Maarten and the BES-Islands. The draft of the CPC was finalized and presented to the Ministry of Justice on October 2013. Later in 2013, the final draft will be submitted to Parliament. In

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

Recommendation 4

14. With regard to this Recommendation rated as LC, the only outstanding deficiency is the lack of a clear provision for the FIU, in its role as a supervisor, to exchange information with foreign supervisors. In this respect, the country indicated that cooperation would occur under article 7 of the NORUT, although this attribution is not specific to its role as a supervisor, and Authorities indicated that the FIU's supervisory section is under development. No statistics were available to indicate otherwise. Full compliance remains outstanding.

Recommendation 23

15. Key deficiencies identified for this Recommendation, included the need to prevent unlicensed money transfer companies to operate in Sint Maarten and to a low number of inspections on existing ones. It was also indicated in the MER that factoring services needed to be regulated and supervised, and a risk based approach system implemented to adequately ponder AML/CTF risks.
16. These deficiencies remain outstanding, since no recent updates were provided to the implementation of changes required, which according to the first follow-up report, are currently underway. Authorities also indicated that the country conducted a risk assessment of the factoring service providers sector and the preliminary findings indicate that the service providers are exposed to very limited risk since the business is not cash based and payments to customer's salaries and other expenses are done through transfers on their bank accounts or through the issuance of cheques. There are no immediate plans to issue P&Gs for Factoring.

Recommendation 26

17. With regard to compliance with this Recommendation, status has slightly changed since the previous report, although deficiencies remain outstanding. The evaluator indicated that Authorities should ensure clarity with regard to the Ministry under which the FIU (hereinafter referred to both as MOT or FIU) falls and that it was necessary to appoint an FIU Head. Both these deficiencies were addressed; the legal basis for the FIU Sint Maarten is the NORUT, as published on April, 2013, and a permanent Director is in place since January, 2013. It was also requested, that the MOT improved its relationship with stakeholders, provide guidance on reporting, publish information on trends and typologies, and enhance measures for physical security of manual files, electronic data, etc., along with a need to ensure operational autonomy of the FIU. These aspects were partly addressed and continue to be addressed by: the move of the MOT to a different and secure location, among other developments explained in the first follow-up report and as it will be discussed for this report, with further modifications to the NORUT in a near future, and issuance of P&Gs for DNFBPs. These P&Gs focus on the implementation of the National Ordinance on Identification for Services and National Ordinance on Reporting Unusual Transactions and cover services providers (i.e. card dealers and jewellers), real estate, lawyers, notaries, accountants, tax advisors and administration offices.

18. Specifically regarding the deficiency related to publishing information on trends and typologies as well as outreach and developing a framework for DNFBCs, P&Gs fully comply with the objective, including a whole Section on Reporting, which refers to the obligation to report to the MOT, and some guidance in terms of what constitutes an unusual transaction, confidentiality of information, among others.

Recommendations 35, 36 and 40

19. All three Recommendations were initially rated as PC and most of the deficiencies identified will be addressed with a series of regulatory measures (including the modification of the NORUT) in progress, therefore, compliance with these Recommendations remains outstanding.
20. With regard to Recommendation 35, Authorities indicated in the last report that the Opium Legislation Act³ will be revised to address some of the issues in relation to compliance with the Vienna Convention. Additionally, as indicated before, with the new Penal Code and the upcoming reforms to the CPC, Sint Maarten Authorities expect to correct deficiencies identified in the **MER**.
21. Regarding Recommendation 40, the Authorities indicated that domestic laws, with the exception of the Regulations for Foreign Exchange Transactions for Curaçao and Sint Maarten (RFETCSM) do not allow for the CBCS to undertake investigations on behalf of their foreign counterparts. Such statement remained for this Report. With regard to the ability to provide international cooperation with/to their foreign counterparts, by all law enforcement entities, the Authorities referred to articles 183 – 185, 521 and 522 of the current CPC. The translation of these articles was provided by the Authorities on May 13th, 2013. Articles 183, 184, and 185 of the CPC, describe the different authorities that interact and that are entrusted functions related with the investigation and prosecution of criminal offenses, including officers, Attorney General and police agents, among others. Articles 521 and 522, refer to the possibility of pursuing investigations outside the Netherland Antilles, but only with regard to persons arrested, objects seized or equivalent crimes, within the territory. This provides in a way, a framework for international cooperation, although very limited. It is also mentioned, that any cooperation will be subject to limitations established by International and Inter-Regional Law. Related statistics will be provided at a later date.

Special Recommendations I, II, III & V

22. As mentioned earlier in this report, Authorities indicated that the new Penal Code of Sint Maarten was passed and is under review by the Constitutional Court. Sint Maarten Authorities expect that with the new Penal Code, the deficiencies identified in the **MER** will be solved. In addition as indicated, a reform to the CPC is currently being drafted. Both documents are pending, therefore, compliance with these Recommendations, remains outstanding.
23. Key issues that need to be addressed to ensure compliance are, regarding Special Recommendations I and II, considering observations raised by the Evaluator, in the **MER**:
1) Need to expressly criminalise the indirect or unlawful provision of funding for the commission of a terrorism offence, as well as the wilful provisions of funds to individual

³ Opiumlandsverordening 1960.

terrorists and all offences referred in the TF Convention. It is also important to incorporate specific penalties for the offence of TF, and a penalty for the legal person who participates in a terrorist organization. With regard to Special Recommendation III, among others, to review the freezing mechanism for persons listed pursuant to Resolution 1267 of the United Nations Security Council, and make any necessary adjustments to ensure that its requirement of acting “without delay”, is complied with. Special Recommendation V is impacted by deficiencies in Recommendation 36 and 40 (explained above) and Special Recommendation II, particularly, because of the ability to extend mutual legal assistance through extradition, with regard to TF and terrorist acts, as well as the ability to exchange information regarding TF.

Other Recommendations

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

Recommendations 6, 7, 8, 9, 12, 14, 16, 17, 18, 21, 24, 25, 27, 30, 31, 32, 33, 38, and 39, Special Recommendations VI, VII, VIII and IX

Recommendation 6

25. With regard to compliance with Recommendation 6, some deficiencies were highlighted in the **MER**. Particularly, that there were no clear requirements for financial institutions to put in place appropriate risk management systems to determine whether a potential customer is a PEP. This was included in P&Gs for Credit Institutions, MTCs, and Insurance Companies and Brokers. P&Gs for DNFBCs were also prepared including general provisions regarding PEPs, as explained under the section describing compliance with Recommendations 12, 16 & 24. Therefore, compliance with this Recommendation is now on a level equivalent to C.

Recommendation 7

26. Recommendation 7 is now on a level of compliance equivalent to a C. Modifications required to incorporate provisions on correspondent relationships in other financial institutions’ P&Gs, such as IC & IBs were introduced, to deal with the only deficiency raised in the **MER**. MTCs do not maintain correspondent relationships, therefore no specific measures were introduced or required.

Recommendation 8

27. Deficiency indicated in the **MER** with regard to Recommendation 8 was very specific, need to include provisions related to criteria 8.2 and 8.21 in MTC’s P&Gs, and it was **solved**, by including the following clarification, with regards to non-face to face relationships, which are prohibited: “(...) MTCs are not permitted to process payment instructions provided by non-face-to-face customers/business relation. Where the MTC is unable to comply with the customer due diligence (CDD) requirements set out under section II.2.A, it must consider making an unusual transaction report to the FIU/MOT (...)”.

Recommendation 9

28. As announced in the previous follow up report, the Authorities indicated that the P&Gs for CI, IC & IB and MTC were revised to implement the recommended actions, which referred to amending the concept of “adequately supervised” provisions of the P&Gs, in line with criteria 9.3, that financial institutions should satisfy themselves that a third party utilized or hired, is regulated and supervised; that the P&Gs also refer more broadly to reports, assessments and reviews of reports produced by the FATF, 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 that MTC’s P&Gs specifically, incorporate all requirements to comply with Recommendation 9, since those P&Gs did not previously have that Section. Required changes were reflected as requested in P&Gs issued for CI, IC & IBs. With regard to MTC’s P&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.

Recommendation 11

29. The only deficiency indicated for this Recommendation was, that there were no specific provisions in the P&Gs for financial institutions, to document and keep at least for five years, findings regarding complex, unusual large transactions or unusual patterns of transactions, and make them available for competent authorities and auditors. All of the quoted P&Gs for Financial Institutions (P&Gs covering Banks, credit institutions, Insurance Companies and Brokers, and MTCs) were modified, establishing that to guard against money laundering and terrorist financing, findings relative to suspicious or unusual transactions, should be set forth in writing and kept at least five years, and available to authorities and for audit. Compliance with this Recommendation is now fully compliant.

