



# First Follow-Up Report

Anti-Money Laundering and  
Combating the Financing of  
Terrorism

## Montserrat

8<sup>th</sup> November, 2011

**MONTSERRAT: FIRST FOLLOW-UP REPORT**

**I. INTRODUCTION**

1. This report represents an analysis of Montserrat’s report to the CFATF plenary concerning the progress that it has made at correcting the deficiencies that were identified in its third round mutual evaluation report (MER). The third round MER of Montserrat was adopted via round robin by CFATF Ministers on 22<sup>nd</sup> July, 2011. Based on a review of the actions taken by Montserrat to meet the recommendations made by the Examiners, the plenary is being asked to keep Montserrat on expedited follow-up with the requirement that Montserrat report back to the May 2012 plenary.
2. Montserrat received ratings of PC on six (6) of the sixteen (16) core and key Recommendations as follows:

<b>Rec.</b>	<b>1</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>10</b>	<b>13</b>	<b>23</b>	<b>26</b>	<b>35</b>	<b>36</b>	<b>40</b>	<b>I</b>	<b>II</b>	<b>III</b>	<b>IV</b>	<b>V</b>
<b>Rating</b>	LC	LC	C	PC	LC	LC	LC	PC	PC	LC	LC	LC	PC	PC	LC	PC

3. Relative to the other non-core or key Recommendations, Montserrat was rated partially compliant and non-compliant as follows:

<b>Partially Compliant (PC)</b>	<b>Non-Compliant (NC)</b>
R. 8 (New technologies & non face-to-face business)	R. 19 (Other forms of reporting)
R. 12 (DNFBP – R.5, 6, 8-11)	SR. IX (Cross Border Declaration & Disclosure)
R. 14 (Protection & no tipping-off)	
R. 16 (DNFBP – R.13-15 & 21)	
R. 19 (Other forms of reporting)	
R. 21 (Special attention for higher risk countries)	
R. 24 (DNFBP - regulation, supervision and monitoring)	
R. 25 (Guidelines & Feedback)	
R. 30 (Resources, integrity and training)	
R. 31 (National co-operation)	
R. 32 (Statistics)	
R. 33 (Legal persons – beneficial owners)	
SR. VI (AML requirements for money/value transfer services)	
SR. VIII (Non-profit organisations)	
SR.IX (Cross Border Declaration & Disclosure)	

4. The following table is intended to assist in providing an insight into the level of risk in the main financial sector in Montserrat.

**Size and integration of the jurisdiction’s financial sector (as at 30<sup>th</sup> June, 2011)**

		<b>Banks</b>	<b>Other Credit Institutions*</b>	<b>Securities</b>	<b>Insurance</b>	<b>TOTAL</b>
<b>Number of institutions</b>	Total #	8	2	0	1	11
<b>Assets</b>	US\$	1,188,938,429	28,107,581		1,738,378	1,218,784,388
<b>Deposits</b>	Total: US\$	453,929,496	19,796,087		373,587	474,099,170
	% Non-resident	82% of deposits				
<b>International Links</b>	% Foreign-owned:	87% of assets	% of assets 0	% of assets	% of assets 0	87% of assets
	#Subsidiaries abroad	3				3

**II. SUMMARY OF PROGRESS MADE BY MONTSERRAT**

**Core Recommendations**

**Recommendation 5**

5. The short comings discerned by the examiners for Recommendation 5 was centred around their inability to assess the effectiveness of the implementation of the legislative provisions and the fact that there was no clear requirement for the application of enhanced CDD to legal persons or arrangements (including trusts) that are personal assets holding vehicles and companies that have nominee shareholders or shares in bearer form. In order to fill these gaps, the examiners had recommended that the Financial Services Commission (FSC) ensure that all financial institutions develop and implement adequate policies and procedures designed to prevent money laundering and terrorist financing. They had also recommended that the Anti-money laundering and Terrorist Financing Regulations of 2010, (AMLR) and the Anti-money laundering and terrorist financing code of 2010, (AMLC) be amended to include requirements for the application of the necessary enhanced CDD to private banking, legal persons or arrangements (including trusts) that are personal assets holding vehicles and companies that have nominee shareholders or shares in bearer form. As it seeks to cure close these deficiencies, Montserrat FSC has included a programme in its work plan for 2011, which is intended to redound to the review of the AML/CFT policies of all financial institutions, by December 2011. Relative to the other examiners recommendation, the jurisdiction has reported that the islands Executive Council will be sought to decide on the necessary amendment. **This Recommendation remains outstanding.**

**Special Recommendation II**

6. Montserrat’s mutual evaluation examiners noted that the jurisdiction’s legislation did not cover terrorist activity taken to compel an international organisation to do or to abstain from

doing an act in keeping with Article 2(1) (b) of the Terrorist Financing Convention nor did the definition of ‘terrorist’ include ‘terrorist organisation’. In seeking to close these gaps in its anti terrorism infrastructure, Montserrat has proposed to amend the local legislation during 2012. **This Special Recommendation remains outstanding.**

## Key Recommendations

### Recommendation 26

7. The shortcomings for this Recommendation are denoted by eleven (11) individual shortcomings, centred around the fact that the Reporting Authority (RA) is not the central body for receiving STRs in Montserrat whilst at the same time its autonomy is uncertain; the Financial Crime Analysis Unit (FCAU), which is the entity charged with the day-to-day functions of the RA has not been formally established; financial institutions and DNFBPs are not bounded by a specific timeframe within which to report STRs nor is there a reporting form for particularising the requisite information when reporting; as for terrorist financing disclosures, both the RA and any constable can receive them. *See the appended matrix for the exhaustive list of shortcomings for this Recommendation.*
8. In order to address these shortcomings, the examiners have recommended that Montserrat formally establish the FCAU as the central unit for receiving STRs. Montserrat has responded by indicating that their Executive Council will be asked to consider whether or not to introduce a bill to amend the Proceeds of Crime Act (POCA) so as to make provisions for this. **This gap remains open.**
9. The examiners have also recommended that Montserrat amend their POCA so as to include a specific timeframe within which reporting entities must submit STRs. Montserrat has responded by indicating that they will consider whether their Interpretation Act, which was in force at the time of the mutual evaluation, already adequately provides for this. **This gap remains open.**
10. Relative to the lack of a STR reporting form, Montserrat has reportedly drafted a new form which will be presented to their Executive Council for its approval, after it is finalised. **This gap remains open.**
11. The examiners had noted that DNFBPs are unaware of their STR reporting requirements due to RA not providing awareness training and had recommended that the RA should consider developing a strategic plan focusing specifically on the DNFBPs and NPOs on a risk assessment approach to awareness training in AML/CFT to make them fully aware of their obligations and the requirements in combating ML and TF. This recommendation was made in the context of the RA’s legislative responsibilities as the FIU for Montserrat, noted at **s.127 (1)** of the POCA. Montserrat has responded by indicating that “*This is an activity in the FSC Strategic Plan 2011-15. The FSC has responsibility for monitoring these entities and with support from the RA carries out AML/CFT training*” **This gap remains open.**
12. In the context of the RA’s legislative responsibilities as the FIU of Montserrat, the examiners had recommended that it should consider the employment of a competent and suitably qualified person to the position of Secretary to the RA responsible for all the administrative functions and to perform duties as the RA may determine. Montserrat has responded by indicating that the RA has considered this recommendation but given the low number of STRs and owing to ‘scarce resources’ the RA has decided to continue using a member of the

FSC staff to carry out its secretariat functions. It is important to note here that the examiners had noted that the autonomy of the RA was uncertain because of its existing structure. The interlocking responsibilities of the Chairperson of the RA and Commissioner of the FSC who are in fact the same person must be considered as a factor leading to this recommendation. **This gap remains open.**

13. The examiners recommendation that the FCAU should be housed in a separate building from the police headquarters so as to minimize the temptation to confuse the functions of the two bodies has not been taken on board. Montserrat has indicated that the implementation of this recommendation would lead to the underutilisation of resources given the low workload generated by STRs. It should be noted that the FCAU has not been formally established and are in fact an arm of the Royal Montserrat Police Force (RMPF), staffed with “*full-fledged police officers*”. The examiners had noted at paragraph 251 of the MER that the current structure of the FCAU “*does not accord sufficient operational independence and autonomy which enables the FCAU to carry out its mandate*”. **This gap remains open.**
14. Pursuant to the examiners recommendations that the RA implement additional security at the FSC building until the formal establishment of the FCAU and also implement a data backup policy for its STRs, Montserrat will acquire a fireproof cabinet to house the RA’s correspondence and is currently exploring whether to locate its backups on or off the island. **This gap remains open.**
15. Finally of Recommendation 26, the examiners recommendation for a legislative amendment that would ensure that TF disclosures are reported solely has been taken on board by Montserrat with the jurisdiction addressing the issue with the UK authorities. **This gap remains open.**

### **Recommendation 35**

16. No action has as yet been taken to implement the examiners recommendations. **The gap noted by the examiners remains open.**

