

CARIBBEAN FINANCIAL ACTION TASK FORCE



Twelfth Follow-Up Report of St. Maarten

LI Plenary and Working Group Meeting
November 20th – December 11th, 2020
Virtual

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ST. MAARTEN TWELFTH FOLLOW-UP REPORT UPDATE AND FULL ANALYSIS

I. INTRODUCTION

1. The CFATF Plenary approved the [third round Mutual Evaluation Report \(MER\) of St. Maarten](#) in November 2012 and subsequent by Round Robin on January 8th, 2013.¹ The Plenary decided to place St. Maarten under expedited follow-up and the country reported back to the CFATF in May 2013 ([first follow-up report](#)), November 2012 ([second follow-up report](#)), May 2014 ([third follow-up report](#)), November 2014 ([fourth follow-up report](#)), May 2015 ([fifth follow-up report](#)); November 2015 ([sixth follow-up report](#)), June 2016 ([seventh follow-up report](#)), November 2016, ([eight follow-up report](#)), May 2019, ([ninth follow-up report](#)), November 2019 ([tenth follow-up report](#)), and June 2020 ([eleventh follow-up report](#)).
2. St. Maarten has indicated that it is of the opinion that it had met the criteria necessary for removal from the follow-up process and the Third Round of Mutual Evaluations. Hence, this report is based on the CFATF procedure for removal from the follow-up process as agreed² by the CFATF Plenary in May 2014 and contains a detailed description and analysis of the actions taken by St. Maarten in respect of the Core and Key Recommendations rated partially compliant (PC) or non-compliant (NC) in the MER, as well as a description and analysis of the other Recommendations rated PC or NC.
3. The analysis of this report was predicated based on information provided by St. Maarten and is a desk evaluation that focused on Recommendations rated PC and NC, which means that only a part of the Anti-Money Laundering/Combating Financing of Terrorism (AML/CFT) system was reviewed. The analysis mainly focused on the analysis of the main laws, regulations, directives, state decrees, ministerial decrees along with other material provided by St. Maarten. As this is a desk-based review, the level and nature of the information provided and accepted in many instances are inherently different from that which would have been accepted during an onsite visit. Consequently, the conclusions of this report do not prejudge the results of any future assessments as they are based on information that was not verified through an onsite process.

¹ Post Plenary, in order to provide St Maarten with a comprehensive list of outstanding documents, it was discovered that translated Articles of the Netherlands Antilles Penal Code that were relevant to assessing compliance primarily with Recommendation 1 (Table of Designated Category of Offences) and also affecting Recommendation 3, 13, 35, 36, SRII and SR IV were not analysed by the Examiners. Accordingly, a post Plenary analysis was conducted, which resulted in the rating for Recommendation 1 being upgraded from a “PC” to a “LC”. The ratings for Recommendations 3, 13, 35, 36, SRII 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.

² According to the decisions by the May 2014 Plenary, countries can apply to exit the follow-up process in the following cases:

- a. Countries who have achieved the level of C/LC in all of their Core and Key Recommendations that were rated PC/NC in their MERs to apply to exit the FUP; or
- b. Countries that have achieved the level of C/LC in all their Core Recommendations, but have one (1) or more Key Recommendations that were rated PC/NC and still have not achieved the level of C/LC in those recommendations to apply to exit once they have achieved substantial compliance (the large majority of non-Core and Key Recommendations have been addressed) in their non-Core or Key Recommendations that were rated PC/NC in their MER.



4. St. Maarten's AML/CFT legal and regulatory frameworks are based on codes, national ordinances, executive decrees, regulations, and provisions and guidelines (P&Gs). The main AML/CFT ordinance is the National Ordinance Combating ML/TF (AB 2019 No. 25). The relevant legislation is discussed in detail in section IV of this report.
5. St. Maarten received ratings of PC and NC on fourteen (14) of the sixteen (16) Core³ and Key⁴ Recommendations. Core Recommendation 1 and Key Recommendation 4 were rated LC. St. Maarten was also rated partially compliant or non-compliant in twenty (20) non-core and non-key Recommendations. These ratings are broken down in the following table:

| Partially Compliant (PC) | Non-Compliant (NC) |
|---|---|
| Core Recommendations | |
| R.5 - Customer due diligence R. 10 - Record-keeping | R. 13 - Suspicious transaction reporting SR. II - Criminalize terrorist financing SR. IV – Suspicious transaction reporting |
| Key Recommendations | |
| R. 3 - Confiscation and provisional measures R. 23 - Regulation, supervision and monitoring R. 35 - Conventions R. 36 - Mutual Legal Assistance R. 40 - Other forms of co-operation SR. I - Implementation of UN instruments SR. III - Freezing and confiscation of terrorist assets SR. V - International cooperation | R. 26 - The MOT |
| Other Recommendations | |
| R. 6 - Politically exposed persons R. 9 - Third parties and Introducers R. 14 - Protection & no Tipping-off R. 17 - Sanctions R. 21 - Special attention for higher risk countries R. 25 - Guidelines & Feedback R. 27 - Law enforcement authorities R. 30 - Resources R. 31 - National co-operation R. 32 - Statistics R. 38 - MLA on confiscation and freezing R. 39 - Extradition SR. VII - Wire transfer rules | R. 12 - DNFBPs – R. 6,8-11 R. 16 - DNFBP-R. 13-15 &21 R. 24 - DNFBP-regulation, supervision, and monitoring R. 33 - Legal persons-beneficial owners SR. VI - AML requirements for MVTS SR. VIII - NPOs SR. IX - Cross-border Declaration & Disclosure |

³ The Core Recommendations as defined in the FATF procedures are R.1, R.5, R.10, R.13 and SR. II and IV.

⁴ The Key Recommendations are R.3, R.4, R.23, R.26, R.35, R.36, R.40, SR. I, SR. III, and SR. V.



II. MAIN CONCLUSION AND RECOMMENDATION TO THE PLENARY

Core Recommendations

6. **Recommendation 5:** At the time of the on-site visit, St. Maarten's legislation presented several shortcomings regarding the categories of financial services providers obliged to apply CDD requirements and the range of CDD measures applicable by these. St. Maarten has addressed most of the deficiencies through the enactment of the National Ordinance Combating ML/TF (AB 2019 No. 25). Two gaps still exist concerning the implementation of CDD measures when executing cross-border and domestic wire transfers and allowing financial institutions to identify the client after the establishment of the business relationship in the circumstances specified in R.5, which are considered minor deficiencies. The compliance with R.5 is up to the level comparable to an LC.
7. **Recommendation 10:** The National Ordinance Combating ML/TF (AB 2019 No. 25) compels service providers to maintain all necessary records on transactions, including commercial correspondence, following the termination of an account or business relationship for at least ten (10) years. This ordinance has the effect of bringing the level of R. 10 to a level comparable to C.
8. **Recommendation 13:** The Penal Code, the National Ordinance on Firearms (AB 2013 CT No. 183), and the National Ordinance on Import, Export, and Transit (AB 2014 GT No. 4) incorporate the complete designated categories of offences required by the FATF. Furthermore, the Ministerial Decree No. 2016/165 ensures that service providers consider tax crimes when analysing transactions and they identify suspicions of ML, TF, and predicate offences on a risk-based approach rather than by heavily relying on objective indicators. These actions have had the effect of raising the level of compliance with R. 13 to a level comparable to a C.
9. **Special Recommendation II:** The deficiencies for this Special Recommendation have been addressed with the provisions of the National Ordinance amending the Penal Code (AB 2019, no. 41), which sets out a new TF offence in Article 2:408. St. Maarten has brought compliance with this recommendation up to the level comparable at minimum to LC.
10. **Special Recommendation IV:** Deficiencies found in R. 13 hindered reporting suspicious transactions related to both ML and TF; consequently, the MER indicated that the recommended actions for SR IV were included in those posed for R13. The amendments made by St. Maarten to its criminal law mentioned in paragraph eight (8) have had the effect of raising the level of compliance with SR. IV to a level comparable to a C.

Key Recommendations

11. **Recommendation 3:** St. Maarten has a legal basis upon which to confiscate or take provisional measures concerning TF and predicate offences. Moreover, the country clarified the provisions by which confiscation measures in the Penal Code can be imposed without notice. The deficiency related to maintaining statistics is continuously being addressed by competent authorities responsible for the investigation, prosecution, and conviction of ML related cases. Therefore, St. Maarten has brought the level of compliance with R. 3 up to that equivalent to a C.



12. **Recommendation 23:** The deficiencies for R. 23 were addressed through different types actions, including the approval of new legislation applicable to MTCs, supervision of MTCs operating under license, and court action against illegal operations of MTCs. R. 23 is now implemented to a level equivalent to an LC.
13. **Recommendation 26:** Since the approval of its MER, St. Maarten has strengthened the legal and institutional framework of the MOT and now the legal basis for the establishment and the autonomy of the MOT is appropriately set out. The MOT has also improved its relationship with and outreach to service providers, the number of reports submitted to the PPO, the security of its premises, and the production of annual reports. St. Maarten has brought the level of compliance with R. 26 up to that equivalent to a C.
14. **Recommendation 35:** St. Maarten's MER identified several deficiencies about the implementation of the Vienna, Palermo, and TF Conventions. St. Maarten's authorities provided supporting material that explained the constitutional and international affairs framework that allows the automatic incorporation of treaty provisions into the legal system of all countries that are part of the Kingdom of the Netherlands, including St. Maarten.. St. Maarten has brought the level of compliance with R. 35 up to that equivalent to an LC.
15. **Recommendation 36:** St. Maarten has corrected the deficiencies relative to the TF Convention that impacted its ability to provide mutual legal assistance. The compliance with R. 36 has improved up to a level comparable at minimum to LC.
16. **Recommendation 40:** The MER indicated that St. Maarten needed to improve its international co-operation framework by allowing law enforcement entities to provide for international cooperation with their counterparts, providing for the Central Bank to undertake investigations on behalf of their foreign counterparts, and maintaining statistics concerning spontaneous referrals of information. While the first deficiency remains, the country took actions to correct the other two. Firstly, it decided to amend several ordinances to ensure that foreign supervisors can conduct supervisions in its territory under the instruction of the Central Bank of Curaçao and St. Maarten (CBCS). Furthermore, the MOT has maintained statistics on information referrals since 2010. St. Maarten has brought the level of compliance with R. 40 up to that equivalent to an LC.
17. **Special Recommendation I:** St. Maarten has taken actions to correct the deficiencies identified for Special Recommendations II and III, which are described in the respective sections. The compliance with Special Recommendation I has improved up to a level comparable, at minimum, to LC.
18. **Special Recommendation III:** The MER identified four (4) deficiencies related to freezing and confiscation of terrorist assets. In this regard, St. Maarten amended the Sanctions National Ordinance to provide for the freezing of funds and other assets without delay, and the freezing of funds and other assets jointly held by designated persons, terrorists, or terrorist organizations with third parties. Notwithstanding Sint. Marten still needs to ensure that compliance with freezing obligations is mandatory and breaches of such obligations are subject to sanctions. St. Maarten has brought the level of compliance with R. 35 up to that equivalent to an LC.
19. **Special Recommendation V:** The MER required St. Maarten to address the deficiencies identified regarding Recommendations 36, 40, and Special Recommendation II to be compliant with Special



Recommendation V. St. Maarten has addressed such deficiencies. The compliance with SR. V has improved up to a level comparable, at minimum, to LC.

Other Recommendations

20. **Recommendation 9:** St. Maarten addressed the deficiencies found concerning requirements related to reliance on third parties by amending the P&Gs applicable to Credit Institutions (CIs), insurance companies (ICs), and Insurance Brokers (IBs), and making sure that those are regulated, supervised or monitored for, and has measures in place for compliance with, CDD and record-keeping requirements. Furthermore, the country clarified that the P&G for MTCs was not revised to include or provisions on reliance on third parties, because these service providers are not allowed to rely on third parties. The compliance with Recommendation 9 has improved up to a level comparable, at minimum, to LC.
21. **Recommendation 12:** St. Maarten has addressed most of the deficiencies identified in the MER concerning DNFBPs with the provisions of the National Ordinance combating ML/TF (AB 2019 No. 25); notwithstanding, minor deficiencies remain for the implementation of the measures set out in Recommendation 5 and 8. The compliance with Recommendation 12 has improved up to a level comparable at minimum to LC.
22. **Recommendation 16:** Most of the shortcomings identified for Recommendation 16 were addressed with the actions taken concerning Recommendations 13 and 14 and several provisions of the National Ordinance combating ML/TF (AB 2019 No. 25). Notwithstanding, the country still needs to ensure that DNFBPs are subject to all the requirements set out in Recommendations 15 and 21. Based on these findings, compliance with Recommendation 16 is comparable at a minimum to an LC.
23. **Recommendation 17:** The deficiencies related to the implementation of sanctions have been addressed with the approval of the National Ordinance combating ML/TF (AB 2019 No. 25) and the actions taken against MTCs that operated without a license as described in the section focused on Recommendation 23. St. Maarten has brought the level of compliance with Recommendation 17 up to that equivalent to a C.
24. **Recommendation 21:** St. Maarten revised its P&Gs to require service providers to consult the FATF's, CFATF's, and Central Bank's websites to identify jurisdictions deemed to be non-compliant or insufficiently compliant with internationally accepted standards for the prevention and combatting of ML/TF. Notwithstanding, the country still needs to set out countermeasures applicable to countries that do not apply or insufficiently apply the FATF Recommendations. The compliance with this Recommendation remains as PC.
25. **Recommendation 24:** St. Maarten addressed the deficiencies related to regulating and supervising DNFBPs with provisions of the National Ordinance combating ML/TF (AB 2019 No. 25) and actions taken at the administrative level by the MOT. Compliance with Recommendation 24 is comparable at a minimum to an LC.
26. **Recommendation 25:** St. Maarten has taken actions to subject DNFBPs to the supervision of the MOT as well as to provide AML/CFT guidance to financial and non-financial service providers; notwithstanding, the country did not provide information on guidance aimed at the factoring sector.



St. Maarten has improved the compliance with Recommendation 25 to a level comparable, at a minimum, to an LC.

27. **Recommendation 27:** St. Maarten did not provide information on actions taken to address the deficiencies relative to the allocation of resources for ML and TF training for the local law enforcement agencies, the execution of training activities, and the increase the number of law enforcement officers qualified to execute effective ML investigations. The level of compliance with Recommendation 27 remains PC.
28. **Recommendation 30:** St. Maarten corrected all the deficiencies relative to the MOT that cascaded into Recommendation 30 with administrative actions, including the increase, resources, and training of its staff, and the development of a tool to analyse STRs. Furthermore, the country provided information on the provision of AML/CFT training for law enforcement agencies and premises for the courts. According to these findings, the level of compliance with Recommendation 30 is comparable at a minimum with an LC.
29. **Recommendation 31:** The deficiencies related to the absence of a body tasked with co-ordinating St. Maarten's AML/CFT efforts were addressed with the approval of 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 Centre. Consequently, the level of compliance with Recommendation 31 has been brought up, at a minimum, to the level of LC.
30. **Recommendation 32:** St. Maarten has taken actions to ensure that the MOT maintains statistics on requests for additional information made to reporting entities and on information requests made to foreign FIUs. Moreover, the country provided information on the informative and training initiatives it has carried out to promote compliance with the service provider's reporting duties.
31. **Recommendation 33:** St. Maarten addressed most of the deficiencies identified for Recommendation 33 with provisions of the National Ordinance combating ML/TF (AB 2019 No. 25) and amendments to Book 2 of the Civil Code; notwithstanding, the country still needs to ensure that competent authorities have access in a timely fashion to adequate, accurate and current. The level of compliance with this recommendation has been brought up, at a minimum, to the level of LC.
32. **Recommendation 38:** St. Maarten has addressed the deficiencies relative to Recommendation 36 and the improvements made cascade into Recommendation 38. The compliance with R. 38 has improved up to a level comparable, at a minimum, to LC.
33. **Recommendation 39:** St. Maarten was required to correct the deficiencies identified for Recommendations 36 and Special Recommendation II to improve compliance with Recommendation 39. The referred Recommendations have been brought up to a level comparable to LC; consequently, the compliance with Recommendation 39 has improved up to a level comparable, at minimum, to LC.
34. **Special Recommendation VI:** St. Maarten corrected the deficiencies identified in Special Recommendation VI with the actions already described in Recommendation 23 regarding the closing of unlicensed MTCs and with the provisions of National Ordinance on Supervision of the Money



Remitter Companies (AB 2018, no.6) that sets out that the Central Bank of Curaçao and St. Maarten (CBCS) is responsible for registering MTCs' agents and sub-agents. With these actions, St. Maarten has improved compliance with this Special Recommendation to a level comparable, at a minimum, to C.

35. ***Special Recommendation VII:*** St. Maarten has not sufficiently addressed the two deficiencies found about the requirements related to wire transfers. The level of compliance with this recommendation remains as PC.
36. ***Special Recommendation VIII:*** Throughout the follow-up process, St. Maarten did not take sufficient actions to correct the deficiencies related to the abuse of NPOs for TF purposes, although it clarified what procedures are in place to ensure that authorities can investigate and gather information on NPOs. Compliance with Special Recommendation VIII is comparable to a PC.
37. ***Special Recommendation IX:*** St. Maarten addressed most of the deficiencies related to Special Recommendation IX by including provisions in the National Ordinance Cross-Border Money Transfers (AB 2019, no. 26) that amend the National Ordinance Reporting Cross-Border Cash Transports (AB 2013, GT no. 730). With these amendments, the country has been able to establish a declaration system for cross-border transportation of currency and bearer negotiable instruments, restrain currency where there is a suspicion of ML or TF and keep relevant statistics. Notwithstanding, the country still needs to ensure that is a process for confiscating currency or negotiable instruments for persons listed under UNSCR 1267. The compliance with Special Recommendation IX has improved up to a level comparable at minimum to LC.

Conclusion

38. This detailed analysis of St. Maarten's actions to close the deficiencies noted in its 3rd MER provides an overview of the progress relating to all Core and Key Recommendations that were rated PC/NC. The analysis indicates that St. Maarten addressed all Core and Key Recommendations rated PC/NC (R. 3, 5, 10, 13, 23, 26, 35, 36, 40, SR. I, II, III, IV, and V) to a level comparable to at least an LC or C. It is recommended to the Plenary that St. Maarten should be allowed to exit the follow-up process and the 3rd Round of Mutual Evaluations.

III. OVERVIEW OF PROGRESS MADE BY ST. MAARTEN SINCE THE ADOPTION OF THE MER

39. Since the publication of the MER in 2013 St. Maarten has set about strengthening its AML/CFT legislative and supervisory framework through the enactment and amendment of several laws. In 2013, the National Ordinance of December 13, 2012, establishing a new Penal Code (AB 2013, no. 2), the National Ordinance on Firearms (AB 2013 CT No. 183), and the National Ordinance Reporting Cross-Border Cash Transports (AB 2013, GT no. 730) came into force and effect.
40. By 2014, the National Ordinance on Import, Export and Transit (AB 2014 GT, no. 4) and the National Ordinance on the reporting of unusual transactions in connection with the intended joining of the Egmont Group (AB 2014 no. 51) were enacted. In this year, the National Ordinance on the Reporting of Unusual Transactions (AB 2013 No. 479) was amended.



41. In 2016, St. Maarten approved the Ministerial Decree No. 2016/165, which contains an amendment of the Regulation on Indicators of Unusual Transactions expressly establishes tax crimes in the indicators to report unusual transactions. In 2017, St. Maarten enacted the National Ordinance to amend the Sanctions Ordinance (AB 2017, no. 25). Subsequently, the National Ordinance updating and Harmonizing the supervision laws of the Central Bank of Curaçao and Sint Maarten (AB 2018, no. 5) and the National Ordinance on Supervision of the Money Remitter Companies (AB 2018, no. 6) were approved in 2018.
42. More recently, in 2019, St. Maarten approved the National Ordinance MOT (AB 2019, no. 24), the National Ordinance combating ML/TF (AB 2019, no. 25), and National Ordinance Cross-Border Money Transfers (AB 2019, no. 26). In this year, the Parliament also enacted the National Ordinance amending the Penal Code (AB 2019, no. 41).

IV. DETAILED ANALYSIS OF COMPLIANCE WITH THE CORE RECOMMENDATIONS

Recommendation 5 - Customer due diligence

R.5 (Deficiency 1): The current 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 lending (factoring), financial leasing, financial guarantees and commitments, trading in money market instruments, participation in securities issues and the provision of financial services related to such issues, individual and collective portfolio management. Certain categories of financial services providers are not covered in the scope of the NOIS and NORUT: intermediaries operating in the Curacao Stock Exchange (DCSX) and life insurance agents.

43. The National Ordinance Combating ML/TF (AB 2019 No. 25) covers lending, financial leasing, financial guarantees and commitments (Article 2(1)(a)(5°)), factoring services (Article 2(1)(a)(13°)), trading in foreign exchange (Article 2(1)(a)(8°)(a)), trading in money market instruments (Article 2 (1)(a)(8°)(b)), trading in transferable securities (Article 2(1)(a)(8°)(d)), trading in commodity futures (Article 2(1)(a)(8°)(e)), participation in securities issues and the provision of financial services related to such issues (Article 2 (1)(a)(14°)), individual and collective portfolio management (Article 2(1)(a)(15°)), intermediaries operating in the Curacao Stock Exchange (Article 2(1)(a)(17°)), and life insurance agents (Article 2(1)(a)(12°)). **St. Maarten has sufficiently addressed Deficiency 1.**

R.5 (Deficiency 2): 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.

44. Article 3(1)(d) of the National Ordinance Combating ML/TF (AB 2019 No. 25) requires the implementation of CDD measures to electronic transfers whereby essential information about the client or beneficiary is lacking. Such rule is not consistent with the Interpretive Note to SR.VII, which require FIs to apply CDD measures when executing cross-border and domestic transfers and does not limit the application of the measures to cases in which there is a lack of identification information. **St. Maarten has not sufficiently addressed Deficiency 2.**



R.5 (Deficiency 3): 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.

45. Article 3(1)(e) of the National Ordinance Combating ML/TF (AB 2019 No. 25) requires financial service providers to undertake CDD measures when they have doubts about the veracity or adequacy of previously obtained customer identification data. **St. Maarten has sufficiently addressed Deficiency 3.**

R.5 (Deficiency 4): 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.

46. Article 3(1)(g) requires FIs to conduct CDD when there is a suspicion of ML/TF. The provision does not include exemptions and no threshold modifies it. **St. Maarten has sufficiently addressed Deficiency 4.**

R.5 (Deficiency 5): The basic obligation to conduct ongoing due diligence is not specified in law or regulation.

47. Article 7(1)(d) of the National Ordinance combating ML/TF (AB 2019 No. 25) requires financial service providers to conduct ongoing due diligence. **St. Maarten has sufficiently addressed Deficiency 5.**

R.5 (Deficiency 6): The requirement to verify the identity of customers and beneficial owners before the establishment of business relations is not always practical.

48. Article 4(2)(a) of the National Ordinance combating ML/TF (AB 2019 No. 25) is not consistent with allowing the verification of customer's identity after the establishment of the business relationship in the circumstances specified in R.5 (criterion 5.12). **St. Maarten has not sufficiently addressed Deficiency 6.**

R.5 (Deficiency 7): 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.

49. Regarding the requirements related to 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, Article 4(2)(b), (3) and (4) of the National Ordinance Combating ML/TF (AB 2019 No. 25) provides that if during the term of the life insurance suspicions are aroused in respect of ML/TF, the financial service provider must file a report. Furthermore, Article 5(4) of the same ordinance covers the requirement for insurance companies and insurance brokers to terminate the business relationship after a re-examination of the business relationship. **St. Maarten has sufficiently addressed Deficiency 7.**



Recommendation 5 overall conclusion

50. According to this examination, of the seven shortcomings identified in the MER, Deficiencies 2 and 6 remain outstanding. **The compliance with R. 5 has improved up to a level comparable at minimum to an LC.**

Recommendation 10 - Record-keeping

R.10 (Deficiency 1): 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.

51. Articles 22(2) and 23 of the National Ordinance Combating ML/TF (AB 2019 No. 25) set out that service providers must keep records on transactions, both domestic and international, for at least ten (10) years after a transaction has been executed or a business relationship has been terminated. **St. Maarten has sufficiently addressed Deficiency 1.**

R.10 (Deficiency 2): 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.

52. Article 22(3) of the National Ordinance Combating ML/TF (AB 2019 No. 25) obliges service providers to keep commercial correspondence for at least ten years. **St. Maarten has sufficiently addressed Deficiency 2.**

Recommendation 10 overall conclusion

53. St. Maarten has addressed the two deficiencies through the enactment of the National Ordinance Combating ML/TF (AB 2019 No. 25). **The compliance with R. 5 has improved up to a level comparable to a C.**

Recommendation 13 - Suspicious transaction reporting

R.13 (Deficiency 1): The scope of UTR reporting may not be as extensive as required by FATF as some designated categories of predicate offences for ML are not covered in St. Maarten.

54. Regarding the need ensure that all designated categories of predicate offences for ML are covered to eliminate any restrictions on reporting (paragraph 277 of MER), the Penal Code, in force since 1st of June 2015, incorporates the crimes of market manipulation (Article 2:321) and insider Trading (Article 2:322). The National Ordinance on Firearms (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). Besides, the Regulation on Indicators of Unusual Transactions (MDIUT) in force since May 1st, 2016 fully incorporated the designated categories of offences as indicators to report unusual transactions. **St. Maarten has sufficiently addressed Deficiency 1.**



R.13 (Deficiency 2): It is unclear that suspicious transactions apply regardless of whether they involve tax matters.

55. The Ministerial Decree No. 2016/165, which contains an amendment of the Regulation on Indicators of Unusual Transactions expressly establishes tax crimes in the indicators to report unusual transactions. **St. Maarten has sufficiently addressed Deficiency 2.**

R.13 (Deficiency 3): Heavy reliance on objective indicators (i.e. threshold).

56. The Ministerial Decree No. 2016/165 allows service providers to identify suspicions of ML, TF, and predicate offences on a risk-based approach, avoiding reliance on prescriptive factors. **St. Maarten has sufficiently addressed Deficiency 3.**

R.13 (Deficiency 4): The burden of reporting subjective (rules-based) indicators could detract from the FIs reporting genuine suspicious transactions.

57. According to the information provided regarding Deficiencies 2 and 3, the provisions of the Ministerial Decree No. 2016/165 have the effect of ensuring that service providers report genuine suspicious transactions. **St. Maarten has sufficiently addressed Deficiency 4.**

Recommendation 13 overall conclusion

58. Legislative actions taken have resulted in St. Maarten overcoming the four deficiencies that were identified in the MER. **The compliance with R. 13 has improved up to a level comparable a C.**

Special Recommendation II – Criminalisation of terrorist financing

59. St. Maarten approved the National Ordinance amending the Penal Code (AB 2019, no. 41) on October 11th, 2019 and it entered into force and effect on November 20th, 2019. This new Ordinance repeals Article 2:55 and provides for a new TF offence in Article 2:408. Consequently, the Secretariat proceeded to analyse the new provision according to the six deficiencies originally identified in the MER.

SR. II (Deficiency 1): No specific penalty is reflected in the Penal Code for the offence of TF.

60. Article 2:408 of the Penal Code is punishable by eighteen (18) years of imprisonment. The sanction appears proportionate and, in some instances, more severe, concerning those set out for other serious offences criminalized in the Penal Code. For example, trafficking in human beings is punished with up to four (4) years of imprisonment; money laundering, participation in an organized criminal group, and terrorism are punished with up to eight (8) years of imprisonment; sexual exploitation is punished with up to twelve (12) years of imprisonment. TF penalty is surpassed by that applicable to manslaughter and murder, which are punished with up to twenty-four (24) and thirty (30) years of imprisonment, respectively.



61. Throughout the 3rd Round of Mutual Evaluations, the CFATF identified a wide variety of penalties for the TF offence among its Members, ranging from six (6) months⁵ of imprisonment (on summary conviction) up to life sentence⁶. Many countries punished TF with imprisonment not exceeding fourteen (14) years⁷ (on conviction on indictment), while others set out fixed terms or terms not exceeding twenty (20), twenty-five (25), or thirty (30) years of imprisonment⁸. The new penalty of eighteen (18) years of imprisonment provided for in St. Maarten's legislation is proportionate to those identified during the 3rd Round of Mutual Evaluations. **St. Maarten has sufficiently addressed Deficiency 1.**

SR. II (Deficiency 2): The indirect or unlawful provision of funding for the commission of a terrorism offence is not criminalized.

62. Article 2:408(1)(a) of the Penal Code provides for the indirect or unlawful collection and provision of objects⁹ to fund the commission of a terrorist offence or a criminal offence in preparation of or for the facilitation of a terrorist offence. **St. Maarten sufficiently addressed Deficiency 2.**

SR. II (Deficiency 3): The wilful provision of funds to individual terrorists is not criminalized.

63. Article 2:408(1)(a) and (b) of the Penal Code provides for the intentional or wilful provision of objects to fund the commission of a terrorist offence or a criminal offence in preparation of or for the facilitation of a terrorist offence. The wording of the offence implicitly encompasses the cases in which the funding is provided to a terrorist organisation or an individual terrorist by not referring to any specific receiver of the funds but the illicit activities being funded only. **St. Maarten has sufficiently addressed Deficiency 3.**

SR. II (Deficiency 4): 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.

64. As indicated previously, St. Maarten approved the National Ordinance amending the Penal Code (AB 2019, no. 41) and now criminalised the TF offence in Article 2:408. The country implements Article 2 of the TF Convention as follows:

- a. The direct or indirect, unlawful, and wilful provision and collection of funds by any person with the intention that they should be used or in the knowledge that they are to be used, in full or in part, to carry out a terrorist offence is covered in Article 2:408 (1)(a) and (b) of the Penal Code. There are no limitations to the means to provide or collect funds with terrorist purposes.

⁵ See Montserrat, St. Kitts and Nevis, Turks and Caicos, and Virgin Islands' 3rd Round MERs for reference.

⁶ See Jamaica's 3rd Round MER for reference.

⁷ See Anguilla, Bermuda, Cayman Islands, St. Kitts and Nevis, Turks and Caicos, and Virgin Islands' 3rd Round MERs for reference.

⁸ See El Salvador, Grenada, St. Vincent, The Bahamas, and the Grenadines 3rd Round MERs for reference.

⁹ According to Article 2:408(3) of the Penal Code, "objects" refers to money and to all goods and all proprietary rights, by whatever means these were acquired, and the documents and data carriers, in any form or capacity whatsoever, showing the ownership or entitlement to the money, the goods or the proprietary rights, including but not confined to bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, bills of exchange and letters of credit.



