



CARIBBEAN
FINANCIAL ACTION
TASK FORCE

Fifth Follow-Up Report

Sint Maarten
May, 2015

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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 fifth follow-up report, based on a matrix of progress provided by Sint Maarten on March 9th, 2015 and subsequent information sent during March and April (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 December 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 the jurisdiction's financial sector Sint Maarten

		Banks²	Other Credit Institutions³	Securities⁴	Insurance	TOTAL
Number of institutions	Total #	7 local banks and 1 international bank	1 specialized credit institution		6 (1)	15
Assets	US\$	Local banks: 2,518,483	15,322		387,780 (2)	2,921,585
		International bank: 149,890				149,890
Deposits	Total: US\$	Local banks: 1,943,887	0		57,975 (3)	2,001,862
		International bank: 115,535				115,535
	% Non-resident	Local banks: 50%	0%		0%	50%
		International bank: 100%				100%
International Links	% Foreign-owned:	Local banks: 71%	100%		5% of Assets (4)	176%
		International bank: 0%				0%
	#Subsidiaries abroad	3 of the local banks	0		6 (5)	9
		0 of the international banks				0

Insurance:

Banks:

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 December 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 December 31, 2014 (amounts in thousands)

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

- (1) This total includes:
 - 1 local life insurance company (locally established)
 - 4 local non-life insurance companies (1 locally established and 3 branches of foreign insurance companies)
 - 1 pension fund (locally established)
- (2) Total Assets as reported by the insurance companies, mentioned in point 1, **as per year end 2013** and by the pension fund **as per year end 2012** (amounts in thousands).
- (3) This amount is included in the Total Assets and represents the investments by the companies in (time) Deposits at (commercial) banks (amounts in thousands).
- (4) Represents the Assets of branch offices of foreign insurance companies in percentage of Total Assets.
- (5) Represents the number of subsidiaries abroad of local insurance companies.

I. Scope of the Report

4. The Plenary in November 2014 in San Salvador, El Salvador decided that Sint Maarten should remain in status quo (Expedited Follow-Up) and report to May 2015 Plenary, considering that the Mutual Evaluation Report for the country was approved in January 2013 and the progress that Sint Maarten is permanently achieving progress. This report will focus on assessing whether Sint Maarten has achieved compliance in the outstanding examiner's recommendations in the following Core Recommendations 5, 10, 13, II and IV and Key Recommendations 3, 23, 26, 35, 36, 40, I, III, and V rated as PC or NC as well as the following outstanding Recommendations: 12, 14, 16, 17, 21, 24, 25, 27, 30, 31, 32, 33, 36, 38, 39, Special Recommendations VI, VII, VIII and IX rated as PC or NC in the **MER**. This report will address also the updates and comments provided by Sint Maarten for the Recommendations 1, 2, 6, 7, 8, 9, 11 and 34 rated as **LC** in the **MER**.

II. Summary of progress made by Sint Maarten

5. Sint Maarten has in force a Penal Code which will be replaced by a new Penal Code under the National Ordinance dated 13th of December 2014. According with the legislative process in Sint Maarten, the new Penal Code will be in force after six (6) weeks from the signature of the last one of the Ministers, which was on April 17th. Therefore, the new Penal Code will be in force by 1st June 2015.
6. Sint Maarten strengthened Rec. 1 with the new Penal Code which incorporates the following designated categories of offences: participation in an organized criminal group and racketeering, terrorism including terrorist financing, trafficking in human beings and migrant smuggling, sexual exploitation, including sexual exploitation of children, illicit trafficking in stolen and other goods, corruption and bribery, fraud, counterfeiting currency, murder, grievous bodily injury, kidnapping, illegal restrain and hostage-taking, robbery or theft, extortion, forgery piracy, insider trading and market manipulation.
7. In addition of the Penal Code, several National Ordinances criminalize the following designated categories of offences: illicit trafficking in narcotic drugs and psychotropic substances (Art. 3 sub 1 National Ordinance on Opium and other Narcotics together with art. 1:118 sub d of the Penal Code), illicit arms trafficking (National Ordinance on Fire Arms (AB 2013 CT No 183 - articles 6 and 11), counterfeiting and piracy of products (National Ordinance on Authors (AB 213 CT #490 – art. 37), environmental crime (National Ordinance

on Waste Water: AB 2013 CT # 142 – art. 52, National Ordinance on Basics of Nature Management and Nature Protection: AB 2013 CT # 809 – art. 33, National Ordinance on Pollution by Ships: AB 2013 CT # 298 – art. 38 and National Ordinance on Hindrance: AB 2013 CT # 139 – art. 17), tax crimes (National Ordinance Domestic Taxes: AB 2013 CT # 416 – art. 49).

8. 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 the following amendments will be included: 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.
9. Other amendments continue 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, the Law on cross-border transportation of currency and amendments to the National Ordinance of Cross Border Declaration of funds (AB 2013 CT no. 730) and the National Ordinance to Import, Export and Transhipment (AB 2014 CT no. 4) to implement a system to restrain currency.

III. Core and Key Recommendations

Outstanding Core Recommendations

Recommendation 1

10. With regard to compliance with this Recommendation rated as LC, the new Penal Code criminalizes (as indicated in paragraph 5 and 6 of this report), the following pending predicate offenses: insider trading and market manipulation. The National Ordinance on Fire Arms (AB 2013 CT No. 183), criminalizes the offence of illicit arms trafficking. Sint Maarten should criminalize the designated offence of smuggling. (Refer to Rec. 13 and SR IV regarding pending designated categories of offences).
11. With regard to ensuring 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 new Penal Code sets out that the criminal law is applicable to any person who commits a criminal act outside Sint Maarten, whose prosecution was transferred to Sint Maarten by a foreign state or to any person whose extradition in relation to a terrorist crime is declared inadmissible, rejected or refused (1:4, 1:5, 1:6 and 1:7). This recommended action has been met. Rec. 1 remains as LC.

Recommendation 5

12. This Recommendation was originally rated PC. For this report, the Recommendation remains in the same status than in the previous follow-up report. The Authorities indicated in the third follow up report, that the identified deficiencies were addressed in the amendments to the P&G and for this report, the references of the FATF Standards reflected in the P&G were

provided. As indicated by the Authorities in the previous follow-up report, the new draft law, consisting on the merged and updated NORUT and NOIS will address the recommended actions identified in the first three bullets of the attached matrix.

13. 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 addressed in the NORUT and NOIS, which are considered as law or regulation under the FATF Methodology. Recommendation 5 has not been met.
14. Regarding the recommended actions 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, this recommended action has been met in the P&Gs, in terms of requiring insurance companies and insurance brokers to re-examine the relationship with the client, but have not been met in terms of requiring by law or regulation, to 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 (which includes financial institutions) and in the previous paragraph. This recommended action has been partially met.

Recommendation 10

15. Recommendation was originally rated PC. For this report, the Authorities indicated that there is no new update. Currently the MOT continues 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. In that sense, the Recommendation remains in the same status than in the previous follow-up report and the deficiencies remain outstanding.

Recommendation 13 and Special Recommendation IV

16. Regarding to ensure that all designated categories of predicate offenses for ML are covered in order to eliminate any restrictions on reporting (paragraph 277 of MER), the new Penal Code, in force from 1st of June 2015, incorporates the crimes of Market manipulation (Article 2:321) and Insider Trading (Article 2:322). The National Ordinance on Fire Arms (AB 2013 CT No. 183), criminalizes the offence of illicit arms trafficking. As indicated in paragraphs number six, seven and ten (6, 7, 10), the new Penal Code and several National Ordinances, incorporate the complete designated categories of offences except for Smuggling, which is a crime indicated in paragraph 277 of the MER. Accordingly, in the list of designated categories of offences, the criminalization of smuggling, is pending. This recommended action has been partially met.

17. 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 April 2015. This recommended action has not been met.
18. Regarding 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 April 2015. Recommendations 13 and S.R. IV remain not met.