### **Special Recommendation III**

17. Montserrat has not as yet begun the process of implementing the examiners recommendations. It should be noted however that in respect of the recommendation that the jurisdiction needs to consider making specific provisions for effective and publicly known procedures for considering de-listing requests and unfreezing of funds or other assets of de-listed persons or entities in a timely manner consistent with international procedures, Montserrat has noted in its matrix that the procedures for considering de-listing requests is not carried out in the territory, but in the UK. The authorities are only responsible for ensuring that Orders emanating from the U.K. are implemented and financial institutions advised in a timely manner consistent with international procedures. **This gap remains open.**
18. Also the recommendation that Provision should be made in law for the procedure for forwarding requests for the release of funds or assets which have been frozen and which are required for basic living expenses to the Committee which has been established under S/RES/1452 (2002) has not been taken on board by Montserrat. The jurisdiction has noted that this is recommended action is provided for in all relevant legislation introduced in respect of freezing of funds or assets. Montserrat needs to specifically demonstrate this fact. **This Recommendation remains outstanding.**

### **Special Recommendation V**

19. Montserrat has not begun the process of implementing the examiners recommendation with respect to this Special Recommendation. **This Special Recommendation remains outstanding.**

### **Recommendation 8**

20. Montserrat has not begun the process of implementing the examiners recommendations. **This Recommendation remains outstanding.**

### **Recommendation 12**

21. Montserrat has not begun the process of implementing the examiners recommendations. However with respect to the recommendation that DNFBPs should enhance their risk management to arrive at the determination of PEPS, Montserrat has indicated that the level of activity carried out by DNFB Ps in the jurisdiction does not warrant DNFBPs to have risk management strategies. At training facilitators will bring awareness to risk PEPS posed to the financial sector. **This Recommendation remains outstanding.**

### **Recommendation 14, 16, 19, 30, 31, 32, 33**

22. Montserrat has not begun the process of closing the gaps with respect to these Recommendations.

### **Recommendation 24**

23. In response to the examiners recommendation that the appropriate authorities should ensure that the guidance and codes are disseminated to the industry, Montserrat has indicated that both the AML/CFT Regulations and Code have been distributed either electronically or in hard copy to all prescribed service providers. Additionally, following the registration of all non-financial services providers the FSC will establish a list of registrants for disseminating the relevant guidance and directives to.

### **Recommendation 25**

24. Montserrat has reportedly introduced a procedure to provide periodic feedback to persons who have submitted suspicious transaction reports. Relative to the RA providing general feedback to financial institutions and DNFBPs on disclosures and sanitised cases, Montserrat has reported that the FSC provides feedback to prescribed service providers when annual training is conducted. It is unclear what role the FSC plays in this regard since feedback in this context refers particularly to the FIU (RA) providing the types of feedback that would add value and aid reporting entities in detecting and reporting suspicious transactions. This Recommendation remains outstanding.

### **Recommendation 33**

25. Montserrat has begun the process of implementing the examiners recommendations by appointing a consultant to draft a Bill for the Companies Act. It is reportedly the intention to

provide in this new legislation powers to the competent authority which will enable them to obtain and keep beneficial ownership information in respect of local companies.

### Special Recommendation VI

26. Montserrat is currently engaged in a review of the written compliance procedures of its MVT service providers with a view towards ensuring that they meet the requirements of the relevant AML/CFT legislation. This action coupled with training which was conducted in September is aimed at guiding the MVT service providers as to the effective execution of their responsibilities under the jurisdictions AML/CFT framework. On November 3<sup>rd</sup>, 2011 Montserrat provided a PowerPoint presentation which was supposed to provide details of this training. This information could not have been analysed prior to the finalisation of this report.

### Special Recommendation VIII

27. The process of registering NPOs commenced in September of 2011 with the submission of applications by some NPOs. The examiners had recommended that Montserrat authorities should consider establishing systems and procedures to allow information on NPOs to be publicly available. Montserrat has responded by indicating that the 2010 Non-Profit Regulations 5 (1) provides for information on NPOs to be publicly available by inspection of the Register of NPOs.

### Special Recommendation IX

28. Montserrat has reportedly introduced a disclosure system for incoming passengers sometime in September of 2011. A copy of this form was provided to the Secretariat on November 3<sup>rd</sup>, 2011 however no other details of any administrative order speaking to the initiation of this system were provided.
29. The examiners had recommended that the jurisdiction consider the making of false disclosures/declarations to Customs authorities a strict liability offence. According to **s. 113 (1)** of Customs (Control and Management) Act, which was actually in force at the time of the mutual evaluation, *any person who makes or signs, or causes to be made or signed, or delivers or causes to be delivered to the Comptroller or an officer, any declaration, notice, certificate or other document; or makes any statement in answer to any question put to him by an officer which he is required by or under any enactment to answer being a document or statement produced or made for any purpose of any assigned matter, which is untrue in a material particular, he shall be guilty of an offence.* According to **s.113 (2)** *If any person knowingly or recklessly makes or signs, or causes to be made or signed, or delivers or causes to be delivered to the Comptroller or an officer, any declaration, notice, certificate or other document; or makes any statement in answer to any question put to him by an officer which he is required by or under any enactment to answer, being a document or statement produced or made for any purpose of an assigned matter, which is untrue in a material particular, he shall be guilty of an offence and liable to a fine.* This recommendation by the examiners is clearly provided for in existing legislation.
30. With regards to the recommendation that consideration be given to reporting all currency interdictions where untrue disclosures/declarations are made to the RA, whether or not

administrative or criminal proceedings are being considered, Montserrat has reported that all currency interdictions reports are reported directly to the FCAU.

### **Conclusion**

31. Montserrat's attempt at closing the gaps discerned in its 3<sup>rd</sup> round MER must be viewed in the context of the fact that this MER was approved on July 22<sup>nd</sup>, 2011, less than three (3) months ago. There are several FATF Recommendations with which Montserrat must show that effective implementation of the relevant legislation has occurred. However the recentness of the follow-up process has not allowed for sufficient time to elapse during which progress in this area can be demonstrated.
32. Notwithstanding the above, the Secretariat is minded of the need for Members to demonstrate their commitment towards being expeditiously removed from the follow-up process. In this regard Montserrat is being asked to consider leaving Montserrat on expedited follow-up and to report back to the May 2012 plenary at which time Montserrat must produce a detailed plan of actions with clearly defined and achievable timelines which will lead to all the examiner recommendations being implemented on or before July 22<sup>nd</sup> 2014, i.e. three (3) years from the date of the adoption of the MER.

CFATF Secretariat

November 2011

Forty Recommendations	Rating	Summary of factors underlying rating <sup>1</sup>	Recommended Actions	Undertaken Actions
<b>Legal systems</b>				
1.ML offence	<b>LC</b>	<ul style="list-style-type: none"> <li>• <b>As there have been no money laundering prosecutions in Montserrat and the POCA has only recently been enacted effectiveness cannot be ascertained.</b></li> <li>• <b>Environmental crime is not a predicate offence for ML.</b></li> <li>• <b>Some psychotropic substances in the updated Schedules to the 1971 Vienna Convention are not scheduled as controlled drugs</b></li> </ul>	<ul style="list-style-type: none"> <li>• The penalties for environmental crime need to be revisited to qualify this type of offence as a predicate offence for ML.</li> <li>• The jurisdiction needs to revisit its legislation dealing with psychotropic substances to ensure that there is comprehensive provision for all elements pursuant to the Vienna Convention since all psychotropic substances do not seem to have been captured under the legislation.</li> <li>• Statistics need to be utilised as a means of assessing and reviewing existing systems.</li> <li>• The new legislative measures need to be fully implemented.</li> </ul>	<ul style="list-style-type: none"> <li>• No action taken. Drafting of necessary amendments have been added to the legislative programme to be completed in 2012.</li> <li>• An audit of the legislative provision is being undertaken and any necessary amendments made to the local legislation in 2012.</li> <li>• This is not a factor which led to the underlying rating.</li> <li>• Noted</li> </ul>

<sup>1</sup> These factors are only required to be set out when the rating is less than Compliant.