Recommendations 12, 16 and 24**Size of DNFBP Sector**

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

30. As mentioned before in this report and the previous, the NOIS and the NORUT are being revised to address some of the deficiencies identified in the **MER** with regard to the designated non-financial business and professions (DNFBP). This item is outstanding.
31. The P&Gs for SAI & AII and TSP were amended, to include criteria 6.2, with regards to managerial approval of relationships with PEPs and 9.3, regarding financial institutions being required to 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 Recommendations 5 and 10. In Both P&Gs, with regard to PEPs, it is established that the Institution’s *decision* to enter into business relationship with PEPs, must be taken at its senior management level. Senior management is defined as individuals entrusted with the daily management of the operations to achieve the institution’s objective. It is also stated, that where a client has been accepted and the client or beneficial owner is subsequently found to be, or subsequently becomes a PEP, administrators and self-administered investment institutions must obtain senior management approval to continue the business relationship. Where administrators and self-administered investment institutions are in a business relationship with a PEP, they must conduct enhanced ongoing monitoring on that relationship. In terms of the required by criteria 9.3, provisions were modified to indicate that financial institutions should satisfy themselves that the third party is AML/CFT regulated and supervised in accordance with FATF Recommendations 23, 24, and 29, and has measures in place to comply with the required CDD requirements (although Recommendations 5 and 10 were not expressly cited), which covers the required by the Evaluator’s recommendations in this point.

32. In addition, the FIU (MOT) drafted P&Gs for the DNFBPs that are under its supervision: Car Dealers and Jewellers (services providers); Real estate Companies, and Lawyers, Notaries and other individual professionals and accountants which address the following Recommendations: 5, 6, 8, 9, 10, 11, 13, 14, 15 and 21 in the context of DNFBPs. See summary of provisions in table below.

Recommendation	
<p>Recommendation 5 (Also referred in these Regulations as New Recommendation 10)</p>	<p>It is important to note for compliance with this and other Recommendations, that P&Gs were issued in a complementary manner to the NOIS and NORUT laws, as well as the Ministerial Decrees implementing those laws and derived Regulation.</p> <p>Regulations establish that a service provider - DNFBP, must ascertain the identity of the customer (natural or legal person) and the Beneficial Owner, before any service is provided. Identification involves the customer providing proof of his identity. It establishes that providing services to <u>anonymous</u>* clients, is not permitted.</p> <p>Beneficial Owner is described as described by the NOIS, as the natural person who owns or holds a qualifying holding or interest in a legal entity or company, or a natural person who is entitled to assets or income from a trust or private foundation fund. A qualifying holding or interest is 25% or more of the nominal capital, or a comparable interest, or the direct or intermediate ability to exercise 25% or more of the voting rights, or the direct or intermediate ability to exercise comparable control.</p> <p>Documents that can be used for identification are those valid under public law (i.e. identity card, passport) and identity should be verified using reliable and independent sources.</p> <p>* Fictitious names were not included.</p>

	<p>There is no indication as to when CDD is required (criteria 5.2), particularly to include need for identification in the case of occasional transactions of the general prohibition of the NOIS (article 8) is relevant here, with regard to all DNFBPs having to, obligatorily, identify (in any case) clients before rendering a service.</p> <p>The services provider is obliged to enquire whether the natural person is acting on his own behalf or for a third party. If a natural person is acting for a third party, the service provider OR DNFBP, is obliged to establish the identity of both natural person and third party and take reasonable steps to confirm the identity of the third party.</p> <p>Regulations provide for some exemptions to identification but these are limited and are defined in agreement with the established by the NOIS, such as a number of financial institutions (i.e. credit institutions, insurance companies, etc.), provided that they have a special permit from the Central Bank, so that they have already been identified by the said bank, or a business or institution to be designated by the Minister of Finance, including a natural or legal person who is member of the stock exchange which in turn is a member of the International Stock Exchange Federation and is not based in a country that does not comply with at least 10 of the core Recommendations proposed by the FATF. This seems to a certain extent in agreement with possible exceptions and lower risk categories established in Recommendation 5, however, there are no indications of the basic obligation of conducting CDD when there is suspicion of money laundering or terrorist financing, regardless of exemptions, thresholds referred elsewhere in FATF Recommendations or when the services provider has doubts about the veracity or adequacy of previously obtained data.</p> <p>There is however a section, that describes that even though one-off identification is the primary rule, if there were doubts about the accuracy of information, particularly in the context of Article 3 of the NOIS, the service provider, DNFBP, must be sure of correct identifying information and to that effect, if it appears the information no longer coincides with reality, the service provider, DNFBP, is obliged to use the amended identity information.</p> <p>For customers who are legal persons or legal arrangements, DNFBPs are required to verify that , any person purposing to act on behalf of the customer is so authorised, and verify identity of that person, as well as to verify the status by obtaining:</p> <ul style="list-style-type: none"> -Authenticated abstract from the register of the Chamber of Commerce and Trade or another institution comparable to the Chamber of Commerce and Trade; or -An identification document to be prepared by the service
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	<p>provided; or -a statement from the competent authority which should contain a predefined set of information including legal format, official name, trading name, complete address, place of establishment, etc., for the legal person, as well as information on all mandatories and representatives.</p> <p>The obligation to obtain information of the purpose and intended nature of the business relationship, as well as the obligation to conduct ongoing due diligence and scrutiny of transactions, among other measures included in criteria 5.7, was included.</p> <p>Provisions clearly establish measures for clients with an increased risk of money laundering and terrorist financing. It includes specific provisions for PEPs which are described in the context of Recommendation 6 below, and it also establishes that service providers or DNFBPs, are required to take appropriate steps to identify and assess their money laundering and terrorist financing risks (for customers, countries, or geographic areas); and products, services, transactions or delivery channels). This is discussed in the context of compliance with Recommendation 8, further in this table.</p> <p>There is no explicit indication of consequences in the case of the services provider not being able to complete CDD, however, the NOIS prohibition to offer a service to unidentified parties is relevant here. Also, a number of scenarios related to difficulties in establishing identity of client or interested party, straw men, address being unclear, are included as alerts or clues which may lead to the decision of reporting an unusual transaction, and that are included as part of the P&Gs (Annex I). Authorities may however want to consider an explicit reference.</p> <p>As explained, there are some minor elements pending, which should be incorporated into the P&Gs, in regards to compliance with Recommendation 5 criteria.</p>
<p>Recommendation 6</p>	<p>Measures to deal with Politically Exposed Persons (PEPs) are contained in the section devoted to the “Identification and verification of clients with increased risk”. Clients are classified as PEPs, whether local or international, including international PEPs resident in Sint Maarten, when individuals who is or has been (or may no longer be) entrusted with a prominent public function. The handling of a client who is no longer entrusted with a prominent public function should be based on an assessment of risk and not on prescribed time limits.</p> <p>Provisions include a reference to Foreign and Domestic Peps, as well as International Organisation PEPs and Family Members and Close Associates, to which all controls should apply.</p> <p>In relation to foreign PEPs, DNFBPs, in addition to performing</p>

	<p>normal CDD measures, must have appropriate risk-management systems to determine if a customer or beneficial owner is a PEP and obtain senior management approval for establishing (or continuing, for existing customers) such business relationships, as well as conduct enhanced monitoring of the relationship, as well as taking reasonable steps to establish source of wealth and source of funds.</p> <p>In case of domestic and International Organizations PEPs, services providers, DNFBPs, must pay attention to higher risk business relationships and apply measures related to obtaining management approval and conducting enhanced monitoring as well as determining source of wealth and funds.</p> <p>From a desk review perspective, provisions are compliant with Recommendation 6.</p>
<p>Recommendation 8</p>	<p>There are no specific provisions in the P&Gs reviewed to deal with risks derived from the use of new technologies and non-face to face relationships, but there is mention, however, of services provider required to take appropriate steps to identify and assess their money laundering and terrorist risks in the sense prescribed by new Recommendation 15; this is acceptable.</p>
<p>Recommendation 9</p>	<p>Regulations incorporate all requirements established by Recommendation 9. It establishes how CDD measures have to be taken and specific conditions under which reliance can occur: a) service provider OR DNFBP, must satisfy himself that intermediary or third party is supervised in a similar manner, service provider OR DNFBP must satisfy himself that over this legislation is also effective in the relevant country and more importantly, must within 48 hours, secure necessary information from the intermediary or third party in relation to CDD measures undertaken. The service provider OR DNFBP must hold copies of the original identity information and other relevant file, relevant copies must prove that the client has been identified in person by the third party or intermediary.</p> <p>In case of any doubts, in relation to CDD measures, the service provider or DNFBP, must himself perform and complete identification and verification.</p> <p>Measures no longer make a reference the required by criteria 9.3, in regards to the service provider OR DNFBP satisfying themselves that the third party is regulated and supervised (in accordance to Recommendation 23, 24, and 29) and has measures in place to comply with CDD requirements set out in Recommendations 5 and 10. However, relevant, similar criteria contained in New Recommendation 17 <u>was</u> introduced, where the criteria to be met by the third party includes that the service provider OR DNFBP should satisfy itself that the third party is regulated, supervised or monitored for, and has measures in place for compliance with, CDD and record-keeping requirements in</p>

