



CARIBBEAN
FINANCIAL ACTION
TASK FORCE

Fourth Follow-Up Report

Sint Maarten
November, 2014

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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 in its Mutual Evaluation Report (**MER**), as approved on November 2012 and subsequent by Round Robin on January 8th, 2013¹. This is the fourth follow-up report, based on a matrix of progress provided by Sint Maarten on September 21st, October 9th and 24th, 2014 (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)	

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 31st, 2014.

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 jurisdiction's financial sector Sint Maarten

		Banks²	Other Credit Institutions^{3*}	Securities⁴	Insurance	TOTAL
Number of institutions	Total #	7 local and 1 international bank	1 specialized credit institution	N/A	6 (1)	
Assets	US\$	Local banks 2,268,051 International banks 165,440	15,855		US\$ 334,000,000 (2)	
Deposits	Total: US\$	Local banks 1,771,345 International banks 125,299	0		US\$ 116,000,000 (3)	
	% Non-resident	Local banks: 45% International banks: 100%	0%		0% (4)	
International Links	% Foreign-owned:	Local banks: 71% International banks: 0%	100%		1% of Assets (5)	
	#Subsidiaries abroad	3 of local banks 0 of international banks	0		3 (6)	

Please include savings and loans institutions, credit unions, financial cooperatives and any other depository and non-depository credit institutions that may not be already included in the first column.

* If any of these categories are not regulated, please indicate so in a footnote and provide an estimate of the figures

(1) This total includes:

- 1 local life insurance company

² The figures of the banks, being local general banks, subsidiaries of foreign banks, branches of foreign banks, branches of local general banks and (non-) consolidated international banks, consist of figures as per May 31, 2014 (amounts in thousands).

³ The figures of other credit institutions, being specialized credit institution, savings banks, credit union, savings and credit funds, savings and thrift funds, consist of figures as per May 31, 2014 (amounts in thousands)

⁴ There are no local or foreign investment institutions under the Central Bank's supervision in Sint Maarten

- 4 local non-life insurance companies

- 1 pension fund

(2) Total Assets as reported by the insurance companies, mentioned in point 1, **as per year end 2012** and by the pension fund **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 in (time) Deposits at foreign banks by the institutions in percentage of total investments in (time) Deposits.

(5) Represents the 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

4. The Plenary in May 2014 in Miami, Florida decided that Sint Maarten should remain in status quo (Expedited Follow-Up) and report to November 2014 Plenary, considering that the Mutual Evaluation Report for the country was approved in January 2013 and the progress that Sint Maarten is permanently achieving.. This report will focus on assessing whether Sint Maarten has achieved full compliance in the outstanding examiner's recommendations in its Core and Key Recommendations as well as other outstanding Recommendations rated as PC or NC in the **MER**. This report will address also the updates provided by Sint Maarten for the Recommendations 1, 2, 4 and 34 rated as LC in the **MER**.

II. Summary of progress made by Sint Maarten

5. Sint Maarten is actually going through a reform process of the Penal Code, which Introduction Ordinance (IO), was reviewed by the Council of Advice. The Council of Ministers is preparing the submission of the IO to the Parliament for approval. The Authorities indicated that the expected enactment is by December 2014.
6. The Sint Maarten FIU MOT is preparing a draft law in which the NORUT and the NOIS are merged and updated. In this new law will be included the following amendments: sharing of information with foreign supervisors, maintenance of records on domestic and international transactions per the period of five years, threshold for identification requirements for casinos, inclusion of Directors, Officers and employees of financial institutions, sanctions to Directors and Senior management of financial institutions, countries that do not apply or insufficiently apply the FATF Recommendations, inclusion of the factory services, suspicious transactions reporting and customer due diligence.
7. Other amendments are in progress like the Ministerial Decree containing the establishment of indicators of the Unusual Transactions National Ordinance (MDIUT) to include tax matters, the draft legislation on the Regulation and Supervision of the gaming industry and the Law on cross-border transportation of currency.
8. The NORUT (AB 2013 No 479) was amended, it was started the registration of DNFBPs and a system to restrain currency is already in place.

III. 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 and TF, occurred in a foreign country, can be prosecuted in Sint Maarten. The Authorities indicated that the Introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice. The Council of Ministers is preparing submission of the IO to Parliament for approval. These Recommendations remains not fully met.

Recommendation 5

10. This Recommendation was originally rated PC. Authorities indicated in the last follow up report, that the identified deficiencies were addressed in the amendments to the P&G. The Authorities indicated that the new draft law, consisting of the merged and updated NORUT and NOIS will address the recommended actions identified in the first three bullets of the attached matrix. There is no information regarding the fourth through the sixth bullet point. It is noted that according with the paragraph 14 of the MER, the Examiners concluded that the P&Gs are “other enforceable means” (OEM) under the FATF Methodology. As indicated in the MER, these deficiencies shall be included in the NORUT and NOIS, which are considered as law or regulation under the FATF Methodology. Recommendation 5 has not been met.
11. Regarding to the recommended action to require insurance companies and insurance brokers to re-examine the relationship with the client to determine whether it’s necessary to terminate such relationship and to consider reporting to the MOT if doubts arise relating to the identity of the client after the client has been accepted and accounts have been opened, the P&Gs clearly establish this obligation in the Section of Customer Due Diligence (CDD). This recommended action has been met in the level of require insurance companies and insurance brokers to re-examine the relationship with the client, but have not been met in terms of undertake CDD measures, “when doubts arise relating to the identity of the client after the client has been accepted and accounts have been opened” as indicated in the third bullet of the attached matrix for Rec. 5 and in the previous paragraph. This recommended action has been partially met.

Recommendation 10

12. Recommendation was originally rated PC. Currently the MOT is preparing a draft law in which the NORUT and the NOIS are merged and updated. In this new law the obligation to maintain all necessary records on transactions, both domestic and international for a period of five years following the termination of an account or business relationship is included. The NOIS and NORUT will address the following 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 is it is not possible to make a proper assessment; deficiencies remain outstanding.

Recommendation 13 and Special Recommendation IV

13. As indicated in the previous follow-up report, outstanding deficiencies remain. One of the key elements affecting compliance, is that not all designated categories of predicate offenses for ML are covered in order to eliminate any restrictions on reporting. Authorities indicated that the matter of predicate offenses would be addressed in the revised Penal Code of Sint Maarten. The Introduction Ordinance (IO) to introduce the Penal Code will be enacted by the end of the year 2014.
14. Authorities explained for previous follow-up reports 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 the Ministerial Decree containing the establishment of indicators of the Unusual Transactions National Ordinance MDIUT modifications). At present, the authorities are incorporating this obligation in the amendment of the MDIUT which will introduce new indicators and is expected to be in force by November 2014.
15. Regarding whit the amendment of MDIUT to allow reporting entities to identify suspicion of ML or TF, and avoid reliance on prescriptive factors; the amended MDIUT which will be in force by November 2014.

Special Recommendation II

16. Considering observations raised by the Evaluator in the **MER**, all the recommended actions need to be addressed to ensure compliance with Special Recommendations I and II.
17. Sint Maarten Authorities expect that with the new Penal Code, the deficiencies identified in the **MER** will be solved. Currently the Introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice and is now ready to be submitted to Parliament for approval. It is expected that the enactment of the Penal Code by the IO will be by December 2014. In addition as indicated, a reform to the CPC is currently being drafted. Both documents are pending, therefore, compliance with these Recommendations, remains outstanding.

Outstanding Key Recommendations

Recommendation 3

18. Since the first follow-up report, the Authorities indicated that new Penal Code of Sint Maarten was in legislative process. The Introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice. The Council of Ministers is preparing submission of the IO to Parliament in order to be approved and have a new Penal Code in force. 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. For the third follow-up report, the Authorities added that the pre-conviction measures have been included to the new draft Criminal Procedure Code of Curacao, Aruba, Sint Maarten and the BES-Islands. In consequence, until the text of the new Penal Code

and the CPC is provided, it is not possible to make an assessment; the deficiencies remain outstanding.

