



# **CARIBBEAN FINANCIAL ACTION TASK FORCE**

## **Eight Follow-Up Report of Sint Maarten**

**November Plenary 2016**

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## I. Introduction

1. This report represents the CFATF Secretariat’s analysis of Sint Maarten’s progress with regard to correcting the deficiencies identified in its Mutual Evaluation Report (**MER**), as approved on November 2012 and subsequently by Round Robin on January 8<sup>th</sup>, 2013<sup>1</sup>. This is the eight follow-up report, based on a matrix of progress provided by Sint Maarten on Sept 2<sup>nd</sup>, 2016 (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 June 30<sup>th</sup>, 2016.

<sup>1</sup> Post Plenary, in order to provide St Maarten with a comprehensive list of outstanding documents, it was discovered that translated Articles of the Netherlands Antilles Penal Code that were relevant to assessing compliance primarily with Recommendation 1 (Table of Designated Category of Offences) and also affecting Recommendation 3, 13, 35, 36, SR II and SR IV were not analysed by the Examiners. Accordingly, a post Plenary analysis was conducted, which resulted in the 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**

		<b>Banks</b>	<b>Other Credit Institutions</b>	<b>Securities</b>	<b>Insurance</b>	<b>TOTAL</b>
<b>Number of institutions</b>	<b>Total #</b>	7 local and 1 international bank  (1)	1 specialized credit institution  (2)	(1)	6 (1)	
	<b>Assets</b>	Local banks 2,820,882  International banks 189,338	15,701		442,434 (2)	
<b>Deposits</b>	<b>Total: US\$</b>	Local banks 2,038,805  International banks 130,488	0		18,882 (3)	
	<b>% Non-resident</b>	Local banks: 45%  International banks: 100%	0%		0%	
<b>International Links</b>	<b>% Foreign-owned:</b>	Local banks: 71%  International banks: 0%	100%		1,88% (4)	



	<b>#Subsidiaries abroad</b>	3 of local banks  0 of international banks	0		3 (5)	

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

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

**BANKS:**

(1) The figures of the banks, being local general banks, subsidiaries of foreign banks, branches of foreign banks, branches of local general banks and (non-) consolidated international banks, consist of figures as per **June 30, 2016 (amounts in thousands)**.

(2) 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 **June 30, 2016 (amounts in thousands)**.

**SECURITIES:**

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

**INSURANCE:**

- (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 and pension fund, mentioned in point 1, as per **year end 2014 (amounts x US\$ 1,000)**.
- (3) This amount is included in the Total Assets and represents the investments by the companies in (time) Deposits at (commercial) banks (amounts x US\$ 1,000).
- (4) Represents the Assets of branch offices and subsidiaries of foreign insurance companies in percentage of Total Assets as mentioned under point 2.
- (5) Represents the number of subsidiaries abroad of local insurance companies.

**II. Scope of the Report**

- 4. This report will review Sint Maarten’s level of compliance with the following Core, Key and other Recommendations rated in the Mutual Evaluation Report (**MER**) as PC or NC that remain outstanding: Core Recommendations 5, 10, and II and Key Recommendations 3, 23, 35, 36, 40, I, III, and V rated as PC or NC as well as the following outstanding Recommendations rated as PC or NC: 9, 12, 14, 16, 17, 21, 24, 25, 27, 30, 31, 32, 33, 38, 39, Special Recommendations VI, VII, VIII and IX. It is also noted, that updates for Recommendations 2, 6, 7, 8, 11, 34 and 37 were provided, which will not be part of this 8<sup>th</sup> FUR since these Recommendations were rated as **LC** in the **MER**.

**III. Summary of progress made by Sint Maarten**

- 5. Sint Maarten has achieved progress with the issuance of the new Penal Code in June 1<sup>st</sup> 2015, the amendment of the Ministerial Decree containing the establishment of Indicators



of the Unusual Transactions National Ordinance (MDIUT) and elaboration of Annual Reports of activities carried out by the Financial Intelligence Unit, for 2010-2011, 2012, 2013 and 2014; including information on typologies, training, statistics of STRS, mutual legal assistance and international cooperation; among other information.

6. As a result of merging the NOIS and NORUT, the draft National Ordinance Combatting Money Laundering and Terrorism Financing was originated.
7. Sint Maarten, also continues in the process of reviewing and passing the following legislation: a) Criminal Procedures Code, b) draft National Ordinance of the FIU, c) draft Harmonization of the Supervision Laws, d) draft National Ordinance for Supervision of MTC's, and d) draft National Ordinance to amend the National Ordinance Cross-border Declaration and Disclosure.

#### **IV. Core Recommendations**

##### **Recommendation 5**

8. A translated copy in English of the draft “National Ordinance containing rules for the prevention and combatting of money laundering and financing of terrorism based on the recommendations of the Financial Action Task Force (FATF) (National Ordinance on Control of Money Laundering and Financing of Terrorism)”; was submitted to the CFATF Secretariat for preliminary analysis. By the time of elaboration of the 8<sup>th</sup> FUR, the National Ordinance was in legislative process. The legislation is expected to be in force by October 2016. As such, this Rec. remains in status quo.

##### **Recommendation 10**

9. The two recommended actions for this Recommendation, were included in the draft of the new National Ordinance for Combatting Money Laundering and Terrorism Financing. By the time of elaboration of the 8<sup>th</sup> FUR, the National Ordinance was in legislative process. The legislation is expected to be in force by October 2016. As such, this Rec. remains in the status quo.

##### **Recommendation 13 and Special Recommendation IV**

10. As indicated in the 6<sup>th</sup> and 7<sup>th</sup> FUR, the recommended actions for **Recommendations 13 and S.R. IV have been fully met.**

##### **Special Recommendation I (Key), II (Core) and III (Key)**

###### **Special Recommendation I**

11. The recommended actions for SRI are included in the recommended actions for SRII and SRIII. Consequently, the following sections will analyse the recommended actions for SRII and SRIII.



### Special Recommendation II

12. As indicated in the 7<sup>th</sup> FUR, except for the dissuasiveness and proportionality of the sanction for FT, Special Recommendation II has been considerably met.
13. Arts. 2:54 and 2:55 establish the penalty of imprisonment of not more than eight years or a fine in the fifth category for terrorism and terrorist financing. Although the Penal Code criminalizes FT, the penalty is not dissuasive compared with the penalties for FT in the region and is not proportionate either with other serious offences criminalized in the new Penal Code; such as murder, which is penalized with imprisonment of not more than twenty-four years. As a consequence, the Penal Code meets the need to incorporate penalties, however does not meet criteria 2.5 and II.4. This recommended action has been partially met. Its full compliance remains outstanding.

### Special Recommendation III

14. The substantive freezing mechanism for persons listed pursuant to Resolution 1267 of the United Nations Security Council, is complied with; since it has been included in the new Sanctions National Decree which has been in force since April 22<sup>nd</sup>, 2016. In order to ensure that freezing mechanisms should be served **without delay**, a draft National Ordinance to amend the Sanctions Ordinance, has been handled in the Council of Ministers in May 31<sup>st</sup>, 2016. By the time of elaboration of this report, the Sanctions ordinance was being sent to the Governor of Sint Maarten. Hereinafter, the draft ordinance would be submitted to the Parliament for approval. A copy of the draft legislation in English Language, was submitted to the Secretariat for prelaminary analysis. The recommended action has not been met.
15. Regarding the amendment of 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 assets which is held “in part” by a designated person, terrorist or terrorist organization**; the Authorities have indicated that this recommended action is included in the draft of the National Ordinance Combatting Money Laundering and Terrorism Financing. The recommended action has not been met.
16. Regarding providing guidance to all persons and entities with regards to obligations in taking action under the freezing mechanism, the Authorities have indicated that the guidelines will be provided by the Department of Foreign Affairs of Sint Maarten. The Authorities of Sint Maarten provided a draft of the Manual on Sanctions elaborated by the Foreign Relations Department. By the time of elaboration of this report, the Manual on Sanctions are expected to be ratified by the Ministers of Justice and Finance in order to be in force during the upcoming weeks. The recommended action has not been met.
17. Regarding incorporating the wording in the FATT Protocols, to clearly reflect that compliance with these Protocols is mandatory and that breaches of the Protocols can be sanctioned by the Central Bank, the Authorities indicated that this is expected to be applicable, once the correspondent Ministerial Decree be in force. The recommended action has not been met.
18. The recommended actions for this Recommendation remain outstanding.



## V. Key Recommendations

### Recommendation 3

19. In respect of confiscation mechanisms for terrorist financing offences, the new Penal Code which came into force on June 1<sup>st</sup>, 2015 sets out in Article 1:67 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. The Authorities also indicated that the confiscation mechanisms have been revised and updated. According with the Authorities, the post-confiscation measures are now in place. To complement these measures, the draft criminal procedures code has been reviewed by the Advisory Counsel and the Minister of Justice and is awaiting the submission to Parliament by the Council of Ministers. **The full compliance of this recommended action, requires the approval of the Criminal Procedures Code and the indication of legal basis on confiscation mechanisms for terrorist financing offences.** This recommendation has been partially met and its full compliance remains outstanding.
20. The PPO is working on their data system in order to provide statistics related to investigations, prosecutions and convictions of ML related cases. The PPO also, has agreed to provide information before the end of 2016. This recommended action has not been met.
21. Regarding the need of reviewing the confiscation measures under the Penal Code to allow for the pre-conviction and post-conviction measures to be imposed without notice, the Authorities indicated that it has been covered by the National Ordinance Import, Export and Transshipment (AB 2014 CT No.4 Art. 218 and Art. 219b). Art. 218 establishes that the officials are authorized to seize objects that can be seized under the Criminal Procedures Code and can demand the release of these objects. The officials have access at all times to all places, of which they may reasonably suspect that a punishable act has been committed.
22. In addition, Art. 119 and 119a of the Criminal Procedures Code, allow for pre-conviction measures to be imposed without advance notice. The Criminal Procedures Code is in legislative procedure. By the time of elaboration of this report, the CPC was being reviewed by the Legal Department, in order to be submitted to the Council of Ministers. Regarding post-conviction measures, Title III of the Penal Code establishes the confiscation, deprivation of unlawfully obtained gains and compensation measures that can be imposed for all the offences, including terrorism and financing of terrorism. The recommendation is partially met.

### Recommendation 23

23. 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 in order to focus the onsite inspections.



24. Regarding the need to take actions to close unlicensed MTCs, the Authorities indicated since the 3<sup>rd</sup> FUR report, that unlicensed MTCs would be closed by the Public Prosecutors Office (PPO). Along with the 5<sup>th</sup> and 6<sup>th</sup> FUR, the PPO reviewed the situation and a case was started in the Court between the unlicensed MTC and the CBCS, in which the MTC lost in the first instance. The Appeals Court reviewed the case, in which the MTC lost against the CBCS in October 19<sup>th</sup> 2015. By this report, the case is been dealt by the Public Prosecutor to summon the mentioned MTC to comply with the court orders and to stop their illegal activities. The Authorities provided information on the number and date of the sentences. **This recommended action has been met.**
25. In addition to the aforementioned actions taken, for the 7<sup>th</sup> FUR, the Authorities pointed that the power to apply a wide range of sanctions has been addressed in the draft National Ordinance Harmonization of the Supervision Laws and the draft National Ordinance Supervision of Money Remitter Companies. For the 8<sup>th</sup> FUR, the draft National Ordinance for Money Remitter Companies, has been approved by the Council of Ministers on June 2, 2016; which is expected to be submitted to the Advisory Board. Provisions regarding this matter were also included in the draft National Ordinance on combatting ML/TF. As indicated in previous reports, a provision has been included in order to close the MTC operating without a license issued by the CBCS. The CBCS, FUI –MOT- and PPO have been working jointly to take actions on the unlicensed MTCs.
26. Regarding increasing the number of on-site inspections of MTCs, in the 3<sup>rd</sup> FUR of May 2014, it was updated that during 2013 the Central Bank performed 3 on-site visits to MTCs. In 2016, the Central Bank performed one (1) on-site visit at the largest MTC established in Sint Maarten. It is required that inspections will continue performing in a regular basis. The recommended action has not been met.
27. On the recommended action of implementing a regulatory and supervisory regime for factoring services, the Central Bank conducted a thorough risk assessment of the factoring services and reached the conclusion that the business is exposed to a very low AML/CFT risk; as indicated for the 3<sup>rd</sup> FUR of May 2014. Sint Maarten has identified the risk posed by the factoring services. However, even if the risk was identified as low, a regulatory and supervisory regime should be implemented according to the low level of risk. This recommended action has not been met.
28. With regards to the development of a risk based approach system to determine the AML/CFT focus of onsite inspections: The Authorities indicated that the CBCS has started the implementation of the supervision based on a risk approach. Further information of the implementation should be provided. This recommended action has been partly met.
29. Regarding having supervisory staff for greater on-site monitoring of licensees, since August 2012 one (1) Supervisory staff was hired by the CBCS to improve the monitoring of the licensees; as indicated in the 3<sup>rd</sup> FUR of May 2014. By the time of elaboration of this report, this recommended action was being reviewed by the Legal Department in order to be sent to the Council of Ministers. Based on the size and integration of Sint Maarten’s financial sector, it is recommended that a review be conducted to determine whether the Staff is adequate to manage the supervisory activities. This recommended action has not been met.



30. According with the above mentioned, Recommendation 23 remains outstanding.

#### **Recommendation 26**

31. As indicated in the 7<sup>th</sup> FUR, **Recommendation 26 has been fully met.**

#### **Recommendations 35, and 40**

##### **Recommendation 35**

32. On the recommended action of ensuring that the Extradition Decree of Curaçao, Aruba and Sint Maarten (EDAC) expressly addresses the matters of non-treaty based requests for extradition, expeditious extradition procedures and simplification of evidentiary requirements, the Authorities indicated that there is no treaty requirement for extradition stipulated in the EDAC. It was also noted that its amendment would require the approval of all territories governed by the Kingdom law.

33. As indicated in paragraph 1281 of the **MER**, regarding specific provisions in the Penal Procedures Code or the EDAC in relation to paragraph 3 (extradition conditioned on the existence of a treaty) and 7 (expedite extradition procedures and to simplify evidentiary requirements) of Art. 6 of the Vienna Convention, which analysis follows:

34. Regarding Art. 6 paragraph 3 of the Vienna Convention: Art. 1 of EDAC makes an implicit reference to the Vienna Convention. Sint Maarten applies the Vienna Convention since its acceptance through the Netherlands and the Netherlands Antilles on September 8<sup>th</sup> 1993. Given the acceptance of this international instrument, the Vienna Convention prevails in the case of the absence of an extradition treaty agreed with another country. It is required that Sint Maarten provides further information on the application of Art 6 number 7 of the Vienna Convention. **This recommended action is still outstanding for Art. 6 number 7 of the Vienna Convention and has been met for Art. 6 number 3 of the Vienna Convention.**

35. As indicated in the analysis for SR II, the criminalization of the indirect or unlawful provision of funding for the commission of a terrorist offence and the willful provision of funds to individual terrorists, **have been met.**

36. The compliance of the other recommended actions for Rec. 35 are outstanding. As indicated in the 7<sup>th</sup> FUR, the compliance was expected to be met by 1<sup>st</sup> of August 2016. By the time of elaboration of this report, the implementation of Rec. 35 has been tasked to be incorporated in the amendment of the CPC and CC.

37. This Recommendation remains outstanding.

##### **Recommendation 40**

38. Regarding the review of the following Ordinances: NOSBCI, RFETCSM, NOSIIA and NOSTCSP to allow for the CBCS to undertake investigations on behalf of their foreign counterparts; the Authorities indicated since the 2<sup>nd</sup> follow-up report that the draft Harmonization Law (supervision of financial institutions) provides for foreign supervisors to operate under CBCS supervision. Accordingly, this recommended action has been included in the indicated legislation, which has been submitted by the Council



of Ministers to the Advisory Council on June 8, 2016 and is expected to be in force in June 2017. In addition, the draft National Ordinance Money Remitter Companies has been approved by the Council of Ministers on June 2, 2016, and will soon be submitted to the Advisory Board. The recommended action has not been met.

39. On the maintenance of statistics of spontaneous referral of information by entities as well as information supplied as a result of a request, the Annual Reports of the MOT for 2010/2011, 2012, 2013 and 2014; present statistics on international requests of information to and from other countries, as well as international exchange of information through Egmont Group, which indicates the number of requests of information received and provided, countries to whom it was provided and type of information. **This recommended action has been met.**
40. With regard of the ability to provide international cooperation with/to their foreign counterparts, by all law enforcement entities; the Authorities indicated that this requirement has been included in (1) The draft National Ordinance on the FIU, in (2) The draft Harmonization law, (3) The draft National Ordinance on Supervision as in (4) The Criminal Procedures Code. This recommended action has not been met.
41. The full compliance of this Recommendation remains outstanding.