2.ML offence – mental element and corporate liability	LC	<ul style="list-style-type: none"> <li>As there have been no money laundering prosecutions in Montserrat and the POCA has only recently been enacted effectiveness cannot be ascertained.</li> </ul>		
3. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> <li>The effectiveness of the legislation could not be determined owing to its recent passage.</li> <li>The absence of a resident judge on the island is likely to affect ability of the jurisdiction to obtain a restraint order in an expeditious manner.</li> </ul>		
4. Secrecy laws consistent with the Recommendations	C			
<b>Preventive measures</b>				
5.Customer due diligence	PC	<ul style="list-style-type: none"> <li>No clear requirement that enhanced CDD be applied to private banking, legal persons or arrangements (including trusts) that are personal assets holding vehicles and companies that have nominee shareholders or shares in bearer form.</li> <li>Effectiveness of legislative provisions cannot be ascertained owing to the recentness of enactment.</li> </ul>	<ul style="list-style-type: none"> <li>The competent authority should ensure that all financial institutions develop and implement adequate policies and procedures designed to prevent money laundering and terrorist financing.</li> <li>Regulation and Code should include private banking, legal persons or arrangements (including trusts) that are personal assets holding vehicles and companies that have nominee shareholders or shares in bearer form as</li> </ul>	<ul style="list-style-type: none"> <li>The Financial Services Commission has, as part of its Strategic Plan for 2011, included in its work-plan a programme to review the policies and procedures for all financial institutions. This task should be completed by December 2011.</li> <li>Decision will be sought from Executive Council to amend the AML/CFT Regulations 2010 and Code to make it mandatory that</li> </ul>

			situations where enhanced CDD should be applied.	financial institutions perform enhanced due diligence for higher risk categories of customer, including: a) Non-resident customers, b) Private banking, c) Legal persons or arrangements such as trusts that are personal assets holding vehicles, d) Companies that have nominee shareholders or shares in bearer form.
6. Politically exposed persons	LC	<ul style="list-style-type: none"> <li>Effectiveness of implementation cannot be ascertained owing to the recent enactment of the Code.</li> </ul>		
7. Correspondent banking	LC	<ul style="list-style-type: none"> <li>Effectiveness of implementation cannot be ascertained owing to the recent enactment of the Code.</li> </ul>	<ul style="list-style-type: none"> <li>All financial institutions should be required to have policies in place to address correspondent banking issues.</li> </ul>	<ul style="list-style-type: none"> <li>Not all financial institutions in Montserrat are part of the “Payment System”, e.g., the Credit Union and Building Society. These institutions operate banking accounts with the two banks operating in the jurisdiction. The two banks have policies and procedures in place that address correspondent banking issues.</li> </ul>
8. New technologies & non face-to-face business	PC	<ul style="list-style-type: none"> <li>Effectiveness of implementation cannot be ascertained owing to the recent enactment of the Code.</li> <li>Not all financial institutions were found to have policies in</li> </ul>	<ul style="list-style-type: none"> <li>All financial institutions should be required to develop policies to address the misuse of technological developments in ML/FT</li> </ul>	<ul style="list-style-type: none"> <li>The bank financial institutions have included this recommendation in their written AML/CFT policy manuals. The authorities will now request the Credit Union and the Building Society to include in their written AML/CFT Compliance</li> </ul>

		<b>place to address misuse in technological developments in ML/FT.</b>		Manual policies to address the misuse of technological developments in ML/FT.
9.Third parties and introducers	<b>LC</b>	<ul style="list-style-type: none"> <li><b>Effectiveness of the Regulations and Code cannot be assessed due to their recent passage.</b></li> </ul>	<ul style="list-style-type: none"> <li>Competent authorities should consider the issuance of a list of jurisdictions that adequately apply the FATF Recommendations for third parties that may operate in foreign countries.</li> <li>Montserrat should consider amending the AML/CFT Regulations or Code to include the requirement that service providers should only accept introduced business from an introducers or intermediaries who themselves have face to face contact when conducting the CDD measures upon which the service provider relies.</li> </ul>	<ul style="list-style-type: none"> <li>The jurisdiction has taken the view that it cannot ascertain at any point in time the jurisdictions that adequately apply the FATF Recommendations. The only list that is available is one published for the use of members of the European Union. It has therefore taken the decision to publish the list issued by the FATF of countries that do not apply FATF recommendations.</li> <li>Except for the requirement for face to face contact, this recommended action is already a requirement and is covered in Regulation 8 of AML/CFT Regulations.</li> </ul> <p>The requirement for face to face contact is not an essential criteria of Rec. 9.</p>
10.Record keeping	<b>LC</b>	<ul style="list-style-type: none"> <li><b>Effectiveness cannot be assessed due to recent passage of the POCA Regulations and Code.</b></li> </ul>		
11.Unusual transactions	<b>LC</b>	<ul style="list-style-type: none"> <li><b>Effectiveness cannot be assessed due to the recent passage of the POCA,</b></li> </ul>		

		<b>Regulations and Code.</b>		
12.DNFBP – R.5, 6, 8-11	<b>PC</b>	<ul style="list-style-type: none"> <li>• <b>Due to the recent enactment of the POCA (proceeds of crime Act), the AML/CFT regulations, the AML/CFT code, effective assessment of the AML/CFT measures cannot be evaluated.</b></li> <li>• <b>Deficiency factors noted in Recommendations 5, 6, 8-11 are also applicable to DNFBPs.</b></li> </ul>	<ul style="list-style-type: none"> <li>• Deficiencies identified for all regulated businesses as noted for Recommendations 5, 6, 8-11 in the relevant sections of this Report are also applicable to DNFBPs.</li> <li>• It is suggested that the Authorities prepare an administration plan for the effective administration of the newly proposed legislations.</li> <li>• Adequate training and familiarization should be provided for the players in order to ascertain that clarity in relation to the reporting requirements and sanctions associated with the non-compliance is clearly understood.</li> <li>• DNFBPs should enhance their risk management to arrive at the determination of PEPS.</li> </ul>	<ul style="list-style-type: none"> <li>• There are no specific recommended actions. Responses to deficiencies in the implementation of Recommendation will 5, 6, 8-11 will be dealt with individually.</li> <li>• The recommended action is part of the functions of the FSC Act and is included in the FSC’s Strategic Plan.</li> <li>• Continued training of DNFBPs is scheduled to be carried out in January 2012.</li> <li>• The level of activity carried out by DNFB Ps in the jurisdiction does not warrant DNFBPs to have risk management strategies. At training facilitators will bring awareness to risk PEPS pose to the financial sector.</li> </ul>
13.Suspicious transaction reporting	<b>LC</b>	<ul style="list-style-type: none"> <li>• <b>No requirements relating to the reporting of suspicious transactions involving tax matters.</b></li> </ul>	<ul style="list-style-type: none"> <li>• There should be an explicit requirement to report suspicious transactions whether or not they are thought among other things to</li> </ul>	<ul style="list-style-type: none"> <li>• The Executive Council will consider whether to introduce a Bill to amend POCA to make provision for recommended action.</li> </ul>

			involve tax matters	
14. Protection & no tipping-off	<b>PC</b>	<ul style="list-style-type: none"> <li>• <b>No explicit protection for financial institutions, directors, officers and employees from criminal or civil liability from breach of contract etc for reporting STRs.</b></li> <li>• <b>Tipping off not applicable to STRs that are in the process of being reported to the Reporting Authority.</b></li> <li>• <b>Tipping off only applicable where an investigation is prejudiced.</b></li> </ul>	<ul style="list-style-type: none"> <li>• Amend the POCA to explicitly detail who are protected from making disclosures to the Reporting Authority.</li> <li>• Amend the POCA to prohibit financial institutions, directors, officers and employees from tipping off the fact that a disclosure or related information is in the process of being reported to the Reporting Authority.</li> <li>• Amend the POCA to specifically prohibit all illegal disclosures.</li> </ul>	<ul style="list-style-type: none"> <li>• The Executive Council will consider whether to introduce a Bill to amend POCA to make provision for recommended action.</li> <li>• The Executive Council will be asked to consider whether to introduce a Bill to amend POCA to make provisions for recommended action.</li> </ul>
15. Internal controls, compliance & audit	<b>LC</b>	<ul style="list-style-type: none"> <li>• <b>No requirement that appropriate staff other than the money laundering compliance officer have timely access CDD and other relevant information</b></li> </ul>	<ul style="list-style-type: none"> <li>• Amend the AML/TFR so that all appropriate staff (including the money laundering compliance officer) have timely access CDD and other relevant information.</li> </ul>	<ul style="list-style-type: none"> <li>• Executive Council will be asked to decide whether to amend the AML/CFT Regulations 2010 and Code and make provision for the recommended action.</li> </ul>
16. DNFBP – R.13-15 & 21	<b>PC</b>	<ul style="list-style-type: none"> <li>• <b>Due to the recent enactment of the POCA 2010 effective implementation of the AML/CFT measures cannot be effectively evaluated</b></li> <li>• <b>Deficiencies identified for other financial institutions with respect to Rec. 13, 15, and 21 would also apply to DNFBPs.</b></li> </ul>	<ul style="list-style-type: none"> <li>• The existing legislation does not adequately ensure the compliance of the jurisdiction in relation to suspicious transaction reporting. (POCA Cap (4:04) and AML regulation 2010)</li> <li>• The requirements for DNFBPs are the same for all other financial institutions, therefore the deficiencies</li> </ul>	<ul style="list-style-type: none"> <li>• There are no specific deficiencies highlighted. POCA Cap. 4.04 was repealed in 2010.</li> <li>• Proposals for any recommended action will be dealt with individually.</li> </ul>