	<p>line with Recommendations 10 and 11.</p> <p>From a desk review perspective, provisions are compliant with Recommendation 9.</p>
<p>Recommendation 10 and Recommendation 11 (in regards to deficiencies identified in the MER, section 3.5, not the entire Recommendations)</p>	<p>Deficiencies identified for Recommendation 10 were related the obligation of maintaining necessary records on transactions, and keeping business correspondence for at least five years following the termination of an account or business relationship. Also to requiring that customer and transaction records and information are available to competent authorities on timely basis. These were not addressed by P&Gs.</p> <p>Deficiencies for Recommendation 11 were in connection with the lack of specific obligation 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. This was addressed, with regard to liability of the service provider OR DNFBP, where it must retain the information in relation to the unusual transaction, in the same way as the information obtained in the context of identification in an accessible manner for a period of five years after the report is made. It further states that information should be recorded in a way that it can be established which employee reached the decision, as well as the factors, considerations and documents that led to the decision. If an unusual transaction is highlighted by an employee at a service provider OR DNFBP, and is not reported to the FIU, there should be a record of the reasons why the report was not made; this should be signed by the compliance officer or the person of the service provider OR DNFBP, responsible for the compliance function and/or the management team.</p> <p>Given the above, there are still some elements pending with regard to compliance with Recommendation 10.</p>
<p>Recommendation 13</p>	<p>Deficiency with regard to scope of reporting remains in the sense that amendments required under Recommendation 1, have not occurred (pending Penal Code and CPC amendments).</p> <p>With regard to <i>other</i> deficiencies identified for this Recommendation, related to allowing reporting entities to report an unusual transaction on the basis of reasons to assume a transaction may be associated with money laundering or financing of terrorism, rather than relying on prescriptive indicators. This was indeed amended: subjective indicators included).</p> <p>Explicit mention of the need of reporting an unusual transaction, regardless of it being related or involving tax matters was included.</p> <p>Given the above, there are still some elements of Recommendation 13 pending (particularly related to</p>

	compliance with Recommendation 1, modifications to NORUT).
Recommendation 14	<p>The prohibition of tipping off was included, however, this prohibition was not clearly extended to DNFBPs, their employees, directors, officers, but only to those submitting the report. Although there is mention of all information and explanations provided or received by virtue of the MOT ordinance, are confidential, and this could be broad enough.</p> <p>Considering the above, there are still some elements pending to comply with Recommendation 14 (see also comments below, under Recommendation 14, for Financial Institutions).</p>
Recommendation 15	<p>P&Gs include the obligation for a service provider OR DNFBP, to set up a compliance regime with at least the following elements: a) appointment of a compliance officer; b) development and application of the compliance policy and procedures; c) ongoing training programme, and d) appraisal of the compliance policy and procedures, to test them for their effectiveness.</p> <p>A section with key duties to be performed by the compliance officer is included. Responsibilities need to be set out in writing and can be requested and reviewed by the FIU.</p> <p>It is established that the officer must be able to operate, as far as possible, on an independent basis and have unrestricted access to the relevant information (i.e. central client records) to do his job.</p> <p>Provisions refer to the need for an appraisal of the policy and procedures maintained by the services provider, every two years. However it is unclear that this entirely complies with the need to maintain adequately resourced and independent audit function to test compliance (criteria 15.2). Also, there are no specific measures related to screening procedures to ensure high standards when hiring employees, although these are briefly discussed as part of the duties the compliance officer must perform. This matter will be issued by the FIU in the future.</p> <p>As explained, while greatly compliance with criteria contained in Recommendation 15, there are still some elements that need to be included or clarified.</p>
Recommendation 21	<p>Provisions included with regard to higher risk jurisdictions are compliant with current Recommendation 21 and seem to have captured what was envisioned in new Recommendation 19. It is established that DNFBPs should pay special attention to clients or business relationships and transactions with natural persons and legal persons from countries that do not apply or comply sufficiently with the FATF recommendations, and should take measures proportionate to the risks. Current classification of high risk jurisdictions, by the FATF, and reference to public</p>

	<p>statements is made, as well as the obligation that the FIU will have, to provide those who are obliged to make reports, under its supervision, with the current state of affairs in relation to countries classified by the FATF as high risk jurisdictions.</p> <p>Given the above, provisions are considered substantially compliant with Recommendation 21. Measures to routinely inform services providers or DNFBPs of the state of affairs in relation to countries classified by the FATF as high risk jurisdictions should be in place. See comments under Recommendation 21 below, as applicable to all other reporting entities.</p>
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1. Also DNFBPs are receiving sensitization on NORUT and the role of the FIU (MOT). The Authorities indicated that the Ministry of Finance is busy drafting the appropriate legislation and guidance to regulate and supervise casinos and internet casinos. These items are pending.

Recommendation 14

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

Recommendation 17

3. For full compliance with this Recommendation, with regard to the deficiency related to inclusion of specific provisions to indicate that sanctions apply to directors and senior management of financial institutions, the Authorities have advised that they will review their legal instruments to address this deficiency. With regard to the power to apply a wide range of sanctions, the Authorities will address this item in draft Harmonization Law which is in legislative process and expected to be enacted by the end of 2013. Therefore, at this point in time, deficiencies remain outstanding.

Recommendation 21

4. The Authorities indicated that the P&Gs for CI, IC & IB and MTC establish that financial institutions are required to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries that do not or insufficiently apply the FATF Recommendations including high-risk and non-cooperative jurisdictions. However, the recommended action in the **MER** refers to criteria 21.1.1. The **MER** in paragraph 826 relates to the process where Central Bank routinely circulates to financial institutions and publishes on its website, extracts from FATF public statements regarding jurisdictions for which the FATF calls for action. The recommended action requires that those notices from the CBCS include not only the jurisdiction that FAFT calls for action. The financial institutions should be advised of

concerns about weaknesses in the AML/CFT systems of other countries. With regard to the remaining recommended action the authorities advised that the NOIS is being revised to correct the deficiency. Based on the above, there has been some progress in compliance with these Recommendations, although, at this point in time, deficiencies remain outstanding.

Recommendation 25

5. Status of compliance with Recommendation 25 continues to be same, although presents some important updates. Authorities indicated last report, that MOT should provide feedback and continue its outreach programme to specifically encompass both feedback and guidance related to STRs. Sint Maarten Authorities indicated for this report, that FIU (MOT) and the PPO are analysing the typologies and all sanitized and specific cases; this process will be carried out periodically and when completed, feedback will be given to the financial institutions through a Typology Report. The FIU is holding regular meetings with other Law Enforcement Agencies, related to the preparation of this Report and other matters.
6. As indicated before, the Authorities advised that the FIU (MOT) is disseminating information to the reporting entities on the manner and procedures for reporting on a case by case basis. The FIU developed P&Gs for DNFBBs and this was a very important development. P&Gs include a separate section on reporting and clues or situations that should raise an alert and may lead to an unusual report being filed. This is part of the dissemination of information responsibility, of the FIU, regarding ALM/CTF requirements.
7. Also, the Authorities indicated that more guidance will be provided to financial institutions with respect to terrorist financing; a training program is in development. This matter is being discussed with the CBCS.

Recommendation 27

8. With regard to compliance with Recommendation 27, status has not varied from last follow up report, deficiencies remain; the Authorities advised that the MOT will be responsible for the training sessions in ML/TF for the law enforcement agencies (LEA). The authorities indicate that in August 2013 the Public Prosecutors Office (PPO) will provide training to all LEAs.
9. With regard to the issue of the unlicensed MTCs, as mentioned before, particularly regarding compliance with Recommendation 23, there have been discussions to address the matter.

Recommendations 30, 31, 32, 37, 28 and 39

10. Status of compliance with these Recommendations is not different from the previous follow-up, where Authorities informed of plans to increase resources in terms of staff, technology, different aspects of domestic cooperation and training. Full compliance with these Recommendations remains outstanding.
11. With regard to Recommendations 37 and 39, the only deficiency identified has to do with assistance being provided by Sint Maarten, regardless of dual criminality, being unclear, as well as the ability to provide mutual legal assistance and assistance through extradition.

Recommendation 33

12. Status of compliance with this Recommendation is not different from the previous follow-up. The Authorities indicated that the law will be amended to require that all legal persons register the ultimate beneficial owner information at the Chamber of Commerce and that the Chamber of Commerce and distribute UBO information to the FIU (MOT). In addition, the Authorities advised that the deficiencies will be examined by the legal affairs department at the Ministry of Justice. Therefore, this Recommendation is outstanding.

Special Recommendations VI and VII

13. As discussed on the previous follow-up report and for this report, above, the Authorities indicated that the matter of the unlicensed MTCs is going to be dealt by the PPO. In addition the relevant provisions are being revised to correct the deficiencies indicated in the **MER**.
14. Meanwhile instead of the P&Gs for CI and IC & IB being revised, the MTC's P&Gs were reviewed directly to implement the recommended actions regarding interpretative note on Special Recommendation VII, with regard to the measures that the Beneficiary Institution must take (on that the originator of a wire transfer must take) when information is missing or incomplete.

Special Recommendation VIII

15. The Authorities have advised that deficiencies will be examined by the legal department of the Government (Judicial Affairs Department within the Ministry of Justice) and the Ministry of Justice in conjunction with the ministry of General Affairs.

Special Recommendation IX

16. There were no updates to the status of this Recommendation. Recommendation was rated as NC, and there was a need to ensure that proposed declaration system is completed by all passengers, instead of the ad hoc disclosure system currently in place. Authorities also needed to consider implementing a system to restrain currency when there is suspicion of ML or TF, among other important requirements in terms of confiscation of currency, cooperation and access to information. As informed on the last follow-up report, the legal department of the Government will address some of the deficiencies pending for this Recommendation. The Authorities advised that the Customs Department received software to generate statistics and a database to store this data; the MOT is working on the development of a training schedule for the Customs Department.