- b. Legislation sets out the collection or provision of objects to fund the commission of a terrorist offence or a criminal offence in preparation of or for the facilitation of a terrorist offence.¹⁰ The criminalisation of the terrorism offences referenced in Annex 1 to the TF Convention is addressed in Deficiency 6.
 - c. The wording Article 2:408 of the Penal Code refers to the collection and provision of objects intended to fund the commission of a terrorist offence or a criminal offence in preparation of or for the facilitation of a terrorist offence. The threshold of criminal conduct is met here if there is an intention to fund the commission of illicit acts and therefore does not require that the funds be used to execute them.
 - d. Article 1:127 of the Penal Code provides that criminal offences can be committed by natural and legal persons and if an offence is committed by a legal person, criminal proceedings can be instituted and the penalties and measures provided for in the relevant legal regulations, which meets the requirement of Article 2, paragraph 4, of the TF Convention.
 - e. Participation as an accomplice in any offence is set out in Article 1:124 of the Penal Code. Article 1:123(1)(b) of the Penal Code provides that those who intentionally solicit the commission of the act employing gifts, promises, abuse of authority, violence, threat or deception or by providing opportunity, means or information, or by other means are punishable. Article 1:124 provides for liability of those who intentionally assisted during the commission of the crime and those who intentionally provide the opportunity, means or information necessary to commit the crime. The referred behaviours are provided in the Penal Code irrespective of the offence and, consequently, include the terrorist financing offence; hence, Article 2, paragraph 4, subparagraphs a, b, and c of the TF Convention are covered.
65. There are no provisions to implement Article 2, paragraph 1, subparagraph (b), of the TF Convention. **St. Maarten should continue addressing Deficiency 4.**

SR. II (Deficiency 5): The Penal Code does not specify a penalty for the legal person which participates in an organization aimed at committing terrorist offences.

66. Article 1:54(7) of the Penal Code, as amended by The National Ordinance amending the Penal Code (AB 2019, no. 41), provides for the imposition of fines¹¹ on convicted legal persons, whose value may vary concerning the seriousness of the offence¹². **St. Maarten has sufficiently addressed Deficiency 5.**

¹⁰ Article 1:202 amended by National Ordinance amending the Penal Code (AB 2019, No. 41) sets out that “terrorist offence” refers to any criminal offence, designated a punishable offence in whatever legislation, committed with terrorist intent

¹¹ The Penal Code sets out six categories of fines: the first category is NAF 500; the second category is NAF 5,000; the third category is NAF 10,000; the fourth category is NAF 25,000; the fifth category is NAF 100,000, and the sixth category is NAF 1,000.000.

¹² In the event of conviction of a legal entity then, if the fine category designated for the offence does not allow for an appropriate punishment, a fine of up to at most the amount of the next higher category may be imposed. If a fine of the sixth category may be imposed for the offence and this fine category does not allow for an appropriate punishment, a fine of up to at most ten per cent of the annual turnover of the legal entity in the financial year prior to the decision may be imposed.

SR. II (Deficiency 6): Not all terrorism offences referenced in Annex 1 to the TF Convention are criminalized as required.

67. According to the information provided by St. Maarten, the terrorism offences defined by the nine (9) treaties are covered in the Penal Code as follows:

| Treaties that define terrorism offences | The criminalisation of terrorism offences |
|--|--|
| Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970. | - Articles 1:4(g), 2:370 and 2:371 of the Penal Code AB 2013, no. 2. |
| Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971. | - Articles 1:4(g), 2:112 et seq., 2:370 and 2:371 of the Penal Code AB 2013, no. 2. - Articles 2:111a and 2:111b added to the Penal Code by Section J of National Ordinance Amending the Penal Code, AB 2019, no. 41. |
| Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents | - Articles 1:4(l), 1:214, 2:34 et seq. and 2:255 of the Penal Code AB 2013, no. 2. |
| International Convention against the Taking of Hostages adopted by the General Assembly of the United Nations on 17 December 1979. | - Articles 2:249 et seq. of the Penal Code AB 2013, no. 2. |
| Convention on the Physical Protection of Nuclear Material adopted at Vienna on 3 March 1980. | - Articles 1:202b and 2:408 amended by Section E of National Ordinance Amending the Penal Code, AB 2019, no. 41. - Article 1:204 amended by Section I of National Ordinance Amending the Penal Code, AB 2019, no. 41 - Articles 2:124a and 2:124b added to the Penal Code by Section J of National Ordinance Amending the Penal Code, AB 2019, no. 41. |
| Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988. | - Articles 1:4(g), 2:112 et seq., 2:370 and 2:371 of the Penal Code AB 2013, no. 2. - Articles 2:111a and 2:111b added to the Penal Code by Section J of National Ordinance Amending the Penal Code, AB 2019, no. 41. |
| Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988. | - Articles 1:4(h)(1°), 2:112 et seq., 2:370 and 2:371 of the Penal Code AB 2013, no. 2. - Articles 2:111a and 2:111b added to the Penal Code by Section J of National Ordinance Amending the Penal Code, AB 2019, no. 41. |
| Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located | - Articles 1:4(g)(2°), 2:112 et seq., 2:370 and 2:371 of the Penal Code AB 2013, no. 2. |



| | |
|---|--|
| on the Continental Shelf, done at Rome on 10 March 1988. | - Articles 2:111a and 2:111b added to the Penal Code by Section J of National Ordinance Amending the Penal Code, AB 2019, no. 41. |
| International Convention for the Suppression of Terrorist Bombings adopted by the General Assembly of the United Nations on 15 December 1997. | - Article 1:4(m) of the Penal Code AB 2013, no. 2. - Article 1:4 amended by Section A of the National Ordinance Amending the Penal Code, AB 2019, no. 41. - Article 2:408(1)(b) added by Section Q of the National Ordinance Amending the Penal Code, AB 2019, no. 41. |

68. St. Maarten has sufficiently addressed Deficiency 6.

Special Recommendation II overall conclusion

69. Legislative actions taken have resulted in St. Maarten addressing most of the elements affected by the deficiencies identified in the MER, but still needs to review its legislation to implement Article 2, paragraph 1, subparagraph b, of the TF Convention. **The compliance with SR. II has improved up to a level comparable, at minimum, to LC.**

Special Recommendation IV – Suspicious transaction reporting

SR. IV (deficiency 1): Rating factors in R13 apply to this Recommendation.

70. The legislative actions taken by St. Maarten to address the deficiencies related to R. 13 cascade into SR. IV. **Therefore, the country has sufficiently addressed Deficiency 1.**

Special Recommendation IV overall conclusions

71. Since St. Maarten has addressed all deficiencies related to R. 13, **The compliance with SR. IV has improved up to a level comparable to a C.**

V. KEY RECOMMENDATIONS

Recommendation 3 - Confiscation and provisional measures

R.3 (Deficiency 1): The powers to confiscate or take provisional measures in relation to terrorist financing or some predicate offences for ML are limited.

72. Articles 1:74 to 1:77 of the Penal Code set out the confiscation of seized objects as ordered in a judicial verdict where a person is convicted of any criminal act, which by way of interpretation includes the TF offence and predicate offences. As explained in the section dedicated to R.13 (Deficiency 1), an adequate range of predicate offences is now covered in the Penal Code. Furthermore, Articles 119 and article 119a of the Penal Procedure Code provides for the freezing of all



objects (i.e. all property and property rights, according to Article 1) that can be used to reveal the truth or to prove unlawfully obtained advantage. **St. Maarten has sufficiently addressed Deficiency 1.**

R.3 (Deficiency 2): 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.

73. 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, St. Maarten indicated that seizure is regulated in Articles 119 to 154a of the current Penal Procedure Code and clarified that seizure and confiscation measures are always applied ex parte, i.e. no prior notice to the suspect is required by law.
74. Furthermore, according to St. Maarten's authorities, the Dutch term "kennisgeving" in Articles 119, par. 3, and 119b, part a, of the Penal Procedure Code should always be interpreted as a post-notice, not as an ex-ante notification, of the seizure from the crime investigation officer to the prosecutor (Articles 119, par. 3) or to the suspect (Article 119b, part a); therefore, this is a notification done after the seizure, never a prior notice or notification to the suspect or other (legal) persons from whom the goods have been seized. They will only receive, if possible, proof of receipt of their confiscated goods (Articles 119, par. 3, 119c, part d, and 129b, par. 3).

75. **St. Maarten has sufficiently addressed Deficiency 2.**

R.3 (Deficiency 3): Based on the insufficient statistics, effectiveness of the confiscation regime could not be confirmed.

76. Regarding this deficiency, the MER recommended that St. Maarten's authorities to ensure that comprehensive statistics are maintained concerning the investigation, prosecution, and conviction of ML related cases. The country informed that the Public Prosecutor's Office (PPO) indicated its data system does not allow for the extraction and aggregation of data or specific topics, and the information is extracted manually. The PPO also indicated that the data system was being currently updated to allow for the collection of aggregated data for statistical purposes. For the present FUR, St. Maarten provided information indicating that the PPO conducted nine (9) investigations on ML in 2018, two (2) cases went to trial; one case was not prosecuted; fines of \$90,000 were imposed in two (2) cases, and the remaining four (4) cases were still being evaluated. **St. Maarten has sufficiently addressed Deficiency 3.**

Recommendation 3 overall conclusions

77. The three (3) deficiencies noted for R. 3 have been sufficiently addressed. **The compliance with R. 3 has improved up to a level comparable to a C.**



Recommendation 23 - Regulation, supervision, and monitoring

R. 23 (Deficiency 1): 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.

78. St. Maarten informed that one 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 on October 19th, 2015. The case was subsequently addressed 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. Furthermore, the National Ordinance on the Supervision of Money Transfer Companies entered into force on March 29th, 2018. The National Ordinance allows for the Central Bank to apply a wide range of sanctions to Money Transfer Companies. **St. Maarten has sufficiently addressed Deficiency 1.**

R. 23 (Deficiency 2): Low number of on-site inspections for MTCs.

79. The CBCS carried out one inspection in 2017. The inspection was performed from Curaçao and included operations in St. Maarten. The Central Bank postponed additional on-site supervisions in 2017 due to Hurricane Irma. In 2018, CBCS did not conduct any on-site examinations at MTCs in St. Maarten since a reassessment of priorities led to a focus on banks established in St. Maarten. In 2019, the CBCS performed two inspections to MTCs. **St. Maarten has sufficiently addressed Deficiency 2.**

R. 23 (Deficiency 3): Factoring services are yet to be subject to Central Bank supervision under the NOIS and NORUT.

80. Article 2(1)(a)(13°) of the National Ordinance combating ML/TF (AB 2019 No. 25) requires factoring service providers to apply the AML/CFT preventive measures. Article 31 subjects these providers to the CBCS' supervisory regime. **St. Maarten has sufficiently addressed Deficiency 3.**

R. 23 (Deficiency 4): The RBA is not calibrated for AML/CFT risks.

81. St. Maarten's MER posed two recommended actions to address Deficiency 4. The country was advised to develop a risk-based approach system to determine the AML/CFT focus of onsite inspections and to commit resources to have supervisory staff in St. Maarten for greater onsite monitoring of licensees.
82. Concerning the first action, every, year, the CBCS performs a risk assessment of the supervised institutions. The AML/CFT risk is assessed on a general level, based on, among other sources of information, examination findings and the follow-up performed by the institutions on the resolution of the findings. The frequency, intensity and risk areas to be covered during onsite inspections are determined according to the results of the assessment. Additionally, the BSD has performed a risk assessment specifically for the AML/CFT area using statistics and results of previous AML/CFT examinations. Accordingly, supervised institutions have been rated low, medium, or high concerning the ML/TF risks.

83. The Institutional Investors Department developed an AML survey which was sent to all life insurance companies and all insurance brokers intermediating in life insurance under supervision of the CBCS. The purpose is to gather as much information as possible on the business activities of these institutions and to attach risk factors to these activities, which will form the basis for the AML risk-based approach. Life insurers and insurance brokers intermediating in life insurance will be supervised and scheduled for onsite examination based on the risk classification determined by the Institutional Investors Department.
84. The Investment Institutions and Trust Supervision Department plan its AML onsite supervision visits with the aid of a risk matrix and professional judgement. This occurs twice a year. It is then decided what the scope will be, which institutions will be inspected and the schedule. The limited manpower resources versus the ML/TF risks identified related to entities or themes is also considered.
85. Concerning committing resources to have supervisory staff in St. Maarten, the CBCS has a total of 51 employees directly involved in supervision working for the respective departments. From these, two (2) members of staff are based in St. Maarten and forty-nine (49) in Curaçao. All Curaçao based supervisors are continuously involved with the supervision of the entities and sectors in St. Maarten that fall under the Central Bank's competence. Supervisors are flown in from Curaçao to conduct on-site inspections together with the St. Maarten based staff as well as to perform other supervisory activities. The staff of the supporting departments is currently 38.¹³

86. St. Maarten has sufficiently addressed Deficiency 4.

Recommendation 23 overall conclusions

87. All four deficiencies have been sufficiently addressed through legislative, supervisory, and court actions. **The compliance with R. 23 up to a level comparable to a C.**

Recommendation 26 - The MOT

R. 26 (Deficiency 1): The legal basis for the establishment of the MOT¹⁴ is not clear.

88. In 2013, St. Maarten informed that the legal basis for the MOT was the National Ordinance on the Reporting of Unusual Transactions (N.G. 1996, no. 21), published in April 2013. The legal basis for the establishment is currently set out in the National Ordinance MOT (AB 2019, no. 24). **St. Maarten has sufficiently addressed Deficiency 1.**

¹³ This includes the departments that are indirectly involved in the supervision activities, such as the Integrity Unity for the screening of Management and Ultimate Beneficiary Owner of the supervised entities and persons, the Legal department, the International Affairs department, the Policy department and the Financial Stability and Resolution department.

¹⁴ MOT stands for Meldpunt Ongebruikelijke Transacties, which is the FIU of St. Maarten.



R. 26 (Deficiency 2): There is an absence of a permanent MOT Head physically present in the MOT on a daily basis.

89. St. Maarten indicated that a permanent Director is in place since January 2013. Presently, Article 2 of the National Ordinance MOT (AB 2019, no. 24) sets out that the MOT is headed by a Director, who shall carry out the tasks assigned to the MOT independently and exclusively and shall be responsible for the overall management of the institution. Articles 8-10 of the same Ordinance provides for designation, removal, and responsibilities of the Director. **St. Maarten has sufficiently addressed Deficiency 2.**

R. 26 (Deficiency 3): Not all reporting entities are aware of the existence of the MOT in Sint Maarten.

90. Regarding Deficiency 3, since 2014 St. Maarten has reported that to clarify the manner and procedures for reporting and improve its relationship with stakeholders, the MOT has disseminated information to reporting entities; DNFBPs have been registered and received information on the laws and existence of the MOT, and reporting entities are referred to the website of the MOT for information. **St. Maarten has sufficiently addressed Deficiency 3.**

R. 26 (Deficiency 4): Inadequate training and guidance sessions for reporting entities.

91. In 2014, the country informed that had completed the review of the P&Gs applicable to DNFBPs, i.e. card dealers and jewellers, real estate, lawyers, notaries, accountants, tax advisors and administration offices. These P&Gs focused on the implementation of the National Ordinance on the Reporting of Unusual Transactions (N.G. 1996, no. 21) and the National Ordinance on Identification of Clients when rendering Services (N.G. 1996, no. 23). Since then, the P&Gs have included a whole Section on Reporting, which refers to the obligation to report to the MOT, and some guidance in terms of what constitutes an unusual transaction, confidentiality of information, among others. **St. Maarten has sufficiently addressed Deficiency 4.**

R. 26 (Deficiency 5): 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.

92. The National Ordinance on the Reporting of Unusual Transactions (AB 2013 No. 479) was amended on April 25th, 2014¹⁵ to establish the operational autonomy of the MOT. St. Maarten noted that the amendment was recognised by the Egmont Group of FIUs and consequently was accepted as one of its members. Presently, Articles 2, 3(2), 5, 6, and 8 of the National Ordinance MOT (AB 2019, no. 24) provide for the operational autonomy of the MOT. **St. Maarten has sufficiently addressed Deficiency 5.**

R. 26 (Deficiency 6): There is a low number of investigative reports forwarded by the MOT to the PPO.

93. Regarding the low number of investigative reports forwarded by the MOT compared to the number of Unusual Transactions Report (UTRs) received, since the issuance of the MER, the MOT has

¹⁵ The Ordinance was then enacted on September 4th, 2014.



increased the number of investigations submitted to the PPO, particularly in 2012 and 2013. By 2015, the MOT had recruited 11 persons to analyse transactions and improve the quality of its reports. **St. Maarten has sufficiently addressed Deficiency 6.**

R. 26 (Deficiency 7): The security of the MOT information, the premises and employees require improvement.

94. Between 2013 and 2014, the MOT moved to a new location with appropriate security measures. The MOT's premises were secured with an access control system and cameras. Since then, visitors must identify themselves and a camera has been placed to verify their identity and have not direct access to the premises. The MOT's database can only be accessed by a limited number of authorized persons. **St. Maarten has sufficiently addressed Deficiency 7.**

R. 26 (Deficiency 8): 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.

95. Throughout the follow-up process, the MOT provided Annual Reports for 2010/2011, 2012, 2013 and 2014. The Annual Reports comprised wide information on statistics and reporting trends, dissemination of information to the PPO and national and international requests of information, national and international cooperation, as views on priorities for the following year. **St. Maarten has sufficiently addressed Deficiency 8.**

Recommendation 26 overall conclusions

96. Since 2013, St. Maarten has taken several actions to close the eight (8) deficiencies identified concerning the MOT, including the recent entry in force and effect of the National Ordinance MOT (AB 2019, no. 24). **The compliance with R. 26 is up to a level comparable to a C.**

Recommendation 35 - Conventions

97. All treaties that the Kingdom of the Netherlands becomes a party of are binding for St. Maarten and their provisions become part of the domestic law automatically. Their "validity" in the national legal order is not dependent on any further implementing legislation. The Dutch Constitution does not formulate this principle; still, it has its basis on unwritten constitutional law.

98. Article 93 of the Constitution of the Kingdom of the Netherlands establishes the "direct effect" principle, by which the Netherlands can apply treaty provisions without the need of implementing domestic legislation if they meet two requirements: (a) They are sufficiently clear to function as "objective law" in the domestic legal order, and (b) all persons to whom they apply know the provisions.

99. While the Kingdom of the Netherlands usually enacts legislation to transform treaty provisions into domestic law, the Netherlands' and St. Maarten's Parliament need not approve domestic legislation so their authorities can implement them in virtue of the "validity principle" described in paragraph a) above



100. All countries that integrate the Kingdom must apply these principles as they are all ruled by the Dutch Constitution. If the automatic implementation of treaty provisions is contested, the judicial branch will determine whether the respective authorities applied them in line with the direct effect principle.

Implementation under the Vienna Convention

R.35 (Deficiency 1): No specific provision was identified in relation to non-treaty-based requests for extradition, expedition of extradition procedures and simplification of evidentiary requirements,

101. The MER required St. Maarten to ensure the Extradition Decree of Curacao, Aruba, and St. Maarten (EDAC) expressly addressed the matters of non-treaty-based requests for extradition, the expedition of extradition procedures, and simplification of evidentiary requirements. While the EDAC was not been amended, St. Maarten's provided information supporting that the country can execute non-treaty-based requests for extradition, abiding case law derived from rulings by the Supreme Court of the Kingdom, e.g. court decisions ECLI:NL:HR:2009:BF0837 and ECLI:NL:HR:2010:BL9130, in which, the court ruled that it was admissible to extradite individuals concerning drug offences in the absence of an applicable treaty, taking Article 6 of the Vienna Convention as the legal basis. This recommended action is met. **St. Maarten has sufficiently addressed Deficiency 1.**

R.35 (Deficiency 2): 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.

102. Based on the automatic incorporation of all treaty provisions, Article 10 of the Vienna Convention on international co-operation and assistance for transit states is already part of St. Maarten's legislation. **St. Maarten has sufficiently addressed Deficiency 2.**

R.35 (Deficiency 3): No evidence of implementation of controlled delivery techniques by the Authorities.

103. Based on the automatic incorporation of all treaty provisions, Article 11 of the Vienna Convention on controlled delivery is already part of St. Maarten's legislation. **St. Maarten has sufficiently addressed Deficiency 3.**

R.35 (Deficiency 4): 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.

104. Based on the automatic incorporation of all treaty provisions, Article 15 of the Vienna Convention on commercial carriers is already part of St. Maarten's legislation. **St. Maarten has sufficiently addressed Deficiency 4.**



R.35 (Deficiency 5): No provisions have been identified in the laws provided which cover the Illicit Traffic at Sea.

105. Based on the automatic incorporation of all treaty provisions, Article 17 of the Vienna Convention on illicit traffic by sea is already part of St. Maarten's legislation. **St. Maarten has sufficiently addressed Deficiency 5.**

R.35 (Deficiency 6): No provisions identified regarding measures to suppress the use of mails for illicit traffic.

106. Based on the automatic incorporation of all treaty provisions, Article 19 of the Vienna Convention on the use of the mails is already part of St. Maarten's legislation. **St. Maarten has sufficiently addressed Deficiency 6.**

Implementation under the Palermo Convention

R.35 (Deficiency 7): 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.

107. The MER required St. Maarten to set out measures to encourage persons who have participated in organised criminal groups, to cooperate with law enforcement, based on Article 26 of the Palermo Convention. In line with this action, the Public Prosecution Service (PPS) make use of "collaborators of justice" or "crown witnesses". These are witnesses who are also accused of one or more criminal offences or take other appropriate measures to encourage persons who have participated in organised criminal groups to cooperate with law enforcement. The Supreme Court of the Netherlands and the European Court on Human Rights has sanctioned the use of crown witnesses in the following rulings: HR 15 February 1994, NJ 1994, 322 (not digitally published); HR 9 March 1996, NJ 1997, 59 (not digitally published); HR 30 June 1998, NJ 1998, 799 (not digitally published); HR 6 April 1999, nr. 109.065 (not digitally published); and HR 14 December 1999, NJ 2000, 164 (digitally published as ECLI:NL:HR:1999:AA3864). **St. Maarten has sufficiently addressed Deficiency 7.**

R.35 (Deficiency 8): 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.

108. Based on the automatic incorporation of all treaty provisions, Article 29 of the Palermo Convention on training and technical assistance is already part of St. Maarten's legislation. **St. Maarten has sufficiently addressed Deficiency 8.**



R.35 (Deficiency 9): 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.

109. Based on the automatic incorporation of all treaty provisions, Article 30 of the Palermo Convention on implementation of its provisions through economic development and technical assistance is already part of St. Maarten's legislation. **St. Maarten has sufficiently addressed Deficiency 9.**

R.35 (Deficiency 10): Verification of whether the laws addressed a) the establishment of national records of persons disqualified from acting as directors of legal persons, and b) the exchange of information contained in the abovementioned national records with the competent authorities of other State Parties could not be done as the relevant articles were not provided for assessment.

110. Based on the automatic incorporation of all treaty provisions, Article 31, paragraph 2, sub-paragraph (d), numbers (iii) and (iv) of the Palermo Convention on additional measures to prevent the misuse of legal persons by organized criminal groups are already part of St. Maarten's legislation. **St. Maarten has sufficiently addressed Deficiency 10.**

R.35 (Deficiency 11): 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.

111. Based on the automatic incorporation of all articles of the Palermo Convention, Article 31, paragraph 2, sub-paragraph (c) on measures to prevent the misuse by organized criminal groups of tender procedures is already part of St. Maarten's legislation. **St. Maarten has sufficiently addressed Deficiency 11.**

R.35 (Deficiency 12): Laws and framework do not address a) the promotion of public awareness regarding the existence, gravity of and threat posed by transnational organized crime; b) informing the Secretary General of the UN of the authority/authorities that can assist other State Parties in developing measures to prevent transnational organized crime, and c) collaboration with other States (apart from the already advised joint cooperation and other collaborative efforts discussed above) including participation in international projects aimed at the prevention of transnational organized crime.

112. Based on the automatic incorporation of all treaty provisions, Article 31, paragraphs 5 and 6 of the Palermo on promoting public awareness on transnational organized crime, the identification of authorities that can assist other State Parties in developing measures to prevent transnational organized crime, and collaboration with other States are already part of St. Maarten's legislation. **St. Maarten has sufficiently addressed Deficiency 12.**



Implementation under the Terrorist Financing Convention

R.35 (Deficiency 13): Wilful provision of funds etc. to individual terrorists does not appear to be covered by the approach to terrorist financing in the Penal Code.

113. The wilful provision of funds by any person with the intention that they should be used or in the knowledge that they are to be used, in full or in part, to carry out a terrorist offence is covered in Article 2:408 (1)(a) and (b) of the Penal Code. **St. Maarten has sufficiently addressed Deficiency 13.**

R.35 (Deficiency 14): No specific penalty is indicated for the offence of TF, appropriateness of this penalty in relation to this Article therefore cannot be assessed.

114. Article 2: 408 of the Penal Code is punishable by eighteen (18) years of imprisonment. The sanction appears proportionate and, in some instances, more severe, concerning those set out for other serious offences criminalized in the Penal Code. Further details are provided in the section dedicated to Deficiency 1 of SR. II. **St. Maarten has sufficiently addressed Deficiency 14.**

R.35 (Deficiency 15): 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.

115. Article 1:4(1)(n) of the Penal Code (AB 2013, No. 2) refers to Article 2 of the TF Convention and to 'Serious Offences Endangering the General Safety of Persons or Property' (Book Two, Title VI, of the Penal Code) with stricter penalties if the act is likely to endanger the life of another person and the offence results in the death of a person, and to 'Serious Offences against Human Life' (Book Two, Title XVIII, of the Penal Code). Furthermore, Article I, Section A, of the National Ordinance Amending the Penal Code (AB 2019, no. 41) amends Article 1:4(1)(n) of the Penal Code by adding another criminal acts to the Penal Code, e.g. Article 2:111a and 2:111b. This is a new 'Serious Offences Endangering the General Safety of Persons or Property'. **St. Maarten has sufficiently addressed Deficiency 15.**

R.35 (Deficiency 16): No law or measure identified regarding the use of forfeited funds to compensate the victims of terrorist offences or their families.

116. Article 1:78 of the Penal Code creates a mechanism whereby forfeited funds can be used to compensate the victims of terrorism. **St. Maarten has sufficiently addressed Deficiency 16.**

R.35 (Deficiency 17): Not all terrorism offences referenced in Annex 1 to the TF Convention are criminalized as required.

117. Several articles of the Penal Code criminalise the terrorism offences referenced in the treaties listed in Annex of TF Convention as indicated in the analysis of Deficiency 6 of SR. II. **St. Maarten has sufficiently addressed Deficiency 17.**



R.35 (Deficiency 18): Reciprocal confidentiality as required by article 12 (Assistance to other States) is not addressed in the Penal Code or Penal Procedures Code.

118. Article 45 of the Penal Procedures Code addresses the matter of reciprocal confidentiality, as required by Article 12 (Assistance to other States) of the TF Convention. **St. Maarten sufficiently addressed Deficiency 18.**

R.35 (Deficiency 19): 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.

119. Article 1:31(3) of the Penal Code addresses the terms under which an offender transferred to St. Maarten from a State will be returned to that State from which the offender was transferred and credited for the time spent in the custody of the State to which the offender was transferred. **St. Maarten sufficiently addressed Deficiency 19.**

R.35 (Deficiency 20): No laws were identified on the matter of the guarantee of fair treatment of persons in custody.

120. Articles 3, 4, 26, 27, 28, 29 and 30 of the Constitution of Sint Maarten regarding torture, slavery, civil rights, personal liberty and human right of arrested or detained individuals address the matter of the guarantee of fair treatment of persons in custody. **St. Maarten has sufficiently addressed Deficiency 20.**

Recommendation 35 overall conclusion

121. St. Maarten has addressed all the deficiencies related to R. 35. **The compliance with R. 35 has improved up to a level comparable at minimum to LC.**

Recommendation 36 - Mutual Legal Assistance

R. 36 (Deficiency 1): The indirect or unlawful provision of funding for the commission of a terrorism offence is not criminalized.

122. St. Maarten amended this deficiency with the actions described concerning Deficiency 2 of SR. II. **St. Maarten has sufficiently addressed Deficiency 1.**

R. 36 (Deficiency 2): Terrorist financing is not criminalized in accordance with the FT Convention.

123. The criminalisation of TF according to the TF Convention is addressed in the section of this report focused on Special Recommendation II. **St. Maarten has sufficiently addressed Deficiency 2.**



R. 36 (Deficiency 3): 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).

124. St. Maarten corrected this deficiency with the actions explained concerning Deficiency 1 of R. 13.
St. Maarten has sufficiently addressed Deficiency 3.

Recommendation 36 overall conclusion

125. By addressing the delicences identified concerning Special Recommendation II, St. Maarten has corrected the issues related to Recommendation 36. **The compliance with R. 36 has improved up to a level comparable, at minimum, to LC.**

Recommendation 40 - Other forms of co-operation

R.40 (Deficiency 1): 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.

126. St. Maarten did not provide information on amendments to the Extract General Regulation Import, Export and Transit of 1908 NG 1949 No. 62 and other legislation concerning the power of law enforcement agencies to provide international cooperation to counterparts. Despite law enforcement agencies can provide legal assistance on an operational level according to Title VIII of the Penal Procedure Code, no information was provided regarding spontaneous exchanges of information with counterparties. On the other hand, Article 3(2)(c), (h), (i), and (j) and Article 7 of the National Ordinance MOT authorises the MOT to provide international cooperation with foreign counterparts. **This deficiency has been partially addressed.**

R.40 (Deficiency 2): No provisions have been identified under NOSCBI, RFETCSM, NOSIIA or the NOSTCSP which reflect that the Central Bank can undertake investigations on behalf of their foreign counterparts.

127. St. Maarten approved the National Ordinance updating and Harmonizing the supervision laws of the Central Bank of Curaçao and Sint Maarten (AB 2018, no. 5). This ordinance amended several others to authorise foreign bodies charged with supervision responsibilities can conduct supervisions in Sint Maarten under conditions established by the CBCS. The current provisions that set out this faculty are the following: Article 25 of the National Ordinance Supervision Banking and Credit System, Article 120c of the National Ordinance Supervision Insurance Business, Article 16b of the National Ordinance on the Supervision of Stock Exchanges, Article 29 of the National Ordinance on the Supervision of Investment Institutions and Administrators, Article 20b of the National Ordinance Supervision Trust System, Article 18b of the National Ordinance Insurance Broker Companies, and Article 5(8) of the National Ordinance MOT. **St. Maarten has sufficiently addressed Deficiency 2.**



R.40 (Deficiency 3): 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 criterion.

128. On the maintenance of statistics for the spontaneous referral of information by entities as well as information supplied as a result of a request, since the Annual Reports of the MOT for 2010/2011, 2012, 2013 and 2014 have included statistics on international requests of information to and from other countries, as well as the 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. **St. Maarten has sufficiently addressed Deficiency 3.**

Recommendation 40 overall conclusion

129. St. Maarten has corrected two of the three deficiencies identified in the implementation of R. 40. The country still needs to improve its legislation to allow for law enforcement agencies provide international cooperation to their counterparts by means different from mutual legal assistance. **The compliance with Recommendation 40 has improved up to a level comparable at minimum to LC.**

Special Recommendation I - Implementation of UN instruments

SR. I (Deficiency 1): Deficiencies identified for SRII and SRIII are applicable to this Special Recommendation.