**Key Recommendation 36 and Special Recommendation V and non Core or Key Recommendation 38**

**Recommendation 36**

42. The deficiencies set out in the ratings table, included in paragraph 1389 of the MER, were incorporated in the Penal Code which came into force on June 1, 2015. It is noted that the recommended actions related to the unlawful provision of funding for the commission of TF and criminalization of predicate offences; were met by the 5<sup>th</sup> FUR. Consequently, only the factor related to the criminalization of FT will be analysed in the table below:

Summary of factors relevant to S.6.3 underlying overall rating	Compliance by Sint Maarten
Terrorist financing is not criminalized in accordance with the FT Convention	<p>It is noted that the offence of Terrorist Financing was criminalized in accordance with the indicated Convention.</p> <ul style="list-style-type: none"> <li>• It was clarified that Art. 2:55 (2) of the Penal Code refers to “funds” howsoever acquired, which does not make a difference whether the source of funds is legitimate or illegitimate. <b>Criterion II.1. (b) has been met.</b></li> <li>• Regarding the possibility of parallel criminal, civil or administrative proceedings to make legal persons subject to criminal liability for TF, it was clarified that Sint Maarten applies the ‘<i>ne bis in idem – principle</i>’ which excludes the possibility to be prosecuted twice for the same crime. However, the legislation does not set any restriction to apply parallel criminal, civil or administrative proceedings. For example, civil liability cases (up to a certain extend) may be merged with the criminal case, making the criminal</li> </ul>



	<p>proceeding dominant, over the civil case. The same rule applies in the case of criminal and administrative proceedings, in which the administrative proceeding applies, once there is a verdict of the judge within the criminal case. Although parallel proceedings are applicable, the Authorities indicated that an explicit provision will be included in the Penal Code to reinforce its application. <b>EC II.4 concerning criterion 2.4 has been met.</b></p> <p>***</p> <p>However, <u>the criminalization of financing of terrorism apparently lacks the following elements:</u></p> <p>a. <u>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))</u></p> <p>b. <u>Although there is a sanction for persons, and it was clarified that the offence includes legal persons and natural persons; the sanctions are not effective, proportionate and dissuasive. (EC II.4 concerning criterion 2.5)</u></p> <p><b>These recommended actions are outstanding.</b>        (See paragraph 13 of this report).</p>
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**Special Recommendation V**

- 43. According to paragraph 1389 of the MER, the deficiencies noted for Rec. 36, also apply for SR V.
- 44. **The full compliance of Special Recommendation V remains outstanding.**

**Recommendation 38**

- 45. According to paragraph 1389 of the MER, the deficiencies noted for Rec. 36, also apply for Recommendation 38.
- 46. As noted in Paragraphs 13 and 40 of the 4<sup>th</sup> FUR, the “new Penal Code, enforced since 1<sup>st</sup> 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. The crime of smuggling has been incorporated in Arts. 233 A, B and C; of the National Ordinance on Import, Export and Transit (AB 2014 GT No.4)”. Consequently, **Sint Maarten has addressed the deficiency regarding the availability to extend mutual legal assistance in relation to the aforementioned predicate offences.** For this FUR, the Authorities have indicated that the draft Criminal Procedures Code regulates the provision of mutual assistance in Art. 555 up to and including Article 566. However, the full compliance of Recommendation 38 requires the compliance of the deficiencies for Recommendation 36.
- 47. **The full compliance of Recommendation 38 remains outstanding.**
- 48. **Recommendation 36, Special Recommendation V and Recommendation 38, should comply with the two outstanding elements on the criminalization of Terrorist Financing, in order to be fully met.**



## VI. Other Recommendations

49. In the following paragraphs there is a brief update of the actions undertaken by Sint Maarten regarding the other non - Core or Key Recommendations that were rated as **PC** or **NC** in the **MER**.

### **Recommendations 9, 12, 14, 16, 17, 21, 24, 25, 27, 30, 31, 32, 33, 39, Special Recommendations VI, VII, VIII and IX**

#### **Recommendation 9**

50. With regards to provisions of the P&Gs, in line with the requirements of essential criteria 9.3, which requires that financial institutions satisfy themselves that the third party is regulated and supervised (in accordance with Recommendation 23, 24 and 29) and has measures in place to comply with the CDD requirements set out in Recommendation 5 and 10; Section 2.8 of P&Gs requires service providers to satisfy themselves that the third party is regulated, supervised or monitored for, and has measures in place for compliance with, CDD and record-keeping requirements in line with Recommendations 10 and 11. **This recommended action has been met.**
51. Regarding amendments to the P&Gs to require that financial institutions satisfy themselves that the third party adequately regulates and supervises by referring more broadly to reports assessments and reviews of reports produced by the FATF, IMF or FSRBs, rather than specifically to Mutual Evaluation Reports; the Authorities indicated that this was incorporated in the P&Gs and in the draft Harmonization and Money Remitter Supervision Law. However, further citation of the P&Gs is required. The deficiency will be discussed with the CBCS. This recommended action has not been met.
52. On the recommended action with regards to incorporate requirements in the P&Gs for MTC, in order to comply with Recommendation 9; the Authorities provided references in the P&Gs. However, this recommended action requires a review of the criteria related to Rec. 10; which analysis will be further addressed in the next FUR. This recommended action has not been met.
53. For this report, the Authorities have indicated that the outstanding recommended actions are expected to be complied once the draft National Ordinance combatting ML/TF is in force.
54. **The overall compliance of Recommendation 9 remains outstanding.**

#### **Recommendation 12**

55. 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 (online gaming). The Authorities indicated that the threshold for identification has been amended and the online casinos have been included in the draft of the new National Ordinance Combatting Money Laundering and Terrorism Financing. These recommended actions have not been met.



56. Regarding the need for the DNFBBs to comply by law or regulation with criteria 5.2c.; 5.2d.; 5.2.e and 5.7 of Recommendation 5; the Authorities indicated that this has been included in the draft of the new National Ordinance Combatting Money Laundering and Terrorism Financing. The recommended action has not been met.<sup>2</sup>
57. Regarding the deficiency to put *legislation* in place for DNFBBs 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, Sint Maarten complied with criteria 5.5.2, 5.5.2 (a), 5.6, 5.8, 5.9, 5.11, 5.16 and 5.17 for DNFBBs except for casinos, which has not complied with the indicated criteria.<sup>3</sup> For this report, the Authorities indicated that the recommended actions have been included in the draft of the new National Ordinance Combatting Money Laundering and Terrorism Financing. The supervision of (1) Casinos, (2) Lotteries and (3) Internet Gaming have been added to the indicated draft. The recommended actions have not been met.
58. The Authorities indicated that the deficiencies in section 3.5 for Recommendation 10 which are applicable to all DNFBBs, have been included in the new National Ordinance Combatting Money Laundering and Terrorism Financing. This recommended action has not been met.
59. With regards to the issuance of *legislation* for DNFBBs supervised by the MOT and casinos that includes all the requirements of Recommendations 6, 8, 9 and 11; it is noted that the amendments of the P&GS complied with criteria 6.1, 6.2, 6.2.1, 8.2, 8.2.1 and 9.3 as indicated in the 5<sup>th</sup> and 6<sup>th</sup> FUR. In addition, the Authorities indicated for this report, that the recommended actions have been included in the new National Ordinance Combatting Money Laundering and Terrorism Financing. This recommended action has not been met.
60. With regards to incorporating criteria E.C. 6.2 of Rec. 6 and E.C. 9.3 of Rec. 9 in the P&Gs for Administrators of Investment Institutions (AII) and Self-Administered Investment Institutions (SAII), **these criteria have been met for the 6<sup>th</sup> FUR.**
61. For this report, the Authorities have indicated that the outstanding recommended actions are expected to be complied once the draft National Ordinance combatting ML/TF is in force.
62. The overall compliance of Recommendation 12 remains outstanding.

#### **Recommendation 14**

63. Regarding the clarification of 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

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<sup>2</sup> It is noted that although these requirements should be implemented in law or regulation, these were implemented through the P&GS.

<sup>3</sup> It is important to note that since the 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.



to the MOT, the Authorities indicated that the explicit prohibition for directors, officers and employees (whether permanent or temporary) to disclose (“tip off”) the fact that an STR or related information is being reported or provided to the MOT; has been included in the draft of the new National Ordinance on Combatting Money Laundering and Terrorist Financing. This recommended action has not been met.

64. For this report, the Authorities have indicated that the outstanding recommended actions are expected to be complied once the draft National Ordinance combatting ML/TF is in force.

### **Recommendation 16**

65. The deficiencies in this Rec. are linked to the identified deficiencies to Recs 13 and 14 in section 3.7 for all DNFBCs. The deficiencies in Rec. 13 have been met with the Regulation on Indicators of Unusual Transactions (MDIUT) in force since May 1<sup>st</sup>, 2016. The deficiency for Rec. 14 is outstanding as indicated in the previous paragraph. The Authorities have indicated that an explicit indication for DNFBCs has been made in the draft of the new National Ordinance Combatting Money Laundering and Terrorism Financing. The recommended action for Rec. 14 has not been met.
66. With regard to issuing *legislation* for DNFBCs supervised by the MOT and casinos that includes all the requirements of Recommendations 15 and 21; for this report, the Authorities have indicated that these requirements have been included in the draft of the new National Ordinance Combatting Money Laundering and Terrorism Financing. This recommended action has not been met.
67. For this report, the Authorities have indicated that the outstanding recommended actions are expected to be complied once the draft National Ordinance combatting ML/TF is in force.
68. This Recommendation remains outstanding.

### **Recommendation 17**

69. With regards to the deficiency related to inclusion of specific provisions to indicate that sanctions apply to directors and senior management of financial institutions, explicit provisions have been made in the draft of the new National Ordinance Combatting Money Laundering and Terrorism Financing to indicate that sanctions apply to directors and senior management of financial institutions. The draft also includes DNFBCs in the provision. The recommended action remains not met.
70. Regarding taking immediate action against directors and senior management of unauthorised MTCs, Sint Maarten has elaborated a draft National Ordinance Supervision of Money Remitter Companies. The recommended action has not been met.
71. 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 the draft National Ordinance Harmonization of the Supervision Laws and the draft National Ordinance Supervision of



Money Remitter Companies which are in legislative process. As indicated by the Authorities, the Central Bank issues notifications on sanctions on a regular basis. This deficiency remains outstanding.

72. For this report, the Authorities have indicated that the outstanding recommended actions are expected to be complied once the draft National Ordinance combatting ML/TF and draft National Ordinance on Administrative Enforcement are in force.
73. The overall compliance of Recommendation 17 remains outstanding.

#### **Recommendation 21**

74. 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. Regarding the need of advising on concerns about weaknesses in the AML/CFT systems, the P&G establishes that (financial) institutions must continuously consult the FATF's, CFATF's and/or the Central Bank's website for the most recent version of the FATF and the CFATF Public Statements. Moreover, the related FATF documents on the High-risk and non-cooperative jurisdictions. In addition, the P&GS have been already amended to request financial institutions to give special attention to business relationships and transactions with persons (individual and legal) from or in countries that do not or insufficiently apply the FATF Recommendations including high-risk and non-cooperative jurisdictions. An explicit requirement has been included in the National Ordinance Combatting Money Laundering and Terrorism Financing. **This recommended action has been met.**
75. Regarding the ability to apply counter-measures to countries that don't apply or insufficiently apply the FATF Recommendations, the Constitution of Sint Maarten allows to apply counter-measures, as indicated by the Authorities. Explicit provision has been included in the draft Harmonization Law (concerning to financial institutions) and the Draft National Ordinance for Money Remitter Companies; in order to provide the Central Bank of Curaçao and Sint Maarten, the legislative powers to apply counter measures. The same provision has been included in the National Ordinance of the FIU concerning DNFBS.
76. For this report, the Authorities have indicated that the draft Harmonization law has been submitted by the Council of Ministers to the Advisory Council on June 8, 2016. The draft National Ordinance Money Remitter Companies has been approved by the Council of Ministers on June 2, 2016 and will be submitted to the Advisory Board soon. The deficiency remains outstanding.

#### **Recommendation 24**

77. Regarding the evaluator's recommendation to implement adequate AML/CFT regulation and supervision of Casinos in compliance with E.C 24.1, the Authorities indicated that the AML/CFT regulation and supervision of casinos, online gaming companies and



lotteries has been included in the draft of the new National Ordinance Combatting Money Laundering and Terrorism Financing.<sup>4</sup> The recommended action has not been met.

78. Aligned with the previous recommendation, it is required that the Authorities implement an AML/CFT regime for Internet casinos. Sint Maarten has include requirements for regulation and supervision of online gaming companies, casinos and lotteries in the draft of the new National Ordinance Combatting Money Laundering and Terrorism Financing. The recommended action has not been met.
79. In regard to the implementation of an effective supervisory regime and resources to fulfil the supervisory role for the relevant DNFBP sector, provisions have been included in the draft National Ordinance Combatting Money Laundering and Terrorism Financing, in the draft National Ordinance on the FIU and in the draft National Ordinance Administrative Enforcement. The recommended action has not been met.
80. 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 Authorities indicated for this report, that this recommended action has been addressed in the draft Harmonization Law and the draft National Ordinance Supervision on Money Remitter Companies which are in legislative process. The recommended actions have not been met.
81. For this report, the Authorities have indicated that the outstanding recommended actions are expected to be complied once the draft National Ordinance combatting ML/TF and the draft National Ordinance on Administrative Enforcement are in force.
82. The overall compliance of Recommendation 24 remains outstanding.

### **Recommendation 25**

83. On the recommended action for the MOT to provide feedback with respect to typologies or sanitized cases, and on specific cases that have been closed; the Annual Reports of the FUI for 2012, 2013 and 2014 comprise a comprehensive section on “Analysis of Unusual Transactions” which includes a descriptive section on methods, trends and cases that have been analysed in Sint Maarten. **This recommended action has been met.**
84. Regarding to continue the outreach programme to specifically encompass both feedback and guidance related to UTRs; the Annual Reports of the FUI for 2012, 2013 and 2014 include a section on information related to UTRs. The reports also include information on training provided to financial reporting entities. **This recommended action has been met.**
85. For the recommended action of providing guidance to financial institutions with respect to terrorism financing, the Authorities indicated that the MOT has started with outreach to the FIs concerning TF in December 2015 and January 2016. The training has been developed based on the Egmont ISIL Project reports for the Western Hemisphere. By the

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<sup>4</sup> For the 3<sup>rd</sup> FUR a proposal was received by the Minister of Justice received to setup the Gaming Control Board. For the 6<sup>th</sup> FUR, 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 under the purview by the MOT. Consequently, the Authorities indicated that the MOT was delegated by the Council of Ministers, for the responsibility of supervision on Casinos.



elaboration of this report, the FIU was conducting training for DNFBPs in this subject. **This recommended action has been met.**

86. Regarding to issue guidance to providers of factoring services, as indicated since the 5<sup>th</sup> FUR, the CBCS conducted a thorough risk assessment of the factoring services provided on Sint Maarten and reached the conclusion that the business is exposed to very low risk with reference to AML/CFT. Nonetheless the AML/CTF regime for factoring services has been added to the draft National Ordinance Combatting Money Laundering and Terrorism Financing. This recommended action has not been met.
87. With regards, the need of providing adequate guidance to DNFBPs supervised by the MOT and Casinos regarding AML/CFT requirements; the Annual Reports of the FUI for 2012, 2013 and 2014 include a section on “Statistics and Reporting Behaviour” which provides information on statistics of the STRs sent to the MOT and guidance on indicators for the analysis of suspicious transactions. In addition, the P&G provide guidance for the DNFBPS regarding CDD measures, reporting duties, compliance regime and enforcement. **This recommended action has been met for DNFBPS.**
88. However, there is no guidance for Casinos. The authorities have indicated for previous reports, that this recommended action is expected to be sorted out with the legislative measures that are in process. However, Casinos were included in the training programme that was approved at Ministerial level in August 2015. Consequently, the MOT continues performing the outreach programme since 2014. This recommended action has not been met for Casinos.
89. On the recommended action of issuing P&Gs, the MOT elaborated Procedures and Guidelines for the following sectors: a) Car dealers and Jewelers b) Real Estate Agents c) Lawyers, Notaries, Independent Legal Professionals and Accountants d) Credit Institutions e) Company Trust Service Providers f) Insurance Companies and Intermediaries (Insurance Brokers) g) Money Transfer Companies and h) Administrators of Investment Institutions and Self-Administrated Investment Institutions. **This recommended action has been met.**
90. For this report, the Authorities have indicated that the outstanding recommended actions are expected to be complied once the draft National Ordinance combatting ML/TF is in force.
91. Although the majority of the recommended actions have been met, the full compliance of Recommendation 25 remains outstanding.

### **Recommendation 27**

92. Regarding financial resources designated to provide training, the Authorities have indicated that the MOT has secured funds for the AML/CFT training of the law enforcement Agencies. It is required to provide information on the training received by the Police Department and the Landsrecherche (Ministry of Justice). For the 7<sup>th</sup> FUR report, the Authorities also made reference to the Annual reports of 2011-2012, 2013 and 2014; however, the reports don't include information on training provided to law



enforcement Authorities during the indicated period.<sup>5</sup> For this report, the Authorities have indicated that two (2) public prosecutors and three (3) financial services detectives have been recruited. The training which was to be provided in 2016 has been postponed to 2017. In the meanwhile, the local financial services detectives have been receiving training from experienced Dutch financial services detectives who were recruited by the Attorney General. This recommended action has not been met.

93. Regarding the operation of MTCs without licenses, Sint Maarten has taken the following actions: a) coordination between the MOT and the PPO in order to discuss the availability of closing the MTCs operating without license, and discontinuation of the licensing process with the MTC in question; as indicated in the 4<sup>th</sup> FUR, b) Notification to the PPO on the illegal operation of MTCs by the CBCS, c) Approach to MTCs in order to urge them to report the unusual transactions by the MOT, d) Start of a case in the Court between the unlicensed MTC and the CBCS which the MTC lost in first instance, as indicated in the 6<sup>th</sup> FUR. e) For this report, the Authorities have indicated that the PPO has continued taking actions and a decision is expected to be taken before the upcoming Plenary meeting in November 2016. f) It is noted that Sint Maarten continues working on the regularization of the MTCs and has indicated that the deficiency is expected to be addressed with the draft National Ordinance Supervision on Money Remittance Companies, which is in legislative process. This Recommendation has not been met.

94. The overall compliance of Recommendation 27 remains outstanding.

## Recommendations 30, 31 and 32

### Recommendation 30

95. Sint Maarten has taken the following actions to address its deficiencies:

- As indicated by the Authorities for this and previous FURs, the MOT has joined adequate and competent human resources to perform its duties, as reflected in the Annual Reports. **This recommended action has been met.**
- In June 2012 the MOT implemented the Sint Maarten Electronic Reporting Tool -SERT Portal- which allows the reporting entities to submit STR in an online platform. It also allows the FIU to analyze STRs base on an alert's system of indicators, in order to produce tactical and operational analysis. **This recommended action has been met.**
- The MOT has committed financial resources to contract a high level expert (former Head of FIU of Curacao and senior legal/policy officer) to assist FIU Sint Maarten with trainings for the Analyst department and the Supervision department. The training comprises interpretation of AML/CFT law, investigation and analysis of cases. **This recommended action has been met.**
- For the previous FUR it was indicated that the connections for offsite electronic data backup are expected to be completed in 2016. This recommended action has not been met.