IV Conclusion

17. As outlined in this Report, since the adoption of its **MER**, Sint Maarten has continued the process of rectifying deficiencies related to its AML/CFT Regime. One of the key developments, was the revision of P&Gs for financial institutions and issuance of P&Gs for DNFBP. With regard to full compliance with all the Core and Key Recommendations, Sint

Maarten fully complies with none of the sixteen (16) Core and Key Recommendations. However, due to measures implemented to date, the country has attained a level of compliance equivalent to a C, in Recommendations 6, 7, 8 and 9, and achieved substantial progress in compliance with Recommendations 12, 16, 21 and 24; Sint Maarten should be specially commended for its progress in the regulation of DNFBPs.

18. It is recommended therefore, that Plenary considers if a) Sint Maarten should be moved to the first stage of enhanced follow-up, and report back to the May 2014 Plenary, or if b) Sint Maarten should remain in expedited follow-up as is, considering that its **MER** was approved January 2013, and expect that Sint Maarten is able to progress with key reforms by May 2014. Particularly, those related to the finalization of amendments to the NOIS, NORUT, Penal Code and CPC, which are on an advanced stage and will impact compliance with several Recommendations. First stage of enhanced follow-up requires an appropriate letter by the Chairman of the CFATF is sent to the authorities (Prime Contact).

CFATF Secretariat
November, 2013

Matrix with ratings and follow-up action plan 3rd round Mutual Evaluation
Sint Maarten

Changes included since the last follow-up report are in bold text

Forty Recommendations	Rating	Summary of factors underlying rating ⁴	Recommended Action	Undertaken Action
Legal systems				
1. ML offence	LC	<ul style="list-style-type: none"> No confirmation that illicit arms trafficking, smuggling, insider trading and market manipulation are criminalised as ML predicate offenses. 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. 	<ul style="list-style-type: none"> The Authorities should ensure criminalization of the following predicate offenses: illicit arms trafficking, smuggling, insider trading and market manipulation. 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. 	Article 1:5 of the proposed PC SXM creates jurisdiction in cases of TF (currently article 4 and 4a PC). The money laundering offences apply to All crimes (articles 2:404, 2:405, 2:406 Penal Code SXM, currently punishable in articles 435a, 435b, 435c Penal Code), thus including the mentioned ones. Next to that the proposed article 2:54 and 2:55 PC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime (currently dealt with in the articles articles 435a, 435b, 435c Penal Code combined with 48a paragraph three (with explicitly mentions the financing of terrorism). The Proposed article 2:55 the financing of crime is punishable as a severe crime. The switching provision of 2:224 (currently 96) makes the general provisions of the first book of the Penal Code applicable to all other Criminal laws
2. ML offence – mental element and	LC	<ul style="list-style-type: none"> No evidence that parallel civil and criminal proceedings are possible. The manner in which the data was captured did not 	<ul style="list-style-type: none"> Amend the Penal Code to ensure that parallel criminal and civil proceedings are possible The penalty applicable for a 	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

⁴ These factors are only required to be set out when the rating is less than Compliant.

corporate liability		<p>allow for proper assessment of the effectiveness of ML prosecutorial efforts.</p> <ul style="list-style-type: none"> • Penalty applicable to culpable ML is not sufficiently dissuasive 	<p>person convicted for culpable ML should be revised to ensure it is effective, dissuasive and proportionate</p>	<p>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>
3. Confiscation and provisional measures	PC	<p>Effectiveness issues</p> <ul style="list-style-type: none"> • The powers to confiscate or take provisional measures in relation to terrorist financing or some predicate offences for ML are limited (please see ratings R1 and SR11) • 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. • Based on the insufficient statistics effectiveness of the confiscation regime could not be confirmed. 	<ul style="list-style-type: none"> • The Penal Code should ensure the effective applicability of Sint Maarten's confiscation mechanisms to Terrorist Financing offences according to the TF Convention and all the designated categories of predicate offenses (refer to paragraph 277). • The Authorities should ensure that comprehensive statistics are maintained in relation to the investigation, prosecution, and conviction of ML related cases. • 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. 	<p>In the proposed PC SXM the articles 2:54 and 2:55 criminalize TF. Via the proposed article of 1:77 (currently 38e) (a separate and/or parallel procedure to the criminal proceedings) Post-conviction measures can be imposed. For pre-conviction measures the proposal for the new CPC SXM has to be awaited. The new CPC SXM has been submitted to the minister of Justice on Oct. 31, 2013, by the joint Committee revising the Criminal Procedure Code of CUR, AUA, SXM and the BES-island. The switching provision of 2:224 (currently 96) makes the general provisions of the first book of the Penal Code applicable to all other Criminal laws</p>
Preventive measures				
4. Secrecy laws consistent with the Recommendations	LC	<ul style="list-style-type: none"> • No clear provision for the FIU (MOT) as supervisor to exchange information with other foreign supervisors. 	<ul style="list-style-type: none"> • FIU (MOT) as supervisor should have the possibility to exchange information with other local and international supervisory authorities 	<p>FIU (MOT) as supervisor does exchange information (intelligence) with other local and international supervisory authorities. This is done based on article 6 paragraph 2 and article seven (7) of the NORUT and carried out when a request for information is submitted to FIU (MOT).</p>
5. Customer due diligence	PC	<ul style="list-style-type: none"> • 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"> ○ Lending (factoring) ○ Financial leasing ○ Financial guarantees and commitments 	<ul style="list-style-type: none"> • 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; 	<p>The NOIS and the NORUT are being revised to reflect the recommended changes. The actions under bullet points 1 through 6 will be addressed therein.</p>

	<ul style="list-style-type: none"> ○ Trading in money market instruments ○ Participation in securities issues and the provision of financial services related to such issues ○ Individual and collective portfolio management ● Certain categories of financial services providers are not covered in the scope of the NOIS and NORUT: <ul style="list-style-type: none"> ○ Intermediaries operating in the Curacao Stock Exchange (DCSX) ○ Life insurance agents ● 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. ● 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. ● The basic obligation to conduct CDD when there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations is not set out in law or regulation. ● The basic obligation to conduct ongoing due diligence is not specified in law or regulation ● The requirement to verify the identity of customers and beneficial owners before the establishment of business relations is not always practical. 	<p>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 (DCSX) should be covered by these national ordinances.</p> <ul style="list-style-type: none"> ● 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. ● 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. ● 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. ● Require financial institutions, through law or regulation, to conduct ongoing due diligence. ● The requirement to verify the identity of customers and beneficial owners before the establishment of business relations is not always practical. Sint Maarten should amend the NOIS to allow for verification at after the establishment of a business relationship in specified circumstances. ● Require insurance companies and 	
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		<ul style="list-style-type: none"> There are no provisions for insurance companies and insurance brokers to re-examine the relationship with the client to determine whether to terminate and whether to report to the MOT if doubts arise relating to the identity of the client after the client has been accepted and accounts have been opened 	<p>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.</p>	
6. Politically exposed persons.	LC	<ul style="list-style-type: none"> No clear requirements within the P&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. 	<ul style="list-style-type: none"> Amend the P&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. 	<p>The recommended action has been incorporated in the P&G for IC & IB. For your convenience the amended section is highlighted in yellow.</p>
7. Correspondent banking	LC	<ul style="list-style-type: none"> Only the P&G for CI contain specific provisions on correspondent banking activities. No similar provisions exist for other types of financial institutions. 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. 	<ul style="list-style-type: none"> Correspondent activities provisions should be incorporated in all the other P&Gs, similar to the P&G for CI, which contains specific provisions on correspondent banking activities. The P&Gs should require the respondent institution's AML/CFT controls, and to ascertain that they are adequate and effective. 	<p>Where relevant the recommended action has been incorporated in the P&Gs. For your convenience the amended section is highlighted in yellow.</p>
8. Non face to face and new technologies.	LC	<ul style="list-style-type: none"> There is no requirement for MTC to comply with criteria 8.2 and 8.2.1 	<ul style="list-style-type: none"> P&Gs for MTCs should incorporate requirements regarding E.C 8.2 and EC 8.2.1 	<p>The recommended action has been incorporated in the P&G for MTC. For your convenience the amended section is highlighted in yellow.</p>
9. Third parties and introducers	PC	<ul style="list-style-type: none"> The "adequately supervised" criterion in the P&Gs is not in line with the requirements of essential criteria 9.3. The sources through which financial institutions should satisfy themselves that a third party is adequately regulated is limited to Mutual Evaluation Reports. There are no requirements for MTC to comply with Recommendation 9 	<ul style="list-style-type: none"> Amend the "adequately supervised" provisions of the P&Gs, in line with the requirements of essential criteria 9.2, which requires that financial institutions satisfy themselves that the third party is regulated and supervised (in accordance with Recommendation 23, 24 and 29) and has measures in place to comply with the CDD requirements set out in Recommendation 5 and Recommendation 10. 	<p>The recommended action has been incorporated in the P&Gs. For your convenience the amended section is highlighted in yellow.</p>