			<p>identified with regard to Rec. 13, 15, and 21 will also include DNFBPs.</p> <ul style="list-style-type: none"> <li>• The relevant supervisory authority should develop and issue guidelines and instructions on the maintenance of the framework for compliance with AML/CFT rules.</li> <li>• Montserrat must ensure that the existing legislative requirements pertaining to DNFBPs are enforced.</li> </ul>	<ul style="list-style-type: none"> <li>• The Anti-Money Laundering and Terrorist Financing Code 2010 which came into force in April 2010 provides guidelines and the framework required to comply with AML/CFT Rules.</li> <li>• The FSC the designated Supervisory Authority for DNFBPs has commenced the processing of ensuring all relevant entities are registered. Following registration the FSC will monitor and enforce compliance with the legislative requirements.</li> </ul>
17. Sanctions	LC	<ul style="list-style-type: none"> <li>• <b>Limited use of the sanctions did not allow for a proper assessment of whether the sanctions were effective, proportionate and dissuasive.</b></li> </ul>	<ul style="list-style-type: none"> <li>• The authorities should monitor the effectiveness of the application of sanctions to determine whether they are consistent, proportionate and dissuasive and make amendments to the legislation as deemed necessary</li> </ul>	<ul style="list-style-type: none"> <li>• Because of the low level of economic activity there is very little opportunity to pursue action for breach of provisions in the legislation. However, over time the level of offences may increase and it will become apparent whether the application of sanctions are appropriate.</li> </ul>
19. Other forms of reporting	NC	<ul style="list-style-type: none"> <li>• <b>The authorities have not considered the feasibility and utility of implementing a system where financial institutions report all transactions in currency above</b></li> </ul>	<ul style="list-style-type: none"> <li>• Competent authorities should consider the feasibility and utility of implementing a system where financial institutions report transactions in currency above a threshold to a centralised national</li> </ul>	<ul style="list-style-type: none"> <li>• The competent authorities considered the feasibility and utility of implementing a system. However, given the low level of activity and the close proximity of the financial institutions, it was decided that since</li> </ul>

		a fixed threshold to a national central agency.	authority.	e the information is kept by institutions for a statutory period of not less than 5 years, the reporting of transactions in currency above a threshold is not necessary. Executive Council's decision on this matter will be sought.
21. Special attention for higher risk countries	PC	<ul style="list-style-type: none"> <li>Some financial institutions demonstrated limited understanding of the need to ensure compliance with the requirement to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations. Neither were there specific policy requirements in place in such instances to address this requirement.</li> <li>No effective implementation of AML/CFT regime as a result of recent enactment of AML/CFT regulations, Code and Guidance 2010.</li> </ul>	FSC should ensure that all financial institutions have the required policies in place to ensure that special attention is paid to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.	In July 2010 all financial institutions were requested to amend their AML/CFT policies to include new provisions in the AML/CFT Regulations 2010 legislation which came into force in April 2010. The new provisions include the requirement in Regulation 7 that service providers must implement policies to carry out enhanced due diligence measures where the service provider has, or proposes to have, a business relationship with, or proposes to carry out an occasional transaction with, a person connected with a country that does not apply, or insufficiently applies, the FATF recommendations. This is requirement of Reg. 7 of the AML/CFT Regulations 2010.
22. Foreign branches & subsidiaries	LC	<ul style="list-style-type: none"> <li>Given the recent issuance of these requirements sufficient time has not elapsed to allow or test for effective</li> </ul>	<ul style="list-style-type: none"> <li>Financial institutions should be required to ensure that their AML/CFT policies contain measures which require compliance with</li> </ul>	<ul style="list-style-type: none"> <li>This requirement is a provision in Reg. 3 of the AML/CFT Regulations 2010.</li> </ul>

		<b>implementation</b>	Recommendation 22.	
23. Regulation, supervision and monitoring	<b>LC</b>	<ul style="list-style-type: none"> <li><b>The FSC has not conducted on-site inspections of all the financial institutions.</b></li> </ul>	<ul style="list-style-type: none"> <li>The ECCB should take steps to ensure that its licensees are in compliance with AML/CFT obligations.</li> <li>The FSC should develop and implement a work plan to ensure that all financial institutions are subjected to on-site inspections to assess compliance with ML and FT measures. Also a follow up programme should be instituted to monitor the level of progress attained by financial institutions in response to the weaknesses identified in on-site inspection reports.</li> </ul>	<ul style="list-style-type: none"> <li>The ECCB is not legally obliged under the laws of Montserrat to ensure licensees compliance with AML/CFT. This is a function of the FSC under FSC Act 2008.</li> <li>The FSC annually prepares a Strategic Plan with objectives. Part of its planned objections is to carry out on-site inspection of all financial institutions in a three cycle. In its work plan the cycle for completion of all financial institutions is 31 December 2011.</li> <li>There exists a follow-up system to monitor the responses to issues arising from off-site review and/or on-site examination in concerning compliance with prudential and AML/CFT issues with all supervised entities.</li> </ul>
24. DNFBP - regulation, supervision and monitoring	<b>PC</b>	<ul style="list-style-type: none"> <li><b>Unable to access implementation of the AML/CFT Regulations and Code due to its recent enactment.</b></li> <li><b>The resources of the FSC is inadequate to enable it to effectively supervise the DNFBP sector.</b></li> </ul>	<ul style="list-style-type: none"> <li>The examiners noted that guidance and directives were in practice not issued to all companies and persons in the financial sector of Montserrat. The appropriate authorities should ensure that the guidance and codes are disseminated to the industry.</li> </ul>	<ul style="list-style-type: none"> <li>Following registration of all-Non-Financial Service providers the FSC will establish a list of registrants for disseminating relevant guidance notes and directives.</li> <li>All prescribed service providers have been provided with a hard or soft copy of the AML/CFT Regulations and AML/CFT Code</li> </ul>

				2010 with guidance.
25. Guidelines & Feedback	PC	<ul style="list-style-type: none"> <li>• <b>The RA/FCAU has not provided consistent feedback on suspicious transaction reports filed by financial institutions.</b></li> <li>• <b>No advisories or reports relating to STRs, statistics, current trends or typologies have been published or issued to service providers.</b></li> <li>• <b>Unable to assess effectiveness guidelines because of their recent implementation.</b></li> <li>• <b>The deficiencies noted for Rec. 25 at Section 3.7 and 3.10 of this Report also apply to DNFBPs.</b></li> </ul>	<ul style="list-style-type: none"> <li>• The RA/FCAU should provide consistent feedback on suspicious transaction reports filed to financial institutions.</li> <li>• The RA has been supplying specific feedback to the service providers. However, the RA should consider providing general feedback to financial institutions and DNFBPs on disclosures and sanitised cases.</li> <li>• The RA should provide the reporting entities with advisories relating to AML/CFT.</li> </ul>	<ul style="list-style-type: none"> <li>• The RA/FCAU has now introduced a procedure to provide feedback periodically to persons who have submitted suspicious transaction reports.</li> <li>• The FSC provides feedback to prescribed service providers when training is carried. Training is carried out annually.</li> <li>• To date all relevant financial institutions are issued with relevant advisories under the UN Sanctions list and any FATF publications concerning countries not sufficiently applying the Recommendations.</li> </ul>
<b>Institutional and other measures</b>				
26. The FIU	PC	<ul style="list-style-type: none"> <li>• <b>The RA is not the central body in Montserrat authorised to receive disclosures.</b></li> <li>• <b>Autonomy of RA uncertain because of existing structure.</b></li> <li>• <b>The FCAU has not been formally established.</b></li> <li>• <b>No specific time-frame for reporting STRs.</b></li> <li>• <b>The STR form in use is not</b></li> </ul>	<ul style="list-style-type: none"> <li>• The FCAU should be formally established as the central authority for receiving STRs in Montserrat</li> <li>• Montserrat should amend section 122(1)(b) of the POCA and Part 5, section 32(1)(a) of the AML/CFT Code which requires the MLRO to submit STRs to the RA “<i>as soon as practical.</i>” Consideration should be</li> </ul>	<ul style="list-style-type: none"> <li>• The Executive Council will be requested to consider whether or not to introduce a Bill to amend POCA to make provision for this recommended action.</li> <li>• The authorities will consider whether the Interpretation Act provides adequately for the recommended action.</li> </ul>