Special Recommendation II and Special Recommendation I (Key)

19. 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.
20. Regarding the criminalization of the indirect or unlawful provision of funding for the commission of a terrorism offence, Art. 2:55 of the new Penal Code criminalizes the financing of terrorism, including collecting and providing funds either directly or indirectly for the commission of a terrorist offence. Although the unlawfully conduct is not explicitly criminalized, it can be inferred from the criminalization of the offence and its incorporation in the new Penal Code. This recommended action has been met.
21. Regarding criminalizing the wilful provision of funds to individual terrorists, Art. 2:54 of the new Penal Code sets out the offence for a person who intentionally provides or attempts to provide means or information to commit a terrorist offence, or for an offence in preparation for or facilitation of a terrorist offence, or who intentionally acquires or passes any knowledge for those proposes. The offence incorporates the provision of means, excluding the provision of funds. The intentionality typified in the offence, incorporates the wilful conduct. This recommended action has been partially met.
22. Regarding criminalize terrorist financing as required by the International Convention for the Suppression of the Financing of Terrorism, Art. 2:55 of the new Penal Code criminalizes terrorism financing. It is noted that the offence of Terrorist Financing was criminalized in accordance of the indicated Convention. The Art. 2:55 incorporates the conducts of Article 2 numbers 1, 4 and 5 of the Convention and also EC II.1 (a), EC II.1 (d) and EC II.1 (e). The Art. also incorporates the element of the intention of providing or collecting funds with the intention that they should be used or in the knowledge that will be used to carry out a terrorist offence, which complies with EC II.1 (a) and EC II.1 (a)(i). The FT offence does not require that the funds were actually used to carry out or attempt a terrorist acts or be linked to a specific terrorist act, as described in criterion II 1. c) of the Methodology. As indicated in paragraph 303 of the MER, the predicate offence regime for ML covers all serious crimes and extends to the widest range of predicate offences, which complies with Criterion II.2. As indicated in paragraph 11, the new Penal Code sets out that the criminal law is applicable to any person who commits a criminal act outside Sint Maarten, whose prosecution was transferred to Sint Maarten by a foreign state or to any person whose extradition in relation to a terrorist crime is declared inadmissible, rejected or refused (1:4, 1:5, 1:6 and 1:7). This regulation complies with criterion II.3. Accordingly with paragraph 309 of the MER, the intentional element of the offence of TF can be deducted from objective factual

circumstances, which meets criterion II.4 concerning to criterion 2.2. Article 1:127 establishes that criminal acts may be committed by natural and juristic persons, which complies with Criterion 2.3.

23. However, the criminalization of financing of terrorism apparently lacks of the following elements:
 - a. To extend the TF offence when it is committed by a terrorist organization or by an individual terrorist (Criterion II.1 a) (ii) and (iii))
 - b. To extend of the offence whether legitimate or illegitimate source (Criterion II.1. (b))
 - c. The possibility of parallel criminal, civil or administrative proceedings to make legal persons subject to criminal liability for TF (EC II.4 concerning criterion 2.4)
 - d. Although there is a sanction for persons (it is not clear whether it includes legal persons or not), it is required to provide further information in order to determine whether the sanctions are effective, proportionate and dissuasive. (EC II.4 concerning criterion 2.5)
24. Further information should be provided by the Authorities in order to determine if the above indicated elements would be inferred of the integration of the new Penal Code with other laws. This recommended action has been partially met.
25. Regarding the need to incorporate specific penalties for the offence of TF, Art. 2:55 establishes a sanction of imprisonment of not more than eight years or a fine in the fifth category. However, it is required to clarify whether the offence incorporates natural and legal persons as indicated in paragraph 20 d of this report. The recommended action has not been met.
26. Regarding the revision of Art. 146a of the Penal Code to specify a penalty for legal persons who participate in terrorist organizations, the Authorities cited the Art.1:127 which refers to criminal acts committed by natural persons and juristic persons and the criminal proceedings and penalties that may be imposed. However, Arts. 1:127 and 2:55 do not set out the penalty for the legal person who participates in a terrorist organization. This recommended action has not been met.
27. Information should be provided about the criminalization of all the offences referenced in the Conventions and Protocols of the Annex 1 of the TF Convention. This recommended action remains outstanding.

Outstanding Key Recommendations

Recommendation 3

28. In respect of confiscation mechanisms for terrorist financing offences, the new Penal Code sets out that forfeiture orders can be imposed upon conviction for any criminal act, which includes terrorist acts, terrorist financing, and the designated categories of predicate offences except for illicit arms trafficking and smuggling which have not been criminalized. The full compliance of this recommended action, requires to extend the forfeiture to illicit arms trafficking and smuggling. This recommendation has been partially met and its full compliance remains outstanding.

29. Statistics related to investigation, prosecution and convictions of ML related cases, should be provided by Sint Maarten in order to further analyse this recommendation. This recommended action has not been met.
30. Regarding the need to allow for the pre-conviction and post-conviction measures to be imposed without notice, the Authorities indicated that it has been covered by the National Ordinance Import, Export and Transhipment (AB 2014 CT No.4 Art. 218 and Art. 219b). The legislation should be provided in order to analyse its compliance. The recommendation remains outstanding.

Recommendation 4

31. 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. For this report, there is no new update, the level of compliance remains in status quo as LC.

Recommendation 23

32. Key deficiencies identified for this Recommendation, included: 1) the need to prevent unlicensed Money Transfer Companies (MTC) to operate in Sint Maarten, 2) a low number of inspections on existing MTCS, 3) to implement a regulatory and supervisory regime for factoring services as indicated in the MER, and 4) to implement a risk based approach system to adequately ponder AML/CTF risks and focus the onsite inspections.
33. For the third follow-up report, the Authorities indicated that unlicensed MTCs would be closed by the Public Prosecutors Office (PPO). For the current follow-up report, the Authorities updated that this matter is being revised by the PPO. For the last report, it was also updated that during 2013 the Central Bank performed 3 on-site visits to MTCs and regarding factoring services, the Central Bank conducted a thorough risk assessment of the factoring services and reached the conclusion that the business is exposed to very low risk with reference to AML/CFT. Notwithstanding the above, the development of a risk based approach system was being implemented in order to determine the AML/CFT focus of onsite inspections as well. For this follow-up report, there are no new updates to this Recommendation. According with the above mentioned circumstances, this Recommendation remains outstanding.

Recommendation 26

34. As indicated in the previous report, the internal procedures of the MOT were reviewed and they considered to hire more personnel, in order to increase the number of investigated reports that are sent to the PPO. For this report, there is no new update regarding the taken actions. These recommendations remain outstanding.

35. Specifically regarding the deficiency related to publishing information on trends and typologies, the Authorities updated that the Annual Reports of the MOT 2010-2014, are expected to start in May 2015. This recommendation remains not met.

Recommendations 35, and 40

36. Both 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.
37. With regard to Recommendation 35, Authorities indicated since the third follow-up 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 (actually on review at the Council of Advice), Sint Maarten Authorities expect to correct deficiencies identified in the **MER**. The Authorities updated that the new Penal Code incorporates the recommended actions, however, the legal basis was not provided. This Recommendation remains outstanding.
38. Regarding Recommendation 40, the Authorities indicated that domestic laws, with the exception of the Regulations for Foreign Exchange Transactions for Curaçao and Sint Maarten (RFETCSM) do not allow for the CBCS to undertake investigations on behalf of their foreign counterparts. For the second follow-up 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.
39. With regard the ability to provide international cooperation with/to their foreign counterparts, by all law enforcement entities, the Authorities referred to articles 183 – 185, 521 and 522 of the current CPC. The translation of these articles was provided by the Authorities on May 13th, 2013. Articles 183, 184, and 185 of the CPC, describe the different authorities that interact and that are entrusted functions related with the investigation and prosecution of criminal offenses, including officers, Attorney General and police agents, among others. Articles 521 and 522, refer to the possibility of pursuing investigations outside the Netherland Antilles, but only with regard to persons arrested, objects seized or equivalent crimes, within the territory.
40. 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.
41. For this report, the Authorities updated that the draft laws are being finalized for submission to the Minister of Justice (law of supervision of financial institutions/MTC and the Harmonization of the supervision to allow the CBCS to carry out investigations on behalf of their foreign counterparts).
42. Related statistics will be provided at a later date. As indicated in the recommended actions, the Authorities should maintain statistics on entities sent spontaneously and upon request. Level of compliance with R. 40 remains without further changes.

⁵ Opiumlandsverordening 1960.

Recommendation 36 and Special Recommendation V

43. These Recommendations regarding Mutual Legal Assistance, require an amendment in the new penal code, addressing the deficiencies indicated in the rating table of the MER (Paragraph 1389). The Authorities should provide the legal basis for Mutual Legal Assistance in order to analyse compliance of these Recommendations. The deficiencies remain outstanding.

Special Recommendations III and Special Recommendation I

44. With respect to SR III and SR I (regarding freezing), it is necessary to review the freezing mechanism for persons listed pursuant to Resolution 1267 of the United Nations Security Council, and make adjustments to ensure that its requirement of acting “without delay”, is complied with. It is also needed: a) to amend The Sanctions National Decree in order to expressly refer to assets jointly owned or controlled by designated persons, terrorists or terrorists organizations with third parties and to 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; b) to provide guidance to all persons and entities with regard to obligations in taking action under the freezing mechanism and c) to incorporate in the FATT Protocols wording to clearly reflect that compliance with these Protocols is mandatory and that breaches of the Protocols can be sanctioned by the Central Bank. For this report, the Authorities indicated that the new Penal Code incorporates the recommended actions and it is expected to be complemented by the CCP which is in review at the Council of Advice. There is a need to provide the legal basis or citations of the new Penal Code. These Recommendations remain outstanding.