			<ul style="list-style-type: none"> • Amend the P&G's to require that financial institutions satisfy themselves that the third party adequately regulated and supervised by referring more broadly to reports assessments and reviews of reports produced by the FATF, IMF or FSRBs, rather than specifically to Mutual Evaluation Reports. • P&Gs for MTC should incorporate requirements to comply with Recommendation 9. 	<p>The recommended action has been incorporated in the P&Gs. For your convenience the amended section is highlighted in yellow.</p> <p>The recommended action has been incorporated in the P&G for MTC. For your convenience the amended section is highlighted in yellow.</p>
10. Record-keeping	PC	<ul style="list-style-type: none"> • 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. • 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. • 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 	<ul style="list-style-type: none"> • 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). • 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 	<p>The NOIS is being amended to reflect the recommended actions under the first and second bullet points.</p>
11. Unusual transactions	LC	<ul style="list-style-type: none"> • There are no specific provisions in the P&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. 	<ul style="list-style-type: none"> • The P&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. 	<p>The P&Gs have been amended to incorporate the recommended action. For your convenience the amended section is highlighted in yellow.</p>
12. DNFBP-	NC	<ul style="list-style-type: none"> • The threshold for identification requirements for 	<ul style="list-style-type: none"> • The threshold for identification 	<p>The NOIS and the NORUT are being amended</p>

<p>R.5, 6, 8–11</p>		<p>casinos is not in accordance FATF standard.</p> <ul style="list-style-type: none"> • No AML/CFT requirements for internet casinos. • No requirements, by law or regulation for DNFBPs regarding criteria 5.2.c. 5.2.d, 5.2.e and 5.7 • No requirements for DNFBPs supervised by the FIU (MOT) and casinos regarding criteria 5.6 to 5.11, 5.16 and 5.17 • The deficiencies in section 3.5 for Rec. 10 which are applicable to all DNFBPs • No legislation i.e. law or guidelines for DNFBPs supervised by the FIU (MOT) and casinos that includes all the requirements of recommendations 6, 8, 9 and 11. • No requirements for SAII and AII regarding criteria 6.1 and 9.3 	<p>requirements for casinos in legislation should be amended in accordance with the FATF standard.</p> <ul style="list-style-type: none"> • AML/CFT requirements should apply to internet casinos. • 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 • Authorities should put legislation for DNFBPs supervised by the FIU (MOT) and casinos with the requirements of criteria 5.5.2, 5.6 to 5.11, 5.16 and 5.17 of recommendation 5. • The deficiencies in section 3.5 for Recommendation 10 which are applicable to all DNFBPs should be remedied. • The Authorities in Sint Maarten should issue legislation for DNFBPs supervised by the FIU (MOT) and casinos that includes all the requirements of recommendations 6, 8, 9 and 11. • Central Bank should incorporate in the P&Gs for SAII and AII requirements regarding E.C 6.2 of Recommendation 6 and E.C 9.3 of Recommendation 9 	<p>to incorporate the recommended actions under the first two bullet points..</p> <p>The P&Gs for DNFBPs have been amended to incorporate recommendation 5. You are referred to the enclosed P&Gs of the DNFBPs supervised by the FIU. These are: P&Gs Car dealers/jewellers: page 9-12; P&Gs Professions: page 9-25; P&Gs Real estate agents: page 9-23.</p> <p>The P&Gs for DNFBPs have been amended to incorporate recommendation 10. You are referred to the enclosed P&Gs of the DNFBPs supervised by the FIU. These are: P&Gs Car dealers/jewellers: page 14/2.6 and page 18/2.10; P&Gs Professions: page 13/2.2.1.5 and page 15/2.2.1.6; P&Gs Real estate agents: page 14/2.6 and page 19/2.10.</p> <p>The P&Gs for DNFBPs have been amended to incorporate recommendation 6. You are referred to the enclosed P&Gs of the DNFBPs supervised by the FIU. These are: P&Gs Car dealers/jewellers: page 6-8; P&Gs Professions: page 15-20; P&Gs Real estate agents: page 6-8.</p> <p>For the incorporation of recommendation 9 you are referred to the P&Gs for DNFBPs supervised by the FIU. These are: P&Gs Car dealers/jewellers: page 17;</p>
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				<p>P&Gs Professions: page 12; P&Gs Real estate agents: page 17.</p> <p>The P&G for SAII and AII have been 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.</p> <p>The P&G for SAII and AII has been amended to implement the recommended actions.</p> <p>For your convenience the amended sections are highlighted in yellow.</p>
13. Suspicious transaction reporting	NC	<ul style="list-style-type: none"> • The scope of UTR reporting may not be as extensive as required by FATF as some designated categories of predicate offenses for ML are not covered in Sint Maarten (see R1). • It is unclear that suspicious transactions apply regardless of whether they involve tax matters. <p><i>Effectiveness issues</i></p> <ul style="list-style-type: none"> • Heavy reliance on objective indicators (i.e threshold). • The burden of reporting subjective (rules based) indicators could detract from the FIs reporting genuine suspicious transactions. 	<ul style="list-style-type: none"> • Sint Maarten should ensure that all designated categories of predicate offenses for ML are covered in order to eliminate the restrictions in the UTR reporting system in this regard (refer to paragraph 277) • 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. • The MDIUT should be amended to allow the reporting entities to identify suspicion of ML or FT and avoid reliance on the prescriptive indicators. 	<p>The new Penal Code has been reviewed by the Constitutional Court. The decision of the Court is dated November 8, 2013 and it has been sent to the CFATF Secretariat. All designated categories of predicate offenses for ML are covered in the new Penal Code.</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.</p>
14. Protection & no tipping-off	PC	<ul style="list-style-type: none"> • It is not clear that this prohibition covers financial institutions and their directors officers and employees (permanent or temporary). 	<ul style="list-style-type: none"> • 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 	<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</p>

			provided to the FIU.	employees (permanent or temporary) of financial institutions. It is not customary in our legal system that all different addressees of the law regulating an issue are mentioned separately one by one. This subject matter will also be submitted to a common law professor who teaches European law for a legal opinion.
15. Internal policies and controls	C			
16. DNFBP–R.13–15 & 21	NC	<ul style="list-style-type: none"> • The deficiencies identified for Recs. 13 and 14 in section 3.7 apply to all DNFBPs. • No legislation i.e. law or guidelines for DNFBPs supervised by the FIU (MOT) and casinos that includes all the requirements of recommendations 15 and 21. • DNFBPs supervised by the Central Bank are not required to apply counter-measures to countries which do not or insufficiently apply FATF Recommendations. • UTR reporting by DNFBPs is ineffective. 	<ul style="list-style-type: none"> • The deficiencies identified for Recs. 13 and 14 in section 3.7 for all DNFBPs should be addressed. • The Authorities in Sint Maarten should issue legislation for DNFBPs supervised by the FIU (MOT) and casinos that includes all the requirements of recommendations 15 and 21. • DNFBPs supervised by the Central Bank should be required to apply counter-measures to countries which do not or insufficiently apply FATF Recommendations. 	<p>The P&Gs for DNFBPs have been amended to incorporate recommendations 13 and 14. You are referred to the enclosed P&Gs of the DNFBPs supervised by the FIU. These are: P&Gs Car dealers and jewellers: page 19-22; P&Gs Professions: page 22-25; P&Gs Real estate agents: page 20-23.</p> <p>The P&Gs for DNFBPs have been amended to incorporate recommendation 15. You are referred to the enclosed P&Gs of the DNFBPs supervised by the FIU, These are: P&Gs Car dealers and jewellers: page 23-26; P&Gs Professions: page 26-30; P&Gs Real estate agents: page 24-27.</p> <p>For the incorporation of recommendation 21 you are referred to the P&Gs for DNFBPs supervised by the FIU. These are: P&Gs Car dealers/jewellers: page 8; P&Gs Professions: page 16 en 17; P&Gs Real estate agents: page 23.</p> <p>The government of Sint Maarten has started drafting legislation/guidelines to supervise</p>

				casinos and internet gambling. The deficiencies for Recommendations 13 and 14 have been updated and included in the P&Gs. For your convenience the amended section is highlighted in yellow.
17. Sanctions	PC	<ul style="list-style-type: none"> • Outside of the Civil and Penal Codes, there are no indications that sanctions could apply to directors and senior management of financial institutions. • Sanctions not effective against MTCs that continue to operate without licenses. • Sanctions appear to be used sparingly. 	<ul style="list-style-type: none"> • Include explicit provisions in the NOIS and NORUT to indicate that sanctions apply to directors and senior management of financial institutions. • Take immediate action against directors and senior management of unauthorised MTCs. • The Central Bank should have a wide range of sanctions and should be prepared to use them. 	<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><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</p>

				<p>understood, the matter will be further examined in order to ensure the correct understanding of this legal mechanism.</p> <p>The power to apply a wide range of sanctions has already been addressed in the draft Harmonization Law which is in legislative process.</p>
18. Shell Banks	C			
19. Reports of Currency transactions	C			
20. Other DNFBP & secure transaction techniques	C			
21. Special attention for higher risk countries	PC	<ul style="list-style-type: none"> • Notices with respect to strategic deficiencies are limited to jurisdictions for which the FATF calls for action. • Countermeasures are not clearly specified with respect to countries that do not apply or insufficiently apply the FATF Recommendations. 	<ul style="list-style-type: none"> • 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. • Ensure that Sint Maarten has the ability to apply counter-measures to countries that continue not to apply or insufficiently apply the FATF Recommendations. 	<p>The P&Gs for CI (page 17), MTC (page 13), SAI & AII (page 23), IC & IB (page 21), and TSP (page 19) indicate that the supervised institutions are required to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries that do not or insufficiently apply the FATF Recommendations including high-risk and non-cooperative jurisdictions.</p> <p>The NOIS is being revised to implement the recommended actions.</p>
22. Branches and subsidiaries	C			

23. Regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> • Unlicensed MTCs continue to operate within Sint Maarten, impacting on effectiveness with respect to E.C. 23.1, E.C 23.5 and E.C. 23.6. • Low number of on-site inspections for MTCs. • Factoring services are yet to be subject to Central Bank supervision under the NOIS and NORUT. • The RBA is not calibrated for AML/CFT risks. 	<ul style="list-style-type: none"> • Take immediate action to close unlicensed MTCs. • Increase on-site inspections of MTCs. • Implement a regulatory and supervisory regime for factoring services. • Develop a risk based approach system to determine the AML/CFT focus of onsite inspections. • Commit resources to having supervisory staff in Sint Maarten for greater onsite monitoring of licensees. 	<p>The situation with the MTC's will be addressed by the PPO.</p> <p>For 2013 the Central Bank has scheduled 3 on-site visits to MTC's in Sint Maarten.</p> <p>The process of developing a risk based approach has started.</p> <p>As per August 2012 one (1) supervisory staff has been hired by the CBCS to improve the monitoring of licensees in Sint Maarten.</p>
24. DNFBP - regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> • There is no adequate AML/CFT regulation and supervision of casinos • No supervisory regimen for Internet casinos. • The FIU (MOT) as supervisory authority has not started yet. • The FIU (MOT) does not have adequate resources to fulfil their supervisory role. • The deficiency identified in section 3.10 (R. 29 and R17) with regard to the supervisory function of the Central Bank applied. 	<ul style="list-style-type: none"> • 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. • The Authorities should implement an AML/CFT regime for Internet casinos. • The FIU (MOT) should implement an effective supervisory regime and should be given resources to fulfil their supervisory role for the relevant DNFBP sector. • The deficiency identified in section 3.10 (R. 29 and R17) with regard to the supervisory function of the Central Bank should be cured. 	<p>Adequate AML/CFT regulation and supervision of casinos and internet casinos will be developed in the coming year.</p> <p>The FIU is setting up the supervision of the DNFBP sector. The registration of the DNFBPs and the recruitment of supervision personnel are underway.</p> <p>In accordance with the legal system, sanctions against directors and senior management are already in place in Sint Maarten. Please be referred to the comment under Undertaken Action re. Rec 17.</p>
25. Guidelines & Feedback	PC	<ul style="list-style-type: none"> • Not much guidance is given to financial institutions on TF techniques and methods. • P&G for providers of factoring services is not in place. 	<ul style="list-style-type: none"> • The FIU should provide feedback with respect to typologies or sanitized cases, and on specific cases that have been closed. • FIU (MOT) is strongly encouraged to continue its outreach programme to 	<p>FIU (MOT) has initiated three monthly meetings with law enforcement agencies, the PPO, the Fraud Unit of the Tax Office and the National Security Agency to discuss and analyse typologies and all sanitized and specific cases.</p>

		<ul style="list-style-type: none"> • DNFBPs supervised by the FIU and do not receive sufficient guidance to DNFBPs on complying with AML/CFT requirements 	<p><u>specifically</u> encompass both feedback and guidance related to UTRs.</p> <ul style="list-style-type: none"> • Provide guidance to financial institutions with respect to terrorism financing. • Issue guidance to providers of factoring services. • The Competent Authorities in Sint Maarten should provide adequate guidance to DNFBPs supervised by the FIU and Casinos regarding AML/CFT requirements. • FIU (MOT) should issue its own P&Gs. 	<p>The report is being prepared.</p> <p>FIU (MOT) does feedback with and guide the financial institutions related to UTRs.</p> <p>More guidance will be provided to financial institutions with respect to TF. A training programme is being developed.</p> <p>The laws are being amended to incorporate factoring services.</p> <p>The FIU (MOT) is busy disseminating information to the DNFBPs supervised by the FIU regarding AML/TF requirements. The FIU has developed P&Gs for DNFBPs; these have been sent to the CFATF Secretariat for review.</p>
Institutional and other measures				
26. The FIU	NC	<ul style="list-style-type: none"> • The legal basis for the establishment of the FIU (MOT) is not clear. • There is an absence of a permanent FIU Head physically present in the FIU on a daily basis. • Not all reporting entities are aware of the existence of the FIU (MOT) in Sint Maarten. Inadequate training and guidance sessions for reporting entities. • Articles 4, 8, 16 and 22 of NORUT present a risk to the operational autonomy of the FIU and create opportunities for undue interference and influence. • There is a low number of investigative reports forwarded by the FIU (MOT) to the PPO. • The security of the FIU (MOT) information, the premises and employees requires improvement. 	<ul style="list-style-type: none"> • The authorities should ensure that the legal underpinnings for the establishment of the FIU (MOT) are sound. It should be clear in the law as to the Ministry under which it falls. • The authorities should move swiftly to appoint an FIU Head. • The FIU (MOT) should seek to clarify the manner and procedures for reporting, improve the relationship between itself and its stakeholders and provide guidance on the manner and procedures for reporting. The FIU (MOT) should increase awareness within its stakeholders of the existence of the MOT. • Articles 4, 8, 16 and 22 of NORUT should 	<p>The NORUT forms the legal basis for the establishment of the FIU (MOT). The Netherlands Antilles NORUT went into force for Sint Maarten by the law on transition of legislation and government dated December 20, 2010. Thereafter the NORUT was converted into Sint Maarten's NORUT on April 19, 2013.</p> <p>The FIU (MOT) has a permanent director in place as of January 1, 2013. The national decree has been sent to the CFATF Secretariat for perusal.</p> <p>With the amendment of the NORUT, the drafting of the P&Gs for the DNFBPs and feedback and guiding sessions, the FIU (MOT) is disseminating</p>

		<ul style="list-style-type: none"> • 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. • Effectiveness of the FIU (MOT) could not be confirmed 	<p>be amended in order to ensure operational autonomy of the FIU and avoid opportunities for undue interference and influence.</p> <ul style="list-style-type: none"> • As the number of investigative reports forwarded by the FIU (MOT) is low compared to the number of UTRs recovered, the FIU (MOT) should reassess its internal process to ensure an adequate number of investigative reports are forwarded to the PPO. • The FIU should implement measures to improve the physical security of manual files, electronic data, premises and the employees of the FIU (MOT). The MOT should produce and publish Annual Reports and ensure that it includes full information on ML and TF trends and typologies. 	<p>information to the reporters on the manner and procedures for reporting. The DNFBPs are being registered and receive information simultaneously on the NORUT and the subsequent existence of the MOT.</p> <p>The NORUT is being amended to legally establish the operational autonomy of the FIU. In practice the FIU already operates autonomously.</p> <p>The internal procedures of the FIU (MOT) are being reviewed and it has been concluded that more qualified personnel needs to be hired. This must increase the number of investigated reports that is sent to the PPO.</p> <p>With the move in February 2013 of the FIU (MOT) office to its new location the physical security of the personnel, the files, and the databases has been increased. The next step is to hire qualified (and screened) personnel to assist in the production of the annual reports 2011 and 2012 of the FIU (MOT).</p>
<p>27. Law enforcement authorities</p>	<p>PC</p>	<p><i>Effectiveness:</i></p> <ul style="list-style-type: none"> • No financial resources have been allocated for ML and TF training for the local law enforcement agencies • There is a shortage of suitably qualified law enforcement officers generally to execute effective ML investigations. • No specific training for TF or ML for several of the law enforcement authorities. • Unlicensed MTCs continue to operate within Sint Maarten 	<ul style="list-style-type: none"> • 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. • There should be a decisive approach with respect to the operation of certain MTCs without licenses in contravention of the 	<p>The FIU (MOT) will be responsible for the training sessions in ML/TF for the law enforcement agencies.</p> <p>The FIU (MOT) will discuss the issue of the unlicensed MTCs with the PPO. One MTC has an appeal pending at the CBCS.</p>