		<p><b>prescribed.</b></p> <ul style="list-style-type: none"> <li>• <b>DNFBPs are unaware of the reporting STR and requirements due to RA not providing awareness training.</b></li> <li>• <b>TF disclosures can be made to the RA through a constable.</b></li> <li>• <b>Lack of clarity as to which entity is authorised to receive STRs.</b></li> <li>• <b>The building that houses the RA is not sufficiently secured.</b></li> <li>• <b>No published reports on STR statistics, trends and typologies by the RA.</b></li> <li>• <b>There is no off-site back-up of information.</b></li> </ul>	<p>given to including a specific time-frame for the submission of STRs together with the ability for the MLROs to submit STRs within the time-frame if suspicious activities warrant such.</p> <ul style="list-style-type: none"> <li>• Montserrat should develop and publish a STR reporting form for the particularisation of information required to be submitted by reporting entities when filing STRs.</li> <li>• The RA should consider developing a strategic plan focusing specifically on the DNFBPs and NPOs on a risk assessment approach to awareness training in AML/CFT to make them fully aware of their obligations and the requirements in combating ML and TF.</li> <li>• The RA should consider the employment of a competent and suitably qualified person to the position of Secretary to the RA responsible for all the administrative functions and to perform duties as the RA may determine.</li> <li>• The RA since its establishment in 2002 has not published any statistics,</li> </ul>	<ul style="list-style-type: none"> <li>• A draft STR form has been prepared for approval to replace the existing form which was introduced under the old legislation. When finalised it will be presented to Executive Council for approval.</li> <li>• This is an activity in the FSC Strategic Plan 2011-15. The FSC has responsibility for monitoring these entities and with support from the RA carries out AML/CFT training.</li> <li>• RA has considered this recommended action. However, given the current low number of reports and scarce resources the RA has decided to continue to use a member of FSC staff who has carried the secretarial function for the RA since 2004.</li> <li>• Statistics and typologies will be published in the annual report for the</li> </ul>
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			<p>trends or typologies from STRs received from reporting entities publicly. The published reports would assist those reporting entities to strengthen their existing AML/CFT programs. Trends and typologies can also be obtained from regional FIUs as well as CFATF to assist the reporting sectors.</p> <ul style="list-style-type: none"> <li>• The independence of the FCAU from the police force seemed highly questionable. It would be advisable for the FCAU to be housed in a separate building from the Police Headquarters so that there might be less temptation to confuse the functions of the two bodies.</li> <li>• The RA should implement additional security of the (FSC) building where the RA operates until such time as the FCAU has been formally established.</li> <li>• A data back-up policy should be implemented at the RA. Which would include scheduled days for backing-up, an off-site (secured) location for the storage of backed-up data and the scanning of STRs to be stored electronically.</li> </ul>	<p>RA. These will also be used in the upcoming training to be carried out by FSC in its training programme for the DNFBPs and MSBs.</p> <ul style="list-style-type: none"> <li>• Given the low workload which generates from suspicious transaction reports it not be possible to implement this recommended. This would lead to underuse of resources At present there are designated officers who members of the FCAU. The FCAU has its separate offices within Police Headquarters.</li> <li>• In the short term a fireproof cabinet will be acquired by the Chair of the RA to house its correspondence.</li> <li>• RA accepts the recommended action and is now exploring whether to locate its off-site back-up in the island or off island. Once a decision is made this recommendation will be implemented.</li> </ul>
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			<ul style="list-style-type: none"> <li>• Montserrat should consider amending section 11(1) and (2) of the Anti-Terrorism (Financial and Other Measures) Overseas Territories) Order 2002 to have disclosures be made to the RA and not reported to a Constable. The GN at Part 5(ix) of the AML/CFT Code also asks that service providers make disclosures to the RA.</li> </ul>	<ul style="list-style-type: none"> <li>• The Orders are issued by the Privy Council in the U.K. and issued to the U.K. Overseas Territories.</li> </ul> <p>The jurisdiction will therefore address the issue with the U.K. authorities.</p>
27. Law enforcement authorities	LC	<ul style="list-style-type: none"> <li>• <b>No clear indications that ML or TF matters are being properly investigated.</b></li> </ul>	<ul style="list-style-type: none"> <li>• No clear indications that ML or TF matters are being properly investigate</li> </ul>	<ul style="list-style-type: none"> <li>• Since the Mutual Evaluation the FCAU has developed a policy document and put in place procedures to indicate the status of each case., i.e., closed, under, investigation, or intelligence.</li> </ul>
28. Powers of competent authorities	LC	<ul style="list-style-type: none"> <li>• <b>No clear authority to record witness statements.</b></li> </ul>	<ul style="list-style-type: none"> <li>• The RMPF, the Attorney General and the FCAU should consider developing and reviewing their strategy in combating ML and TF with the view to adapting a more active approach in conducting investigations, prosecutions and possible convictions by ensuring that the investigative tools are provided for in the POCA are utilised.</li> <li>• Montserrat should ensure that there are legislative provisions that would empower investigators to record witness statements for use in</li> </ul>	<ul style="list-style-type: none"> <li>• Investigative tools in POCA will be utilised once evidence permits.</li> <li>• No action taken. Drafting of necessary amendments have been added to the legislative programme to be completed mid- 2012.</li> </ul>

			investigations and prosecutions of MT, TF and predicate offences.	
29. Supervisors	LC	<ul style="list-style-type: none"> <li>Some financial institutions did not have established and sufficiently comprehensive policies in place for combating ML and FT.</li> </ul>	<ul style="list-style-type: none"> <li>The competent authority should ensure that all financial institutions develop and implement policies outlining the procedures for combating money laundering and terrorist financing</li> </ul>	<ul style="list-style-type: none"> <li>The FSC is currently carrying out a comprehensive review of the all financial institutions' written policies and procedures for combating ML and FT to ensure they meet the requirements in the AML/CFT Regulations 2010 and the Code.</li> </ul>
30. Resources, integrity and training	PC	<ul style="list-style-type: none"> <li>Insufficient human resources at the RA.</li> <li>No budget allocation to the RA for carrying out the functions that will be required under POCA 2010.</li> <li>The FCAU is not specifically dedicated to the investigation to ML and TF matters. They are still required to perform other policing duties when requested.</li> <li>Competent Authorities do limited ongoing vetting of officers to ensure that the highest level of integrity is maintained.</li> <li>The FSC is not adequately structured and staffed currently for its effective functioning. There are no positions for line managers and</li> </ul>	<ul style="list-style-type: none"> <li>The authorities should consider providing the Police Force more training particularly in the area of ML investigation and other relevant areas. This Training should include the seizing, freezing, forfeiture and confiscation of assets.</li> <li>The FCAU should be utilised in conducting in-house training for the RMPF with specific emphasis on the CID officer and the recruits in training, in the first instant, to be made aware of ML and TF investigations.</li> <li>Authorities should consider increasing the budgetary resources of the Police Force to adequately cover, purchasing of additional resources and the hiring of qualified staff to enable it to adequately perform its</li> </ul>	<ul style="list-style-type: none"> <li>The RMPS have and will continue to invest in training to bring current and potential staff up to the required level.</li> <li>This recommended action has been accepted and steps have already been implemented to carry out the training.</li> <li>The RMPS will submit budget based on requirements.</li> </ul>

		<p><b>Examiners.</b></p> <ul style="list-style-type: none"> <li>• <b>HM Customs is inadequately trained in ML and TF due to inadequate financial resources.</b></li> <li>• <b>Consultation with the Commissioner of the FSC on the appointment and dismissal of a director could compromise the matter of independence of the FSC</b></li> </ul>	<p>functions</p> <ul style="list-style-type: none"> <li>• Authorities should consider reviewing the measures in place for ensuring that persons of high integrity and good moral character are recruited into the RMPF and that there is a system in place for ongoing monitoring of officers to maintain the high level of professionalism and integrity needed.</li> <li>• There is a need for additional lawyers in the Legal Department.</li> <li>• The Legal Department should hold workshops with the FCAU on the operation of the various pieces of legislation relating to ML and TF (investigative tools and confiscation procedures) investigations.</li> <li>• The authorities should consider reorganizing the organisational structure of the FSC for increased effectiveness of its performance. This should include consideration for adequate staff, equipment, funding and other forms of resources.</li> <li>• The provision in Sections 5 and 8 of the FCSA which require the</li> </ul>	<ul style="list-style-type: none"> <li>• Polygraph has been considered; however, officers will be required to swear, submit and comply with the Secrecy Act to ensure compliance with confidentiality and keep integrity at a high level,</li> <li>• This will be considered as part of GOM’s overall strategic development plan and will be subject to the availability of funding.</li> <li>• The Legal Department will seek to include workshops in its programme for 2012. In this regard, the input of the incoming DPP will be substantial. Accordingly, no concrete decisions can be taken until the post is manned (post -September 2011)</li> <li>• The Board of the Commission to respond</li> </ul>
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			<p>Governor to consult with the Director of the FSC on the matter of appointment and dismissal of a director should be removed.</p> <ul style="list-style-type: none"> <li>The Authorities should consider providing training in counterfeit currency identification to all Customs, especially those working at the ports. The identification of precious metals and stones as such should also be conducted as a part of such training.</li> <li>The RA should set guidelines on confidentiality and ensure that the Financial Intelligence Unit fully observes those guidelines.</li> </ul>	<ul style="list-style-type: none"> <li>The Board of the Commission to respond</li> <li>The RA will request the ECCB to provide training in counterfeit currency identification to all relevant persons. Steps will be taken to identify a facilitator for conducting training in the identification of precious metals and stones. This is not a priority given that is little or no activity in precious metals in the island.</li> <li>The authorities are currently reviewing the procedures to implement the recommended action.</li> </ul>
<p>31. National co-operation</p>	<p><b>PC</b></p>	<ul style="list-style-type: none"> <li><b>There are no established mechanisms in place to allow policy makers to cooperate with each other</b></li> <li><b>No formalised mechanism is in place for co-operation between the competent authorities at the</b></li> </ul>	<ul style="list-style-type: none"> <li>The authorities should ensure that an effective mechanism is put in place to bring together the various competent authorities on a regular basis to develop and implement policies and strategies to combat money laundering and terrorist</li> </ul>	<ul style="list-style-type: none"> <li>The members of the RA are heads of the various competent authorities who meet regularly to carry out the functions of the RA including developing and implementing policies and procedures to meet the</li> </ul>

