



CARIBBEAN
FINANCIAL ACTION
TASK FORCE

Seventh Follow-Up Report

Dominica

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DOMINICA SEVENTH FOLLOW-UP REPORT

I. INTRODUCTION

1. This report represents an analysis of Dominica's report back to the CFATF Plenary concerning the progress that it has made towards correcting the deficiencies that were identified in its third round Mutual Evaluation Report. Based on the action taken by Dominica since November 2012, the Plenary issued a Public Statement on the Jurisdiction and recommended that Dominica bring into force mechanisms to address its AML/CFT deficiencies by November 2013. At the November 2013 Plenary in The Bahamas the Plenary concluded that overall Dominica has reached a satisfactory level of compliance with all six Core Recommendations and significantly addressed all the Key Recommendation. Given the significant progress made by Dominica and the ongoing efforts at further addressing some of the outstanding deficiencies, Dominica was asked to report to this Plenary. Based on the review of the actions taken by Dominica since its last follow-up report a recommendation would be made as to whether Dominica should be kept in enhanced follow-up or moved to another stage of the follow-up process.
2. Dominica received ratings of PC or NC on thirteen (13) of the sixteen (16) Core and Key Recommendations as follows:

Table 1: Ratings for Core and Key Recommendations

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

3. With regard to the other non-core or key Recommendations, Dominica was rated partially compliant or non-compliant as indicated below:

Table 2: 'Other' Recommendations rated as PC and NC

Partially Compliant (PC)	Non—Compliant (NC)
R. 9 (Third parties and introducers)	R. 6 (Politically exposed persons)
R. 11 (Unusual transactions)	R. 7 (Correspondent banking)
R. 15 (Internal controls, compliance & audit)	R. 8 (New technologies & non face-to-face business)
R. 20 (Other NFBP & secure transaction techniques)	R. 12 (DNFBP – R.5, 6, 8-11)
R. 22 (Foreign branches & subsidiaries)	R. 16 (DNFBP – R.13-15 & 21)
R. 27 (Law enforcement authorities)	R. 17 (Sanctions)
R. 28 (Powers of competent authorities)	R. 18 (Shell banks)
R. 29 (Supervisors)	R. 19 (Other forms of reporting)
R. 31 (National co-operation)	R. 21 (Special attention for higher risk countries)
R. 33 (Legal persons – beneficial owners)	R. 24 (DNFBP - regulation, supervision and monitoring)
R. 38 (MLA on confiscation and freezing)	R. 25 (Guidelines & Feedback)
SR. IX (IX Cross Border Declaration & Disclosure)	R. 30 (Resources, integrity and training)

	R. 32 (Statistics)
	R. 34 (Legal arrangements – beneficial owners)
	SR. VI (AML requirements for money/value transfer services)
	SR. VII (Wire transfer rules)
	SR. VIII (Non-profit organisations)

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

Table 3: Size and integration of Dominica's financial sectors at 30 June 2013

		Banks	Other Credit Institutions*	Securities	Insurance	TOTAL
Number of institutions	Total #	12	11	Nil	17	38
Assets	US\$	721,546	286,591	Nil	63,512	1,071,649
Deposits	Total: US\$	602,394	186,234	Nil	91,267	179,895
	% Non-resident	% of deposits	Nil	N/A	N/A	23
International Links	% Foreign-owned:	% of assets	% of assets	% of assets	% of assets	% of assets
		N/A	N/A	N/A	N/A	N/A
	#Subsidiaries abroad	N/A	N/A	N/A	N/A	N/A

II. SCOPE OF THIS REPORT

5. This report will focus on assessing the extent of Dominica efforts to cure the deficiencies for all Recommendations which were rated as PC or NC. Recommendations which were assessed to have been closed in previous follow-up reports will not be reassessed in this follow-up report.

III. SUMMARY OF PROGRESS MADE BY DOMINICA

6. The Anti-Money Laundering and Suppression of Terrorist Financing Code of Practice 2014 became law on May 1st 2014 and affects several of the 'other' Recommendations; On March 19, 2014 the Criminal Law and Procedure (Amendment) Act No. 3 of 2014 which affects Recommendation 27 was enacted. The Proceeds of Crime (Amendment) Act 2014 which affects Recommendation 34 was enacted. The Trusts and Non-profit Organisations Regulations, 2014 which affects Recommendation 34 and SR.VIII became law on May 1, 2014.

The Code of Practice as Other Enforceable Means

7. The Code of Practice (Code) was made by the Minister of Finance in accordance with s.60 of the Proceeds Of Crime Act (POCA). The Code is subject to negative resolution of Dominica's Parliament and following gazetting on May 1, 2014 it immediately obtained the force of law. Consequently, pursuant to Section 30(2) & (3), Chapter 3:01, of Dominica Revised Laws 1990, the Code is now part of the laws of Dominica unless there is an annulment at the next sitting of the Parliament.
8. There are several objectives which the Code is intended to achieve. Among these are: to outline and provide guidance on the relevant requirements of the Drug (Prevention of Misuse) Act, the FIU Act, the MLPA and its regulations and the SFTA and to ensure that financial institutions

and persons carrying on a relevant business puts in place appropriate systems and controls to detect and prevent money laundering and terrorist financing.

9. The mandatory language used in the Code clearly sets out provisions which relevant entities are bound to comply with. The mandatory language is bolstered by **s.59 (1)** which has created offences and penalties for contravention or failure to comply with specified provisions detailed at Schedule 3 of the said Code. The Code is enforced by the FSU which can impose administrative sanctions for non-compliance and breaches of the provisions set out at Schedule 3. Owing to the recentness of the Code however the FSU has not had any opportunity to take action which would have resulted in the imposition of any of the related sanctions. Notwithstanding the Code is enforceable.

IV. REVIEW OF MEASURES TAKEN IN RELATION TO THE CORE RECOMMENDATIONS

10. The 6th follow-up report has already documented the actions taken by Dominica which resulted in all the Examiners recommendations, intended as cures to the deficiencies noted in the MER being fully taken on board and resulting in all the outstanding Core Recommendations being closed.

IV. REVIEW OF MEASURES TAKEN IN RELATION TO THE KEY RECOMMENDATIONS

11. Dominica has provided the following data to demonstrate the Jurisdiction's ongoing implementation of Recommendation 23 and reported that during the period of April – July 2014 onsite inspections will be carried out at the insurance Sector, Dominica building and loan society and money services businesses.

Table 4: Onsite supervisory inspections covering AML/CFT issues

DATE	TYPE OF INSTITUTION	INSP. TYPE
December 2-3, 2013	Money Services Business	AML/CFT
January 6-8, 2014	Commercial Bank	AML/CFT
January 9-10, 2014	Bank & Trust Company	AML/CFT
January 13, 2014	Bank & Trust Company	AML/CFT
January 13, 2014	Bank & Trust Company	AML/CFT
January 14, 2014	Commercial Bank	AML/CFT
January 15-16, 2014	Bank & Trust Company	AML/CFT

12. For **Recommendation 26 which was rated as PC**, the issue relating to the security of the FIU's information is reported to have been addressed through the acquisition of physical offsite storage where copies of the FIU's database are secured. This gap is **closed**.
13. Relative to the recommended action that *the FIU should have more control over its budget since the control currently maintained by the Ministry could impact the Unit's operation and to some extent its independence*. Dominica has explained the process for the allocation of funds for its operations. According to Dominica "Whenever, the FIU needs to expend budgetary

resources, a request is made by the Director of the FIU to the Permanent Secretary of the Ministry of Legal Affairs for endorsement of expenditure under the aegis of the budgetary allocation related to a specific expenditure head.” Dominica further reports that “Requests have always been endorsed by the Permanent Secretary” in his/her capacity as Accounting Officer, endorses expenditure by the FIU to ensure that the FIU remains within its budgetary provisions. The budgetary allocation for fiscal years 2011/2012, 2012/2013 and 2013/2014 amounted to \$273,542; \$370,386 and \$368,345 respectively and the Director of the FIU has reported that in instances where the FIU had expended its allocated budget, additional funds were made available to it. In fact if the FIU has exhausted its budget for any financial year, a virement warrant can be applied for an issued by the head of the Ministry of Tourism & Legal Affairs, under which the FIU has been placed, for the allocation of additional funding to meet the additional expenditure needs of the FIU. Even though the situation, as is now described by Dominica, is exactly as it were during the onsite the Jurisdiction has reported that it has never encountered any negative issues whatsoever with requests for funds prior to the onsite or since then because the Permanent Secretary has always endorsed its requests. This established procedure for the control of and allocation of funds to a department of a government ministry is not unlike what exists in several other CFATF jurisdictions and is part of the strict checks and balances which exists for the management of financial resources. In light of this and the forgoing explanations proffered by Dominica, this gap is *closed*.

Overall conclusion for Recommendation 26

14. There were six (6) deficiencies noted in the MER and four (4) recommended actions aimed at closing those deficiencies. Dominica has completely addressed three (3) of the recommended actions and provided detailed explanations which shows that the positive effect intended by implementing the other recommendation is already in place. This Recommendation is *closed*.
15. For **Recommendation 35 and Special Recommendation I ratings of PC** were applied and identical deficiencies discerned. The recommended action was that *the Commonwealth of Dominica should become a party to The 2000 United Nation Convention Against Transnational Organized Crime – (The Palermo Convention) and fully implement article Articles 3-11, 15, 17 and 19) of the Vienna Convention, Articles 5-7, 10-16, 18-20, 24-27, 29-31, & 34 of the Palermo Convention, Articles 2- 18 of the Terrorist Financing Convention and S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001).*
16. The procedure to give effect to Terrorist Financing Convention and S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001) has been created in the Central Authority Procedure. It was previously noted that **s.8 of the SFTA(A) 2013** provides for the freezing of funds connected to an offence under the SFTA or any other enactment.
17. For S/RES/1267(1999) the procedure for freezing would be initiated by the financial institution or DNFBP which is required to immediately place a temporary hold, for a period not exceeding three (3) business days, on the account on any client that the UN has designated as a terrorist or terrorist organisation. The financial institution or DNFBP is required to immediately inform the FIU, the FSU and the Attorney General. Following verification, the FIU is required to promptly provide the Minister of National Security with the name of the confirmed terrorist or terrorist organisation, The Minister of National Security is then required to immediately begin the preparation of a designation order which is made pursuant to **s.11(2) of the SFTA**. Once a designation order is made the Minister of National Security is required to publish, no later than the second business day, in the Gazette, the names of the terrorist or terrorist organisation. Upon such publication the Attorney General is required, within two (2) hours, or before the

expiration of the three (3) day temporary hold, to issue in writing to the financial institutions in Dominica an order to freeze the account.

18. For S/RES/1373(2001) the procedures as outlined for freezing initiated by the financial institution or DNFBP are also applicable in this situation. This process is initiated by the Attorney General following receipt, from the United Nations, of the names of persons designated by the said United Nations as terrorists or terrorist organisations. The gap here is ***closed*** and consequently Recommendation 35 and Special Recommendation I ***are closed***.
19. For **Special Recommendation V** the examiners applied a PC rating and noted four (4) deficiencies for which corrective action were required. The fifth follow-up report has already detailed the positive action by Dominica which resulted in the ***closure of the first three gaps***.
20. Dominica has not provided an update for SR.V. The fourth deficiency where the examiners discerned that there were no measures or procedures adopted to allow extradition requests and proceedings relating to terrorist acts and the financing of terrorism offences to be handled without undue delay is partially addressed at Part B of the Central Authority Procedures where extradition requests relating to terrorist financing is covered. Here the procedures to be adopted by Dominica when acceding to extradition requests is fully fleshed out but there appears to be no indication on the timeframe for doing this. This gap is ***open***.
21. Dominica's action has fully addressed three (3) of the four (4) deficiencies with the outstanding being no apparent timeframe for the execution of extradition requests. This Recommendation is ***outstanding***.

V. REVIEW OF MEASURES TAKEN IN RELATION TO THE OTHER RECOMMENDATIONS

22. For **Recommendation 8 which was rated as NC** the outstanding deficiency, noted in fifth follow-up report, where the requirement for financial institutions to have measures aimed at preventing misuse of technology developments only referred to money laundering has been addressed at section 13 of the AML/CFT code of practice where a provision has been created which now specifically refers to both money laundering and terrorist financing. This recommendation is ***closed***.
23. At **Recommendation 9**, Dominica was rated as being PC and the examiners made three (3) recommendations aimed at closing the deficiencies in the MER. Dominica's has pointed to the regulation 13 of the ML(P)R 2013 as the cure for these deficiencies. The related analyses are as follows:
 - i. *Financial institutions relying on a third party should be required to immediately obtain from the third party the necessary information concerning the elements of the CDD process detailed in Recommendation 5.3 to 5.6.* – This deficiency has not as yet been addressed by Dominica. The cited regulation is related to the obligation at EC 9.2. This gap remains ***open***.
 - ii. *The requirement that financial service providers be ultimately responsible for obtaining documentary evidence of identity of all clients should be made enforceable.* - This deficiency has been addressed through the **s.2 (4) of the Code** which, as noted above, is enforceable. This gap remains ***closed***.