			law.	
28. Document production, search and seizure	C			
29. Supervisors	C			
30. Resources, integrity, and training	PC	<ul style="list-style-type: none"> • The MOT lacks of staff to adequately perform its functions (including the Head of FIU) • The staff of the FIU does not have adequate and relevant training for combatting ML & TF. • The FIU lacks of analytical tools such as Analyst Notebook to assist in the analysis of UTRs. • The FIU lacks of resources to protect the FIU data, premises and staff; eg. Offsite electronic data fireproof safe, fire extinguishers, etc. • Several of the law enforcement agencies possess a shortage of suitably qualified officers trained in ML investigations. • Inadequate training for ML and TF. • No allocation of financial resources for ML and TF. • Inadequate space for the Court of First Instance to properly execute its functions 	<ul style="list-style-type: none"> •The authorities should increase the staff complement of the FIU (MOT.) •The authorities should acquire additional tools such as Analyst Notebook to assist in the analysis of UTRs. •Sufficient financial resources should be reserved that in order that the staff may be adequately trained for ML and TF. •The FIU should obtain the relevant resources eg. Offsite electronic data fireproof safe, fire extinguishers, etc to further protect its information, premises and employees. •The authorities should seek to quickly employ robust recruiting programmes to fill the vacancies in the law enforcement agencies such as the KPSM. •The authorities should ensure that all relevant entities including the Tax Department, Landsrecherche, Customs, Coast Guard and the KPSM are adequately and regularly trained in money laundering and counter financing of terrorism like the RST. •Improved facilities should be provided for the Courts of Justice 	<p>The director of the FIU (MOT) has undertaken action to describe the full time equivalent of the FIU (MOT) functions. This establishes the staff complement of the FIU (MOT) which will be submitted for approval by the Council of Ministers.</p> <p>The financial resources for the ML/TF training of personnel have been reserved in 2013.</p> <p>The connections for offsite electronic data backup are expected to be completed in the next two (2) months. A fireproof safe and fire extinguishers are already in place at the FIU (MOT).</p> <p>The authorities have been busy recruiting personnel for the law enforcement agencies such as the KPSM.</p> <p>The FIU (MOT) has taken responsibility to organize the ML/TF training sessions. The funds have been reserved for the first training sessions for financial and non-financial reporters.</p> <p>The Courts of Justice dispose of extra office space since December 2012.</p>
31. National co-operation	PC	<ul style="list-style-type: none"> • The CIWG needs to be formally established. • Many of the national coordination mechanisms (such as the national AML Committee - CIWG; 	<ul style="list-style-type: none"> • The CIWG needs to be formally established. • The Authorities should ensure the 	<p>The anti-money laundering and terrorism financing committee, the CAWGFT, was formally established by national decree dated</p>

		and Trainings to be undertaken by the PPO) are not yet in operation.	implementation of the mechanism for coordination that were informed to the Team.	June 8 th , 2012. The director of FIU (MOT) will discuss training by the PPO with this entity.
32. Statistics	PC	<ul style="list-style-type: none"> No statistics available relating to requests to overseas FIUs. No statistics available for requests for additional information by the FIU(MOT) to reporting entities. Several reporting entities have not filed UTRs for either subjective or objective indicators and appear not to understand or know their responsibility to report. 	<ul style="list-style-type: none"> The Authorities should ensure that comprehensive statistics are maintained in relation to the investigation, prosecution, and conviction of ML related cases The authorities should ensure that relevant statistics are maintained for Sint Maarten with respect to requests for additional information by the FIU (MOT). The FIU should host training sessions on ML and TF for the reporting entities to ensure that the financial entities report as required. The FIU should also maintain statistics regarding the number of requests made to foreign FIUs. 	<p>Now that the FIU (MOT) has moved to its new location, a start can be made with the (bi) annual production of on requests from and to overseas FIUs, ML related cases, etc. Director of FIU (MOT) is also busy with the hiring of qualified (IT) personnel to carry out these tasks. However, it needs to be mentioned here that all the DNFBBPs have received information from the FIU (MOT) Netherlands Antilles.</p> <p>The FIU (MOT) will host training sessions on ML/TF for the reporting entities and DNFBBPs in particular. This will be done in close collaboration with the FIUs in the Kingdom.</p>
33. Legal persons–beneficial owners	NC	<ul style="list-style-type: none"> There is no system in place to ensure access to the UBO information. Not all competent authorities have access in timely fashion to adequate, accurate and current UBO information. The requirement for bearer shares to be transformed into registered shares operates at the discretion of the shareholder and is therefore not mandatory. 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. 	<ul style="list-style-type: none"> Sint Maarten should establish a system to ensure access to the UBO information of legal persons. 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. Article 105 3rd paragraphs reflects that bearer shares shall be transformed by the company into registered shares if this is requested by the holder of the bearer shares that this be done. This aspect of the CC must be amended to either make the transformation mandatory or mandate the registration of the UBO details in relation to the bearer shares and express 	<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.</p> <p>This subject matter will be further examined by the Judicial Affairs Department the ministry of Justice.</p>

			<p>mechanisms incorporate either in the Code or elsewhere to achieve this registration.</p> <ul style="list-style-type: none"> • Amend the NDCBSC so that the 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 	<p>This subject matter will be further examined by the Judicial Affairs Department of the ministry of Justice.</p>
34. Legal arrangements – beneficial owners	LC	<ul style="list-style-type: none"> • There is no certainty that all Competent Authorities have timely access to UBO information. 	<ul style="list-style-type: none"> • 	<p>This subject matter will be further examined by the legal department of government.</p>
International Cooperation				
35. Conventions	PC	<p><i>Implementation in accordance with the Vienna Convention</i></p> <ul style="list-style-type: none"> • No specific provision was identified in relation to non-treaty based requests for extradition, expedition of extradition procedures and simplification of evidentiary requirements, • 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. • No evidence of implementation of controlled delivery techniques by the Authorities. • 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 • No provisions have been identified in the laws provided which cover the Illicit Traffic at Sea 	<ul style="list-style-type: none"> • 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 • 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. • 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. • 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. 	<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</p>

	<ul style="list-style-type: none"> • No provisions identified regarding measures to suppress the use of mails for illicit traffic. <p><i>Implementation in accordance with the Palermo Convention</i></p> <ul style="list-style-type: none"> • 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. • 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. • No laws or measures identified regarding the matter of coordinated efforts bilaterally and multilaterally to provide assistance to developing countries in their efforts to combat transnational organized crime. • Verification of whether the laws addressed – <ul style="list-style-type: none"> a) The establishment of national records of persons disqualified from acting as directors of legal persons, and b) The exchange of information contained in the abovementioned national records with the competent authorities of other State Parties. <p>Could not be done as the relevant articles were not provided for assessment.</p> • Laws do not address Prevention of the misuse by organized criminal groups of Government tender 	<ul style="list-style-type: none"> • The Penal Code and Penal Procedures Code should be revised to address the shortfalls identified in the ratings Table below in relation to the Palermo Convention • 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. • The Penal Procedures Code and/or Penal Code should be amended to expressly address <ul style="list-style-type: none"> • the matter of reciprocal confidentiality (as required by article 12 (Assistance to other States) of the TF Convention; • 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 State to which the offender was transferred 	<p>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. 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> <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 CPC SXM, which has been</p>
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	<p>processes and of subsidies and licenses granted by public authorities.</p> <ul style="list-style-type: none"> • Laws and framework do not address <ol style="list-style-type: none"> a) The promotion of public awareness regarding the existence, gravity of and threat posed by transnational organized crime; 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 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><i>Implementation in accordance with the Terrorist Financing Convention</i></p> <ul style="list-style-type: none"> • Wilful provision of funds etc. to individual terrorists does not appear to be covered by the approach to terrorist financing in the Penal Code. • No specific penalty is indicated for the offence of TF, appropriateness of this penalty in relation to this Article therefore cannot be assessed. • 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. • No law or measure identified regarding the use of forfeited funds to compensate the victims of terrorist offences or their families. • Not all terrorism offences referenced in Annex 1 to the TF Convention are criminalized as required. • Reciprocal confidentiality (as required by article 12 (Assistance to other States) is not addressed in 		<p>drafted by the Joint Committee Criminal Procedure Code. (JCCPC)</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>
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		<p>the Penal Code or Penal Procedures Code.</p> <ul style="list-style-type: none"> • No provisions addressing the matters of custody arrangements, terms under which an offender transferred to Sint marten from a State will be returned to that State from which the offender was transferred, credit for time spent in custody of State to which the offender was transferred, were identified in the Penal Code or Penal Procedures Code. • No laws were identified on the matter of the guarantee of fair treatment of persons in custody. • 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 		
36. MLA	PC	<p>The extent of Mutual Legal Assistance that may be extended by Sint Maarten is limited by the following deficiencies identified:</p> <ul style="list-style-type: none"> • The indirect or unlawful provision of funding for the commission of a terrorism offence is not criminalized. • Terrorist financing is not criminalized in accordance with the FT Convention. • 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). 	Amend the Penal Code to address the deficiencies set out in the ratings table.	<p>Next to that the proposed article 2:54 and 2:55 PC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime. In article 2:55 the financing of crime is punishable as a severe crime. Next to that article 1:120 PC SXM (currently article 48a) criminalizes the aiding and abetting of the crimes mentioned in article 2:54 and 2:55. Of course criminal attempts are punishable under 1:119 PC SXM (article 47)</p> <p>The matter of Mutual Assistance is dealt with in the current CPC SXM (article 555 and further (International Mutual Assistance) but will be more expressively mentioned and regulated more detailed in the new CPC SXM, which has been drafted by the Joint Committee Criminal Procedure Code and submitted on Oct. 31, 2013, to the minister of Justice.</p> <p>(JCCPC) PC</p>