		<p><b>operational level.</b></p>	<p>financing.</p> <ul style="list-style-type: none"> <li>• The authorities should consider the setting up a secretariat to monitor the implementation of the country’s AML/CFT regime</li> <li>• There appear to be an excellent working relationship between the competent authorities at a strategic level due to the composition of the RA. However at the operational level the relationship among competent authorities appear to be ad-hoc.</li> <li>• The authorities should consider formalising the arrangement with MOUs among the local authorities.</li> <li>• The AG department should consider playing a more pro-active role in giving guidance to the FCAU in relation to AML/CFT investigations.</li> <li>• The competent authorities should consider formulating a strategic plan on a risk-based approach both in the short-term and long-term targeting the DNFBPs and NPOs with awareness training seminars to help them become fully compliant with their obligations and requirements</li> </ul>	<p>obligations in the POCA, AML/CFT Regulations and Code and to advise the Government on such matters.</p> <ul style="list-style-type: none"> <li>• This is done through various assessments and evaluations of the jurisdictions AML/CFT framework.</li> <li>• The proposal is to build on the relationship that exists between the head of the competent authorities.</li> <li>• The authorities are considering introducing a MOU for this purpose.</li> <li>• This function will be performed by the Criminal Division of the Legal Department under direct management of the DPP. Firm commitments will likely be made once the post is filled next month.</li> <li>• The FSC has been designated Supervisory Authority for the DNFBs and NPOs. Its Strategic Plan includes conducting training to entities subject to the AML/CFT requirements and obligations on a risk-based approach.</li> </ul>
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			<p>under the legislation.</p> <ul style="list-style-type: none"> <li>• Montserrat has demonstrated a high level of national cooperation amongst the policy makers. There were two main issues that were identified during the onsite visit. Firstly, there was far too much duplication on the part of the various bodies. The Chairman of the RA was also the Regulator of IBCs and Director/Commissioner of the Financial Services Commission. It is apparent that the Commissioner also functioned in other regulatory roles. Apart from the possibility of conflicts of interest arising, the ability to work effectively when saddled with such enormous responsibilities was highly questionable. This was borne out because during the onsite visit it was clear that not all DNFBPs and all financial institutions, to a lesser extent had received comprehensive monitoring, supervision and training in keeping with the mandate of the FSC legislation. Clearly more resources need to be allocated to these areas to increase the complement of the FSC staff.</li> <li>• Montserrat also needs to consider putting measures in place to ensure a more definitive separation of roles</li> </ul>	<ul style="list-style-type: none"> <li>• The Board of the Commission and the authorities to respond</li> <li>• The Board of the Commission and</li> </ul>
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			and functions and to ensure the greatest transparency.	the authorities to respond
32. Statistics	<b>PC</b>	<ul style="list-style-type: none"> <li>• <b>Statistics do not appear to have been faithfully maintained therefore all situations were not necessarily captured.</b></li> <li>• <b>There is no comprehensive and independent statistics maintained by the Reporting Authority (RA) in relation to international wire transfers.</b></li> <li>• <b>No information about spontaneous referrals made by the Reporting Authority (RA) or FCAU to foreign authorities.</b></li> <li>• <b>No statistics maintained by HM Customs on matters that were referred to other Agencies such as the RA for investigations.</b></li> <li>• <b>HM Customs does not keep any comprehensive statistics on cross border seizures.</b></li> <li>• <b>HM Customs does not yet maintain statistics on the cross border transportation of currency and bearer monetary instruments.</b></li> <li>• <b>There is no comprehensive</b></li> </ul>	<ul style="list-style-type: none"> <li>• The FIU should establish a system for that would ensure that the collection and analysis of information relative to wire transfers are carried out.</li> <li>• Statistics need to be utilised as a means of assessing and reviewing existing systems.</li> <li>• HM Customs does not yet maintain statistics on the cross border transportation of currency and bearer monetary instruments, however there is an amendment bill to the Customs (Control and Management) Act that would incorporate a mandatory declaration system when implemented.</li> <li>• HM Customs should consider keeping and maintaining comprehensive statistics on cross-border seizures, formal and spontaneous requests. In addition, all competent authorities should consider the procedure adopted in Recommendation 32 of FATF 40+9 for the recording and maintaining of statistics.</li> </ul> <p>Comprehensive statistics should be</p>	<ul style="list-style-type: none"> <li>• Currently statistics of remittances are submitted to the FSC by MSBs. We propose to request that all financial institutions submit information relative to wire transfers to the FSC. The FSC will provide FIU with statistics on wire transfers.</li> <li>• Customs currently keep statistics manually. The Department intends to introduce an electronic database in the near future</li> <li>• The database mentioned above will include the keeping of statistics on cross-border seizures, formal and spontaneous requests.</li> <li>• Customs currently keep statistics manually. The Department intends</li> </ul>

		<p><b>statistics maintained by all competent authorities.</b></p> <ul style="list-style-type: none"> <li>• <b>No information maintained about spontaneous referrals made by the RA or FCAU to foreign authorities.</b></li> <li>• <b>No statistics is maintained by the RA on international wire transfers.</b></li> </ul>	<p>maintained on all aspects of Customs and Excise operations including records of declaration/disclosures and seizures. These statistics should be readily available for use by Customs, LEAs and other government departments.</p>	<p>to introduce an electronic database in the near future. In addition, information is also held in the ASYCUDA database system</p>
33. Legal persons – beneficial owners	PC	<ul style="list-style-type: none"> <li>• <b>Effectiveness of implementation cannot be assessed due to the recent enactment of the legislation.</b></li> <li>• <b>No clear provision requiring the maintenance of beneficial ownership and control information of local companies.</b></li> <li>• <b>No clear provision allowing for access to and obtaining information on beneficial ownership and control of local companies.</b></li> </ul>	<ul style="list-style-type: none"> <li>• Clear provisions needs to be made in the Companies Act to require the keeping of information on beneficial ownership and control of local companies.</li> <li>• Clear provisions must be made for the obtaining of and access to information, in a timely manner on beneficial ownership and control of local companies under the Companies Act</li> </ul>	<ul style="list-style-type: none"> <li>• A consultant has been appointment to draft a Bill for the Companies Act. It is intended that the new legislation will provide that a competent authority has power to obtain and keep information on beneficial ownership in respect of local companies.</li> <li>• See above comments. It is the intention that adequate provisions will be made in any new legislation for the information required to be kept will be available to the competent authority in a timely manner.</li> </ul>
34. Legal arrangements – beneficial owners	LC	<ul style="list-style-type: none"> <li>• <b>Effectiveness of implementation cannot be assessed due to the recent enactment of the legislation</b></li> </ul>		
<b>International Co-operation</b>				
35. Conventions	PC	<ul style="list-style-type: none"> <li>• <b>Some psychotropic substances in the updated Schedules to the</b></li> </ul>	<ul style="list-style-type: none"> <li>• There is not sufficient evidence that</li> </ul>	<ul style="list-style-type: none"> <li>• An audit of the legislative provision is being undertaken and any</li> </ul>

		<p><b>1971 Vienna Convention are not scheduled as controlled drugs.</b></p> <ul style="list-style-type: none"> <li>• <b>The Palermo Convention and the 1999 Terrorist Financing Convention have not been duly extended to Montserrat.</b></li> </ul>	<p>psychotropic substances have been adequately covered.</p> <ul style="list-style-type: none"> <li>• The authorities should ensure full compliance with the provisions of all the requisite conventions.</li> <li>• Montserrat should request that the Palermo Convention and the 1999 Terrorist Financing Convention be extended to the jurisdiction.</li> </ul>	<p>necessary amendments made to the local legislation in 2012</p> <ul style="list-style-type: none"> <li>• The FCO/GOV to respond</li> <li>• The FCO/GOV to respond</li> </ul>
<p>36. Mutual legal assistance (MLA)</p>	<p>LC</p>	<ul style="list-style-type: none"> <li>• <b>No specific procedures for establishing timelines for complying with requests for assistance</b></li> <li>• <b>Difficult to judge effectiveness of implementation.</b></li> </ul>	<ul style="list-style-type: none"> <li>• Montserrat should consider reviewing the current procedures for executing MLAT requests to provide for greater efficiency.</li> <li>• The jurisdiction should create mechanisms to establish specific timelines for complying with requests for assistance.</li> <li>• Montserrat should consider expanding mutual legal assistance provisions to include fiscal offences.</li> <li>• Clear allowance should be made to facilitate compliance with requests for assistance in terms of foreign non-criminal confiscation orders.</li> </ul>	<ul style="list-style-type: none"> <li>• The procedures will be reviewed with a view to making necessary changes by the end of June 2012.</li> <li>• Existing provisions and procedures will be reviewed with a view to making necessary changes by the end of June 2012.</li> <li>• Amendments to be made to the local legislation in 2012. Executive Council will be expected to provide policy guidance.</li> <li>• Amendments to be made to the local legislation in 2012</li> </ul>