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<sup>5</sup> As noted for the previous FUR: The MOT has developed the ML/TF training program for all stakeholders (MOT, Police, Customs, PPO, *Landsrecherche*, Tax Office and National Security Agency) The AML/CFT Training Programme II was approved by the Minister of Justice and the Police Department and the *Landsrecherche* (Ministry of Justice) are expected to receive training.



- Regarding the need of implementing robust recruiting programmes to fill the vacancies, the Detective Department of the Police Force has been strengthened with two financial investigators. The complement of the Landsrecherche has been expanded to eight (8) investigators. The complement of the Detective Co-operation Team (RST) has been expanded with two (2) detectives to four (4) in total. **This recommended action has been met.**
- The Customs department has received training on AML, particularly focused in case studies regarding cash transactions, cross border transactions and suspicious transactions. In addition, for the 8<sup>th</sup> FUR the Authorities have indicated that Customs department continue receiving a compact training conducted by MOT staff. The staff of the MOT also has continued the training programme and attended the Supervision training carried out in Trinidad and Tobago in May 2016. In addition, the analyst are in the process of obtaining the ACAMS certification. Regarding AML /FT /STR training for Tax Department, Landsrecherche, Coast Guard and the KPSM, the Authorities have indicated that the training which was to be provided in 2016 has been postponed to 2017. In the meanwhile, the local financial services detectives have been receiving training from experienced Dutch financial services detectives who were recruited by the Attorney General. This recommended action has not been met.
- The Courts of Justice are using the extra facilities provided. **This recommended action has been met.**

96. Except for the fourth and sixth bullet point (training on AML /FT /STR for Tax Department, Landsrecherche, Coast Guard and the KPSM), Recommendation 30 has been considerably met. Its full compliance remains outstanding.

### **Recommendation 31**

97. Regarding the need of establishing the Anti-Money Laundering and Terrorist Financing Committee (CIWG), Sint Maarten adopted 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” (AB 2014 no. 51) which establishes The Reporting Center. Based in Art. 3 number 6 g) and h), The Reporting Center maintains contact with and participates in meetings of international and intergovernmental agencies in the field of AML/CFT and 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 reporting center replaces the CIWG. In addition, Sint Maarten established the position of a national coordinator, which functions have been included in the draft national ordinance on combatting ML/TF in its Article 36 paragraph 2 under k. **This recommended action has been met.**
98. Regarding the establishment of a mechanism of coordination, the explanatory notes of the AB 2014 no. 51 indicate that The Reporting Center is headed by a Head, who acts as the point of contact for the CFATF; implements the CFATF recommendations, advises upon request and at its own initiative, to the government at a strategic level concerning matters related to the prevention and combating of money laundering and the financing of terrorism; reports to the government concerning the progress of the implementation of the CFATF recommendations; and makes policy and legislative proposals for the



promotion of the prevention and combating of money laundering and the financing of terrorism. Based in Art. 3 number 6 g), the head is able to independently conclude covenants or administrative agreements concerning the exchange of data and information with foreign agencies that have duty that is similar to that of the Reporting Center. **This recommended action has been met.**

99. **Recommendation 31 has been fully met.**

### Recommendation 32

100. Statistics on investigations, prosecutions and convictions of ML related cases have not been provided. This recommended action has not been met.

101. With regards statistics on requests for additional information by the MOT to reporting entities, the MOT has requested the following information to reporting entities.

Article 12 requests to reporting entities in Sint Maarten				
2010-2011	2012	2013	2014	2015
12	50	62	32	48

**This recommended action has been met.**

102. On statistics of training sessions to reporting entities, the Annual Reports for 2010-2011, 2012, 2013 and 2014 provide information on the informative/training sessions addressed to financial reporting entities; with regards their reporting obligation, reporting procedure, correct way to report, FATF recommendations, PEPs, cases of ML/TF, FIU and its legal duties. **This recommended action has been met.**

103. Regarding the maintenance of statistics respect to requests made to foreign MOTs, the Annual Reports 2010-2011, 2012, 2013 and 2014 comprise a section of “International requests to and from other countries”; including information shared through MOU’s and international exchange of information regarding requests from other countries and requests made by the MOT to other FIUS. **This recommended action has been met.**

104. Except for statistics on investigations, prosecutions and convictions of ML; Recommendation 32 is considerably met. For this report, the PPO is working on their data system in order to provide statistics. The PPO also, has agreed to provide information before the end of 2016. The overall compliance remains outstanding.

### Recommendation 33

105. All the recommended actions for the compliance of this Rec. are expected to be addressed with the legislative reforms. The recommended actions were included in the draft National Ordinance on the FIU, draft National Ordinance Combatting Money Laundering and Terrorism Financing (Arts. 7 and 8), draft Harmonization of the Supervision Law and draft National Ordinance Supervision of Money Remitter Companies. The amendment of the NDCBSC will be discussed with the Central Bank, as it is a uniform decree.

106. The overall compliance of Recommendation 33 remains outstanding.



### **Recommendation 39**

107. The deficiencies noted for Rec. 36 and SR II, also apply for Recommendation 39.

108. Except for the above indicated, the criminalization of TF was criminalized according with the Convention for FT and is included in Art. 2:55 of the Penal Code, which is in force since July 1<sup>st</sup>. 2015. For the 6<sup>th</sup> FUR the Authorities indicated that the draft Criminal Procedures Code was reviewed by the Council for advice and the Minister of Justice made the adaptation in conformity with the advices received. Thereafter it was expected to be submitted again to the Council of Ministers and Parliament.

109. This Recommendation remains outstanding.

### **Special Recommendation VI**

110. Regarding the two recommended actions: a) Shut the operations of unauthorised MTCs, as indicated in Recommendation 23, the Authorities indicated that the case is been dealt by the Public Prosecutor to summon the mentioned MTC to comply with the court orders and to stop their illegal activities. The PPO has continued taking actions and a decision is expected to be taken before the upcoming Plenary meeting in November 2016. b) Regarding to update the Central Bank on the number of agents and sub agents, the provisions were formalized in the draft National Ordinance on Supervision of the Money Remitter Companies.

111. SR VI has not been met.

### **Special Recommendation VII**

112. On the recommended action of set requirements with respect to this Recommendation, Sint Maarten has included this requirements in the draft National Ordinance Combatting Money Laundering and Terrorism Financing (Art. 1 under k and Art. 3 paragraph 1 under d). This Recommendation has not been met.

### **Special Recommendation VIII**

113. Sint Maarten expects to comply with this recommended action with the enforcement of the draft National Ordinance combatting Money Laundering and Terrorism Financing. Provisions have been included in Art. 57 a. The recommended actions have not been met.

### **Special Recommendation IX**

114. Regarding the following recommended actions: a) A declaration system to be completed by all passengers, instead of the ad hoc disclosure system currently in place. b). A system to restrain currency when there is suspicion of ML or TF. c). Maintenance of statistics evidencing Custom's effectiveness in the area of international cooperation; the Authorities have indicated that these requirements have been included in the draft National Ordinance to amend the National Ordinance Cross-border Declaration and Disclosure (Art. 6). Information on these recommended actions will be included in the



following reports elaborated by FUI –MOT-. These recommended actions have not been met.

115. With regards establishing a process for confiscation of currency and negotiable instruments when implementing the UNSCR 1373 and 1267; the Sanctions National Decree of 17<sup>th</sup> of February 2016 (AB 2016 No. 10) establishes in Art. 1 its applicability for the implementation of UNSCRS 1373 and 1267, among others. Art. 6 numbers 1 to 4, establishes the following: a) process to designate persons or organizations referred to in Resolution 1373 of the UNSCR, b) freezing of resources belonging to them, c) prohibition of the provision of financial services and d) prohibition of making the funds available for such persons or organizations. Apparently the described process is not applicable to UNSCR 1267, since there is no reference to UNSCR 1267 in Art. 6 of AB 2016 No. 10. This recommended action is partially met.
116. Regarding a system to identify the source, destination and purpose of movement of gold or other precious metals and stones; the Authorities cited the Annual Reports for 2010-2011, 2012, 2013 and 2014; which comprise several statistics with information on the jeweler sector. Notwithstanding, there is no information regarding the system that has been putted in place to identify the source, destination and purpose of movement of gold and precious metals and stones. This recommended action has not been met.
117. The recommended action of implementing a structure for the training and targeted programmes for Customs, **was met for the 6<sup>th</sup> FUR**. The Authorities indicated that training and targeted programmes for Customs were included in the Training Programme II approved by the Minister and started to be executed in August 2015. The Customs Department received training in September 2015. Additionally, for this report, the Authorities made reference to the Annual Reports for 2010-2011, 2012, 2013 and 2014. **This recommended action has been met.**
118. Regarding to ensure that the relevant authorities posse timely access to suspicious cash declarations or disclosures, or intentional lack of disclosures of information; the Authorities cited the Annual Reports for 2010-2011, 2012, 2013 and 2014. Notwithstanding, there is no information regarding the access to suspicious cash declarations or disclosures, or intentional lack of disclosures of information. This recommended action has not been met.

## V. Conclusion

119. Sint Maarten continues working on strengthening their legal framework through several amendments to the laws particularly with the National Ordinance Combatting Money Laundering and Terrorism Financing, which comprises the provisions of the NOIS and NORUT.
120. Sint Maarten, also continues in the process of review and pass the following legislation: a) Criminal Procedures Code, b) draft National Ordinance of the FIU, c) draft Harmonization of the Supervision Laws, d) draft National Ordinance for Supervision of MTC's, and d) draft National Ordinance to amend the National Ordinance Cross-border Declaration and Disclosure.



121. The Ministerial Decree containing the establishment of Indicators of the Unusual Transactions National Ordinance (MDIUT) is in force and amended various recommended actions. The FIU finalized the Annual Reports for 2010-2011, 2012, 2013 and 2014; which compile information on typologies, training, statistics of STRS, mutual legal assistance and international cooperation; among other information.
122. For this report, Sint Maarten has demonstrated progress regarding the closure of unlicensed MTCs by the Public Prosecutors Office, started the implementation of the supervision based on a risk approach, Customs and MOT personnel have received training on AML/FT, Supervision and ACAMS certification.
123. The Authorities have also provided the draft of the National Ordinance containing rules for the prevention and combatting of money laundering and financing of terrorism based on the recommendations of the Financial Action Task Force (FATF) (National Ordinance on Control of Money Laundering and Financing of Terrorism) and the draft of the Manual on Sanctions elaborated by the Foreign Relations Department; both in English language.
124. Except for the element of dissuasiveness and proportionality of the sanctions, Core Recommendation II was considerably met since the previous FUR.
125. As indicated in the previous FUR, Sint Maarten is urged to provide deadlines for the review and enforcement of the drafted legislation and provide the outline of the legislative process indicating the deadlines for each one of the laws that are being drafted. It is also recommended that Sint Maarten remains in expedited follow-up and reports to the May 2017 Plenary.

CFATF Secretariat  
November 4<sup>th</sup>, 2016



**Matrix with ratings and follow-up action plan 3<sup>rd</sup> round Mutual Evaluation Sint Maarten**  
**Changes since last Report June 2016, are highlighted in bold.**

Forty Recommendations	Rating	Summary of factors underlying rating <sup>6</sup>	Recommended Action	Undertaken Action
<b>Legal systems</b>				
<b>1. ML offence</b>	LC	<ul style="list-style-type: none"> <li>• No confirmation that illicit arms trafficking, smuggling, insider trading and market manipulation are criminalised as ML predicate offenses.</li> <li>• The Penal Code is not applicable to anyone who outside of Sint Maarten committed the crimes of ML; TF and most of the non-terrorist related predicate offences.</li> </ul>	<ul style="list-style-type: none"> <li>• The Authorities should ensure criminalization of the following predicate offenses: illicit arms trafficking, smuggling, insider trading and market manipulation.</li> <li>• The Penal Code should be amended to ensure that most of the non-terrorist related predicate offences for ML, ML and TF occurred in a foreign country can be prosecuted in Sint Maarten.</li> </ul>	<p>Article 1:5 of the proposed PC SXM creates jurisdiction in cases of TF (currently article 4 and 4a PC). The money laundering offences apply to All crimes (articles 2:404, 2:405, 2:406 Penal Code SXM, currently punishable in articles 435a, 435b, 435c Penal Code), thus including the mentioned ones. Next to that the proposed article 2:54 and 2:55 PC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime (currently dealt with in the articles articles 435a, 435b, 435c Penal Code combined with 48a paragraph three (with explicitly mentions the financing of terrorism). The Proposed article 2:55 the financing of crime is punishable as a severe crime. The switching provision of 2:224 (currently 96) makes the general provisions of the first book of the Penal Code applicable to all other Criminal laws</p> <p>The Introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice. The Council of Ministers is preparing submission of the IO to Parliament for approval.</p> <p>The Introduction Ordinance (IO) to enact the Penal Code has been by Parliament on February 27<sup>th</sup>, 2015. Both recommended actions concerning</p>

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



				<p>FATF rec 1 are hereby incorporated in the Penal Code.</p> <p>THE PENAL CODE ENTERED INTO FORCE ON JUNE 1, 2015. ALL PREDICATE OFFENSES HAVE BEEN INCORPORATED INTO THE PENAL CODE AND OTHER ORDINANCES (info sent to CFATF secretariat).</p> <p><b>This deficiency has been resolved in the Penal Code article 2:404 up until and including article 2:407.</b></p>
<p><b>2. ML offence – mental element and corporate liability</b></p>	<p>LC</p>	<ul style="list-style-type: none"> <li>• No evidence that parallel civil and criminal proceedings are possible.</li> <li>• The manner in which the data was captured did not allow for proper assessment of the effectiveness of ML prosecutorial efforts.</li> <li>• Penalty applicable to culpable ML is not sufficiently dissuasive</li> </ul>	<ul style="list-style-type: none"> <li>• Amend the Penal Code to ensure that parallel criminal and civil proceedings are possible The penalty applicable for a person convicted for culpable ML should be revised to ensure it is effective, dissuasive and proportionate</li> </ul>	<p>Culpable ML in the proposed article 2:406 PC SXM (currently article 435c PC) is punishable with 4 years. Due to this duration of the penalty other effective measures are possible for the prosecution. The switching provision of 2:224 (currently 96) makes the general provisions of the first book of the Penal Code applicable to all other Criminal laws</p> <p>The Introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice. The Council of Ministers is preparing submission of the IO to Parliament for approval.</p> <p>The Introduction Ordinance (IO) to enact the Penal Code has been by Parliament on February 27<sup>th</sup>, 2015. The recommended action concerning FATF rec 2 is hereby incorporated in the Penal Code.</p> <p>PENAL CODE ENTERED INTO FORCE ON JUNE 1, 2015. THE PENALTY APPLICABLE FOR A PERSON CONVICTED FOR CULPABLE ML HAS BEEN REVISED TO ENSURE ITS EFFECTIVENESS, DISSUASIVENESS AND PROPORTIONATENESS.</p> <p><b>This deficiency has been resolved in the Penal Code article 2:406</b></p>



<p><b>3. Confiscation and provisional measures</b></p>	<p>PC</p>	<p>Effectiveness issues</p> <ul style="list-style-type: none"> <li>• The powers to confiscate or take provisional measures in relation to terrorist financing or some predicate offences for ML are limited (please see ratings R1 and SRII)</li> <li>• Confiscation measures (under both pre-conviction and post-conviction circumstances) in the Penal Code do not allow for the measures to be imposed without notice.</li> <li>• Based on the insufficient statistics effectiveness of the confiscation regime could not be confirmed.</li> </ul>	<ul style="list-style-type: none"> <li>• 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).</li> <li>• The Authorities should ensure that comprehensive statistics are maintained in relation to the investigation, prosecution, and conviction of ML related cases.</li> <li>• The confiscation measures under the Penal Code should be revised to allow for the pre-conviction and post-conviction measures to be imposed without notice.</li> </ul>	<p>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. 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. The Introduction Ordinance (IO) to enact the Penal Code has been by Parliament on February 27<sup>th</sup>, 2015. The recommended actions concerning FATF rec 3 are hereby incorporated in the Penal Code.</p> <p>PENAL CODE ENTERED INTO FORCE ON JUNE 1, 2015. CONFISCATION MECHANISMS HAVE BEEN REVISED AND UPDATED. POST-CONFISCATION MEASURES ARE NOW IN PLACE (SEE ABOVE ELUCIDATION). THE DRAFT CRIMINAL PROCEDURES CODE HAS BEEN REVIEWED BY THE COUNCIL FOR ADVICE AND THE MINISTER OF JUSTICE IS MAKING THE ADAPTATION IN CONFORMITY WITH THE ADVICES RECEIVED. HEREAFTER IT WILL BE SUBMITTED AGAIN TO THE COUNCIL OF MINISTERS AND THEREAFTER TO PARLIAMENT.</p>
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				<p>ALL LAW ENFORCEMENT AUTHORITIES HAVE BEEN INFORMED BY THE HEAD OF THE FIU THAT STATISTICS MUST BE MAINTAINED.</p> <p><b>The confiscation mechanisms to Terrorist Financing offences according to the TF Convention and all the designated categories of predicate offenses</b></p>
<b>Preventive measures</b>				
<b>4. Secrecy laws consistent with the Recommendations</b>	LC	<ul style="list-style-type: none"> <li>No clear provision for the MOT as supervisor to exchange information with other foreign supervisors.</li> </ul>	<ul style="list-style-type: none"> <li>MOT as supervisor should have the possibility to exchange information with other local and international supervisory authorities</li> </ul>	<p>MOT as supervisor does have the possibility to exchange information on the reporting behaviour with other local supervisors. This can be done based on article 6, paragraph 2 of the NORUT.</p> <p>The MOT is preparing a draft law in which the NORUT and the NOIS are merged and updated. In this new law the possibility of sharing information with foreign supervisors will be included.</p> <p>STATUS QUO; NO NEW UPDATE</p> <p>THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016.</p> <p><b>Draft National Ordinance combatting ML/TF Article 27</b></p>
<b>5. Customer due diligence</b>	PC	<ul style="list-style-type: none"> <li>The current version versions of the NOIS and NORUT do not adequately cover the scope of financial services activities and operations conducted by financial institutions that are subject to AML/CFT requirements. Activities and operations not covered include:               <ul style="list-style-type: none"> <li>Lending (factoring)</li> <li>Financial leasing</li> <li>Financial guarantees and commitments</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Sint Maarten should urgently amend the NOIS and NORUT to incorporate the full range of activities and operations of financial institutions, including explicit wording with respect to lending; financial leasing; financial guarantees and commitments; trading in a) money market instruments, b) foreign exchange, c) transferable securities, commodity futures;</li> </ul>	<p>The NOIS and the NORUT are being revised to reflect the recommended changes. The actions under <del>bullet points</del> letters a through c 1 through 6 will be addressed in the new draft law consisting of the merged and updated NORUT and NOIS.</p>