130. St. Maarten has taken actions to correct most of the deficiencies identified for Special Recommendations II and III, which are described in the respective sections. **St. Maarten has sufficiently addressed Deficiency 1.**

Special Recommendation I overall conclusion

131. The actions taken by St. Maarten about Special Recommendations II and III cascade positively into this one. **The compliance with Special Recommendation I has improved up to a level comparable, at minimum, to LC.**

Special Recommendation III - Freezing and confiscation of terrorist assets

SR. III (Deficiency 1): 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.

132. Article 6(2) of the National Ordinance to amend the Sanctions Ordinance (AB 2017, no. 25) sets out a mechanism aimed at implementing UN Resolutions without delay. For every change to a list of designated persons and entities, the Secretary-General of the Ministry of General Affairs must sign a ministerial regulation requiring the immediate implementation of the freezing measure on behalf of the Minister of General Affairs. Subsequently, the ministerial regulation must be placed



directly in the Official Journal to be executed by the respective authorities. **St. Maarten has sufficiently addressed Deficiency 1.**

SR. III (Deficiency 2): There is no clear guidance especially to other persons and entities concerning their obligations in acting under the freezing mechanism.

133. Throughout the follow-up process, St. Maarten indicated that guidelines were provided by the Department of Foreign Affairs of St. Maarten. Moreover, a Manual on Sanctions was ratified by the Ministers of Justice and Finance and has been in force since 2017. The Manual on Sanctions guides all persons on their obligations and actions that should be taken regarding property that is subject to freezing based on UN and EU sanctions. **St. Maarten has sufficiently addressed Deficiency 2.**

SR. III (Deficiency 3): 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.

134. Article 34(3) of the combating ML/TF (AB 2019 No. 25) amends the Sanctions National Ordinance by adding a new paragraph 3 Article 2. Current Article 2(3)(b) sets out the freezing of assets or other assets that are wholly or partially owned or controlled, directly or indirectly, by designated persons or entities. **St. Maarten has sufficiently addressed Deficiency 3.**

SR. III (Deficiency 4): There is no wording in the FATF Protocols which indicate compliance with these Protocols is mandatory or that breaches of the Protocols can be sanctioned by the Central Bank.

135. Article 4 of the Sanctions National Decree stipulates that it is prohibited to act in contravention of UN Resolutions a sanction as referred to in Articles 2 or 3, not to freeze resources belonging to persons and organizations as referred to in Articles 2 or 3, to provide financial services for or on behalf of persons as referred to in article 2 or 3, and to make resources available directly or indirectly to persons and organizations as referred to in Article 2 or 3. Notwithstanding, these provisions are declarations rather than obligations and are not subject to sanction that ensures the enforceability of the ordinance. **This deficiency has not been addressed.**

Special Recommendation III overall conclusions

136. St. Maarten has successfully addressed three (3) of the deficiencies identified concerning SR. III, but still needs to ensure that compliance with freezing obligations is mandatory and non-compliance with them is subject to sanctions. Accordingly, **the compliance with R. 40 has improved up to a level comparable at minimum to LC.**



Special Recommendation V - International cooperation

SR. V (Deficiency 1): The deficiencies in R.36 impact St. Maarten's ability to extend mutual legal assistance through extradition.

137. St. Maarten's actions to address the deficiencies found in Recommendation 36 are described in the respective section of this report. **St. Maarten has sufficiently addressed Deficiency 1.**

SR. V (Deficiency 2): The deficiencies in SRII impact Sint Maarten's ability to extend assistance in connection with combating TF and terrorist acts.

138. St. Maarten's actions to address the deficiencies found in Special Recommendation II are described in the respective section of this report. **St. Maarten has sufficiently addressed Deficiency 2.**

SR. V (Deficiency 3): The deficiencies in R40 would impact Sint Maarten's to the exchange of information regarding TF.

139. St. Maarten's actions to address the deficiencies found in Recommendation 40 are described in the respective section of this report. **St. Maarten has sufficiently addressed Deficiency 3.**

Special Recommendation V overall conclusion

140. St. Maarten has addressed the deficiencies identified in the MER relative to Recommendations 36, 40 and SR. III. **The compliance with SR. V has improved up to a level comparable at minimum to LC.**

VI. ANALYSIS OF MEASURES TAKEN IN RELATION TO OTHER RECOMMENDATIONS RATED NC OR PC

Recommendation 9 - Third parties and introducers

R.9 (Deficiency 1): The "adequately supervised" criterion in the P&Gs is not in line with the requirements of essential criterion 9.3.

141. St. Maarten updated Section 2.8 of all P&Gs to require 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 5 and 10. **St. Maarten has sufficiently addressed Deficiency 1.**

R.9 (Deficiency 2): The sources through which financial institutions should satisfy themselves that a third party is adequately regulated is limited to Mutual Evaluation Reports.

142. Throughout the follow-up process, St. Maarten indicated that the P&Gs for CIs, ICs, and IBs were revised to refer broadly to reports, assessments and reviews of reports produced by the FATF, IMF



or FSRBs and not only Mutual Evaluation Reports, as means of consultation to assess risks and determine where a third party that meets the required conditions can be based. **St. Maarten has sufficiently addressed Deficiency 2.**

R.9 (Deficiency 3): There are no requirements for MTC to comply with Recommendation 9.

143. St. Maarten clarified that the P&Gs for MTC was not revised to include or provisions on reliance on third parties, because MTCs are not able to make use of them, i.e. all relationships with MTCs must be conducted directly by the MTC. **St. Maarten has sufficiently addressed Deficiency 3.**

Recommendation 9 overall conclusion

144. St. Maarten has taken adequate actions to address the three deficiencies identified in its MER concerning R. 9. **The compliance with SR. V has improved up to a level comparable at minimum to LC.**

Recommendation 12 - DNFBPs–R.5, 6, 8–11

R.12 (Deficiency 1): The threshold for identification requirements for casinos is not in accordance with the FATF standard.

145. Article 3(2)(d) of the National Ordinance combating ML/TF (AB 2019 No. 25) sets out that a non-financial service provider must conduct customer due diligence when it relates to games of chance as referred to in the National Ordinance Games of Chance, the National Ordinance Offshore Games of Chance or the Lottery Ordinance, whereby transactions above NAf 5.000,00 are paid for using cash, electronically or using other payment systems. **St. Maarten has sufficiently addressed Deficiency 1.**

R.12 (Deficiency 2): No AML/CFT requirements for internet casinos.

146. Article 2(b)(4°)(b) of the National Ordinance Combatting ML/TF include games of chance as referred to in the National Ordinance Offshore Games as a non-financial service provider covered by its provisions. Furthermore, National Ordinance Offshore Games provides for the licensing of providers interested in exploiting hazard games on the international market through online services. **St. Maarten has sufficiently addressed Deficiency 2.**

R.12 (Deficiency 1): No requirements, by law or regulation for DNFBPs regarding criteria 5.2.c, 5.2.d, 5.2.e and 5.7.

147. St. Maarten has covered most of the required criteria with the following provisions of the National Ordinance Combating ML/TF (AB 2019 No. 25):

| Criteria | Provisions |
|----------|-----------------|
| 5.2.c | Not covered |
| 5.2.d | Article 3(2)(g) |
| 5.2.e | Article 3(2)(h) |

| | |
|-------|-----------------|
| 5.7.1 | Article 7(1)(d) |
| 5.7.2 | Article 9 |

148. **This deficiency has been partially addressed.**

R.12 (Deficiency 3): No requirements for DNFBPs supervised by the MOT and casinos regarding criteria 5.6 to 5.11, 5.16 and 5.17.

149. St. Maarten has covered most of the required criteria with the following provisions of the National Ordinance Combating ML/TF (AB 2019 No. 25):

| Criteria | Provisions |
|----------|-----------------------------------|
| 5.5.2 | Articles 1(ee); 7(1)(b); and 8(2) |
| 5.6 | Article 7(1)(c) |
| 5.7 | Article 7(1),(d), and article 9 |
| 5.8 | Article 10(1) |
| 5.9 | Article 6(1)(a)(1°) |
| 5.10 | Article 6(1)(a)(2°) |
| 5.11 | Article 6(4) |
| 5.16 | Articles 5(4) and 9(2) |
| 5.17 | Not covered |

150. **This deficiency has not been sufficiently addressed.**

R.12 (Deficiency 4): The deficiencies in section 3.5 for Rec. 10 which are applicable to all DNFBPs.

151. Articles 22 and 23 of the National Ordinance Combating ML/TF (AB 2019 No. 25) on “the storage of data and information acquired by service providers” address the deficiencies mentioned in section 3.5¹⁶ for Recommendation 10. **St. Maarten has sufficiently addressed Deficiency 4.**

R.12 (Deficiency 5): 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.

152. St. Maarten has covered most of the requirements of Recommendations 6, 8, 9 and 11 with the following provisions of the National Ordinance combating ML/TF (AB 2019 No. 25):

¹⁶ The deficiencies identified were the following:

1. The obligation under essential criterion 10.1, which compels financial institutions to maintain all necessary records on transactions, is not clearly stipulated in law or regulation.
2. 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.
3. The obligation under E.C. 10.3 requiring that all customer and transaction records and information be available to competent authorities upon appropriate authority on a timely basis should be in law or regulation.



- a. *Recommendation 6:* All the criteria set out in Recommendation 6 are covered with Article 1(1)(w) and (2)(a), (b) and (c), Article 10(2), and Article 11.
- b. *Recommendation 8:* Article 20(3) covers criterion 8.1, but St. Maarten has not addressed criteria 8.2 and 8.2.1.
- c. *Recommendation 9:* Articles 13 and 14 cover criteria 9.1, 9.2, 9.4 and 9.5. The 6th FUR shows that the Central Bank incorporated requirements regarding criterion 9.3 in the P&Gs for SAII and AII.
- d. *Recommendation 11:* All the criteria set out in Recommendation 11 are covered with Article 12 of the National Ordinance combating ML/TF.

153. **This deficiency has been partially addressed.**

R.12 (Deficiency 6): No requirements for Self-Administered Investment Institutions (SAII) and Administrators of Investment Institutions (AII) regarding criteria 6.2 and 9.3.

154. The following table analyses the compliance with the referenced criteria:

| Criteria | P&Gs AII and SAII |
|----------|--|
| 6.2 | The Guidelines sets out that the institution's decision to start a business relationship with PEPs must be taken at its senior management level. |
| 9.3 | When there is a reliance on third parties to perform some of the elements of the due diligence process, the P&G sets out the steps must be taken by Post Plenary cfatf-fur-sint-maarten-6th 15 administrators and self-administered investment institutions, indicating that they should satisfy themselves that the third party is AML/CFT regulated and supervised and is under FATF Recommendation 23, 24 and 29. |

155. **St. Maarten has sufficiently addressed Deficiency 6.**

Recommendation 12 overall conclusion

156. S. Maarten has addressed four of the deficiencies identified in full, but there are minor gaps concerning the implementation of essential criteria 5.2.c, 5.17, 8.2, and 8.2.1 that still need corrective actions. **The compliance with Recommendation 12 has improved up to a level comparable at minimum to LC.**

Recommendation 14 - Protection & no tipping-off

R.14 (Deficiency 1): It is not clear that this prohibition covers financial institutions and their directors' officers and employees (permanent or temporary).

157. Article 27(1)(a) and (b) of the National Ordinance Combating ML/TF (AB 2019 No. 25) sets out that both service providers and the directors and other employees of service providers have a duty of confidentiality regarding reports submitted to the MOT or information disclosed to the MOT at its request. **St. Maarten has sufficiently addressed Deficiency 1.**

Recommendation 14 overall conclusion

158. St. Maarten addressed the only deficiency found concerning Recommendation 14. **The compliance with Recommendation 14 has improved up to a level comparable to a C.**

Recommendation 16 - DNFBPs–R.13–15 & 21

R. 16 (Deficiency 1): The deficiencies identified for Recs. 13 and 14 in section 3.7 apply to all DNFBPs.

159. The deficiencies identified in relation Recommendations 13 and 14 have all been addressed as explained in the respective sections of this report. **St. Maarten has sufficiently addressed Deficiency 1.**

R. 16 (Deficiency 2): 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.

160. The National Ordinance combating ML/TF (AB 2019 No. 25) includes provisions that partially address the requirement of issuing legislation for DNFBPs supervised by the MOT and casinos as required in Recommendations 15 and 21. The following table detail the relevant provisions concerning this deficiency:

| Criteria | Provisions |
|-----------------|--|
| 15.1 | Article 20(1) and (2) |
| 15.1.1 | Article 20(1) and (2) and 21 |
| 15.1.2 | Not covered |
| 15.2 | Not covered |
| 15.3 | Article 21(1) partially covers this criterion as it does not require service providers to establish ongoing employee training to ensure that employees are kept informed of new developments, including information on current ML and FT techniques, methods and trends. |
| 21.1 | Article 12(1)(a) |
| 21.1.1 | Article 12(2) partially covers this criterion as it does not require service providers to make available their written findings to competent authorities (e.g. supervisors, law enforcement agencies and the FIU). |
| 21.2 | Article 12(2) |
| 21.3 | Not covered |

161. Deficiency 2 has not been sufficiently addressed.



R. 16 (Deficiency 3): DNFBPs supervised by the Central Bank are not required to apply counter-measures to countries which do not or insufficiently apply FATF Recommendations.

162. Article 10(2)(h) of the National Ordinance combating ML/TF (AB 2019, no. 25) requires DNFBPs to apply enhanced customer due diligence before the business relationship is entered into or the transaction executed, as well as during the business relationship if it relates to natural persons, legal entities, trusts and comparable entities which are registered or based in a country or jurisdiction which does not, or does not sufficiently, comply with internationally accepted standards for the prevention and combatting of ML/TF. **St. Maarten has sufficiently addressed Deficiency 3.**

Recommendation 16 overall conclusion

163. St. Maarten has successfully addressed the shortcomings related to the implementation of Recommendations 13 and 14 which cascaded into Recommendation 16, moreover, its legislation provides for DNFBPs' obligation to apply countermeasures to countries which do not or insufficiently apply FATF Recommendations. Notwithstanding, there are some requirements derived from Recommendations 15 and 21 that have not been implemented. **The compliance with Recommendation 16 has improved up to a level comparable to an LC.**

Recommendation 17 - Sanctions

R. 17 (Deficiency 1): Outside of the Civil and Penal Codes, there are no indications that sanctions could apply to directors and senior management of financial institutions.

164. Article 33(5) of the National Ordinance combating ML/TF (AB 2019 No. 25) provides for the application of sanctions against directors and executives, irrespective of whether these are natural persons, legal entities, groups of natural persons or legal entities, or organisations for non-compliance with AML/CFT obligations. **St. Maarten has sufficiently addressed Deficiency 1.**

R. 17 (Deficiency 2): Sanctions not effective against MTCs that continue to operate without licenses.

165. The actions taken concerning Deficiency 1 of Recommendation 23 cascades into this one. **St. Maarten has sufficiently addressed Deficiency 2.**

R. 17 (Deficiency 3): Sanctions appear to be used sparingly.

166. To correct Deficiency 3, the MER recommended that the Central Bank should have a wide range of sanctions and should be prepared to use them. Accordingly, Article 31 of the National Ordinance combating ML/TF (AB 2019 No. 25) sets out that:

- a. The Central Bank and Office for Disclosure are responsible for the enforcement of the national ordinances on reporting unusual transactions, and for supervising the compliance of financial and non-financial service providers, respectively with such ordinances.
- b. To implement this national ordinance, the Office for Disclosure and the Central Bank are authorised to impose orders to comply with specific instructions, enforcement actions, or administrative penalties.



- c. The National Ordinance Administrative Enforcement (AB 2018, no. 22) applies to both the Office for Disclosure and the Bank, provided that the administrative penalty, referred to in Article 55 of that national ordinance, amounts to no more than NAf 4,000,000.

167. St. Maarten has sufficiently addressed Deficiency 3.

Recommendation 17 overall conclusion

168. St. Maarten has addressed all deficiencies identified for Recommendation 17. **The compliance with this Recommendation has improved up to a level comparable to a C.**

Recommendation 21 - Special attention for higher risk countries

R.21 (Deficiency 1): Notices with respect to strategic deficiencies are limited to jurisdictions for which the FATF calls for action.

169. P&Gs were amended to establish the obligation of continuously consult the FATF's, CFATF's, and Central Bank's websites for the most recent version of the FATF and the CFATF Public Statements and FATF-related documents on high-risk and non-cooperative jurisdictions. Besides, the P&GSs were also revised to include require service providers to pay special attention to business relationships and transactions with natural and legal persons from or in countries that do not or insufficiently apply the FATF Recommendations including high-risk and non-cooperative jurisdictions. **St. Maarten has sufficiently addressed Deficiency 1.**

R.21 (Deficiency 2): Countermeasures are not clearly specified with respect to countries that do not apply or insufficiently apply the FATF Recommendations.

170. The Harmonizing the supervision laws of the Central Bank of Curaçao and Sint Maarten (AB 2018, no. 5) adds Articles 6a and 6c to The National Ordinance on the Supervision of Banking and Credit Institutions. Article 6a(3) enables the Central Bank of Curacao and St. Maarten to issue technical and organisational regulations to give effect to recommendations and rules of international or intergovernmental organisations. Article 6c(3) allows the Bank to publish any public warnings given by a foreign or intergovernmental organisation. In addition, Harmonizing the supervision laws of the Central Bank of Curaçao and Sint Maarten (AB 2018, no. 5) adds the same provisions in the respective Ordinances applicable to the insurance industry (Articles 15b and 18a), stock exchanges (Articles 3a and 3c), investment institutions and administrators (Articles 5b and 9), trust service providers (Articles 11 and 11b) and insurance brokerage companies (Articles 8a and 8b).

171. Nevertheless, the provisions referenced above focus on giving effect to recommendations and replicating public warnings issued by international or intergovernmental organisations do not suffice the requirement of setting out countermeasures applicable to countries that do not implement or insufficiently implement the FATF Recommendations. **St. Maarten has not sufficiently addressed Deficiency 2.**



Recommendation 21 overall conclusion

172. St. Maarten has addressed one of the deficiencies identified for Recommendation 21 and the second one remains outstanding. **The compliance with this Recommendation remains as PC.**

Recommendation 24 - DNFBPs - Regulation, supervision and monitoring

R.24 (Deficiency 1): There is no adequate AML/CFT regulation and supervision of casinos.

173. Article 2(b)(4°) of the National Ordinance combating ML/TF (AB 2019 No. 25) sets out that those offering the opportunity to participate in games of chance or a lottery are non-financial services providers. Articles 3-14, 19-23, and 25-27 of the same Ordinance set out a wide range of AML/CFT obligations for these service providers. Article 31(1) subjects them to the AML/CFT regulatory and supervisory regime of the Office for Disclosures. Article 33 authorises the Office of Disclosures to sanction them. **St. Maarten has sufficiently addressed Deficiency 1.**

R.24 (Deficiency 2): No supervisory regime for internet casinos.

174. The action described in Deficiency 2 of Recommendation 12 cascades into this one. Regarding the implementation of an AML/CFT regime for internet casinos, please refer to paragraph 60 of this report. **St. Maarten has sufficiently addressed Deficiency 2.**

R.24 (Deficiency 3): The MOT as supervisory authority has not started yet.

175. Throughout the follow-up process, St. Marten informed that the MOT started a register of non-financial service providers. By 2015, the MOT had a complete listing of the jewellers and real estate companies and agents. Moreover, the MOT has carried out information and management meetings with all non-financial sectors under its supervision. On the other hand, Article 3(2) of the National Ordinance MOT sets out that the MOT is responsible for the enforcement of the National Ordinances on reporting unusual transactions and monitoring the compliance of non-financial service providers with these National Ordinances. Articles 1(o); 4(2); 5(5), (6), and 8; 16; and 20, also develop the supervisory role of the MOT. On the other hand, Article 14 of the same Ordinance refers to providing the MOT with the resources to fulfil its roles, including supervision. **St. Maarten has sufficiently addressed Deficiency 3.**

R.24 (Deficiency 4): The MOT does not have adequate resources to fulfil their supervisory role.

176. St. Maarten provided annual reports that reflected the hiring of adequate and competent human resources to perform its duties. By 2016, the MOT had committed financial resources to contract a high-level expert (former Head of FIU of Curacao and senior legal/policy officer) to assist with training for the analysis and the supervision departments. The staff of the MOT also has continued the training programme and attended the supervision training carried out in Trinidad and Tobago in 2016. Also, analysts went through an ACAMS certification process. **St. Maarten has sufficiently addressed Deficiency 4.**

R.24 (Deficiency 5): The deficiency identified in section 3.10 (R. 29 and R17) with regard to the supervisory function of the Central Bank applied.

177. The deficiencies related to Recommendations 17 have been sufficiently addressed as explained in the respective section of this report. As Recommendation 29 was rated LC in the MER, it was not further analysed throughout the follow-up process. The first deficiency listed concerning this recommendation referred to the lack of explicit provisions in the NOIS or the NORUT for sanctions against directors or senior management of financial institutions. This issue has been addressed with Article 33(5) of the National Ordinance combating ML/TF (AB 2019 No. 25), which provides for the application of sanctions against directors and executives, irrespective of whether these are natural persons, legal entities, groups of natural persons or legal entities, or organisations for non-compliance with AML/CFT obligations. The second deficiency related to Recommendation 29 read pointed out that sanctions had not dissuaded money remitters from operating without a licence. This issue was issued by the country as referred to in Deficiency 1 of Recommendation 23. **St. Maarten has sufficiently addressed Deficiency 5.**

Recommendation 24 overall conclusion

178. St. Maarten has addressed all the deficiencies identified for Recommendation 23; hence, **compliance with this recommendation is now significantly improved and comparable to the level of an LC.**

Recommendation 25 - Guidelines & Feedback

R.25 (Deficiency 1): Not much guidance is given to financial institutions on TF techniques and methods.

179. The Annual Reports of the MOT 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. These Annual Reports also included a section on information related to UTRs. The reports also include information on training provided to financial reporting entities. Furthermore, St. Maarten indicated that the MOT carried training activities aimed at financial service providers in December 2015 and January 2016, which were based on the Egmont ISIL Project reports for the Western Hemisphere. The MOT also conducted training for DNFBPs on TF throughout 2016. **St. Maarten has sufficiently addressed Deficiency 1.**

R.25 (Deficiency 2): P&G for providers of factoring services is not in place.

180. Article 2(1)(a)(13°) of the National Ordinance Combating ML/TF (AB 2019 No. 25) covers factoring services so that this sector is subject to AML/CFT obligations. Notwithstanding, St. Maarten did not provide information on the issuance of a P&G document for factoring services. **The deficiency has not been addressed.**

R.25 (Deficiency 3): DNFBPs are not supervised by the MOT and do not receive sufficient guidance to DNFBPs on complying with AML/CFT requirements.

181. Article 2(2) of the National Ordinance MOT (AB 2019, no. 24) sets out that the MOT is responsible for enforcing compliance with the National Ordinances on reporting unusual transactions and monitoring the compliance of non-financial service providers with these National Ordinances.

182. On the other hand, the Annual Reports of the MOT for 2012, 2013 and 2014 include a section on “Statistics and Reporting Behaviour” which provides guidance on indicators for the analysis of suspicious transactions. Besides, by 2016, the MOT issued P&Gs for the following sectors: a) Car dealers and Jewellers 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, which guide non-financial service providers regarding CDD measures, reporting duties, the compliance regime and enforcement.

183. **St. Maarten has sufficiently addressed Deficiency 3.**

Recommendation 25 overall conclusion

184. St. Maarten has addressed most of the deficiencies identified for Recommendation 25. However, the country has not provided updated information on the issuance of guidance to providers of factoring services and this issue accordingly remains not met. St. Maarten has not met the recommended action. The recommended actions for R. 25 are mostly met. **St. Maarten has improved the compliance with Recommendation 25 to a level comparable, at a minimum, to an LC.**

Recommendation 27 - Law enforcement authorities

R. 27 (Deficiency 1): No financial resources have been allocated for ML and TF training for the local law enforcement agencies.

185. The MER posed to correct Deficiencies 1, 2, and 3 with the same recommended action: 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.

186. Regarding such action, St. Maarten did not provide clear information regarding financial resources designated to provide training to ensure that recruited officers are appropriately trained in ML and TF or to keep them up to date in the recent developments in financial investigations; therefore, **St. Maarten has not sufficiently addressed Deficiency 1.**

R. 27 (Deficiency 2): There is a shortage of suitably qualified law enforcement officers generally to execute effective ML investigations.

187. Since the recommended action for Deficiencies 1, 2, and 3 was not met throughout the follow-up process, **St. Maarten has not sufficiently addressed Deficiency 2.**

R. 27 (Deficiency 3): No specific training for TF or ML for several of the law enforcement authorities.

188. Since the recommended action for Deficiencies 1, 2, and 3 was not met throughout the follow-up process, **St. Maarten has not sufficiently addressed Deficiency 3.**



R. 27 (Deficiency 4): Unlicensed MTCs continue to operate within Sint Maarten

189. As referred in the analysis of Deficiency 1 of Recommendation 23, **St. Maarten has sufficiently addressed Deficiency 4.**

Recommendation 27 overall conclusion

190. Considering that St. Maarten has sufficiently addressed only one of the four (4) deficiencies identified for Recommendation 27, **the level of compliance with this recommendation remains PC.**

Recommendation 30 - Resources, integrity, and training

R. 30 (Deficiency 1): The MOT lacks staff to adequately perform its functions (including the Head of MOT).

191. The analysis made for Deficiencies 2 and 6 regarding Recommendation 26 address the issues of the absence of a permanent MOT Head and the increase of staff members to analyse transactions and improve the quality of its reports. Accordingly, **St. Maarten has sufficiently addressed Deficiency 1.**

R. 30 (Deficiency 2): The staff of the MOT does not have adequate and relevant training for combatting ML & TF.

192. The analysis made for Deficiency 4 of Recommendation 24 explains how St. Maarten addressed the shortage of adequate and relevant training for combatting ML & TF for the staff of the MOT, **St. Maarten has sufficiently addressed Deficiency 2.**

R. 30 (Deficiency 3): The MOT lacks analytical tools such as Analyst Notebook to assist in the analysis of UTRs.

193. In 2012, the MOT implemented the Sint Maarten Electronic Reporting Tool -SERT Portal- which allows the reporting entities to submit suspicious transactions reports via an online platform. It also allows the MOT to analyse suspicious transactions reports base according to an alert's system of indicators to produce tactical and operational analysis. **St. Maarten has sufficiently addressed Deficiency 3.**

R. 30 (Deficiency 4): The MOT lacks resources to protect the MOT data, premises and staff, e.g. Offsite electronic data fireproof safe, fire extinguishers, etc.

194. The analysis made for Deficiency 7 of Recommendation 26 explains how St. Maarten addressed the lack of resources to protect the MOT data, premises, and staff. **St. Maarten has sufficiently addressed Deficiency 4.**



R. 30 (Deficiency 5): Several of the law enforcement agencies possess a shortage of suitably qualified officers trained in ML investigations.

195. By 2016, St. Maarten informed that the Detective Department of the Police Force was strengthened with two financial investigators. The complement of the Landsrecherche was expanded to eight (8) investigators. The complement of the Detective Co-operation Team (RST) was expanded with two (2) detectives to four (4) in total. **St. Maarten has sufficiently addressed Deficiency 5.**

R. 30 (Deficiency 6): Inadequate training for ML and TF.

196. The MER posed that the country should ensure that all relevant entities including the Tax Department, Landsrecherche, Customs, Coast Guard and the KPSM are adequately and regularly trained in money laundering and counter financing of terrorism like the RST. By 2016, the Customs department received training on AML, particularly focused on case studies regarding cash transactions, cross border transactions, and suspicious transactions. The Tax Department, the Landsrecherche, the Coast Guard and the KPSM participated in a pre-assessment CFATF training in Curaçao. The MOT received the training specified in Deficiency 4 of Recommendation 24. Furthermore, The Customs Department and Financial Investigators of the Police Department received training in January 2019 from the MOT. The local financial services detectives have been receiving training from experienced Dutch financial services detectives who were recruited by the PPO. **St. Maarten has sufficiently addressed Deficiency 6.**

R. 30 (Deficiency 7): Inadequate space for the Court of First Instance to properly execute its functions

197. By 2016, St. Maarten informed that the Courts of Justice had been provided with extra facilities to execute its functions. **St. Maarten has sufficiently addressed Deficiency 7.**

Recommendation 30 overall conclusion

198. St. Maarten addressed all the deficiencies identified for Recommendation 30. **The level of compliance with this recommendation is comparable at a minimum with an LC.**

Recommendation 31 - National co-operation

R. 31 (Deficiency 1): The National Committee on Money Laundering (CIWG) needs to be formally established.

199. St. 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 Centre”. Based in Article 3(6)(g) and (h) of this Ordinance, The Reporting Centre 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 CFATF, as well as independently maintaining contact with the Egmont Group



within the context of compliance with the recommendations made by these organizations. Consequently, The Reporting Centre replaces the CIWG. **St. Maarten has sufficiently addressed Deficiency 1.**

R. 31 (Deficiency 2): 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.

200. The explanatory notes of 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) indicate that The Reporting Center is led by a Head who acts as the point of contact for the CFATF; implements the CFATF recommendations, advice upon request and at its initiative to the government at a strategic level, concerning matters related to the prevention and combating of ML/TF; 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 ML/TF. Based in Article 3(6)(g), the head can independently conclude covenants or administrative agreements concerning the exchange of data and information with foreign agencies that have a duty that is similar to that of The Reporting Centre. **St. Maarten has sufficiently addressed Deficiency 2.**

Recommendation 31 overall conclusion

201. St. Maarten has addressed the two (2) deficiencies identified for Recommendation 31; hence, **the level of compliance with this recommendation has been brought up, at a minimum, to the level of LC.**

Recommendation 32 - Statistics

R. 32 (Deficiency 1): No statistics available relating to requests to overseas MOTs.

202. 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. **St. Maarten has sufficiently addressed Deficiency 1.**

R. 32 (Deficiency 2): No statistics available for requests for additional information by the MOT to reporting entities.

203. Throughout the follow-up process, St. Marten MOT provided information on requests for additional information issued by the MOT to reporting entities. The country provided specific statistics for 2010-2015. The country also provided information regarding the need to ensure that comprehensive statistics are maintained concerning the investigation, prosecution, and conviction of ML related cases. The Public Prosecutor’s Office (PPO) indicated its data system does not allow for the extraction and aggregation of data on specific topics, and this information is extracted manually. The PPO also indicated that the data system was being currently updated to allow for the collection of aggregated data for statistical purposes. For the 9th FUR, St. Maarten provided information indicating that the PPO conducted nine (9) investigations on ML in 2018, two (2) cases went to trial; one (1) case was not prosecuted; fines of \$90,000 were imposed in two (2) cases, and the remaining four (4) cases were still being evaluated. It is not clear whether these statistics are kept annually as required in criterion 32.2 and whether they are used to review the effectiveness of



the AML/CFT system as expected according to criterion 32.1, which are subjects that may be further reviewed in the 4th Round of Mutual Evaluations. **St. Maarten has sufficiently addressed Deficiency 2.**

R. 32 (Deficiency 3): Several reporting entities have not filed UTRs for either subjective or objective indicators and appear not to understand or know their responsibility to report.