Recommendation 4

19. 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 for the second follow-up report 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. Currently the MOT is preparing a draft law in which the NORUT and the NOIS are merged and updated. In this new law the possibility of sharing information with foreign supervisors will be included. Full compliance remains outstanding.

Recommendation 23

20. Key deficiencies identified for this Recommendation, included the need to prevent unlicensed Money Transfer Companies (MTC) 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.
21. For the third follow-up report, the Authorities indicated that unlicensed MTCs would be closed by the Public Prosecutors Office (PPO). To the current report, the Authorities updated that this matter will be revised by the MOT with the Minister of Justice and the PPO. During 2013 the Central Bank performed 3 on-site visits to MTCs. Regarding factoring services, the Central Bank has conducted a thorough risk assessment of the factoring services and has reached the conclusion that the business is exposed to very low risk with reference to AML/CFT. Notwithstanding, the development of a risk based approach system is being implemented in order to determine the AML/CFT focus of onsite inspections as well. According with the above mentioned circumstances, this Recommendation remains outstanding.

Recommendation 26

22. Regarding the need that the MOT improved its relationship with stakeholders and provide guidance on reporting, the correspondent Authorities are disseminating information to the financial entities. The DNFBPs are being registered and receive information on the laws and existence of the MOT. According with the scheduled activities, in 2014 informative sessions were held, related to NORUT for the financial institutions and DNFBPs.
23. There is significant progress regarding to the autonomy of the FIU. The Authorities indicated that the NORUT (AB 2013 No 479 was amended on April 25th, 2014 to establish the operational autonomy of the MOT. The amended law was enacted on September 4th, 2014. It is noted that Authorities indicated that with the abovementioned amendment of the NORUT, the MOT from Sint Maarten was inducted into the Egmont Group of FIUs, which is an achievement to strengthen the MOT. This recommendation was met.
24. Sint Maarten finalized the review of P&Gs for DNFBPs. These P&Gs focus on the implementation of the NOIS and NORUT (i.e. card dealers and jewellers, real estate,

lawyers, notaries, accountants, tax advisors and administration offices). Additionally the internal procedures of the MOT are being reviewed and they are considering to hire more personnel. It is expected that these actions will increase the number of investigated reports that are sent to the PPO. These actions are considered as significant advances in order to full comply in the near future, with the correspondent requirements.

25. In terms of physical security of the personnel, the files and data bases, the Authorities mentioned that this aspect was addressed and actually are in place. The security of the personnel and installations were strengthened with high standards.
26. Specifically regarding the deficiency related to publishing information on trends and typologies as well as outreach and developing a framework for DNFBPs, 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. Although this deficiency was fully addressed since the last report, the Authorities updated that regarding the Annual Reports of the MOT, the FIU is actually compiling the data from the analyst department to produce during the first quarter of 2015, the Annual Reports of 2011, 2012 and 2013 of the MOT. Except for the recommended action about to ensure the operational autonomy of the MOT, these recommendations remain not met.

Recommendations 35, and 40

27. 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. Compliance with these Recommendations remains outstanding.
28. With regard to Recommendation 35, Authorities indicated in the last report that the Opium Legislation Act⁵ 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**. The Authorities updated that the Introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice and is now ready to be submitted to Parliament for approval. The enactment of the Penal Code is expected by the IO by December 2014.
29. Regarding the 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. For this Report the Authorities updated that the draft Harmonization Law (supervision of financial institutions) provides for foreign supervisors to operate under CBCS supervision. The Supervision Law on MTC's also provides for this. 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

⁵ Opiumlandsverordening 1960.

police agents, among others. Articles 521 and 522, refer to the possibility of pursuing investigations outside the Netherlands 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. The compliance of R. 40 remains not met.

Special Recommendation V

30. Regarding the recommended action of amend the Penal Code to address the deficiencies set out in the ratings table, the Authorities updated that the Introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice and is now ready to be submitted to Parliament for approval. The enactment of the Penal Code is expected by the IO by December 2014. Therefore, compliance with these Recommendations, remains outstanding.

IV. Other Recommendations

31. 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 2, 12, 14, 16, 17, 21, 24, 25, 27, 30, 31, 32, 33, 34, Special Recommendations VI, and IX

Recommendation 2

32. Regarding the amendment to the Penal code to ensure that parallel criminal and civil proceedings are possible and that the penalty applicable for a person convicted for culpable ML should be effective, dissuasive and proportionate, the Authorities indicated that the Introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice and is now ready to be submitted to Parliament for approval. R. 2 remains not met.

Recommendation 12

33. As mentioned before in this report the MOT is preparing a draft law in which the NOIS and the NORUT are merged and updated. In this new law the threshold for identification requirements for Casinos in accordance with the FATF Standards is included. This item is outstanding.

Criteria		P&Gs
5.5.2 (a)	For customers that are legal persons or legal arrangements, the financial institution should be required to take reasonable measures to: (a) understand the ownership and control structure of the customer	It is required to conduct Standard CDD in case the customer is a legal person, a partnership or any other legal entity, the CDD should include the service provider understanding of the ownership and the control structure of the customer.

5.5.2 (b)	* determine who are the natural persons that ultimately own or control the customer. This includes those persons who exercise ultimate effective control over a legal person or arrangement.	This means that the service provider should take reasonable steps, if the client is a legal person or any other legal business entity (e.g. syndicate, joint venture or partnership), to gain an understanding of the client's ownership and control structure. This will involve the service provider establishing the identities of the natural persons who have controlling interests.
5.6	Financial institutions should be required to obtain information on the purpose and intended nature of the business relationship.	This means that the service provider should establish the objective and intended nature of the business relationship. This includes an inquiry into the nature, origin and ultimate purpose of the goods involved in the transaction(s).
5.11	Simplified CDD measures are not acceptable whenever there is suspicion of money laundering or terrorist financing or specific higher risk scenarios apply.	A simplified CDD procedure is not permitted if there are suspicions of money laundering or financing of terrorism, or where specific larger risks are involved.
5.16	Where the financial institution has already commenced the business relationship e.g. when Criteria 5.2(e), 5.14 or 5.17 apply, and the financial institution is unable to comply with Criteria 5.3 to 5.5 above it should be required to terminate the business relationship and to consider making a suspicious transaction report.	If the service provider has already entered into a business relationship with the client, it is obliged to terminate this relationship if it appears that it has not been able to perform parts a to c of the Standard CDD. Once the business relationship has been terminated, the service provider should consider whether the specific circumstances amount to an (attempted) unusual transaction that should be reported to the FIU on the basis of the subjective indicator.
5.17	Financial institutions should be required to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times.	The CDD does not only apply to new clients but also to existing clients. The application of the CDD to existing clients should also be risk based. The CDD requirements are on the basis of materiality (for example if the service provider already disposes of relevant and valid CDD information there is no need to request this information once again) and should be conducted at appropriate times.

34. The Authorities indicated that the Provisions and Guidelines (P&Gs) for DNFBs were amended to incorporate all the requirements of the Recommendations 5, 6, 8, 9 and 10.

35. Regarding the requirement by law or regulation to DNFBPs to comply with 5.2c.; 5.2d.; 5.2.e and 5.7 of Recommendation 5; the Authorities indicated that these requirements were implemented through the P&G. As indicated in the paragraph 14 of the MER, the Examiners concluded that the P&Gs are "other enforceable means" (OEM). Consequently, the essential criteria 5.2c.; 5.2d.; 5.2.e and 5.7 of Recommendation 5, must be included in law of regulation under the FATF Methodology. In that sense, the recommended actions indicated in the MER and the last Follow-Up report, remain outstanding.