- iii. *Competent authorities should take into account information on countries which apply FATF Recommendations in determining in which country the third party can be based.* – This deficiency has not as yet been addressed by Dominica. **S.54(1)** of the Code places a responsibility on all entities engaging in business relationships and transactions to pay special attention to whether the jurisdiction of that foreign party sufficiently applies the FAFT recommendations with respect to money laundering and terrorist financing. At **s.54 (2)** the FSU is mandated to publish, on its website, a list of jurisdictions for the purposes of the Code, the ML(P)R 2013 and the SFTA that are recognised as jurisdictions which apply FAFT recommendations. Additionally the FSU is also mandated to issue advisory warnings to entities and professionals, advising them about weaknesses in the anti-money laundering and terrorist financing systems of other jurisdictions. On January 9, 2014 the FSU issued its most recent advisory about Guyana and Belize. This action by Dominica significantly closes the deficiency here with the minor deficiency remaining because the FSU has not as yet published the list applicable to s.54 (1) of the Code.
- 24. Dominica has taken legislative action which has significantly improved its implementation of Rec.9. There are however still one (1) Examiner recommendation still open and an implementation issue relating to the non-publication of the list of recognised jurisdictions on the FSU's website.
- 25. For **Recommendation 12 which was rated as NC**, the examiners had made four (4) recommendations intended as cures for the deficiencies identified in the MER. Dominica's actions to close those gaps are detailed below:
 - i. *The deficiencies identified for all financial institutions for Recs.5, R.6, and Recs.8-11 in the relevant sections of this report are also applicable to DNFBPs.* - Prior to this report the only outstanding actions were in relation to Rec. 8 and 9. This (the 7th follow-up report) has chronicled the positive action by Dominica which has resulted Rec. 8 being closed and significantly improving the implementation of Rec. 9.
 - ii. *While Dominica has passed legislation capturing DNFBPs under its AML/CFT regime, there is no competent authority that ensures these entities are subject to monitoring and compliance with the requirements of the MPLA or the Guidance Notes* – The actions by Dominica which has resulted in Rec. 23 being closed are relevant here in that Section 9 (1) (b) of the FSU Act No. 18 of 2008 as amended by section 6 of Act No. 10 of 2011 mandates that the principal functions of the Director of the FSU are to monitor compliance with the MLPA and such other Acts, Regulations, Guidelines or the Codes relating to the MLPA or SFTA. The FSU Act is in force and the director FSU continues to carry out supervisory and monitoring functions prescribed therein. Table 4 above was provided to demonstrate implementation of the FSU's onsite inspection obligations. This gap is **closed**.
 - iii. *The licensed agents should be subject to ongoing monitoring and compliance given the role that they play in the keeping of and maintenance of beneficial owners' information for IBC's and other companies that they register* – Here Dominica has reported that the FSU has developed a Structured Work Programme (SWP) which that ensures that the Registered Agents (Licensed Agents) are subject to ongoing monitoring and compliance with the provisions of the AML/CFT Code of Practices. Registered agents are in fact listed as one of the Scheduled Entities in the FSU's SWP which was previously submitted to the Secretariat. It is not clear however whether the FSU has actually began the process of

- monitoring them specifically relating to their maintenance of beneficial ownership information. This gap is *open*.
- iv. *There should be some form of data capture during the year by the FSU outside of the reporting of STRs as required by the MPLA to the MLSA* – The FSU has an offsite monitoring process in place. This process redounds to the receipt of AML/CFT Policies and future amendments made to these policies which are forwarded to the FSU for their consideration. Analyses of these policies can assist the FSU in determining its approach to the onsite inspection bearing in mind the content of such policies. This gap is *closed*.
26. Dominica's action at closing the gaps noted by the Examiners for Rec. 12 has resulted in significant positive improvement. Here the legislative and supervisory infrastructure is in place but some aspects of its implementation still need to be addressed.
27. For **Recommendations 15** the examiners had made two (2) recommendations aimed at improving the PC rating which they had applied. The first recommendation requiring financial institutions to maintain independent audit functions to test compliance with procedures, policies and controls has now been fully addressed through s.12 (4) of the Code. Here every entity and professional is required to establish and maintain an independent audit function that is adequately resourced to test compliance, including sample testing, with its or his written system of internal controls and the other provisions of the MLPA or the ML(P)R 2013 made thereunder, SFTA and the Code. This gap is *closed*. The second recommendation requiring financial institutions to also have internal procedures relative to terrorist financing has been addressed at s.12 (1) of the Code accordingly an entity or professional is required to establish and maintain a written and effective system of internal controls which provides appropriate policies, processes and procedures for detecting and preventing activities of money laundering and terrorist financing. Subsection (2) of s.12 fleshes out in detail the matters which the internal control and procedures are required to address. This Recommendation is *closed*.
28. **Recommendation 16** which was rated NC. The third follow-up report has already credited Dominica for significantly closing these gaps through the establishment of the FSU but lamented the fact that no statistics to demonstrate that the FSU had been carrying out its functions were provided. For this reporting period Dominica produced the data shown at table 4 to demonstrate that the FSU is in fact carrying out its functions. It can be seen that four (4) of the eight (8) entities for whom onsite inspections were conducted were DNFBPs (trusts service providers). Additionally, a copy of the notification of January 9, 2014 evidencing the FSU's advisory about Guyana and Belize, pursuant to Rec. 21, was provided to the Secretariat. All the deficiencies for Rec. 16 have been closed whilst Dominica has demonstrated that implementation is ongoing. This recommendation remains *closed*.
29. **Recommendation 18** was rated as NC and there were two (2) recommended actions to close deficiencies noted in the MER. (1) *Financial institutions should not be permitted to enter into, or continue correspondent banking relationship with shell banks and* (2) *Financial institutions should be required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks*. The first recommended action is now addressed at r.20 (3) of the ML(P)R 2013 where a bank is prohibited from maintaining a business relationship with banks that do not maintain a physical presence under the laws of which they were established, unless they are part of a financial group subject to effective consolidated supervision. The first gap is *closed*. The second recommended action is fully addressed in s.37(1)(a) of the Code which places certain restrictions on correspondent banking by prescribing that a bank that is or that proposes to be a correspondent bank shall not enter

into or maintain a relationship with a respondent bank that provides correspondent banking services to a shell bank. This gap is closed and consequently Recommendation 18 is **closed**.

30. **Recommendation 19** was rated as **NC**. On February 25, 2014 formal consideration was given to the implementation of a CTR system by Dominica's AML/CFT Technical Working Group. This group is comprised of experts from the Office of the Attorney General, the FIU, the FSU, Dominica's Police Force, and Customs. The meeting of the group was called to discuss draft legislation and to also consider implementing a CTR system, consistent with Recommendation 19, in Dominica. A technical analysis of the legal and financial implications involved in implementing such a system was done by the FIU, and presented for discussions by members of the team. After the discussions it was decided that even though a CTR system would add value to the work of the FIU, the recurring financial resources needed to successfully implement and maintain it would yield higher returns if invested in strengthening the current STR system. As such the team decided that Dominica will not be implementing a CTR system at this time. This Recommendation is **closed**.
31. For **Recommendation 20** Dominica reported that there are five (5) major banks in Commonwealth with a total of 28 ABMs. Mobile banking was introduced in Dominica to facilitate secure transactions. Additionally, Dominica reported that over the last five (5) years all the financial institutions have increased the number of ABMs available to clients. This Recommendation is **closed**.
32. Relative to **Recommendation 21**, there were two (2) recommendations made by the Assessors to cure the deficiencies in the MER. The actions taken by Dominica to close these gaps are noted as follows:
 - i. *Effective measures should be established to ensure that financial institutions are advised of concerns about AML/CFT weaknesses in other countries* – As noted in the comments for Rec. 8, the FSU is also mandated to issue advisory warnings to entities and professionals, advising them about weaknesses in the anti-money laundering and terrorist financing systems of other jurisdictions. The obligation in this regard is found at **s.54 (5)** of the Code. On January 9, 2014 the FSU issued its most recent advisory about Guyana and Belize. This gap is **closed**.
 - ii. *There should be requirements to allow for the application of counter-measures to countries that do not or insufficiently apply the FATF Recommendations.* – This is addressed at **s.56** of the Code whereby the FSU is allowed to apply any countermeasure it deems fit in relation to a jurisdiction which does not or insufficiently applies the FATF Recommendations, has received an unsatisfactory or poor rating from the FATF, or has no specific regulatory body or agency corresponding to Dominica's FSU or FIU. This gap is **closed**.
33. The two (2) deficiencies noted in the MER have been closed through the enactment of the Code. Consequently this Recommendation is **closed**.
34. **Recommendation 22** was rated **PC** and the Examiners made the lone recommendation for financial institutions to be required to *inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CTF measures because this is prohibited by local laws, regulations and measures* – Here Dominica has pointed to **s.55** of the Code to satisfy this requirement. **S.55 (5)** of the Code mandates any entity that has branches subsidiaries or representative offices operating in foreign jurisdictions to notify the FIU and

- FSU in writing if any of its branches subsidiaries or representative offices is unable to observe appropriate anti-money laundering and terrorist financing measures on account of the fact that such observance is prohibited by the laws, policies or other measures of the foreign jurisdiction in which it operates. **S.55(6)** provides for the entity that reported at 55(5) to consider the desirability of continuing the operation of the branch subsidiary or representative office and mandates the FIU and FSU to liaise and consider the further steps that may be necessary to effectively address the notification. Dominica has fully complied with the recommendation of the Examiners here and consequently this Recommendation is **closed**.
35. With regards to **Recommendation 24**, the third follow-up report has already noted the action by Dominica and concluded that, *“This action has the effect of significantly closing the gap for Recommendation 24”*. In the context of the examiners recommendation that, *“There is no comprehensive regulatory and supervisory regime that ensures compliance by casinos and other DNFBPs with the AML/CFT regime that is in place”*, table 4 of this report has detailed the FSU’s ongoing inspection of DNFBPs for AML/CFT. Dominica has advised that there are no casinos operating in the jurisdiction and as a result the Examiners comment relating to casinos is not relevant. This Recommendation **closed**.
36. As for **Recommendation 25, s.8** of the Code requires the FIU to promptly acknowledge receipt, in writing, of any STR filed by reporting entities or professionals and also provides for the manner in which feedback on STRs is to be provided to the said reporting entities and professionals. The provisions here include the obligation for the FIU to keep the reporting entity or professional informed of the interim and final results of any investigation conducted subsequent to the filing of an STR. This form of feedback is an acceptable best practice and as such this related gap is **closed**. Dominica reported that the FSU is currently in the process of creating guidelines to assist financial institutions and DNFBPs to effectively apply the provisions of the MLPA. Notwithstanding, Dominica has already created the infrastructure necessary to implement this Recommendation by enacting the 2013 guidelines, which have already been discussed in the sixth follow-up report, thereby resulting in further significant improvement with its implementation. It is now up to the FIU to demonstrate that these provisions are being implemented. This Recommendation is **closed**.
37. For **Recommendation 27 which was rated as PC**, there were three (3) Examiners recommendations intended as cures for the deficiencies noted in the MER. Dominica’s action to close these deficiencies are as follows: *Provisions should be made in domestic legislation that allow authorities investigating ML cases to postpone or waive the arrest of suspected persons and/or the seizure of money for the purpose of identifying persons involved in such activities or for evidence gathering* - The Criminal Law and Procedure (Amendment) Act No. 3 of 2014 inserted a new section 13A into the Criminal law and Procedure Act Chap 12:01 allowing money or property suspected to have been used or being used to commit an offence under the said Criminal law and Procedure Act to enter leave or move through Dominica. This section also provides protection from criminal and civil liability for the authorised officers involved. This gap is **closed**. The other two (2) recommended actions by the Examiners are additional elements and therefore not relevant for the follow-up process. Recommendation 27 is **closed**.
38. **For Recommendation 28** the comments of the fifth follow-up report are relevant. Dominica has noted that by **s.41 (b)** of the **POCA**, provides for a police officer to obtain a production order where he has reasonable grounds to suspect that a person has committed a scheduled offence (an offence of terrorism) and that a person has possession or control of any documents relevant to identifying, locating or quantifying property of the person who committed the

offence or to identifying or to locating a document necessary for the transfer or property of the person who committed the offence. Even though the recommendation by the Examiners was for the SFTA to be amended to provide investigators with the ability to compel the production of business transaction records, the 2010 amendment of the POCA (Act 10 of 2010) replaced the list of offences with Schedule 1 which included the terrorism and the financing of terrorism. Consequently, investigators pursuing terrorism and terrorism financing offences can now compel the production business transaction records. This gap is **closed**. The 5th follow-up report had noted that *Scheduled offences, according to the POCA amendment No. 10 of 2010, does not appear to include the offences of piracy (pirates at sea) which was originally not covered in Dominican legislation as a predicate offence to money laundering but which were subsequently captured through the Piracy Act of 2010.* On May 19, 2014 Dominica submitted that the by virtue of the Proceeds of Crime (Amendment) Act No.7 of 2013, the offence of piracy was added to that list. In fact **s.22 of** the Proceeds of Crime (Amendment) Act No.7 of 2013 amended Schedule I of the POCA by inserting Piracy to the offences listed as predicates in Dominica. This Recommendation is **closed**.

39. For **Recommendation 30**, the examiners made ten (10) recommendations aimed at closing the gaps in the MER. The fifth

- i. *The staff of the Unit (FIU) should be expanded to include a database administrator* – The FIU now reportedly has a complement of (6) officers and one of them doubles as the database administrator. This gap is **closed**.
- ii. *The FSU is not adequately staffed. The Unit's request for additional staff should be adhered to. It is also recommended that a restructuring of the Unit should be considered so that its regulatory and supervisory functions can be discharged effectively* – The FSU currently has a staff compliment of 3 Senior Examiners, 4 Junior Examiners and a Secretary. There are two (2) dedicated Examiners with exclusive responsibility for AML/CFT supervision. However, all other Examiners perform AML/CFT supervision of their respective sectors during their on-site and off-site inspections. Dominica is in the process of filling the position of Director of the FSU.
- iii. *The FSU should consider the establishment of databases to allow for effective off-site supervision* – In October of 2013, a database, which was created by the Information Communication and Telecommunication Unit, was installed and handed over to the FSU to assist them in storing and analysing AML/CFT data. Additionally, in February 2014, the FSU's website was handed over to the Unit. This website will be used to assist in the Unit's outreach and supervisory functions. Training of the FSU staff in the use of the website is currently ongoing prior to it being launched. This gap is **closed**.
- iv. *Technical resource- The Police Force should be provided with better communication equipment* – Not yet taken on board by Dominica. This gap remains **open**.
- v. *With the increased demand on the Police the numbers in the police contingent should be increased* - The establishment of the Commonwealth of Dominica Police Force was increased to five (500) hundred by a Cabinet decision dated March 2, 2010 by the creation of fifty (50) new Police Constables positions. The present strength is four hundred and sixty with forty (40) vacancies which is mostly due to attrition. Some thirty eight (38) Police Recruits commenced training at the Police Training

School on March 1, 2013 and are expected to join the ranks of the Police Force by September 2013. The Government of Dominica has given a commitment to further increase the establishment of the Police Force by the creation of an additional one hundred (100) new positions. No information has been provided to substantiate this action. This gap is *open (pending the receipt of information to substantiate this claim)*