37. Dual criminality	LC	It is not clear whether the assistance provided by Sint Maarten occurred regardless of the existence of dual criminality.		
38. MLA on confiscation and freezing	PC	The deficiencies in R36 impact Sint Maarten's ability to extend mutual legal assistance	Amend the Penal Code to address the deficiencies set out in the ratings table	Already dealt with but more specific legislation is under construction as mentioned under R36.
39. Extradition	PC	The deficiencies in R36 impact Sint Maarten's ability to extend mutual legal assistance through extradition.	Implement the recommended actions outlined in relation to SR11.	Already dealt with but more specific legislation is under construction, as far as the CPC SXM is concerned, and in legislative process as far as CC SXM is concerned.
40. Other forms of co-operation	PC	<ul style="list-style-type: none"> • 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 • 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. • Statistics have not been provided with respect to spontaneous referrals of information as well as to information supplies on request in order that there can be an adequate assessment of the implementation of this criteria 	<ul style="list-style-type: none"> • 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. • The authorities should maintain statistics on entities' spontaneous referrals of information as well as information supplied as a result of a request. This system can be used at a policy and operational level to adequately assess the country's international cooperation efforts for AML/CFT. • Sint Maarten's domestic legislation for all law enforcement entities should specifically provide for international cooperation with their foreign counterparts. 	<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.</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 entails Customs, Police,</p>

				Coastguard and Landsrecherche. Also the fraud unit of the Tax Office and all others who have been authorized to investigated offences. The NORUT already in its article seven has this arrangement. The other domestic laws do not have this provision for the CBCS.
Nine Special Recommendations				
SR.I Implement UN instruments	PC	Refer to the ratings Table at Sections 2.2 and 2.4 of this Report.		
SR.II Criminalize terrorist financing	NC	<ul style="list-style-type: none"> • No specific penalty is reflected in the Penal Code for the offence of TF. • The indirect or unlawful provision of funding for the commission of a terrorism offence is not criminalized. • The wilful provision of funds etc. to individual terrorists is not criminalized. • 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. • The Penal Code does not specify a penalty for the legal person which participates in an organization aimed at committing terrorist offences. • Not all terrorism offences referenced in Annex 1 to the TF Convention are criminalized as required. 	<ul style="list-style-type: none"> • 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. • Article 48a of the Penal Code should be revised to expressly criminalize the wilful provision of funds etc. to individual terrorists. • Penal Code should be revised to independently criminalize Terrorism Financing should be effected without delay. • Penal Code should be amended to incorporate specific penalties for the offence of TF. • 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. • The Authorities should amend the Penal Code to criminalize all the offences referenced in the Conventions and 	<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 proposed PC SXM all offence in the mentioned Conventions will be criminalized.</p>

			Protocols referenced at Annex 1 to the TF Convention.	
SR.III Freeze and confiscate terrorist assets	PC	<ul style="list-style-type: none"> • The framework does not support an ability to invoke freezing mechanisms in response to a requesting foreign State’s freezing requirement. • The substantive freezing mechanism for persons listed pursuant to UN Resolution 1267 (1999) would not meet the ‘without delay’ requirement based on the intervening legislative process between listing by the UN and issue of the requisite Sanctions National Decree which compels the freezing. • There is no clear guidance specially to other persons and entities concerning their obligations in taking action under the freezing mechanism. • 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. • 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. 	<ul style="list-style-type: none"> • The substantive freezing mechanism for persons listed pursuant to UN Resolution 1267 (1999) should be reviewed and appropriate adjustments made to ensure that the requirement of acting ‘without delay’ will be met in relation to subsequent freezing obligations that arise pursuant to terrorist related UN Resolutions that are issued. • 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. • Sint Maarten should provide guidance to all persons and entities with regard to obligations in taking action under the freezing mechanism. • 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. 	<p>The matter of Mutual Assistance is dealt with in the current CPC SXM (article 555 and further (International Mutual Assistance) but will be more expressively mentioned and regulated more detailed in the new CPC SXM, which has been drafted by the Joint Committee Criminal Procedure Code and submitted to the minister of Justice on Oct. 31, 2013. (JCCPC). The draft article 560 CPC creates a possibility to respond immediately to a request, when regulated by International Treaties combatting Terrorism and the Financing of Terrorism (and other International Treaties. In the draft Explanatory Memorandum it is clearly and expressively mentioned that the article is amended to expressively state that this article offers this possibility to the authorities.</p> <p>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>
SR.IV Suspicious transaction reporting	NC	Rating factors in R13 apply to this Recommendation.		
SR.V. International cooperation	PC	<ul style="list-style-type: none"> • The deficiencies in R36 impact Sint Maarten’s ability to extend mutual legal assistance through extradition. 	<ul style="list-style-type: none"> • Amend the Penal Code to address the deficiencies set out in the ratings table. 	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

		<ul style="list-style-type: none"> • The deficiencies in SR II impact Sint Maarten's ability to extend assistance in connection with combating TF and terrorist acts. • The deficiencies in R40 would impact Sint Maarten's to the exchange of information regarding TF. 	<ul style="list-style-type: none"> • Implement the recommended actions outlined in relation to SR II 	<p>deemed as a crime. In article 2:55 the financing of crime is punishable as a severe crime. Next to that article 1:120 CC SXM (currently article 48a) criminalizes the aiding and abetting of the crimes mentioned in article 2:54 and 2:55. Of course criminal attempts are punishable under 1:119 CC SXM (currently article 47)</p> <p>Mutual Assistance furthermore is (article 555 and further CPC) and will be more specifically be regulated in the new CPC SXM, that has been drafted by the JCCPC (under construction, as far as the CPC SXM is concerned) and in legislative process as far as PC SXM is concerned.</p>
SR.VI	NC	<ul style="list-style-type: none"> • There continue to be MTCs operating within Sint Maarten without licenses from the Central Bank. • Provisions for MTCs to update the Central Bank on the number of agents and sub-agents should be formalised. 	<ul style="list-style-type: none"> • Shut the operations of unauthorised MTCs operation in Sint Maarten. • Provisions for MTCs to update the Central Bank on the number of agents and sub agents should be formalised. 	The situation with the MTCs will be addressed by the PPO.
SR.VII Wire transfer rules	PC	<ul style="list-style-type: none"> • The E.C. for wire transfers are not detailed in the relevant P&Gs. • There are no explicit provisions in the P&G for CI to be risk-based. 	<ul style="list-style-type: none"> • Sint Maarten should detail the requirements with respect to SR VII for the relevant financial institutions instead of relying on the general provision in the P&G for CI to observe the latest Interpretive Note to SR VII 	The P&G for MTC has been amended to implement the recommended actions. For your convenience the amended section is highlighted in yellow.
SR.VIII NPOs	NC	<ul style="list-style-type: none"> • No recent assessment on the on the risk with regard NPO sector. • There is no oversight or supervisory regime for NPOs. • No requirement for NPO sector to keep financial information. • No procedures in place to ensure that they are able to effectively investigate and gather information on NPOs. • No training sessions or sensitization forum held for NPOs 	<ul style="list-style-type: none"> • Sint Maarten should conduct a new assessment on the risk with regard NPO sector. • The Authorities should consider designating an authority to monitor and supervise the NPO sector. • Sint. Maarten should institute an outreach program which provides adequate AML/CFT awareness about the risk of NPOs to terrorist financing. • There should be appropriate sanctions available for those NPOs 	This subject matter will be further examined by the Judicial Affairs Department of the ministry of Justice.

			<ul style="list-style-type: none"> • NPOs should be required to maintain transaction records for a minimum period of five (5) years. • The Authorities in St. Marten should be procedures in place to ensure that they are able to effectively investigate and gather information on NPOs. • There should be procedures in place which allow for timely and effective sharing of information on NPOs both domestically and internationally. • The Authorities should consider issuing guidance specifically pertain to the NPO sector. 	
<p>SR.IX Cross-Border Declaration & Disclosure</p>	<p>PC</p>	<ul style="list-style-type: none"> • An ad hoc system is in place for the disclosure of the physical cross-border transportation of currency. • There is no system to restrain currency where there is a suspicion of ML or TF. • There are no statistics evidencing Customs' effectiveness in the area of international cooperation. • There are no statistics regarding the number of false declarations and investigations forwarded to the PPO. • There is no process for confiscating currency or negotiable instruments for persons listed in accordance with UNSCR 1373 and 1267. • There are no statistics relating to shipments of gold or other precious metals and stones. • There is no structure established for the training and targeted programmes for Customs. • No current information available with respect to the timeliness of the dissemination of the information relating to suspicious cash declarations/disclosures. 	<ul style="list-style-type: none"> • 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. • The Authorities should consider implementing the system to restrain currency where there is a suspicion of ML or TF. • The authorities should maintain statistics evidencing Customs' effectiveness in the area of international cooperation. • The Sint Maarten authorities should maintain the process for confiscating currency or negotiable instruments in implementing the UNSCR 1373 and 1267. • The authorities should maintain a system to identify the source, destination and purpose of movement of gold or other precious metals and stones. • A structure should be established for the training and targeted programmes for 	<p>This subject matter will be further examined by the Judicial Department of the ministry of Justice.</p> <p>The Customs Department already has the software to generate statistics and a database to store this data.</p>

			<p>Customs.</p> <ul style="list-style-type: none">• The authorities should ensure that the relevant authorities possess timely access to suspicious cash declarations or disclosures, or intentional lack of disclosures information.	<p>The FIU (MOT) is busy developing a training schedule for all the Law Enforcement Agencies.</p>
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