IV. Other Recommendations

45. 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, 6, 7, 8, 9, 11, 12, 14, 16, 17, 21, 24, 25, 27, 30, 31, 32, 33, 34, 36, 38, 39, Special Recommendations VI, VII, VIII and IX**Recommendation 2**

46. 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 it was incorporated in the new Penal Code, however the legal basis was not provided. R. 2 remains not met.

Recommendations 6, 7, 8, 9 and 11

47. For these Recommendations originally rated as LC (except for Rec. 9 rated as PC); the Authorities indicated that there is no new update since the review of the P&Gs by the CBCS. The aforementioned Recs. remain in the same status.

Recommendation 12

48. Regarding to Casinos, there are 2 recommended actions outstanding: a) to amend the threshold for identification requirements for Casinos in accordance with the FATF Standards and b) to issue AML/CFT requirements to internet casinos. The Authorities indicated that the MOT is preparing a draft law in which the NOIS and the NORUT will be merged and updated. These recommended actions are outstanding.
49. 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 since the last report, 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 since the third follow-up report, remain outstanding.
50. Regarding the deficiency to put *legislation* in place 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, it is important to note that since the aforementioned criteria are not basic obligations, (except 5.5.2 b) and 5.7 which are basic obligations marked with asterisk (*) in the Methodology), the criteria can be set out in the P&G which fall in the category of OEM.
51. The deficiencies related with Criteria 5.5.2 (a), 5.6, 5.11, 5.16 and 5.17 have been met, as indicated in the last follow-up report. In that sense, this paragraph will analyse only criteria 5.8, 5.9 and 5.10 to the P&G for Car Dealers and Jewellers, P&G for Lawyers, Notaries, Accountants, Tax Advisors and Administrations Offices, and P&G for Real Estate Agents:

Criteria	P&Gs
5.8	The P&Gs require to perform enhanced CDD when there is an increased risk of ML/TF in different categories of clients (PEP, specified countries, clients who are not physically present) and higher risk factors (national/geographical indicators, client indicators, product indicators).
5.9	Under the P&Gs, simplified CDD can be applied when there are circumstances in which the risk of ML/TF is limited. The primary rule is to apply standard CDD procedures.
5.10	The P&Gs set out that if the client is from a foreign country, the service provider is only permitted to use the simplified CDD approach if the foreign country is in compliance with and has effectively implemented the FATF Recommendations. However, criterion 5.10 refers to customers who are residents in another country, not to clients who are from another country.

52. Based on the above information, the criteria 5.8 and 5.9 have been met. Criteria 5.5.2 b), 5.7 (required in law) and 5.10 (required in P&G) remain outstanding. Criteria 5.5.2, 5.6 to 5.11, 5.16 and 5.17 remain outstanding in the casino sector.
53. There is no updated information regarding the deficiencies in section 3.5 for Recommendation 10 which are applicable to all DNFBPs.

54. With regard to 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 considered as OEM, can set out this requirements. As indicated in the previous report, criteria 6.1. and 9.3 have been met. In that sense, the following paragraph will analyse the criteria updated for this report: 6.2, 8.1, 8.2 and 8.2.1 to the P&G for Car Dealers and Jewellers, P&G for Lawyers, Notaries, Accountants, Tax Advisors and Administrations Offices, and P&G for Real Estate Agents:

Criteria	P&Gs
6.2 6.2.1	The Guidelines require to obtain senior management approval for establishing or continuing (for existing customers), the relationship with PEPS. This criterion has been met in the P&GS.
8.1	The provisions require to be aware of new technologies when performing CDD. However, there is need to provide further clarification about requiring financial institutions to have policies in place or to take measures to prevent the misuse of technological developments in ML/TF, as indicated in the criterion. This criterion is outstanding in the P&GS.
8.2 8.2.1	The service providers are required apply enhanced CDD to clients who are not physically present. That ECDD means to take a number of specific steps with regard to the client's identity and to consider them as higher risk clients. These criteria have been met.

55. 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

56. 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.
57. 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. For this report, the Authorities indicated that the MOT is preparing the merging of the NORUT and NOIS. R. 14 remains not met.

Recommendation 16

58. 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 smuggling and all the 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 and R. 13 in this report), 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.
59. 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.
60. With regard to issuing 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. Regarding Rec. 15, it is required to provide citation about the compliance of criteria of Rec. 15 in all the P&GS.. For this report, the Authorities indicated that the legislation for the Gaming Control Board (GCB) has been submitted to the Ministers of Justice and Economic Affairs and Tourism for discussion. The proposal includes the AML/CFT supervision of the gaming industry by the MOT. This Recommendation remains outstanding.

Recommendation 17

61. 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, which are currently being merged by the MOT) to indicate that sanctions apply to directors and senior management of financial institutions to address this deficiency. The recommended action remains not met.

62. 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. Authorities indicated for this report, that the PPO is addressing the issue of the illegal MTC. Therefore, the deficiencies remain outstanding.

Recommendation 21

63. 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. There is no new update to this recommended action. This recommendation remains partially met.
64. Regarding the ability to apply counter-measures to countries that continue not to apply or insufficiently apply the FATF Recommendations, the new draft law (NORUT-NOIS, which are being actually merged by the MOT), will reflect the counter-measures with respect to countries that do not apply or insufficiently apply the FATF recommendations.

Recommendation 24

65. Regarding the evaluator's recommendation to issue legislation for the DNFBPs supervised by the MOT and Casinos, the Authorities indicated for the third follow-up report that the Minister of Justice received a proposal for the setup of the Gaming Control Board for approval. Currently, the MOT submitted the first draft of the legislation to the Ministers of Justice and Economic Affairs and Tourism. The legislation proposes to supervise Casinos and Internet Gambling and that this supervision is done by the MOT. These actions remains not met.
66. 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 started with the management meetings with aforementioned companies in September 2014 through December 2014. In March and April 2015, the MOT started with the 2015

informative sessions for the DNFBP sector. These actions are important steps in order to reach compliance with R.24, notwithstanding that full compliance with these Recommendations requires an effective supervisory regime for the DNFBPS sector. The deficiencies remain in status quo.

67. 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

68. 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 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.
69. Regarding the need to continue its outreach programme to specifically encompass both feedback and guidance related to STRS, the Authorities indicated that the MOT provides regular informative sessions for the reporters/DNFBPS. The MOT should provide further information in order to fully comply with this recommended action.
70. 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.
71. 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.
72. 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.
73. The Authorities indicated that the training programme was submitted for approval by the Minister of Justice.

Recommendation 27

74. Regarding financial resources designated to provide training, the MOT has secured funds for the AML/CFT training of the law enforcement Agencies. There is no new update in this regard.
75. 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. For the last follow-up report, the Authorities indicated that the CBCS discontinued the licensing process with the MTC in question. The PPO was 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. There is no new update regarding the

operation of MTCs without licences, for this report, the PPO is reviewing the case. This Recommendation remains not fully met.

Recommendations 30, 31 and 32

76. With respect of the Recommendation 30, there is no new update for this report.
77. 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 programme for MOT personnel, is awaiting for approval.
 - 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.
78. 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.
79. Regarding Recommendation 31, for the last report, 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. For this report, the National Coordinator is leading the consultation with the stakeholders on the update of the legislation. R. 31 remains not fully met.
80. With regard Recommendation 32, for the third follow-up 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. For this report, no new updates were provided. This action has been partially met.

81. Regarding the training sessions hosted by the MOT, the Authorities indicated for the fourth FUR, that five (5) sessions were 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 informative 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. For this report, no new updates were provided. This recommended action has been partially met.
82. For this report, 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

83. In the matter to establish a system to ensure access to the UBO information, there are minor changes and there is no new updated information for this report. On the last report, 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.
84. 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

85. The Authorities indicated for the fourth FUR 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 was discussed again with the Minister of Justice. Regarding shutting the operations of unauthorised MTCs operations the Authorities updated for this report, that the PPO is reviewing the case. Regarding with provisions for MTCs to update the Central Bank on the number of agents and sub agents, the

provisions were formalized in the new draft legislation on supervision of MTC. Both deficiencies remain outstanding.

Special Recommendation IX

86. 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 is under review by the Customs Department. 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 9, 21, 32, 36, 38, 39 and Special Recommendations I, VII, and VIII

87. The Authorities indicated that the recommended actions to be taken remain in status quo. As a result, the level of compliance of these Recommendations originally rated as PC or NC remains in the level of compliance indicated in the fourth follow-up report.