204. The Annual Reports for 2010-2011, 2012, 2013 and 2014 provided information on the informative/training sessions addressed to financial service providers, their reporting obligation, reporting procedures, the correct way to report, FATF recommendations, PEPs, cases of ML/TF, FIU and its legal duties. **St. Maarten has sufficiently addressed Deficiency 3.**

Recommendation 32 overall conclusion

205. St. Maarten has taken actions to address the deficiencies related to the statistics maintained by different authorities, primarily the MOT. **The level of compliance with Recommendation 32 has been brought up, at a minimum, to the level of LC.**

Recommendation 33 - Legal persons–beneficial owners

R. 33 (Deficiency 1): There is no system in place to ensure access to the UBO information.

206. Article 35 of the National Ordinance combating ML/TF (AB 2019 No. 25) amends the Commercial Registers Decree to oblige the registration of the personal details of the ultimate beneficiary, which, according to Article 1(ee) is a natural person who can exercise effective control in or on behalf of the client, and “client” is a concept that includes legal persons in Article 1(e). **St. Maarten has sufficiently addressed Deficiency 1.**

R. 33 (Deficiency 2): Not all competent authorities have access in timely fashion to adequate, accurate and current UBO information.

207. The country did not provide new information on mechanisms to guarantee that competent authorities can obtain and have access promptly to accurate and current ultimate beneficiary information. **St. Maarten has not sufficiently addressed Deficiency 2.**

R. 33 (Deficiency 3): The requirement for bearer shares to be transformed into registered shares operates at the discretion of the shareholder and is therefore not mandatory.

208. Article 100(1) of the National Ordinance to amend Book 2 of the Civil Code, in force since November 2019, prohibits the issuance of bearer shares. **St. Maarten has not sufficiently addressed Deficiency 3.**



R. 33 (Deficiency 4): 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.

209. Article 10(2)(g) of the combating ML/TF (AB 2019 No. 25) requires service providers to apply enhanced customer due diligence before the business relationship is entered into or the transaction executed, as well as during the business relationship if it relates to companies and comparable entities in which the shares are registered shares held for the benefit of a third party. Article 10(4)(a) clarifies that at a minimum, enhanced customer due diligence shall consist of standard customer due diligence, supplemented with additional information about the client and the ultimate beneficiary. **St. Maarten has not sufficiently addressed Deficiency 4.**

Recommendation 33 overall conclusion

210. St. Maarten has sufficiently addressed most the deficiencies identified for Recommendation 33, but still needs to ensure that competent authorities have access in a timely fashion to adequate, accurate and current. **The level of compliance with this recommendation has been brought up, at a minimum, to the level of LC.**

Recommendation 38 - MLA on confiscation and freezing

R. 38 (Deficiency 1): The deficiencies in R36 impact Sint Maarten's ability to extend mutual legal assistance.

211. St. Maarten has addressed the deficiencies identified in the MER concerning Recommendation 36. **The compliance with R. 38 has improved up to a level comparable at minimum to LC.**

Recommendation 38 overall conclusion

212. St. Maarten has addressed most of the deficiencies relative to Recommendation 36, which cascade into Recommendation 38; notwithstanding, the correction of all deficiencies relative to the implementation of the TF Convention is pending, which hinders St. Maarten's full compliance with Recommendation 38. **The level of compliance with this recommendation has been brought up, at a minimum, to the level of LC.**

Recommendation 39 - Extradition

R. 39 (Deficiency 1): The deficiencies in R36 impact Sint Maarten's ability to extend mutual legal assistance through extradition.

213. St. Maarten was required to attend to deficiencies related to Recommendation 36 and Special Recommendation II to achieve compliance with Recommendation 39. The respective sections of this report on such recommendations indicate that the country has addressed most of the deficiencies identified. **St. Maarten has sufficiently addressed Deficiency 1.**



Recommendation 39 overall conclusion

214. Based on the progress achieved concerning Recommendation 36 and Special Recommendation II, **the level of compliance with Recommendation 39 has been brought up, at a minimum, to the level of LC.**

Special Recommendation VI – Money or value transfer services (MTCs)

SR. VI (Deficiency 1): There continue to be MTCs operating within Sint Maarten without licenses from the Central Bank.

215. The actions taken by St. Maarten regarding unlicensed MTCs were detailed in the analysis of Deficiency 1 of Recommendation 23. **St. Maarten has sufficiently addressed Deficiency 1.**

SR. VI (Deficiency 2): Provisions for MTCs to update the Central Bank on the number of agents and sub-agents should be formalised.

216. By Articles 1(h) and 11 of the National Ordinance on Supervision of the Money Remitter Companies (AB 2018, no. 6), the CBCS must keep a register of money transfer offices, which is a term that comprises (a) anyone who carries out money transactions on a professional or commercial basis for the benefit of or at the request of a third party. Accordingly, the CBCS must register agents and other intermediaries who execute money transactions or conclude agreements for a money transaction office on behalf of or at the request of a third party. **St. Maarten has sufficiently addressed Deficiency 2.**

Special Recommendation VI overall conclusion

217. St. Maarten has corrected the two deficiencies identified for Special Recommendation VI. **St. Maarten has improved compliance with this Special Recommendation to a level comparable, at a minimum, to C.**

Special Recommendation VII - Wire transfer rules

SR.VII (Deficiency 1): The essential criteria for wire transfers are not detailed in the relevant P&Gs.

218. The MER recommended addressing Deficiencies 1 and 2 by detailing the wire transfer requirements that financial service provider must comply with concerning Special Recommendation VII, instead of relying on the general provisions in the P&G for credit institutions.

219. In this regard, St. Maarten has implemented some of the requirements concerning Special Recommendation VII in the National Ordinance combatting ML/TF (AB 2019 No. 25) as the following details:

| Criteria | Provisions |
|-----------------|---|
| VII.1 | Article 22(1) partially covers the criterion as it does not specify what information services providers must obtain concerning the originator. |
| VII.2 | Article 22(1) partially covers the criterion as it does not indicate what information services providers must include in the transfer message, in case of a cross-border wire transfer. |
| VII.3 | Article 22(1) partially covers the criterion as it does not detail what information services providers must include in the transfer message, in case of a domestic wire transfer. |
| VII.4 | Not covered |
| VII.4.1 | Not covered |
| VII.5 | Not covered |
| VII.6 | Not covered |
| VII.7 | Articles 31(3) and 33(5). |

220. **St. Maarten has not sufficiently addressed Deficiency 1.**

SR.VII (Deficiency 2): There are no explicit provisions in the P&G for credit institutions to be risk-based.

221. The insufficiency of the action taken in respect of Deficiency 1 cascades into the present one. **St. Maarten has not sufficiently addressed Deficiency 2.**

Special Recommendation VII overall conclusion

222. St. Maarten has not sufficiently addressed the two deficiencies found concerning Special Recommendation VII. **The level of compliance with this recommendation remains as PC.**

Special Recommendation VIII - NPOs

SR. VIII (Deficiency 1): No recent assessment on the on the risk with regard NPO sector.

223. Sint Maarten had scheduled a national risk assessment (NRA) to start at the end of March 2020. This NRA, that will include the NPO sector, will be rescheduled due to the COVID-19 pandemic (exact date to be established in due time). **This deficiency has not been addressed.**

SR. VIII (Deficiency 2): There is no oversight or supervisory regime for NPOs.

224. One outcome of the NRA exercise mentioned in Deficiency 1 will be the designation of an authority to monitor and supervise the NPO sector. The sanctions for non-compliance by the NPOs will be established with the institution of the authority. **This deficiency has not been addressed.**



SR. VIII (Deficiency 3): No requirement for NPO sector to keep financial information.

225. The previously referred NPO authority will institute an outreach program for NPOs to maintain transaction records for a minimum period of five (5) years and implement other obligations. **This deficiency has not been addressed.**

SR. VIII (Deficiency 4): No procedures in place to ensure that they are able to effectively investigate and gather information on NPOs.

226. St. Maarten has clarified that the procedures to ensure that law enforcement can effectively investigate and gather information on NPOs are already in place in the current Penal Procedures Code. By the same token, law enforcement agencies have procedures in place that allow for timely and effective sharing of information on NPOs, both domestically and internationally, because NPOs are not considered different than any other subject of investigation. **St. Maarten has sufficiently addressed Deficiency 4.**

SR. VIII (Deficiency 5): No training sessions or sensitization forum held for NPOs.

227. The future NPO Authority will also implement an outreach program to provide adequate AML/CFT awareness and guidance about the ML/TF risks of the NPO sector. **This deficiency has not been addressed.**

Special Recommendation VIII overall conclusion

228. St. Maarten has not addressed four (4) of the five (5) shortcomings identified concerning Special Recommendation VIII. Based on the clarification provided as to how authorities investigate and gather information on NPOs, **compliance with Special Recommendation VIII has improved up to a level comparable to a PC.**

Special Recommendation IX - Cross-Border Declaration & Disclosure

SR. IX (Deficiency 1): An ad hoc system is in place for the disclosure of the physical cross-border transportation of currency.

229. The MER required St. Maarten's authorities to set out a declaration system for cross-border transportation of currency and bearer negotiable instruments to be completed by all passengers instead of the ad hoc disclosure system that was in place. St. Maarten has taken the following actions:

- a. National Ordinance to amend the National Ordinance Cross-Border Money Transfers (AB 2019, no. 26) revised Article 2 of the National Ordinance Reporting Cross-Border Cash Transports (AB 2013, GT no. 730) and makes it compulsory for persons entering or leaving St. Maarten to declare money, precious metals, jewellery, or other objects worth NAf 25,000 or more to Customs officials.
- b. The declaration must be made by submitting a declaration signed by the applicant following a model to be determined by the Minister. This model was approved in the "Regulation of the Minister of Justice of 22 May 2015 No. 12 establishing the model for the declaration form, referred to in Article 2, second paragraph, of the National Ordinance on the Notification of Cross-Border Money Transport Regulations".



- c. The annex to the regulation contains the model of the declaration form in Dutch, English, Spanish, and French.

230. St. Maarten has sufficiently addressed Deficiency 1.

SR. IX (Deficiency 2): There is no system to restrain currency where there is a suspicion of ML or TF.

231. The disposition I of the National Ordinance Cross-Border Money Transfers (AB 2019, no. 26) amends Article 5(2)(e) of the National Ordinance Reporting Cross-Border Cash Transports (AB 2013, GT no. 730) to provide for the seizing of currency where there is suspicion ML or TF. **St. Maarten has sufficiently addressed Deficiency 2.**

SR. IX (Deficiency 3): There are no statistics evidencing Customs' effectiveness in the area of international cooperation.

232. The disposition I of the National Ordinance to amend the National Ordinance cross-border money transfers (AB 2019 no. 26) adds a new paragraph ten (10) to Article 5 of National Ordinance Reporting Cross-Border Cash Transports (AB 2013, GT no. 730) to require the Minister of Justice to publish statistics before 1st April each year for the previous calendar year regarding international customs cooperation in the implementation of the legislation for the prevention and combatting of ML/TF. **St. Maarten has sufficiently addressed Deficiency 3.**

SR. IX (Deficiency 4): There are no statistics regarding the number of false declarations and investigations forwarded to the PPO.

233. The action taken in relation to the previous deficiency 3 is applicable to the present one. **St. Maarten has sufficiently addressed Deficiency 4.**

SR. IX (Deficiency 5): There is no process for confiscating currency or negotiable instruments for persons listed in accordance with UNSCR 1373 and 1267.

234. The Sanctions National Decree (AB 2016 No. 10) establishes in Article 1 its applicability for the implementation of UNSCRs 1373 and 1267, among others. Article 6(1)-(4) establishes the following: a) process to designate persons or organizations referred to in UNSCR 1373, 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. The described process does not apply to UNSCR 1267 as such resolution is not referenced in Article 6 of Sanctions National Decree (AB 2016 No. 10). **This deficiency has been partially addressed.**

SR. IX (Deficiency 6): There are no statistics relating to shipments of gold or other precious metals and stones.

235. The National Ordinance to amend the National Ordinance cross-border money transfers (AB 2019, no. 26) amends Articles 2(2) and Article 3 of the National Ordinance Reporting Cross-Border Cash Transports (AB 2013, GT no. 730) so that all persons entering and leaving country report (a) the identity and home address of the person making the report and the owner of the money, precious metals, jewellery or other objects that are being reported; (b) the size, origin and destination of the money, precious metals, jewellery or other objects; and (c) the reason for the chosen mode of



transport of the money, precious metals, jewellery or other. **St. Maarten has sufficiently addressed Deficiency 6.**

SR. IX (Deficiency 7): There is no structure established for the training and targeted programmes for Customs.

236. Throughout the follow-up process, St. Maarten provided information on training and targeted programmes for Customs, including the training programme that started to be executed in August 2015. The Customs Department received training in September 2015. **St. Maarten has sufficiently addressed Deficiency 7.**

SR. IX (Deficiency 8): No current information available with respect to the timeliness of the dissemination of the information relating to suspicious cash declarations/disclosures.

237. Disposition H of the National Ordinance to amend the National Ordinance cross-border money transfers (AB 2019 no. 26) amends Article 4 of the National Ordinance Reporting Cross-Border Cash Transports (AB 2013, GT no. 730) to require Customs' officials to forward every suspicion of ML/TF to the MOT. The officials must submit the business information recorded in an official report as referred to in Article 4(2)(b) and (c), and the business information concerning suspicions of ML/TF electronically to the MOT. **St. Maarten has sufficiently addressed Deficiency 8.**

Special Recommendation 9 overall conclusion

238. St. Maarten has addressed seven (7) of the Deficiencies found concerning Special Recommendation IX, but still needs to ensure that is a process for confiscating currency or negotiable instruments for persons listed under UNSCR 1267. **The compliance with Recommendation 14 has improved up to a level comparable to an LC.**

CFATF Secretariat
November, 2020

MATRIX WITH RATINGS AND FOLLOW-UP ACTION PLAN 3RD ROUND MUTUAL EVALUATION ST. MAARTEN

Changes since the last Report in November 2019, are highlighted in bold.

| Forty Recs. | Rating | Recommended Action | Actions Already Taken | Remaining Actions to be Taken |
|----------------------|---------------|---|---|--------------------------------------|
| Legal systems | | | | |
| 1. ML offence | LC | <ul style="list-style-type: none"> The Authorities should ensure criminalization of the following predicate offenses: illicit arms trafficking, smuggling, insider trading and market manipulation. The Penal Code should be amended to ensure that most of the non-terrorist related predicate offences for ML, ML and TF occurred in a foreign country can be prosecuted in Sint Maarten. | <p>Article 1:5 of the proposed PC SXM creates jurisdiction in cases of TF (currently article 4 and 4a PC). The money laundering offences apply to All crimes (articles 2:404, 2:405, 2:406 Penal Code SXM, currently punishable in articles 435a, 435b, 435c Penal Code), thus including the mentioned ones. Next to that the proposed article 2:54 and 2:55 PC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime (currently dealt with in the articles 435a, 435b, 435c Penal Code combined with 48a paragraph three (with explicitly mentions the financing of terrorism)). The Proposed article 2:55 the financing of crime is punishable as a severe crime. The switching provision of 2:224 (currently 96) makes the general provisions of the first book of the Penal Code applicable to all other Criminal laws</p> <p>The Introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice. The Council of Ministers is preparing submission of the IO to Parliament for approval.</p> <p>The Introduction Ordinance (IO) to enact the Penal Code has been by Parliament on February 27th, 2015. Both recommended actions concerning FATF rec 1 are hereby incorporated in the Penal Code.</p> <p>THE PENAL CODE ENTERED INTO FORCE ON JUNE 1, 2015.</p> <p>ALL PREDICATE OFFENSES HAVE BEEN INCORPORATED INTO THE PENAL CODE AND OTHER ORDINANCES (info sent to CFATF secretariat).</p> <p>This deficiency has been resolved in the Penal Code article 2:404 up until and including article 2:407.</p> <p>Criminal Code article 2:404 and article 1:127</p> <p>Criminal Code articles 2:404, 2:405, 2:406 (ML offence). Money laundering is a punishable act that is based on a predicate offence that generates money, such as illegal arms trafficking, insider trading and market manipulation. Article 1:3 and article 1:4 under c, of the Criminal Code stipulate that these offences committed outside of Sint Maarten, can be prosecuted in Sint Maarten.</p> <p>Draft national ordinance to amend the Criminal Code article 2:404 (include money under property of any description and to increase the punishment from 6 to 8 years).</p> <p>Both recommended actions are incorporated in the – Penal Code (PC) as enacted by AB 2015, no. 9 and amended by AB 2019, no. 41. The latter (National Ordinance Amending the Penal Code (NOAPC) came into effect in November 2019.</p> | Closed in 11 th FUR |

| | | | |
|--|--|---|--|
| | | <p>Article 1:5 PC creates jurisdiction in cases of TF. Article 2:54 PC creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime. The provision of 1:224 PC makes the general provisions of the First Book of the Penal Code applicable to all other (specific) Criminal laws.</p> <p>Also, to exclude that parallel criminal, civil or administrative proceedings may exclude liability of (legal) persons, groups of (legal) persons, and organizations, the NOAPC includes a new and generally applicable paragraph 4 in Article 1: 143 PC (See Article I, Part C, of the NOAPC). This new paragraph 4 contains a nuance on the "principle of ne bis in idem" (prohibition of double jeopardy).</p> <p>The money laundering offences apply to all crimes. Money laundering is criminalized in the PC: see Articles 2:404, 2:405, 2:406. The term "from any serious offence" in Articles 2:404 and 2:406 includes all serious offences. In this context, one should think of (also) the so-called "predicate offenses". These predicate offenses are incorporated and punishable in the PC and in other (specific) ordinances. These are successively (with the addition of the relevant article in the Penal Code):</p> <ul style="list-style-type: none">-participating in a criminal organization (Articles 2:57, 2:80, 2:127 and 2:252).-extortion (Articles 2:294 – 2:297).-terrorism, including financing of terrorism (Article 2:54, 2:408 and 2:409).-human trafficking and smuggling of human beings (Articles 2:154 and 2:239).-sexual exploitation, i.e. sexual exploitation of children (Article 2:239).-Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Article 1:118, under d, juncto Article 3 of the National Ordinance on opium and other narcotic drugs (Opiates Ordinance).-illegal arms trade (Article 1:118, under e juncto Article 6 of the Firearms Ordinance and Article 1 of the Weapon Ordinance); | |
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| | | <p>-intentional handling of stolen property (Articles 2:397 and 2:399). -corruption and bribery (Articles 2:314, 2:350, 2:351 and 2:352). -fraud (Article 2:305). -counterfeiting money (valsnummerij) (Articles 2:169 tot 2:172). -piracy and counterfeiting of products (Article 2:307). -environmental crime (Article 52 of the National Ordinance on Wastewater, Article 33 of the National Ordinance on Environmental Management and Protection, Article 38 of the National Ordinance for the Prevention of Pollution from ships and Article 81 of the National Ordinance Maritime Management); -murder and grievous bodily harm (Articles 2:259, 2:262, 2:273 t/m 2:276); -abduction, unlawful deprivation of liberty and hostage-taking (Articles 2:245, 2:246, 2:249 and 2:250); -robbery and theft (Articles 2:288 tot and met 2:291); -tax offenses (including with regard to customs and excise duties and tax) (Article 49, par. 2, of the General National Ordinance on National Taxes, and Articles 233, 233A, 233B and 235, par. 2, of the National Ordinance Import, Export and Transit.); -piracy (Articles 2:365 and 2:366); and, -insider trading and market manipulation (Articles 2:311 and 2:321, and Articles 8 and 9, juncto Article 15 of the National Ordinance Supervision Stock Markets).</p> <p>Via the NOAPC several ‘terrorist offences’ are mentioned more explicitly in the PC and the punishment for financing of terrorism is more strict. A (legal) person is now punishable by a term of imprisonment of up to 18 years - before the amendment this used to be much lower. (See Art. I, Part A, B, E, F, I, J, K, Q of the NOPC).</p> <p>But to fully live up to the FATF recommendations a new Title - Title XXXII Financing of Terrorism – is added to Book Two of the Penal Code. (See Art. I, Part Q of the NOPC.) Title XXXII consist of two new articles: one criminalizing the financing of terrorism (Article 2:408), and the other making it possible to disqualify a person, who is convicted for terrorism financing, from certain rights (Article 2:409).</p> | |
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| | | | To put an end to all doubt as to if in the Penal Code “means” also entails: money, a new provision (paragraph 2) is added to Article 2:54, stipulating that “means” shall be understood to mean all property of any description, whether corporeal or incorporeal, including money. This is also the case in the Articles 2:404 and 2:406. (See Art. I, Parts F, O and P of the NOPC). | |
| 2. ML offence – mental element and corporate liability | LC | <ul style="list-style-type: none">Amend the Penal Code to ensure that parallel criminal and civil proceedings are possible. The penalty applicable for a person convicted for culpable ML should be revised to ensure it is effective, dissuasive and proportionate | <p>Culpable ML in the proposed article 2:406 PC SXM (currently article 435c PC) is punishable with 4 years. Due to this duration of the penalty other effective measures are possible for the prosecution. The switching provision of 2:224 (currently 96) makes the general provisions of the first book of the Penal Code applicable to all other Criminal laws</p> <p>The Introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice. The Council of Ministers is preparing submission of the IO to Parliament for approval.</p> <p>The Introduction Ordinance (IO) to enact the Penal Code has been by Parliament on February 27th, 2015. The recommended action concerning FATF rec 2 is hereby incorporated in the Penal Code.</p> <p>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>This deficiency has been resolved in the Penal Code article 2:406</p> <p>Draft Criminal Code article 1:143 (make possible parallel criminal and civil proceedings)</p> <p>Draft Criminal Code article 2:54 (dissuasiveness)</p> <p>Draft Criminal Code article 1:143 (does not prohibit parallel criminal and civil proceedings). One cannot be punished twice for the same offence, so a contrario a criminal and civil/administrative procedure against a criminal act is possible.</p> <p>Draft Criminal Code article 2:54 (dissuasiveness)</p> <p>The PC is revised and amended by the NOAPC.</p> | Closed in 11 th FUR |



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| | | | <p>Pursuant to Article 2:406 PC culpable ML is punishable with 4 years. Due to this duration of the penalty other effective measures are possible for the prosecution. Via the connecting provision of Article 1:224 all the general provisions of the PC's First Book PCare applicable to all other (specific) criminal laws.</p> <p>To exclude that parallel criminal, civil or administrative proceedings may exclude liability of (legal) persons, groups of (legal) persons, and organizations, See Article I, Part C, of the NOAPC: this includes a new and generally applicable paragraph four in Article 1: 143 of the Penal Code. That new fourth paragraph contains a nuance on the "principle of ne bis in idem".</p> <p>Also the term of imprisonment for money laundering is raised from six to eight years (see Article I, Part O, NOAPC).</p> | |
| 3. Confiscation and provisional measures | PC | <ul style="list-style-type: none">• The Penal Code should ensure the effective applicability of Sint Maarten's confiscation mechanisms to Terrorist Financing offences according to the TF Convention and all the designated categories of predicate offenses (refer to paragraph 277).• The Authorities should ensure that comprehensive statistics are maintained in relation to the investigation, prosecution, and conviction of ML related cases.• The confiscation measures under the Penal Code should be revised to allow for the | <p>In the proposed PC SXM the articles 2:54 and 2:55 criminalize TF. Via the proposed article of 1:77 (currently 38e) (a separate and/or parallel procedure to the criminal proceedings) Post-conviction measures can be imposed. The pre-conviction measures have been added to the new draft Criminal Procedure Code of CUR, AUA, SXM and the BES-islands. The switching provision of 2:224 (currently 96) makes the general provisions of the first book of the Penal Code applicable to all other Criminal laws.</p> <p>The Introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice. The Council of Ministers is preparing submission of the IO to Parliament for approval.</p> <p>The Introduction Ordinance (IO) to enact the Penal Code has been by Parliament on February 27th, 2015. The recommended actions concerning FATF rec 3 are hereby incorporated in the Penal Code.</p> <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</p> | Closed in 11 th FUR |



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| | <p>pre-conviction and post-conviction measures to be imposed without notice.</p> | <p>AGAIN TO THE COUNCIL OF MINISTERS AND THEREAFTER TO PARLIAMENT.</p> <p>ALL LAW ENFORCEMENT AUTHORITIES HAVE BEEN INFORMED BY THE HEAD OF THE FIU THAT STATISTICS MUST BE MAINTAINED.</p> <p>The confiscation mechanisms to Terrorist Financing offences according to the TF Convention and all the designated categories of predicate offenses</p> <p><u>Criminal Procedures Code</u></p> <p>Freezing: article 119 and article 119a.</p> <p>Confiscation: article 1:74, article 1:75, article 1:76 and article 1:77.</p> <p><u>Draft Criminal Procedures Code (additions)</u></p> <p>Broadening of the possibility of confiscation under article 119a;</p> <p>Broadening of the confiscation regulation under article 120 and further;</p> <p>The possibility to freeze the proceeds until the authorized persons have arrived under article 121;</p> <p>The possibility to conduct a search without the physical presence of an examining magistrate (with the need for authorization when the search is at a dwelling or in another privacy-sensitive area) under article 122;</p> <p>The consideration to claim documents and search offices or dwellings of persons with a right to legal privilege and journalists under article 125 paragraph 3;</p> <p>The conducting of searches by the examining magistrate under paragraph 130;</p> <p>Broadening of the complaint regulation in connection with the special investigative powers and the digital era under article 150;</p> <p>Adjustment of the search authorization in automated works under article 167.</p> <p>The possibilities to proceed with seizure are broadened. (Title IX Criminal Procedure Code)</p> <p>All objects that may serve to reveal the truth or demonstrate unlawfully obtained gains shall be</p> | |
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| | | <p>liable to seizure. Also, all objects whose confiscation or withdrawal from circulation may be ordered shall be liable to seizure. (Article 119)</p> <p>Furthermore objects intended to preserve the right of redress to pay the unlawfully obtained benefit or the purpose of preserving the right of recovery for payment of a fine or of a victim-measure can be seized. (Article 119a)</p> <p>The seizure regulation has been extensively adjusted (Article 120 and further). The possibility of freezing the situation until the authorized persons have arrived is added (Article 121).</p> <p>The term "House search" is replaced with the term "search". A search can take place without the physical presence of the examining magistrate on the condition that he has granted authorization in the event that a home or other privacy-sensitive space must be searched (Article 122).</p> <p>The consideration for demanding extradition of documents and searching for offices or houses of journalists requires special attention (for example, Article 125 paragraph 3).</p> <p>In appropriate cases, the examining magistrate may conduct a search himself (Article 130).</p> <p>Instructions are given in the monthly Tripartite Meetings between the PPO, and the Chief of Police, to make sure to collect data for statistics.</p> <p>The seizure and confiscation measures take place without prior notification to the subject (Article 119 paragraph 3). The issuance of the notification forms part of the procedures during the criminal investigation and is of importance for the criminal file. The subject of whom assets are seized/confiscated will receive a notification after the fact, of the assets that have been seized/confiscated.</p> <p>The recommended action as regards to confiscation measures "to be imposed without notice" has been met. This finding is based on a misinterpretation of the English text of the PC; therefore can be seen as "a case of lost in translation".</p> | |
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| | | | <p>Seizure and confiscation measures are always applied ex parte. No prior notice to the suspect(s) is required by law.</p> <p>Seizure is regulated in Title IX (Articles 119 to 154a) of both the current Penal Procedure Code (PPC) and the draft new Penal Procedure Code (draft-PPC).</p> <p>The Dutch term “kennisgeving” (in Articles 119, par. 3, and 119b, part a,) may have been translated in English as ‘notice’ or ‘notification’ but these English terms should always be interpreted as a post-notice (not as an ex-ante notification) of the seizure from the (crime) investigation officer to the prosecutor (Articles 119, par. 3) or to the suspect (Article 119b, part a). Therefore as a notification after the seizure, never as a prior-notice/ notification to the suspect or other (legal) persons from whom the goods have been seized. They will only receive, if possible, a proof of receipt of their confiscated goods (Articles 119, par. 3, 119c, part d, and 129b, par. 3).</p> <p>The law enforcement agencies do keep statistics as part of their work processes, i.a. for risk based research and as a management and budgeting tool.</p> | |
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| Preventive measures | | | | |
| 4. Secrecy laws consistent with the Recommendations | LC | <ul style="list-style-type: none">MOT as supervisor should have the possibility to exchange information with other local and international supervisory authorities | <p>MOT as supervisor does have the possibility to exchange information on the reporting behaviour with other local supervisors. This can be done based on article 6, paragraph 2 of the NORUT.</p> <p>The MOT is preparing a draft law in which the NORUT and the NOIS are merged and updated. In this new law the possibility of sharing information with foreign supervisors will be included.</p> <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>Draft National Ordinance combatting ML/TF Article 27</p> <p>Draft National Ordinance on the MOT article 5 paragraph 8</p> <p>National Ordinance establishing the FIU article 5 and article 6</p> | Closed in 7 th FUR |



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| | | <p>A supervisor who, in the performance of his/her duties, discovers facts or offences which could be construed as money laundering or terrorist financing shall inform the FIU without delay, if necessary by way of derogation from the applicable statutory duty of confidentiality (Article 16 paragraph 2 of National Ordinance combatting ML/TF)</p> <p>The FIU is also authorised to permit a foreign authority that is responsible for supervision of non-financial service providers or is recognised by the Egmont Group to conduct investigations of service providers established in Sint Maarten. The FIU will, where appropriate, set conditions in advance in an administrative agreement in respect of or give instructions for the performance of these supervisory activities. The officials of the foreign authority who conduct an investigation as referred to in the first sentence shall be obliged to follow strictly the instructions given by the FIU. (Article 5 paragraph 8 National Ordinance on the MOT)</p> <p>The FIU can independently enter into covenants or administrative agreements with regard to the exchange of data and intelligence with foreign authorities that have a similar task as the FIU. Art. 7 (AB 2019, no. 24).</p> | |
| 5. Customer due diligence | PC | <ul style="list-style-type: none">Sint Maarten should urgently amend the NOIS and NORUT to incorporate the full range of activities and operations of financial institutions, including explicit wording with respect to lending; financial leasing; financial guarantees and commitments; trading in <p>The NOIS and the NORUT are being revised to reflect the recommended changes. The actions under bullet points letters a through c 1 through 6 will be addressed in the new draft law consisting of the merged and updated NORUT and NOIS.</p> <p>Please note that these issues are moreover already incorporated in the P&Gs.</p> <p>Please be referred to: page 11 of the P&G CI under CDD. Page 22 of the P&G IC under Wire transfer. Page 11 of the P&G MTC third bullet of the third paragraph under CDD.</p> | Closed in 11 th FUR |