36. Notwithstanding the foregoing, it is noted that the MOT has taken the measures to require the DNFBPs through the P&Gs to comply with 5.2c.; 5.2d.; 5.2.e. Base on the P&G's the Standard CDD comprises: a) Identifying the customer and verifying that customer's identity using valid and reliable, independent source documents, data or information; b) Identifying the beneficial owner and taking reasonable measures to verify the identity of the beneficial owner, in such a way that the service provider knows who the actual beneficial owner is. In case the customer is a legal person, a partnership or any other legal entity, the CDD should include the service provider understanding of the ownership and the control structure of the customer. c) Understanding and obtaining information on the purpose and intended nature of the business relationship. d) Conducting on-going due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship, to ensure that the transactions being conducted are consistent with the service provider's knowledge of the customer, the business, the source of funds and the formulated risk profile. As indicated before, Criteria 5.7 must be in law or regulation, notwithstanding, the MOT has included the obligations of the criteria in the P&Gs which require to conduct on-going due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship, to ensure that the transactions being conducted are consistent with the service provider's knowledge of the customer, the business, the source of funds and the formulated risk profile. The above indicated incorporated the criteria 5.7.1. As indicated in the Section 2.2.5 "On-going due diligence on the business relationship" File records of the on-going due diligence should also be retained, related to the Section 2.2.4 of the P&Gs about "Record-keeping". It incorporates in the P&Gs the criteria 5.7.2.
37. The deficiency related to put legislation for DNFBPs supervised by the MOT and casinos with the requirements of criteria 5.5.2, 5.6 to 5.11 (except 5.7 which is an essential criteria), 5.16 abs 5.17 of Recommendation 5:
38. No information was provided to criteria 5.8, 5.9 and 5.10. Criterion 5.5.2 (b) * is an essential criteria according with the FATF Methodology which must be included in law or regulation. The deficiencies related with Criteria 5.5.2 (a), 5.6, 5.11, 5.16 and 5.17 have been met.
39. With regard the issuing of legislation for DNFBPs supervised by the MOT and casinos that includes all the requirements of Recommendations 6, 8, 9 and 11. The P&Gs require the service provider to take reasonable risk management measures to determine whether a customer or ultimate beneficial owner is a domestic PEP or a person who is or has been entrusted with a prominent function by an international organisation. There are various ways to determine whether someone is a PEP, such as consulting public sources (Google, (digital) newspaper etc.) and subscription sources (e.g. www.transparency.org, www.world-check.com and www.info4C.net). In many cases, however, the information may be found from whatever details are provided by the client in response to questions that are generally asked before the business relationship is established. This regulation, meets the criterion 6.1.
40. The P&Gs also require to service providers to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to the CDD requirements will be made available by the third party upon request without delay, but in any case within 48 hours. The service provider 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 line with Recommendations 10 and 11. This

regulation, meets the criterion 9.3. The other criteria of Recs. 6, 8, 9 and 11 remains pending.

41. P&Gs for Administrators of Investment Institutions (AII) and Self-Administered Investment Institutions (SAII) were not provided to the Secretariat, consequently the compliance with E.C. 6.2 of Rec. 6 and E.C. 9.3 of Rec. 9 have not been met.

Recommendation 14

42. Regarding the clarification that financial institutions, their directors, officers and employees (whether permanent or temporary) are prohibited by law from disclosing (“tipping off”) the fact that an STR or related information is being reported or provided to the MOT, the Authorities indicated that the draft law in which the NORUT and NOIS are merged will include the specific mention of directors, officers and employees of financial institutions. The Authorities also indicated that the P&Gs set that the service provider and its directors, senior management, and employees are not allowed to divulge any information, with regard to the FIU and its legal tasks, to clients and/or third parties (tipping off prohibition). While this is useful for the protection of information it covers the general provision to prohibit the disclosure information and it does not address the specific instance of prohibit the disclosure of the fact that a SRT or related information is being reported or provided to the FIU. Additionally, the paragraph 843 from the MER establishes the following: “Pursuant to article 20 paragraph 1 of the NORUT the person that reports the unusual transaction is prohibited by law to disclose such. The prohibition against disclosure is limited to persons who supplied the data or information, or persons who work for the person who supplied the data or information. The NORUT should be enhanced to make clear that financial institutions and their directors, officers and employees (permanent or temporary) should be prohibited by law from disclosing (“tipping off”) the fact that STR or related information is being reported or provided to the FIU. R. 14 remains not met.

Recommendation 16

43. The deficiencies in this Rec. are linked with the identified deficiencies to Recs 13 and 14 in section 3.7 for all DNFBPs. The deficiencies in Rec. 14 were indicated in the previous paragraph. With regard Rec. 13, Sint Maarten should: a) 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 of MER), b) 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 and c) The MDIUT should be amended to allow the reporting entities to identify suspicion of ML or FT and avoid reliance on the prescriptive indicators. In this regard, the Authorities indicated that the P&Gs set that there is one subjective indicator for service providers. The subjective indicator implies that a transaction should be reported if for the service provider, based e.g. on his knowledge of the client, the client’s business or the transaction involved, there are reasons to assume that the transaction may be associated with money laundering or the financing of terrorism. Annex 1 to these P&G contains a list of red flags on the basis of which a decision can be made as to whether a transaction should be classified as unusual. This list is not exhaustive. If one or more of these red flags are applicable, the service provider will need to assess whether the transaction should be reported as unusual. If the service provider decides not to report the transaction to the FIU, it is in its own interest to document the reasons for not reporting this transaction. This might come in handy for the service provider in a possible criminal case in due course, because the PPO

might come to a different conclusion with regard to the reporting duty of the service provider. Article 23 of the NORUT states that the violation of the reporting obligation, in so far committed intentionally, is considered a criminal offence. In that sense, the recommended actions indicated in the MER and the last Follow-Up report, remain outstanding.

44. With regard to issue legislation for DNFBPs supervised by the MOT and casinos that includes all the requirements of Recommendations 15 and 21 the Authorities indicated that Provisions and Guidelines (P&Gs) for DNFBs were amended to incorporate all the requirements of the Recommendations 15 and 21. The requirements from Rec. 21 will be presented in the corresponding section in this FUR and the Rec. 15 was rated as **C** in the MER.

Recommendation 17

45. 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 explicit provisions will be included in the new law (merged and updated NORUT-NOIS) to indicate that sanctions apply to directors and senior management of financial institutions to address this deficiency.
46. With regard to the power to apply a wide range of sanctions, as indicated in the first follow-up report, the Authorities will address this item in draft Harmonization Law which is in legislative process. Therefore, at this point in time the deficiencies remain outstanding.

Recommendation 21

47. 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. In this regard, the P&Gs require that Enhanced CDD should be always performed in the following circumstances: i) Countries identified by credible sources, such as mutual evaluation or detailed assessment reports or published follow-up reports, as not having adequate AML/CFT systems. Identifying the "higher risk jurisdictions" is undertaken within the FATF by the International Cooperation and Review Group (ICRG) and is publicised by means of a list called the "Public Statement" and a document called "Improving Global AML/CFT Compliance: On-going process". ii) Countries subject to sanctions, embargos or similar measures issued by, for example, the United Nations. iii) Countries identified by credible sources as having significant levels of corruption or other criminal activity (people trafficking, drug trade, prostitution, etc.). iv) Countries or geographic areas identified by credible sources as providing funding or support for terrorist activities, or that have designated terrorist organizations operating within their country. Given that the P&Gs were amended after the ME, the Authorities should provide updated information about the awareness of concerns about weaknesses in the AML/CFT systems. This action has been partially met.
48. Regarding the ability to apply counter-measures to countries that continue not to apply or insufficiently apply the FATF Recommendations, the new draft law (merged NORUT-

NOIS) will reflect the counter-measures with respect to countries that do not apply or insufficiently apply the FATF recommendations.