- vi. *Special training in money laundering and terrorist financing should be provided to magistrates and judges to ensure they are familiar with the provisions for dealing with the seizure, freezing and confiscation of property* - Not yet taken on board by Dominica. This gap remains *open*.
- vii. *There should be a group of officers who would be trained in investigating the proceeds of crime, perhaps in the NJIC, who would supplement the efforts of the FIU* - The CDPF has reportedly trained a cadre of police officers in financial investigations, money laundering, terrorist financing and cyber-crime investigations. Additionally, in September 2013 a Major Crimes Unit was established within the police force to augment and enhance the investigations of serious crimes. This Unit focuses on the investigation of major crimes in the jurisdiction and compliments the work of the FIU with the investigation of predicate offences (major crimes) to money laundering. The Unit's current complement is 21 police officers stationed at various sections and departments of the Police Force and are called on a needs basis. It is headed by an Assistant Superintendent of Police and includes officers that have benefited from ongoing training at REDTRAC in Jamaica. This gap is *closed*.
- viii. *There should be regular inter agency meetings among all the agencies that are charged with ensuring the effectiveness of the AML/CFT regime* – Not yet taken on board by Dominica. This gap is *open*.
- ix. *There should be put in place some measures to vet the officers in these agencies to ensure that they maintain a high level of integrity*- In 2011 The Dominica Police Force introduced polygraph testing as part of its vetting process of persons who work in sensitive or specialized sections such as the CID, Anti-crime Task Force, Drug Squad, Special Branch, and NJIC. The polygraph testing of the ranks of the Police Force is being done on a voluntary basis. The vetting process is coordinated by the Regional Security System (RSS) and funded by the US Embassy in Barbados. The US only provides funding for the vetting of persons in specialized sections or areas. Between November 2012 and February 2013 some sixty eight (68) police officers were vetted comprising of senior managers, middle managers and lower ranks. Other sensitive personnel and other ranks will be vetting if funding is available. Outside funding will have to be sourced for personnel not in specialized or sensitive areas and new entrants into the Police Force. This gap is *closed*.
- x. *Databases should be established which can be shared by all authorities responsible for monitoring and ensuring compliance with the AML/CFT regime in Dominica* – In February 2014, the Dominica Police Force installed a new database at its headquarters in Roseau. It is currently in the process of conducting data entry activities at the Administration Section, The Criminal Investigation Department and the Charge Office. Data on personnel, outstanding warrants, land and sea patrols, motor vehicle licenses, firearm license among other data types are among some of the information that is being populated in the new database. Dominica has not

indicated whether this database will be shared according to the Examiners' recommendation. This gap is *open*.

40. Based on Dominica's actions, four (4) of the deficiencies for Rec. 30 have been closed whilst four (4) others have been positive affected. This represents a significant improvement in the overall implementation of Recommendation 30.
41. **Recommendation 31 which was rated as NC** continues as noted in the fifth follow-up report. This Recommendation 30 remains *outstanding*.
42. **Recommendation 32 which was rated as NC** Dominica reported having installed a new database at the police headquarters which captures reports. The Central Authority also has a new database which allows it to track incoming and outgoing requests and other data including the date the request was received, the actions taken, the time the action was taken and the status of the requests. On April 16, 2014, Dominica submitted a table showing the MLAT requests it received from July to October 2013. This demonstrates that the Central Authority can glean statistics from its database and appears to address the second Examiners' recommendation that "*With respect to MLA and other international request the Commonwealth Dominica should maintain statistics on the nature of such requests and the time frame for responding*". Dominica has not provided any data to demonstrate that relevant comprehensive statistics are actually being maintained by the competent authorities. This Recommendation 30 remains *outstanding*.
43. For **Recommendation 33, which was rated as PC** the examiners made three (3) recommendations to cure the gaps discerned in the MER. Dominica's action at closing these gaps are detailed below:
 - i. *There is a need to ensure that licensed agents are subjected to ongoing monitoring and supervision in such areas as maintenance of up-to-date information on beneficial owners, licensing and registration, particularly for IBC's incorporated by the agent* – The legislative infrastructure to ensure this is achieved has been created by the enactment of the Code on May 1, 2014. Here **s.28 (2)** of the Code prescribes that the licensed agents must take reasonable measures to verify the beneficial owners or controllers of a legal person and update information on any changes to the beneficial ownership or control. The FSU however, which supervises the licensed agents has not as yet begun the monitoring process. This gap is *open*.
 - ii. *It is recommended that the FSU institute the process of ongoing monitoring and compliance for both AML/CFT purposes and for general supervisory and regulatory purposes* – This process has been detailed in the Structured Work Programme and Examiners Inspections Manual which were submitted to the Secretariat. Data on the onsite inspections conducted from 2013 to date has been provided to the Secretariat. This gap is *closed*.
 - iii. *There should be measures to ensure that bearer shares are not misused for money laundering* – The FSU guidelines which have been issued pursuant to **s.9** of the MLPA has sought to address this issue. At paragraph 47 financial services providers are required to develop special procedures for dealing with corporate clients that issue Bearer Shares to ensure that the beneficial ownership is always known. At paragraph 62 where a financial service provider is conducting business with companies with bearer shares, and they are unable to identify the beneficial owners that financial service provider is not allowed to

proceed with the relationship. At paragraph 71, in addition to the identification requirements where a company's stock has been issued to bearer (a "bearer stock" company), it would be prudent that the bearer share certificates be held in custody and under the control of the Financial Services Provider. This gap is **closed**.

44. Recommendation 33 is now significantly improved from the PC applied in the MER owing to the positive actions taken by Dominica which have resulted in two (2) of the three (3) identified deficiencies being closed.

45. For **Recommendation 34, which was rated as NC** the examiners made three (3) recommendations to cure the gaps the discerned in the MER. Dominica's action at closing these gaps are detailed below:

i. *Information on the settlors, trustees and beneficiaries of Trusts should be made available to the Registrar or if not recorded there should be available from the registered agent on request without the written consent of the Trustee* – Regulation 72A of the Proceeds of Crime (Amendment) Act 2014 provides for the Attorney General to make regulations for the control of trusts in Dominica. On May 1, 2014 the Trusts and Non-profit Organisations Regulations, 2014, made by the Attorney General became law. At regulation 4 (1) of the Trusts and Non-profit Organisations Regulations, 2014 the FSU has been designated as the Trusts and NPO supervisor. The functions of the FSU in this regard include acting as the registration, supervision and enforcement authority for trusts and protecting trusts and NPOs from being used for the financing of terrorism and ensuring compliance by Dominica with the FATF Recommendations applicable to trusts. At regulation 6 (1) of the Trusts and Non-profit Organisations Regulations, 2014 the FSU as trusts and NPO Supervisor is required to establish a register of trusts and NPOs. That register must contain the following information:

- a. the name, address in Dominica and the telephone number and e-mail address, if any, of the trust or non-profit organisation;
- b. the nature, purpose, objectives and activities of the trust or non-profit organisation;
- c. the identity of the persons who own, control or direct the trust or non-profit organisation;
- d. the date of registration and, if applicable, deregistration of the trust or non-profit organisation;
- e. any other information that the Trusts and NPO Supervisor considers appropriate.

According to regulation 7(1) of the Trusts and Non-profit Organisations Regulations, 2014 every trust or NPO must be registered in the Register once it has been incorporated, formed or otherwise established in Dominica or administered in or from Dominica. This information must be stored electronically and may be accessed by anyone during normal business hours. There is no requirement for the trustee to grant consent to anyone accessing information in the register. This gap is **closed**.

ii. *Competent Authorities should be able to gain access to information on beneficial ownership of Trusts in a timely fashion* - As noted above, anyone, including the FIU, has access to the register of trusts and NPOs during normal business hours. This gap is **closed**.

- iii. *Even though currently there are no trust activities in Dominica, the authorities in Dominica should include adequate, accurate and current information on the beneficial ownership and control of legal arrangements as part of the register information on international trust*
 – The comments at paragraph 47 i above are relevant here. This gap is **closed**.
46. Dominica has addressed all the deficiencies noted by the Examiners for Recommendation 34 which is now **closed**
47. For **Recommendation 38 which was rated PC** the third and fifth follow-up reports have already detailed the actions by Dominica which resulted in two of the four (4) deficiencies remaining open. The first outstanding deficiency in relation to the laws *clarifying whether the requirement in Criterion 38.1 is met where the request relates to property of corresponding value* has been addressed through s.39 (b) of the Money Laundering Prevention Act No. 8 of 2011 which provides for the Courts or Central Authority to receive a request, from the court of another State, to identify, trace, freeze, seize, confiscate or forfeit any property of corresponding value. This gap is **closed**. The last outstanding deficiency is in relation to the laws *clarifying whether the Commonwealth of Dominica could have arrangements for co-ordinating seizure and confiscation actions with other countries has been*. Dominica has reported that this can be achieved through the establishment of MOUs and has proffered s.41 of the Money Laundering Prevention Act No. 8 of 2011 as the legislative basis for this. Whilst s.41 provides the legislative basis for the FIU to execute an MOU with a foreign FIU, it refers to the preceding s.40 which provides the legislative basis for the FIU to share information. Whilst this confirms that Dominica has arrangements for sharing information it does not appear to amount to the legal clarification on whether Dominica could have arrangements for co-ordinating seizure and confiscation actions with other countries sought by the Examiners. This gap is **open**. At the time of the onsite the status of this Rec. was rated as being only PC. Since then Dominica has taken legislative action which has substantially improved its status. Once the outstanding issue noted above has been clarified Recommendation 38 can be closed. Until then it remains **outstanding**.
48. With regard to **Special Recommendation VII** Dominica has enacted Part V of the Code to address the deficiencies which resulted in the application of a NC rating by the Examiners. The Code became law on May 1, 2014. Based on the initial analysis of the related provisions together with information and explanations from Dominica it appears that the deficiencies have been addressed. However because of insufficient time the conclusive analysis that is necessary could not have been conducted. With the Plenary's approval this analysis will be deferred to the next follow-up report.
49. **Special Recommendation VIII** was rated as NC. On May 1, 2014 the Trusts and Non-profit Organisations Regulations, 2014, made by the Attorney General, became law. There were 13 recommended actions made by the Examiners to cure the deficiencies in the MER. Based on the initial analysis of the related provisions of the Trusts and Non-profit Organisations Regulations, 2014 it appears that the related deficiencies have been addressed. However because of insufficient time, the detailed analysis necessary could not have been conducted. With the Plenary's approval this analysis will be deferred to the next follow-up report.
50. For **Special Recommendation IX which was rated PC** the status remains as noted in the fifth follow-up report. This Recommendation remains **outstanding**. Reference was made in the matrix to the Customs Act of 2010 but copies of this law was only provided to the Secretariat on May 19, 2014. Because of insufficient time, the detailed analysis necessary could not have

been conducted. With the Plenary's approval this analysis will be deferred to the next follow-up report.

VI. MAIN CONCLUSIONS AND RECOMMENDATIONS TO THE PLENARY

Core Recommendations

51. Dominica legislative and administrative actions have addressed all the deficiencies for the Core Recommendations.

Key Recommendations

52. For the Key Recommendations the only outstanding issue is in relation to SR. V where there does not appear to be any stipulation of a timeframe for the execution for extradition requests. All of the other deficiencies have been addressed.

Other Recommendations

53. Dominica has made sufficient progress to close Recommendations 6, 7, 8, 11, 15, 16, 17, 18, 19, 20, 21, 24, 25, 27, 28, 29, 34 and SRVI. Significant progress has been made with Recommendations 9, 12, 15, 18, 25, 30, 33, and 38.
54. There are only two (2) other Recommendations remaining outstanding. They are Recommendations 31 and 32.

Conclusions & Recommendations to Plenary

55. Given the significant progress made by Dominica and the ongoing efforts at further addressing the few deficiencies still outstanding, Dominica should now be encouraged to apply to the November 2014 Plenary for removal from enhanced follow-up to biennial updating. If Dominica does not so apply it is recommended that the Jurisdiction report to the November 2014 Plenary.

CFATF Secretariat
May 20, 2014

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
The Commonwealth of Dominica – April 2014**

Forty Recommendations	Rating	Summary of Factors Underlying Rating	Recommended Actions	Action Undertaken
Rec. 1 ML offence	PC	<ul style="list-style-type: none"> The physical and material elements of the money laundering offence in the Commonwealth of Dominica do not cover conversion or transfer. Designated categories of offences, Piracy (Pirates at Sea) and Extortion not criminalized. 	<p>The laws of the Commonwealth of Dominica should be amended to:</p> <p>i. Cover conversion or transfer as two additional physical and material elements of the money laundering offence;</p> <p>ii. Criminalize all the designated categories of offences and in particular Piracy (Pirates at Sea) and Extortion.</p>	<p>Section 3 of the Money Laundering (Prevention) Act No. 8 of 2011 now specifically include conversion and transfer. Once a person involves himself with the conversion or transfer of property that is the proceeds of crime then he has committed a money laundering offence.</p> <p>Section 3 of Piracy Act No. 11 of 2010 criminalizes Piracy. It reads “ <i>A person who engages in piracy commits an offence.</i>”Section 22A of the Theft Act Chap: 10:33 of the D.R.L of 1990 as amended by Section 3 of the Theft (Amendment) Act No. 12 of 2010 criminalizes extortion. Section 22 (a) (1) outlines the behaviour activity which constitutes extortion and subsection 3 states the penalty.</p> <p>Section 3(1) has been amended by section 4 of the Money Laundering (Prevention) (Amendment) Act No. 5 of 2013 to reflect that ‘<i>property that is the proceeds of crime, knowing or believing the property to be the proceeds of crime commits an offence</i>’.</p>