V. Conclusion

88. For this follow-up report, Sint Maarten has met criteria 5.8, 5.9, 6.2, 6.2.1, 8.2 and 8.2.1 in the P&GS for Car Dealers and Jewellers, P&G for Lawyers, Notaries, Accountants, Tax Advisors and Administrations Offices, and P&G for Real Estate Agents.
89. The most important achievement of Sint Maarten for this report was the adoption of the new Penal Code which strengthened Rec. 1 and criminalizes the following designated categories of offences: participation in an organized criminal group and racketeering, terrorism including terrorist financing, trafficking in human beings and migrant smuggling, sexual exploitation, including sexual exploitation of children, illicit trafficking in stolen and other goods, corruption and bribery, fraud, counterfeiting currency, murder, grievous bodily injury, kidnapping, illegal restrain and hostage-taking, robbery or theft, extortion, forgery piracy, insider trading and market manipulation.
90. The new Penal Code and Several National Ordinances criminalize the following designated categories of offences: illicit trafficking in narcotic drugs and psychotropic substances, illicit arms trafficking, counterfeiting and piracy of products, environmental crime and tax crimes. The recommended action for Rec. 1 of assuring that the offences occurred in a foreign country can be prosecuted in Sint Maarten, has been met in the new Penal Code.
91. It is noted that the measures implemented since the Sint Maarten's Mutual Evaluation was approved in January 2013, do not address the substantial deficiencies in the pending elements of Core Recommendation and Key Recommendations rated as **PC** and **NC**. It is recommended that the Authorities in Sint Maarten continue reviewing the laws and urgently implement the recommended actions to address outstanding deficiencies. It is

recommended that Sint Maarten remains in expedited follow-up and reports to the November 2015 Plenary.

CFATF Secretariat
May, 2015

Matrix with ratings and follow-up action plan 3rd round Mutual Evaluation Sint Maarten
Changes since last Report November 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> <p>The Introduction Ordinance (IO) to enact the Penal Code has been by Parliament on February 27th, 2015. Both recommended actions concerning FATF rec 1 are hereby incorporated in the Penal Code.</p>

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

<p>2. ML offence – mental element and corporate liability</p>	<p>LC</p>	<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 allow for proper assessment of the effectiveness of ML prosecutorial efforts. • Penalty applicable to culpable ML is not sufficiently dissuasive 	<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 person convicted for culpable ML should be revised to ensure it is effective, dissuasive and proportionate 	<p>Culpable ML in the proposed article 2:406 PC SXM (currently article 435c PC) is punishable with 4 years. Due to this duration of the penalty other effective measures are possible for the prosecution. The switching provision of 2:224 (currently 96) makes the general provisions of the first book of the Penal Code applicable to all other Criminal laws</p> <p>The Introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice. The Council of Ministers is preparing submission of the IO to Parliament for approval.</p> <p>The Introduction Ordinance (IO) to enact the Penal Code has been by Parliament on February 27th, 2015. The recommended action concerning FATF rec 2 is hereby incorporated in the Penal Code.</p>
<p>3. Confiscation and provisional measures</p>	<p>PC</p>	<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 SRII) • 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> <p>The Introduction Ordinance (IO) to enact the Penal Code has been by Parliament on February 27th, 2015. The recommended actions concerning FATF rec 3 are hereby incorporated in the Penal Code.</p>

Preventive measures				
<p>4. Secrecy laws consistent with the Recommendations</p>	<p>LC</p>	<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. The MOT is preparing a draft law in which the NORUT and the NOIS are merged and updated. In this new law the possibility of sharing information with foreign supervisors will be included.</p> <p>STATUS QUO; NO NEW UPDATE</p>
<p>5. Customer due diligence</p>	<p>PC</p>	<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 	<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 	<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>(referencing article 1, paragraph one, section b., under 7, of the NOIS) apply to wire transfers.</p> <ul style="list-style-type: none"> • There are no provisions in law or regulation for a financial institution to undertake CDD measures when it has doubts about the veracity or adequacy of previously obtained customer identification data. • The basic obligation to conduct CDD when there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations is not set out in law or regulation. • The basic obligation to conduct ongoing due diligence is not specified in law or regulation • The requirement to verify the identity of customers and beneficial owners before the establishment of business relations is not always practical. • 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>when they have doubts about the veracity or adequacy of previously obtained customer identification data.</p> <ul style="list-style-type: none"> • Require financial institutions, through law or regulation, to conduct CDD when there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations. • Require financial institutions, through law or regulation, to conduct ongoing due diligence. • The requirement to verify the identity of customers and beneficial owners before the establishment of business relations is not always practical. Sint Maarten should amend the NOIS to allow for verification at after the establishment of a business relationship in specified circumstances. • Require insurance companies and 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 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> <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> <p>The NOIS and the NORUT will be merged and updated to reflect all recommended actions concerning FATF rec 5.</p> <p>STATUS QUO; NO NEW UPDATE. The P&G have been updated by the CBCS to reflect the recommended actions concerning FATF rec 5.</p>
<p>6. Politically exposed persons.</p>	<p>LC</p>	<ul style="list-style-type: none"> • No clear requirements within the P&Gs for financial institutions to put in place appropriate risk management system to determine whether a potential customer, customer or beneficial owner is a PEP. 	<ul style="list-style-type: none"> • Amend the P&Gs to state that FIs should put in place appropriate risk management system to determine whether a potential customer, customer or beneficial owner is a PEP. 	<p>The recommended action has been incorporated in the P&G for IC & IB. For your convenience the amended section is highlighted in yellow.</p>

				STATUS QUO; NO NEW UPDATE. The P&G have been updated by the CBCS to reflect the recommended action concerning FATF rec 6.
7. Correspondent banking	LC	<ul style="list-style-type: none"> • Only the P&G for CI contain specific provisions on correspondent banking activities. No similar provisions exist for other types of financial institutions. • There are no provisions for financial institutions to assess the respondent institution’s AML/CFT controls, and to ascertain that they are adequate and effective. 	<ul style="list-style-type: none"> • Correspondent activities provisions should be incorporated in all the other P&Gs, similar to the P&G for CI, which contains specific provisions on correspondent banking activities. • The P&Gs should require the respondent institution’s AML/CFT controls, and to ascertain that they are adequate and effective. 	<p>Where relevant the recommended action has been incorporated in the P&Gs. For your convenience the amended section is highlighted in yellow.</p> <p>STATUS QUO; NO NEW UPDATE. The P&G have been updated by the CBCS to reflect the recommended actions concerning FATF rec 7.</p>
8. Non face to face and new technologies.	LC	<ul style="list-style-type: none"> • There is no requirement for MTC to comply with criteria 8.2 and 8.2.1 	<ul style="list-style-type: none"> • P&Gs for MTCs should incorporate requirements regarding E.C 8.2 and EC 8.2.1 	<p>The recommended action has been incorporated in the P&G for MTC. For your convenience the amended section is highlighted in yellow.</p> <p>STATUS QUO; NO NEW UPDATE. The P&G have been updated by the CBCS to reflect the recommended action concerning FATF rec 8.</p>
9. Third parties and introducers	PC	<ul style="list-style-type: none"> • The “adequately supervised” criterion in the P&Gs is not in line with the requirements of essential criteria 9.3. • The sources through which financial institutions should satisfy themselves that a third party is adequately regulated is limited to Mutual Evaluation Reports. • There are no requirements for MTC to comply with Recommendation 9 	<ul style="list-style-type: none"> • Amend the “adequately supervised” provisions of the P&Gs, in line with the requirements of essential criteria 9.2, which requires that financial institutions satisfy themselves that the third party is regulated and supervised (in accordance with Recommendation 23, 24 and 29) and has measures in place to comply with the CDD requirements set out in Recommendation 5 and Recommendation 10. • 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>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&Gs. For your convenience the amended section is highlighted in yellow.</p>