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| | <p>a) money market instruments, b) foreign exchange, c) transferable securities, commodity futures; participation in securities issues and the provision of financial services related to such issues; individual and collective portfolio management; factoring services and insurance activities conducted by agents. Furthermore, all intermediaries operating in the Curacao Stock Exchange (DCSX) should be covered by these national ordinances.</p> <ul style="list-style-type: none">• There should be explicit requirements in law or regulation for CDD to be undertaken when carrying out occasional transactions that are wire transfers, as per the Interpretive Note to SR VII.• Require financial institutions, through law or regulation, to undertake CDD | <p>Please be referred to: page 12 of the P&G CI paragraph CDD under Resident customer. Page 13 of the P&G SAI under Verification of identity. Page 13 of the P&G TSP under Verification of the identity of resident individuals. Page 13 of the P&G IC under Resident customers.</p> <p>Please be referred to: page 11 of the P&G CI under CDD fifth paragraph. Page 12 of the P&G IC under CDD fifth bullet. Page 11 of the P&G MTC 2nd paragraph. Page 11 of the P&G SAI under II.2.A Detection and deterrence of money.</p> <p>Please be referred to: page 12 of the P&G IC under CDD third paragraph. Laundering. Page 11 P&G CTSP 2nd paragraph.</p> <p>The NOIS and the NORUT will be merged and updated to reflect all recommended actions concerning FATF rec 5.</p> <p>STATUS QUO; NO NEW UPDATE. The P&G have been updated by the CBCS to reflect the recommended actions concerning FATF rec 5.</p> <p>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>Draft National Ordinance combatting ML/TF Article 3 up to and including Article 17 Draft National Ordinance combatting ML/TF article 3 up to and including article 17. National Ordinance combatting ML/TF Chapter II, article 3 up to and including article 17.</p> <p>The actions under letters a through c have been addressed in article 2 paragraph 1, 5°, 8°, 12°, 13° and 14° National Ordinance combatting ML/TF</p> | |
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| | <p>measures when they have doubts about the veracity or adequacy of previously obtained customer identification data.</p> <ul style="list-style-type: none">• Require financial institutions, through law or regulation, to conduct CDD when there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations.• Require financial institutions, through law or regulation, to conduct ongoing due diligence.• The requirement to verify the identity of customers and beneficial owners before the establishment of business relations is not always practical. Sint Maarten should amend the NOIS to allow for verification at after the establishment of a business relationship in specified circumstances. | <p>The actions under the bullet points are also addressed in Article 3 up to and including Article 17 of the National Ordinance combatting ML/TF.</p> | |
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| | | <ul style="list-style-type: none">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. | | |
| 6. Politically exposed persons. | LC | <ul style="list-style-type: none">Amend the P&Gs to state that FIs should put in place appropriate risk management system to determine whether a potential customer, customer or beneficial owner is a PEP. | <p>The recommended action has been incorporated in the P&G for IC & IB. For your convenience the amended section is highlighted in yellow.</p> <p>STATUS QUO; NO NEW UPDATE. The P&G have been updated by the CBCS to reflect the recommended action concerning FATF rec 6.</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>Draft National Ordinance combatting ML/TF Article 11</p> <p>Draft National Ordinance combatting ML/TF article 10 paragraph 2, and article 11 in conjunction with article 1.</p> <p>National Ordinance combatting ML/TF article 1, sub w; article 2, sub a, sub b, and sub c; article 10, paragraph 2, sub i, and article 11.</p> <p>Article 11 of the National Ordinance combatting ML/TF also states:</p> <p>1. A service provider shall conduct an adequate policy and have risk assessment procedures to establish whether a client, a prospective client, an ultimate beneficiary or a beneficiary of a life insurance policy is a politically prominent person. Moreover, a service provider shall</p> | Closed in 11 th FUR |



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| | | | have procedures to enable it to establish the origins of the assets and bank balances of its clients and the ultimate beneficiaries who, on the basis of the first complete sentence, are designated politically prominent persons. | |
| 7. Correspondent banking | LC | <ul style="list-style-type: none">• Correspondent activities provisions should be incorporated in all the other P&Gs, similar to the P&G for CI, which contains specific provisions on correspondent banking activities.• The P&Gs should require the respondent institution's AML/CFT controls, and to ascertain that they are adequate and effective. | <p>Where relevant the recommended action has been incorporated in the P&Gs. For your convenience the amended section is highlighted in yellow.</p> <p>STATUS QUO; NO NEW UPDATE. The P&G have been updated by the CBCS to reflect the recommended actions concerning FATF rec 7.</p> <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>Draft National Ordinance combatting ML/TF Article 15 and Article 16</p> <p>Draft National Ordinance combatting ML/TF article 15 and article 16.</p> <p>National Ordinance combatting ML/TF article 15 and article 16.</p> <p>Article 15 of the National Ordinance combatting ML/TF also states:</p> <p class="list-item-l1">1. A financial service provider operating as a bank which intends to enter into a correspondent bank relationship shall ensure that:</p> <p class="list-item-l2">a. it gathers sufficient information about the relevant correspondent bank to obtain a full picture of the nature of its activities and can, on the basis of publicly available information, establish the reputation of the correspondent bank and the quality of the supervision exercised over that bank, including information about any investigations into money laundering and the financing of terrorism and of any measures taken in respect of the supervision;</p> <p class="list-item-l2">b. it assesses procedures and measures taken by the bank involved to prevent and combat money laundering and the financing of terrorism, and establishes that these are adequate and effective; and,</p> | Closed in 11 th FUR |



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| | | | c. it fully understands the responsibilities of both banks in the area of preventing and combatting money laundering and the financing of terrorism, and records these in writing. | |
| 8. Non face to face and new technologies. | LC | •P&Gs for MTCs should incorporate requirements regarding E.C 8.2 and EC 8.2.1 | <p>The recommended action has been incorporated in the P&G for MTC. For your convenience the amended section is highlighted in yellow.</p> <p>STATUS QUO; NO NEW UPDATE. The P&G have been updated by the CBCS to reflect the recommended action concerning FATF rec 8.</p> <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>Draft National Ordinance combatting ML/TF Article 20 paragraph 3</p> <p>Draft National Ordinance combatting ML/TF article 3 paragraph 2, under l, m, and n; and article 20 paragraph 3.</p> <p>National Ordinance combatting ML/TF article 20 paragraph 3.</p> <p>Article 20 paragraph of the National Ordinance combatting ML/TF also states:</p> <p>. A service provider shall conduct an adequate policy and have adequate procedures which focus on preventing the abuse of new technological developments, new products, new business practices and instruments for the benefit of money laundering and the financing of terrorism. The procedures, referred to in the first complete sentence, also relate to risk assessments prior to the launch of the new products and business practices, and to the use of new or developing technologies.</p> | Closed in 11 th FUR |
| 9. Third parties and introducers | PC | •Amend the “adequately supervised” provisions of the P&Gs, in line with the requirements of essential criteria 9.2, which requires that financial institutions satisfy themselves that the third party is regulated | <p>The recommended action has been incorporated in the P&Gs. For your convenience the amended section is highlighted in yellow.</p> <p>The recommended action has been incorporated in the P&Gs. For your convenience the amended section is highlighted in yellow.</p> <p>The recommended action has been incorporated in the P&G for MTC. For your convenience the amended section is highlighted in yellow.</p> | Closed in 2 nd , 7 th and 9 th FURs |



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| | <p>and supervised (in accordance with Recommendation 23, 24 and 29) and has measures in place to comply with the CDD requirements set out in Recommendation 5 and Recommendation 10.</p> <ul style="list-style-type: none">• Amend the P&G's to require that financial institutions satisfy themselves that the third party adequately regulated and supervised by referring more broadly to reports assessments and reviews of reports produced by the FATF, IMF or FSRBs, rather than specifically to Mutual Evaluation Reports.• P&Gs for MTC should incorporate requirements to comply with Recommendation 9. | <p>STATUS QUO; NO NEW UPDATE. The P&G have been updated by the CBCS to reflect the recommended actions concerning FATF rec 9.</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>Draft National Ordinance combatting ML/TF Article 6 paragraph 1, sub b under 4^o</p> <p>Draft National Ordinance combatting ML/TF article 6 paragraph 1 under b sub 4^o.</p> <p>National Ordinance combatting ML/TF article 13.</p> <p><i>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.</i></p> <p>2. 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. <i>The deficiency will be discussed with the CBCS. This recommended action has not been met.</i></p> <p>3. 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,</p> | |
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| | | <p><i>this recommended action requires a review of the criteria related to Rec. 10; which analysis will be further addressed in the next FUR.</i> This recommended action has not been met.</p> <p>4. For this report, the Authorities have indicated that the outstanding recommended actions are expected to be complied through article 6 paragraph 1 under b sub 4^o of National Ordinance combatting ML/TF. The compliance with the recommended action will be determined once the Draft Ordinance be enforceable.</p> <p>5. The overall compliance of Recommendation 9 remains outstanding.</p> <p>In the first FUR of Sint Maarten it was indicated which actions were going to be undertaken to address the recommended actions. With regard to recommended actions mentioned under bullets 1 and 2 above it was indicated that the P&Gs for CI and IC & IB were being revised to implement the recommended actions. Specifically with regard to the recommended action to incorporate requirements in the P&G for MTCs to comply with R. 9 (bullet 3 above), we indicated that “The P&G for MTC’s is being amended to prohibit the non-face to face transactions at MTC’s.” Contrary to bullet 2 above, in undertaken actions stated for R. 9 we did not mention the draft Harmonization and Money Remitter Supervision Law.</p> <p>Furthermore, paragraph 28 of the second FUR of Sint Maarten states:” the P&Gs also refer more broadly to reports, assessments and reviews of reports produced by the FATF, IMF or FSRBs and not only Mutual Evaluation Reports, as means of consultation to assess risks and determine where a third party that meets the required conditions can be based (criteria 9.4) And also: “With regard to MTC’s P&Gs, modifications included do not include a section or provisions on Reliance on Third Parties; Authorities explained that this is due to MTCs not being able to rely on third parties, all relationships should be conducted face to face, directly by the MTC.” The modification entailed inclusion of the following prohibition in the P&G for MTCs:</p> | |
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| | | <p>“MTCs are not permitted to process payment instructions provided by non-face-to-face customers/business relation.”</p> <p>Therefore, CDD reliance on third parties is not permitted. See attached P&Gs for MTVs page 12.</p> <p>Our apologies if this was not (made) clear before.</p> <p>Furthermore, please, refer to bullet 3 above and clarify the relevancy of the criteria of R.10 if MTCs are not allowed to rely on intermediaries or other third parties (R.9).</p> <p>Finally, the second FUR of Sint Maarten, contains a matrix that starts on page 10 of the FUR. On page 13 of the report (in the matrix) it is concluded for R. 9: “From a desk review perspective, provisions are compliant with Recommendation 9.” Recommendation 9 is therefore met.</p> <p>In view of the above explanation we kindly request you to adapt mentioned paragraphs which were clearly based on an oversight and apologize for any inconvenience in this regard.</p> | |
| 10. Record-keeping | PC | <ul style="list-style-type: none">The NOIS should be amended to reflect the obligation to maintain all necessary records on transactions, both domestic and international for five years following the termination of an account or business relationship (or longer if requested by the competent authority in specific <p>The NOIS is being amended to reflect the recommended actions under the first and second bullet points.</p> <p>The MOT is preparing a draft law in which the NORUT and the NOIS are merged and updated. In this new law the obligation to maintain all necessary records on transactions, both domestic and international for a period of five years following the termination of an account or business relationship is included.</p> <p>STATUS QUO; NO NEW UPDATE.</p> | Closed in 11 th FUR |



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| | <p>cases and upon proper authority).</p> <ul style="list-style-type: none">• The NOIS should be amended to reflect the obligation to maintain records of business correspondence for at least five years following the termination of an account or business relationship | <p>THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORESEEN IN JANUARY 2016.</p> <p>Draft National Ordinance combatting ML/TF Article 22 and article 23</p> <p>Draft National Ordinance combatting ML/TF article 22 paragraph 1, paragraph 2, and paragraph 3; and article 23; and article 31.</p> <p>Draft National Ordinance on the MOT article 5.</p> <p>National Ordinance combatting ML/TF article 22 paragraphs 2 and 3; and article 23. The period of time has been increased from 5 to 10 years.</p> <p>Articles 22 and 23 of the National Ordinance combatting ML/TF states:</p> <p>Article 22</p> <ol style="list-style-type: none">1. When electronically transferring funds and messages related to the transfers, a financial service provider shall attach accurate data relating to both the client and the beneficiary; this data is necessary for the whole payment chain.2 For at least ten years after a transaction has been executed, a service provider should retain all the data related to the transaction, on both a national and international level, which could be necessary to be able to comply with a request for information from a competent authority without delay. The data shall be stored in such a way that individual transactions can at all times be reconstructed and used as evidence for the prosecution of criminal offences.3. For at least ten years after a business relationship has been terminated or a transaction executed, a service provider should retain all the data acquired through customer due diligence, the accounts, commercial correspondence, as referred to in article 3, paragraph 3, as well as the results of the analyses of any unusual transactions which are necessary to be able to comply with a request for information from a competent authority without delay. The data shall be stored in such | |
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| | | | <p>a way that individual transactions can at all times be reconstructed and used as evidence for the prosecution of criminal offences.</p> <p>4. A financial service provider shall maintain a register in which the data related to transactions and data acquired during customer due diligence is registered and can be easily accessed.</p> <p>Article 23</p> <p>For at least ten years after a business relationship has been terminated, a service provider should retain the copies, referred to in article 17, paragraph 6, in an accessible manner and on request provide these to a competent authority without delay.</p> | |
| 11. Unusual transactions | LC | | <p>The P&Gs have been amended to incorporate the recommended action. For your convenience the amended section is highlighted in yellow.</p> <p>STATUS QUO; NO NEW UPDATE. The P&G have been updated by the CBCS to reflect the recommended action concerning FATF rec 11.</p> <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>This recommendation has been dropped. New recommendation is rec. 20 ‘reporting of suspicious transactions’.</p> <p>Provisions and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing for Credit Institutions paragraph II.2.A.1 Recognition, documentation, and reporting of unusual transactions (page 19-20).</p> <p>Provisions and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing for Credit Institutions paragraph II.2.A.1 Recognition, documentation, and reporting of unusual transactions (page 19-20).</p> <p>Article 25 of the National Ordinance combatting ML/TF.</p> | Closed in 3rd Round MER |

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| 12. DNFBP-R.5, 6, 8-11 | NC | <ul style="list-style-type: none"> • The threshold for identification requirements for casinos in legislation should be amended in accordance with the FATF standard. • AML/CFT requirements should apply to internet casinos. • DNFBPs should be required by law or regulation to comply with 5.2.c, 5.2.d, 5.2.e and 5.7 of Recommendation 5 • Authorities should put legislation for DNFBPs supervised by the MOT and casinos with the requirements of criteria 5.5.2, 5.6 to 5.11, 5.16 and 5.17 of recommendation 5. • The deficiencies in section 3.5 for Recommendation 10 which are applicable to all DNFBPs should be remedied. • The Authorities in Sint Maarten should issue legislation for DNFBPs supervised by the MOT and casinos that includes all the requirements of recommendations 6, 8, 9 and 11. | <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 RECOMMENDED ACTIONS WILL BE INCORPORATED.</p> <p>The P&Gs for DNFBPs have been amended to incorporate recommendation 5. You are referred to the enclosed P&Gs of the DNFBPs: Car dealers and Jewellers: pages 9-22 8-25. Real Estate Agents: pages: 9-24 8-25. Professionals: pages 11-24 9-26.</p> <p>5.2c-5.2d-5.2eCar dealers and jewellers: page 8 Real Estate: page 8 Professionals: page 9</p> <p>5.5.2 Car dealers and jewellers: page 9 b + re.a + re.b Real Estate: page 9 b + re.a + re.b Professionals: page 10 b + re.a + re.b</p> <p>5.6 Car dealers and jewellers: page 9.c Real Estate: page 9.c Professionals: page 10.c</p> <p>5.7 Car dealers and jewellers: page 9.d</p> <p>Closed in 11th FUR. Criteria 8.2 and 8.2.1 will be addressed and submitted for review in the 4th Round ME</p> |
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| | <ul style="list-style-type: none">• Central Bank should incorporate in the P&Gs for SAII and AII requirements regarding E.C 6.2 of Recommendation 6 and E.C 9.3 of Recommendation 9 | <p>Real Estate: page 9.d Professionals: page 10.d</p> <p>5.11 Car dealers and jewellers: page 17 Real Estate: page 17 Professionals: page 18</p> <p>5.16 Car dealers and jewellers: page 10 Real Estate: page 10 Professionals: page 11</p> <p>5.17 Car dealers and jewellers: page 8 Real Estate: page 8 Professionals: page 9</p> <p>6.1 Car dealers and jewellers: page 20 Real Estate: page 20 Professionals: page 21</p> <p>9.3 Car dealers and jewellers: page 14 Real Estate: page 14 Professionals: page 15</p> <p>The P&Gs for DNFBPs have been amended to incorporate recommendation 10. You are referred to the enclosed P&Gs of the DNFBPs: Car dealers and Jewellers: pages 16-17 15-16 + 29. Real Estate Agents: pages 17-18 14-16 + 29. Professionals: page 18 15-17 + 30.</p> | |
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| | | <p>The P&Gs for DNFBPs have been amended to incorporate recommendation 6. You are referred to the enclosed P&Gs of the DNFBPs: Car dealers and Jewellers: pages 19-20 19-20 + 25. Real Estate Agents: pages 21-22 19-20 + 25. Professionals: pages 21-22 20-21 + 26.</p> <p>For the incorporation of recommendation 9 you are referred to the P&Gs for DNFBPs: Car dealers and Jewellers: pages 14-15 14. Real Estate Agents: pages 15-16 14. Professionals: pages 16-17 15.</p> <p>STATUS QUO; NO NEW UPDATE. The P&G have been updated by the MOT to reflect the recommended actions concerning FATF rec 12.</p> <p>The P&G for SAII and AII have been updated to include EC 5.3 to 5.6, the deficiencies identified in section 3 and the deficiencies in section 3.5 for Rec 10.</p> <p>The P&G for SAII and AII has been amended to implement the recommended actions.</p> <p>For your convenience the amended section is highlighted in yellow.</p> <p>STATUS QUO; NO NEW UPDATE. The P&G have been updated by the CBCS to reflect the recommended actions concerning FATF rec 12.</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> | |
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| | | <p>Draft National Ordinance combatting ML/TF Article 3 paragraph 2, up to and including Article 17.</p> <p>Draft National Ordinance combatting ML/TF article 2 paragraph 1 under b sub 5°, in conjunction with article 3 up to and including article 14, article 3 paragraph 2 under d, article 2 paragraph 1 under b sub 1° – 2° – 3° – 6°, in conjunction with article 3 up to and including article 14.</p> <p>The P&G for SAII and AII were updated to include EC 5.3 to 5.6, the deficiencies identified in section 3 and the deficiencies in section 3.5 for Rec 10.</p> <p>The P&G for SAII and AII were amended to implement the recommended actions.</p> <p>National Ordinance combatting ML/TF Chapter II, article 3 up to and including article 17 (CDD obligation for DNFBPs).</p> <p>National Ordinance combatting ML/TF article 22 paragraphs 2 and 3; and article 23. The period of time has been increased from 5 to 10 years (record keeping obligation).</p> <p>National Ordinance combatting ML/TF article 2 paragraph 1 under b; article 22 and article 23.</p> <p>National Ordinance combatting ML/TF article 3 paragraph 2 under c (threshold for casinos established at Antillean Guilders 5.000 (equivalent to USD 3,000)</p> <p>The MDIUT (AB 2013 no. 489) article 2 states:</p> <p>3. Contrary to the first paragraph, parts c and d, as an indicator for the reporting of transactions executed or intended by casinos, internet ca-</p> | |
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| | | <p>sinos and lotteries, every transaction by or for the benefit of their customers worth NAf 5,000 or the equivalent thereof in foreign currency, or more.</p> <p>National Ordinance combating ML/TF, article 2, sub 4°:</p> <p>4°. to offer the opportunity to participate in:</p> <ul style="list-style-type: none">a. games of chance as referred to in the National Ordinance games of chance;b. games of chance as referred to in the National Ordinance offshore games of chance; or,c. a lottery as referred to in the Lottery Ordinance; <p>Rec. 10: Customer Due Diligence:</p> <p>National Ordinance combating ML/TF:</p> <p>Chapter 3, Customer Due Diligence, articles 3-17.</p> <p>Rec 6: Politically Exposed Persons</p> <p>National Ordinance combating ML/TF:</p> <p>Article 10, paragraph 2, under i, and article 11</p> <p>The P&G have been updated by the CBCS to reflect the recommended actions concerning FATF rec 12.</p> <p>The P&G for SAII and AII were updated to include EC 5.3 to 5.6, the deficiencies identified in section 3 and the deficiencies in section 3.5 for Rec 10.</p> <p>The P&G for SAII and AII were amended to implement the recommended actions.</p> | |
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| 13. Suspicious transaction reporting | NC | <ul style="list-style-type: none">• Sint Maarten should ensure that all designated categories of predicate offenses for ML are covered in order to eliminate the restrictions in the UTR reporting system in this regard (refer to paragraph 277)• Sint Maarten should consider express provisions in law regulation or other enforceable means to require that suspicious transactions should be reported regardless of whether they involve tax matters.• The MDIUT should be amended to allow the reporting entities to identify suspicion of ML or FT and avoid reliance on the prescriptive indicators. <p>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. THE INTRODUCTION ORDINANCE (IO) WAS APPROVED BY PARLIAMENT ON FEBRUARY 27th 2015.</p> <p>The Ministerial Decree on indicators, although not explicitly mentioned, does not exclude tax matters when reporting a suspicious transaction. Suspicious UTR takes place whether or not it involves a tax matter.</p> <p>The MDIUT will be amended to allow reporting entities to identify suspicion of ML or FT to avoid reliance only on the prescriptive indicators. The amended MDIUT will go into force in November 2014. STATUS QUO; THE MDIUT IS EXPECTED TO BE UPDATED IN APRIL 2015. THE DRAFT MDIUT IS READY TO BE SUBMITTED TO THE MINISTER OF JUSTICE FOR APPROVAL AND SIGNING. EXPECTED DATE OF THE MDIUT TO ENTER INTO FORCE: MAY 1, 2016. Draft National Ordinance combatting ML/TF Article 25 Draft National Ordinance combatting ML/TF article 2 paragraph 1 under b sub 3°, article 24, article 25, article 40 paragraph 3. National Ordinance combatting ML/TF article 25; Ministerial Decree (AB 2016 no. 12) on Indicators article 3.</p> <p>National Ordinance combatting ML/TF Article 25; Ministerial Decree on Indicators article 3 (AB 2016 no. 12).</p> | Closed in 5 th and 6 th FURs |
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| | | <p>The predicate offenses are incorporated and punishable in the PC and in other (specific) ordinances.¹⁷ These are successively (with the addition of the relevant article in the Penal Code):</p> <p>participating in a criminal organization (Articles 2:57, 2:80, 2:127 and 2:252); extortion (Articles 2:294 – 2:297); terrorism, including financing of terrorism (Article 2:54, 2:408 and 2:409); human trafficking and smuggling of human beings (Articles 2:154 and 2:239); sexual exploitation, i.a. sexual exploitation of children (Article 2:239); Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Article 1:118, onder d, juncto Article 3 of the National Ordinance on opium and other narcotic drugs (<u>Opiates Ordinance</u>)); illegal arms trade (Article 1:118, onder e juncto Article 6 of the Fire Arms Ordinance and Article 1 of the <u>Weaponordinance</u>); intentional handling of stolen property (Articles 2:397 and 2:399); corruption and bribery (Articles 2:314, 2:350, 2:351 and 2:352); fraud (Article 2:305); counterfeiting money (<i>valsmunterij</i>) (Articles 2:169 tot 2:172); piracy and counterfeiting of products (Article 2:307); environmental crime (Article 52 of the <u>National Ordinance on Waste Water</u>, Article 33 of the National Ordinance on Environmental Management and Protection, Article 38 of the <u>National Ordinance for the Prevention of Pollution from ships</u> and Article 81 of the <u>National Ordinance Maritime Management</u>); murder and grievous bodily harm (Articles 2:259, 2:262, 2:273 t/m 2:276); abduction, unlawful deprivation of liberty and hostage-taking (Articles 2:245, 2:246, 2:249 and 2:250);</p> | |
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¹⁷ See Annex V for a translation of the applicable legal provisions.



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| | | | <p>robbery and theft (Articles 2:288 tot and met 2:291); tax offenses (including with regard to customs and excise duties and tax) (Article 49, par. 2, of the <u>General National Ordinance on National Taxes</u>, and Articles 233, 233A, 233B and 235, par. 2, of the <u>National Ordinance Import, Export and Transit.</u>); piracy (Articles 2:365 and 2:366); and,</p> <ul style="list-style-type: none">- insider trading and market manipulation(Articles 2:311 and 2:321, and Articles 8 and 9, juncto Article 15 of the <u>National Ordinance Supervision Stock Markets</u>). <p>Ministerial Regulation on Indicators (AB 2013 no. 489): <i>Article 3 Subjective indicators</i></p> <p>Without prejudice to the provisions of Article 2, the following shall be deemed to be indicators of executed or intended unusual transactions:</p> <p style="padding-left: 2em;">transactions that differ from the client's profile; and</p> <p style="padding-left: 2em;">transactions that give rise to the suspicion that these may be related to money laundering or financing of terrorism.</p> <p>Suspicious transactions are reported regardless of whether they involve tax matters:</p> <p>Refer to article 3 of the MDIUT and tax offenses (including with regard to customs and excise duties and tax) (Article 49, par. 2, of the <u>General National Ordinance on National Taxes</u>, and Articles 233, 233A, 233B and 235, par. 2, of the <u>National Ordinance Import, Export and Transit.</u>) are included in the list of predicate offenses.</p> | |
| 14. Protection & no tipping-off | PC | <ul style="list-style-type: none">• Make it clear that financial institutions, their directors, officers and em- | According to the Civil law system which Sint Maarten is part of and contrary to the Common law system the wording “een ieder“ 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 | Closed in 11 th FUR |



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| | | <p>ployees (whether permanent or temporary) are prohibited by law from disclosing ("tipping off") the fact that an STR or related information is being reported or provided to the MOT.</p> <p>and employees (permanent or temporary) of financial institutions. It is not customary in our legal system that all different addressees of the law regulating an issue are mentioned separately one by one. This issue will be included in the draft law in which the NORUT and the NOIS are merged and updated. This new law will include the specific mention of the directors, officers and employees of financial institutions.</p> <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 FORESEEN IN JANUARY 2016.</p> <p>Draft National Ordinance combatting ML/TF Article 9 and article 27</p> <p>Draft National Ordinance combatting ML/TF article 27 paragraph 1 under a in conjunction with article 33 paragraph 1 - paragraph 2 – paragraph 3, article 29.</p> <p>Draft National Ordinance on the MOT article 25, article 26, and article 27.</p> <p>National Ordinance combatting ML/TF article 27, paragraph 1, under b.</p> <p>National Ordinance combatting ML/TF article 27, paragraph 1, under a and b.</p> | | |
| 15. Internal policies and controls | C | | | |
| 16. DNFBP-R.13–15 & 21 | NC | <ul style="list-style-type: none">The deficiencies identified for Recs. 13 and 14 in section 3.7 for all DNFBPs should be addressed. | <p>The P&Gs for DNFBPs have been amended to incorporate recommendations 13 and 14. You are referred to the enclosed P&Gs of the DNFBPs:</p> <p>Car dealers and Jewellers: pages 23-27. Real Estate Agents: pages 26-29. Professionals: pages 25-28.</p> | <p>Closed in 11th FUR. Criteria 15.1.2, 15.2, 15.3, 21.1.1z, and 21.3 will be addressed and submitted for review in the 4th Round ME</p> |