Recommendation 24

49. Regarding the evaluator's recommendation to issue legislation for the DNFBPs supervised by the MOT and Casinos, the Authorities indicated for the last report that the Minister of Justice has received a proposal for the setup of the Gaming Control Board for approval. Currently, the Minister of Justice expects to submit the draft legislation on the regulation and supervision of the gaming industry to the minister of Justice by 2015. -As indicated for the last report, the legislation and Guidelines to supervise Casinos and Internet Gambling will be presented in the second half of 2014. These actions remains not met.
50. In regard to the implementation of an effective supervisory regime and resources to fulfil the supervisory role for the relevant DNFBP sector, the MOT has started with the registration of the businesses and professions. The inventories of the Jewellers and Real Estate Companies and Agents is complete. The first info sessions have been held in July 2014 (financial institutions) and August 2014 (Jewellers and Real Estate Companies and Agents. The MOT has started with the management meetings with aforementioned companies in September 2014 through December 2014.
51. All the deficiencies identified in section 3.10 (R. 29 and 17) with regard to the supervisory function of the Central Bank should be remedied. The deficiencies remain not met.

Recommendation 25

52. Authorities indicated in the first follow-up report, that MOT should provide feedback with respect to typologies or sanitized cases, and on specific cases that have been closed and continue its outreach programme to specifically encompass both feedback and guidance related to STRs. Sint Maarten Authorities indicated for the second follow-up report, that FIU 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 and received training from the former Head of the FIU from Curaçao. The recommendations have not been met.
53. The FIU developed P&Gs for DNFBPs and this was a very important action. 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.
54. It was updated that more guidance will be provided to financial institutions with respect to terrorist financing and it will take place in 2015. This recommended actions is still not met.
55. The issue of guidance to providers of factoring services will be included in the new draft law (merged and updated NORUT – NOIS). This recommended action is still pending.
56. For the last report, the Authorities indicated that a training programme for all stakeholders (MOT, law enforcement, PPO, reporters and DNFBPs) has been developed and approved

by the Minister of Justice. The execution of the training program started during March 2014 according with the information provided. These matters have not been met.

Recommendation 27

57. Regarding financial resources designated to provide training, the MOT has secured funds for the AML/CFT training of the law enforcement Agencies.
58. Regarding to the need of licencing of the MTCs, as indicated in the previous follow-up report, the MOT started discussions with the PPO and expected that the PPO would close the MTCs operating without license. At present, the CBCS has discontinued the licensing process with the MTC in question. The PPO has once again been informed by the CBCS of the illegally operation MTC. The MOT is responsible for the reporting of unusual transactions by service providers. From this perspective the MOT approaches all MTC's to urge them to report the unusual transactions. The issue will be discussed again with the Minister of Justice. This Recommendation has been partially met.

Recommendations 30, 31 and 32

59. With respect to the subject matter of the Recommendation 30, in addition to the actions reported for the last follow-up report, Sint Maarten has taken the following actions to address its deficiencies:
- a. The Director of the MOT has described the full time equivalent of the MOT functions. This established the staff complement of the MOT. The recruitment of a strategic analyst is underway. The strategic analyst/co-ordinator of the analyst department has started working at the MOT on July 1st, 2014
 - b. The ML/TF training of MOT personnel started in January 2014 and ends in November 2014. The second part of the training starts in December 2014 for six (6) months.
 - c. The connections for offsite electronic data backup are expected to be completed during the first half of 2015.
 - d. The MOT has developed the ML/TF training program for all stakeholders (MOT, Police, Customs, PPO, *Landsrecherche*, Tax Office and National Security Agency) which was approved and financed by the Minister of Justice (Crime Fund), the training will start in January 2015.
 - e. The Courts of Justice are using the extra facilities provided.
60. The full compliance of this Recommendation requires to employ robust recruiting programmes to fill the vacancies in the law enforcement agencies, to finalize the training program for all stakeholders and acquiring tools to analyse UTRs.
61. Regarding Recommendation 31, the Authorities provided the National Ordinance of 23 July 2014 amending the National Ordinance on the reporting of unusual transactions in connection with the intended joining of the Egmont Group which sets out the activities and duties of The Reporting Center. The Reporting Center is in charge of performing the national coordination of the activities within the context of the implementation of the recommendations of the Caribbean Financial Action Task Force, as well as independently maintaining contact with the Egmont Group within the context of compliance with the recommendations made by these organizations. The Authorities also indicated that the Anti-Money Laundering and Terrorism Financing Committee was replaced by a National

Co-ordinator AML/CFT. This function is carried out by the Head of the MOT who according with the information provided, is in contact with all the stakeholders at the appropriate times. This contravenes the paragraph 1267 of the MER, notwithstanding, Sint Maarten should clarify and provide more information to determine whether The Reporting Center and the appointment of the National Co-ordinator, address the implementation of the mechanism for coordination that were informed to the Examiners as cited in the paragraphs 1244 to 1246 of the MER..R. 31 has been partially met.

62. With regard Recommendation 32, for the last report the Authorities indicated that statistics on requests made to and from overseas FIUs were available. For the last report, three (3) requests for information were received from other units and four (4) requests were made to other units. For this report, the Authorities indicated that the MOT received thirty five (35) requests and made fifteen (15) requests of information to other FIUs. Although the MOT was recently establish, this statistics shown an improvement in the maintenance of statistics regarding the number of requests made to foreign MOTs. This action has been partially met.
63. Regarding whit the training sessions hosted by the MOT, the Authorities indicated that five (5) sessions have been organized by the MOT, including sessions with individual companies and businesses and professions. In relation to training to all the reporting entities, the Authorities indicated that the MOT has started with informative sessions for reporting entities. The info sessions included the FATF information, case material, CDD, compliance regime, unusual transactions reporting, including the reporting of suspicious transactions by making use of the subjective indicator, and sanctions. The training sessions for financial institutions were held on July 9th, 2014, for the real estate agents on August 21st, 2014, for Jewellers on August 22nd, 2014 for notaries: October 22nd, 2014. It is expected to start with more training sessions for the reporters. This recommended action has been partially met.
64. The Authorities did not provide information regarding the maintenance of statistics in relation to the investigation, prosecution and conviction of ML related cases. This recommended action have not been met.

Recommendations 33 and 34

65. In the matter to establish a system to ensure access to the UBO information, there are minor changes. The Authorities indicated that the subject matter of R. 33 will be addressed in the new draft law (merged and updated NORUT – NOIS). Regarding the 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, actually the MOT is requesting UBO information to DNFBPs when registering. Actually the MOT require entities to fill a form which is published in the website in order to carry out the registration. The related form, requires information about the company, its director(s) and the UBO(s). The Authorities can request this information at the MOT. However as indicated the Registry at the Chamber of Commerce does not have UBO information of legal persons (paragraph 1169 MER), there is no evidence that it has the power or ability to have access to UBO information and such details are not necessary for registration in the commercial register (p. 1163 MER) and if in a criminal investigation, information on the UBO and control of legal persons is needed (on short term) by the investigating officers, it can be obtained within hours through a court order, however, there is no evidence that the information is being obtained in a timely manner. . Therefore, this Recommendation is outstanding.

66. The recommended actions identified in R.34 will be addressed also with the new draft law (merged and updated NORUT – NOIS). Deficiencies with regard to the compliance of this Recommendation are still outstanding.

Special Recommendation VI

67. The Authorities indicated that the MOT is responsible for the reporting of unusual transactions by service providers. From this perspective the MOT approaches all MTC's to urge them to report the unusual transactions. The issue be discussed again with the Minister of Justice. The deficiencies regarding shutting the operations of unauthorised MTCs operations and provisions for MTCs to update the Central Bank on the number of agents and sub agents, remain outstanding.

Special Recommendation IX

68. With regard to declaration system to be completed by all passengers and the consideration of implementing the system to restrain currency; the Authorities indicated that both systems are already in place. However, no further information was provided in order to analyse the compliance of these recommendations. The law on cross-border transportation of currency will be amended to address all outstanding issues in December 2014. The following actions need to be implemented: 1. A declaration system to be completed by all passengers, instead of the ad hoc disclosure system currently in place. 2. A system to restrain currency when there is suspicion of ML or TF. 3. Process for confiscation of currency and negotiable instruments. 4. A system to identify the source, destination and purpose of movement of gold or other precious metals and stones. 5. To ensure that the relevant authorities possess timely access to suspicious cash declarations or disclosures, or intentional lack of disclosures information. The compliance of this Recommendation remains outstanding.