		<ul style="list-style-type: none"> <li>○ Trading in money market instruments</li> <li>○ Participation in securities issues and the provision of financial services related to such issues</li> <li>○ Individual and collective portfolio management</li> <li>● Certain categories of financial services providers are not covered in the scope of the NOIS and NORUT:       <ul style="list-style-type: none"> <li>○ Intermediaries operating in the Curacao Stock Exchange (DCSX)</li> <li>○ Life insurance agents</li> </ul> </li> <li>● Ministerial Decree for the Implementation of the NOIS (N.G. 2010, no. 11) does not specify or cross-reference any threshold for occasional transactions that are wire transfers, and it is unclear whether Article 4 of the Ministerial Decree (referencing article 1, paragraph one, section b., under 7, of the NOIS) apply to wire transfers.</li> <li>● There are no provisions in law or regulation for a financial institution to undertake CDD measures when it has doubts about the veracity or adequacy of previously obtained customer identification data.</li> <li>● The basic obligation to conduct CDD when there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations is not set out in law or regulation.</li> <li>● The basic obligation to conduct ongoing due diligence is not specified in law or regulation</li> </ul>	<p>participation in securities issues and the provision of financial services related to such issues; individual and collective portfolio management; factoring services and insurance activities conducted by agents. Furthermore, all intermediaries operating in the Curacao Stock Exchange (DCSX) should be covered by these national ordinances.</p> <ul style="list-style-type: none"> <li>● There should be explicit requirements in law or regulation for CDD to be undertaken when carrying out occasional transactions that are wire transfers, as per the Interpretive Note to SR VII.</li> <li>● Require financial institutions, through law or regulation, to undertake CDD measures when they have doubts about the veracity or adequacy of previously obtained customer identification data.</li> <li>● Require financial institutions, through law or regulation, to conduct CDD when there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations.</li> <li>● Require financial institutions, through law or regulation, to conduct ongoing due diligence.</li> <li>● The requirement to verify the identity of customers and beneficial owners before the establishment of business relations is not always practical. Sint Maarten should</li> </ul>	<p>Please note that these issues are moreover already incorporated in the P&amp;Gs.</p> <p>Please be referred to: page 11 of the P&amp;G CI under CDD. Page 22 of the P&amp;G IC under Wire transfer. Page 11 of the P&amp;G MTC third bullet of the third paragraph under CDD.</p> <p>Please be referred to: page 12 of the P&amp;G CI paragraph CDD under Resident customer. Page 13 of the P&amp;G SAI under Verification of identity. Page 13 of the P&amp;G TSP under Verification of the identity of resident individuals. Page 13 of the P&amp;G IC under Resident customers.</p> <p>Please be referred to: page 11 of the P&amp;G CI under CDD fifth paragraph. Page 12 of the P&amp;G IC under CDD fifth bullet. Page 11 of the P&amp;G MTC 2nd paragraph. Page 11 of the P&amp;G SAI under II.2.A Detection and deterrence of money.</p>
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		<ul style="list-style-type: none"> <li>The requirement to verify the identity of customers and beneficial owners before the establishment of business relations is not always practical.</li> <li>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</li> </ul>	<p>amend the NOIS to allow for verification at after the establishment of a business relationship in specified circumstances.</p> <ul style="list-style-type: none"> <li>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.</li> </ul>	<p>Please be referred to: page 12 of the P&amp;G IC under CDD third paragraph. Laundering. Page 11 P&amp;G CTSP 2nd paragraph.</p> <p>The NOIS and the NORUT will be merged and updated to reflect all recommended actions concerning FATF rec 5.</p> <p>STATUS QUO; NO NEW UPDATE. The P&amp;G have been updated by the CBCS to reflect the recommended actions concerning FATF rec 5. THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016.  <b>Draft National Ordinance combatting ML/TF Article 3 up to and including Article 17</b></p>
<b>6. Politically exposed persons.</b>	LC	<ul style="list-style-type: none"> <li>No clear requirements within the P&amp;Gs for financial institutions to put in place appropriate risk management system to determine whether a potential customer, customer or beneficial owner is a PEP.</li> </ul>	<ul style="list-style-type: none"> <li>Amend the P&amp;Gs to state that FIs should put in place appropriate risk management system to determine whether a potential customer, customer or beneficial owner is a PEP.</li> </ul>	<p>The recommended action has been incorporated in the P&amp;G for IC &amp; IB. For your convenience the amended section is highlighted in yellow.</p> <p>STATUS QUO; NO NEW UPDATE. The P&amp;G have been updated by the CBCS to reflect the recommended action concerning FATF rec 6. THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016.  <b>Draft National Ordinance combatting ML/TF Article 11</b></p>
<b>7. Correspondent banking</b>	LC	<ul style="list-style-type: none"> <li>Only the P&amp;G for CI contain specific provisions on correspondent banking activities. No similar</li> </ul>	<ul style="list-style-type: none"> <li>Correspondent activities provisions should be incorporated in all the other P&amp;Gs, similar to the P&amp;G for CI, which contains</li> </ul>	



		<p>provisions exist for other types of financial institutions.</p> <ul style="list-style-type: none"> <li>• There are no provisions for financial institutions to assess the respondent institution's AML/CFT controls, and to ascertain that they are adequate and effective.</li> </ul>	<p>specific provisions on correspondent banking activities.</p> <ul style="list-style-type: none"> <li>•The P&amp;Gs should require the respondent institution's AML/CFT controls, and to ascertain that they are adequate and effective.</li> </ul>	<p>Where relevant the recommended action has been incorporated in the P&amp;Gs. For your convenience the amended section is highlighted in yellow.</p> <p>STATUS QUO; NO NEW UPDATE. The P&amp;G have been updated by the CBCS to reflect the recommended actions concerning FATF rec 7. THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016. <b>Draft National Ordinance combatting ML/TF Article 15 and Article 16</b></p>
<b>8. Non face to face and new technologies.</b>	LC	<ul style="list-style-type: none"> <li>• There is no requirement for MTC to comply with criteria 8.2 and 8.2.1</li> </ul>	<ul style="list-style-type: none"> <li>•P&amp;Gs for MTCs should incorporate requirements regarding E.C 8.2 and EC 8.2.1</li> </ul>	<p>The recommended action has been incorporated in the P&amp;G for MTC. For your convenience the amended section is highlighted in yellow.</p> <p>STATUS QUO; NO NEW UPDATE. The P&amp;G have been updated by the CBCS to reflect the recommended action concerning FATF rec 8. THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016. <b>Draft National Ordinance combatting ML/TF Article 20 paragraph 3</b></p>
<b>9. Third parties and introducers</b>	PC	<ul style="list-style-type: none"> <li>• The “adequately supervised” criterion in the P&amp;Gs is not in line with the requirements of essential criteria 9.3.</li> <li>• The sources through which financial institutions should satisfy themselves that a third party is adequately regulated is limited to Mutual Evaluation Reports.</li> <li>• There are no requirements for MTC to comply with Recommendation 9</li> </ul>	<ul style="list-style-type: none"> <li>•Amend the “adequately supervised” provisions of the P&amp;Gs, in line with the requirements of essential criteria 9.2, which requires that financial institutions satisfy themselves that the third party is regulated and supervised (in accordance with Recommendation 23, 24 and 29) and has measures in place to comply with the CDD</li> </ul>	<p>The recommended action has been incorporated in the P&amp;Gs. For your convenience the amended section is highlighted in yellow.</p>



			<p>requirements set out in Recommendation 5 and Recommendation 10.</p> <ul style="list-style-type: none"> <li>• Amend the P&amp;G's to require that financial institutions satisfy themselves that the third party adequately regulated and supervised by referring more broadly to reports assessments and reviews of reports produced by the FATF, IMF or FSRBs, rather than specifically to Mutual Evaluation Reports.</li> <li>• P&amp;Gs for MTC should incorporate requirements to comply with Recommendation 9.</li> </ul>	<p>The recommended action has been incorporated in the P&amp;Gs. For your convenience the amended section is highlighted in yellow.</p> <p>The recommended action has been incorporated in the P&amp;G for MTC. For your convenience the amended section is highlighted in yellow.</p> <p>STATUS QUO; NO NEW UPDATE. The P&amp;G have been updated by the CBCS to reflect the recommended actions concerning FATF rec 9. THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016.  <b>Draft National Ordinance combatting ML/TF Article 6 paragraph 1, sub b under 4<sup>o</sup></b></p>
<b>10. Record-keeping</b>	PC	<ul style="list-style-type: none"> <li>• The obligation under E.C. 10.1, which compels financial institutions to maintain all necessary records on transactions, is not clearly stipulated in law or regulation.</li> <li>• The obligation to maintain records of business correspondence for at least five years following the termination of an account or business relationship is not stated in law or regulation.</li> <li>• The obligation under E.C. 10.3 requiring that all customer and transaction records and information be available to competent authorities upon appropriate</li> </ul>	<ul style="list-style-type: none"> <li>• The NOIS should be amended to reflect the obligation to maintain all necessary records on transactions, both domestic and international for five years following the termination of an account or business relationship (or longer if requested by the competent authority in specific cases and upon proper authority).</li> <li>• The NOIS should be amended to reflect the obligation to maintain records of business correspondence for at least five years</li> </ul>	<p>The NOIS is being amended to reflect the recommended actions under the first and second bullet points.</p> <p>The MOT is preparing a draft law in which the NORUT and the NOIS are merged and updated. In this new law the obligation to maintain all necessary records on transactions, both domestic and international for a period of five years following the termination of an account or business relationship is included.</p>



		authority on a timely basis should be in law or regulation	following the termination of an account or business relationship	STATUS QUO; NO NEW UPDATE.  THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016. <b>Draft National Ordinance combatting ML/TF Article 22 and article 23</b>
<b>11. Unusual transactions</b>	LC	<ul style="list-style-type: none"> <li>There are no specific provisions in the P&amp;Gs for financial institutions to keep documented findings regarding complex, unusual large transactions, or unusual patterns of transactions, available for competent authorities and auditors for at least five years.</li> </ul>	<ul style="list-style-type: none"> <li>The P&amp;Gs should be amended to incorporate specific provisions for FIs to keep documented findings of their findings regarding complex, unusual large transactions, or unusual patterns of transactions, available for competent authorities and auditors for at least five years.</li> </ul>	<p>The P&amp;Gs have been amended to incorporate the recommended action. For your convenience the amended section is highlighted in yellow.</p> <p>STATUS QUO; NO NEW UPDATE. The P&amp;G have been updated by the CBCS to reflect the recommended action concerning FATF rec 11. THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016.</p> <p><b>This recommendation has been dropped. New recommendation is rec. 20 ‘reporting of suspicious transactions’.</b></p>
<b>12. DNFBP–R.5, 6, 8–11</b>	NC	<ul style="list-style-type: none"> <li>The threshold for identification requirements for casinos is not in accordance FATF standard.</li> <li>No AML/CFT requirements for internet casinos.</li> <li>No requirements, by law or regulation for DNFBPs regarding criteria 5.2.c. 5.2.d, 5.2.e and 5.7</li> <li>No requirements for DNFBPs supervised by the MOT and casinos regarding criteria 5.6 to 5.11, 5.16 and 5.17</li> <li>The deficiencies in section 3.5 for Rec. 10 which are applicable to all DNFBPs</li> </ul>	<ul style="list-style-type: none"> <li>The threshold for identification requirements for casinos in legislation should be amended in accordance with the FATF standard.</li> <li>AML/CFT requirements should apply to internet casinos.</li> <li>DNFBPs should be required by law or regulation to comply with 5.2.c. 5.2.d, 5.2.e and 5.7 of Recommendation 5</li> <li>Authorities should put legislation for DNFBPs supervised by the MOT and casinos with the requirements of criteria</li> </ul>	<p>The NOIS and the NORUT are being amended to incorporate the recommended actions under the first two bullet points.</p> <p>The MOT is preparing a draft law in which the NORUT and the NOIS are merged and updated. In this new law the threshold for identification requirements for casinos in accordance with the FATF standard is included.</p> <p>THE MOT IS BUSY WITH THE MERGING OF THE NORUT AND THE NOIS IN WHICH THE</p>



		<ul style="list-style-type: none"> <li>• No legislation i.e. law or guidelines for DNFBPs supervised by the MOT and casinos that includes all the requirements of recommendations 6, 8, 9 and 11.</li> <li>• No requirements for SAII and AII regarding criteria 6.1 and 9.3</li> </ul>	<p>5.5.2, 5.6 to 5.11, 5.16 and 5.17 of recommendation 5.</p> <ul style="list-style-type: none"> <li>• The deficiencies in section 3.5 for Recommendation 10 which are applicable to all DNFBPs should be remedied.</li> <li>• The Authorities in Sint Maarten should issue legislation for DNFBPs supervised by the MOT and casinos that includes all the requirements of recommendations 6, 8, 9 and 11.</li> <li>• Central Bank should incorporate in the P&amp;Gs for SAII and AII requirements regarding E.C 6.2 of Recommendation 6 and E.C 9.3 of Recommendation 9</li> </ul>	<p><b>RECOMMENDED ACTIONS WILL BE INCORPORATED.</b></p> <p>The P&amp;Gs for DNFBPs have been amended to incorporate recommendation 5. You are referred to the enclosed P&amp;Gs of the DNFBPs:      Car dealers and Jewellers: pages 9-22 8-25. Real Estate Agents: pages: 9-24 8-25. Professionals: pages 11-24 9-26.</p> <p>5.2c-5.2d-5.2e Car dealers and jewellers: page 8      Real Estate: page 8      Professionals: page 9</p> <p>5.5.2      Car dealers and jewellers: page 9 b + re.a + re.b      Real Estate: page 9 b + re.a + re.b      Professionals: page 10 b + re.a + re.b</p> <p>5.6      Car dealers and jewellers: page 9.c      Real Estate: page 9.c      Professionals: page 10.c</p> <p>5.7      Car dealers and jewellers: page 9.d      Real Estate: page 9.d      Professionals: page 10.d</p> <p>5.11      Car dealers and jewellers: page 17      Real Estate: page 17</p>
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				<p>Professionals: page 18</p> <p>5.16          Car dealers and jewellers: page 10          Real Estate: page 10          Professionals: page 11</p> <p>5.17          Car dealers and jewellers: page 8          Real Estate: page 8          Professionals: page 9</p> <p>6.1          Car dealers and jewellers: page 20          Real Estate: page 20          Professionals: page 21</p> <p>9.3          Car dealers and jewellers: page 14          Real Estate: page 14          Professionals: page 15</p> <p>The P&amp;Gs for DNFBPs have been amended to incorporate recommendation 10. You are referred to the enclosed P&amp;Gs of the DNFBPs:          Car dealers and Jewellers: pages 16-17 15-16 + 29.          Real Estate Agents: pages 17-18 14-16 + 29.          Professionals: page 18 15-17 + 30.</p> <p>The P&amp;Gs for DNFBPs have been amended to incorporate recommendation 6. You are referred to the enclosed P&amp;Gs of the DNFBPs:</p>
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				<p>Car dealers and Jewellers: pages 19-20 19-20 + 25.        Real Estate Agents: pages 21-22 19-20 + 25.        Professionals: pages 21-22 20-21 + 26.</p> <p>For the incorporation of recommendation 9 you are referred to the P&amp;Gs for DNFBPs:        Car dealers and Jewellers: pages 14-15 14. Real Estate Agents: pages 15-16 14. Professionals: pages 16-17 15.</p> <p>STATUS QUO; NO NEW UPDATE. The P&amp;G have been updated by the MOT to reflect the recommended actions concerning FATF rec 12.</p> <p>The P&amp;G for SAII and AII have been updated to include EC 5.3 to 5.6, the deficiencies identified in section 3 and the deficiencies in section 3.5 for Rec 10.</p> <p>The P&amp;G for SAII and AII has been amended to implement the recommended actions.</p> <p>For your convenience the amended section is highlighted in yellow.</p> <p>STATUS QUO; NO NEW UPDATE. The P&amp;G have been updated by the CBCS to reflect the recommended actions concerning FATF rec 12.        THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW</p>
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				<p>AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016.  <b>Draft National Ordinance combatting ML/TF Article 3 paragraph 2, up to and including Article 17</b></p>
<p><b>13. Suspicious transaction reporting</b></p>	<p>NC</p>	<ul style="list-style-type: none"> <li>• The scope of UTR reporting may not be as extensive as required by FATF as some designated categories of predicate offenses for ML are not covered in Sint Maarten (see R1).</li> <li>• It is unclear that suspicious transactions apply regardless of whether they involve tax matters.</li> </ul> <p><i>Effectiveness issues</i></p> <ul style="list-style-type: none"> <li>• Heavy reliance on objective indicators (i.e threshold).</li> <li>• The burden of reporting subjective (rules based) indicators could detract from the FIs reporting genuine suspicious transactions.</li> </ul>	<ul style="list-style-type: none"> <li>• Sint Maarten should ensure that all designated categories of predicate offenses for ML are covered in order to eliminate the restrictions in the UTR reporting system in this regard (refer to paragraph 277)</li> <li>• Sint Maarten should consider express provisions in law regulation or other enforceable means to require that suspicious transactions should be reported regardless of whether they involve tax matters.</li> <li>• The MDIUT should be amended to allow the reporting entities to identify suspicion of ML or FT and avoid reliance on the prescriptive indicators.</li> </ul>	<p>All designated categories of predicate offenses for ML are covered in the new Penal Code. The comments (which were all non-ML and TF) have been processed in the Penal Code and the ordinance to introduce the PC should be ready and in force by the end of March 2014 Penal Code. The IO to introduce the Penal Code will be enacted by the end of the year 2014.</p> <p>THE INTRODUCTION ORDINANCE (IO) WAS APPROVED BY PARLIAMENT ON FEBRUARY 27<sup>th</sup> 2015.</p> <p>The Ministerial Decree on indicators, although not explicitly mentioned, does not exclude tax matters when reporting a suspicious transaction. Suspicious UTR takes place whether or not it involves a tax matter.</p> <p>The MDIUT will be amended to allow reporting entities to identify suspicion of ML or FT to avoid reliance only on the prescriptive indicators. The amended MDIUT will go into force in November 2014.</p> <p>STATUS QUO; THE MDIUT IS EXPECTED TO BE UPDATED IN APRIL 2015.</p> <p>THE DRAFT MDIUT IS READY TO BE SUBMITTED TO THE MINISTER OF JUSTICE FOR APPROVAL AND SIGNING. EXPECTED</p>