			<ul style="list-style-type: none"> • P&Gs for MTC should incorporate requirements to comply with Recommendation 9. 	<p>The recommended action has been incorporated in the P&G for MTC. For your convenience the amended section is highlighted in yellow.</p> <p>STATUS QUO; NO NEW UPDATE. The P&G have been updated by the CBCS to reflect the recommended actions concerning FATF rec 9.</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> <p>STATUS QUO; NO NEW UPDATE.</p>
11. Unusual transactions	LC	<ul style="list-style-type: none"> • There are no specific provisions in the P&Gs for financial institutions to keep documented findings regarding complex, unusual large transactions, or unusual patterns of transactions, available for competent authorities and auditors for at least five years. 	<ul style="list-style-type: none"> • The P&Gs should be amended to incorporate specific provisions for FIs to keep documented findings of their findings regarding complex, unusual large transactions, or unusual patterns of transactions, available for competent authorities and auditors for at least five years. 	<p>The P&Gs have been amended to incorporate the recommended action. For your convenience the amended section is highlighted in yellow.</p> <p>STATUS QUO; NO NEW UPDATE. The P&G have been updated by the CBCS to reflect the recommended action concerning FATF rec 11.</p>
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. 	<ul style="list-style-type: none"> • The threshold for identification requirements for casinos in legislation should be amended in accordance with the FATF standard. 	<p>The NOIS and the NORUT are being amended to incorporate the recommended actions under the first two bullet points.</p>

		<ul style="list-style-type: none"> • 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"> • 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 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 MOT IS BUSY WITH THE MERGING OF THE NORUT AND THE NOIS IN WHICH THE RECOMMENDED ACTIONS WILL BE INCORPORATED.</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-5.2e Car dealers and jewellers: page 8 Real Estate: page 8 Professionals: page 9</p> <p>5.5.2 Car dealers and jewellers: page 9 b + re.a + re.b Real Estate: page 9 b + re.a + re.b Professionals: page 10 b + re.a + re.b</p> <p>5.6 Car dealers and jewellers: page 9.c Real Estate: page 9.c Professionals: page 10.c</p> <p>5.7 Car dealers and jewellers: page 9.d Real Estate: page 9.d</p>
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<p>13. Suspicious transaction reporting</p>	<p>NC</p>	<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 	<p>All designated categories of predicate offenses for ML are covered in the new Penal Code. The comments (which were all non-ML and TF) have been processed in the Penal Code and the</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>restrictions in the UTR reporting 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>ordinance to introduce the PC should be ready and in force by the end of March 2014 Penal Code. The IO to introduce the Penal Code will be enacted by the end of the year 2014. THE INTRODUCTION ORDINANCE (IO) WAS APPROVED BY PARLIAMENT ON FEBRUARY 27th 2015.</p> <p>The Ministerial Decree on indicators, although not explicitly mentioned, does not exclude tax matters when reporting a suspicious transaction. Suspicious UTR takes place whether or not it involves a tax matter.</p> <p>The MDIUT will be amended to allow reporting entities to identify suspicion of ML or FT to avoid reliance only on the prescriptive indicators. The amended MDIUT will go into force in November 2014. STATUS QUO; THE MDIUT IS EXPECTED TO BE UPDATED IN APRIL 2015.</p>
<p>14. Protection & no tipping-off</p>	<p>PC</p>	<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. 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>

				THE MOT IS BUSY WITH THE MERGING OF THE NORUT AND THE NOIS IN WHICH THE RECOMMENDED ACTION CONCERNING FATF RED 14 WILL BE INCORPORATED.
15. Internal policies and controls	C			
16. DNFBP–R.13–15 & 21	NC	<ul style="list-style-type: none"> • The deficiencies identified for Recs. 13 and 14 in section 3.7 apply to all DNFBPs. • No legislation i.e. law or guidelines for DNFBPs supervised by the 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>STATUS QUO; NO NEW UPDATE. THE P&G HAVE BEEN UPDATED BY THE MOT TO REFLECT THE RECOMMENDED ACTIONS CONCERNING FATF REC 16.</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 FIRST DRAFT OF THE LEGISLATION FOR THE GCB HAS BEEN SUBMITTED TO THE MINISTERS OF JUSTICE AND ECONOMIC AFFAIRS AND TOURISM FOR DISCUSSION. THE PROPOSAL IS TO HAVE THE AML/CTF SUPERVISION OF THE GAMING INDUSTRY FALL UNDER THE MOT.</p> <p>The deficiencies for Recommendations 13 and 14 have been updated and included in the P&Gs.</p>
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<p>17. Sanctions</p>	<p>PC</p>	<ul style="list-style-type: none"> • Outside of the Civil and Penal Codes, there are no indications that sanctions could apply to directors and senior management of financial institutions. • Sanctions not effective against MTCs that continue to operate without licenses. • Sanctions appear to be used sparingly. 	<ul style="list-style-type: none"> • Include explicit provisions in the NOIS and NORUT to indicate that sanctions apply to directors and senior management of financial institutions. • Take immediate action against directors and senior management of unauthorised MTCs. • The Central Bank should have a wide range of sanctions and should be prepared to use them. 	<p>In accordance with our legal system, sanctions against directors and senior management are already in place in Sint Maarten. Please, refer to Sint Maarten’s answer to E.C. 17.3 in section 3.10 of the MEQ: <i>The power of enforcement to act against financial institutions and their directors can be derived from a general statutory provision in the Penal Code. Article 53 of the Penal Code provides that offences can be committed by natural persons and legal persons. When an offence is committed by a legal person, prosecution can be instituted and the penal sanctions and measures provided for in general ordinances, if eligible, can be pronounced: a. against the legal person, or b. against those who ordered the execution of the offence as well as against those who actually lead the execution of the prohibited conduct, or c. against the ones mentioned in section a and b jointly.</i></p> <p><i>The above mentioned provision makes it possible to act against directors or senior management, because the director or senior management are the ones who give the orders on the work floor and because there is a so called switch provision (article 96) of the Penal Code that provides for the application of article 53 of the Penal Code to other facts which are penalized by other general ordinances, unless the general ordinances provide otherwise. Therefore the administrative fines of the NOIS and NORUT are also applicable to the financial institutions and their directors.</i></p> <p>However, as this legal mechanism was not 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> <p>STATUS QUO; NO NEW UPDATE. THE PPO IS ADDRESSING THE ISSUE OF THE ILLEGAL MTC.</p> <p>THE MOT IS BUSY WITH THE MERGING OF THE NORUT AND THE NOIS IN WHICH THE RECOMMENDED ACTION CONCERNING FATF REC 17 BE ADDRESSED.</p>
18. Shell Banks	C			
19. Reports of Currency transactions	C			
20. Other DNFBP & secure transaction techniques	C			
21. Special attention for higher risk countries	PC	<ul style="list-style-type: none"> • Notices with respect to strategic deficiencies are limited to jurisdictions for which the FATF calls for action. • Countermeasures are not clearly specified with respect to countries that do not apply or insufficiently apply the FATF Recommendations. 	<ul style="list-style-type: none"> • Ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of all countries specified by the FATF, not only those countries for which the FATF calls for action. • Ensure that Sint Maarten has the ability to apply counter-measures to countries that continue not to apply or insufficiently apply the FATF Recommendations. 	<p>The P&Gs for CI (page 17), MTC (page 13), SAI & AII (page 23), IC & IB (page 21), and TSP (page 19) indicate that the supervised institutions are required to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries that do not or insufficiently apply the FATF Recommendations including high-risk and non-cooperative jurisdictions.</p>

				<p>STATUS QUO; NO NEW UPDATE. THE P&G HAVE BEEN UPDATED BY THE CBCS TO REFLECT THE RECOMMENDED ACTION CONCERNING FATF REC 21.</p> <p>The NOIS is being revised to implement the recommended actions. The new draft law (merged NORUT-NOIS) will reflect the counter-measures with respect to countries that do not apply or insufficiently apply the FATF recommendations.</p> <p>STATUS QUO; NO NEW UPDATE. THE MOT IS BUSY WITH THE MERGING OF THE NORUT AND THE NOIS IN WHICH THE RECOMMENDED ACTION CONCERNING FATF REC 21 BE ADDRESSED.</p>
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. 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 Sint Maarten.</p> <p>STATUS QUO; NO NEW UPDATE. THE PPO IS BUSY REVIEWING THE CASE ON THE ILLEGAL MTC.</p>
<p>24. DNFBP - regulation, supervision and monitoring</p>	<p>NC</p>	<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. 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. The MOT has started with the registration fo the businesses and professions. The inventories of the Jewellers and Real Estate Companies and Agents is complete. The first info sessions have been held in July 2014 (financial institutions) and August 2014 (Jewellers and Real Estate Companies and Agents).</p> <p>The MOT has started with the management meetings with aforementioned companies in September 2014 through December 2014.</p>