Recommendations 6, 7, 8, 9, 36, 38, 39 and Special Recommendations I, VII, and VIII

69. The level of compliance of these Recommendations originally rated as PC or NC remains in the same level as the previous reports, due that updates for these Recommendations were not provided for this report.

V. Conclusion

70. In the MER Sint Maarten was rated LC in Core Recommendation 1 and Key Recommendation 4. The non- Core and Key Recommendations 15, 18, 19, 20, 22 and 28 were rated C and Recommendations 2, 6, 7, 8, 11, 29, 34 and 37 were rated LC. To this follow-up report, Sint Maarten has met criteria 6.1 some deficiencies identified in Core Recommendation 5 (related with criterion 5.5.2 (a), 5.6, 5.11, 5.16, 5.17) and some of the deficiencies identified in Rec. 26. Sint Maarten also has partially met some of the deficiencies identified in Recs. 21, 27, 31 and 32 as indicated in the correspondent sections.
71. It is noted that the measures implemented since that Sint Maarten's Mutual Evaluation was approved in January 2013, do not address the substantial deficiencies in the pending elements of Core Recommendation 5 and others 13 Key and Core Recommendations that were rated as **PC** and **NC**. It is recommended that the Authorities in Sint Maarten urgently implement the legislation and measures to address outstanding deficiencies. Sint Maarten remains in expedited follow-up and should report to the May 2015 Plenary.

CFATF Secretariat
November, 2014

Matrix with ratings and follow-up action plan 3rd round Mutual Evaluation Sint Maarten
Changes since last Report May 2014, are highlighted in bold.

Forty Recommendations	Rating	Summary of factors underlying rating ⁶	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. 	<p>Article 1:5 of the proposed PC SXM creates jurisdiction in cases of TF (currently article 4 and 4a PC). The money laundering offences apply to All crimes (articles 2:404, 2:405, 2:406 Penal Code SXM, currently punishable in articles 435a, 435b, 435c Penal Code), thus including the mentioned ones. Next to that the proposed article 2:54 and 2:55 PC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime (currently dealt with in the articles articles 435a, 435b, 435c Penal Code combined with 48a paragraph three (with explicitly mentions the financing of terrorism). The Proposed article 2:55 the financing of crime is punishable as a severe crime. The switching provision of 2:224 (currently 96) makes the general provisions of the first book of the Penal Code applicable to all other Criminal laws</p> <p>The Introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice. The Council of Ministers is preparing submission of the IO to Parliament for approval.</p>
2. ML offence – mental element and corporate liability	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 	<p>Culpable ML in the proposed article 2:406 PC SXM (currently article 435c PC) is punishable with 4 years. Due to this duration of the penalty other effective measures are possible for the</p>

⁶ These factors are only required to be set out when the rating is less than Compliant.

		<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>prosecution. The switching provision of 2:224 (currently 96) makes the general provisions of the first book of the Penal Code applicable to all other Criminal laws</p> <p>The Introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice. The Council of Ministers is preparing submission of the IO to Parliament for approval.</p>
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. The pre-conviction measures have been added to the new draft Criminal Procedure Code of CUR, AUA, SXM and the BES-islands. The switching provision of 2:224 (currently 96) makes the general provisions of the first book of the Penal Code applicable to all other Criminal laws.</p> <p>The Introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice. The Council of Ministers is preparing submission of the IO to Parliament for approval.</p>
Preventive measures				
4. Secrecy laws consistent with the Recommendations	LC	<ul style="list-style-type: none"> • No clear provision for the MOT as supervisor to exchange information with other foreign supervisors. 	<ul style="list-style-type: none"> • MOT as supervisor should have the possibility to exchange information with other local and international supervisory authorities 	<p>MOT as supervisor does have the possibility to exchange information on the reporting behaviour with other local supervisors. This can be done based on article 6, paragraph 2 of the NORUT.</p> <p>The MOT is preparing a draft law in which the NORUT and the NOIS are merged and updated. In this new law the possibility of sharing information with foreign supervisors will be included.</p>

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 ○ 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 	<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; 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. • 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 	<p>The NOIS and the NORUT are being revised to reflect the recommended changes. The actions under bullet points letters a through c 1 through 6 will be addressed in the new draft law consisting of the merged and updated NORUT and NOIS.</p> <p>Please note that these issues are moreover already incorporated in the P&Gs.</p> <p>Please be referred to: page 11 of the P&G CI under CDD. Page 22 of the P&G IC under Wire transfer. Page 11 of the P&G MTC third bullet of the third paragraph under CDD.</p> <p>Please be referred to: page 12 of the P&G CI paragraph CDD under Resident customer. Page 13 of the P&G SAI under Verification of identity. Page 13 of the P&G TSP under Verification of the identity of resident individuals. Page 13 of the P&G IC under Resident customers.</p>
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		<p>thresholds that are referred to elsewhere under the FATF Recommendations is not set out in law or regulation.</p> <ul style="list-style-type: none"> • 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. • 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>or regulation, to conduct ongoing due diligence.</p> <ul style="list-style-type: none"> • 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 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>Please be referred to: page 11 of the P&G CI under CDD fifth paragraph. Page 12 of the P&G IC under CDD fifth bullet. Page 11 of the P&G MTC 2nd paragraph. Page 11 of the P&G SAI under II.2.A Detection and deterrence of money.</p> <p>Please be referred to: page 12 of the P&G IC under CDD third paragraph. Laundering. Page 11 P&G CTSP 2nd paragraph.</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. 	The recommended action has been incorporated in the P&G for IC & IB. For your convenience the amended section is highlighted in yellow.
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. 	Where relevant the recommended action has been incorporated in the P&Gs. For your convenience the amended section is highlighted in yellow.
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 	The recommended action has been incorporated in the P&G for MTC. For your convenience the amended section is highlighted in yellow.
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 	<ul style="list-style-type: none"> • Amend the "adequately supervised" provisions of the P&Gs, in line with the 	The recommended action has been incorporated in the P&Gs. For your convenience the amended

		<p>criteria 9.3.</p> <ul style="list-style-type: none"> • 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 	<p>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> <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>section is highlighted in yellow.</p> <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> <p>The MOT is preparing a draft law in which the NORUT and the NOIS are merged and updated. In this new law the obligation to maintain all necessary records on transactions, both domestic and international for a period of five years following the termination of an account or business relationship is included.</p>

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. 	The P&Gs have been amended to incorporate the recommended action. For your convenience the amended section is highlighted in yellow.
12. DNFBP–R.5, 6, 8–11	NC	<ul style="list-style-type: none"> The threshold for identification requirements for casinos is not in accordance FATF standard. 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 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 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 	<ul style="list-style-type: none"> The threshold for identification requirements for casinos in legislation should be amended in accordance with the FATF standard. 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 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 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>The NOIS and the NORUT are being amended to incorporate the recommended actions under the first two bullet points.</p> <p>The MOT is preparing a draft law in which the NORUT and the NOIS are merged and updated. In this new law the threshold for identification requirements for casinos in accordance with the FATF standard is included.</p> <p>The P&Gs for DNFBPs have been amended to incorporate recommendation 5. You are referred to the enclosed P&Gs of the DNFBPs: Car dealers and Jewellers: pages 9-22 8-25. Real Estate Agents: pages: 9-24 8-25. Professionals: pages 11-24 9-26.</p> <p>5.2c-5.2d-5.2eCar dealers and jewellers: page 8 Real Estate: page 8 Professionals: page 9</p> <p>5.5.2 Car dealers and jewellers: page 9 b + re.a + re.b Real Estate: page 9 b + re.a + re.b Professionals: page 10 b + re.a + re.b</p>