				DATE OF THE MDIUT TO ENTER INTO FORCE: MAY 1, 2016.  <b>Draft National Ordinance combatting ML/TF Article 25</b>
<b>14. Protection &amp; no tipping-off</b>	PC	<ul style="list-style-type: none"> <li>It is not clear that this prohibition covers financial institutions and their directors officers and employees (permanent or temporary).</li> </ul>	<ul style="list-style-type: none"> <li>Make it clear that financial institutions, their directors, officers and employees (whether permanent or temporary) are prohibited by law from disclosing (“tipping off”) the fact that an STR or related information is being reported or provided to the MOT.</li> </ul>	<p>According to the Civil law system which Sint Maarten is part of and contrary to the Common law system the wording “<i>een ieder</i>“ in article 20 of the NORUT implies that each and every one is subject to the sphere of action when the law is enacted, including directors, officers and employees (permanent or temporary) of financial institutions. It is not customary in our legal system that all different addressees of the law regulating an issue are mentioned separately one by one.</p> <p>This issue will be included in the draft law in which the NORUT and the NOIS are merged and updated. This new law will include the specific mention of the directors, officers and employees of financial institutions.</p> <p>THE MOT IS BUSY WITH THE MERGING OF THE NORUT AND THE NOIS IN WHICH THE RECOMMENDED ACTION CONCERNING FATF REC 14 WILL BE INCORPORATED. THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016.</p> <p><b>Draft National Ordinance combatting ML/TF Article 9 and article 27</b></p>
<b>15. Internal policies and controls</b>	C			



<p><b>16. DNFBP– R.13–15 &amp; 21</b></p>	<p>NC</p>	<ul style="list-style-type: none"> <li>• The deficiencies identified for Recs. 13 and 14 in section 3.7 apply to all DNFBPs.</li> <li>• No legislation i.e. law or guidelines for DNFBPs supervised by the MOT and casinos that includes all the requirements of recommendations 15 and 21.</li> <li>• DNFBPs supervised by the Central Bank are not required to apply counter-measures to countries which do not or insufficiently apply FATF Recommendations.</li> <li>• UTR reporting by DNFBPs is ineffective.</li> </ul>	<ul style="list-style-type: none"> <li>• The deficiencies identified for Recs. 13 and 14 in section 3.7 for all DNFBPs should be addressed.</li> <li>• The Authorities in Sint Maarten should issue legislation for DNFBPs supervised by the MOT and casinos that includes all the requirements of recommendations 15 and 21.</li> <li>• DNFBPs supervised by the Central Bank should be required to apply counter-measures to countries which do not or insufficiently apply FATF Recommendations.</li> </ul>	<p>The P&amp;Gs for DNFBPs have been amended to incorporate recommendations 13 and 14. You are referred to the enclosed P&amp;Gs of the DNFBPs:        Car dealers and Jewellers: pages 23-27. Real Estate Agents: pages 26-29. Professionals: pages 25-28.</p> <p>Rec 13 – section 3.7        Car dealers and jewellers: page 27        Real Estate: page 27        Professionals: page 28</p> <p>Rec 14 – sections 3.7        Car dealers and jewellers: page 29 + 30        Real Estate: page 29 + 30        Professionals: page 30 + 31</p> <p>The P&amp;Gs for DNFBPs have been amended to incorporate recommendation 15. You are referred to the enclosed P&amp;Gs of the DNFBPs:        Car dealers and Jewellers: pages 27-30 26-30. Real Estate Agents: pages 30-34 26-30. Professionals: pages 29-33 27-31.</p> <p>Rec 15        Car dealers and jewellers: page 31        Real Estate: page 31        Professionals: page 32</p> <p>Rec 21        Car dealers and jewellers: page 21        Real Estate: page 21        Professionals: page 22</p>
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				<p>For the incorporation of recommendation 21 you are referred to the P&amp;Gs for DNFBPs:          Car dealers and Jewellers: pages 18-19 21-22. Real Estate Agents: page 20 21-22. Professionals: page 20 22-23.</p> <p>STATUS QUO; NO NEW UPDATE. THE P&amp;G HAVE BEEN UPDATED BY THE MOT TO REFLECT THE RECOMMENDED ACTIONS CONCERNING FATF REC 16.</p> <p>The Minister of Justice has received a proposal for the setup of the Gaming Control Board for approval. The legislation and guidelines to supervise casinos and internet gambling will be presented in the second half of 2014 introduced mid 2015.</p> <p>THE FIRST DRAFT OF THE LEGISLATION FOR THE GCB HAS BEEN SUBMITTED TO THE MINISTERS OF JUSTICE AND ECONOMIC AFFAIRS AND TOURISM FOR DISCUSSION. THE PROPOSAL IS TO HAVE THE AML/CTF SUPERVISION OF THE GAMING INDUSTRY FALL UNDER THE MOT.</p> <p>The deficiencies for Recommendations 13 and 14 have been updated and included in the P&amp;Gs.</p> <p>For your convenience the amended section is highlighted in yellow.</p>
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				<p>STATUS QUO; NO NEW UPDATE. The P&amp;G have been updated by the CBCS to reflect the recommended action concerning FATF rec 16.</p> <p>THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016.</p> <p><b>Draft National Ordinance combatting ML/TF Article 3 paragraph 2, up to and including Article 17</b></p>
17. Sanctions	PC	<ul style="list-style-type: none"> <li>• Outside of the Civil and Penal Codes, there are no indications that sanctions could apply to directors and senior management of financial institutions.</li> <li>• Sanctions not effective against MTCs that continue to operate without licenses.</li> <li>• Sanctions appear to be used sparingly.</li> </ul>	<ul style="list-style-type: none"> <li>• Include explicit provisions in the NOIS and NORUT to indicate that sanctions apply to directors and senior management of financial institutions.</li> <li>• Take immediate action against directors and senior management of unauthorised MTCs.</li> <li>• The Central Bank should have a wide range of sanctions and should be prepared to use them.</li> </ul>	<p>In accordance with our legal system, sanctions against directors and senior management are already in place in Sint Maarten. Please, refer to Sint Maarten’s answer to E.C. 17.3 in section 3.10 of the MEQ: <i>The power of enforcement to act against financial institutions and their directors can be derived from a general statutory provision in the Penal Code. Article 53 of the Penal Code provides that offences can be committed by natural persons and legal persons. When an offence is committed by a legal person, prosecution can be instituted and the penal sanctions and measures provided for in general ordinances, if eligible, can be pronounced: a. against the legal person, or b. against those who ordered the execution of the offence as well as against those who actually lead the execution of the prohibited conduct, or c. against the ones mentioned in section a and b jointly.</i></p> <p><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</i></p>



				<p><i>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. <b>The central bank issues notifications on sanctions on a regular basis.</b></p> <p>STATUS QUO; NO NEW UPDATE. THE PPO IS ADDRESSING THE ISSUE OF THE ILLEGAL MTC.</p> <p>THE MOT IS BUSY WITH THE MERGING OF THE NORUT AND THE NOIS IN WHICH THE RECOMMENDED ACTION CONCERNING FATF REC 17 BE ADDRESSED.</p> <p>THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016. THE NEW ORDINANCE WILL INCLUDE THE PROVISION TO INDICATE THAT</p>
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				<p>SANCTIONS APPLY TO DIRECTORS AND SENIOR MANAGEMENT OF FINANCIAL INSTITUTIONS. THIS PROVISION HAS BEEN INCLUDED IN THE DRAFT ORDINANCES FOR THE SUPERVISION OF THE MTC's AND THE HARMONIZATION ORDINANCE.</p> <p><b>Draft National Ordinance combatting ML/TF Article 34</b></p> <p><b>Draft National Ordinance on Administrative Enforcement Article 46 up to and including Article 57</b></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"> <li>• Notices with respect to strategic deficiencies are limited to jurisdictions for which the FATF calls for action.</li> <li>• Countermeasures are not clearly specified with respect to countries that do not apply or insufficiently apply the FATF Recommendations.</li> </ul>	<ul style="list-style-type: none"> <li>• Ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of all countries specified by the FATF, not only those countries for which the FATF calls for action.</li> <li>• Ensure that Sint Maarten has the ability to apply counter-measures to countries that continue not to apply or insufficiently apply the FATF Recommendations.</li> </ul>	<p>The P&amp;Gs for CI (page 17), MTC (page 13), SAI &amp; AII (page 23), IC &amp; IB (page 21), and TSP (page 19) indicate that the supervised institutions are required to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries that do not or insufficiently apply the FATF Recommendations including high-risk and non-cooperative jurisdictions.</p> <p>STATUS QUO; NO NEW UPDATE. THE P&amp;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.          THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016.          THIS PROVISION HAS BEEN INCLUDED IN THE DRAFT ORDINANCES FOR THE SUPERVISION OF THE MTC's AND THE HARMONIZATION ORDINANCE.</p> <p><b>Update:</b></p> <p><b>The draft Harmonization law has been submitted by the Council of Ministers to the Advisory Council on June 8, 2016. The draft National Ordinance Money Remitter Companies has been approved by the Council of Ministers on June 2, 2016, and will soon be submitted to the Advisory Board.</b></p>
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				<b>Draft National Ordinance combatting ML/TF Article 14</b>
<b>22. Branches and subsidiaries</b>	C			
<b>23. Regulation, supervision and monitoring</b>	PC	<ul style="list-style-type: none"> <li>• Unlicensed MTCs continue to operate within Sint Maarten, impacting on effectiveness with respect to E.C. 23.1, E.C 23.5 and E.C. 23.6.</li> <li>• Low number of on-site inspections for MTCs.</li> <li>• Factoring services are yet to be subject to Central Bank supervision under the NOIS and NORUT.</li> <li>• The RBA is not calibrated for AML/CFT risks.</li> </ul>	<ul style="list-style-type: none"> <li>• Take immediate action to close unlicensed MTCs.</li> <li>• Increase on-site inspections of MTCs.</li> <li>• Implement a regulatory and supervisory regime for factoring services.</li> <li>• Develop a risk based approach system to determine the AML/CFT focus of onsite inspections.</li> <li>• Commit resources to having supervisory staff in Sint Maarten for greater onsite monitoring of licensees.</li> </ul>	<p>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><b>THE DRAFT NATIONAL ORDINANCE FOR SUPERVISION ON MTC HAS BEEN SUBMITTED TO THE LEGAL DEPARTMENT FOR PROCESSING. A PROVISION HAS BEEN INCLUDED IN THE DRAFT FOR THE CBCS TO CLOSED DOWN MTC THAT OPERATE WITHOUT A LICENSE OR THAT DO NOT COMPLY WITH THE LICENSE ISSUED BY THE CBCS.</b></p> <p><b>Update:</b></p> <p><b>The draft National Ordinance Money Remitter Companies has been approved by the Council of Ministers on June 2, 2016, and will soon be submitted to the Advisory Board.</b></p> <p>In 2013 the Central Bank has performed 3 on-site visits to MTCs established in Sint Maarten. In 2016 the Central Bank performed 1 on-site visit at the largest MTC established in Sint Maarten.</p>



				<p>The Central Bank has conducted a thorough risk assessment of the factoring services provided on Sint Maarten and has reached the conclusion that the business is exposed to very low risk with reference to AML/CFT. <b>Currently, there is one (1) representative of a small factoring service provider operating in Sint Maarten with its head-office in Curacao.</b></p> <p><b>The implementation of a risk based approach has started.</b></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>THE UNLICENSED MTC HAS STARTED A CASE AGAINST THE CBCS WHICH THE MTC HAS LOST IN FIRST INSTANCE AS WELL AS THE APPEAL.</p> <p><b>This case is a matter for the Public Prosecutor to summon the mentioned MTC to comply with the court orders and to stop their illegal activities.</b></p> <p><b>Draft National Ordinance combatting ML/TF Article 4</b></p>
<p><b>24. DNFBP - regulation,</b></p>	<p>NC</p>	<ul style="list-style-type: none"> <li>• There is no adequate AML/CFT regulation and supervision of casinos</li> </ul>	<ul style="list-style-type: none"> <li>• The Authorities in St. Maarten should immediately implement adequate</li> </ul>	<p>Adequate AML/CFT regulation for casinos and internet casinos will be developed. The Ministry of</p>



<p><b>supervision and monitoring</b></p>		<ul style="list-style-type: none"> <li>• No supervisory regimen for Internet casinos.</li> <li>• The MOT as supervisory authority has not started yet.</li> <li>• The MOT does not have adequate resources to fulfil their supervisory role.</li> <li>• The deficiency identified in section 3.10 (R. 29 and R17) with regard to the supervisory function of the Central Bank applied.</li> </ul>	<p>AML/CFT regulation and supervision of casinos in compliance with E.C. 24.1. Casinos in St. Maarten are not effectively regulated or monitored.</p> <ul style="list-style-type: none"> <li>• The Authorities should implement an AML/CFT regime for Internet casinos.</li> <li>• The MOT should implement an effective supervisory regime and should be given resources to fulfil their supervisory role for the relevant DNFBP sector.</li> <li>• The deficiency identified in section 3.10 (R. 29 and R17) with regard to the supervisory function of the Central Bank should be cured.</li> </ul>	<p>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 COUNCIL OF MINISTERS HAS DECIDED TO HAVE THE MOT CARRY OUT THE AML/CTF SUPERVISION ON CASINOS. THIS WILL BE INCLUDED IN THE DRAFT OF THE MERGED NORUT/NOIS.</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>
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				<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. THE MOT SUPERVISION IS ONGOING AND BEING EXPANDED TO INCLUDE ALL DNFBP. THE LAST GROUP THAT WILL BE INFORMED OF THE AML/CTF LEGISLATION ARE THE JUDICIAL SERVICE PROVIDERS.</p> <p><b>Draft National Ordinance combatting ML/TF Article 35 paragraphs 3 and 4</b>  <b>Draft National Ordinance on Administrative Enforcement Article 4</b></p>
<p><b>25. Guidelines &amp; Feedback</b></p>	<p>PC</p>	<ul style="list-style-type: none"> <li>• Not much guidance is given to financial institutions on TF techniques and methods.</li> <li>• P&amp;G for providers of factoring services is not in place.</li> <li>• DNFbps supervised by the MOT and do not receive sufficient guidance to DNFbps on complying with AML/CFT requirements</li> </ul>	<ul style="list-style-type: none"> <li>•The MOT should provide feedback with respect to typologies or sanitized cases, and on specific cases that have been closed.</li> <li>•MOT is strongly encouraged to continue its outreach programme to <u>specifically</u> encompass both feedback and guidance related to UTRs.</li> <li>•Provide guidance to financial institutions with respect to terrorism financing.</li> <li>• Issue guidance to providers of factoring services.</li> </ul>	<p>MOT and the PPO are analysing the typologies and all sanitized and specific cases. This process will be carried out periodically and when completed, feedback will be given to the financial institutions.</p> <p>MOT does feedback with and guide the financial institutions related to UTRs.</p> <p>More guidance will be provided to financial institutions with respect to TF. A training programme for all stakeholders (MOT, law</p>