<p>Rec. 2</p> <p>ML offence – mental element and corporate liability</p>	<p>LC</p>	<ul style="list-style-type: none"> • The Money Laundering (Prevention) Act, 2000 (Chapter 40:07), does not adequately detail what administrative proceedings that may be employed in dealing with legal persons who have been found criminally liable. • No civil or administrative sanctions are provided for ML. • No powers are given to administer administrative sanctions. 	<ul style="list-style-type: none"> i. Adequately detail what administrative proceedings may be employed in dealing with legal persons who have been found criminally liable; ii. Provide for civil and administrative sanctions; 	<p>These deficiencies have been cured by the MLPA No.8 of 2011. Section 7 of this Act which establishes the Financial Services Unit as the Money Laundering Supervisory Authority. Section 10 provides the authority with the power to give directives by written notice where there is contravention of the Act. These directives include :</p> <ul style="list-style-type: none"> A) To cease engaging in any activity, behaviour or practice for a specified period B) To take remedial measures or action that the Authority considers necessary for the financial institution to be in compliance with the Act. <p>Section 11 of the Act further gives the Authority the powers to administer the administrative sanctions. Section 11 (2) and 12 deals with the sanctions which can be imposed. The section states:11(2) “ The Authority may, pursuant to subsection (1)-</p> <ul style="list-style-type: none"> a) issue a warning or reprimand to the financial institution or person carrying on a scheduled business; b) give directives as seen appropriate c) impose on the financial institution or person carrying on a scheduled business, in accordance with section 13, a pecuniary penalty; or
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			<p>iii. Adopt an approach that would result in more effective use of existing legislation</p>	<p>d) recommend, in accordance with section 12-</p> <p>i) the suspension of any or all of the activities that the financial institution or person carrying on a scheduled business may have otherwise conducted pursuant to the license of the financial institution or person carrying on a scheduled business; or\</p> <p>ii) the suspension or revocation of the licence of the financial institution or person carrying on a schedule business.</p> <p>iii) By written notice, recommend to the relevant regulatory authority that it</p> <p>A. suspends any or all of the activities of that financial institution or person carrying on a scheduled business; or</p> <p>B. suspend or revoke the licence of the financial institution or carrying on the scheduled business,</p>
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				In circumstances where the relevant authority is satisfied that a legal person has contravened a guideline or have failed to comply with the directive issued under this Act, section 13 ML (P) Act also gives the power to the Authority to impose certain pecuniary penalties on them.
Rec. 3 Confiscation and provisional measures	PC	<ul style="list-style-type: none"> • In the Commonwealth of Dominica the laws do not allow the initial application to freeze or seize property subject to confiscation to be made ex-parte or without prior notice. • Law enforcement agencies, the FIU or other competent authorities in the Commonwealth of Dominica do not have adequate powers to identify and trace property that is, or may become subject to confiscation or is suspected of being the proceeds of crime. • There is little authority in The Commonwealth of Dominica to take 	i. The laws or measures in the Commonwealth of Dominica should allow an initial application to freeze or seize property subject to confiscation to be made ex-parte or without prior notice, unless this is inconsistent with fundamental principles of domestic law.	<p>Sec. 29 (1) of the MLP Act No. 8 of 2011 allows the D.P.P to make an application to the court for an order to freeze or seize property subject to confiscation in relation to a money laundering offence. Subsection 2 allows the D.P.P to make such an application without notice. Section 29 as amended states that “The Director of Public Prosecutions may make an application to the Court for an order to freeze-</p> <ul style="list-style-type: none"> a) Property of, or in the possession or under the control of a person charged or who is about to be charged or is being investigated for a money laundering offence; b) Any property possessed by a person to whom a person referred to in paragraph (a) has directly or indirectly made a gift.” <p>Sub-section 2 will remain the same. Where a persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation, it would</p>

		<p>steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.</p>	<p>ii. There should be authority to take steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.</p>	<p>mean that they would no longer be considered “innocent” third parties . It would mean that they are accomplices or offenders in accordance to Section 4 of the Money Laundering (Prevention) (Amendment) Act and as such the authorities would have the power to seize their assets and there would be no need to void the transaction. However, legislation does provide for the voiding of transactions in certain situations. Section 11 of the Proceeds of Crime Act No. 4 of 1993, Section 38A of the SFTA 3 of 2003 as amended by section 16 of the SFT (Amendment) Act No. 9 of the 2011 and Section 34 of the MLP Act.</p> <p>Sec. 11 of the Proceeds of Crime Act No. 4 of 1993, provides for the ability of the Court to set aside any conveyance or transfer of property that occurred after the seizure of the property or the service of the restraining order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice.</p> <p>Sec. 38A of the SFTA 3 of 2003 as amended by Section 16 of the SFT (Amendment) Act No. 9 of 2011</p> <p>Section 34 of the MLP Act No. 8 of 2011</p>
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				<p>No.8 of 2011 are designed for that specific purpose. These section state “The Court may-</p> <ul style="list-style-type: none"> A) Before making a forfeiture order; and B) In the case of property in respect of which a freezing order was made and where the order was duly seized, <p>Set aside any conveyance or transfer of the Property that occurred after the seizure of the property or the service of the freezing order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith or without notice.”</p> <p>N. B. The provision can be exercised on property being held or owned by a third party. Since the DPP can provide evidence to the Court by way of an application that the property is related to a person charged or who is about to be charged with or is being investigated with a money laundering offence, the DPP may make an application to the Court for an Order to freeze the property. Rights of bona fide third parties are captured at Section 35 of Act No. 8 of 2011</p> <p>In July 2010, the FIU secured a Freeze Order on a House, its contents and motor vehicles. In the same case, in August 2012, the FIU secured a supplementary Freeze Order on Bank Accounts and other assets. Copies of the Freeze Orders are submitted herewith.</p>
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				<p>If the property held by the third party satisfies the broad definition of money laundering as stated in Section 3 of the Money Laundering (Prevention) Act No. 8 of 2011 that third party will be charged for money laundering and the property will be subject to a Freeze Order.</p> <p>Section 35 of Act No. 8 of 2011 requires the DPP to publish Freeze Orders. This Section also provides for bona fide third parties to apply to the Court for recourse.</p> <p>Dominica has drafted an amendment to the Money Laundering (Prevention) Act No.8 of 2011 which would address the comment which states “that Dominica has not demonstrated that the existing confiscation measures can be exercised on property held or owned by a third party where that third party has not been charged for a criminal offence.”</p> <p>Clause 29 of the Draft Bill cited above appropriately deals with this comment.</p>
Rec. 4 Secrecy laws consistent with the Recommendations	PC	<ul style="list-style-type: none"> • Inability of the competent authorities to share information without an MOU or court order 	i. Dominica should enact provisions allowing the ECCB, FSU, the MLSA, the registered agents to share information with other competent authorities	<p>The FSU is the Money Laundering Supervisory Authority by virtue of section 7 of the Money Laundering (Prevention) Act No.8 of 2011.</p> <p>Sec. 32 of the FSU Act No. 18 of 2008 as amended by Section 11 of the FSU (Amendment) Act No. 10 of 2011 makes provisions for the sharing of information with other competent authorities. It states</p>

				<p>“ In discharging his functions under the Act the Director May-</p> <ul style="list-style-type: none"> a) Seek assistance, share or request information from the Central Bank subject to a confidentiality agreement and a memorandum of understanding b) Seek assistance, share or request information, from other regulatory authority including a foreign regulatory authority.” <p>There are two competent authorities performing AML/CFT functions viz. the FSU (regulatory functions) and the FIU (analytical and investigative functions).</p> <p>The FSU’s regulatory functions are captured at Section 9 (1) (b) of Act No. 18 of 2008, as amended by Section 6 (a) of Act No. 10 of 2011. As per Section 7 of Act No. 8 of 2011, the FSU is established as the MLSA. The FIU’s analytical and investigative functions are captured at Section 4 (1) (a) of Act No. 7 of 2011.</p>
Rec. 5 Customer due diligence	NC	<ul style="list-style-type: none"> • The requirements that documents, data or information collected under the CDD process should be kept up to date by the financial institution is not enforceable. 	i. The legislation should entail requirement to undertake CDD measures according to recommendation 5.	The Money Laundering (Prevention) Regulations deal with customer due diligence. Specifically, regulation 10 places an obligation on a person carrying on a relevant business to obtain further information from the client and also dictates measures to be taken in relation to the business relationship. Section 11 deals with on-going due diligence and

		<ul style="list-style-type: none"> • The obligation that financial institutions should perform ongoing due diligence on the business relationships is not enforceable. • The determination by the financial institution as to who are the ultimate beneficial owners is not enforceable. • No guidance for the insurance companies with regards to identification and verification of the underlying principals, persons other than the policyholders. • Financial institutions do not perform enhanced due diligence for higher risk customers. • Financial institutions are not required to perform CDD measures on existing clients if they have anonymous accounts. 	<p>ii. The requirement for financial institutions to ensure that documents, data or information collected under the CDD process is kept up to date should be enforceable.</p>	<p>section 12 deals with enhanced customer due diligence measures and on-going due diligence.</p> <p>There is a proposed amendment to the Money Laundering (Prevention) (Amendment) Regulation S.R.O.4 of 2013 which provides for the information collected under the CDD process to be kept up to date. Section 25 of the of the Regulations will be amended by clause 4 of the Money Laundering (Prevention)(Amendment) Regulations which will insert a new section 25A which states “A person carrying on a relevant business shall keep documents, data or information collected under these Regulations up to date and relevant by undertaking reviews of existing records.”</p> <p>Section 25 of the Money Laundering (Prevention) (Amendment) Regulation S.R.O.4 of 2013 provides for the information collected under the CDD process to be kept up to date. Section 25 of the of the Regulations as amended by section 4 of the Money Laundering (Prevention)(Amendment) Regulations inserts a new section 25A which states that “A person carrying on a relevant business shall keep documents, data or information collected under these Regulations up to date and relevant by undertaking reviews of existing records.”</p>
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		<ul style="list-style-type: none"> • The business clients on the exempted list of the banks do not submit a source of fund declaration for each transaction. 	<p>iii. Requirement for on-going due diligence on the business relationships should be enforceable.</p> <p>iv. Requirement to take reasonable measures to determine who are the ultimate beneficial owners or exercise the ultimate effective control should be enforceable.</p> <p>v. The Guidance Notes should include additional guidance with regards to identification and verification of the underlying principals, persons other than the policyholders with regards to insurance companies.</p>	<p>The Money Laundering (Prevention) (Amendment) Regulations is enforced by the Money Laundering (Prevention) Act No. 8 of 2011.</p> <p>Section 7 of the MLPA No. 8 of 2011 establishes the Financial Services Unit as the Money Laundering Supervisory Authority. Provisions of the MLPA and Regulations are enforceable using the section quoted above along with section 10 which allows the authority to give directives to financial institutions. Section 11 of the Act gives the Authority the powers to administer the administrative sanctions. Section 11 (2) and 12 deals with the sanctions which can be imposed.</p> <p>Section 10 (1) (c) of the Money Laundering (Prevention) S.R.O 4 provides for the taking of reasonable measures to determine beneficial owners. This is in compliance with CDD measures outlined in the FATF recommendations.</p> <p>The FSU have established called the Anti-Money Laundering Guidelines of 2013. Paragraph 41 of the guidelines deal with identification and verification of the underlying principals, persons other than the policyholders with regards to insurance companies.</p>
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			<p>vi. Financial institutions should to perform enhanced due diligence for higher risk customers</p>	<p>Section 8, 10, 11, 12 & 22 of the Money Laundering (Prevention) Regulations of 2013 provide for enhanced due diligence for higher risk customers. However, sections 11 and 12 are directed to higher risk situations. These sections read as:</p> <p>11 “A person carrying on a relevant business shall employ on going customer due diligence measures with respect to every business relationship and closely examine the transactions conducted in the course of a business relationship to determine whether the transactions are consisted with its knowledge of the relevant customer, his commercial activities, if any, and risk profile and, where required, the source of funds.”</p> <p>12. “A person carrying on a relevant business shall apply on a risk-sensitive basis enhanced customer due diligence measures and enhanced on going due diligence under regulation 11 in any situation which by its nature can present a higher risk of money laundering.”</p>
			<p>vii. Financial institutions are not required to perform CDD measures on existing clients if they have anonymous accounts.</p>	<p>Section 11 and 12 of the Money Laundering (Prevention) Regulations of 2012</p> <p>Section 15 and 16 of the Money Laundering (Prevention) Regulations of 2012</p> <p>Section 11 of the Money Laundering (Prevention) S.R.O. 4 of 2013 makes provision for on-going customer due</p>