				<p>5.6 Car dealers and jewellers: page 9.c Real Estate: page 9.c Professionals: page 10.c</p> <p>5.7 Car dealers and jewellers: page 9.d Real Estate: page 9.d Professionals: page 10.d</p> <p>5.11 Car dealers and jewellers: page 17 Real Estate: page 17 Professionals: page 18</p> <p>5.16 Car dealers and jewellers: page 10 Real Estate: page 10 Professionals: page 11</p> <p>5.17 Car dealers and jewellers: page 8 Real Estate: page 8 Professionals: page 9</p> <p>6.1 Car dealers and jewellers: page 20 Real Estate: page 20 Professionals: page 21</p> <p>9.3 Car dealers and jewellers: page 14 Real Estate: page 14 Professionals: page 15</p>
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				<p>The P&Gs for DNFBPs have been amended to incorporate recommendation 10. You are referred to the enclosed P&Gs of the DNFBPs: Car dealers and Jewellers: pages 16-17 15-16 + 29. Real Estate Agents: pages 17-18 14-16 + 29. Professionals: page 18 15-17 + 30.</p> <p>The P&Gs for DNFBPs have been amended to incorporate recommendation 6. You are referred to the enclosed P&Gs of the DNFBPs: Car dealers and Jewellers: pages 19-20 19-20 + 25. Real Estate Agents: pages 21-22 19-20 + 25. Professionals: pages 21-22 20-21 + 26.</p> <p>For the incorporation of recommendation 9 you are referred to the P&Gs for DNFBPs: Car dealers and Jewellers: pages 14-15 14. Real Estate Agents: pages 15-16 14. Professionals: pages 16-17 15.</p> <p>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 section is 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). 	<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 	<p>All designated categories of predicate offenses for ML are covered in the new Penal Code. The comments (which were all non-ML and TF) have been processed in the PC and the ordinance to</p>

		<ul style="list-style-type: none"> • It is unclear that suspicious transactions apply regardless of whether they involve tax matters. <i>Effectiveness issues</i> • 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. 	<p>system in this regard (refer to paragraph 277)</p> <ul style="list-style-type: none"> • 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>introduce the PC should be ready and in force by the end of March 2014. The IO to introduce the Penal Code will be enacted by the end of the year 2014.</p> <p>The Ministerial Decree on indicators, although not explicitly mentioned, does not exclude tax matters when reporting a suspicious transaction. Suspicious UTR takes place whether or not it involves a tax matter.</p> <p>The MDIUT will be amended to allow reporting entities to identify suspicion of ML or FT to avoid reliance only on the prescriptive indicators. The amended MDIUT will go into force in November 2014.</p>
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 provided to the MOT. 	<p>According to the Civil law system which Sint Maarten is part of and contrary to the Common law system the wording “<i>een ieder</i>” in article 20 of the NORUT implies that each and every one is subject to the sphere of action when the law is enacted, including directors, officers and employees (permanent or temporary) of financial institutions. It is not customary in our legal system that all different addressees of the law regulating an issue are mentioned separately one by one.</p> <p>This issue will be included in the draft law in which the NORUT and the NOIS are merged and updated. This new law will include the specific mention of the directors, officers and employees of financial institutions.</p>
15. Internal and policies	C			

controls				
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 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 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: Car dealers and Jewellers: pages 23-27. Real Estate Agents: pages 26-29. Professionals: pages 25-28.</p> <p>Rec 13 – section 3.7 Car dealers and jewellers: page 27 Real Estate: page 27 Professionals: page 28</p> <p>Rec 14 – sections 3.7 Car dealers and jewellers: page 29 + 30 Real Estate: page 29 + 30 Professionals: page 30 + 31</p> <p>The P&Gs for DNFBPs have been amended to incorporate recommendation 15. You are referred to the enclosed P&Gs of the DNFBPs: Car dealers and Jewellers: pages 27-30 26-30. Real Estate Agents: pages 30-34 26-30. Professionals: pages 29-33 27-31.</p> <p>Rec 15 Car dealers and jewellers: page 31 Real Estate: page 31 Professionals: page 32</p> <p>Rec 21 Car dealers and jewellers: page 21 Real Estate: page 21 Professionals: page 22</p>

				<p>For the incorporation of recommendation 21 you are referred to the P&Gs for DNFBPs: Car dealers and Jewellers: pages 18-19 21-22. Real Estate Agents: page 20 21-22. Professionals: page 20 22-23.</p> <p>The Minister of Justice has received a proposal for the setup of the Gaming Control Board for approval. The legislation and guidelines to supervise casinos and internet gambling will be presented in the second half of 2014 introduced mid 2015.</p> <p>The 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.</p>
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</i></p>

				<p><i>and because there is a so called switch provision (article 96) of the Penal Code that provides for the application of article 53 of the Penal Code to other facts which are penalized by other general ordinances, unless the general ordinances provide otherwise. Therefore the administrative fines of the NOIS and NORUT are also applicable to the financial institutions and their directors.</i></p> <p>However, as this legal mechanism was not understood, the matter will be further examined in order to ensure the correct understanding of this legal mechanism.</p> <p>Explicit provisions will be included in the new law (merged and updated NORUT-NOIS) to indicate that sanctions apply to directors and senior management of financial institutions.</p> <p>The power to apply a wide range of sanctions has already been addressed in the draft Harmonization Law which is in legislative process.</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. 	<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</p>

			<ul style="list-style-type: none"> • 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>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> <p>The new draft law (merged NORUT-NOIS) will reflect the counter-measures with respect to countries that do not apply or insufficiently apply the FATF recommendations.</p>
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>Unlicensed MTC's will be shut down by the PPO.</p> <p>The matter concerning unlicensed MTC's will be revisited by the MOT with the minister of Justice and the PPO.</p> <p>In 2013 the Central Bank has performed 3 on-site visits to MTCs established in Sint Maarten.</p> <p>The Central Bank has conducted a thorough risk assessment of the factoring services provided on Sint Maarten and has reached the conclusion that the business is exposed to very low risk with reference to AML/CFT.</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</p>

				Sint Maarten.
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 MOT as supervisory authority has not started yet. • The 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 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 for casinos and internet casinos will be developed. The Ministry of Justice is busy with the setup of the GCB. An outline for the regulatory body has been submitted to the Minister of Justice for approval.</p> <p>The ministry of Justice expects to submit draft legislation on the regulation and supervision of the gaming industry to the minister of Justice mid 2015.</p> <p>The MOT is setting up the supervision of the DNFBP sector. The registration of the DNFBPs is ongoing. Two legal experts have been recruited and are busy with the setup of the administrative organization of the Supervision Department.</p> <p>The MOT has started with the registration for the businesses and professions. The inventories of the Jewellers and Real Estate Companies and Agents is complete. The first info sessions have been held in July 2014 (financial institutions) and August 2014 (Jewellers and Real Estate Companies and Agents.</p> <p>The MOT has started with the management meetings with aforementioned companies in September 2014 through December 2014.</p> <p>In accordance with the legal system, sanctions against directors and senior management are already in place in Sint Maarten. Please be referred to the comment under Undertaken Action re. Rec 17.</p>
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 	<ul style="list-style-type: none"> • The MOT should provide feedback with respect to typologies or sanitized cases, and on specific cases that have been closed. • MOT is strongly encouraged to continue its 	<p>MOT and the PPO are analysing the typologies and all sanitized and specific cases. This process will be carried out periodically and when completed, feedback will be given to the financial</p>

		<p>place.</p> <ul style="list-style-type: none"> • DNFBPs supervised by the MOT and do not receive sufficient guidance to DNFBPs on complying with AML/CFT requirements 	<p>outreach programme to <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 MOT and Casinos regarding AML/CFT requirements. • MOT should issue its own P&Gs. 	<p>institutions.</p> <p>MOT does feedback with and guide the financial institutions related to UTRs.</p> <p>More guidance will be provided to financial institutions with respect to TF. A training programme for all stakeholders (MOT, law enforcement, PPO, Reporters, DNFBPs) has been developed and approved by the Minister of Justice. The execution of the training program will start in March 2014.</p> <p>Guidance to financial institutions with regard to TF will take place in 2015.</p> <p>The MOT received and is still receiving training from the former head of the FIU Curaçao. The reporters/DNFBPs get regular info sessions and can call and visit the MOT at all times to receive information. They must include in their compliance regime that they will get training minimal once (1) a year. The only outstanding group is law enforcement (Police, RST, Landsrecherche, PPO and Customs); they will be trained in the first half of 2015. The programme is ready.</p> <p>The laws are being amended to incorporate factoring services. The new draft law (merged and updated NORUT-NOIS) includes factoring services.</p> <p>The MOT routinely disseminates information to the DNFBPs supervised by the MOT regarding AML/TF requirements. The MOT developed P&Gs for DNFBPs.</p>
Institutional and other measures				