				<p>In accordance with the legal system, sanctions against directors and senior management are already in place in Sint Maarten. Please be referred to the comment under Undertaken Action re. Rec 17.</p> <p>THE MOT SUBMITTED THE FIRST DRAFT OF THE LEGISLATION FOR THE GCB TO THE MINISTERS OF JUSTICE AND ECONOMIC AFFAIRS AND TOURISM. THE PROPOSAL IS FOR THE MOT TO CARRY OUT THE AML/CTF SUPERVISION OF THE GAMING INDUSTRY.</p> <p>THE MOT HAS STARTED WITH THE 2015 INFORMATION SESSIONS FOR THE DNFBP IN MARCH AND APRIL 2015 THE REAL ESTATE COMPANIES, THE CAR DEALERSHIPS AND THE ACCOUNTANTS.</p>
<p>25. Guidelines & Feedback</p>	<p>PC</p>	<ul style="list-style-type: none"> • Not much guidance is given to financial institutions on TF techniques and methods. • P&G for providers of factoring services is not in place. • DNFBPs supervised by the MOT and do not receive sufficient guidance to DNFBPs on complying with AML/CFT requirements 	<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 outreach programme to <u>specifically</u> encompass both feedback and guidance related to UTRs. •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. 	<p>MOT and the PPO are analysing the typologies and all sanitized and specific cases. This process will be carried out periodically and when completed, feedback will be given to the financial institutions.</p> <p>MOT does feedback with and guide the financial institutions related to UTRs.</p> <p>More guidance will be provided to financial institutions with respect to TF. A training programme for all stakeholders (MOT, law enforcement, PPO, Reporters, DNFBPs) has been developed and approved by the Minister of Justice. The execution of the training program will start in March 2014.</p>

			<ul style="list-style-type: none"> • MOT should issue its own P&Gs. 	<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> <p>STATUS QUO; NO NEW UPDATE. TRAINING PROGRAM WAS SUBMITTED IN NOVEMBER 2014 TO THE MINISTER OF JUSTICE FOR APPROVAL. THE MOT IS STILL PROVIDING GUIDANCE TO THE REPORTING INSTITUTIONS REGARDING STR.</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. 	<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. 	<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

	<ul style="list-style-type: none"> • 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 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>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> <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 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</p>
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				<p>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> <p>STATUS QUO; NO NEW UPDATE. THE MOT EXPECTS TO START WITH THE ANNUAL REPORTS 2010-2014 IN MAY 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>STATUS QUO; NO NEW UPDATE.</p> <p>The MOT has discussed the issue of the unlicensed MTCs with the PPO. One MTC is busy with the application for an operational license at the CBCS. The CBCS has discontinued the licensing process with the MTC in question. The PPO has once again been informed by the CBCS of the illegally operation MTC.</p> <p>The MOT is responsible for the reporting of unusual transactions by service providers. From this perspective the MOT approaches all MTC's to urge them to report the unusual transactions. The issue will again be discussed with the minister of Justice.</p> <p>STATUS QUO; NO NEW UPDATE. THE PPO IS BUSY REVIEWING THE CASE ON THE ILLEGAL MTC.</p>
28. Document production, search and seizure	C			

<p>29. Supervisors</p> <p>30. Resources, integrity, and training</p>	<p>C</p> <p>PC</p>	<ul style="list-style-type: none"> • The MOT lacks of staff to adequately perform its functions (including the Head of MOT) • 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 increase the staff complement of the MOT. •The authorities should acquire additional tools such as Analyst Notebook to assist in the analysis of UTRs. •Sufficient financial resources should be reserved that in order that the staff may be adequately trained for ML and TF. •The 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>The director of the MOT has described the full time equivalent of the MOT functions. This established the staff complement of the MOT. The recruitment of a strategic analyst is underway. The strategic analyst/co-ordinator of the analyst department has started working at the MOT as of July 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>STATUS QUO; NO NEW UPDATE. TRAINING PROGRAM WAS SUBMITTED IN NOVEMBER 2014 AND IS AWAITING APPROVAL.</p>
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				The Courts of Justice is using the extra facilities provided.
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; and Trainings to be undertaken by the PPO) are not yet in operation. 	<ul style="list-style-type: none"> • The CIWG needs to be formally established. • The Authorities should ensure the implementation of the mechanism for coordination that were informed to the Team. 	<p>The anti-money laundering and terrorism financing committee was formally established by national decree dated June 8th, 2012. Due to a problem of dysfunctioning of the committee, the minister of Justice decided to replace the committee by a National Co-ordinator AML/CTF. This function is carried out by the (Head of the) MOT.</p> <p>The function of the national co-ordinator has been included in the amended NORUT (AB 2014 no 51) is the authority who based on rec 31 co-ordinates policy co-operation across all relevant competent authorities; this includes operational co-operation between authorities at the law enforcement, FIU level including Customs authorities and where appropriate between FIU, law enforcement and supervisors. Discussions with ALL stakeholders have already started.</p> <p>STATUS QUO; NO NEW UPDATE. THE NATIONAL CO-ORDINATOR IS IN CONSULTATION WITH THE STAKEHOLDERS ON THE UPDATE OF THE LEGISLATION.</p>
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. 	<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,</p>

			<ul style="list-style-type: none"> • 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>including sessions with individual companies and businesses and professions. The info sessions included the FATF information, case material, CDD, compliance regime, unusual transactions reporting, including the reporting of suspicious transactions by making use of the subjective indicator, and sanctions. 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> <p>STATUS QUO; NO NEW UPDATE.</p>
<p>33. Legal persons–beneficial owners</p>	<p>NC</p>	<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 	<p>At this point in time the legal person is not obligated by law to submit its UBO information to the Chamber of Commerce. The law (CoC) will be revised to guarantee that authorities have access to UBO information. This subject matter will be addressed in the new draft law (merged and updated NORUT-NOIS). This subject matter will be further examined by the judicial affairs department of the ministry of Justice. When registering the DNFBPs the MOT requests the businesses and professions to submit the UBO information.</p> <p>Registration of UBO information: The MOT has a form that is accessible on its website. Entities fill this in with information about the company, its director(s) and the UBO(s). Authorities can request this information at the MOT.</p> <p>STATUS QUO; NO NEW UPDATE. THE MOT IS REGISTERING THE DNFBP WITH THEIR UBO INFORMATION. THE</p>

			owners of the legal person on whose behalf the bearer shares are kept or held	<p>CHAMBER LEGISLATION WILL BE UPDATED TO REFLECT THIS RECOMMENDATION.</p> <p>This subject matter will be further examined by the judicial affairs department of the ministry of Justice.</p>
34. Legal arrangements – beneficial owners	LC	<ul style="list-style-type: none"> There is no certainty that all Competent Authorities have timely access to UBO information. 	<ul style="list-style-type: none"> 	<p>This subject matter will be further examined by the judicial affairs department of the ministry of Justice. The new draft law (merged and updated NORUT-NOIS) will address this issue.</p> <p>STATUS QUO; NO NEW UPDATE. THE MOT IS REGISTERING THE DNFBP WITH THEIR UBO INFORMATION. THE CHAMBER LEGISLATION WILL BE UPDATED TO REFLECT THIS RECOMMENDATION.</p>
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 	<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 	