			<p>viii. The bank should not keep an exempted list for business clients so that they do not require to fill out a source of fund declaration form for each deposit</p>	<p>diligence in ensuring that information is kept up to date. By virtue of this provision it would mean that all customer information would be updated removing the so called anonymous accounts.</p> <p>Section 12 of the Money Laundering (Prevention) Regulations of 2012</p> <p>Anonymous accounts are not permitted in Dominica due to the identification requirements mandated by the MLP Regulations (current and proposed). Sections 3, 5, 6, 7, 8 & 9 of S.R.O. 14 of 2001 implicitly prevents the opening of anonymous accounts (current regulations). These provisions are carried forward in the new MLP Regulations at section 3 and Part III of the MLP S.R.O.</p> <p>The exempt list has been eliminated. The exempt list in fact consisted of low risk customers.</p> <p>Part III of the Money Laundering (Prevention) Regulations No. 4 of 2013 provides for <i>inter alia</i> the mandatory requirement for the production of sufficient evidence of identity with respect to both natural and legal persons. In the absence of the production of that information by the applicant for business the Regulations mandates that the relation should not proceed.</p>
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				<p>In addition, information is required on the purpose and nature of the business relationship.</p> <p>Additional CDD control measures can be found at section 3 of the Money Laundering (Prevention) Regulations which makes it mandatory for FIs and DNFBPs to maintain identification procedures in accordance with regulations 8, 9, 10 and 15; as well as record keeping, internal reporting (regulation (26), internal controls and communication procedures, an audit function to test compliance, screening procedures when hiring customers and initial and refreshers training policies. A penalty of forty thousand dollars and a term of imprisonment not exceeding two (2) years.</p> <p>Non-compliance with the Money Laundering (Prevention) Act and Regulations made thereunder will invoke the powers of the Money Laundering Supervisory Authority established at section 7 of the Money Laundering (Prevention) Act No. 8 of 2011.</p> <p>A range of sanctions are at the disposal of the said Authority at section 8, 10, 11, 12 and 13 of the Money Laundering (Prevention) Act for non-compliance</p>
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				<p>These sanctions range from warning letters, issuance of directives and guidelines with regards to measures to be implemented by FIs and DNFBPs, imposition of pecuniary penalties, suspension of activities, revocation of license or issuance of a reprimand.</p> <p>Sections 10, 11, 12 and 22</p> <p>An additional element of the required CDD measures is captured at section 10 of the Money Laundering (Prevention) Regulations regarding certain activities a FIs or DNFBP must do when establishing a business relationship. They include obtaining information on the purpose and nature of the business relationship; evidence of identity when the transaction is carried by either a natural or legal person.</p> <p>Mandatory on-going due diligence measures captured at section 11 of the Regulations provides for the execution of due diligence measures by financial institutions and DNFBPs with regards to every transaction conducted during the course of the business relationship.</p> <p>Existing customers are captured at section 22 where a period of six (6) months is given to the financial institution and DBFBPs to verify the identity of the customers failing which, the relationship should be terminated. An extension of time may be granted only on application to the Financial Services Unit, the Supervisory Authority with oversight</p>
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				<p>over these matters, for a period of six (6) months. However, failure by the financial institution or DNFBP to obtain the necessary data o sufficiently identify the identity of its customers, the regulation mandates that the relationship shall be terminated.</p> <p>Section 12 mandates that enhanced due diligence be conducted on a risk-sensitive basis in any situation which by its nature could pose a higher risk of money laundering. This requirement forces the continuous updating of the records held by financial institutions and DNFBPs.</p> <p>Reference is made to CDD requirements to be obtained by the financial institution and DNFBPs on the identity of the beneficial owners of legal persons sufficient to identify the ownership and control structure of same. This includes incorporation documents, the identities of directors, the principal owners and beneficial owners and any authorised to act on behalf of the company including their identities.</p> <p>These sections i.e. 3, 8, 9, 10, 11 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 of S.R.O. 4 of 2013 <i>inter alia</i> addresses the following Section 3. Systems and training; Section 8. Identification procedures, business relationships and transactions; Section 9. Identification and verification of customer identity; Section 10. Further information to be obtained and measures to be taken when establishing a business</p>
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				<p>relationship; Section 11. On-going due diligence; Section 12. Enhanced customer due diligence measures and ongoing due diligence; Section 13. Identification measures where reliance placed on intermediary; Section 14. Identification procedure where payment by post, delivered by hand or electronically; Section 15. Identification procedure where transaction is conducted on behalf of another; Section 16. Obligation where business is conducted on behalf of another; Section 17. Persons exempted from identification procedures; Section 18. Evidence of identity not required in certain circumstances; Section 19. Measures in relation to politically exposed persons; Section 20. Measures in relation to cross border correspondent banking and similar relationships; Section 21. Electronic funds transfer to include originator information; Section 22. Existing customers.</p> <p>With regards to sections 17 and 18 where identifications procedures may not be required when conducting a transaction, this exemption is only applicable where during a previous transaction sufficient evidence of identity was presented by the customer who is a legal person and the customer is licensed and or registered, and supervised by the Authority, who is satisfied as to the adequacy of measures</p>
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				<p>by that customer to prevent money laundering.</p> <p>Hence, it is explicitly implied due to the range of CDD measures that FIs and DFBPS have to comply with when establishing or on previously established business relationships, that anonymous accounts are not allowed within the jurisdiction.</p> <p>All clients of FIs and DNFBPs, including existing clients are required to produce sufficient information as relates to their identity. This is mandated in particular in regulations 8 and 22 – Existing Clients. All FIs and DFBPs are given at a maximum one (1) year to update all records of existing clients. Six (6) months in the first instance and an additional six (6) months on application approved by the Authority. The regulations further states that failure to update these records should result in the termination of the business relationship.</p>
Rec. 6 Politically exposed persons	NC	It should be enforceable on the financial institutions that they apply enhanced and ongoing due diligence on their PEPs.	i. Recommendation 6 should be enforceable on the financial institutions. ii. Financial institutions should apply risk based approach on their PEPs clients, and continue to do enhanced due diligence on them.	Regulation 19 (1) of the Money Laundering (Prevention) Regulations SRO No. 4 of 2013 requires relevant businesses to put appropriate risk management systems in place to determine if a customer or beneficial owner is a PEP.

				<p>section 19(2) further states that “<i>where a person carrying on a relevant business determines that a customer is a politically exposed person it shall-</i></p> <ul style="list-style-type: none"> <i>(a) adequately identify and verify his identity in accordance with regulations 9 and 10;</i> <i>(b) require its officers and employees to obtain the approval of senior management before establishing or continuing a business relationship with the person;</i> <i>(c) take reasonable measures to establish the source of funds and p</i> <i>(d) conduct regular enhanced monitoring of the business relationship.”</i> <p>The Proceeds of crime Act has been amended by virtue of the inclusion of a new s.60 which gives the Minister of Finance the power to issue a code of practice in respect of money laundering and Terrorist Financing. This amendment contained in the Proceeds of Crime (Amendment)Bill which was passed in Parliament on March 19th 2014 will give legal force to the Code of practice as soon as it has been assented to by the president.</p> <p>\]</p> <p>Section 22 of the said AML/CFT Code of Practice which will soon have the force of law, provides for steps additional to the customer due diligence already carried out by entities and professionals in dealing</p>
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				<p>with an applicant for business or a customer in relation to a business relationship or one-off transaction in order to forestall and prevent money laundering, terrorist financing and other financial crimes.</p> <p>It mandates that every entity or professional shall engage in enhanced due diligence in its or his dealings with an applicant for business or a customer who, or in respect of a transaction which, is determined to be a higher risk applicant for business or customer, or transaction, irrespective of the nature or form of the relationship or transaction.</p> <p>Section 22 (3) details various additional enhanced due diligence measures that an entity or professional shall adopt with respect to higher risk business relationships, customers or transactions.</p> <p>Section 24 (1) (a) of the AML/CFT Code of Practice makes it mandatory that every entity or professional shall have, as part of its or his internal control systems, appropriate risk-based policies, processes and procedures for determining whether an applicant for business or a customer is a politically exposed person.</p> <p>Several additional risk policies are contained in the remaining section from 24 (1) (b) to section 24 (5) as it relates to PEPS.</p>
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Rec. 7 Correspondent banking	NC	<p>No requirement to determine the nature of business reputation of a respondent and the quality of supervision.</p> <p>No assessment of a respondent AML/CFT controls and responsibilities.</p> <p>No provision to obtain senior management approval before establishing new correspondent relationships.</p> <p>No condition to document respective AML/CFT responsibilities in correspondent relationships.</p> <p>No requirement for financial institutions with correspondent relationships involving “payable through accounts” to be satisfied that the respondent.</p>	<p>The specific requirement to understand and document the nature of the respondent bank’s business and reputation, supervision of the institution and if they have been subjected to money laundering or terrorist financing activities or regulatory action.</p> <p>Financial institutions should be required to assess all the AML/CFT controls of respondent.</p> <p>i. The financial institutions should document the AML/CTF responsibility of each institution in a correspondent relationship</p>	<p>Regulation 20 of the Money Laundering (Prevention) (MLP) Regulations of 2012 specifies the requirements for financial institutions with regards to cross border correspondent banking relationships and similar relationships. This section outlines the requirement for customer identification, assessment of the entity’s anti –money laundering controls to ascertain that they are adequate and effective, and ongoing customer due diligence.</p> <p>Regulation 20 (1) (a),(b) &(c) of the MLP Regulations SRO No. 4 of 2013 requires banks to adequately identify and verify respondent banks, gather sufficient information and determine the reputation, quality of supervision including whether the respondent bank has been subject to a money laundering investigation or regulatory action.</p> <p>Regulation 20 (1) (d) of SRO No. 4 of 2013 also requires banks to assess a respondent bank’s anti money laundering controls and ascertain that they are adequate and effective.</p> <p>Regulation 20(1) (f) deals with documentation of responsibilities in correspondent relationships.</p>

	<p>Financial institutions have not performed all normal CDD obligations on its customers that have access to the accounts.</p> <p>No requirement for the financial institution to satisfy themselves that the respondent institution can provide reliable customer identification data upon request.</p>	<p>ii. Financial institutions should require senior management approval before establishing new correspondent relationships.</p> <p>iii. Financial institutions should ensure that the correspondent relationships if involved in payable through accounts that they normal CDD obligations as set out in R5 have been adhered to and they are able to provide relevant customer identification upon request.</p>	<p>Regulation 20 (1) (e) requires the in relation to cross- border correspondent banking, that a bank must first obtain the approval from senior management before establishing a new correspondent relationship;</p> <p>Regulation 20(2) addresses concern v. It provides for necessary measures related to payable through accounts. The section states “Where a cross-border correspondent banking relationship involves the maintenance of payable-accounts, the bank or the financial institutions shall ensure that the person or entity with whom it has established the relationship-</p> <ul style="list-style-type: none"> a. has verified the identity of and performed on-going due diligence on such of that person’s customers that have direct access to accounts of the financial institution; and b. is able to provide the relevant customer identification data upon request to the financial institution.” <p>Section 37 of the AML/CFT code of practice further regulates the conduct of a bank which proposes to begin or maintain a correspondent relationship with another</p>
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				<p>bank. It is clearly stipulated in this legislative provision that a bank <u>shall not</u> maintain a relationship with a respondent Bank that provides banking services to a shell bank.</p> <p>A local bank is also required by paragraph (b) of this section to undertake customer due diligence measures and where necessary, enhanced customer due diligence measures in respect of a respondent bank in order to :</p> <ul style="list-style-type: none"> i. to fully and properly understand the nature of the respondent bank's business; ii. to make a determination from information and documents available, regarding the reputation of the bank and whether it is appropriately regulated; and iii. to establish whether or not the respondent bank is or has been the subject of a regulatory enforcement action or any money laundering, terrorist financing or other financial crime investigation
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				<p>In respect of the <u>documentation</u> of the AML/CFT responsibility of institutions in a correspondent relationship, section 37(f) of the code requires that banks-</p> <ul style="list-style-type: none"> a. ensure that the respective anti-money laundering and terrorist financing measures of each party to a correspondent banking relationship is fully understood and properly recorded; and that they b. adopt such measures as they considers necessary to demonstrate that any documentation or other information obtained in compliance with the requirements of this subsection is held for current and new correspondent banking relationships. <p>Section 38 of the code effectively places a responsibility upon financial institutions to ensure that normal <u>CDD obligations</u> are adhered to by the correspondent banks which provide customers with direct access to its services by way of payable through accounts. By virtue of this section, financial institutions are obligated to ensure that they:</p> <ul style="list-style-type: none"> a. Undertake appropriate customer due diligence and, where applicable, enhanced customer due diligence in respect of
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				<p>customer that have direct access to the correspondent bank's services; and</p> <p>b. Are able to provide relevant customer due diligence information and verification evidence to the correspondent bank upon request.</p> <p>O No. 4 of 2013 requires banks to document the responsibilities of financial institutions in correspondent banking relationships.</p> <p>Section 20 (2) of SRO No. 4 of 2013 provides for necessary measures related to payable through accounts.</p>
<p>Rec. 8</p> <p>New technologies & non face-to-face</p>	NC	<p>There are no provisions which require the financial institutions to have measures aimed at preventing misuse of technology developments in money laundering and terrorist financing.</p>	<p>i. Financial institutions should be required to have measures aimed to prevent the misuse of technological developments.</p>	<p>Section 13 of the AML/CFT Code of Practice addresses this deficiency by creating a provision that states that "an entity or professional shall adopt and maintain such policies, procedures and other measures considered appropriate to prevent the misuse of technological developments for the purposes of money laundering or terrorist financing.</p> <p>Regulation 23 of the Money Laundering (Prevention) Regulations states that a person carrying on a relevant business shall put policies in place and take measures necessary to address any specific risks associated with non-face-to-face business relationships or transactions.</p>

				<p>Section 15 of the AML/CFT Code of Practice mandates that an entity or a professional shall exercise constant vigilance in its dealings with an applicant for business or with a customer, and in entering into any business relationship or one-off transaction, as a means of deterring persons from making use of its or his facilities for the purpose of money laundering and terrorism financing.</p> <p>The section further elucidates several additional CDD roles and duties of an entity or a professional to include:</p> <ul style="list-style-type: none"> • Verification of its customers • Keeping vigilance over any suspicious transactions • Ensuring compliance with reporting requirements to FIU • Record keeping • Putting in place a mechanism as part of its internal control to enable it to: <ul style="list-style-type: none"> ○ Determining confirmation of true identity of customers ○ Recognition of suspicious transactions and the reporting of same to the FIU <p>Ensure that reports to the FIU are made in a timely manner where a proposed or existing business relationship or one-off transaction with a politically exposed person gives grounds for suspicion.</p>
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<p>Rec. 9</p> <p>Third parties and introducers</p>	<p>PC</p>	<p>No requirement for financial institutions to immediately obtain from all third parties necessary information concerning certain elements of the CDD process referenced in Recommendation 5.3 to 5.6</p> <p>The requirement that financial service providers be ultimately responsible for obtaining documentary evidence of identity of all clients is not enforceable.</p> <p>Competent authorities should give guidance with regards to countries in which the third party can be based.</p>	<p>iv. Financial institutions relying on a third party should be required to immediately obtain from the third party the necessary information concerning the elements of the CDD process detailed in Recommendation 5.3 to 5.6.</p> <p>v. The requirement that financial service providers be ultimately responsible for obtaining documentary evidence of identity of all clients should be made enforceable</p> <p>vi. Competent authorities should take into account information on countries which apply FATF</p>	<p>Regulation 13 of the MLP Regulations of 2013. “Where a person carrying on a relevant business relies on an intermediary or third party to undertake its obligations under regulations 8, 9,10 or 19 or to introduce business to it-</p> <p>(a) It must be satisfied that the third party is able to provide copies of identification data and other documents relating to the obligation of due diligence under regulations 8,9,10 or19 without delay;</p> <p>(b) it shall satisfy itself that the third party or intermediary is regulated and supervised, and has measures in place to comply with the requirements set out in regulations 8,9,10,19,20 and 24.</p> <p>Section 2(4) of the Code of practice provides that notwithstanding anything contained within the code, the ultimate responsibility for complying with the requirements of the code rests with the entity or professional to whom the code applies.</p> <p>Section 54(1) places a responsibility on all entities engaging in business relationships and transactions to pay special attention to whether the jurisdiction of that foreign party sufficiently applies the FAFT</p>
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			<p>Recommendations in determining in which country the third party can be based.</p>	<p>recommendations with respect to money laundering and terrorist financing.</p> <p>Subsection 2 also mandates that the Financial Services Unit (FSU) publishes on its website a list of jurisdictions for the purposes of the Code of practice, the Money Laundering (Prevention) Regulations 2013 and the Suppression of Financing of Terrorism Act 2003, that are recognised as jurisdictions which apply FAFTF recommendations. By virtue of subsection 5, the FSU may from time to time issue advisories to entities to advise on the weaknesses in the Anti-money Laundering and Terrorist Financing systems of other jurisdictions. This will effectively assist financial institutions in making informed decisions when determining which Third party institutions they should utilise.</p>
<p>Rec. 10</p> <p>Record keeping</p>	C			<p>Money Laundering (Prevention) (Amendment) Regulation deals with record keeping.</p>