26. The MOT	NC	<ul style="list-style-type: none"> • The legal basis for the establishment of the MOT is not clear. • There is an absence of a permanent MOT Head physically present in the MOT on a daily basis. • Not all reporting entities are aware of the existence of the 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 MOT and create opportunities for undue interference and influence. • There is a low number of investigative reports forwarded by the MOT to the PPO. • The security of the MOT information, the premises and employees requires improvement. • 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 MOT could not be confirmed 	<ul style="list-style-type: none"> • The authorities should ensure that the legal underpinnings for the establishment of the MOT are sound. It should be clear in the law as to the Ministry under which it falls. • The authorities should move swiftly to appoint an MOT Head. • The MOT should seek to clarify the manner and procedures for reporting, improve the relationship between itself and its stakeholders and provide guidance on the manner and procedures for reporting. The MOT should increase awareness within its stakeholders of the existence of the MOT. • Articles 4, 8, 16 and 22 of NORUT should be amended in order to ensure operational autonomy of the MOT and avoid opportunities for undue interference and influence. • As the number of investigative reports forwarded by the MOT is low compared to the number of UTRs recovered, the MOT should reassess its internal process to ensure an adequate number of investigative reports are forwarded to the PPO. • The MOT should implement measures to improve the physical security of manual files, electronic data, premises and the employees of the MOT. The MOT should produce and publish Annual Reports and ensure that it includes full information on ML and TF trends and typologies. 	<p>The legal basis for the MOT are formed by:</p> <ol style="list-style-type: none"> 1. The national ordinance structure and organisation of the national government (AB 2010, No. 6) – article 9 2. The national decree containing general measures to be subdivided and worked out in further detail by the ministry of Justice (AB 2010, No. 11) – article 17. <p>Both laws are enclosed for review. The NORUT (AB 2013 No 479) was amended on April 25th, 2014, to establish the operational autonomy of the MOT. The amended law was enacted on September 4th, 2014. I refer to the AB 2014 No 51, which was sent to the CFATF Secretariat on October 3rd, 2014.</p> <p>With the abovementioned amendment of the NORUT MOT Sint Maarten was inducted into the Egmont Group of FIUs as is recommended in recommendation 40.</p> <p>The MOT has a permanent director in place as of January 1, 2013.</p> <p>The MOT is disseminating information to the reporters. The DNFBPs are being registered and receive information on the laws and existence of the MOT. Also reference is made of the website of the MOT Sint Maarten (www.fiu-sxm.net)</p> <p>The NORUT has been amended (draft to be submitted to and approved by parliament end of March 2014) to establish the operational autonomy of the MOT. In practice the MOT already operates autonomously.</p> <p>The internal procedures of the MOT are being reviewed. More qualified personnel needs to be hired. This will increase the number of</p>
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				<p>investigated reports that are sent to the PPO.</p> <p>The physical security of the personnel, the files, and the databases is in place. The next step is to hire qualified (and screened) personnel compile the data from the analyst department to assist in the production of produce the annual reports 2011, 2012 and 2013 of the MOT. Annual reports will be produced in the first 3 months of 2015.</p>
27. Law enforcement authorities	PC	<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 law. 	<p>The MOT has secured funds for the ML/TF training of the law enforcement agencies.</p> <p>The MOT has discussed the issue of the unlicensed MTCs with the PPO. One MTC is busy with the application for an operational license at the CBCS. The CBCS has discontinued the licensing process with the MTC in question. The PPO has once again been informed by the CBCS of the illegally operation MTC.</p> <p>The MOT is responsible for the reporting of unusual transactions by service providers. From this perspective the MOT approaches all MTC's to urge them to report the unusual transactions. The issue will again be discussed with the minister of Justice.</p>
28. Document production, search and seizure	C			
29. Supervisors	C			
30. Resources, integrity, and	PC	<ul style="list-style-type: none"> • The MOT lacks of staff to adequately perform its functions (including the Head of MOT 	<ul style="list-style-type: none"> • The authorities should increase the staff complement of the MOT. 	<p>The director of the MOT has described the full time equivalent of the MOT functions. This</p>

training		<ul style="list-style-type: none"> • The staff of the MOT does not have adequate and relevant training for combatting ML & TF. • The MOT lacks of analytical tools such as Analyst Notebook to assist in the analysis of UTRs. • The MOT lacks of resources to protect the MOT 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 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 MOT 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>established the staff complement of the MOT. The recruitment of a strategic analyst is underway. The strategic analyst/co-ordinator of the analyst department has started working at the MOT as of July 1st, 2014.</p> <p>The ML/TF training of MOT personnel has started in January 2014. The training ends November 2014. The second part of the training starts in December 2014 for 6 months.</p> <p>The connections for offsite electronic data backup are expected to be completed in the second half of 2014. A fireproof safe and fire extinguishers are already in place at the MOT. The offsite back-up will be completed in the first half of 2015.</p> <p>The authorities have been busy recruiting personnel for the law enforcement agencies such as the KPSM.</p> <p>The MOT has developed the ML/TF training program for all stakeholders (MOT, Police, Customs, PPO, <i>Landsrecherche</i>, Tax Office and National Security Agency) which was approved and financed by the Minister of Justice (Crime Fund). The training will start in January 2015.</p> <p>The Courts of Justice is using the extra facilities provided.</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 was formally established by national decree dated June 8th, 2012. Due to a</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.	<p>problem of dysfunctioning of the committee, the minister of Justice decided to replace the committee by a National Co-ordinator AML/CTF. This function is carried out by the (Head of the) MOT.</p> <p>The function of the national co-ordinator has been included in the amended NORUT (AB 2014 no 51) is the authority who based on rec 31 co-ordinates policy co-operation across all relevant competent authorities; this includes operational co-operation between authorities at the law enforcement, FIU level including Customs authorities and where appropriate between FIU, law enforcement and supervisors. Discussions with ALL stakeholders have already started.</p>
32. Statistics	PC	<ul style="list-style-type: none"> • No statistics available relating to requests to overseas MOTs. • No statistics available for requests for additional information by the 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 MOT. • The MOT should host training sessions on ML and TF for the reporting entities to ensure that the financial entities report as required. • The MOT should also maintain statistics regarding the number of requests made to foreign MOTs. 	<p>Statistics on requests made to and from overseas FIUs are available.</p> <p>Requests for information from FIUs: 35. Requests for information to FIUs: 15.</p> <p>The MOT will host training sessions on ML/TF for the reporting entities and DNFBPs. Already five sessions have been organized by the MOT, including sessions with individual companies and businesses and professions.</p> <p>The info sessions included the FATF information, case material, CDD, compliance regime, unusual transactions reporting, including the reporting of suspicious transactions by making use of the subjective indicator, and sanctions.</p> <p>Dates sessions: for financial institutions on July 9th, 2014, for the real estate agents on August 21st, 2014, for Jewellers on August 22nd, 2014. For notaries: October 22nd, 2014.</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 mechanisms incorporate either in the Code or elsewhere to achieve this registration. • Amend the NDCBSC so that the is wording requires that beneficial ownership information must also be captured for the ultimate beneficial owners of the legal person on whose behalf the bearer shares are kept or held 	<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 addressed in the new draft law (merged and updated NORUT-NOIS).</p> <p>This subject matter will be further examined by the judicial affairs department of the ministry of Justice. When registering the DNFBPs the MOT requests the businesses and professions to submit the UBO information.</p> <p>Registration of UBO information: The MOT has a form that is accessible on its website. Entities fill this in with information about the company, its director(s) and the UBO(s). Authorities can request this information at the MOT.</p> <p>This subject matter will be further examined by the judicial affairs department of the ministry of Justice.</p>
34.	Legal arrangements –	LC	<ul style="list-style-type: none"> • There is no certainty that all Competent Authorities have timely access to UBO 	<ul style="list-style-type: none"> • 	<p>This subject matter will be further examined by the judicial affairs department of the ministry of</p>