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| | <ul style="list-style-type: none">• The Authorities in Sint Maarten should issue legislation for DNFBPs supervised by the MOT and casinos that includes all the requirements of recommendations 15 and 21.• DNFBPs supervised by the Central Bank should be required to apply counter-measures to countries which do not or insufficiently apply FATF Recommendations. | <p>Rec 13 – section 3.7 Car dealers and jewellers: page 27 Real Estate: page 27 Professionals: page 28</p> <p>Rec 14 – sections 3.7 Car dealers and jewellers: page 29 + 30 Real Estate: page 29 + 30 Professionals: page 30 + 31</p> <p>The P&Gs for DNFBPs have been amended to incorporate recommendation 15. You are referred to the enclosed P&Gs of the DNFBPs: Car dealers and Jewellers: pages 27-30 26-30. Real Estate Agents: pages 30-34 26-30. Professionals: pages 29-33 27-31.</p> <p>Rec 15 Car dealers and jewellers: page 31 Real Estate: page 31 Professionals: page 32</p> <p>Rec 21 Car dealers and jewellers: page 21 Real Estate: page 21 Professionals: page 22</p> <p>For the incorporation of recommendation 21 you are referred to the P&Gs for DNFBPs: Car dealers and Jewellers: pages 18-19 21-22. Real Estate Agents: page 20 21-22. Professionals: page 20 22-23.</p> | |
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| | | <p>STATUS QUO; NO NEW UPDATE. THE P&G HAVE BEEN UPDATED BY THE MOT TO REFLECT THE RECOMMENDED ACTIONS CONCERNING FATF REC 16.</p> <p>The Minister of Justice has received a proposal for the setup of the Gaming Control Board for approval. The legislation and guidelines to supervise casinos and internet gambling will be presented in the second half of 2014 introduced mid 2015.</p> <p>THE FIRST DRAFT OF THE LEGISLATION FOR THE GCB HAS BEEN SUBMITTED TO THE MINISTERS OF JUSTICE AND ECONOMIC AFFAIRS AND TOURISM FOR DISCUSSION. THE PROPOSAL IS TO HAVE THE AML/CTF SUPERVISION OF THE GAMING INDUSTRY FALL UNDER THE MOT.</p> <p>The deficiencies for Recommendations 13 and 14 have been updated and included in the P&Gs.</p> <p>For your convenience the amended section is highlighted in yellow.</p> <p>STATUS QUO; NO NEW UPDATE. The P&G have been updated by the CBCS to reflect the recommended action concerning FATF rec 16.</p> <p>THE ACTUAL MERGING OF THE NORUT AND THE NOIS IS TAKING PLACE NOW AND THE FINALIZATION OF THE DRAFT IS FORESEEN IN JANUARY 2016.</p> <p>Draft National Ordinance combatting ML/TF Article 3 paragraph 2, up to and including Article 17</p> <p>Draft National Ordinance combatting ML/TF article 19 and article 20 (internal controls and foreign branches and subsidiaries);</p> <p>article 10 paragraph 2 under h and m, article 12 paragraph 1 under a and article 14 paragraph 1 and paragraph 2, article 19 paragraph 2 and paragraph 3 (higher risk countries);</p> <p>Draft National Ordinance on MOT article 2 paragraph 3.</p> | |
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| | | <p>National Ordinance combatting ML/TF article 18 and 19 (internal control and foreign branches and subsidiaries), article 14 (higher risk an non-cooperative jurisdictions).</p> <p>The deficiencies for Recommendations 13 and 14 have been updated and included in the P&Gs.</p> <p>For your convenience the amended section is highlighted in yellow.</p> <p>The P&G have been updated by the CBCS to reflect the recommended action concerning FATF rec 16.</p> <p>Financial institutions are continually advised of concerns about weaknesses in the AML/CFT systems of all countries specified by the FATF by the Central Bank via i.a. the representative organizations moreover via publication on its website.</p> <p>Article V Harmonization law:</p> <p>The National Ordinance on the Supervision of Trust Service Providers will be amended as follows:</p> <p>Article 11 (page 128)</p> <p>3. In order to give effect to recommendations and regulations of international or intergovernmental organizations, the Bank may, by ordinance, issue generally binding regulations of a technical and organizational nature intended for the trust offices and natural persons with dispensation that are under its supervision by virtue of this National Ordinance.</p> <p>Article 11b (page 129)</p> <p>2. The authority to issue a public warning as referred to in paragraph 1 is without prejudice to the Bank's authority to publish, in Sint Maarten, any public warnings given by an international or intergovernmental organization.</p> <p>National Ordinance combatting ML/TF Article 3 paragraph 2, up to and including Article 17</p> <p>National Ordinance combatting ML/TF article 19 and article 20 (internal controls and foreign branches and subsidiaries);</p> | |
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| | | | Article 10 paragraph 2 under h and m, article 12 paragraph 1 under a and article 14 paragraph 1 and paragraph 2, article 19 paragraph 2 and paragraph 3 (higher risk countries); National Ordinance on MOT article 2 paragraph 3. | |
| 17. Sanctions | PC | <ul style="list-style-type: none">• Include explicit provisions in the NOIS and NORUT to indicate that sanctions apply to directors and senior management of financial institutions.• Take immediate action against directors and senior management of unauthorised MTCs.• The Central Bank should have a wide range of sanctions and should be prepared to use them. | <p>In accordance with our legal system, sanctions against directors and senior management are already in place in Sint Maarten. Please, refer to Sint Maarten's answer to E.C. 17.3 in section 3.10 of the MEQ: <i>The power of enforcement to act against financial institutions and their directors can be derived from a general statutory provision in the Penal Code. Article 53 of the Penal Code provides that offences can be committed by natural persons and legal persons. When an offence is committed by a legal person, prosecution can be instituted and the penal sanctions and measures provided for in general ordinances, if eligible, can be pronounced: a. against the legal person, or b. against those who ordered the execution of the offence as well as against those who actually lead the execution of the prohibited conduct, or c. against the ones mentioned in section a and b jointly.</i></p> <p><i>The above mentioned provision makes it possible to act against directors or senior management, because the director or senior management are the ones who give the orders on the work floor and because there is a so called switch provision (article 96) of the Penal Code that provides for the application of article 53 of the Penal Code to other facts which are penalized by other general ordinances, unless the general ordinances provide otherwise. Therefore the administrative fines of the NOIS and NORUT are also applicable to the financial institutions and their directors.</i></p> <p>However, as this legal mechanism was not understood, the matter will be further examined in order to ensure the correct understanding of this legal mechanism.</p> <p>Explicit provisions will be included in the new law (merged and updated NORUT-NOIS) to indicate that sanctions apply to directors and senior management of financial institutions.</p> | Closed in 11 th FUR |



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| | | <p>The power to apply a wide range of sanctions has already been addressed in the draft Harmonization Law which is in legislative process. The central bank issues notifications on sanctions on a regular basis.</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 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>Draft National Ordinance combatting ML/TF Article 34 Draft National Ordinance on Administrative Enforcement Article 46 up to and including Article 57 Draft National Ordinance combatting ML/TF article 33 paragraph 1. Draft National Ordinance on MOT article 2 paragraph 5. National Ordinance updating and Harmonization of supervision laws of the Central Bank of Curaçao and Sint Maarten; National Ordinance supervision money remittance companies; National Ordinance combatting ML/TF article 33 paragraph 4 (sanctions apply to directors and senior management of organizations, groups of natural persons, or legal persons); National Ordinance combatting ML/TF article 21 paragraph 3 (sanctions regime FIU and Central Bank)</p> | |
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| | | | National Ordinance combatting ML/TF article 33 paragraph 5: 5. The party committing the act is punishable, as well as the directors and executives, irrespective of whether these are natural persons, legal entities, groups of natural persons or legal entities, or organisations. The illegal operating MTCs have been closed down by the PPO. | |
| 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">• Ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of all countries specified by the FATF, not only those countries for which the FATF calls for action.• Ensure that Sint Maarten has the ability to apply counter-measures to countries that continue not to apply or insufficiently apply the FATF Recommendations. | The P&Gs for CI (page 17), MTC (page 13), SAII & AII (page 23), IC & IB (page 21), and TSP (page 19) indicate that the supervised institutions are required to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries that do not or insufficiently apply the FATF Recommendations including high-risk and non-cooperative jurisdictions. STATUS QUO; NO NEW UPDATE. THE P&G HAVE BEEN UPDATED BY THE CBCS TO REFLECT THE RECOMMENDED ACTION CONCERNING FATF REC 21. 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. | Closed in 7 th FUR. Criteria 21.3 will be addressed and submitted for review in the 4 th Round ME |



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| | | <p>STATUS QUO; NO NEW UPDATE.</p> <p>THE MOT IS BUSY WITH THE MERGING OF THE NORUT AND THE NOIS IN WHICH THE RECOMMENDED ACTION CONCERNING FATF REC 21 BE ADDRESSED.</p> <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>THIS PROVISION HAS BEEN INCLUDED IN THE DRAFT ORDINANCES FOR THE SUPERVISION OF THE MTC's AND THE HARMONIZATION ORDINANCE.</p> <p>Update:</p> <p>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.</p> <p>Draft National Ordinance combatting ML/TF Article 14 Draft National Ordinance combatting ML/TF article 10 paragraph 2 under h and m, article 12 paragraph 1 under a and article 14 paragraph 1 and paragraph 2, article 19 paragraph 2 and paragraph 3. National Ordinance combatting ML/TF article 10, paragraph 2, under h; article 12, paragraph 1, under a and paragraph 2; article 14, paragraph 1; article 19, paragraphs 2 and 3</p> <p>Regarding the Central Bank: The power to apply a wide range of sanctions has been addressed in the Harmonization Law (A.B. 2018 no 5) which came into force on March 29 2018: fines, penalties and publications have been incorporated in all supervision ordinances for the violation of the aml/cft P&Gs.</p> <p>The P&Gs for CI (page 17), MTC (page 13), SAII & AII (page 23), IC & IB (page 21), and TSP (page 19) indicate that the supervised</p> | |
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| | | <p>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-co-operative jurisdictions.</p> <p>THE P&G HAVE BEEN UPDATED BY THE CBCS TO REFLECT THE RECOMMENDED ACTION CONCERNING FATF REC 21.</p> <p>Financial institutions are continually advised of concerns about weaknesses in the AML/CFT systems of all countries specified by the FATF by the Central Bank via i.a. the representative organizations moreover via publication on its website.</p> <p>The following provisions have been included in the Harmonization Ordinance:</p> <p>Article I</p> <p>The National Ordinance on the Supervision of the Bank and Credit Institutions of 1994 is hereby amended as follows:</p> <p>Article 6a (page 6)</p> <p>3. In order to give effect to recommendations and regulations of international or intergovernmental organizations, the Bank may, by ordinance, issue generally binding regulations of a technical and organizational nature intended for the credit institutions that are under its supervision by virtue of this National Ordinance.</p> <p>Article 6c (page 7)</p> <p>3. The authority to issue a public warning as referred to in the first and second paragraphs is without prejudice to the Bank's authority to publish, in Sint Maarten, any public warnings given by an international or intergovernmental organization.</p> <p>Article II</p> | |
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| | | <p>The National Ordinance on the Supervision of the Insurance Industry will be amended as follows:</p> <p>Article 15b (page 38)</p> <p>2. The authority to issue a public warning as referred to in the first paragraph is without prejudice to the Bank's authority to publish, in Sint Maarten, any public warnings given by an international or intergovernmental organization.</p> <p>Article 18a (page 40)</p> <p>3. In order to give effect to recommendations and regulations issued by international or intergovernmental organizations, the Bank may, by ordinance, issue generally binding regulations of a technical and organizational nature intended for the institutions that are under its supervision by virtue of this National Ordinance.</p> <p>Article III</p> <p>The National Ordinance on supervision of stock exchanges will be amended as follows:</p> <p>Article 3a (page 71)</p> <p>3. In order to give effect to recommendations and regulations of international or intergovernmental organizations, the Bank may, by ordinance, issue generally binding regulations of a technical and organizational nature intended for the institutions that are under its supervision by virtue of this National Ordinance, and these will be under the obligation to comply, and to continue to comply, with said regulations.</p> <p>Article 3c (page 72)</p> <p>2. The authority to issue a public warning as referred to in paragraph 1 is without prejudice to the Bank's authority to publish, in Sint Maarten, any public warnings given by an international or intergovernmental organization.</p> <p>Article IV</p> | |
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| | | <p>The National Ordinance on supervision of investment institutions and administrators will be amended as follows:</p> <p>Article 5b (page 94)</p> <p>2. The authority to issue a public warning as referred to in paragraph 1 is without prejudice to the Bank's authority to publish, in Sint Maarten, any public warnings given by an international or intergovernmental organization.</p> <p>Article 9 (page 96)</p> <p>3. In order to give effect to recommendations and regulations of international or intergovernmental organizations, the Bank may, by ordinance, issue generally binding of a technical and organizational nature intended for the institutions that are under its supervision by virtue of this National Ordinance.</p> <p>Article 18 (page 102)</p> <p>3. In order to give effect to recommendations and regulations of international or intergovernmental organizations, the Bank may, by ordinance, issue generally binding regulations of a technical and organizational nature intended for the administrators that are under its supervision by virtue of this National Ordinance.</p> <p>Article V</p> <p>The National Ordinance on the Supervision of Trust Service Providers will be amended as follows:</p> <p>Article 11 (page 128)</p> <p>3. In order to give effect to recommendations and regulations of international or intergovernmental organizations, the Bank may, by ordinance, issue generally binding regulations of a technical and organizational nature intended for the trust offices and natural persons with dispensation that are under its supervision by virtue of this National Ordinance.</p> <p>Article 11b (page 129)</p> | |
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| | | <p>2. The authority to issue a public warning as referred to in paragraph 1 is without prejudice to the Bank's authority to publish, in Sint Maarten, any public warnings given by an international or intergovernmental organization.</p> <p>Article VI</p> <p>The National Ordinance on Insurance Brokerage Companies will be amended as follows:</p> <p>Article 8a (page 156)</p> <p>2. The authority to issue a public warning as referred to in paragraph 1 is without prejudice to the Bank's authority to publish, in Sint Maarten, any public warnings given by an international or intergovernmental organization.</p> <p>Article 8b (page 157)</p> <p>3. In order to give effect to recommendations and regulations of international or intergovernmental organizations, the Bank may, by ordinance, issue generally binding regulations of a technical and organizational nature intended for the institutions that are under its supervision by virtue of this National Ordinance. Such institutions will be under the obligation to comply, and to continue to comply, with said regulations.</p> <p>In the National Ordinance on the Supervision of MTCs: article 10 paragraph 1 and article 10a paragraph 2</p> <p>Regarding the FIU, the power to apply sanctions to the DNFBPs has been established in the National Ordinance FIU (AB 2019 no. 24) article 19;</p> <p>And also in the National Ordinance combating ML/TF (AB 2019 no. 25) article 31 paragraph 3.</p> | |
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| 22. Branches and subsidiaries | C | | | |
| 23. Regulation, supervision and monitoring | PC | <ul style="list-style-type: none"> • Take immediate action to close unlicensed MTCs. • Increase on-site inspections of MTCs. • Implement a regulatory and supervisory regime for factoring services. • Develop a risk based approach system to determine the AML/CFT focus of onsite inspections. • Commit resources to having supervisory staff in Sint Maarten for greater onsite monitoring of licensees. | <p>Unlicensed MTC's will be shut down by the PPO. The matter concerning unlicensed MTC's will be revisited by the MOT with the minister of Justice and the PPO.</p> <p>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.</p> <p>Update:</p> <p>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.</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. Currently, there is one (1) representative of a small factoring service provider operating in Sint Maarten with its head-office in Curacao.</p> <p>The implementation of a risk based approach has started.</p> <p>In August 2012 one (1) supervisory has been hired by the CBCS to review the monitoring of licensees in</p> | Closed in the 3 rd , 5 th , 6 th , 8 th , and 11 th FURs |



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| Year | Quantity of existing MTCs | Quantity of on-site inspections |
|------|---------------------------|---------------------------------|
| 2013 | 3 | 3 |
| 2014 | 3 | 0 |
| 2015 | 3 | 0 |

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| | | | 20 16 | 3 | 1 | |
| | | | 20 17 | 3 | 1 ¹⁸ | |
| | | | 20 18 | 3 | 0 | |
| | | | 20 19 | 3 | 2 | |

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. Currently, there is one (1) representative of a small factoring service provider operating in Sint Maarten with its head-office in Curacao.

The implementation of a risk based approach has started.

The following is the RBA as applied by each supervision department responsible for AML/CFT supervision.

1. On a yearly basis the Banking Supervision Department (“BSD”) determines the institutional profile and performs a risk assessment of the supervised institutions. As part of this process the AML/CFT risk is assessed on a general level, which assessment is based amongst other on examination findings and the follow up performed by the institutions on the resolution of the findings. Based on the assessment of the AML/CFT risk, the frequency,

¹⁸ This examination was performed from Curaçao and included the operations in Sint Maarten.

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| | | <p>intensity and risk areas to be covered during onsite inspections are determined.</p> <p>2. In addition to the above BSD has performed a risk assessment specifically for the AML/CFT area based on a.o. the statistics and results of previous AML/CFT examinations. Based on this risk assessment the institutions have been risk rated Low, Medium or High for AML/CFT.</p> <p>The Institutional Investors Department developed an AML survey which was sent to all life insurance companies and all insurance brokers intermediating in life insurance under supervision of the Central Bank. The purpose is to gather as much information as possible on the business activities of these institutions and to attach risk factors to these activities, which will form the basis for the AML risk based approach. Life insurers and insurance brokers intermediating in life insurance will be supervised and e.g. scheduled for onsite examination based on the risk classification determined by the Institutional Investors Department.</p> <p>3. The Investment Institutions and Trust Supervision Department plans its AML supervision concerning specifically onsite visits with the aid of a risk matrix and professional judgement. This occurs twice a year. It is then decided what the scope will be, which institutions will be inspected and when these will be scheduled, considering the limited manpower resources versus the (AML/CFT) risks identified related to entities or themes.</p> <p>Sint Maarten and Curaçao together form a monetary union. The Central Bank is the supervisory authority of (finan-</p> | |
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| | | | <p>cial) institutions in both jurisdictions. The Central Bank employs a total of 51 fte's working for the respective departments that are directly involved in supervision. From these fte's, 2 are based in Sint Maarten and 49 in Curaçao. All 49 Curaçao based fte's are continuously involved with the supervision of the entities and sectors in Sint Maarten that fall under the Central Bank. They are flown in from Curaçao to conduct on-site inspections together with the Sint Maarten based staff as well as to perform other supervisory activities.</p> <p>Moreover, the staffing of the supporting departments (the departments that are indirectly involved in the supervision activities such as the Integrity Unity for the screening of Management and UBOs of the supervised entities and persons, the Legal department, the International Affairs department for i.a. sanctions, the Policy department and the Financial Stability and Resolution department) is currently 38.</p> | |
| 24. DNFBP - regulation, supervision and monitoring | NC | <ul style="list-style-type: none"> • The Authorities in St. Maarten should immediately implement adequate AML/CFT regulation and supervision of casinos in compliance with E.C. 24.1. Casinos in St. Maarten are not effectively regulated or monitored. • The Authorities should implement an AML/CFT regime for Internet casinos. • The MOT should implement an effective supervisory regime and | <p>Adequate AML/CFT regulation for casinos and internet casinos will be developed. The Ministry of Justice is busy with the setup of the GCB. An outline for the regulatory body has been submitted to the Minister of Justice for approval.</p> <p>The ministry of Justice expects to submit draft legislation on the regulation and supervision of the gaming industry to the minister of Justice mid 2015.</p> <p>THE 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.</p> <p>The MOT has started with the registration fo the businesses and professions. The inventories of the Jewellers and Real Estate Companies</p> | Closed in 11 th FUR |



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| | <p>should be given resources to fulfil their supervisory role for the relevant DNFBP sector.</p> <p>The deficiency identified in section 3.10 (R. 29 and R17) with regard to the supervisory function of the Central Bank should be cured.</p> | <p>and Agents is complete. The first info sessions have been held in July 2014 (financial institutions) and August 2014 (Jewellers and Real Estate Companies and Agents).</p> <p>The MOT has started with the management meetings with aforementioned companies in September 2014 through December 2014.</p> <p>In accordance with the legal system, sanctions against directors and senior management are already in place in Sint Maarten. Please be referred to the comment under Undertaken Action re. Rec 17.</p> <p>THE MOT SUBMITTED THE FIRST DRAFT OF THE LEGISLATION FOR THE GCB TO THE MINISTERS OF JUSTICE AND ECONOMIC AFFAIRS AND TOURISM. THE PROPOSAL IS FOR THE MOT TO CARRY OUT THE AML/CTF SUPERVISION OF THE GAMING INDUSTRY.</p> <p>THE MOT HAS STARTED WITH THE 2015 INFORMATION SESSIONS FOR THE DNFBP IN MARCH AND APRIL 2015 THE REAL ESTATE COMPANIES, THE CAR DEALERSHIPS AND THE ACCOUNTANTS.</p> <p>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>Draft National Ordinance combatting ML/TF Article 35 paragraphs 3 and 4</p> <p>Draft National Ordinance on Administrative Enforcement Article 4</p> <p>Draft National Ordinance combatting ML/TF article 2 paragraph 1 under b sub 5°;</p> <p>article 1 under aa sub 2°;</p> <p>article 31 paragraph 1 and paragraph 3.</p> <p>National Ordinance combatting ML/TF article 2 paragraph 1 under b sub 4°; article 1 under aa sub 2°; article 31 paragraphs 1, 2 and 3.</p> | |
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| | | | National Ordinance combatting ML/TF (supervision): article 2 paragraph 1 under b sub 4°; article 1 under aa sub 2°; article 31 paragraphs 1, 2 and 3. | |
| 25. Guidelines & Feedback | PC | <ul style="list-style-type: none">•The MOT should provide feedback with respect to typologies or sanitized cases, and on specific cases that have been closed.•MOT is strongly encouraged to continue its outreach programme to <u>specifically</u> encompass both feedback and guidance related to UTRs.•Provide guidance to financial institutions with respect to terrorism financing.•Issue guidance to providers of factoring services.• The Competent Authorities in Sint Maarten should provide adequate guidance to DNFBPs supervised by the MOT and Casinos regarding AML/CFT requirements.• MOT should issue its own P&Gs. | <p>MOT and the PPO are analysing the typologies and all sanitized and specific cases. This process will be carried out periodically and when completed, feedback will be given to the financial institutions.</p> <p>MOT does feedback with and guide the financial institutions related to UTRs.</p> <p>More guidance will be provided to financial institutions with respect to TF. A training programme for all stakeholders (MOT, law enforcement, PPO, Reporters, DNFBPs) has been developed and approved by the Minister of Justice. The execution of the training program will start in March 2014.</p> <p>Guidance to financial institutions with regard to TF will take place in 2015.</p> <p>The MOT received and is still receiving training from the former head of the FIU Curaçao. The reporters/DNFBPs get regular info sessions and can call and visit the MOT at all times to receive information. They must include in their compliance regime that they will get training minimal once (1) a year. The only outstanding group is law enforcement (Police, RST, Landsrecherche, PPO and Customs); they will be trained in the first half of 2015. The programme is ready.</p> <p>The laws are being amended to incorporate factoring services. The new draft law (merged and updated NORUT-NOIS) includes factoring services.</p> <p>The MOT routinely disseminates information to the DNFBPs supervised by the MOT regarding AML/TF requirements. The MOT developed P&Gs for DNFBPs.</p> | Closed in 7 th FUR |



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| | | <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> <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>Draft National Ordinance combatting ML/TF Article 36 paragraph 2 under h</p> <p>Draft National Ordinance on MOT article 3 paragraph 2 under g P&G's for DNFBPs have been issued and a copy thereof submitted to CFATF secretariat.</p> <p>National Ordinance on MOT article 3 paragraph 2 under g; P&G's for DNFBPs have been issued and posted on the MOT website.</p> <p>The MOT disseminates information to the DNFBPs supervised by the MOT regarding AML/TF requirements. The MOT developed P&Gs for DNFBPs.</p> <p>The MOT presents typologies and sanitized cases that have been closed in its annual reports.</p> | |
| Institutional and other measures | | | |
| 26. The MOT | NC | <p>The authorities should ensure that the legal underpinnings for the establishment of the MOT</p> <p>The legal basis for the MOT are formed by:</p> <ol style="list-style-type: none">1. The national ordinance structure and organisation of the national government (AB 2010, no. 6) – article 9 | Closed in 7 th FUR |



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| | <p>are sound. It should be clear in the law as to the Ministry under which it falls.</p> <ul style="list-style-type: none">• The authorities should move swiftly to appoint an MOT Head.• The MOT should seek to clarify the manner and procedures for reporting, improve the relationship between itself and its stakeholders and provide guidance on the manner and procedures for reporting. The MOT should increase awareness within its stakeholders of the existence of the MOT.• Articles 4, 8, 16 and 22 of NORUT should be amended in order to ensure operational autonomy of the MOT and avoid opportunities for undue interference and influence.• As the number of investigative reports forwarded by the MOT is low compared to the number of UTRs recovered, the MOT should | <p>2. The national decree containing general measures to be subdivided and worked out in further detail by the ministry of Justice (AB 2010, no. 11) – article 17.</p> <p>Both laws are enclosed for review. The NORUT (AB 2013 No 479) was amended on April 25th, 2014, to establish the operational autonomy of the MOT. The amended law was enacted on September 4th, 2014. I refer to the AB 2014 No 51, which was sent to the CFATF Secretariat on October 3rd, 2014.</p> <p>With the abovementioned amendment of the NORUT MOT Sint Maarten was inducted into the Egmont Group of FIUs as is recommended in recommendation 40.</p> <p>The MOT has a permanent director in place as of January 1, 2013.</p> <p>The MOT is disseminating information to the reporters. The DNFBPs are being registered and receive information on the laws and existence of the MOT. Also reference is made of the website of the MOT Sint Maarten (www.fiu-sxm.net)</p> <p>The NORUT has been amended (draft to be submitted to and approved by parliament end of March 2014) to establish the operational autonomy of the MOT. In practice the MOT already operates autonomously.</p> <p>The internal procedures of the MOT are being reviewed. More qualified personnel needs to be hired. This will increase the number of investigated reports that are sent to the PPO.</p> <p>The physical security of the personnel, the files, and the databases is in place. The next step is to hire qualified (and screened) personnel compile the data from the analyst department to assist in the production of produce the annual reports 2011, 2012 and 2013 of the MOT. Annual reports will be produced in the first 3 months of 2015.</p> | |
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| | | <p>reassess its internal process to ensure an adequate number of investigative reports are forwarded to the PPO.</p> <p>The MOT should implement measures to improve the physical security of manual files, electronic data, premises and the employees of the MOT.</p> <p>The MOT should produce and publish Annual Reports and ensure that it includes full information on ML and TF trends and typologies.</p> | <p>STATUS QUO; NO NEW UPDATE. THE MOT EXPECTS TO START WITH THE ANNUAL REPORTS 2010-2014 IN MAY 2015.</p> <p>A START HAS BEEN MADE WITH THE DRAFTING OF THE ANNUAL REPORTS. THE EXPECTED DATE OF COMPLETION AND PRESENTATION TO THE MINISTER OF JUSTICE AND PLACEMENT ON THE WEBSITE IS JANUARY 2016.</p> <p>Draft National Ordinance combatting ML/TF Article 35 and Article 36</p> <p>The MOT has been established by law in 2014 and has been operational since. This has been confirmed in paragraph 40 of the 7th FUR.</p> | |
| 27. Law enforcement authorities | PC | <ul style="list-style-type: none"> Relevant financial resources should be directed to ensure that recruited officers are appropriately trained in ML and TF and are kept up to date in the recent developments in financial investigations. These challenges identified will therefore affect the proper investigation of ML and TF offences. There should be a decisive approach with respect to the operation of | <p>The MOT has secured funds for the ML/TF training of the law enforcement agencies.</p> <p>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</p> | <p>Closed in 8th FUR. New information will be submitted for review in 4th Round ME</p> |



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| | | certain MTCs without licenses in contravention of the law. | <p>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 COURT. APPEAL WILL BE HANDLED BEFORE THE END OF 2015.</p> <p>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.</p> <p>Recommendation 29 (old rec. 26) was declared 'fully met' under the seventh follow up report of June 2016.</p> <p>Furthermore, Sint Maarten has established a new National Ordinance on the FIU (AB 2019 no. 24).</p> <p>The PPO staff has been increased, one extra PPO specialized in ML/TF cases added, and an increase of eight (8) financial investigators (law enforcement).</p> <p>Every year the MOT trains the law enforcement in ML/TF in the recent developments.</p> | |
| 28. Document production, search and seizure | C | | | |
| 29. Supervisors | C | | | |
| 30. Resources, integrity, and training | PC | <ul style="list-style-type: none">• The authorities should increase the staff complement of the MOT.• The authorities should acquire additional tools | <p>The director of the MOT has described the full time equivalent of the MOT functions. This established the staff complement of the MOT. The recruitment of a strategic analyst is underway. The strategic analyst/co-ordinator of the analyst department has started working at the MOT as of July 1st, 2014.</p> | <p>Closed in 7th FUR. An update will be submitted for review in the 4th Round ME</p> |



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| | <p>such as Analyst Notebook to assist in the analysis of UTRs.</p> <ul style="list-style-type: none">• Sufficient financial resources should be reserved that in order that the staff may be adequately trained for ML and TF.• The MOT should obtain the relevant resources eg. Offsite electronic data fireproof safe, fire extinguishers, etc to further protect its information, premises and employees.• The authorities should seek to quickly employ robust recruiting programmes to fill the vacancies in the law enforcement agencies such as the KPSM.• The authorities should ensure that all relevant entities including the Tax Department, Landsrecherche, Customs, Coast Guard and the KPSM are adequately and regularly trained in money laun- | <p>The ML/TF training of MOT personnel has started in January 2014. The training ends November 2014. The second part of the training starts in December 2014 for 6 months.</p> <p>The connections for offsite electronic data backup are expected to be completed in the second half of 2014. A fireproof safe and fire extinguishers are already in place at the MOT. The offsite back-up will be completed in the first half of 2015.</p> <p>The authorities have been busy recruiting personnel for the law enforcement agencies such as the KPSM.</p> <p>The MOT has developed the ML/TF training program for all stakeholders (MOT, Police, Customs, PPO, <i>Landsrecherche</i>, Tax Office and National Security Agency) which was approved and financed by the Minister of Justice (Crime Fund). The training will start in January 2015.</p> <p>STATUS QUO; NO NEW UPDATE. TRAINING PROGRAM WAS SUBMITTED IN NOVEMBER 2014 AND IS AWAITING APPROVAL.</p> <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> | |
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| | | <p>dering and counter financing of terrorism like the RST.</p> <ul style="list-style-type: none"> • Improved facilities should be provided for the Courts of Justice | <p>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 received a compact training from the MOT staff.</p> <p>The integrity training and other requirements are an ongoing process and structural part of the tasks of the MOT.</p> <p>Recruitment of personnel and training of personnel takes place annually in the Justice Ministry. The MOT trains the new recruits on the latest ML/TF developments.</p> | |
| 31. National co-operation | PC | <ul style="list-style-type: none"> • The CIWG needs to be formally established. • The Authorities should ensure the implementation of the mechanism for coordination that were informed to the Team. | <p>The anti-money laundering and terrorism financing committee was formally established by national decree dated June 8th, 2012. Due to a problem of dysfunctioning of the committee, the minister of Justice decided to replace the committee by a National Co-ordinator AML/CTF. This function is carried out by the (Head of the) MOT.</p> <p>The function of the national co-ordinator has been included in the amended NORUT (AB 2014 no 51) is the authority who based on rec 31 co-ordinates policy co-operation across all relevant competent authorities; this includes operational co-operation between authorities at the law enforcement, FIU level including Customs authorities and where appropriate between FIU, law enforcement and supervisors. Discussions with ALL stakeholders have already started.</p> <p>STATUS QUO; NO NEW UPDATE. THE NATIONAL CO-ORDINATOR IS IN CONSULTATION WITH THE STAKEHOLDERS ON THE UPDATE OF THE LEGISLATION.</p> <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 OF THE MERGED NORUT AND NOIS TO GET THEIR INPUT. THE NATIONAL CO-ORDINATOR HAS MET WITH THE LAW ENFORCEMENT REPRESENTATIVES TO</p> | Closed in 7 th FUR |