<p>Rec. 11</p> <p>Unusual transactions</p>	<p>PC</p>	<p>No requirement for financial institutions to examine as far as possible the background and purpose of complex, unusual large transactions and to set their findings in writing.</p>	<p>i. The Commonwealth of Dominica should consider amending its legislation so as to mandate financial institutions to examine the background and purpose of all complex, unusual or large business transactions whether completed or not, all unusual patterns of transactions which have no apparent or visible economic or lawful purpose.</p> <p>ii. The Commonwealth of Dominica should consider amending its legislation so that the financial institutions would be mandated to examine the background and purpose of all complex, unusual or large business transactions whether completed or not, all unusual patterns of transactions which have no apparent or visible economic or lawful purpose and set forth their findings in writing and to make such findings available to competent authorities and auditors.</p>	<p>Section 19 of the MLP Act No. 8 of 2011 as amended by section 6 of the Money Laundering (Prevention) (Amendment) Act meets the requirements of the examiners, as it places the obligations outlined in recommendation 11 on financial institutions or persons carrying on a scheduled business. Section 19(1)(ii) and (iii) states that <i>“A financial institution or person carrying on a scheduled business shall pay attention to- (ii) all unusual patterns of transactions, whether completed or not; (iii) insignificant but periodic transactions, that have no apparent or visible economic or lawful purpose.”</i></p> <p>Further, section 19(1A) states that <i>“A financial institution or person carrying on a scheduled business shall examine as far as possible the background and purpose of transactions under subsection (1) and shall keep a written record of their findings for at least seven years.”</i> Section 19(1B) states that: <i>“A financial institution or person carrying on a scheduled business shall make the records kept under subsection (1A) available to its auditor.”</i></p> <p>This deficiency is further addressed by the virtue of the AML/CFT Code of Practice as follows: Section 15(1) provides that:</p> <p><i>“An entity or a professional shall exercise constant vigilance in its dealings with an</i></p>
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				<p><i>applicant for business or with a customer, and in entering into a business relationship or one-off transaction, as a means of deterring persons from making use of any of its facilities for the purpose of money laundering and suppression of terrorist financing activities.”</i></p> <p>Pursuant to this particular provision, it is provided in section 15(2)(h) of the code that:-</p> <p><i>“An entity or a professional shall identify and pay special attention to, and examine as far as possible , the background and purpose of any complex or unusually large or unusual pattern of transaction or transaction that does not demonstrate any apparent or visible economic or lawful purpose or which is unusual having regard to the pattern of business or known sources of an applicant for business or a customer.”</i></p> <p>Paragraph (i) (i.e.: s.15(2)(i)) also expressly mandates that an entity has an obligation to record its findings in relation to any examination carried out pursuant to paragraph (h) above, and make such findings available to the FIU, and the auditors of the entity.</p> <p>Section 19 of MLP Act No. 8 of 2011 to be amended to include new sections (2) a</p>
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<p>Rec. 12</p> <p>DNFBP – R.5, 6, 8-11</p>	<p>NC</p>	<p>The requirements of Recommendations 5, 6, 8 to 11 are not adequately enforced on DNFBPs.</p>	<p>i. The deficiencies identified for all financial institutions for R.5, R.6, and R.8-11 in the relevant sections of this report are also applicable to DNFBPs. The implementation of the specific recommendations in the relevant sections of this report will also be applicable to DNFBPs.</p> <p>ii. While Dominica has passed legislation capturing DNFBPs under its AML/CFT regime, there is no competent authority that ensures these entities are subject to monitoring and compliance with the requirements of the MPLA or the Guidance Notes.</p> <p>iii. The licensed agents should be subject to ongoing monitoring and compliance given the role that they play in the keeping of and maintenance of beneficial owners’</p>	<p>Section 7 of the MLP Act No. 8 of 2011 establishes the Financial Services Unit as the Money Laundering Supervisory Authority.</p> <p>Section 9 (1) (b) of the FSU Act No. 18 of 2008 as amended by section 6 of Act No. 10 of 2011 mandates that the principal functions of the Director of the FSU are to monitor compliance with the Money Laundering (Prevention) Act and such other Acts, Regulations, Guidelines or the Codes relating to the money laundering (Prevention) Act or Suppression of the Financing of terrorism Act.</p> <p>Additionally, section 9 of the AML/CFT Code of Practice makes it the duty of the FSU to monitor compliance by its licenses and other persons who are subject to compliance measures, with the Code and any other enactment (including any other code, guidance notes and any guidelines) relating to money laundering or terrorist financing as may be prescribed by the Code or any other enactment.</p> <p>The FSU has developed a Structured Work Programme (SWP) that ensures that the Registered Agents (Licensed Agents) are subject to ongoing monitoring and compliance with the provisions of the AML/CFT Code of Practice.</p>
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			<p>information for IBC's and other companies that they register.</p> <p>iv. There should be some form of data capture during the year by the FSU outside of the reporting of STRs as required by the MPLA to the MLSA.</p>	<p>All Entities and Professionals are required to comply with the CDD requirements of PARTS II, III and VI of the AML/CFT Code of Practice. Non-compliance may result in the application of penalties referenced at sections 60 (5), (6) and (8) of the Proceeds of Crime (Amendment) Act No. 2 of 2014.</p> <p>Section 2 of the MLPA No. 8 of 2011 defines persons carrying on a Scheduled Business as any activity listed in PART II of the Schedule to the MLPA which list DNFBPs. Consequently, the CDD measures outlined in the ML (P) Regulations also extends to DNFBPs.</p> <p>Part II and III of the MLP Regulations 2012 DNFBPs are a subset of 'relevant business' as captured at Section 2 (1) in SRO No. 4 of 2013. Thus the SRO is applicable to DNFBPs.</p> <p>All STRs are currently being filed directly to the FIU as per section 4 (1) of the Financial Intelligence Unit Act No. 7 of 2011.</p> <p>Notwithstanding, the Financial Services Unit receives from various institutions and companies it regulates the following information which includes but is not limited to:</p> <ul style="list-style-type: none"> • Financial Statements
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				<ul style="list-style-type: none"> • Licensing Applications • Monthly Balance sheet and Income Statement <p>Monthly statement of assets and liabilities</p> <ul style="list-style-type: none"> • Quarterly, the Financial Services Unit receives the following data from the following sector: <ol style="list-style-type: none"> 1. Comprehensive quarterly return 2. Quarterly financial return • Annually, the Financial Services Unit receives audited financial statements from all regulated financial institutions. • AML/CFT Policies and future amendments made to these policies, are forwarded to the FSU for their consideration
Rec. 13 Suspicious transaction reporting	NC	<p>The requirement to report suspicious transactions should be linked to all transactions and not only to complex, large, unusual.</p> <p>No requirement to report attempted transactions.</p> <p>The reporting of an STR does not include transactions that are linked to terrorism financing, terrorism, terrorism acts, and terrorist organizations.</p>	<p>i. The financial institutions should be required to report STRs to the FIU.</p> <p>ii. The requirement for financial institutions to report suspicious transactions should also be applicable to attempted transactions.</p> <p>iii. The obligation to make a STR related to money laundering should apply to all offences to be included as predicate offences under Recommendation 1.</p>	<p>Sec. 19 (2) of the MLP Act No. 8 of 2011 Makes provision for the reporting of all transactions, proposed transaction or attempted transactions that raise reasonable suspicion of being related to money laundering offences or proceeds of crime to the Director of the FIU.</p> <p>2011 Act includes a new part A dealing with suspicious transactions. Section 19(A)(2) of</p>

		The legislation does not require the STR be reported to the FIU.	iv. The reporting of STRs should also include the suspicious transactions that are linked to terrorism, the financing of terrorism, terrorist organizations and terrorist acts.	<p>SFTA No. 3 of 2003 as amended by Section 11 of the SFT (Amendment) Act No.9 of 2011 requires financial institutions to report to the FIU where it “<i>suspects or has reasonable grounds to suspect that-</i></p> <p><i>(a) a transaction, proposed transaction or attempted transaction, is related to offences of terrorist or terrorist financing;</i></p> <p><i>(b) funds which are the subject of a transaction referred to in paragraph (b) are linked or related to, or to be used for terrorism, terrorist acts or by terrorist groups,”</i></p> <p>Section 19A was also intending to require the financial institutions to report funds which are a subject of funds referred to in section 19 (2) (a) which are linked to terrorist acts.</p> <p>The cross referencing error in 19a (2)(b) is being addressed by the Suppression of Financing of Terrorism Amendment Bill 2013. The reference to paragraph b will be changed to (a).</p>
Rec. 14 Protection & no tipping-off	LC	The prohibition against tipping-off does not extend to the directors, officers	i. The offence with regards to tipping-off should be extended to directors, officers and employees of financial institutions.	<p>Sec. 5 of the MLP Act No. 8 of 2011 does not limit the applicability of the section to any person or group of persons. It states “A person who has reasonable grounds to</p>

		and employees of financial institutions.		<p><i>believe that an investigation into a money laundering offence has been, is being or is about to be made shall not prejudice the investigation by divulging the fact to another person.”</i></p> <p>Additionally, section 21 of the MLPA No. 8 of 2011 states: “ A director, officer or employee of a financial institution or person carrying on a scheduled business who has made a suspicious transaction report shall not disclose that fact or any information regarding the contents of a suspicious transaction report to any other person, including the person in respect of whom the suspicious transaction report has been made, otherwise than for the purpose of -</p> <ul style="list-style-type: none"> (a) carrying out the provisions of this Act; (b) legal proceedings, including any proceeding before a judge in chambers; (c) complying with the terms of an Order of a Court; or (d) the Authority carrying out its powers and duties under the Financial Services Unit Act, 2008. <p>(2) A director, officer or employee of a financial institution or person carrying on a scheduled business who contravenes subsection (1), commits an offence and is liable on conviction to a fine of five hundred</p>
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				<p>thousand dollars and to imprisonment for a term not exceeding five years.”</p> <p>Sec. 5 of the MLP Act No. 8 of 2011 does not limit the applicability of the section to any person or group of persons. It states: <i>“A person who has reasonable grounds to believe that an investigation into a money laundering offence has been, is being or is about to be made shall not prejudice the investigation by divulging the fact to another person.”</i></p> <p>The ‘tipping off’ provision in Section 5 of the MLP Act No. 8 of 2011 references ‘a person’ which is very broadly defined at Section 2 (1) of the said Act and therefore, includes directors, officers and employees of financial institutions.</p> <p>As indicated above, it is clear that section 21(1)(a) of Act No. 8 of 2011 specifically refers to directors, officers and employees of Financial Institutions. This provision expressly provides that such persons shall not disclose information regarding the existence or contents of a suspicious transaction report to any other person including the person in respect of whom the report has been made otherwise than for certain specified purposes listed in paragraphs (a-d).</p> <p>Subsection (2) further provides that if such Directors, Officers and Employees of financial institutions contravene subsec.</p>
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				<p>(1), he commits an offence and is liable on conviction to a fine of five hundred thousand dollars and to imprisonment for a term not exceeding five years.</p> <p>These provisions effectively ensure that the directors, officers and employees of financial institutions are not excluded from liability in respect of ‘Tipping off’.</p>
Rec. 15 Internal controls, compliance & audit	PC	Financial institutions do not maintain an independent audit function to test compliance with policies, procedures and controls Internal procedures do not include terrorist financing.	i. The requirement to maintain independent audit functions to test compliance with procedures, policies and controls should be adhered to. ii. Requirement of the financial institutions to have internal procedures with regards to money laundering should also include terrorist financing.	Development of CFT Regulations. Section 3 (1) (a) (v) and (vi) of the MLP Regulations as per Section 54 (3) of Act No. 8 of 2011 Section 3 (1) (a) (v) of SRO No. 4 of 2013 requires a person carrying on a relevant business to maintain an audit function to test compliance with its anti-money laundering procedures, policies and controls. Section 3 (1) (a) (vi) of the cited SRO requires the maintenance of screening procedures to ensure high standards when hiring employees

				<p>The deficiencies concerning: the absence of an obligation that the audit function be independent and adequately resourced and the requirement that Financial Institutions have internal procedures regarding Money Laundering has been addressed.</p> <p>Section 12(4) of the AML/CFT code of practice now places a clear obligation of on every entity and professional as follows:</p> <p><i>“ Every entity and professional shall establish and maintain an independent audit function that is adequately resourced to test compliance, including sample testing, with its or his written system of internal controls and the other provisions of the Money Laundering (Prevention) Act 2011 or the Regulations made thereunder, and the suppression of Financing of Terrorism Act 2013, and this Code.”</i></p>
<p>Rec. 16</p> <p>DNFBP – R.13-15 & 21</p>	NC	<p>No effective application of R 13-14, R 15 and 21.</p> <p>No competent body to impose sanctions/fines.</p>	<p>i. There is no specific body charged with the duty of applying sanctions to DNFBPs without requiring a court order.</p> <p>ii. As well the FSU does not conduct ongoing monitoring and compliance checks on these entities or persons to</p>	<p>Via section 7 of the MLP Act No. 8 of 2011 the FSU is charged with the duty of applying sanctions to the DNFBPs without first requiring a court order. Sections 9-12 of the Act outlines the measures which the authority can take, none of which requires a court order.</p> <p>Section 11 of the MLP ACT No.8 of 2011 makes provisions for the imposition of sanctions on financial institutions and scheduled entities. These sanctions also</p>