			<ul style="list-style-type: none"> <li>• The Competent Authorities in Sint Maarten should provide adequate guidance to DNFBPs supervised by the MOT and Casinos regarding AML/CFT requirements.</li> <li>• MOT should issue its own P&amp;Gs.</li> </ul>	<p>enforcement, PPO, Reporters, DNFBPs) has been developed and approved by the Minister of Justice. The execution of the training program will start in March 2014.</p> <p>Guidance to financial institutions with regard to TF will take place in 2015.</p> <p>The MOT received and is still receiving training from the former head of the FIU Curaçao. The reporters/DNFBPs get regular info sessions and can call and visit the MOT at all times to receive information. They must include in their compliance regime that they will get training minimal once (1) a year. The only outstanding group is law enforcement (Police, RST, Landsrecherche, PPO and Customs); they will be trained in the first half of 2015. The programme is ready.</p> <p>The laws are being amended to incorporate factoring services. The new draft law (merged and updated NORUT-NOIS) includes factoring services.</p> <p>The MOT routinely disseminates information to the DNFBPs supervised by the MOT regarding AML/TF requirements. The MOT developed P&amp;Gs for DNFBPs.</p> <p>STATUS QUO; NO NEW UPDATE. TRAINING PROGRAM II WAS SUBMITTED IN NOVEMBER 2014 TO THE MINISTER OF JUSTICE FOR APPROVAL. THE MOT IS STILL PROVIDING GUIDANCE TO THE REPORTING INSTITUTIONS REGARDING STR.</p>
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				<p>THE AML/CTF TRAINING PROGRAM II HAS BEEN APPROVED BY THE MINISTER AND THE EXECUTION THEREOF STARTED IN AUGUST 2015. SINCE, THE CUSTOMS DEPARTMENT HAS RECEIVED TRAINING ON THE EXECUTION OF THE NATIONAL ORDINANCE BORDERCROSSING MONEY TRANSFERS. THE POLICE DEPARTMENT AND THE LANDSRECHERCHE WILL RECEIVE TRAINING BEFORE THE END OF THE YEAR 2015.</p> <p><b>Draft National Ordinance combatting ML/TF Article 36 paragraph 2 under h</b></p>
<b>Institutional and other measures</b>				
<b>26. The MOT</b>	NC	<ul style="list-style-type: none"> <li>• The legal basis for the establishment of the MOT is not clear.</li> <li>• There is an absence of a permanent MOT Head physically present in the MOT on a daily basis.</li> <li>• Not all reporting entities are aware of the existence of the MOT in Sint Maarten. Inadequate training and guidance sessions for reporting entities.</li> <li>• Articles 4, 8, 16 and 22 of NORUT present a risk to the operational autonomy of the MOT and create opportunities for undue interference and influence.</li> <li>• There is a low number of investigative reports forwarded by the MOT to the PPO.</li> <li>• The security of the MOT information, the premises and employees requires improvement.</li> <li>• The authorities should produce and publish the outstanding Annual Report for 2011 and ensure that it contains information relating to the typologies and trends for ML and TF for Sint Maarten.</li> </ul>	<ul style="list-style-type: none"> <li>• The authorities should ensure that the legal underpinnings for the establishment of the MOT are sound. It should be clear in the law as to the Ministry under which it falls.</li> <li>• The authorities should move swiftly to appoint an MOT Head.</li> <li>• The MOT should seek to clarify the manner and procedures for reporting, improve the relationship between itself and its stakeholders and provide guidance on the manner and procedures for reporting. The MOT should increase awareness within its stakeholders of the existence of the MOT.</li> <li>• Articles 4, 8, 16 and 22 of NORUT should be amended in order to ensure operational autonomy of the MOT and avoid</li> </ul>	<p>The legal basis for the MOT are formed by:</p> <ol style="list-style-type: none"> <li>1. The national ordinance structure and organisation of the national government (AB 2010, No. 6) – article 9</li> <li>2. The national decree containing general measures to be subdivided and worked out in further detail by the ministry of Justice (AB 2010, No. 11) – article 17.</li> </ol> <p>Both laws are enclosed for review. The NORUT (AB 2013 No 479) was amended on April 25<sup>th</sup>, 2014, to establish the operational autonomy of the MOT. The amended law was enacted on September 4<sup>th</sup>, 2014. I refer to the AB 2014 No 51, which was sent to the CFATF Secretariat on October 3<sup>rd</sup>, 2014.</p> <p>With the abovementioned amendment of the NORUT MOT Sint Maarten was inducted into the Egmont Group of FIUs as is recommended in recommendation 40.</p>



		<ul style="list-style-type: none"> <li>Effectiveness of the MOT could not be confirmed</li> </ul>	<p>opportunities for undue interference and influence.</p> <ul style="list-style-type: none"> <li>As the number of investigative reports forwarded by the MOT is low compared to the number of UTRs recovered, the MOT should reassess its internal process to ensure an adequate number of investigative reports are forwarded to the PPO.</li> <li>The MOT should implement measures to improve the physical security of manual files, electronic data, premises and the employees of the MOT. The MOT should produce and publish Annual Reports and ensure that it includes full information on ML and TF trends and typologies.</li> </ul>	<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 (<a href="http://www.fiu-sxm.net">www.fiu-sxm.net</a>)</p> <p>The NORUT has been amended (draft to be submitted to and approved by parliament end of March 2014) to establish the operational autonomy of the MOT. In practice the MOT already operates autonomously.</p> <p>The internal procedures of the MOT are being reviewed. More qualified personnel needs to be hired. This will increase the number of investigated reports that are sent to the PPO.</p> <p>The physical security of the personnel, the files, and the databases is in place. The next step is to <del>hire qualified (and screened) personnel</del> compile the data from the analyst department to <del>assist in the production of</del> produce the annual reports 2011, 2012 and 2013 of the MOT. Annual reports will be produced in the first 3 months of 2015.</p> <p>STATUS QUO; NO NEW UPDATE. THE MOT EXPECTS TO START WITH THE ANNUAL REPORTS 2010-2014 IN MAY 2015. A START HAS BEEN MADE WITH THE DRAFTING OF THE ANNUAL REPORTS. THE EXPECTED DATE OF COMPLETION AND PRESENTATION TO THE MINISTER OF</p>
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				JUSTICE AND PLACEMENT ON THE WEBSITE IS JANUARY 2016. <b>Draft National Ordinance combatting ML/TF Article 35 and Article 36</b>
<b>27. Law enforcement authorities</b>	PC	<p><i>Effectiveness:</i></p> <ul style="list-style-type: none"> <li>No financial resources have been allocated for ML and TF training for the local law enforcement agencies</li> <li>There is a shortage of suitably qualified law enforcement officers generally to execute effective ML investigations.</li> <li>No specific training for TF or ML for several of the law enforcement authorities.</li> <li>Unlicensed MTCs continue to operate within Sint Maarten</li> </ul>	<ul style="list-style-type: none"> <li>Relevant financial resources should be directed to ensure that recruited officers are appropriately trained in ML and TF and are kept up to date in the recent developments in financial investigations. These challenges identified will therefore affect the proper investigation of ML and TF offences.</li> <li>There should be a decisive approach with respect to the operation of certain MTCs without licenses in contravention of the law.</li> </ul>	<p>The MOT has secured funds for the ML/TF training of the law enforcement agencies. THE POLICE DEPARTMENT AND THE LANDSRECHERCHE WILL RECEIVE TRAINING BEFORE THE END OF THE YEAR 2015.</p> <p>STATUS QUO; NO NEW UPDATE.</p> <p>The MOT has discussed the issue of the unlicensed MTCs with the PPO. One MTC is busy with the application for an operational license at the CBCS. The CBCS has discontinued the licensing process with the MTC in question. The PPO has once again been informed by the CBCS of the illegally operation MTC.</p> <p>The MOT is responsible for the reporting of unusual transactions by service providers. From this perspective the MOT approaches all MTC's to urge them to report the unusual transactions. The issue will again be discussed with the minister of Justice.</p> <p>STATUS QUO; NO NEW UPDATE. THE PPO IS BUSY REVIEWING THE CASE ON THE ILLEGAL MTC.</p> <p>THE UNLICENSED MTC HAS STARTED A CASE AGAINST THE CBCS WHICH THE MTC HAS LOST IN FIRST INSTANCE. NOW THE CASE IS IN REVIEW AT THE APPEALS</p>



				<p>COURT. APPEAL WILL BE HANDLED BEFORE THE END OF 2015.</p> <p><b>The amount of public prosecutors and financial crimes detectives has been increased by respectively 2 and 3 persons. The case of the unlicensed MTC has again been put forward to the PPO. A decision will be taken before the next plenary meetings.</b></p>
<b>28. Document production, search and seizure</b>	C			
<b>29. Supervisors</b>	C			
<b>30. Resources, integrity, and training</b>	PC	<ul style="list-style-type: none"> <li>• The MOT lacks of staff to adequately perform its functions (including the Head of MOT)</li> <li>• The staff of the MOT does not have adequate and relevant training for combatting ML &amp; TF.</li> <li>• The MOT lacks of analytical tools such as Analyst Notebook to assist in the analysis of UTRs.</li> <li>• The MOT lacks of resources to protect the MOT data, premises and staff; eg. Offsite electronic data fireproof safe, fire extinguishers, etc.</li> <li>• Several of the law enforcement agencies possess a shortage of suitably qualified officers trained in ML investigations.</li> <li>• Inadequate training for ML and TF.</li> <li>• No allocation of financial resources for ML and TF.</li> <li>• Inadequate space for the Court of First Instance to properly execute its functions</li> </ul>	<ul style="list-style-type: none"> <li>• The authorities should increase the staff complement of the MOT.</li> <li>• The authorities should acquire additional tools such as Analyst Notebook to assist in the analysis of UTRs.</li> <li>• Sufficient financial resources should be reserved that in order that the staff may be adequately trained for ML and TF.</li> <li>• The MOT should obtain the relevant resources eg. Offsite electronic data fireproof safe, fire extinguishers, etc to further protect its information, premises and employees.</li> <li>• The authorities should seek to quickly employ robust recruiting programmes to fill the vacancies in the law enforcement agencies such as the KPSM.</li> <li>• The authorities should ensure that all relevant entities including the Tax Department, Landsrecherche, Customs,</li> </ul>	<p>The director of the MOT has described the full time equivalent of the MOT functions. This established the staff complement of the MOT. The recruitment of a strategic analyst is underway. The strategic analyst/co-ordinator of the analyst department has started working at the MOT as of July 1<sup>st</sup>, 2014.</p> <p>The ML/TF training of MOT personnel has started in January 2014. The training ends November 2014. The second part of the training starts in December 2014 for 6 months.</p> <p>The connections for offsite electronic data backup are expected to be completed in the second half of 2014. A fireproof safe and fire extinguishers are already in place at the MOT. The offsite back-up will be completed in the first half of 2015.</p>



			<p>Coast Guard and the KPSM are adequately and regularly trained in money laundering and counter financing of terrorism like the RST.</p> <ul style="list-style-type: none"> <li>• Improved facilities should be provided for the Courts of Justice</li> </ul>	<p>The authorities have been busy recruiting personnel for the law enforcement agencies such as the KPSM.</p> <p>The MOT has developed the ML/TF training program for all stakeholders (MOT, Police, Customs, PPO, <i>Landsrecherche</i>, Tax Office and National Security Agency) which was approved and financed by the Minister of Justice (Crime Fund).        The training will start in January 2015.</p> <p>STATUS QUO; NO NEW UPDATE. TRAINING PROGRAM WAS SUBMITTED IN NOVEMBER 2014 AND IS AWAITING APPROVAL.</p> <p>The Courts of Justice is using the extra facilities provided.        THE AML/CTF TRAINING PROGRAM II HAS BEEN APPROVED BY THE MINISTER AND THE EXECUTION THEREOF STARTED IN AUGUST 2015. SINCE, THE CUSTOMS DEPARTMENT HAS RECEIVED TRAINING ON THE EXECUTION OF THE NATIONAL ORDINANCE BORDERCROSSING MONEY TRANSFERS. THE POLICE DEPARTMENT AND THE LANDSRECHERCHE WILL RECEIVE TRAINING BEFORE THE END OF THE YEAR 2015.</p> <p><b>The staff of the MOT has attended the supervision training held in May 2016 in Trinidad. The ACAMS certificate training for the analysts is pending. The Customs have</b></p>
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				<p><b>received a compact training from the MOT staff.</b></p>
<p><b>31. National co-operation</b></p>	<p>PC</p>	<ul style="list-style-type: none"> <li>• The CIWG needs to be formally established.</li> <li>• Many of the national coordination mechanisms (such as the national AML Committee - CIWG; and Trainings to be undertaken by the PPO) are not yet in operation.</li> </ul>	<ul style="list-style-type: none"> <li>• The CIWG needs to be formally established.</li> <li>• The Authorities should ensure the implementation of the mechanism for coordination that were informed to the Team.</li> </ul>	<p>The anti-money laundering and terrorism financing committee was formally established by national decree dated June 8<sup>th</sup>, 2012. Due to a problem of dysfunctioning of the committee, the minister of Justice decided to replace the committee by a National Co-ordinator AML/CTF. This function is carried out by the (Head of the) MOT.</p> <p>The function of the national co-ordinator has been included in the amended NORUT (AB 2014 no 51) is the authority who based on rec 31 co-ordinates policy co-operation across all relevant competent authorities; this includes operational co-operation between authorities at the law enforcement, FIU level including Customs authorities and where appropriate between FIU, law enforcement and supervisors. Discussions with ALL stakeholders have already started.</p> <p>STATUS QUO; NO NEW UPDATE. THE NATIONAL CO-ORDINATOR IS IN CONSULTATION WITH THE STAKEHOLDERS ON THE UPDATE OF THE LEGISLATION.</p> <p>IN 2014 SINT MAARTEN UPDATED ITS NORUT AND CHOSE TO IMPLEMENT THE NATIONAL AML/CTF CO-ORDINATOR SINCE IT SEES CONFLICT OF INTEREST WITH A AML/CTF COMMITTEE FORMAT (IN WHICH STAKEHOLDERS HAVE REPRESENTATION). THE NATIONAL CO-ORDINATOR MEETS WITH THE RELEVANT STAKEHOLDERS DURING THE DRAFTING</p>



				<p>OF THE MERGED NORUT AND NOIS TO GET THEIR INPUT. THE NATIONAL CO-ORDINATOR HAS MET WITH THE LAW ENFORCEMENT REPRESENTATIVES TO START PREPARATIONS FOR THE NRA. INFORMATION SHARING WITH ALL STAKEHOLDERS WILL TAKE PLACE NEXT YEAR.</p> <p><b>The function of the national co-ordinator has been included in the draft national ordinance on combatting ML/TF in its Article 36 paragraph 2 under k.</b></p>
32. Statistics	PC	<ul style="list-style-type: none"> <li>No statistics available relating to requests to overseas MOTs.</li> <li>No statistics available for requests for additional information by the MOT to reporting entities.</li> <li>Several reporting entities have not filed UTRs for either subjective or objective indicators and appear not to understand or know their responsibility to report.</li> </ul>	<ul style="list-style-type: none"> <li>The Authorities should ensure that comprehensive statistics are maintained in relation to the investigation, prosecution, and conviction of ML related cases</li> <li>The authorities should ensure that relevant statistics are maintained for Sint Maarten with respect to requests for additional information by the MOT.</li> <li>The MOT should host training sessions on ML and TF for the reporting entities to ensure that the financial entities report as required.</li> <li>The MOT should also maintain statistics regarding the number of requests made to foreign MOTs.</li> </ul>	<p>Statistics on requests made to and from overseas FIUs are available.</p> <p>Requests for information from FIUs: 35. Requests for information to FIUs: 15.</p> <p>2014: REQUESTS FOR INFORMATION RECEIVED FROM FIUs: 13        2014: RESPONSES TO FIUs: 11        2014: REQUESTS SENT TO FIUs: 9        2014: POSITIVE RESPONSES RECEIVED: 4        2014: NEGATIVE RESPONSES RECEIVED: 5        2015 (up to October 5<sup>th</sup>, 2015): REQUESTS RECEIVED FROM FIUs (INCLUDING SPONTANEOUS DISSEMINATIONS): 27        2015 (up to October 5<sup>th</sup>, 2015): REQUESTS SENT TO FIUs (INCLUDING SPONTANEOUS DISSEMINATIONS): 16</p> <p>The MOT will host training sessions on ML/TF for the reporting entities and DNFBPs. Already five sessions have been organized by the MOT, including sessions with individual companies and businesses and professions.</p>



				<p>The info sessions included the FATF information, case material, CDD, compliance regime, unusual transactions reporting, including the reporting of suspicious transactions by making use of the subjective indicator, and sanctions.</p> <p>Dates sessions: for financial institutions on July 9<sup>th</sup>, 2014, for the real estate agents on August 21<sup>st</sup>, 2014, for Jewellers on August 22<sup>nd</sup>, 2014. For notaries: October 22<sup>nd</sup>, 2014.</p> <p>INFO SESSION FOR JUDICIAL SERVICE PROVIDERS PLANNED FOR JANUARY 2016.</p> <p>STATUS QUO; NO NEW UPDATE.</p> <p>ONE ON ONE INFO SESSIONS WITH JEWELLERS AND REAL ESTATE AGENTS AND NOTARIES.</p> <p>STATISTICS ON ML RELATED CASES: 18 CASES AND 18 CASES AND 12 CONVICTIONS UP TO 12 MARCH 2015.</p> <p><b>See Annual reports 2010-2014. Annual report 2015 pending.</b></p>
33. Legal persons–beneficial owners	NC	<ul style="list-style-type: none"> <li>• There is no system in place to ensure access to the UBO information.</li> <li>• Not all competent authorities have access in timely fashion to adequate, accurate and current UBO information.</li> <li>• The requirement for bearer shares to be transformed into registered shares operates at the discretion of the shareholder and is therefore not mandatory.</li> <li>• The NDCBSC does not require the capture and retention of the ultimate beneficial ownership details of the legal person on whose behalf the bearer shares are kept or held.</li> </ul>	<ul style="list-style-type: none"> <li>• Sint Maarten should establish a system to ensure access to the UBO information of legal persons.</li> <li>• There should be mechanisms in place to guarantee that competent authorities are able to obtain and have access in a timely manner to accurate and current UBO information.</li> <li>• Article 105 3<sup>rd</sup> paragraphs reflects that bearer shares shall be transformed by the company into registered shares if this is requested by the holder of the bearer shares that this be done. This aspect of the</li> </ul>	<p>At this point in time the legal person is not obligated by law to submit its UBO information to the Chamber of Commerce. The law (CoC) will be revised to guarantee that authorities have access to UBO information.</p> <p>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:</p>



			<p>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.</p> <ul style="list-style-type: none"> <li>Amend the NDCBSC so that the is wording requires that beneficial ownership information must also be captured for the ultimate beneficial owners of the legal person on whose behalf the bearer shares are kept or held</li> </ul>	<p>The MOT has a form that is accessible on its website. Entities fill this in with information about the company, its director(s) and the UBO(s). Authorities can request this information at the MOT.</p> <p>STATUS QUO; NO NEW UPDATE. THE MOT IS REGISTERING THE DNFBP WITH THEIR UBO INFORMATION. THE CHAMBER LEGISLATION WILL BE UPDATED TO REFLECT THIS RECOMMENDATION.</p> <p>THE OBLIGATION TO SUBMIT UBO INFORMATION WILL BE INCLUDED IN THE MERGED NORUT-NOIS ORDINANCE. THE UBO INFORMATION WILL THEN BECOME ACCESSIBLE TO LAW ENFORCEMENT.</p> <p>This subject matter will be further examined by the judicial affairs department of the ministry of Justice.  <b>Draft National Ordinance on Combatting ML/TF Article 7</b></p>
<p><b>34. Legal arrangements – beneficial owners</b></p>	<p>LC</p>	<ul style="list-style-type: none"> <li>There is no certainty that all Competent Authorities have timely access to UBO information.</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>	<p>This subject matter will be further examined by the judicial affairs department of the ministry of Justice. The new draft law (merged and updated NORUT-NOIS) will address this issue.</p>