beneficial owners		information.		Justice. The new draft law (merged and updated NORUT-NOIS) will address this issue.
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 • 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 	<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. • 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 	<p>The issue of the offences set out in the Vienna Convention is already partly dealt with in the Opium Legislation which currently is the <i>Opiumlandsverordening 1960</i>. This Act will have to be revised.</p> <p>The general provisions as set out in the Penal Code are applicable on all other Criminal laws, thus on the Opium Legislation through the switching provision of 2:224 (currently 96)</p> <p>The treaty of San Jose covers the combating of illicit traffic at sea and the use of mails for illicit traffic.</p> <p>The issue of the offences set out in the Vienna Convention is already partly dealt with in the Opium Legislation which currently is the <i>Opiumlandsverordening 1960</i>. This Act will have to be revised. This Act will have to be revised.</p> <p>The general provisions as set out in the Penal</p>

	<p>enforcement.</p> <ul style="list-style-type: none"> • 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> <ul style="list-style-type: none"> • Laws do not address Prevention of the misuse by organized criminal groups of Government tender processes and of subsidies and licenses granted by public authorities. • Laws and framework do not address <ul 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 	<p>as the wilful provision of funds etc. to individual terrorists set out in article 2(a) of the Terrorist Financing Convention.</p> <ul style="list-style-type: none"> • 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>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>The introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice and is now ready to be submitted to Parliament for approval. Expected enactment of the Penal Code by the IO: December 2014.</p> <p>Next to that the proposed article 2:54 and 2:55 PC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime. In article 2:55 the financing of crime is punishable as a severe crime. Next to that article 1:120 PC SXM (currently article 48a) criminalizes the aiding and abetting of the crimes mentioned in article 2:54 and 2:55. Of course criminal attempts are punishable under 1:119 PC SXM (currently article 47)</p> <p>The matter reciprocal confidentiality is dealt with in the current CPC SXM article 555 and further (International Mutual Assistance) but will be more expressively mentioned and regulated more detailed in the new (draft) Criminal Procedure Code.</p> <p>As for establishing mechanisms whereby forfeited funds are used to compensate the</p>
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		<p>prevent transnational organized crime, and</p> <p>c) Collaboration with other States (apart from the already advised joint cooperation and other collaborative efforts discussed above) including participation in international projects aimed at the prevention of transnational organized crime.</p> <p><i>Implementation in accordance with the Terrorist Financing Convention</i></p> <ul style="list-style-type: none"> • 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 the Penal Code or Penal Procedures Code. • 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. 		<p>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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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 (draft) Criminal Procedure Code.</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 SRIL.	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 	<ul style="list-style-type: none"> Authorities should consider revising the respective Ordinances (NOSBCI, 	Sint Maarten can hereby inform that its domestic laws with the exception of the RFETCSM or the

		<p>Customs) and all domestic legislation with respect to the law enforcement entities should provide for international cooperation with their counterparts</p> <ul style="list-style-type: none"> • No provisions have been identified under NO SCBI, 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 	<p>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.</p> <ul style="list-style-type: none"> • 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>CBCS charter do not allow for the CBCS to undertake investigations on behalf of their foreign counterparts. The draft Harmonization law (supervision of financial institutions) provides for foreign supervisors to operate under CBCS supervision. The Supervision law on MTC's also provides for this.</p> <p>Articles 183, 184 and 185 of the CPC ensure international cooperation between law enforcement entities and their counterparts. The international cooperation is regulated in the articles 521 and 522 of the CPC. All law enforcement entities mean Customs, Police, Coastguard and <i>Landsrecherche</i>. Also the fraud unit of the Tax Office and all others who have been authorized to investigated offences. The NORUT already in its article seven has this arrangement. The other domestic laws do not have this provision for the CBCS.</p>
Nine Special Recommendations				
SR.I Implement	PC	Refer to the ratings Table at Sections 2.2 and 2.4 of		

UN instruments		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 Protocols referenced at Annex 1 to the TF Convention. 	<p>Next to that the proposed article 2:54 and 2:55 PC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime. In article 2:55 the financing of crime is punishable as a severe crime. Next to that article 1:120 PC SXM (currently article 48a) criminalizes the aiding and abetting of the crimes mentioned in article 2:54 and 2:55. Of course criminal attempts are punishable under 1:119 PC SXM (currently article 47).</p> <p>As far as legal persons are concerned the proposed article 1:127 (currently article 53) states that legal persons can commit a criminal acts mentioned in the PC SXM. Next to that is should be pointed out that paragraph 7 of the proposed article 1:54 PC (currently creates a possibility to punish legal persons more harshly. Next to that the paragraph 2 and 3 of the mentioned proposed article 1:127 PC SXM (article 53) makes de facto leaders of the legal person punishable as well</p> <p>With the adaption of the new PC SXM all offence in the mentioned Conventions will be criminalized.</p> <p>The introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice and is now ready to be submitted to Parliament for approval. Expected enactment of the Penal Code by the IO: December 2014.</p>
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 	<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 	<p>The matter of Mutual Assistance is dealt with in the current CPC SXM article 555 and further (International Mutual Assistance) but will be more expressively mentioned and regulated more detailed in the new (draft) Criminal Procedure Code.</p>

		<p>based on the intervening legislative process between listing by the UN and issue of the requisite Sanctions National Decree which compels the freezing.</p> <ul style="list-style-type: none"> • 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. 	<p>subsequent freezing obligations that arise pursuant to terrorist related UN Resolutions that are issued.</p> <ul style="list-style-type: none"> • 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 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.		The new draft law (merged and updated NORUT-NOIS) will specifically address the issue of suspicious transaction reporting.
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. • 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"> • Amend the Penal Code to address the deficiencies set out in the ratings table. • Implement the recommended actions outlined in relation to SR.II 	<p>Next to that the proposed article 2:54 and 2:55 CC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime. In article 2:55 the financing of crime is punishable as a severe crime. Next to that article 1:120 CC SXM (currently article 48a) criminalizes the aiding and abetting of the crimes mentioned in article 2:54 and 2:55. Of course criminal attempts are punishable under 1:119 CC SXM (currently article 47)</p> <p>Mutual Assistance furthermore is (article 555 and</p>

				<p>further CPC) and will be more specifically be regulated in the new (draft) CPC SXM is concerned, and as far as the new PC SXM is concerned.</p> <p>The introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice and is now ready to be submitted to Parliament for approval. Expected enactment of the Penal Code by the IO: December 2014.</p>
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. 	<p>The MTCs operating without a license will be shut down by the PPO. One MTC is busy with an application for a license at the CBCS.</p> <p>The MOT is responsible for the reporting of unusual transactions by service providers. From this perspective the MOT approaches all MTC's to urge them to report the unusual transactions. The issue will again be discussed with the minister of Justice.</p>
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 	<p>The P&G for MTC has been amended to implement the recommended actions.</p>
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 	<p>This subject matter will be further examined by the judicial department of the ministry of Justice.</p>

			<p>available for those NPOs</p> <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. 	
SR.IX Cross-Border Declaration & Disclosure	PC	<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 	<p>This subject matter will be further examined by the judicial department of the ministry of Justice.</p> <p>The law on cross-border transportation of currency will be amended to address all outstanding issues in December 2014. The proposed declaration system is already in place.</p> <p>A system to restrain currency is already in place.</p> <p>The Customs Department already has the software to generate statistics and a database to store this data.</p>

			<p>training and targeted programmes for 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 MOT has developed a training program for all the Law Enforcement Agencies.</p>
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