			<p>ensure that the requirements of R 13-14, R 15 and 21 are complied with, particularly as regards the money remitters and licensed agents. It is recommended that a competent authority (FSU) be entrusted with the legal responsibility of imposing sanctions or fines as well as conducting on-going monitor and compliance.</p>	<p>include the imposition of fines. Section 12 (C) of the Act makes provisions for the imposition of a “pecuniary penalty” on schedule entities or financial institutions. Section 9(1) (b) of the FSU Act No. 18 of 2008 as amended by Section 6 of the FSU (Amendment) Act No. 10 of 2011 deals with onsite monitoring by FSU of scheduled entities and financial institutions.</p> <p>The FSU has established a structured work programme in August 2012, which includes onsite monitoring and offsite surveillance of scheduled entities. The FSU has conducted onsite inspections of the commercial banks and two offshore banks.</p> <p>Section 7 of the MLP Act No. 8 of 2011 and Section 9 (1) (b) of the FSU Act No. 18 of 2008 establishes the FSU as the Regulatory / Supervisory Authority for scheduled entities. DNFBPs are scheduled entities.</p> <p>The FSU SWP of August 2012 focused on inspections. A further developed SWP is forwarded herewith.</p> <p>Sections 11, 12 and 13 of the MLP Act No. 8 of 2011 authorizes the FSU to apply administrative sanctions on DNFBPs</p> <p>The FSU continues to conduct monitoring and compliance checks. See Recommendation 23 for details of the institutions visited and the exact periods during which these checks were</p>
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				conducted. A report from FSU evidencing same is attached for your consideration.
Rec. 17 Sanctions	NC	Lack of a designated regulatory body to apply sanctions/fines and the absence of a clearly defined process in the law or guidance notes.	i. There should be a competent body designated to impose administrative and civil sanctions/fines for non-compliance with the requirements of the AML/CFT legislation/regime. As well the legislation should define the process for applying these sanctions.	<p>Section 7 of the MLP Act No.8 of 2011 has established the FSU as the Money Laundering Supervisory authority. Under section 9 the Unit has the authority to issue directives and section 10-12 gives the the unit the authority to impose administrative and other sanctions on financial institutions and scheduled entities for non-compliance with the requirements of the Act and Regulations which reflect the requirements of AML//CFT. The sections also defines the process for applying these sanctions.</p> <p>Sec. 47 (1) of the SFTA No. 3 of 2003 as amended by Section 17 of the SFT (Amendment) Act No. 9 of 2011.</p> <p>Section 7 of the MLP Act No. 8 of 2011 and Section 9 (1) (b) of the FSU Act No. 18 of 2008 establishes the FSU as the Regulatory / Supervisory Authority for scheduled entities.</p> <p>The FSU SWP of August 2012 focused on inspections. A further developed SWP is forwarded herewith.</p>

				<p>Sections 11, 12 and 13 of the MLP Act No. 8 of 2011 authorize the FSU to apply administrative sanctions on scheduled entities.</p> <p>Section 47 (1) of the SFTA No. 3 of 2003 as amended by Section 17 of Act No. 9 of 2011 provides for administrative sanctions related to terrorist financing.</p>
<p>Rec. 18</p> <p>Shell banks</p>	NC	<p>The requirement for domestic and offshore banks not to enter into correspondent banking relationship with shell banks is not enforceable.</p> <p>No requirement for financial institution to satisfy themselves that the respondent financial institutions do not permit their accounts to be used by shell banks.</p>	<p>i. Financial institutions should not be permitted to enter into, or continue correspondent banking relationship with shell banks</p> <p>ii. Financial institutions should be required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.</p>	<p>Regulation 20(3) of the Money Laundering (Prevention) S.R.O4 of 2013 prohibits banking relationship with shell banks. The section states:</p> <p><i>“A bank shall not maintain a business relationship with banks that do not maintain a physical presence under the laws of which they were established, unless they are part of a financial group subject to effective consolidated supervision.....”</i></p> <p>This regulation is further supported by section 36(1)(a) of the code of practice which contains an outright prohibition against any entity entering into or maintaining a correspondent relationship with a shell bank or any other bank unless the entity is satisfied that the bank is subject to an appropriate level of regulation.</p> <p>Contravention of this subsection is deemed an offence under subsection 3 and any entity found liable will be proceeded</p>

				<p>against under section 60(5) of the Proceeds of Crime Act.</p> <p>The requirement that banks satisfy themselves that their respondent financial institutions do not permit their accounts to be used as shell banks is fully addressed in section 37(1)(a) of the code which places certain restrictions on correspondent banking. The provision is as follows:</p> <p><i>“A bank that is or that proposes to be a correspondent bank shall not enter into or maintain a relationship with a respondent bank that provides correspondent banking services to a shell bank.”</i></p>
<p>Rec. 19</p> <p>Other forms of reporting</p>	NC	<p>No evidence that Dominica has considered the feasibility and utility of implementing a fixed threshold currency reporting system.</p>	<p>i. The Commonwealth of Dominica is advised to consider the implementation of a system where all (cash) transactions above a fixed threshold are required to be reported to the FIU.</p> <p>In this regard the Commonwealth of Dominica should include as part of their consideration any possible increases in the amount of STRs filed, the size of this increase compared to resources available for analyzing the information.</p>	<p>The Financial Intelligence Unit has made contact with Curacao FIU in sourcing information re: the Currency Reporting System. The Communication and Information Technology Unit of the Government of Dominica have also been contacted re the feasibility and utility of such a system.</p> <p>A detail report with the specific recommendations and details for implementing such a system has been generated and submitted to the Director of the FIU for his consideration.</p> <p>A report from the Director of the was appended to the analysis and submitted to the AML/CFT Technical Working Group</p>

				<p>chaired by the Honourable Attorney General for its consideration.</p> <p>The AML/CFT Technical Working Group endorsed the recommendations made by the Director of the FIU with respect to this recommendation. (See attached documents)</p> <p>It was decided that it would not be feasible at this time to implement a system as the one referred to in Recommendation 19. In the interim, reliance will be placed on the Director's Written Request for information which can be used as a tool to source the same information for any period requested. Additionally, the information contained on the STRs filed by FIs and DNFBPs will also assist in the Unit's data collection and analysis efforts relative to transactions above a particular threshold.</p>
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Rec. 20	PC	Procedures adopted for modern secure techniques are ineffective	<p>i. More on-site inspections are required.</p> <p>ii. Modern secured transaction techniques should be scheduled under the Money Laundering (Prevention) Act, 2000 (Chapter 40:07),</p>	<p>The FSU continues to conduct onsite inspections on a regular basis. The information regarding the institutions inspected and the evidence of the observations made and the relevant dates can be seen in the attached document from the FSU and under Recommendation 23.</p> <p>In Dominica, there is an absence of any legislative or other restrictions on the efforts of financial institution to develop current procedures and make use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.</p> <p>Separate and apart from this absence of restrictions, Financial Institutions are further encouraged to ensure that there are safeguards to prevent the misuse of technology for the purposes of money laundering and terrorist financing.</p> <p>S.13 of the AML/CFT code of Practice provides as follows:</p> <p>“An entity or a professional shall adopt and maintain such policies and proceudres and their measures considered appropriate to prevent the misuse of technological developments for the purposes of money laundering and terrorist financing.</p> <p>Financial Institutions, being unrestricted, have made some strides in the</p>
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				<p>development and use of modern and secure techniques for conducting financial transactions.</p> <p>In fact, there are five major banking institutions Dominica with a total of twenty eight (28) Automated Banking Machines (ATMs).</p> <p>The National Bank of Dominica for example, has the most with twenty one (21) ATMs. The National Bank of Dominica introduced Mo-Banking in 2009. MoBanking is convenient and secured banking on your mobile phone. This new wave of banking can be accessed via text or a web browser on a cell phone, laptop or PC. Over the last five years all of the Financial institutions in Dominica have increase the number of ATMs access to clients,</p>
Rec. 21 Special attention for higher risk countries	NC	<ul style="list-style-type: none"> • There are no measures that require competent authorities to ensure that financial institutions are notified about AML/CFT weaknesses in other countries. • There are no provisions that allow competent authorities to apply counter-measures to countries that do not or 	i. Effective measures should be established to ensure that financial institutions are advised of concerns about AML/CFT weaknesses in other countries.	<p>Section 53 and 54 of the Code addresses this issue by encouraging dialogue between the FIU and FSU with the private sector and financial institutions. Section 53 (2)states : “ the FIU and the FSU shall either through the Joint Anti-money Laundering and Suppression of Terrorist Financing Advisory Committee or directly, encourage and promote dialogue with private sector entities and professionals with a view</p> <p>a) To establishing a broad-based understanding and awareness of issues concerning money</p>

		insufficiently apply the FATF Recommendations.		<p>laundering and terrorist financing; and</p> <p>b) To promoting the exchange of information on money laundering and terrorist financing matters.</p> <p>54. (1) Every entity and professional shall pay special attention to a business relationship and transaction that relates to a person from jurisdiction which the FSU considers does not apply or insufficiently applies the FATF Recommendations with respect to money laundering and terrorist financing.</p> <p>(2) the FSU shall publish on its website a list of jurisdictions for the purposes of this Code, the Money Laundering (prevention) Regulations, 2013, the Suppression of the Financing of Terrorism Act, 2003, that are recognized as jurisdiction</p> <p>a) Which apply the FATF Recommendations and which the FSU considers, for the purposes of subsection (1), apply or sufficiently apply those Recommendations; and</p> <p>Whose anti-money laundering and terrorist financing laws are equivalent with the provisions of the Money Laundering (Prevention) Regulations, 2013, the Suppression of Financing of Terrorism Act, 2003, and this Code.</p> <p>Section 56 of the code adequately addresses this issue, as the FSU is provided with the</p>
			i. There should be requirements to allow for the application of counter-measures	

			<p>to countries that do not or insufficiently apply the FATF Recommendations.</p>	<p>authority to impose sanctions on foreign jurisdictions which do not apply or insufficiently apply the FATF Recommendation. The section states “ Where the FSU forms the opinion that a jurisdiction in relation of which Dominica engages in business or the provision of any service through an entity or a professional-</p> <ul style="list-style-type: none"> a) does not apply or insufficiently applies the FATF Recommendations, b) has received an unsatisfactory or poor rating form the FATF, CFATF or any other similar organisation reviewing the jurisdiction’s ant money laundering and terrorist financing regime, or c) has no specific regulatory body or agency corresponding to the FSU or FIU which renders assistance on request to authorities in Dominica with respect to money laundering an terrorist financing activities <p>the FSU may apply such counter-measures as it deems fit in relation to that jurisdiction.</p> <p>Section 56(2) of the Code provides a list of some of the counter measures which the FSU may impose. Further section 56(3) makes it an offence to contravene a counter measure imposed by FSU pursuant to section 56(1) of the Code and an entity or professional is liable to be</p>
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				proceeded against under section 60 (5) of the Proceeds of Crime Act.
Rec. 22 Foreign branches & subsidiaries	PC	<ul style="list-style-type: none"> Requirement to inform the home country supervisor when local laws and guidelines prohibit the implementation. 	i. Inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CTF measures because this is prohibited by local laws, regulations and measures.	<p>Section 55 of the Code directly addresses this deficiency:</p> <p>Sub-Section 55 states that-</p> <p><i>“(5) “An entity that has branches, subsidiaries or representative offices operating in foreign jurisdictions shall notify the FIU and the FSU in writing if any of the entity’s branches, subsidiaries or representative offices is unable to observe appropriate anti-money laundering and terrorist financing measures on account of the fact that such observance is prohibited by the laws, policies or other measures of the foreign jurisdiction in which it operates.</i></p> <p><i>(6) Where a notification is provided pursuant to subsection (5)-</i></p> <p><i>a) The entity concerned may consider the desirability of continuing the operation of the branch, subsidiary or</i></p>

				<p><i>representative office in the foreign jurisdiction and act accordingly; and</i></p> <p><i>b) The FIU and FSU shall liaise and consider what steps, if any, need to be adopted to properly and efficiently deal with the notification, including the need or otherwise of providing necessary advice to the entity concerned.</i></p>
<p>Rec. 23</p> <p>Regulation, supervision and monitoring</p>	NC	<ul style="list-style-type: none"> No competent authority assigned the responsibility of monitoring and ensuring compliance with AML/CFT requirements. No specific body entrusted with the responsibility for conducting on-site examinations and regular off-site monitoring. 	<p>i. The FSU should be entrusted with the legal authority to ensure compliance with the MLPA, its Regulations and the Anti-Money Laundering Guidance Notes. As well the Unit should implement a structured work programme, approved by the Financial Director to ensure ongoing on-site and off-site monitoring. These measures should be applicable to all institutions under the regulation and supervision of the FSU. The Unit should also be legally entrusted with the responsibility to license or register DNFBP'S and those financial institutions not under the purview of the ECCB.</p>	<p>Sec. 9 (1) (b) of the FSU Act 18 of 2008 speaks broadly to the monitoring of compliance by regulated persons. This monitoring can take the form of either offsite and onsite or both types of monitoring. Under the Money Laundering (Prevention) Act NO.8 of 2011, the FSU was made the Money Laundering Supervisory Authority. The FSU Amendment Bill will amend</p> <p>section 9 of the Act in paragraph b to specifically include offsite surveillance.</p> <p>Section 6 (2) Money Services Business Act No. 8 of 2010. Notwithstanding that the Minister is the one who actually issues the licence, the FSU is the one who is charged with the important task of conducting the investigations to ascertain the nature of</p>