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| | | | <p>START PREPARATIONS FOR THE NRA. INFORMATION SHARING WITH ALL STAKEHOLDERS WILL TAKE PLACE NEXT YEAR.</p> <p>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.</p> <p>Sint Maarten decided in June 2014 to include the functions of the CIWG under the tasks of the MOT into a national coordinator, article 3 under h. In the draft National Ordinance on the MOT, the task is included in article 3 under j.</p> <p>National Ordinance establishing the MOT article 12 (the guidance committee)</p> <p>The committee to combat ML/TF was established by national decree of June 2012.</p> | |
| 32. Statistics | PC | <ul style="list-style-type: none">• The Authorities should ensure that comprehensive statistics are maintained in relation to the investigation, prosecution, and conviction of ML related cases• The authorities should ensure that relevant statistics are maintained for Sint Maarten with respect to requests for additional information by the MOT.• The MOT should host training sessions on ML and TF for the reporting entities to ensure that the | <p>Statistics on requests made to and from overseas FIUs are available. Requests for information from FIUs: 35. Requests for information to FIUs: 15.</p> <p>2014: REQUESTS FOR INFORMATION RECEIVED FROM FIUs: 13</p> <p>2014: RESPONSES TO FIUs: 11</p> <p>2014: REQUESTS SENT TO FIUs: 9</p> <p>2014: POSITIVE RESPONSES RECEIVED: 4</p> <p>2014: NEGATIVE RESPONSES RECEIVED: 5</p> <p>2015 (up to October 5th, 2015): REQUESTS RECEIVED FROM FIUs (INCLUDING SPONTANEOUS DISSEMINATIONS): 27</p> <p>2015 (up to October 5th, 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> | Closed in 7 th and 9 th FURs. New information based on criterion 32.1 will be submitted for review in 4 th Round ME |



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| | | <p>financial entities report as required.</p> <ul style="list-style-type: none">• The MOT should also maintain statistics regarding the number of requests made to foreign MOTs. | <p>The info sessions included the FATF information, case material, CDD, compliance regime, unusual transactions reporting, including the reporting of suspicious transactions by making use of the subjective indicator, and sanctions.</p> <p>Dates sessions: for financial institutions on July 9th, 2014, for the real estate agents on August 21st, 2014, for Jewellers on August 22nd, 2014. For notaries: October 22nd, 2014.</p> <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>See Annual reports 2010-2014. Annual report 2015 pending.</p> <p>The annual report (AR) 2015 has been posted on the site of the MOT. The draft AR 2016 and 2017 are ready and being reviewed before posting.</p> <p>The training and information sessions organized by the MOT for the financial institutions and DNFBPs are ongoing (core task of the MOT – article 3).</p> <p>The MOT has the data always readily available on information exchange with foreign FIUs.</p> <p>The MOT maintains the statistics on information exchange with foreign FIUs for the bi-annual census of the Egmont Group of FIUs.</p> | |
| 33. Legal persons–beneficial owners | NC | <ul style="list-style-type: none">• Sint Maarten should establish a system to ensure access to the UBO | <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> | Closed in 11 th FUR. New information will be submitted for review in 4 th Round ME |

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| | <ul style="list-style-type: none"> information of legal persons. • There should be mechanisms in place to guarantee that competent authorities are able to obtain and have access in a timely manner to accurate and current UBO information. • Article 105 3rd paragraphs reflects that bearer shares shall be transformed by the company into registered shares if this is requested by the holder of the bearer shares that this be done. This aspect of the CC must be amended to either make the transformation mandatory or mandate the registration of the UBO details in relation to the bearer shares and express mechanisms incorporate either in the Code or elsewhere to achieve this registration. • Amend the NDCBSC so that the wording requires that beneficial ownership information must also be captured | <p>This subject matter will be addressed in the new draft law (merged and updated NORUT-NOIS).</p> <p>This subject matter will be further examined by the judicial affairs department of the ministry of Justice. When registering the DNFBPs the MOT requests the businesses and professions to submit the UBO information.</p> <p>Registration of UBO information: The MOT has a form that is accessible on its website. Entities fill this in with information about the company, its director(s) and the UBO(s). Authorities can request this information at the MOT.</p> <p>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. Draft National Ordinance on Combatting ML/TF Article 7 Draft National Ordinance on Combatting ML/TF Chapter II and article 25, article 18 paragraph 2, article 17 paragraph 6, article 22, article 23, article 31, paragraph 3, article 35, article 36. Draft National Ordinance on the MOT article 2 paragraph 5, article 5 paragraph 1, article 20, article 7 paragraph 1 and paragraph 2 (conduct investigations o.b.o. foreign entities that have a similar task as the MOT).</p> <p>Registration of UBO information:</p> | |
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| | <p>for the ultimate beneficial owners of the legal person on whose behalf the bearer shares are kept or held</p> <p>National Ordinance Chamber of Commerce article 1 under ee; article 16, under f; article 17 under h; article 18 paragraph 1, under g; article 19, paragraph 1 under f; article 20, paragraph 1 under e; article 21, paragraph 1 under f; article 22, paragraph 1 under g.</p> <p>The MOT registers the UBO information of its supervised entities. The supervisors of the MOT can request any and all information of the supervised entities (National Ordinance establishing the MOT article 31).</p> <p>Draft National Ordinance to amend Book 2 of the Civil Code: prohibition to give out bearer shares (Title 5: the public limited company, section 1: general provisions - article 100, paragraph 1)</p> <p>Registration of UBO information:</p> <p>Article 35 of the National Ordinance combating ML/TF (AB 2019 no. 25) amends the Commercial Registers Decree to obligate the registration of the personal details of the ultimate beneficiary, which, according to Article 1(ee) is a natural person who can exercise effective control in or on behalf of the client, and client is a concept that includes legal persons in Article 1(e).</p> <p>Amended articles of the Commercial Registers Decree, to include the UBO registration obligation:</p> <p>Commercial Registers Decree article 1 under ee; article 16, under f; article 17 under h; article 18 paragraph 1, under g; article 19, paragraph 1 under f; article 20, paragraph 1 under e; article 21, paragraph 1 under f; article 22, paragraph 1 under g.</p> <p>National Ordinance to amend Book 2 of the Civil Code: prohibition to give out bearer shares (Title 5: the public limited company, section 1: general provisions - article 100, paragraph 1)</p> | |
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| 34. Legal arrangements – beneficial owners | LC | • | <p>This subject matter will be further examined by the judicial affairs department of the ministry of Justice. The new draft law (merged and updated NORUT-NOIS) will address this issue.</p> <p>STATUS QUO; NO NEW UPDATE. THE MOT IS REGISTERING THE DNFBP WITH THEIR UBO INFORMATION. THE CHAMBER LEGISLATION WILL BE UPDATED TO REFLECT THIS RECOMMENDATION.</p> <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>Draft National Ordinance on Combatting ML/TF Article 8 Draft National Ordinance on Combatting ML/TF article 2 paragraph 1 under b sub 2°, article 3 paragraph 2 under c, article 22, article 31 paragraph 3. Draft National Ordinance on the MOT article 2 paragraph 5, article 7 paragraph 1 and paragraph 2. National Ordinance Chamber of Commerce article 1 under ee; article 16, under f; article 17 under h; article 18 paragraph 1, under g; article 19, paragraph 1 under f; article 20, paragraph 1 under e; article 21, paragraph 1 under f; article 22, paragraph 1 under g.</p> <p>Furthermore, the registry of the Chamber of Commerce is public.</p> <p>Amended articles of the Commercial Registers Decree, to include the UBO registration obligation:</p> <p>Commercial Registers Decree article 1 under ee; article 16, under f; article 17 under h; article 18 paragraph 1, under g; article 19, paragraph 1 under f; article 20, paragraph 1 under e; article 21, paragraph 1 under f; article 22, paragraph 1 under g.</p> | Closed in 11 th FUR |



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| | | | National Ordinance to amend Book 2 of the Civil Code: prohibition to give out bearer shares (Title 5: the public limited company, section 1: general provisions - article 100, paragraph 1) | |
| International Cooperation | | | | |
| 35. Conventions | PC | <ul style="list-style-type: none">• Authorities must ensure the EDACs expressly addresses the matters of non-treaty based requests for extradition; ,expedition of extradition procedures and simplification of evidentiary requirements• The international cooperation framework under the criminal laws should expressly address Sint Maarten's ability to extend cooperation and assistance to Transit States as contemplated by article 10 of the Vienna Convention.• The criminal laws must expressly impose obligations on Commercial Carriers to ensure these carriers are not used for the commission of article 3 offences set out in the Vienna Convention. | <p>The issue of the offences set out in the Vienna Convention is already partly dealt with in the Opium Legislation which currently is the <i>Opiumlandsverordening 1960</i>. This Act will have to be revised.</p> <p>The general provisions as set out in the Penal Code are applicable on all other Criminal laws, thus on the Opium Legislation through the switching provision of 2:224 (currently 96).</p> <p>The treaty of San Jose covers the combating of illicit traffic at sea and the use of mails for illicit traffic.</p> <p>The issue of the offences set out in the Vienna Convention is already partly dealt with in the Opium Legislation which currently is the <i>Opiumlandsverordening 1960</i>. This Act will have to be revised. This Act will have to be revised.</p> <p>The general provisions as set out in the Penal Code are applicable on all other Criminal laws, thus on the Opium Legislation through the switching provision of 2:224 (currently 96).</p> | Closed in 11 th FUR Amendments to legislation will be submitted for review in 4 th Round ME |



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| | <ul style="list-style-type: none">• The criminal laws must expressly address mechanisms required by article 17 (illicit traffic at sea) and required by article 19 (illicit use of mails) of the Vienna Convention.• The Penal Code and Penal Procedures Code should be revised to address the shortfalls identified in the ratings Table below in relation to the Palermo Convention• The Penal Code should be revised to expressly criminalize the indirect or unlawful provision of funding for the commission of a terrorism offence, as well as the wilful provision of funds etc. to individual terrorists set out in article 2(a) of the Terrorist Financing Convention.• The Penal Procedures Code and/or Penal Code should be amended to expressly address• the matter of reciprocal confidentiality (as re- | <p>With the introduction of the new Penal Code of SXM all offences set out in the Palermo Convention as well as the recommended offences will be criminalized.</p> <p>The introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice and is now ready to be submitted to Parliament for approval. Expected enactment of the Penal Code by the IO: December 2014.</p> <p>Next to that the proposed article 2:54 and 2:55 PC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime. In article 2:55 the financing of crime is punishable as a severe crime. Next to that article 1:120 PC SXM (currently article 48a) criminalizes the aiding and abetting of the crimes mentioned in article 2:54 and 2:55. Of course criminal attempts are punishable under 1:119 PC SXM (currently article 47)</p> <p>The matter reciprocal confidentiality is dealt with in the current CPC SXM article 555 and further (International Mutual Assistance) but will be more expressively mentioned and regulated more detailed in the new (draft) Criminal Procedure Code.</p> <p>As for establishing mechanisms whereby forfeited funds are used to compensate the victims of terrorist the proposed article 1:78 PC SXM creates a mechanism to compensate victims and is also applicable to victims of terrorist acts As far as the Criminal laws are concerned the switching provision of 2:224 (currently 96) makes the general provisions of the first book of the Penal Code applicable to all other Criminal laws.</p> | |
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| | <p>quired by article 12 (Assistance to other States) of the TF Convention;</p> <ul style="list-style-type: none">• establishing mechanisms whereby forfeited funds are used to compensate the victims of terrorist offences or their families, and matters of custody arrangements, terms under which an offender transferred to Sint marten from a State will be returned to that State from which the offender was transferred, credit for time spent in custody of State to which the offender was transferred | <p>THE RECOMMENDED ACTIONS HAVE BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27TH, 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> <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. [Note: voluntary community service] 3. Trafficking in human beings is prohibited.</p> <p>Article 26</p> | |
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| | | <p>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 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">a. lawful detention after conviction by a competent court;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;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;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;e. lawful custody of persons deprived of liberty and law that might spread a contagious disease, of unsound mind, addicted to alcohol or drugs;f. lawful detention of persons in order to prevent them from effecting an unauthorized entry into the country or to prolong their stay illegally;g. lawful arrest or detention of persons against them if a deportation or extradition. <p>2. Everyone who is arrested or detained in accordance with paragraph c of this Article, shall be brought promptly before a</p> | |
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| | | <p>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> <ul style="list-style-type: none">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;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>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> <p>Article 28</p> <ul style="list-style-type: none">1. No offense is punishable than by virtue of a preceding statutory penal provision.2. Everyone charged with an offense is presumed innocent until proved guilty according to national ordinance.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.4. Anyone charged with an offense has the following rights:<ul style="list-style-type: none">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;b. to have the free assistance of an interpreter if he does not understand or speak the language used in court;c. To have adequate time and facilities to prepare his defense; | |
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| | | <p>d. to defend himself;</p> <p>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.</p> <p>Article 29</p> <ol style="list-style-type: none">1. Everyone may be legally represented in civil, criminal and administrative proceedings.2. In National ordinance will be laid down the rules on the granting of legal aid to persons of limited means. <p>Article 30</p> <ol style="list-style-type: none">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.2. Suspects are exceptional circumstances aside, segregated from convicted persons and are entitled to a separate treatment appropriate to their status as unconvicted persons.3. Juvenile suspects are held separately from adults and arraigned as soon as possible before the court.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>This recommendation has been dropped.</p> <p>In operation for Sint Maarten:</p> <p>Vienna 1988. See: https://treatydatabase.overheid.nl/en/Verdrag/Details/003363</p> <p>Palermo 2000. See: https://treatydatabase.overheid.nl/en/Verdrag/Details/009348</p> | |
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| | | <p>Terrorist Financing Convention. See: https://treatydatabase.overheid.nl/en/Verdrag/Details/009247</p> <p>The necessary implementing legislation has already been incorporated into existing legislation (Criminal Code) and regulations.</p> <p>Sint Maarten is not a party to:</p> <p>Europe convention on cyber crime. See: https://treatydatabase.overheid.nl/en/Verdrag/Details/009852</p> <p>Inter-American Convention against Terrorism. See: http://www.oas.org/juridico/english/sigs/a-66.html</p> <p>Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on Financing of Terrorism, 2005. See: https://treatydatabase.overheid.nl/en/Verdrag/Details/011299.</p> <p>The UN Convention against Corruption 2003 has not yet entered into force for Sint Maarten, although the Netherlands Antilles indicated at the time that they wanted co-notification. See https://treatydatabase.overheid.nl/en/Verdrag/Details/010077. A missing part of the required legislation is added under article 38 of the draft National Ordinance combatting ML/TF.</p> <p>The Vienna Convention can form the basis for extradition with countries that are a party to that convention, but with which Sint Maarten does not have a signed treaty. Furthermore, extradition can take place without a signed treaty, only the procedure is lengthier. The Extradition Decree of Curaçao, Sint Maarten and Aruba is a Kingdom Decree and the amendment thereof is not in the hands of Sint Maarten, but is carried out by the parliaments of the Netherlands. The same point that is raised here for Sint Maarten also counts for Curaçao and Aruba.</p> | |
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| | | <p>The international mutual legal assistance is applicable to all foreign states, it therefore also includes transit states.</p> <p>The Criminal Code establishes the obligation for commercial carriers natural persons and legal persons and is therefore automatically applicable to commercial carriers; a commercial carriers is prosecutable and punishable according to the Criminal Code and the Criminal Procedures Code for drug-related offences. See also article 11 paragraph 4 of the National Ordinance on psycho tropic substance drugs.</p> <p>The same as immediately above is applicable in the case of illicit trafficking by sea carried out by legal persons that are shipping companies.</p> <p>The shortfalls concerning human smuggling/-trafficking in relation to the Palermo Convention were corrected in article 2:154 of the Criminal Code.</p> <p>Also in the draft National Ordinance to amend the Criminal Code, article 1 under Q a new Title XXXI 'Financing of Terrorism' is introduced to expressly criminalize the indirect or unlawful provision of funding for the commission of a terrorism offence, as well as the willful provision of funds etc. to individual terrorists set out in article 2(a) of the Terrorist Financing Convention.</p> <p>Draft Criminal Procedures Code article 45 (reciprocal confidentiality).</p> <p>A victim of a crime must seek compensation in a civil lawsuit.</p> <p>- Though the EDAC does not (explicitly) regulate the non-treaty based requests for extradition, <u>non-treaty based extradition is also legally allowed in Sint Maarten.</u>¹⁹ Sint Maarten, as part of the Kingdom of the Netherlands, is not a country which requires detailed (national) legislation in order to use the Vienna Convention as a legal basis.²⁰ It is constitutionally regulated that provisions of treaties and decisions of organizations under international law, which according to their</p> | |
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¹⁹ See for a more elaborate explanation Annex I (Case Law pertaining to extradition in the absent of a bilateral treaty).

²⁰ See also Annex II (Self-execution of Treaty provisions within the Kingdom of the Netherlands)

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| | | <p>content can bind everyone, have binding force after they have been published. As Sint Maarten is party to the Vienna Convention 1988, in case of the absence of an extradition treaty between Sint Maarten and another country, the Vienna Convention (or other treaties) may serve as grounds for the extradition in respect of the offences mentioned in this Convention. (Vide Article 6, Paragraph 3, jo. Article 3, Paragraph 1, of the Vienna Convention 1988). <u>This was also (already) judicially established by the Supreme Court of the Netherlands (i.a. in 2010: ECLI:NL:HR:2010:BL9130), the highest court for both the European and the Caribbean part of the Dutch Kingdom countries in the fields of criminal, civil, and tax law.</u></p> <p>- Sint Maarten is not a country which requires detailed legislation in order to use Article 10 of the Vienna Convention 1988 as the legal basis to extend cooperation and assistance to Transit States.²¹</p> <p>- The offences set forth in i.a. article 3 of the Vienna convention has been implemented in the Penal Code (and the Opiates Ordinance. These laws are applicable to both legal persons and natural persons (vide Article 1:127, par. 1, of the Penal Code), thus also to airline companies, their personnel, passengers and suppliers. The investigative officers are given specific authorities and privileges to prevent that airlines and their aircrafts are being used for the offences mentioned in article 3 of the Vienna Convention. (See i.a. Articles 9a to 10c of the Opium Ordinance and the international legal assistance provisions of the Penal Procedure Code.) Also all commercial carriers, in order to be issued with an AOC (air operator's certificate), should screen and train their personnel and also have security protocols and guidelines in place to i.a. ensure that they are not used for illegal activities.</p> <p>- It is pointed out that revising the Penal Procedure Code to i.a. implement Article 26 of the Palermo Convention is actually only codi-</p> | |
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²¹ Idem.

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| | | <p><u>fying something that is already (legally) applied by the Public Prosecution Service on the basis of case law, therefore is already legal practice in Sint Maarten (just like Aruba and Curacao).</u> Already since the nineties prosecutors (may) make use of so called ‘crown witnesses’ or take other appropriate measures to encourage persons who have participated in organized criminal groups to become collaborators of justice. Both the Supreme Court of the Netherlands (the highest court for the Kingdom on i.a. Criminal Law cases) and the European Court on Human Rights have legally sanctioned the use of Crown Witnesses.²²</p> <p>With regard to the establishment of national records of persons disqualified from acting as directors of legal persons it is pointed out that Article 25 of Book Two of the Civil Code (which came in effect in November 2019) regulates the disqualification of directors of legal persons.</p> <p>- As mentioned above ML/TF is regulated in the Penal Code (as amended by the <u>National Ordinance amending the Penal Code (AB 2019 no. 41)</u>.</p> <p>- The <u>Opium Ordinance</u> is applicable to transport by land, air or sea: vide Articles 10b and 11d, of the Opium Ordinance.²³ Combating illicit trafficking by sea is also regulated in the Kingdom Law Coast Guard.</p> <p>The Coast Guard for i.a. Aruba, Curacao and Sint Maarten is established by the Dutch Kingdom countries. The Coast Guard was established on the basis of the <u>Kingdom Act Coast Guard</u> and has various tasks, including an criminal investigative task pertaining to i.a. trafficking of narcotics. (See Articles 2 and 3.) The Opium Ordinance is applicable to all kind of packed goods. See</p> | |
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²² See Annex III.

²³ See Annex V, p. 2.

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| | | <p>also Article 127, 128 and 140 of the (current and draft new) Penal Procedure Code. Customs officers are enforcing the laws on illicit trafficking also via the <u>National Ordinance on Import, Export and Transit</u> (See i.a. Articles 114 and 173), which deals with the inspection of mail (letter post and parcel post).</p> <p>All law enforcement officers are civil servants. For civil servants the <u>National Ordinance substantive civil servants law</u> (LMA) is applicable. Confidentiality is regulated in Articles 61 and 62 of the LMA. For sanctions, see Articles 86 and 87, par. 1, of the LMA (disciplinary measures) and also Article 116 of the Penal Code (PC).²⁴</p> <p>Also, in the (Government) Employee Handbook the following is written under section D (Integrity), more specific D-2:</p> <p><i>“Confidentiality</i></p> <p><i>Employees are bound to secrecy in their position. This confidentiality exists so that Government can control the flow of information to the outside non-government world and can hold employees legally accountable for disseminating (potentially damaging) information without prior permission from their managers. It is also forbidden to abuse information one comes across in the execution of ones job.”</i></p> <p>- With respect to the control techniques in free trade zones one should keep in mind that Sint Maarten, its whole territory, is a free trade zone. The free trade status sets Sint Maarten apart from the other three Dutch Kingdom countries (Aruba, Curacao and the Netherlands) and from several other, if not all CFATF Member States. So, all “modern law enforcement equipment and techniques, electronic surveillance, combating organized crime through the use of computers, telecommunications networks or other forms of modern</p> | |
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²⁴ See annex V.



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| | | <p>technology and bilateral and multilateral arrangements to maximize operational and training activities of article 29 of the Palermo Convention” in Sint Maarten are being used in the context of Sint Maarten being a free trade zone.</p> <p>Ad Enforcement equipment, techniques and computers:</p> <p>Sint Maarten law enforcement agencies, like the Police, Customs, Coast Guard, Royal Dutch Marechausee, work effectively and efficiently together in the multi-disciplinary “Alpha Team”, which is led by the Sint Maarten Police Force, to combat i.a. transnational organized crime.</p> <p>Sint Maarten also has an Asset Recovery Team which seizes illicit generated assets (e.g. money, real estate, cars and boats) is an example of such a new approach while tackling organized crime. This team is under the supervision of the Public Prosecutor's Office comprises of officers of the Sint Maarten Police Force, Customs, the Coast Guard and the Tax Office. It is using an integral work approach, is result orientated and creative.</p> <p>Aforementioned law enforcement agencies have their own CID (Criminal Information Database) and have signed an agreement to centralize data on serious crimes (predicate offences) and also make use of ICT systems for data exchange with other law enforcement agencies like ACTPOL for the Police, BMS (Border Management System) and FMS (Foreigner Management System), for border control. The FIU uses the Unusual Transactions Registry. The Public Prosecutor Service uses PRIEM (Prosecutor's (Office) Registration and Information Management System). The Justice Organizations in the Caribbean parts of the Kingdom share one ICT organization (Foundation ICT Management Law Enforcement).</p> | |
| | | <p>Ad Electronic Surveillance:</p> <p>Camera Surveillance on the Island has been implemented since 2016 and is monitored centrally by a special Camera Monitoring Unit of the Police Force of Sint Maarten. The Coast Guard uses surveillance</p> | |



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| | | <p>(and interceptor) boats, helicopters and planes and also mobile radars for continues coastal surveillance.</p> <p>Ad Telecommunications networks or other forms of modern technology:</p> <p>Sint Maarten has two telecom providers which are both used by the law enforcement agencies for their mobile radio networks and internet/wifi. Satellite communication is also being used.</p> <p>Ad Bilateral and multilateral arrangements Sint Maarten has i.a. the <u>Franco-Dutch treaty</u>²⁵ and a <u>Police Cooperation Treaty</u> with France²⁶. On the basis of the latter treaty law enforcement officers from both the French and Dutch side of the island are able to conduct patrols on either sides of the island and foster better exchange of information and cooperation. Officers of the law are also able to do controls jointly on both sides.</p> <p>There is also a MoU with the United States of America on law enforcement in the region. Sint Maarten, as part of the Kingdom, has signed the <u>Agreement establishing the Caribbean Customs Organization and on Mutual Administrative Assistance in Customs Matters</u>.</p> <p>Also, Interpol has an office in Sint Maarten.</p> <p>The exchange of information contained in national records with the competent authorities of other State Parties On the basis of Articles 63 and 64 of the National Ordinance on personal data protection it is in general possible for a legal (administrative or civil law) person to exchange information. In Article 20 of the National Ordinance on Police Data it is regulated how and when police data may be exchanged.</p> <p>Informal and swift mutual assistance on an operational level can in</p> | |
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²⁵ Treaty between the Kingdom of the Netherlands and the French Republic on the control of persons entering Saint Martin through the airports.

²⁶ Treaty between the Government of the Kingdom of the Netherlands and the Government of the French Republic on island-wide police cooperation in Sint Maarten.



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| | | | general be provided pursuant to article 555 of the (current) Penal Procedure Code PPC). ²⁷ | |
| 36. MLA | PC | Amend the Penal Code to address the deficiencies set out in the ratings table. | <p>Next to that the proposed article 2:54 and 2:55 PC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime. In article 2:55 the financing of crime is punishable as a severe crime. Next to that article 1:120 PC SXM (currently article 48a) criminalizes the aiding and abetting of the crimes mentioned in article 2:54 and 2:55. Of course criminal attempts are punishable under 1:119 PC SXM (article 47).</p> <p>The matter of Mutual Assistance is dealt with in the current CPC SXM (article 555 and further (International Mutual Assistance) but will be more expressively mentioned and regulated more detailed in the new (draft) Criminal Procedure Code.</p> <p>THE RECOMMENDED ACTION ON THE EXTENT OF THE MLA HAS BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27TH, 2015.</p> <p>THE DRAFT OF THE CRIMINAL PROCEDURES CODE IS ON REVIEW AT THE COUNCIL OF ADVICE.</p> <p>THE PENAL CODE ENTERED INTO FORCE ON JUNE 1, 2015. TF IS NOW CRIMINALIZED.</p> <p>This recommendation has been incorporated in the Criminal procedures Code: pending.</p> <p>Draft Criminal Procedures Code article 554a (separate claim withdrawal from circulation), article 556 paragraph 3 (handling of an MLAT request by the PPO instead of the Courts), article 563 (the primacy of the treaties is underlined by the cancellation of the leave procedure at the Court when making available the results of the desired investigation), article 565a (the other changes mainly concern</p> | Closed in 11 th FUR |

²⁷ See Annex V.



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| | | <p>modernization of the law based on the constantly changing Dutch legislation, such as the introduction of special investigation methods), article 593a and beyond (the possibility of setting up joint investigation teams is regulated, which is particularly important for Sint Maarten because of the close relationship with the French part of the island), articles 596a and 596b (the transfer of enforcement of criminal judgments scheme is also being adjusted: arrangements concerning execution in the country of the verdict given in absentia, and on the execution of a verdict rendered in absentia in a foreign state).</p> <p>Draft Criminal Procedures Code Title XIII article 5:55 up to and including article 5:65e, on mutual legal assistance in criminal cases.</p> <p>All universal offenses (a.o. illicit Arms Trafficking, Smuggling, Insider Trading market manipulation) that are punishable in other countries are also punishable in Sint Maarten; see draft Criminal Procedures Code Title XIII article 2:55 up to and including article 2:65e.</p> <p>Reference is made to what is mentioned above as undertaken action under R.1, on how TF is now regulated in the Penal Code as amended by the National Ordinance Amending the Penal Code (NOAPC). Informal and swift mutual assistance on an operational level can in general be provided pursuant to article 555 of the (current) Penal Procedure Code PPC).</p> | |
| 37.Dual criminality | LC | <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>This recommendation has been dropped. The contents however has been incorporated in the Criminal Procedures Code; pending. Extradition Decree Aruba, Curaçao and Sint Maarten article 1.</p> | Closed in MER |



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| | | | In practice Sint Maarten extends MLA to countries with which it does not have a signed treaty. That covers dual criminality. | |
| 38. MLA on confiscation and freezing | PC | Amend the Penal Code to address the deficiencies set out in the ratings table | <p>Already dealt with but more specific legislation is under construction as mentioned under R36.</p> <p>THE RECOMMENDED ACTION ON THE EXTENT OF THE MLA HAS BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27TH, 2015.</p> <p>THE DRAFT OF THE CRIMINAL PROCEDURES CODE IS ON REVIEW AT THE COUNCIL OF ADVICE.</p> <p>THE PENAL CODE ENTERED INTO FORCE ON JUNE 1, 2015. 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>This recommendation has been incorporated in the Criminal procedures Code: pending.</p> <p><u>Draft Criminal Procedures Code (additions)</u></p> <p>Broadening of the possibility of confiscation under article 119a;</p> <p>Broadening of the confiscation regulation under article 120 and further;</p> <p>The possibility to freeze the proceeds until the authorized persons have arrived under article 121;</p> <p>The possibility to conduct a search without the physical presence of an examining magistrate (with the need for authorization when the search is at a dwelling or in another privacy-sensitive area) under article 122;</p> <p>The consideration to claim documents and search offices or dwellings of persons with a right to legal privilege and journalists under article 125 paragraph 3;</p> <p>The conducting of searches by the examining magistrate under paragraph 130;</p> | Closed in 11 th FUR |



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| | | | <p>Broadening of the complaint regulation in connection with the special investigative powers and the digital era under article 150;</p> <p>Adjustment of the search authorization in automated works under article 167</p> <p>Criminal Procedures Code article 555 up to and including article 565e (international mutual legal assistance) and article 564, article 564a (confiscation and seizure stipulations), in combination with Title IX article 119 up to and including article 154a (stipulations on what procedures must be followed when seizing and confiscating assets).</p> <p>Reference is made to what is mentioned above as undertaken action under R.1, on how TF is now regulated in the PC, as amended by the NOAPC.</p> <p>Informal and swift mutual assistance on an operational level can in general be provided pursuant to article 555 of the (current) Penal Procedure Code PPC).</p> | |
| 39. Extradition | PC | Implement the recommended actions outlined in relation to SRII. | <p>Already dealt with but more specific legislation is under construction, as far as the CPC SXM is concerned, and in legislative process as far as CC SXM is concerned.</p> <p>THE RECOMMENDED ACTION ON THE EXTENT OF THE MLA HAS BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27TH, 2015.</p> <p>THE DRAFT OF THE CRIMINAL PROCEDURES CODE IS ON REVIEW AT THE COUNCIL OF ADVICE.</p> <p>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</p> | Closed in 11 th FUR |



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| | | | <p>WILL BE SUBMITTED AGAIN TO THE COUNCIL OF MINISTERS AND THEREAFTER TO PARLIAMENT.</p> <p>This recommendation has been incorporated in the Criminal procedures Code: pending.</p> <p><u>Extradition decree Aruba, Curaçao and Sint Maarten article 1.</u> <u>Draft Criminal Procedures Code article 43 introduces the criminal summary proceedings (to speed up the extradition procedure)</u></p> <p>Draft Criminal Procedures Code Title XIII on MLA through extradition.</p> <p>Furthermore, the Extradition Decree of Curaçao, Sint Maarten and Aruba is a Kingdom Decree and the amendment thereof is not in the hands of Sint Maarten, but is carried out by the parliaments of the Netherlands. The same point that is raised here for Sint Maarten also counts for Curaçao and Aruba.</p> <p>Reference is made to what is mentioned above under R.35 – i.e. non-treaty based extradition is legally allowed within the Kingdom of the Netherlands, therefore also in Sint Maarten - and under R. 36.</p> | |
| 40. Other forms of co-operation | PC | <ul style="list-style-type: none">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 | <p>Sint Maarten can hereby inform that its domestic laws with the exception of the RFETCSM or the CBCS charter do not allow for the CBCS to undertake investigations on behalf of their foreign counterparts. The draft Harmonization law (supervision of financial institutions) provides for foreign supervisors to operate under CBCS supervision. The Supervision law on MTC's also provides for this.</p> <p>THE TWO DRAFTS OF THE CBCS SUPERVISION LEGISLATION OF THE FINANCIAL INSTITUTIONS (1. SUPERVISION OF THE MTC AND 2. THE HARMONIZATION OF THE SUPERVISION DO INCORPORATE AMENDMENT TO ALLOW THE CBCS TO CARRY OUT INVESTIGATIONS ON BEHALF OF THEIR FOREIGN COUNTERPARTS. THE DRAFTS ARE BEING</p> | Closed in 7 th and 11 th FURs. Amendments of legislation will be submitted for review in 4 th ME |