	<p>extend cooperation and assistance to Transit States as contemplated by article 10 of this Convention.</p> <ul style="list-style-type: none"> • 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 enforcement. • The advised training initiatives do not appear to cover control techniques in free trade zones and free ports; modern law enforcement equipment and techniques, electronic surveillance, combating organized crime through the use of computers, telecommunications networks or other forms of modern technology and bilateral and multilateral arrangements to maximize operational and training activities of article 29 of the Palermo Convention. • No laws or measures identified regarding the matter of coordinated efforts bilaterally and multilaterally to provide assistance to developing countries in their efforts to combat transnational organized crime. 	<p>address Sint Maarten’s ability to extend cooperation and assistance to Transit States as contemplated by article 10 of the Vienna Convention.</p> <ul style="list-style-type: none"> • 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 as the wilful provision of funds etc. to individual terrorists set out in article 2(a) of the Terrorist Financing Convention. • The Penal Procedures Code and/or Penal Code should be amended to expressly address <ul style="list-style-type: none"> • the matter of reciprocal confidentiality (as required by article 12 (Assistance to other States) of the TF Convention); • establishing mechanisms whereby forfeited funds are used to compensate the victims of terrorist offences or their families, and matters of custody arrangements, terms under which an 	<p>The issue of the offences set out in the Vienna Convention is already partly dealt with in the Opium Legislation which currently is the <i>Opiumlandsverordening 1960</i>. This Act will have to be revised.</p> <p>The general provisions as set out in the Penal Code are applicable on all other Criminal laws, thus on the Opium Legislation through the switching provision of 2:224 (currently 96)</p> <p>The treaty of San Jose covers the combating of illicit traffic at sea and the use of mails for illicit traffic.</p> <p>The issue of the offences set out in the Vienna Convention is already partly dealt with in the Opium Legislation which currently is the <i>Opiumlandsverordening 1960</i>. This Act will have to be revised. This Act will have to be revised.</p> <p>The general provisions as set out in the Penal Code are applicable on all other Criminal laws, thus on the Opium Legislation through the switching provision of 2:224 (currently 96).</p> <p>With the introduction of the new Penal Code of SXM all offences set out in the Palermo Convention as well as the recommended offences will be criminalized.</p> <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>
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	<ul style="list-style-type: none"> • Verification of whether the laws addressed – <ul style="list-style-type: none"> a) The establishment of national records of persons disqualified from acting as directors of legal persons, and b) The exchange of information contained in the abovementioned national records with the competent authorities of other State Parties. <p>Could not be done as the relevant articles were not provided for assessment.</p> • Laws do not address Prevention of the misuse by organized criminal groups of Government tender 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 prevent transnational organized crime, and c) Collaboration with other States (apart from the already advised joint cooperation and other collaborative efforts discussed above) including participation in international projects aimed at the prevention of transnational organized crime. <p><i>Implementation in accordance with the Terrorist Financing Convention</i></p> <ul style="list-style-type: none"> • Wilful provision of funds etc. to individual terrorists does not appear to be covered by the approach to terrorist financing in the Penal Code. • No specific penalty is indicated for the offence of TF, appropriateness of this penalty in relation to this Article therefore cannot be assessed. 	<p>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>	<p>Next to that the proposed article 2:54 and 2:55 PC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime. In article 2:55 the financing of crime is punishable as a severe crime. Next to that article 1:120 PC SXM (currently article 48a) criminalizes the aiding and abetting of the crimes mentioned in article 2:54 and 2:55. Of course criminal attempts are punishable under 1:119 PC SXM (currently article 47)</p> <p>The matter reciprocal confidentiality is dealt with in the current CPC SXM article 555 and further (International Mutual Assistance) but will be more expressively mentioned and regulated more detailed in the new (draft) Criminal Procedure Code.</p> <p>As for establishing mechanisms whereby forfeited funds are used to compensate the victims of terrorist the proposed article 1:78 PC SXM creates a mechanism to compensate victims and is also applicable to victims of terrorist acts As far as the Criminal laws are concerned the switching provision of 2:224 (currently 96) makes the general provisions of the first book of the Penal Code applicable to all other Criminal laws.</p> <p>THE RECOMMENDED ACTIONS HAVE BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27TH, 2015.</p>
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<p>36. MLA</p>	<p>PC</p>	<p>The extent of Mutual Legal Assistance that may be extended by Sint Maarten is limited by the following deficiencies identified:</p> <ul style="list-style-type: none"> • The indirect or unlawful provision of funding for the commission of a terrorism offence is not criminalized. 	<p>Amend the Penal Code to address the deficiencies set out in the ratings table.</p>	<p>Next to that the proposed article 2:54 and 2:55 PC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime. In article 2:55 the financing of crime is punishable as a severe crime. Next to that article 1:120 PC SXM (currently article 48a) criminalizes the aiding and abetting of the crimes mentioned in article 2:54 and 2:55. Of course</p>

		<ul style="list-style-type: none"> • 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). 		<p>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> <p>THE RECOMMENDED ACTION ON THE EXTENT OF THE MLA HAS BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27TH, 2015.</p> <p>THE DRAFT OF THE CRIMINAL PROCEDURES CODE IS ON REVIEW AT THE COUNCIL OF ADVICE.</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	<p>Already dealt with but more specific legislation is under construction as mentioned under R36.</p> <p>THE RECOMMENDED ACTION ON THE EXTENT OF THE MLA HAS BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27TH, 2015.</p> <p>THE DRAFT OF THE CRIMINAL PROCEDURES CODE IS ON REVIEW AT THE COUNCIL OF ADVICE.</p>

<p>39. Extradition</p>	<p>PC</p>	<p>The deficiencies in R36 impact Sint Maarten’s ability to extend mutual legal assistance through extradition.</p>	<p>Implement the recommended actions outlined in relation to SR11.</p>	<p>Already dealt with but more specific legislation is under construction, as far as the CPC SXM is concerned, and in legislative process as far as CC SXM is concerned.</p> <p>THE RECOMMENDED ACTION ON THE EXTENT OF THE MLA HAS BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27TH, 2015.</p> <p>THE DRAFT OF THE CRIMINAL PROCEDURES CODE IS ON REVIEW AT THE COUNCIL OF ADVICE.</p>
<p>40. Other forms of co-operation</p>	<p>PC</p>	<ul style="list-style-type: none"> • The Extract General Regulation Import, Export and Transit of 1908 NG 1949 No. 62 (In relation to Customs) and all domestic legislation with respect to the law enforcement entities should provide for international cooperation with their counterparts • No provisions have been identified under NOSCB1, RFETCSM, NOSIIA or the NOSTCSP which reflect that the Central Bank can undertake investigations on behalf of their foreign counterparts. • Statistics have not been provided with respect to spontaneous referrals of information as well as to information supplies on request in order that there can be an adequate assessment of the implementation of this criteria 	<ul style="list-style-type: none"> • Authorities should consider revising the respective Ordinances (NOSB1, RFETCSM, NOSIIA, NOSTCSP to expressly allow for the CBCS to undertake investigations on behalf of their foreign counterparts. Consequential amendments to the Charter governing the powers of the CBCS may also be necessary to allow for the amendment of the Ordinances as recommended. • The authorities should maintain statistics on entities’ spontaneous referrals of information as well as information supplied as a result of a request. This system can be used at a policy and operational level to adequately assess the country’s international cooperation efforts for AML/CFT. • Sint Maarten’s domestic legislation for all law enforcement entities should specifically provide for international cooperation with their foreign counterparts. 	<p>Sint Maarten can hereby inform that its domestic laws with the exception of the RFETCSM or the CBCS charter do not allow for the CBCS to undertake investigations on behalf of their foreign counterparts. The draft Harmonization law (supervision of financial institutions) provides for foreign supervisors to operate under CBCS supervision. The Supervision law on MTC’s also provides for this.</p> <p>THE TWO DRAFTS OF THE CBCS SUPERVISION LEGISLATION OF THE FINANCIAL INSTITUTIONS (1. SUPERVISION OF THE MTC AND 2. THE HARMONIZATION OF THE SUPERVISION DO INCORPORATE AMENDMENT TO ALLOW THE CBCS TO CARRY OUT INVESTIGATIONS ON BEHALF OF THEIR FOREIGN COUNTERPARTS. THE DRAFTS ARE BEING FINALIZED FOR SUBMISSION TO THE MINISTER OF JUSTICE.</p>

				<p>Articles 183, 184 and 185 of the CPC ensure international cooperation between law enforcement entities and their counterparts. The international cooperation is regulated in the articles 521 and 522 of the CPC. All law enforcement entities mean Customs, Police, Coastguard and <i>Landsrecherche</i>. Also the fraud unit of the Tax Office and all others who have been authorized to investigate offences. The NORUT already in its article seven has this arrangement. The other domestic laws do not have this provision for the CBCS.</p> <p>THE DRAFT OF THE CRIMINAL PROCEDURES CODE IS ON REVIEW AT THE COUNCIL OF ADVICE.</p>
Nine Special Recommendations				
SR.I Implement UN instruments	PC	Refer to the ratings Table at Sections 2.2 and 2.4 of this Report.		
SR.II Criminalize terrorist financing	NC	<ul style="list-style-type: none"> • No specific penalty is reflected in the Penal Code for the offence of TF. • The indirect or unlawful provision of funding for the commission of a terrorism offence is not criminalized. • The wilful provision of funds etc. to individual terrorists is not criminalized. • TF is not independently criminalized and therefore there is no comprehensive treatment of terrorist financing in the Penal Code as required by the TF Convention. • The Penal Code does not specify a penalty for the legal person which participates in an organization aimed at committing terrorist offences. 	<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. 	<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</p>

		<ul style="list-style-type: none"> • Not all terrorism offences referenced in Annex 1 to the TF Convention are criminalized as required. 	<ul style="list-style-type: none"> • 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. <ul style="list-style-type: none"> • 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>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 RECOMMENDED ACTIONS ON THE CRIMINALIZATION OF TERRORISM FINANCING HAVE BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27TH, 2015.</p> <p>THE DRAFT OF THE CRIMINAL PROCEDURES CODE IS ON REVIEW AT THE COUNCIL OF ADVICE.</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>THE RECOMMENDED ACTIONS ON THE CRIMINALIZATION OF TERRORISM FINANCING HAVE BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27TH, 2015.</p>
<p>SR.III</p>	<p>PC</p>	<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. 	<ul style="list-style-type: none"> • The substantive freezing mechanism for persons listed pursuant to UN Resolution 1267 (1999) should be reviewed and 	<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</p>