			<ul style="list-style-type: none"> <li>• Clear provisions should be made to ensure that civil forfeiture extends to foreign non-criminal orders.</li> <li>• Montserrat should articulate a clear definition of a serious arrestable offence or a standard for the application of the term</li> </ul>	<ul style="list-style-type: none"> <li>• Amendments to be made to the local legislation in 2012</li> <li>•</li> </ul>
37.Dual criminality	LC	<ul style="list-style-type: none"> <li>• <b>Only partial mutual assistance may be granted in the absence of dual criminality.</b></li> </ul>	<ul style="list-style-type: none"> <li>• Montserrat should consider reviewing the current procedures for executing MLAT requests to provide for greater efficiency.</li> <li>• The jurisdiction should create mechanisms to establish specific timelines for complying with requests for assistance.</li> <li>• Montserrat should consider expanding mutual legal assistance provisions to include fiscal offences.</li> <li>• Clear allowance should be made to facilitate compliance with requests for assistance in terms of foreign non-criminal confiscation orders.</li> <li>• Clear provisions should be made to ensure that civil forfeiture extends to foreign non-criminal orders.</li> <li>• Montserrat should articulate a clear</li> </ul>	<ul style="list-style-type: none"> <li>• The procedures will be reviewed with a view to making necessary changes by the end of June 2012.</li> <li>• Existing provisions and procedures will be reviewed with a view to making necessary changes by the end of June 2012.</li> <li>• Amendments to be made to the local legislation in 2012</li> <li>• Amendments to be made to the local legislation in 2012</li> <li>• Amendments to be made to the local legislation in 2012</li> </ul>

			definition of a serious arrestable offence or a standard for the application of the term	
38.MLA on confiscation and freezing	LC	<ul style="list-style-type: none"> <li>• <b>Unclear definition and applicable standard of what is a serious arrestable offence.</b></li> </ul>	<ul style="list-style-type: none"> <li>• Montserrat should articulate a clear definition of a serious arrestable offence or a standard for the application of the term.</li> </ul>	<ul style="list-style-type: none"> <li>• No action taken. Amendments to be made to the local legislation in 2012</li> </ul>
39.Extradition	LC	<ul style="list-style-type: none"> <li>• <b>Effectiveness of Implementation could not be assessed.</b></li> </ul>	<ul style="list-style-type: none"> <li>• There is no specific obligation requiring the Governor to act expeditiously having received a request for extradition. Montserrat needs to consider introducing a specific time requirement or even “without delay” provisions.</li> </ul>	<ul style="list-style-type: none"> <li>• No action taken to amend the Extradition Act; however section 20 of the Interpretation Act which came into force on August 17, 2011 provides: “<b>20. General Principles Provisions when no time prescribed</b> Where no time is prescribed or allowed within which anything is to be done, <b><u>the thing must be done with all convenient speed</u></b>, and as often as the prescribed occasion arises”. (bold and underlining min for emphasis)</li> </ul>
40.Other forms of co-operation	LC	<ul style="list-style-type: none"> <li>• <b>The CJICA does not fully address whether requests are refused on the sole ground that it is considered to involve fiscal matters.</b></li> </ul>	<ul style="list-style-type: none"> <li>• The authorities should consider making amendments to the Criminal Justice (International Co-operation) Act (Cap. 04.06) to state specifically, that requests should not be refused on the sole ground on a request pertaining to fiscal matters.</li> </ul>	<p>Amendments to be made to the local legislation in 2012</p> <p>With the introduction of post of DPP</p>

			<ul style="list-style-type: none"> <li>• The Montserrat authorities should consider having all international request relating to AML/CFT be directed through the Attorney General office and designate the AG as the Central Authority for Montserrat. This provision once introduced would remove any administrative delays of foreign requests being action upon by the AG in the performance of his functions in a timely manner.</li> <li>• The current legislative provisions governing the provision of assistance should be reassessed in an attempt to streamline the process to make it more efficient and reduce the likelihood of delays.</li> <li>• There was no evidence that Montserrat had actually entered into any agreements or signed MOUs with other countries to facilitate exchange of information.</li> </ul>	<p>in September under the New Constitution, this authority should be vested in the DPP. The amendments will be drafted by consultant Richard Carpenter on receipt of instructions from the FSC. It is anticipated that this will take place by the end of June, 2012.</p> <ul style="list-style-type: none"> <li>• No action taken. To be placed on Legislative programme for completion of any necessary amendments to the local legislation in 2012</li> <li>• The FSC has entered into MOUs with Eastern Caribbean Central Bank, 8 Member states of the ECCU, and with Bank Supervisory authorities in Panama, Costa Rica and Guatemala. The jurisdiction has also entered into bilateral agreements with all EU countries to provide information in respect of exchange of information required to be provided under The Montserrat Reporting of Savings Income</li> </ul>
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				Information Order 2005. In addition, ten agreements have signed and implemented under the Tax Information Exchange Act, 2010. They are with respectively, Australia, Kingdom of Belgium, Denmark, Faroes, Finland, Greenland, Iceland, Kingdom of the Netherlands, Kingdom of Norway and Sweden.
<b>Nine Special Recommendations</b>				
SR.I Implement UN instruments	<b>LC</b>	<ul style="list-style-type: none"> <li>• <b>Montserrat is not party to the Palermo Convention and the 1999 Terrorist Financing Convention.</b></li> </ul>	<ul style="list-style-type: none"> <li>• Montserrat should request that the Palermo Convention and the 1999 Terrorist Financing Convention be extended to the jurisdiction.</li> </ul>	<ul style="list-style-type: none"> <li>• The authorities are in negotiating with the U.K. Government to make arrangements to extend the Convention to Montserrat.</li> </ul>
SR.II Criminalise terrorist financing	<b>PC</b>	<ul style="list-style-type: none"> <li>• <b>The legislation does not cover terrorist activity taken to compel an international organisation to do or to abstain from doing an act in keeping with Article 2(1) (b) of the Terrorist Financing Convention.</b></li> <li>• <b>The definition of terrorist does not include a ‘terrorist organisation’.</b></li> <li>• <b>Effectiveness of the legal framework cannot be properly assessed in the absence of</b></li> </ul>	<ul style="list-style-type: none"> <li>• Montserrat needs to review the definition of “terrorism” in order to properly address the activities of a terrorist organisation. The definition of ‘terrorism” needs to be reviewed to capture all of the acts referred to in the Suppression of the Financing of Terrorism Convention that are set out in the Nine Conventions specified under that instrument.</li> <li>• Similarly, the legislation needs to be amended to capture terrorist activity that is an act intended to cause death or serious bodily injury to a civilian,</li> </ul>	<ul style="list-style-type: none"> <li>• Amendments to be made to the local legislation in 2012</li> <li>• Amendments to be made to the local legislation in 2012</li> </ul>

		<p><b>investigations and convictions for TF.</b></p>	<p>or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel an international organization to do or to abstain from doing any act.</p>	
<p>SR.III Freeze and confiscate terrorist assets</p>	<p><b>PC</b></p>	<ul style="list-style-type: none"> <li>• <b>The systems in place do not adequately cover immediate effective communication for actions taken under the freezing mechanisms referred to in criteria III.1 – III.3 to the financial sector upon taking such action.</b></li> <li>• <b>There is no specific provision for effective and publicly known procedures for considering de-listing requests and unfreezing of funds or other assets of de-listed persons or entities in a timely manner consistent with international procedures.</b></li> <li>• <b>Immediate freezing of terrorist funds is not explicitly provided for.</b></li> </ul>	<ul style="list-style-type: none"> <li>• The jurisdiction needs to establish concrete systems to provide immediate effective communication for actions taken under the freezing mechanisms referred to in criteria III.1 –III.3 to the financial sector immediately upon taking such action.</li> <li>• Montserrat may need to consider recommending to the UK that the 2001 Anti-Terrorism Order amended to specifically address the issue of ‘freezing without delay’ the funds of identified terrorists.</li> <li>• The jurisdiction needs to consider making specific provisions for effective and publicly known procedures for considering de-listing requests and unfreezing of funds or other assets of de-listed persons or entities in a timely manner consistent with international procedures.</li> </ul>	<ul style="list-style-type: none"> <li>• Written procedures will be introduced for communicating to the financial sector actions to be taken to freeze terrorist funds or other assets.</li> <li>• A recommendation from GOM will be sent to FCO to action this.</li> <li>• The procedures for considering de-listing requests is not carried out in the territory, but in the UK. The authorities are only responsible for ensuring that Orders emanating from the U.K. are implemented and financial institutions advised in a timely manner consistent with international procedures.</li> <li>• The authorities are aware of</li> </ul>