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| | <p>allow for the amendment of the Ordinances as recommended.</p> <ul style="list-style-type: none">• The authorities should maintain statistics on entities' spontaneous referrals of information as well as information supplied as a result of a request. This system can be used at a policy and operational level to adequately assess the country's international cooperation efforts for AML/CFT.• Sint Maarten's domestic legislation for all law enforcement entities should specifically provide for international co-operation with their foreign counterparts. | <p>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>Update:</p> <p>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.</p> <p>Articles 183, 184 and 185 of the CPC ensure international cooperation between law enforcement entities and their counterparts. The international cooperation is regulated in the articles 521 and 522 of the CPC. All law enforcement entities mean Customs, Police, Coastguard and <i>Landsrecherche</i>. Also the fraud unit of the Tax Office and all others who have been authorized to investigate offences. The NORUT already in its article seven has this arrangement. The other domestic laws do not have this provision for the CBCS.</p> <p>THE DRAFT OF THE CRIMINAL PROCEDURES CODE IS ON REVIEW AT THE COUNCIL OF ADVICE.</p> <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> | |
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| | | <p>This recommendation has been incorporated in the Criminal procedures Code: pending.</p> <p><u>Draft Criminal Procedures Code</u> introduces in its Book 7 a new Title VIII: International Legal Assistance in Criminal Cases. Article 555 (the introduction of the term 'Country' (within the Kingdom), article 555 paragraph 1 (legal assistance can be provided in the context of the investigation, prosecution, trial of criminal offenses or the execution of sentences abroad), article 556 and article 557 (legal assistance requests to foreign states, article 558 (the central role of the Attorney General, article 559 (the grounds for refusal), article 560 (the execution of a legal assistance request), article 562 and article 563 (rules concerning the execution of the legal assistance request), article 564 (transfer of the results of the legal assistance request), article 565a up to and including 565e (these articles concern the procedure for the international cooperation in criminal cases)).</p> <p><u>Draft National Ordinance on the MOT</u> article 3 paragraph 2 under c (the exchange of information with foreign entities in conformity with the regulation under the draft National Ordinance combatting ML/TF, the draft National Ordinance cross-border money transfers and the Sanctions National Ordinance;</p> <p>Article 3 paragraph 2 under k (the national coordination to implement the FATF recommendations);</p> <p>Article 5 paragraph 8 (foreign supervisor to conduct audits in Sint Maarten at providers of financial services, under the supervision of the MOT);</p> <p>Article 6 paragraph 6 (information on the manner in which the MOT reaches a suspicion of ML/TF will not be proof in a criminal case (proof as stipulated in the Title I of the draft Criminal Procedures Code));</p> <p>Article 7 paragraph 1 and paragraph 2 (the submitting of information from the registry of unusual (suspicious) transactions and the conditions on how this must be executed and the need of an MOU).</p> <p>The National Ordinance updating and</p> | |
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| | | <p>Harmonizing the supervision laws of the Central Bank of Curaçao and Sint Maarten (article 41 for international cooperation);</p> <p>National Ordinance supervision money remittance companies. (article 19 for international cooperation).</p> <p><u>Draft Criminal Procedures Code</u> introduces in its Book 7 a new Title VIII: International Legal Assistance in Criminal Cases. Article 555 (the introduction of the term 'Country' (within the Kingdom), article 555 paragraph 1 (legal assistance can be provided in the context of the investigation, prosecution, trial of criminal offenses or the execution of sentences abroad), article 556 and article 557 (legal assistance requests to foreign states, article 558 (the central role of the Attorney General, article 559 (the grounds for refusal), article 560 (the execution of a legal assistance request), article 562 and article 563 (rules concerning the execution of the legal assistance request), article 564 (transfer of the results of the legal assistance request), article 565a up to and including 565e (these articles concern the procedure for the international cooperation in criminal cases).</p> <p>National Ordinance on the MOT article 5 paragraph 8 (foreign supervisor to conduct audits in Sint Maarten at providers of financial services, under the supervision of the MOT).</p> <p>The Harmonization law) provides for foreign supervisors to operate under CBCS supervision. The Supervision law on MTC's also provides for this (article 20).</p> <p>Based on article 7 of the National Ordinance FIU (AB 2019 no. 24), the FIU is authorized to exchange information with international organizations that have the same tasks as the FIU.</p> <p>Informal and swift mutual assistance on an operational level of law enforcement can be provided pursuant to article 555 of the (current) Penal Procedure Code PPC).</p> | |
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| Nine Special Recommendations | | | | |
| SR.I Implement UN instruments | PC | | <p>This special recommendation has been dropped. The contents however has been incorporated in the Penal Code.</p> <p>Draft Criminal Procedures Code article 554a (separate claim withdrawal from circulation), article 556 paragraph 3 (handling of an MLAT request by the PPO instead of the Courts), article 563 (the primacy of the treaties is underlined by the cancellation of the leave procedure at the Court when making available the results of the desired investigation), article 565a (the other changes mainly concern modernization of the law based on the constantly changing Dutch legislation, such as the introduction of special investigation methods), article 593a and beyond (the possibility of setting up joint investigation teams is regulated, which is particularly important for Sint Maarten because of the close relationship with the French part of the island), articles 596a and 596b (the transfer of enforcement of criminal judgments scheme is also being adjusted: arrangements concerning execution in the country of the verdict given in absentia, and on the execution of a verdict rendered in absentia in a foreign state).</p> <p>Draft Criminal Procedures Code article 554a (separate claim withdrawal from circulation), article 556 paragraph 3 (handling of an MLAT request by the PPO instead of the Courts), article 563 (the primacy of the treaties is underlined by the cancellation of the leave procedure at the Court when making available the results of the desired investigation), article 565a (the other changes mainly concern modernization of the law based on the constantly changing Dutch legislation, such as the introduction of special investigation methods), article 593a and beyond (the possibility of setting up joint investigation teams is regulated, which is particularly important for Sint Maarten because of the close relationship with the French part of the island), articles 596a and 596b (the transfer of enforcement of criminal judgments scheme is also being adjusted: arrangements concerning</p> | Closed in 11 th FUR. |



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| | | | <p>execution in the country of the verdict given in absentia, and on the execution of a verdict rendered in absentia in a foreign state).</p> <p>Reference is made to what is mentioned above as undertaken action under R.1, on how TF is now regulated in the PC, as amended by the NOAPC.</p> | |
| SR.II Criminalize terrorist fi- nancing | NC | <ul style="list-style-type: none">Article 48a of the Penal Code should be revised to expressly criminalise the indirect or unlawful provision of funding for the commission of a terrorism offence as set out in article 2(a) of the Terrorist Financing Convention.Article 48a of the Penal Code should be revised to expressly criminalize the wilful provision of funds etc. to individual terrorists.Penal Code should be revised to independently criminalize Terrorism Financing should be effected without delay.Penal Code should be amended to incorporate specific penalties for the offence of TF.Article 146a of the Penal Code (which extends to | <p>Next to that the proposed article 2:54 and 2:55 PC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime. In article 2:55 the financing of crime is punishable as a severe crime. Next to that article 1:120 PC SXM (currently article 48a) criminalizes the aiding and abetting of the crimes mentioned in article 2:54 and 2:55. Of course criminal attempts are punishable under 1:119 PC SXM (currently article 47).</p> <p>As far as legal persons are concerned the proposed article 1:127 (currently article 53) states that legal persons can commit a criminal acts mentioned in the PC SXM. Next to that is should be pointed out that paragraph 7 of the proposed article 1:54 PC (currently creates a possibility to punish legal persons more harshly. Next to that the paragraph 2 and 3 of the mentioned proposed article 1:127 PC SXM (article 53) makes de facto leaders of the legal person punishable as well. With the adaption of the new PC SXM all offence in the mentioned Conventions will be criminalized.</p> <p>THE RECOMMENDED ACTIONS ON THE CRIMINALIZATION OF TERRORISM FINANCING HAVE BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27TH, 2015.</p> <p>THE 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> | Closed in 11 th FUR |



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| | <p>participating in a terrorist organization) should be revised to specify a penalty for the legal person who participates in such an organization.</p> <ul style="list-style-type: none">• The Authorities should amend the Penal Code to criminalize all the offences referenced in the Conventions and Protocols referenced at Annex 1 to the TF Convention. | <p>The introduction Ordinance (IO) to enact the Penal Code was reviewed by the Council of Advice and is now ready to be submitted to Parliament for approval. Expected enactment of the Penal Code by the IO: December 2014.</p> <p>THE RECOMMENDED ACTIONS ON THE CRIMINALIZATION OF TERRORISM FINANCING HAVE BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27TH, 2015.</p> <p>THE PENAL CODE ENTERED INTO FORCE ON JUNE 1, 2015. TF HAS BEEN CRIMINALIZED.</p> <p>This special recommendation has been dropped. The contents however has been incorporated in the Penal Code.</p> <p>Criminal Code article 2:54 and article 2:55 (since June 2015).</p> <p>Criminal Code article 2:54 and article 2:55 (since June 2015).</p> <p>See Article I, parts F, G and Q, of the NOAPC: Terrorist financing was already criminalized and punishable under Articles 2:54 and 2:55 of the Penal Code (PC). Article I, Part F, of the NOAPC adds a new paragraph 2 to article 2:54, of the PC which makes it clear that “funds” shall mean all property of any description, whether corporeal or incorporeal, <u>including money</u>. A (legal) person is now punishable by a term of imprisonment not exceeding fifteen years (before the amendment this used to be eight years).</p> <p>Article 2:55 PC is deleted (see Article I, Part G, NOAPC) and replaced by the new articles 2:408 and 2:409 - see Article I, Part Q, of the NOAPC - which regulate the financing of terrorism in accordance with the International Convention on the financing of terrorism. Crimes against internationally protected persons and acts involving</p> | |
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| | | | <p>nuclear material and weapons of mass destruction have been stipulated more in detail, as well as the financing of travel for the purpose of committing a terrorist crime. The maximum term of imprisonment is raised from eight to eighteen years.</p> <p>The provision of 1:224 PC makes the general provisions of the First Book of the Penal Code applicable to all other (specific) criminal laws. And the PC, but also all other criminal laws are applicable to both legal persons and natural persons (vide Article 1:127, par. 1, PC).</p> | |
| SR.III Freeze and confiscate ter- rorist assets | PC | <ul style="list-style-type: none">• The substantive freezing mechanism for persons listed pursuant to UN Resolution 1267 (1999) should be reviewed and appropriate adjustments made to ensure that the requirement of acting 'without delay' will be met in relation to subsequent freezing obligations that arise pursuant to terrorist related UN Resolutions that are issued.• The Sanctions National Decree should also expressly refer to assets jointly owned or controlled by designated persons, terrorists or terrorist organizations with third parties, and should incorporate wording to clearly communicate the | <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> <p>THE RECOMMENDED ACTION ON FATF SR III CONCERNING THE FREEZING AND CONFISCATION OF ASSETS HAVE BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27TH, 2015.</p> <p>THE DRAFT OF THE CRIMINAL PROCEDURES CODE IS ON REVIEW AT THE COUNCIL OF ADVICE.</p> | Closed in 11 th FUR. The FATF Protocols will be amended and submitted for review in the 4 th ME |



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| | | <p>enforceability of sanctions against the entire asset which is held “in part” by a designated person, terrorist or terrorist organization.</p> <ul style="list-style-type: none">• Sint Maarten should provide guidance to all persons and entities with regard to obligations in taking action under the freezing mechanism.• The FATT Protocols should incorporate wording to clearly reflect that compliance with these Protocols is mandatory and that breaches of the Protocols can be sanctioned by the Central Bank. | <p>THE DRAFT 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>This special recommendation has been dropped. The contents however has been incorporated in the Penal Code.</p> <p>Sanctions National Decree article 1, article 2, article 3, article 4; Draft National Ordinance combatting ML/TF article 34; Draft Criminal Code article 2:410.</p> <p>Sanctions National Decree article 1, article 2, article 3, article 4; Draft National Ordinance combatting ML/TF article 34; Draft Criminal Code article 2:410.</p> <p>Reference is made to what is mentioned above as undertaken action under R. 3.</p> <p>Seizure and confiscation is regulated in Title IX (Articles 119 to 154a) of the (current) Penal <u>Procedure</u> Code (PPC).²⁸ St. Maarten is on the basis of this legal framework for freezing and confiscating criminal assets able to adequately and effectively act as regards the freezing obligations that may arise pursuant to the terrorist related UN Resolutions. Informal and swift mutual assistance on an operational level can in general be provided pursuant to article 555 of the (current) Penal Procedure Code PPC.²⁹</p> | |
| SR.IV Suspicious transaction re- porting | NC | | The new draft law (merged and updated NORUT-NOIS) will specifically address the issue of suspicious transaction reporting. | Closed in the 5 th , 6 th , and 7 th FURs |

²⁸ See Annex IV (Seizure as regulated in Title IX of the current Penal Procedure Code (PPC)).

²⁹ See Annex IV, p. 13



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| | | | <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 FORESEEN IN JANUARY 2016.</p> <p>Draft National Ordinance on Combatting ML/TF Article 25 National Ordinance combatting ML/TF article 25.</p> <p>Ministerial Regulation on Indicators (AB 2013 no. 489): <i>Article 3 Subjective indicators</i></p> <p>Without prejudice to the provisions of Article 2, the following shall be deemed to be indicators of executed or intended unusual transactions:</p> <p>transactions that differ from the client's profile; and</p> <p>transactions that give rise to the suspicion that these may be related to money laundering or financing of terrorism.</p> | |
| SR.V. International cooperation | PC | <ul style="list-style-type: none">• Amend the Penal Code to address the deficiencies set out in the ratings table.• Implement the recommended actions outlined in relation to SRII | <p>Next to that the proposed article 2:54 and 2:55 CC SXM creates the crime of aiding or abetting a terrorist crime under which financing also can be deemed as a crime. In article 2:55 the financing of crime is punishable as a severe crime. Next to that article 1:120 CC SXM (currently article 48a) criminalizes the aiding and abetting of the crimes mentioned in article 2:54 and 2:55. Of course criminal attempts are punishable under 1:119 CC SXM (currently article 47) 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> | Closed in the 11 th FUR |



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| | | <p>THE RECOMMENDED ACTIONS ON FATF SR V CONCERNING INTERNATIONAL CO-OPERATION HAVE BEEN INCORPORATED IN THE PENAL CODE. THE INTRODUCTION ORDINANCE WAS APPROVED BY PARLIAMENT ON FEBRUARY 27TH, 2015.</p> <p>THE PENAL CODE ENTERED INTO FORCE ON JUNE 1, 2015. 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>This recommendation has been incorporated in the Criminal procedures Code: pending.</p> <p>Draft Criminal Procedures Code article 554a (separate claim withdrawal from circulation), article 556 paragraph 3 (handling of an MLAT request by the PPO instead of the Courts), article 563 (the primacy of the treaties is underlined by the cancellation of the leave procedure at the Court when making available the results of the desired investigation), article 565a (the other changes mainly concern modernization of the law based on the constantly changing Dutch legislation, such as the introduction of special investigation methods), article 593a and beyond (the possibility of setting up joint investigation teams is regulated, which is particularly important for Sint Maarten because of the close relationship with the French part of the island), articles 596a and 596b (the transfer of enforcement of criminal judgments scheme is also being adjusted: arrangements concerning execution in the country of the verdict given in absentia, and on the execution of a verdict rendered in absentia in a foreign state).</p> <p>Draft Criminal Procedures Code article 554a (separate claim withdrawal from circulation), article 556 paragraph 3 (handling of an MLAT request by the PPO instead of the Courts), article 563 (the primacy of the treaties is underlined by the cancellation of the leave procedure at the Court when making available the results of the desired investigation), article 565a (the other changes mainly concern</p> | |
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| | | | <p>modernization of the law based on the constantly changing Dutch legislation, such as the introduction of special investigation methods), article 593a and beyond (the possibility of setting up joint investigation teams is regulated, which is particularly important for Sint Maarten because of the close relationship with the French part of the island), articles 596a and 596b (the transfer of enforcement of criminal judgments scheme is also being adjusted: arrangements concerning execution in the country of the verdict given in absentia, and on the execution of a verdict rendered in absentia in a foreign state).</p> <p>Reference is made to what is mentioned above as undertaken action under SR.II.</p> | |
| SR.VI AML/CFT requirements for money/value transfer services | NC | <ul style="list-style-type: none">• Shut the operations of unauthorised MTCs operation in Sint Maarten.• Provisions for MTCs to update the Central Bank on the number of agents and sub agents should be formalised. | <p>The MTCs operating without a license will be shut down by the PPO. One MTC is busy with an application for a license at the CBCS. The MOT is responsible for the reporting of unusual transactions by service providers. From this perspective the MOT approaches all MTC's to urge them to report the unusual transactions. The issue will again be discussed with the minister of Justice.</p> <p>THE PPO IS BUSY WITH THE REVIEW OF THE ILLEGAL MTC CASE.</p> <p>THE PROVISIONS FOR THE MTC TO UPDATE THE CBCS ON THE NUMBER OF AGENTS AND SUB AGENTS HAS BEEN FORMALIZED IN THE NEW DRAFT LEGISLATION ON SUPERVISION OF MTC.</p> <p>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> <p>The case of the unlicensed MTC has again been put forward to the PPO. A decision will be taken before the next plenary meetings.</p> <p>National Ordinance Supervision Money Transaction Offices article 2 and article 3 and further.</p> | Closed in the 7 th and 8 th FURs |



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| | | | <p>National Ordinance Supervision Money Remittance Offices article 2 and article 3 and further.</p> <p>All illegal operating MTCs have been closed by the PPO.</p> <p>National Ordinance Supervision Money Transaction Offices article 2 and article 3 and further.</p> <p>National Ordinance Supervision Money Remittance Offices article 2 and article 3 and further.</p> | |
| SR.VII Wire transfer rules | PC | <ul style="list-style-type: none">Sint Maarten should detail the requirements with respect to SR VII for the relevant financial institutions instead of relying on the general provision in the P&G for CI to observe the latest Interpretive Note to SR VII | <p>The P&G for MTC has been amended to implement the recommended actions.</p> <p>STATUS QUO; NO NEW UPDATE. THE P&G HAVE BEEN UPDATED BY THE CBCS TO REFLECT THE RECOMMENDED ACTION CONCERNING FATF SR VII ON 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>Draft National Ordinance on Combatting ML/TF Article 1 under k and article 3 paragraph 1 under d.</p> <p>Draft National Ordinance combatting ML/TF article 22 paragraph 1, article 10 paragraph 2 under 1, article 3 paragraph 2 under d and e, article 2 paragraph 1 under b sub 3°, article 24 and article 34 (to complete the Sanctions National Ordinance).</p> <p>National Ordinance combatting ML/TF article 22 paragraph 1, article 10 paragraph 2 under 1, article 3 paragraph 2 under d and e, article 2 paragraph 1 under b sub 3°, article 24 and article 34.</p> <p>National Ordinance combatting ML/TF article 22 paragraph 1, article 10 paragraph 2 under a, article 3 paragraph 2 under d and e, °, and article 34.</p> | Closed in the 11 th FUR. Criteria VII.1, VII.2, VII.3, VII.4, VII.4.1, VII.5, and VII.6 will be addressed and submitted for review in the 4 th Round ME |

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| SR.VIII NPOs | NC | <ul style="list-style-type: none"> • Sint Maarten should conduct a new assessment on the risk with regard NPO sector. • The Authorities should consider designating an authority to monitor and supervise the NPO sector. • Sint Maarten should institute an outreach program which provides adequate AML/CFT awareness about the risk of NPOs to terrorist financing. • There should be appropriate sanctions available for those NPOs • NPOs should be required to maintain transaction records for a minimum period of five (5) years. • The Authorities in St. Marten should be procedures in place to ensure that they are able to effectively investigate and gather information on NPOs. • There should be procedures in place which al- | <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>Draft National Ordinance on Combatting ML/TF Article 57a</p> <p><u>Draft National Ordinance to amend Book 2 of the Civil Code</u> Article 4 (to establish a legal person), article 5 (notary registers the legal person at the chamber of commerce), article 15 (the obligation of the legal person to produce financial statements), article 24 (the authority of the court to dissolve the legal person if this is contrary to public order and safety), article 55 (the director of the legal person can be removed upon request of the PPO or a beneficial owner), article 272 paragraph 2 (the PPO can request the court to give permission to carry out an investigation at the legal person), article 25 (the authorization of the Chamber of Commerce to annul an inactive legal person).</p> <p><u>Draft National Ordinance combatting ML/TF article 18</u> (establishing a national policy on risk assessment), article 36 (gives the chamber of commerce the authority to annul the legal person if the MOT has reported that the legal person has suspicious transactions). In article 36 it is also stipulated that the legal person is obligated to produce an annual report.</p> <p><u>Draft National Ordinance on the MOT</u> article 3 paragraph 2 under l and m (the task of the MOT to identify, assess and establish the risks for Sint Maarten).</p> | Closed in 11 th FUR. New information will be submitted for review in the 4 th ME |
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| | <p>low for timely and effective sharing of information on NPOs both domestically and internationally.</p> <ul style="list-style-type: none">The Authorities should consider issuing guidance specifically pertain to the NPO sector. | <p><u>Draft National Ordinance to amend Book 2 of the Civil Code</u> Article 4 (to establish a legal person), article 5 (notary registers the legal person at the chamber of commerce), article 15 (the obligation of the legal person to produce financial statements), article 24 (the authority of the court to dissolve the legal person if this is contrary to public order and safety), article 55 (the director of the legal person can be removed upon request of the PPO or a beneficial owner), article 272 paragraph 2 (the PPO can request the court to give permission to carry out an investigation at the legal person), article 25 (the authorization of the Chamber of Commerce to annul an inactive legal person).</p> <p><u>National Ordinance combatting ML/TF</u> article 18 (establishing a national policy on risk assessment), article 36 (gives the chamber of commerce the authority to annul the legal person if the MOT has reported that the legal person has suspicious transactions). In article 36 it is also stipulated that the legal person is obligated to produce an annual report.</p> <p><u>National Ordinance on the MOT</u> article 3 paragraph 2 under 1 and m (the task of the MOT to identify, assess and establish the risks for Sint Maarten).</p> <ul style="list-style-type: none">Sint Maarten had scheduled a national risk assessment (NRA) to start in the end of March 2020. This NRA, that will include the NPO sector, will be rescheduled due to the COVID-19 pandemic (exact date to be established in due time).One outcome of the NRA will be the designation of an authority to monitor and supervise the NPO sector; this authority will, amongst other things, institute an outreach program which provides adequate AML/CFT awareness about the risk of NPOs to terrorist financing and see to it that the NPOs maintain transaction records for a minimum period of five (5) years. | |
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| | | <ul style="list-style-type: none"> • Sanctions have already been established for financial service providers and DNFBPs. The sanctions for non-compliance by the NPOs will be established with the institution of the authority. • The procedures to ensure that law enforcement is able to effectively investigate and gather information on NPOs are already in place in the current Penal Procedures Code (see articles 119 and further on confiscation). • The law enforcement does have procedures in place that allow for timely and effective sharing of information on, amongst others, NPOs, both domestically and internationally. NPOs are <u>not</u> considered different than any other subject of investigation. • With the establishment of the authority to supervise NPOs, guidance will be issued pertaining to this sector. | |
| SR.IX Cross-Border Declaration & Disclosure | PC | <ul style="list-style-type: none"> • The authorities should ensure that they pursue the proposed declaration system to be completed by all passengers instead of the ad hoc disclosure system currently in place. • The Authorities should consider implementing the system to restrain currency where there is a suspicion of ML or TF. • The authorities should maintain statistics evidencing Customs' effectiveness in the area of international cooperation. <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> | Closed in 9 th and 11 th FURs. Establishment of a process under the Sanctions National Decree for the confiscation of currency and negotiable instruments when implementing UNSCRs 1373 and 1267 will be submitted for review in 4 th ME |

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| | <ul style="list-style-type: none"> • The Sint Maarten authorities should maintain the process for confiscating currency or negotiable instruments in implementing the UNSCR 1373 and 1267. • The authorities should maintain a system to identify the source, destination and purpose of movement of gold or other precious metals and stones. • A structure should be established for the training and targeted programmes for Customs. • The authorities should ensure that the relevant authorities possess timely access to suspicious cash declarations or disclosures, or intentional lack of disclosures information. | <p>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. 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. National Ordinance on the Obligation to Report Cross-border Money Transfer: Article 6</p> <p><u>Regulation (Ministerial Decree containing general measures) on cross-border cash transport declaration forms (AB 2015, no. 12 article 1 and the enclosure to the regulation, containing the 4 models of the declaration form in Dutch, English, Spanish, and French.</u></p> <p><u>Draft National Ordinance to amend the National Ordinance on the obligation to report cross-border money transports article 1 (to amend article 2 of the abovementioned ordinance, to establish the model of the declaration form by Ministerial Regulation (holding general measures); Article 1 under B amends article 1 of the ordinance to include under paragraph 2 gold and other precious metals and stones and to amend</u></p> | |
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| | | <p>article 2 paragraph 3 to obligate the sender of the money, gold, precious metals, jewelry or other objects of high value, to declare this transport to Customs ultimately at the moment of import or export of the money, gold, precious metals, jewelry or other objects of high value, by making use of the model declaration form;</p> <p>Article 4 (article 5 of the Ordinance is amended to restrain currency when there is a suspicion of ML/TF);</p> <p>Article II of the draft ordinance proposes to amend the National Ordinance import, transport and export to authorize Customs to restrain currency and the other objects;</p> <p>Article 4 of the aforementioned draft amends article 5 paragraph 2 under e, to include the confiscation of currency or negotiable instruments in implementing the UNSCR 1373 and 1267 when there is a suspicion of ML as is intended under Title XXXI of the Criminal Code or when there is a suspicion of TF as is intended under article 2:55 of the Criminal Code;</p> <p>Article 4 of the aforementioned draft also amends article 5 of the ordinance, to include the obligation of Customs to produce statistics;</p> <p>The government entered into an agreement with the Dutch government after the hurricanes of 2017, to have the Dutch Customs provide technical assistance and training, together with the MOT, to the Customs officials;</p> <p>The amendment of article 4 of the aforementioned ordinance establishes timely access of Customs and MOT to suspicious cash declarations or disclosures, or intentional lack of disclosures information.</p> <p><u>Regulation (Ministerial Decree containing general measures) on cross-border cash transport declaration forms (AB 2015, no. 12 article 1 and the enclosure to the regulation, containing the 4 models of the declaration form in Dutch, English, Spanish, and French.</u></p> <p><u>National Ordinance to amend the National Ordinance on the obligation to report cross-border money transports</u> article 1 under B amends article 1 of the ordinance to include under paragraph 2 gold and other</p> | |
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| | | <p>precious metals and stones and to amend article 2 paragraph 3 to obligate the sender of the money, gold, precious metals, jewelry or other objects of high value, to declare this transport to Customs ultimately at the moment of import or export of the money, gold, precious metals, jewelry or other objects of high value, by making use of the model declaration form;</p> <p>Article 4 (article 5 of the Ordinance is amended to restrain currency when there is a suspicion of ML/TF);</p> <p>Article II of the Ordinance proposes to amend the National Ordinance import, transport and export to authorize Customs to restrain currency and the other objects;</p> <p>Article 4 of the aforementioned Ordinance amends article 5 paragraph 2 under e, to include the confiscation of currency or negotiable instruments in implementing the UNSCR 1373 and 1267 when there is a suspicion of ML as is intended under Title XXXI of the Criminal Code or when there is a suspicion of TF as is intended under article 2:55 of the Criminal Code;</p> <p>Article 4 of the aforementioned draft also amends article 5 of the ordinance, to include the obligation of Customs to produce statistics; The Dutch Customs and the MOT are still providing technical assistance and training, to the Customs officials;</p> <p>The amendment of article 4 of the aforementioned ordinance establishes timely access of Customs and MOT to suspicious cash declarations or disclosures, or intentional lack of disclosures information.</p> <p>Passengers do have the obligation to disclose the cross-border transportation of money or other negotiable instruments. Furthermore the passenger is obligated to disclose to the Immigration authorities in their immigration form if they carry a designated amount of money when traveling in or out of Sint Maarten.</p> <p><u>Regulation (Ministerial Decree containing general measures) on cross-border cash transport declaration forms (AB 2015, no. 12 article 1 and the annex to the regulation, containing the 4 models of the declaration form in Dutch, English, Spanish, and French.</u></p> | |
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| | | <p><u>The National Ordinance on the obligation to report cross-border money transports (AB 2019 no. 26)</u> article 1 paragraph 2 includes the obligation of the passenger to declare, apart from money, also the transport of gold and other precious metals and stones.</p> <p>Article 2 paragraph 3 of abovementioned National Ordinance obligates the passenger to declare the transport of money, gold, precious metals, jewelry or other objects of high value, to Customs ultimately at the moment of import or export of the money, gold, precious metals, jewelry or other objects of high value, by making use of the model declaration form;</p> <p>Article 5 of the abovementioned Ordinance is amended to restrain currency when there is a suspicion of ML/TF).</p> <p>The National Ordinance import, transport and export article 217, paragraph 1, and article 218, paragraph 1, authorize Customs to restrain currency and gold and other precious metals and stones;</p> <p>Article 5 paragraph 2 under e, of the National Ordinance on the obligation to report cross-border money transports (AB 2019 no. 26) includes the confiscation of currency or negotiable instruments to carry out UNSCR 1373 and 1267 when there is a suspicion of ML as is intended under Title XXXI of the Criminal Code or when there is a suspicion of TF as is intended under Title VIII of the Criminal Code;</p> <p>Article 5 of the National Ordinance on the obligation to report cross-border money transports (AB 2019 no. 26) includes the obligation of Customs to produce statistics;</p> <p>The Dutch Customs and the MOT provide technical assistance and training, to the local Customs;</p> <p>The amendment of article 4 of the aforementioned ordinance establishes timely access of Customs and MOT to suspicious cash declarations or disclosures, or intentional lack of disclosures information.</p> | |
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