				<p>STATUS QUO; NO NEW UPDATE. THE MOT IS REGISTERING THE DNFBP WITH THEIR UBO INFORMATION. THE CHAMBER LEGISLATION WILL BE UPDATED TO REFLECT THIS RECOMMENDATION. THE OBLIGATION TO SUBMIT UBO INFORMATION WILL BE INCLUDED IN THE MERGED NORUT-NOIS ORDINANCE. THE UBO INFORMATION WILL THEN BECOME ACCESSIBLE TO LAW ENFORCEMENT.</p> <p><b>Draft National Ordinance on Combatting ML/TF Article 8</b></p>
<b>International Cooperation</b>				
<b>35. Conventions</b>	PC	<p><i>Implementation in accordance with the Vienna Convention</i></p> <ul style="list-style-type: none"> <li>• No specific provision was identified in relation to non-treaty based requests for extradition, expedition of extradition procedures and simplification of evidentiary requirements,</li> <li>• The framework under the criminal laws provided is not indicative of Sint Maarten having the ability to extend cooperation and assistance to Transit States as contemplated by article 10 of this Convention.</li> <li>• No evidence of implementation of controlled delivery techniques by the Authorities.</li> <li>• No specific provisions have been identified from the laws provided or advised in relation to special arrangements with Commercial Carriers precautionary measures implemented to ensure commercial carriers are not used for the commission of offences</li> <li>• No provisions have been identified in the laws provided which cover the Illicit Traffic at Sea</li> </ul>	<ul style="list-style-type: none"> <li>• Authorities must ensure the EDACs expressly addresses the matters of non-treaty based requests for extradition; ,expedition of extradition procedures and simplification of evidentiary requirements</li> <li>• The international cooperation framework under the criminal laws should expressly address Sint Maarten’s ability to extend cooperation and assistance to Transit States as contemplated by article 10 of the Vienna Convention.</li> <li>• The criminal laws must expressly impose obligations on Commercial Carriers to ensure these carriers are not used for the commission of article 3 offences set out in the Vienna Convention.</li> <li>• The criminal laws must expressly address mechanisms required by article 17 (illicit traffic at sea) and required by article 19</li> </ul>	<p>The issue of the offences set out in the Vienna Convention is already partly dealt with in the Opium Legislation which currently is the <i>Opiumlandsverordening 1960</i>. This Act will have to be revised.</p> <p>The general provisions as set out in the Penal Code are applicable on all other Criminal laws, thus on the Opium Legislation through the switching provision of 2:224 (currently 96)</p>



	<ul style="list-style-type: none"> <li>• No provisions identified regarding measures to suppress the use of mails for illicit traffic.</li> </ul> <p><i>Implementation in accordance with the Palermo Convention</i></p> <ul style="list-style-type: none"> <li>• No measures were identified in the law in relation to having appropriate measures to encourage persons who have participated in organized criminal groups to cooperate with law enforcement.</li> <li>• The advised training initiatives do not appear to cover control techniques in free trade zones and free ports; modern law enforcement equipment and techniques, electronic surveillance, combating organized crime through the use of computers, telecommunications networks or other forms of modern technology and bilateral and multilateral arrangements to maximize operational and training activities of article 29 of the Palermo Convention.</li> <li>• No laws or measures identified regarding the matter of coordinated efforts bilaterally and multilaterally to provide assistance to developing countries in their efforts to combat transnational organized crime.</li> <li>• Verification of whether the laws addressed –       <ul style="list-style-type: none"> <li>a) The establishment of national records of persons disqualified from acting as directors of legal persons, and</li> <li>b) The exchange of information contained in the abovementioned national records with the competent authorities of other State Parties.</li> </ul> </li> </ul> <p>Could not be done as the relevant articles were not provided for assessment.</p>	<p>(illicit use of mails) of the Vienna Convention.</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• The Penal Code should be revised to expressly criminalize the indirect or unlawful provision of funding for the commission of a terrorism offence, as well as the wilful provision of funds etc. to individual terrorists set out in article 2(a) of the Terrorist Financing Convention.</li> <li>• The Penal Procedures Code and/or Penal Code should be amended to expressly address       <ul style="list-style-type: none"> <li>• the matter of reciprocal confidentiality (as required by article 12 (Assistance to other States) of the TF Convention;</li> <li>• establishing mechanisms whereby forfeited funds are used to compensate the victims of terrorist offences or their families, and matters of custody arrangements, terms under which an offender transferred to Sint marten from a State will be returned to that State from which the offender was transferred, credit for time spent in custody of State to which the offender was transferred</li> </ul> </li> </ul>	<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. 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. The introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice and is now ready to be submitted to Parliament for approval. Expected enactment of the Penal Code by the IO: December 2014.</p> <p>Next to that the proposed article 2:54 and 2:55 PC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime. In article 2:55 the financing of crime is punishable as a severe crime. Next to that article 1:120 PC SXM (currently article 48a) criminalizes the aiding and abetting of the crimes mentioned in article 2:54 and 2:55. Of course</p>
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	<ul style="list-style-type: none"> <li>• Laws do not address Prevention of the misuse by organized criminal groups of Government tender processes and of subsidies and licenses granted by public authorities.</li> <li>• Laws and framework do not address       <ol style="list-style-type: none"> <li>a) The promotion of public awareness regarding the existence, gravity of and threat posed by transnational organized crime;</li> <li>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</li> <li>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.</li> </ol> <p><i>Implementation in accordance with the Terrorist Financing Convention</i></p> <ul style="list-style-type: none"> <li>• Wilful provision of funds etc. to individual terrorists does not appear to be covered by the approach to terrorist financing in the Penal Code.</li> <li>• No specific penalty is indicated for the offence of TF, appropriateness of this penalty in relation to this Article therefore cannot be assessed.</li> <li>• TF is not criminalized in accordance with the FT Convention. There is some doubt as to whether freezing mechanism could be invoked in response to a requesting foreign State's freezing requirement arising in relation to a terrorist financing offence.</li> <li>• No law or measure identified regarding the use of forfeited funds to compensate the victims of terrorist offences or their families.</li> </ul> </li> </ul>		<p>criminal attempts are punishable under 1:119 PC SXM (currently article 47)</p> <p>The matter reciprocal confidentiality is dealt with in the current CPC SXM article 555 and further (International Mutual Assistance) but will be more expressively mentioned and regulated more detailed in the new (draft) Criminal Procedure Code.</p> <p>As for establishing mechanisms whereby forfeited funds are used to compensate the victims of terrorist the proposed article 1:78 PC SXM creates a mechanism to compensate victims and is also applicable to victims of terrorist acts As far as the Criminal laws are concerned the switching provision of 2:224 (currently 96) makes the general provisions of the first book of the Penal Code applicable to all other Criminal laws.</p> <p>THE RECOMMENDED ACTIONS HAVE BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27<sup>TH</sup>, 2015.</p> <p>THE DRAFT OF THE <i>OPIUMLANDSVERORDENING 1960</i> IS STILL PENDING.</p> <p>THE DRAFT OF THE CRIMINAL PROCEDURES CODE IS ON REVIEW AT THE COUNCIL OF ADVICE.</p>
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	<ul style="list-style-type: none"> <li>• Not all terrorism offences referenced in Annex 1 to the TF Convention are criminalized as required.</li> <li>• Reciprocal confidentiality (as required by article 12 (Assistance to other States) is not addressed in the Penal Code or Penal Procedures Code.</li> <li>• No provisions addressing the matters of custody arrangements, terms under which an offender transferred to Sint marten from a State will be returned to that State from which the offender was transferred, credit for time spent in custody of State to which the offender was transferred, were identified in the Penal Code or Penal Procedures Code.</li> <li>• No laws were identified on the matter of the guarantee of fair treatment of persons in custody.</li> <li>• There is a strong possibility therefore that the TCSP owners, directors and some managers not falling within the definition of staff, may be exposed to criminal liability for breaches of the NOSTSP in respect of reports made by the TCSP pursuant to the NORUT</li> </ul>		<p>THE DRAFT OF THE CRIMINAL PROCEDURES CODE INCLUDES THE OFFENCES IN AFOREMENTIONED CONVENTIONS.</p> <p>THE DRAFT OF THE OPIUM NATIONAL ORDINANCE IS PENDING. UPDATE WILL START WHEN OTHER DRAFTS IN PROCEDURE ARE FINALIZED.</p> <p>Constitution of Sint Maarten states in the following articles that:</p> <p>Article 3      No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.</p> <p>Article 4      1. No one shall be held in slavery or servitude.      2. No one may perform forced or compulsory labor, other than as a community service.  <i>[Note: voluntary community service]</i>      3. Trafficking in human beings is prohibited.</p> <p>Article 26      With the establishment of his civil rights and obligations and when prosecuted for a criminal offense a person is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. By</p>
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				<p>ordinance, the public nature of the treatment can be reduced.</p> <p>Article 27</p> <p>1. Everyone has the right to personal liberty. No one shall be deprived of his liberty except according to legislation as referred to in Article 81 b, f and g, to adopt rules in case of:</p> <ul style="list-style-type: none"> <li>a. lawful detention after conviction by a competent court;</li> <li>b. lawful arrest or detention for refusing to execute a similar legislation of a court injunction or to follow or to secure the fulfillment of any express obligation prescribed by legislation;</li> <li>c. lawful arrest or detention to be brought before the competent court if there are reasonable grounds to suspect that he has committed a criminal offense or if it is reasonably necessary to prevent his committing an offense or fleeing after having committed a criminal offense;</li> <li>d. lawful detention of a minor for the purpose of intervening in his upbringing or in the case of his lawful detention for the purpose of bringing him before the competent authority;</li> <li>e. lawful custody of persons deprived of liberty and law that might spread a contagious disease, of unsound mind, addicted to alcohol or drugs;</li> </ul>
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				<p>f. lawful detention of persons in order to prevent them from effecting an unauthorized entry into the country or to prolong their stay illegally;</p> <p>g. lawful arrest or detention of persons against them if a deportation or extradition.</p> <p>2. Everyone who is arrested or detained in accordance with paragraph c of this Article, shall be brought promptly before a judge and the law tried to be brought or pending to be the process in freedom within a reasonable period.</p> <p>3. Any person deprived of liberty shall have the right:</p> <p>a. to ask the court to enable it to decide without delay on the lawfulness of his detention and his release ordered if the detention is not lawful;</p> <p>b. promptly in a language which he understands, to be informed of the nature and cause of his detention, his right to refrain from answering and its power to make himself a lawyer.</p> <p>4. Anyone who has been the victim of a deprivation of liberty contrary to the provisions of this article shall have an enforceable right to compensation.</p> <p>5. A person who has been lawfully deprived of liberty may be restricted in the exercise of fundamental rights insofar as it is not compatible with the deprivation of liberty.</p>
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				<p>Article 28</p> <ol style="list-style-type: none"><li>1. No offense is punishable than by virtue of a preceding statutory penal provision.</li><li>2. Everyone charged with an offense is presumed innocent until proved guilty according to national ordinance.</li><li>3. No person shall be prosecuted or punished a second time for an offense in respect of which he is irrevocably adjudicated by the court.</li><li>4. Anyone charged with an offense has the following rights:<ol style="list-style-type: none"><li>a. promptly, in a language which he understands and in detail, to be informed of the nature and cause of the charges against him, of his right to refrain from answering and to seek assistance by a lawyer;</li><li>b. to have the free assistance of an interpreter if he does not understand or speak the language used in court;</li><li>c. To have adequate time and facilities to prepare his defense;</li><li>d. to defend himself;</li><li>e. to question witnesses or to have examined the attendance and examination of witnesses on his behalf, to pass the same conditions as is the case with the prosecution witnesses.</li></ol></li></ol> <p>Article 29</p>
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				<p>1. Everyone may be legally represented in civil, criminal and administrative proceedings.</p> <p>2. In National ordinance will be laid down the rules on the granting of legal aid to persons of limited means.</p> <p>Article 30</p> <p>1. All persons who are deprived of their liberty will be treated with humanity and with respect for the inherent dignity of the human person.</p> <p>2. Suspects are exceptional circumstances aside, segregated from convicted persons and are entitled to a separate treatment appropriate to their status as unconvicted persons.</p> <p>3. Juvenile suspects are held separately from adults and arraigned as soon as possible before the court.</p> <p>4. The prison system provides for a treatment of prisoners with the essential aim of reformation and social rehabilitation. Juvenile detainees are held separately from adults and are treated in accordance with their age and legal status.</p> <p><b>This recommendation has been dropped.</b></p>
36. MLA	PC	<p>The extent of Mutual Legal Assistance that may be extended by Sint Maarten is limited by the following deficiencies identified:</p> <ul style="list-style-type: none"> <li>The indirect or unlawful provision of funding for the commission of a terrorism offence is not criminalized.</li> </ul>	Amend the Penal Code to address the deficiencies set out in the ratings table.	<p>Next to that the proposed article 2:54 and 2:55 PC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime. In article 2:55 the financing of crime is punishable as a severe crime. Next to that article 1:120 PC SXM (currently article 48a)</p>



		<ul style="list-style-type: none"> <li>• Terrorist financing is not criminalized in accordance with the FT Convention.</li> <li>• There is a doubt as to the extent of assistance that could be provided in relation to matters which have not been confirmed as predicate offences (i.e. Illicit Arms Trafficking, Smuggling, Insider Trading market manipulation).</li> </ul>		<p>criminalizes the aiding and abetting of the crimes mentioned in article 2:54 and 2:55. Of course criminal attempts are punishable under 1:119 PC SXM (article 47).</p> <p>The matter of Mutual Assistance is dealt with in the current CPC SXM (article 555 and further (International Mutual Assistance) but will be more expressively mentioned and regulated more detailed in the new (draft) Criminal Procedure Code.</p> <p>THE RECOMMENDED ACTION ON THE EXTENT OF THE MLA HAS BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27<sup>TH</sup>, 2015.</p> <p>THE DRAFT OF THE CRIMINAL PROCEDURES CODE IS ON REVIEW AT THE COUNCIL OF ADVICE.</p> <p>THE PENAL CODE ENTERED INTO FORCE ON JUNE 1, 2015. TF IS NOW CRIMINALIZED.</p> <p><b>This recommendation has been incorporated in the Criminal procedures Code: pending.</b></p>
37. Dual criminality	LC	It is not clear whether the assistance provided by Sint Maarten occurred regardless of the existence of dual criminality.		<p>THE DRAFT CRIMINAL PROCEDURES CODE HAS BEEN REVIEWED BY THE COUNCIL FOR ADVICE AND THE MINISTER OF JUSTICE IS MAKING THE ADAPTATION IN CONFORMITY WITH THE ADVICES RECEIVED. HEREAFTER IT WILL BE SUBMITTED AGAIN TO THE COUNCIL OF MINISTERS AND THEREAFTER TO PARLIAMENT.</p>



				<b>This recommendation has been dropped. The contents however has been incorporated in the Criminal Procedures Code; pending.</b>
<b>38. MLA on confiscation and freezing</b>	PC	The deficiencies in R36 impact Sint Maarten's ability to extend mutual legal assistance	Amend the Penal Code to address the deficiencies set out in the ratings table	<p>Already dealt with but more specific legislation is under construction as mentioned under R36.</p> <p>THE RECOMMENDED ACTION ON THE EXTENT OF THE MLA HAS BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27<sup>TH</sup>, 2015.</p> <p>THE DRAFT OF THE CRIMINAL PROCEDURES CODE IS ON REVIEW AT THE COUNCIL OF ADVICE.</p> <p>THE PENAL CODE ENTERED INTO FORCE ON JUNE 1, 2015.</p> <p>THE DRAFT CRIMINAL PROCEDURES CODE HAS BEEN REVIEWED BY THE COUNCIL FOR ADVICE AND THE MINISTER OF JUSTICE IS MAKING THE ADAPTATION IN CONFORMITY WITH THE ADVICES RECEIVED.</p> <p><b>This recommendation has been incorporated in the Criminal procedures Code: pending.</b></p>
<b>39. Extradition</b>	PC	The deficiencies in R36 impact Sint Maarten's ability to extend mutual legal assistance through extradition.	Implement the recommended actions outlined in relation to SRIL.	<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</p>



				<p>APPROVED BY PARLIAMENT ON FEBRUARY 27<sup>TH</sup>, 2015.</p> <p>THE DRAFT OF THE CRIMINAL PROCEDURES CODE IS ON REVIEW AT THE COUNCIL OF ADVICE.</p> <p>THE DRAFT CRIMINAL PROCEDURES CODE HAS BEEN REVIEWED BY THE COUNCIL FOR ADVICE AND THE MINISTER OF JUSTICE IS MAKING THE ADAPTATION IN CONFORMITY WITH THE ADVICES RECEIVED. HEREAFTER IT WILL BE SUBMITTED AGAIN TO THE COUNCIL OF MINISTERS AND THEREAFTER TO PARLIAMENT.</p> <p><b>This recommendation has been incorporated in the Criminal procedures Code: pending.</b></p>
<p><b>40. Other forms of co-operation</b></p>	<p>PC</p>	<ul style="list-style-type: none"> <li>• The Extract General Regulation Import, Export and Transit of 1908 NG 1949 No. 62 (In relation to Customs) and all domestic legislation with respect to the law enforcement entities should provide for international cooperation with their counterparts</li> <li>• No provisions have been identified under NOSBCI, RFETCSM, NOSIIA or the NOSTCSP which reflect that the Central Bank can undertake investigations on behalf of their foreign counterparts.</li> <li>• Statistics have not been provided with respect to spontaneous referrals of information as well as to information supplies on request in order that there can be an adequate assessment of the implementation of this criteria</li> </ul>	<ul style="list-style-type: none"> <li>• Authorities should consider revising the respective Ordinances (NOSBCI, RFETCSM, NOSIIA, NOSTCSP to expressly allow for the CBCS to undertake investigations on behalf of their foreign counterparts. Consequential amendments to the Charter governing the powers of the CBCS may also be necessary to allow for the amendment of the Ordinances as recommended.</li> <li>• The authorities should maintain statistics on entities' spontaneous referrals of information as well as information supplied as a result of a request. This system can be used at a policy and operational level to adequately assess the country's</li> </ul>	<p>Sint Maarten can hereby inform that its domestic laws with the exception of the RFETCSM or the CBCS charter do not allow for the CBCS to undertake investigations on behalf of their foreign counterparts. The draft Harmonization law (supervision of financial institutions) provides for foreign supervisors to operate under CBCS supervision. The Supervision law on MTC's also provides for this.</p> <p>THE TWO DRAFTS OF THE CBCS SUPERVISION LEGISLATION OF THE FINANCIAL INSTITUTIONS (1. SUPERVISION OF THE MTC AND 2. THE HARMONIZATION OF THE SUPERVISION DO INCORPORATE AMENDMENT TO ALLOW THE CBCS TO CARRY OUT</p>