		<ul style="list-style-type: none"> <li>• <b>There is no adequate provision for extraordinary expenses once funds have been seized or frozen.</b></li> </ul>	<ul style="list-style-type: none"> <li>• There needs to be adequate provision for extraordinary expenses once funds have been seized or frozen.</li> <li>• Provision should be made in law for the procedure for forwarding requests for the release of funds or assets which have been frozen and which are required for basic living expenses to the Committee which has been established under S/RES/1452 (2002).</li> </ul>	<p>contingent liability that exists.</p> <ul style="list-style-type: none"> <li>• This is recommended action is provided for in all relevant legislation introduced in respect of freezing of funds or assets.</li> </ul>
SR.IV Suspicious transaction reporting	LC	<ul style="list-style-type: none"> <li>• <b>No requirements relating to the reporting of suspicious transactions involving tax matters.</b></li> </ul>	<ul style="list-style-type: none"> <li>• The requirement to report suspicious transactions should apply regardless of whether they are thought, among other things to involve tax matters.</li> </ul>	<ul style="list-style-type: none"> <li>• The Executive Council will consider whether to introduce a Bill to amend POCA to make provision for recommended action.</li> </ul>
SR.V International co-operation	PC	<ul style="list-style-type: none"> <li>• <b>The definition of terrorism in the ATFOMOTO does not adequately meet the requirements of the convention for the Suppression of the Financing of Terrorism.</b></li> <li>• <b>Terrorist financing may not be an extraditable offence.</b></li> <li>• <b>The CJICA does not fully address whether requests are refused on the sole ground that it is considered to involve fiscal</b></li> </ul>	<ul style="list-style-type: none"> <li>• Montserrat should articulate a clear definition of a serious arrestable offence or a standard for the application of the term.</li> <li>• Montserrat should consider reviewing the current procedures for executing MLAT requests to provide for greater efficiency.</li> <li>• The jurisdiction should create mechanisms to establish specific timelines for complying with</li> </ul>	<ul style="list-style-type: none"> <li>• The authorities will liaise with the U.K. Government who makes Orders in Council concerning the introduction of this recommended action.</li> <li>• The Tax Information Exchange Act, 2011 and Tax Information Exchange Rules are applicable. The Act was brought into force on January 6, 2011. The Rules have been drafted and are to be submitted to Executive Council for consideration and passage within the next three months.</li> </ul>

		<b>matters.</b>	requests for assistance. <ul style="list-style-type: none"> <li>• Montserrat should consider expanding mutual legal assistance provisions to include fiscal offences</li> </ul>	<ul style="list-style-type: none"> <li>• The Legal Department will add this to its legislative agenda and will seek policy guidance from the Cabinet.</li> </ul> <p>These matters are under active consideration and will require policy guidance from Cabinet which will be sought in the medium term.</p>
SR VI AML requirements for money/value transfer services	<b>PC</b>	<ul style="list-style-type: none"> <li>• <b>The effectiveness of Sanctions cannot be evaluated due to lack of information</b></li> <li>• <b>Effectiveness of implementation cannot be ascertained due to the recent enactment of legislation</b></li> </ul>	<ul style="list-style-type: none"> <li>• The FSC should provide for training to guide Money service providers as to the effective execution of their responsibilities under the recently enacted AML/CFT legislative framework.</li> <li>• Bearing in mind the above, the FSC should assess the current level of compliance with AML/CFT legislation of the MSB providers with a view to improve the compliance level with the recently enacted legislations.</li> </ul>	<ul style="list-style-type: none"> <li>• Training of MSBs and FI's is scheduled to be carried out in September 2011.</li> <li>• The FSC is currently reviewing the written compliance procedures of all MSB to ensure that stated policies and procedures meet the requirements in the AML/CFT legislation.</li> </ul>
SR VII Wire transfer rules	<b>LC</b>	<ul style="list-style-type: none"> <li>• <b>Effectiveness cannot be assessed due to recent passage of the POCA Regulations and Code.</b></li> </ul>	<ul style="list-style-type: none"> <li>• The Code should be amended to address the requirement whereby each party in a payment chain of intermediaries and beneficiary financial institutions should be required to ensure that full originator</li> </ul>	<ul style="list-style-type: none"> <li>• Rule 47 of the AML/CFT Code provides for this recommended action.</li> </ul>

			<p>information accompanies a wire transfer transmitted.</p>	
<p>SR.VIII Non-profit organisations</p>	<p><b>PC</b></p>	<ul style="list-style-type: none"> <li>• <b>Given the recent enactment of the NPO Regulations, the Commission has only recently commenced its outreach program</b></li> <li>• <b>No systems or procedures in place to publicly access information on NPOs.</b></li> <li>• <b>No requirement to report unusual donations by NPOs.</b></li> <li>• <b>No monitoring of the NPOs international activities.</b></li> <li>• <b>No investigative expertise with regard to examining NPOs suspected of either being exploited by or actively supporting terrorist activities.</b></li> </ul>	<ul style="list-style-type: none"> <li>• The authorities should undertake outreach to the NPO sector in order to protect the sector from terrorist activities. The authorities should monitor activities of NPOs to prevent or reduce the likelihood that funds and other assets transferred through NPOs are not diverted to support the activities of terrorists or terrorist organisations NPOs should be required to report unusual donations to the Reporting Authority.</li> <li>• The authorities should ensure that the regulated entities (NPOs) are vigilant in their response to the risk for abuse by those who finance terrorism.</li> <li>• NPOs should be made aware of the reporting procedures for irregular transactions relating to terrorist activities.</li> <li>• A program for the monitoring of compliance by the NPOs should be developed by the regulatory authority.</li> <li>• Authorities should consider</li> </ul>	<ul style="list-style-type: none"> <li>• From the beginning of September 2011 the authorities have commenced the registration of Non-Profit Organizations, a requirement of the Non-Profit Organization Regulations No. 24 of 2010.</li> <li>• A seminar for NPOs will be conducting in January 2012 to apprise registered NPOs of the risks.</li> <li>• This recommended action will be included in the training seminar.</li> <li>• Annual registration and the submission of annual returns will provide a mechanism for the Supervisory Authority to monitor activities.</li> <li>• The Non-Profit Regulations 2010</li> </ul>

			<p>establishing systems and procedures to allow information on NPOs to be publicly available.</p> <ul style="list-style-type: none"> <li>• The authorities should consider monitoring the NPOs and their international activities.</li> <li>• Consideration should be given to developing investigative expertise with regard to examining NPOs suspected of either being exploited by or actively supporting terrorist activities.</li> </ul>	<p>provides for information on NPOs to be publicly available by inspection of the Register of NPOs</p> <ul style="list-style-type: none"> <li>• NPOs will be required to register and submit annual returns. The information provided in the returns will be used for monitoring their activities.</li> <li>• The recommended action is accepted. Any training for the development of investigative experts in respect of AML/CFT activities will include the training of misuse of NPOs to support and fund terrorist activities.</li> </ul>
<p>SR.IX Cross Border Declaration &amp; Disclosure</p>	<p>NC</p>	<ul style="list-style-type: none"> <li>• <b>There is no disclosure/declaration system in place with the required threshold.</b></li> <li>• <b>Domestic cooperation between Customs and other agencies is not adequately structured.</b></li> <li>• <b>Customs officers not sufficiently trained in AML/CFT and other related customs techniques.</b></li> <li>• <b>Customs' participation in AML/CFT is not sufficient.</b></li> <li>• <b>Unable to assess effectiveness of disclosure system due to</b></li> </ul>	<ul style="list-style-type: none"> <li>• Customs should implement the declaration system to be used in conjunction with the disclosure system for incoming and outgoing passengers. The threshold should not be higher than EUR/US15000.00.</li> <li>• Customs officials should be trained in behaviour analysis for use in passenger screening and smuggling techniques of potential currency carriers.</li> <li>• Authorities should consider the</li> </ul>	<ul style="list-style-type: none"> <li>• The jurisdiction has now introduced the disclosure system for incoming passengers.</li> <li>• The authorities are investigating appropriate training and the funding of such training. Enquires will be made into viability of sharing resources with other jurisdictions.</li> <li>• This recommended action is a</li> </ul>

		<p><b>insufficient statistics.</b></p>	<p>making of false disclosures/declarations to Customs authorities a strict liability offence.</p> <ul style="list-style-type: none"> <li>• Comprehensive statistics should be maintained on all aspects of Customs and Excise operations including records of declaration/disclosures and seizures. These statistics should be readily available for use by Customs, LEAs and other government departments.</li> <li>• The Authorities should consider providing training in counterfeit currency identification to all Customs, especially those working at the ports. The identification of previous metals and stones as such should also be conducted as a part of such training.</li> <li>• There is a need for increased participation by the Customs Department in combating money laundering and terrorist financing.</li> <li>• Consideration should be given to reporting all currency interdictions</li> </ul>	<p>provision in section 113 (1) and (2) of Customs (Control and Management) Act.</p> <ul style="list-style-type: none"> <li>• The department already keep statistics although manually. A new computerised database will shortly be introduced. In addition statistics are also held in ASYCUDA database system.</li> <li>• The authorities will seek assistance from ECCB to carry out the training for the Police and Customs officers on allocation of funds.</li> <li>• The Police and Customs will introduce a formal programme for joint co-operation between the two competent authorities.</li> <li>• All currency interdictions reports are reported directly to the FCAU. The</li> </ul>
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			<p>where untrue disclosures/declarations are made to the RA, whether or not administrative or criminal proceedings are being considered.</p> <ul style="list-style-type: none"> <li>• Customs should consider reporting all declaration/disclosures to the RA that is equal to and above the declared sum of US\$15,000.</li> </ul>	<p>authorities now proposes to introduce procedure that statistics on these reports are provided to the RA on a periodic basis.</p> <ul style="list-style-type: none"> <li>• The recommendation is accepted.</li> </ul>
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