<p>Freeze and confiscate terrorist assets</p>		<ul style="list-style-type: none"> • The substantive freezing mechanism for persons listed pursuant to UN Resolution 1267 (1999) would not meet the ‘without delay’ requirement based on the intervening legislative process between listing by the UN and issue of the requisite Sanctions National Decree which compels the freezing. • There is no clear guidance specially to other persons and entities concerning their obligations in taking action under the freezing mechanism. • The Sanctions National Decree does not expressly refer to assets jointly held by designated persons, terrorists or terrorist organizations with third parties. The wording of the Decree also raises issues of enforceability of sanctions against the entire asset which is held “in part” by designated persons, terrorists or terrorist organizations. • There is no wording in the FATT Protocols which indicate compliance with these Protocols is mandatory or that breaches of the Protocols can be sanctioned by the Central Bank. 	<p>appropriate adjustments made to ensure that the requirement of acting ‘without delay’ will be met in relation to subsequent freezing obligations that arise pursuant to terrorist related UN Resolutions that are issued.</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>expressively mentioned and regulated more detailed in the new (draft) Criminal Procedure Code.</p> <p>The draft article 560 CPC creates a possibility to respond immediately to a request, when regulated by International Treaties combatting Terrorism and the Financing of Terrorism (and other International Treaties. In the draft Explanatory Memorandum it is clearly and expressively mentioned that the article is amended to expressively state that this article offers this possibility to the authorities.</p> <p>When the request is received the freezing of assets and freezing mechanisms are dealt with in the articles 119 until 173 draft CC. Besides that the possibility of further Financial Investigation in the Criminal Procedure is dealt with in Title XVI of the Criminal Procedure Code.</p> <p>THE RECOMMENDED ACTION ON FATF SR III CONCERNING THE FREEZING AND CONFISCATION OF ASSETS HAVE BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27TH, 2015.</p> <p>THE DRAFT OF THE CRIMINAL PROCEDURES CODE IS ON REVIEW AT THE COUNCIL OF ADVICE.</p>
<p>SR.IV Suspicious transaction reporting</p>	<p>NC</p>	<p>Rating factors in R13 apply to this Recommendation.</p>		<p>The new draft law (merged and updated NORUT-NOIS) will specifically address the issue of suspicious transaction reporting.</p> <p>THE MOT IS BUSY WITH THE MERGING OF THE NORUT AND THE NOIS IN WHICH THE RECOMMENDED ACTION</p>

				CONCERNING FATF SR IV ON SUSPICIOUS TRANSACTIONS WILL BE INCORPORATED.
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 SRII 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 SRII 	<p>Next to that the proposed article 2:54 and 2:55 CC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime. In article 2:55 the financing of crime is punishable as a severe crime. Next to that article 1:120 CC SXM (currently article 48a) criminalizes the aiding and abetting of the crimes mentioned in article 2:54 and 2:55. Of course criminal attempts are punishable under 1:119 CC SXM (currently article 47)</p> <p>Mutual Assistance furthermore is (article 555 and further CPC) and will be more specifically be regulated in the new (draft) CPC SXM is concerned, and as far as the new PC SXM is concerned.</p> <p>The introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice and is now ready to be submitted to Parliament for approval. Expected enactment of the Penal Code by the IO: December 2014.</p> <p>THE RECOMMENDED ACTIONS ON FATF SR V CONCERNING INTERNATIONAL CO-OPERATION HAVE BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27TH, 2015.</p>
SR.VI AML/CFT requirements	NC	<ul style="list-style-type: none"> • There continue to be MTCs operating within Sint Maarten without licenses from the Central Bank. 	<ul style="list-style-type: none"> • Shut the operations of unauthorised MTCs operation in Sint Maarten. 	<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>for money/value transfer services</p>		<ul style="list-style-type: none"> • 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"> • Provisions for MTCs to update the Central Bank on the number of agents and sub agents should be formalised. 	<p>The MOT is responsible for the reporting of unusual transactions by service providers. From this perspective the MOT approaches all MTC's to urge them to report the unusual transactions. The issue will again be discussed with the minister of Justice.</p> <p>THE PPO IS BUSY WITH THE REVIEW OF THE ILLEGAL MTC CASE.</p> <p>THE PROVISIONS FOR THE MTC TO UPDATE THE CBCS ON THE NUMBER OF AGENTS AND SUB AGENTS HAS BEEN FORMALIZED IN THE NEW DRAFT LEGISLATION ON SUPERVISION OF MTC.</p>
<p>SR.VII Wire transfer rules</p>	<p>PC</p>	<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> <p>STATUS QUO; NO NEW UPDATE. THE P&G HAVE BEEN UPDATED BY THE CBCS TO REFLECT THE RECOMMENDED ACTION CONCERNING FATF SR VII ON TIRE TRANSFER RULES.</p>
<p>SR.VIII NPOs</p>	<p>NC</p>	<ul style="list-style-type: none"> • No recent assessment on the on the risk with regard NPO sector. • There is no oversight or supervisory regime for NPOs. • No requirement for NPO sector to keep financial information. • No procedures in place to ensure that they are able to effectively investigate and gather information on NPOs. • No training sessions or sensitization forum held for NPOs 	<ul style="list-style-type: none"> • Sint Maarten should conduct a new assessment on the risk with regard NPO sector. • The Authorities should consider designating an authority to monitor and supervise the NPO sector. • Sint. Maarten should institute an outreach program which provides adequate AML/CFT awareness about the risk of NPOs to terrorist financing. • There should be appropriate sanctions available for those NPOs 	<p>This subject matter will be further examined by the judicial department of the ministry of Justice.</p> <p>STATUS QUO; NO NEW UPDATE. AS SOON AS THE MAJORITY OF THE KEY AND CORE RECS HAVE BEEN MET, THE MOT WILL START ANALYZING THE MATTER OF THE NPO AS STATED UNDER SR VIII.</p>

			<ul style="list-style-type: none"> • NPOs should be required to maintain transaction records for a minimum period of five (5) years. • The Authorities in St. Marten should be procedures in place to ensure that they are able to effectively investigate and gather information on NPOs. • There should be procedures in place which allow for timely and effective sharing of information on NPOs both domestically and internationally. • The Authorities should consider issuing guidance specifically pertain to the NPO sector. 	
<p>SR.IX Cross-Border Declaration & Disclosure</p>	<p>PC</p>	<ul style="list-style-type: none"> • An ad hoc system is in place for the disclosure of the physical cross-border transportation of currency. • There is no system to restrain currency where there is a suspicion of ML or TF. • There are no statistics evidencing Customs' effectiveness in the area of international cooperation. • There are no statistics regarding the number of false declarations and investigations forwarded to the PPO. • There is no process for confiscating currency or negotiable instruments for persons listed in accordance with UNSCR 1373 and 1267. • There are no statistics relating to shipments of gold or other precious metals and stones. • There is no structure established for the training and targeted programmes for Customs. • No current information available with respect to the timeliness of the dissemination of the information relating to suspicious cash declarations/disclosures. 	<ul style="list-style-type: none"> • The authorities should ensure that they pursue the proposed declaration system to be completed by all passengers instead of the ad hoc disclosure system currently in place. • The Authorities should consider implementing the system to restrain currency where there is a suspicion of ML or TF. • The authorities should maintain statistics evidencing Customs' effectiveness in the area of international cooperation. • The Sint Maarten authorities should maintain the process for confiscating currency or negotiable instruments in implementing the UNSCR 1373 and 1267. • The authorities should maintain a system to identify the source, destination and purpose of movement of gold or other precious metals and stones. 	<p>This subject matter will be further examined by the judicial department of the ministry of Justice. The law on cross-border transportation of currency will be amended to address all outstanding issues in December 2014. The proposed declaration system is already in place.</p> <p>A system to restrain currency is already in place.</p> <p>The Customs Department already has the software to generate statistics and a database to store this data.</p> <p>THE OUTSTANDING ISSUES HAVE BEEN INCORPORATED IN THE DRAFT AMENDMENT OF THE NATIONAL ORDINANCE ON CROSS-BORDER TRANSPORTATION OF CURRENCY. THE</p>

			<ul style="list-style-type: none"> • A structure should be established for the training and targeted programmes for Customs. • The authorities should ensure that the relevant authorities possess timely access to suspicious cash declarations or disclosures, or intentional lack of disclosures information. 	<p>DRAFT IS NOW ON REVIEW TOGETHER AT THE CUSTOMS DEPARTMENT.</p> <p>The MOT has developed a training program for all the Law Enforcement Agencies.</p> <p>STATUS QUO; NO NEW UPDATE. THE TRAINING PROGRAM HAS BEEN SUBMITTED TO THE MINISTER OF JUSTICE.</p>
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