			<p>international cooperation efforts for AML/CFT.</p> <ul style="list-style-type: none"> <li>• Sint Maarten's domestic legislation for all law enforcement entities should specifically provide for international cooperation with their foreign counterparts.</li> </ul>	<p>INVESTIGATIONS ON BEHALF OF THEIR FOREIGN COUNTERPARTS. THE DRAFTS ARE BEING FINALIZED FOR SUBMISSION TO THE MINISTER OF JUSTICE.</p> <p>BOTH ABOVEMENTIONED DRAFT SUPERVISION ORDINANCES HAVE BEEN SENT TO THE LEGAL DEPARTMENT FOR PROCESSING AND SUBMITTING FOR DECISIONMAKING BY THE COUNCIL OF MINISTERS.</p> <p><b>Update:</b></p> <p><b>The draft Harmonization law has been submitted by the Council of Ministers to the Advisory Council on June 8, 2016. The draft National Ordinance Money Remitter Companies has been approved by the Council of Ministers on June 2, 2016, and will soon be submitted to the Advisory Board.</b></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.</p>
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				<p>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> <p>THE DRAFT CRIMINAL PROCEDURES CODE HAS BEEN REVIEWED BY THE COUNCIL FOR ADVICE AND THE MINISTER OF JUSTICE IS MAKING THE ADAPTATION IN CONFORMITY WITH THE ADVICES RECEIVED. HEREAFTER IT WILL BE SUBMITTED AGAIN TO THE COUNCIL OF MINISTERS AND THEREAFTER TO PARLIAMENT.</p> <p><b>This recommendation has been incorporated in the Criminal procedures Code: pending.</b></p>
<b>Nine Special Recommendations</b>				
<b>SR.I Implement UN instruments</b>	PC	Refer to the ratings Table at Sections 2.2 and 2.4 of this Report.		<b>This special recommendation has been dropped. The contents however has been incorporated in the Penal Code.</b>
<b>SR.II Criminalize terrorist financing</b>	NC	<ul style="list-style-type: none"> <li>• No specific penalty is reflected in the Penal Code for the offence of TF.</li> <li>• The indirect or unlawful provision of funding for the commission of a terrorism offence is not criminalized.</li> <li>• The wilful provision of funds etc. to individual terrorists is not criminalized.</li> <li>• TF is not independently criminalized and therefore there is no comprehensive treatment of terrorist financing in the Penal Code as required by the TF Convention.</li> </ul>	<ul style="list-style-type: none"> <li>• Article 48a of the Penal Code should be revised to expressly criminalise the indirect or unlawful provision of funding for the commission of a terrorism offence as set out in article 2(a) of the Terrorist Financing Convention.</li> <li>• Article 48a of the Penal Code should be revised to expressly criminalize the wilful provision of funds etc. to individual terrorists.</li> </ul>	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).



		<ul style="list-style-type: none"> <li>• The Penal Code does not specify a penalty for the legal person which participates in an organization aimed at committing terrorist offences.</li> <li>• Not all terrorism offences referenced in Annex 1 to the TF Convention are criminalized as required.</li> </ul>	<ul style="list-style-type: none"> <li>• Penal Code should be revised to independently criminalize Terrorism Financing should be effected without delay.</li> <li>• Penal Code should be amended to incorporate specific penalties for the offence of TF.</li> <li>• Article 146a of the Penal Code (which extends to participating in a terrorist organization) should be revised to specify a penalty for the legal person who participates in such an organization.</li> </ul> <ul style="list-style-type: none"> <li>• The Authorities should amend the Penal Code to criminalize all the offences referenced in the Conventions and Protocols referenced at Annex 1 to the TF Convention.</li> </ul>	<p>As far as legal persons are concerned the proposed article 1:127 (currently article 53) states that legal persons can commit a criminal acts mentioned in the PC SXM. Next to that is should be pointed out that paragraph 7 of the proposed article 1:54 PC (currently creates a possibility to punish legal persons more harshly. Next to that the paragraph 2 and 3 of the mentioned proposed article 1:127 PC SXM (article 53) makes de facto leaders of the legal person punishable as well</p> <p>With the adaption of the new PC SXM all offence in the mentioned Conventions will be criminalized.</p> <p>THE RECOMMENDED ACTIONS ON THE CRIMINALIZATION OF TERRORISM FINANCING HAVE BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27<sup>TH</sup>, 2015.</p> <p>THE PENAL CODE ENTERED INTO FORCE ON JUNE 1, 2015. TF HAS BEEN CRIMINALIZED.</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>
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				<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 27<sup>TH</sup>, 2015.</p> <p>THE PENAL CODE ENTERED INTO FORCE ON JUNE 1, 2015. TF HAS BEEN CRIMINALIZED.</p> <p><b>This special recommendation has been dropped. The contents however has been incorporated in the Penal Code.</b></p>
<p><b>SR.III Freeze and confiscate terrorist assets</b></p>	<p>PC</p>	<ul style="list-style-type: none"> <li>• The framework does not support an ability to invoke freezing mechanisms in response to a requesting foreign State's freezing requirement.</li> <li>• The substantive freezing mechanism for persons listed pursuant to UN 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.</li> <li>• There is no clear guidance specially to other persons and entities concerning their obligations in taking action under the freezing mechanism.</li> <li>• The Sanctions National Decree does not expressly refer to assets jointly held by designated persons, terrorists or terrorist organizations with third parties. The wording of the Decree also raises issues of enforceability of sanctions against the entire asset which is held "in part" by designated persons, terrorists or terrorist organizations.</li> </ul>	<ul style="list-style-type: none"> <li>• The substantive freezing mechanism for persons listed pursuant to UN Resolution 1267 (1999) should be reviewed and appropriate adjustments made to ensure that the requirement of acting 'without delay' will be met in relation to subsequent freezing obligations that arise pursuant to terrorist related UN Resolutions that are issued.</li> <li>• The Sanctions National Decree should also expressly refer to assets jointly owned or controlled by designated persons, terrorists or terrorist organizations with third parties, and should incorporate wording to clearly communicate the enforceability of sanctions against the entire asset which is held "in part" by a designated person, terrorist or terrorist organization.</li> <li>• Sint Maarten should provide guidance to all persons and entities with regard to</li> </ul>	<p>The matter of Mutual Assistance is dealt with in the current CPC SXM article 555 and further (International Mutual Assistance) but will be more expressively mentioned and regulated more detailed in the new (draft) Criminal Procedure Code.</p> <p>The draft article 560 CPC creates a possibility to respond immediately to a request, when regulated by International Treaties combatting Terrorism and the Financing of Terrorism (and other International Treaties. In the draft Explanatory Memorandum it is clearly and expressively mentioned that the 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>



		<ul style="list-style-type: none"> <li>• There is no wording in the FATT Protocols which indicate compliance with these Protocols is mandatory or that breaches of the Protocols can be sanctioned by the Central Bank.</li> </ul>	<p>obligations in taking action under the freezing mechanism.</p> <ul style="list-style-type: none"> <li>• The FATT Protocols should incorporate wording to clearly reflect that compliance with these Protocols is mandatory and that breaches of the Protocols can be sanctioned by the Central Bank.</li> </ul>	<p>THE RECOMMENDED ACTION ON FATF SR III CONCERNING THE FREEZING AND CONFISCATION OF ASSETS HAVE BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27<sup>TH</sup>, 2015.</p> <p>THE DRAFT OF THE CRIMINAL PROCEDURES CODE IS ON REVIEW AT THE COUNCIL OF ADVICE.</p> <p>THE DRAFT CRIMINAL PROCEDURES CODE HAS BEEN REVIEWED BY THE COUNCIL FOR ADVICE AND THE MINISTER OF JUSTICE IS MAKING THE ADAPTATION IN CONFORMITY WITH THE ADVICES RECEIVED. HEREAFTER IT WILL BE SUBMITTED AGAIN TO THE COUNCIL OF MINISTERS AND THEREAFTER TO PARLIAMENT.</p> <p><b>This special recommendation has been dropped. The contents however has been incorporated in the Penal Code.</b></p>
<p><b>SR.IV          Suspicious          transaction          reporting</b></p>	<p>NC</p>	<p>Rating factors in R13 apply to this Recommendation.</p>		<p>The new draft law (merged and updated NORUT-NOIS) will specifically address the issue of suspicious transaction reporting.</p> <p>THE MOT IS BUSY WITH THE MERGING OF THE NORUT AND THE NOIS IN WHICH THE RECOMMENDED ACTION CONCERNING FATF SR IV ON SUSPICIOUS TRANSACTIONS WILL BE INCORPORATED.</p>



				<p>THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016.</p> <p><b>Draft National Ordinance on Combatting ML/TF Article 25</b></p>
<p><b>SR.V.          International cooperation</b></p>	<p>PC</p>	<ul style="list-style-type: none"> <li>• The deficiencies in R36 impact Sint Maarten’s ability to extend mutual legal assistance through extradition.</li> <li>• The deficiencies in SR11 impact Sint Maarten’s ability to extend assistance in connection with combating TF and terrorist acts.</li> <li>• The deficiencies in R40 would impact Sint Maarten’s to the exchange of information regarding TF.</li> </ul>	<ul style="list-style-type: none"> <li>• Amend the Penal Code to address the deficiencies set out in the ratings table.</li> <li>• Implement the recommended actions outlined in relation to SR11</li> </ul>	<p>Next to that the proposed article 2:54 and 2:55 CC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime. In article 2:55 the financing of crime is punishable as a severe crime. Next to that article 1:120 CC SXM (currently article 48a) criminalizes the aiding and abetting of the crimes mentioned in article 2:54 and 2:55. Of course criminal attempts are punishable under 1:119 CC SXM (currently article 47)</p> <p>Mutual Assistance furthermore is (article 555 and further CPC) and will be more specifically be regulated in the new (draft) CPC SXM is concerned, and as far as the new PC SXM is concerned.</p> <p>The introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice and is now ready to be submitted to Parliament for approval. Expected enactment of the Penal Code by the IO: December 2014.</p> <p>THE RECOMMENDED ACTIONS ON FATF SR V CONCERNING INTERNATIONAL CO-OPERATION HAVE BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27<sup>TH</sup>, 2015.</p>



				<p>THE PENAL CODE ENTERED INTO FORCE ON JUNE 1, 2015.</p> <p>THE DRAFT CRIMINAL PROCEDURES CODE HAS BEEN REVIEWED BY THE COUNCIL FOR ADVICE AND THE MINISTER OF JUSTICE IS MAKING THE ADAPTATION IN CONFORMITY WITH THE ADVICES RECEIVED.</p> <p><b>This recommendation has been incorporated in the Criminal procedures Code: pending.</b></p>
<p><b>SR.VI</b></p> <p><b>AML/CFT requirements for money/value transfer services</b></p>	<p>NC</p>	<ul style="list-style-type: none"> <li>• There continue to be MTCs operating within Sint Maarten without licenses from the Central Bank.</li> <li>• Provisions for MTCs to update the Central Bank on the number of agents and sub-agents should be formalised.</li> </ul>	<ul style="list-style-type: none"> <li>• Shut the operations of unauthorised MTCs operation in Sint Maarten.</li> <li>• Provisions for MTCs to update the Central Bank on the number of agents and sub agents should be formalised.</li> </ul>	<p>The MTCs operating without a license will be shut down by the PPO. One MTC is busy with an application for a license at the CBCS.</p> <p>The MOT is responsible for the reporting of unusual transactions by service providers. From this perspective the MOT approaches all MTC's to urge them to report the unusual transactions. The issue will again be discussed with the minister of Justice.</p> <p>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. THE UNLICENSED MTC HAS STARTED A CASE AGAINST THE CBCS WHICH THE MTC HAS LOST IN FIRST INSTANCE. NOW THE CASE IS IN REVIEW AT THE APPEALS COURT. APPEAL WILL BE HANDLED BEFORE THE END OF 2015.</p>



				<b>The case of the unlicensed MTC has again been put forward to the PPO. A decision will be taken before the next plenary meetings.</b>
<b>SR.VII Wire transfer rules</b>	PC	<ul style="list-style-type: none"> <li>The E.C. for wire transfers are not detailed in the relevant P&amp;Gs.</li> <li>There are no explicit provisions in the P&amp;G for CI to be risk-based.</li> </ul>	<ul style="list-style-type: none"> <li>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&amp;G for CI to observe the latest Interpretive Note to SR VII</li> </ul>	<p>The P&amp;G for MTC has been amended to implement the recommended actions.</p> <p>STATUS QUO; NO NEW UPDATE. THE P&amp;G HAVE BEEN UPDATED BY THE CBCS TO REFLECT THE RECOMMENDED ACTION CONCERNING FATF SR VII ON WIRE TRANSFER RULES.</p> <p>THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORSEEN IN JANUARY 2016.</p> <p><b>Draft National Ordinance on Combatting ML/TF Article 1 under k and article 3 paragraph 1 under d.</b></p>
<b>SR.VIII NPOs</b>	NC	<ul style="list-style-type: none"> <li>No recent assessment on the on the risk with regard NPO sector.</li> <li>There is no oversight or supervisory regime for NPOs.</li> <li>No requirement for NPO sector to keep financial information.</li> <li>No procedures in place to ensure that they are able to effectively investigate and gather information on NPOs.</li> <li>No training sessions or sensitization forum held for NPOs</li> </ul>	<ul style="list-style-type: none"> <li>Sint Maarten should conduct a new assessment on the risk with regard NPO sector.</li> <li>The Authorities should consider designating an authority to monitor and supervise the NPO sector.</li> <li>Sint. Maarten should institute an outreach program which provides adequate AML/CFT awareness about the risk of NPOs to terrorist financing.</li> <li>There should be appropriate sanctions available for those NPOs</li> <li>NPOs should be required to maintain transaction records for a minimum period of five (5) years.</li> </ul>	<p>This subject matter will be further examined by the judicial department of the ministry of Justice.</p> <p>STATUS QUO; NO NEW UPDATE. AS SOON AS THE MAJORITY OF THE KEY AND CORE RECS HAVE BEEN MET, THE MOT WILL START ANALYZING THE MATTER OF THE NPO AS STATED UNDER SR VIII.</p> <p><b>Draft National Ordinance on Combatting ML/TF Article 57a</b></p>



			<ul style="list-style-type: none"> <li>• The Authorities in St. Marten should be procedures in place to ensure that they are able to effectively investigate and gather information on NPOs.</li> <li>• There should be procedures in place which allow for timely and effective sharing of information on NPOs both domestically and internationally.</li> <li>• The Authorities should consider issuing guidance specifically pertain to the NPO sector.</li> </ul>	
<b>SR.IX          Cross-Border          Declaration &amp;          Disclosure</b>	PC	<ul style="list-style-type: none"> <li>• An ad hoc system is in place for the disclosure of the physical cross-border transportation of currency.</li> <li>• There is no system to restrain currency where there is a suspicion of ML or TF.</li> <li>• There are no statistics evidencing Customs' effectiveness in the area of international cooperation.</li> <li>• There are no statistics regarding the number of false declarations and investigations forwarded to the PPO.</li> <li>• There is no process for confiscating currency or negotiable instruments for persons listed in accordance with UNSCR 1373 and 1267.</li> <li>• There are no statistics relating to shipments of gold or other precious metals and stones.</li> <li>• There is no structure established for the training and targeted programmes for Customs.</li> <li>• No current information available with respect to the timeliness of the dissemination of the information relating to suspicious cash declarations/disclosures.</li> </ul>	<ul style="list-style-type: none"> <li>• The authorities should ensure that they pursue the proposed declaration system to be completed by all passengers instead of the ad hoc disclosure system currently in place.</li> <li>• The Authorities should consider implementing the system to restrain currency where there is a suspicion of ML or TF.</li> <li>• The authorities should maintain statistics evidencing Customs' effectiveness in the area of international cooperation.</li> <li>• The Sint Maarten authorities should maintain the process for confiscating currency or negotiable instruments in implementing the UNSCR 1373 and 1267.</li> <li>• The authorities should maintain a system to identify the source, destination and purpose of movement of gold or other precious metals and stones.</li> <li>• A structure should be established for the training and targeted programmes for Customs.</li> </ul>	<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 DRAFT IS NOW ON REVIEW TOGETHER AT THE CUSTOMS DEPARTMENT.</p>



			<ul style="list-style-type: none"> <li>The authorities should ensure that the relevant authorities possess timely access to suspicious cash declarations or disclosures, or intentional lack of disclosures information.</li> </ul>	<p>THE DRAFT NATIONAL ORDINANCE ON CROSS-BORDER TRANSPORTATION OF CURRENCY IS AT THE LEGAL DEPARTMENT FOR PROCESSING AND SUBMITTING TO THE COUNCIL OF MINISTERS.</p> <p>The MOT has developed a training program for all the Law Enforcement Agencies.</p> <p>STATUS QUO; NO NEW UPDATE. THE TRAINING PROGRAM HAS BEEN SUBMITTED TO THE MINISTER OF JUSTICE.</p> <p>THE AML/CTF TRAINING PROGRAM II HAS BEEN APPROVED BY THE MINISTER AND THE EXECUTION THEREOF STARTED IN AUGUST 2015. THE CUSTOMS DEPARTMENT HAS RECEIVED TRAINING IN SEPTEMBER 2015.</p> <p><b>National Ordinance on the Obligation to Report Cross-border Money Transfer: Article 6</b></p>
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