				<p>the business of applicants , that the applicant is a fit and proper person to conduct business among other things. As such the FSU plays a fundamental role in the issuing of licenses.</p> <p>By virtue of the Money Laundering (Prevention) Act No.8 of 2011 the FSU is now the supervisory authority and it is now entrusted with</p> <ul style="list-style-type: none"> • The supervision of all financial institutions and persons carrying on scheduled business • Developing anti-money laundering strategies for Dominica • Advising the Minister with regard to any matter relating to money laundering • Creating and promoting training requirements for financial institutions and persons carrying on scheduled businesses • Conducting inspections of any financial institutions or scheduled businesses whenever it is necessary to do so to ensure compliance with requirements of the MLP Act. • Sending of information received from inspection to the Unit where it is believed that a money laundering offence has been committed.
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				<p>The FSU has established a structured work programme in August 2012, which includes onsite monitoring and offsite surveillance of scheduled entities. The FSU has conducted onsite inspections of the commercial banks and two offshore banks. More information is required.</p> <p>Information concerning same inclusive of the names of the institutions examined and the relevant dates is attached.</p> <p>The FSU Structured Work Program (SWP) established in August 2012 focused essentially on inspections. A further developed FSU SWP is submitted herewith.</p> <p>As obtains with other jurisdictions, offsite surveillance is not legislated as it is not necessary to legislate offsite surveillance. However, Dominica intends to make the legislative amendment before the May Plenary.</p> <p><u>Examinations</u></p> <p>The FSU has conducted onsite examinations of the various financial institutions set out in Part 1 of the Schedule to Act No. 8 of 2011 and Schedule 2 of Act No. 9 of 2011 to examine compliance with the MLPA/CFTA and the guidance notes and to satisfy itself that there is sound compliance by the sector with the legislative requirements. The</p>
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				<p>following is a list of the onsite examination which was done:</p> <p><The names of individual private sector institutions were removed for confidentiality reasons></p> <p><The</p> <p><u>Offsite Examinations</u></p> <ul style="list-style-type: none"> • The Institutions AML/CFT compliance programme was submitted to the Financial Services Unit during the period August 2012 to December 2012 where an offsite evaluation has been conducted to assess the level of prudence and compliance that exists at various institutions as it relates to combating money laundering and terrorist financing. During this evaluation the following areas were ; the institutions risk profile, volume of business, nature of business, customer base, product and services offered, training programme, effectiveness of compliance officer, reporting and record keeping, customer due diligence, know your employees and customers and customer identification programs.
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				<p><i>During the period June 2013 to present, off site surveillance of the sectors continues as mandated by legislation. At present, all the institutions' AML/CFT policies have been received and reviewed by the FSU and recommendations have been made where necessary.</i></p> <p><i>A sensitization workshop was conducted to include the scheduled entities and financial institutions on July 28 & 29, 2013</i></p> <ul style="list-style-type: none"> <i>• Training was provided for staff and management of Barnett Capital Bank, First Domestic Insurance, Easy Money Financial, Western Union, Sagcor insurances and the Credit Union Sector</i> <i>• Additionally, the FSU was schedule a follow up sensitization workshop for April 15, 2014 to include the Car Dealers ,Jewelers, Building and Loan Societies, telecommunications, utilities companies and Dominica Social Security</i> <i>• The FSU has implemented a database solely designed for capturing and storing information relating strictly to AML/CFT. The database is administered by the</i>
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				<p><i>Senior Examiner and one other AML/CFT examiner.</i></p> <ul style="list-style-type: none"> <i>The FSU website is in its final stage and should be launched by March 31, 2014.</i> <p>As part of the structured work programme of the Financial Services Unit, it is expected that during the quarter ending June, 2013 the follow up process of bot onsite and offsite evaluation of all the Schedule entities will be conducted and emphasis placed on continued evaluation of these institutions.</p> <p>Members of the FSU who are responsible for conducting onsite inspections are currently undergoing CAM certification in order to equip them with more useful tools for conducting inspections. This will also help in the area of demonstrating that the FSU has adequate expertise in terms of training of its examiners.</p> <p>The FSU has also made some improvements to its work program in attempt to provide the necessary information required from the examiners. A copy of the structured work program and the inspection manual is attached hereto.</p>
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<p>Rec. 24</p> <p>DNFBP - regulation, supervision and monitoring</p>	<p>NC</p>	<ul style="list-style-type: none"> No regulatory/supervisory measure are in place to ascertain compliance with AML/CFT laws and guidelines nor, is the FSU charged with the responsibility of monitoring and ensuring compliance with AML/CFT requirements. 	<p>i. There is no comprehensive regulatory and supervisory regime that ensures compliance by casinos and other DNFBPs with the AML/CFT regime that is in place. As well, there is no designated regulatory body to discharge that function as well as to apply relevant sanctions/fines for non-compliance.</p> <p>ii. It is recommended that a competent body, the FSU be charged with the responsibility of monitoring and ensuring compliance with the requirements of the regime as well as imposing sanctions.</p> <p>iii. The AML/CFT legislation should also detail the process to be adopted when applying sanctions.</p>	<p>Section 7 of the MLP Act No.8 of 2011 has established the FSU as the Money Laundering Supervisory authority. Under section 9 the Unit has the authority to issue directives and section 10-12 gives the the unit the authority to impose administrative and other sanctions on financial institutions for non-compliance with the requirements of the Act and Regulations which reflect the requirements of AML//CFT. The sections also define the process for applying these sanctions.</p> <p>Section 7 and 8 of the MLP Act No. 8 of 2011.</p> <p>Section 9 (1) (b) of the FSU Act No. 18 of 2008 as amended by section 6 of the FSU (Amendment) Act No. 10 of 2011 deals with onsite monitoring.</p> <p>Sec. 47 of the SFTA No. 3 of 2003 as amended by Section 17 of the SFT (Amendment) Act No. 9 of 2011.</p>
<p>Rec. 25</p> <p>Guidelines & Feedback</p>	<p>NC</p>	<ul style="list-style-type: none"> Non issuance of specific guidelines to assist DNFBPs and other financial institutions with 	<p>i. The Authority should provide financial institutions and DNFBPs with adequate and appropriate feedback on the STRs.</p>	<p>This recommendation requires that the FIU provides financial institutions and DNFBPs with adequate and appropriate feedback having regard to FATF best practices. In accordance with this</p>

		<p>implementing the requirements of the AML/CFT regime.</p> <ul style="list-style-type: none"> • Non issuance of guidelines by SROs and other competent authority (FSU) for DNFBPs. • The authority has not provided the financial sector with adequate and appropriate feedback on the STRs 	<p>i. The FSU in addition to the MLSA should issue specific guidance notes or other targeted guidelines that can assist financial institutions other than domestic commercial banks, as well as DNFBPs to effectively apply the provisions of the MPLA, and its Regulations.</p>	<p>requirement, <u>section 8</u> of the code stipulates the required conduct of the FIU in respect of matters not limited to acknowledgment of receipt and reporting, upon the receipt of STRs. The code states as follows:</p> <p>“The FIU should on receipt of a report, promptly acknowledge the receipt of the report in writing addressed to the entity which, or professional who, made the report and-</p> <ul style="list-style-type: none"> <i>a) Assign it to such investigating officer of as the director of FIU determines;</i> <i>b) Through the investigating officer, conduct inquiries to ascertain the basis for the suspicion;</i> <i>c) Ensure the customer who is subject to the inquiry is as far as possible, never approached during the conduct of inquiries;</i> <i>d) Maintain the integrity of a confidential relationship between FIU, other law enforcement agencies and the reporting entities and professionals and any person acting for , through or on behalf of the entities or professionals;</i> <i>e) <u>Keep the reporting entity or professional informed of the interim and final result of any investigation consequent to the reporting of a suspicion to the FIU;</u></i>
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				<p><i>f) <u>On the request of the reporting entity or professional, promptly confirm the current status of an investigation with respect to a matter reported to the FIU and ;</u></i></p> <p><i>g) <u>Endeavour to issue an interim report to the institution at regular intervals and in any event to issue the first interim report within three months of a report being made to the FIU.</u></i></p> <p>Section 8 (e) of the Code places an obligation on the FIU to provide financial institutions and DNFBP's with interim and final results of any investigation consequent to the reporting of a suspicion to the FIU. These reports would provide the institutions with necessary feedback.</p> <p>Section 8 of the Code adequately deals with the requirements of recommendation 25 as it relates to FATF Best Practices.</p> <p>FSU is in the process of creating guidelines to assist financial institutions and DNFBPs to effectively apply the provisions of the MLPA.</p>
Institutional and other measures				

<p>Rec. 26</p> <p>The FIU</p>	<p>PC</p>	<ul style="list-style-type: none"> • The FIU is not the central authority for the receipt of STRs from reporting entities. • In practice STRs are filed with the MLSA and copies are made available to the FIU. • The FIU does not have total control over the STRs it maintains on behalf of the MLSA. • Although the FIU has almost immediate access to the STRs submitted by the Financial Institutions and other scheduled entities, the MLPA charges that the STRs should be sent to the Money Laundering Supervisory Authority (MLSA) who is then charged with sending it to the FIU. At the same time the legislation requires that STRs relating to the TF should be sent to the Commissioner of Police. 	<p>i. The FIU should be made the central authority for the receipt of STRs from reporting entities as it relates to both Money Laundering and Terrorist Financing.</p> <p>ii. The FIU should have more control over its budget since the control currently maintained by the Ministry could impact the Unit's operation and to some extent its independence.</p>	<p>Sec. 4 (1) (a) of the FIU Act No. 7 of 2011 makes the FIU the central authority for receipt of STR reporting and information relating to the property of terrorist groups and financing. Sec. 19 (2) of the MLP Act No. 8 of 2011 dictates that suspicious transactions be reported to the FIU.</p> <p>Section 19A (2) of the SFT Act No. 3 of 2003 as amended by Section 11 of the SFT (Amendment) Act No. 9 of 2011. This section clearly states that suspicious transactions as it relates to money laundering and terrorist financing “shall promptly” be reported to the “Unit”. Unit in this section refers to the FIU. So both the MLPA and the SFTA acknowledges the FIU as the central authority for the receipt of STRs.</p> <p>Essential Criteria 26.1 states “...<i>The FIU can be established either as an independent governmental authority or within an existing authority or authorities.</i>” As such, Dominica has established its FIU within an existing governmental authority namely the Ministry of Tourism & Legal Affairs.</p> <p>The FIU has its own budget which is under the control of the Director of the FIU. All expenditures from the FIU's budget are controlled and authorized by the said Director.</p>
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		<ul style="list-style-type: none"> The data held by the FIU however, all backup data are housed on site which effectively defeats the purpose of having the backup done. 		

		<ul style="list-style-type: none"> The annual report prepared by the Unit is not made public. 		<p>The FIU continues to maintain comprehensive and secured databases on the Microsoft SQL Platform in accordance with essential criteria 32.2 of Recommendation 32.</p> <p>In 2012, the FIU received 87 STRs, 15 requests from the Police Service, 6 requests from Regional FIUs and 6 requests from Members of the Egmont Group. The FIU made two requests of Egmont Members. All requests were fulfilled.</p> <p>The FIU has an active case portfolio of 25 cases with 16 cases at the Magistrate's Court.</p>
<p>Rec. 27</p> <p>Law enforcement authorities</p>	PC	<ul style="list-style-type: none"> No consideration of taking measures providing for the postponement or waiving of arrest of suspects or seizure of money for the purpose of identifying suspects or for evidence gathering. There is no group specialized in investigating the proceeds of crime. 	<p>i. Provisions should be made in domestic legislation that allow authorities investigation ML cases to postpone or waive the arrest of suspected persons and/or the seizure of money for the purpose of identifying persons involved in such activities or for evidence gathering.</p>	<p>By virtue of the Criminal Law and Procedure (Amendment) Act No. 3 of 2014 which inserted a new section into the Criminal law and Procedure Act Chap 12:01, this deficiency has been addressed.</p> <p>The new section 13A provides as follows: <i>“ For the Purpose of gathering evidence to identify a person involved in the commission of an offence or to facilitate a prosecution for an offence, the minister may by regulations provide for :</i> <i>a. Money or property that authorised officers reasonably suspect has been, is being or may be used to commit an offence under the Act , to enter leave or move through Dominica; and</i></p>

			<p>ii. Legislation should be put in place to provide investigators of Money Laundering and Terrorist financing cases with a wide range of investigative techniques including controlled delivery.</p> <p>iii. There should be a group of officers who would be trained in investigating the proceeds of crime, perhaps in the NJIC, who would supplement the efforts of the FIU.</p>	<p><i>b. The protection of authorised officers from criminal and civil liability for acts performed under paragraph (a) in good faith in the exercise of their duties.</i></p> <p>Section 13A (3) also provides that an authorised officer does not commit an offence if-</p> <p><i>a. The authorised officer is engaged in investigation of a suspected offence; and</i></p> <p><i>b. The offence involves money or property that the authorised reasonably suspects has been, is being or may be used to commit an offence.</i></p> <p>The aspect of using controlled deliveries as an investigative technique has been addressed by an amendment to the Criminal Law and Procedure Act. The Criminal Law and Procedure (Amendment) Bill was passed in Parliament on March 19th 2014 and has addressed this issue.</p> <p>Guidelines have also been created to deal with the procedures to govern controlled deliveries. These guidelines are attached.</p> <p>As part of its strategic approach to assist in the efforts to deter, prevent and thwart money laundering, the CDPF has trained a cadre of police officers in financial investigations, money laundering, terrorist financing and cyber-crime</p>
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				<p>investigations. Between 2008 and 2012 some twenty eight (28) police officers have been trained to facilitate the detection, prevention and deterrence of money laundering and the financing of terrorist activities.</p> <p>As part of our the mandate of the Money Laundering Supervisory Authority, the FSU is responsible for providing training and assisting the sector in efficiently structuring and educating its staff and those directly involved in the financial services sector. The following training has been provided, both internally and externally;</p> <ol style="list-style-type: none"> 1. May 2012, In house education on Money Laundering and Terrorist Financing by Mr. Artherton Nesty, Senior Examiner 2. July 2012, Training provide to the Money Services Business Sector, on Combating Money laundering and Terrorist Financing and familiarization with the various pieces of legislation. 3. September 10,17 and 24 2012, training provided to Financial Services Inc.(Fast Cash), Money laundering and Terrorist Financing by Mr. Artherton Nesty
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				<ol style="list-style-type: none"> 4. October 2012, Training provided to Easy Money Financial Corporation on Combating Money Laundering. 5. November 2012, Training provided to the Credit Union Sector on Terrorist Financing and Money Laundering 6. February 2013, training provided to Archipelago Trading/Cambio Man, Money Gram on the familiarization with the AML/CFT Act and the combating of Money Laundering. <p>The Financial Services Unit continue to ensure that the financial sector is properly educated as it relates to combating money laundering and terrorist financing and in this drive have put in place a structured work programme for 2013 which will place much emphasis on Training, offsite and onsite examination and prudential benchmarks related to AML/CFT in the Commonwealth of Dominica.</p> <p>A policy has been drafted which deals with the use of controlled deliveries as an investigative tool in both money laundering and terrorist financing cases. Dominica is currently in the process of the drafting of MOU's between itself and its Caribbean counterparts which allow the use of Controlled deliveries regionally.</p> <p>A copy of the policy document is attached.</p>
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<p>Rec. 28</p> <p>Powers of competent authorities</p>	<p>PC</p>	<ul style="list-style-type: none"> • No provision in the SFTA which affords the FIU or the Commissioner of Police the ability to compel the production of business transaction records, in pursuit of TF investigations. • No explicit legal provision for predicate offences investigators to obtain search warrants to seize and obtain business transaction records. 	<p>i. The SFTA should be amended to provide investigators with the ability to compel the production of business transaction records.</p>	<p>By virtue of section 4 of the Proceeds of Crime (Amendment) Act 10 of 2010, Terrorism and Financing of Terrorism are scheduled offences.</p> <p>By section 41 (b) of POCA, a production order may be applied for by a police officer to a Judge in Chambers, where he has reasonable grounds to suspect that a person has committed a scheduled offence (an offence of terrorism) and that a person has possession or control of any documents relevant to identifying, locating or quantifying property of the person who committed the offence or to identifying or to locating a document necessary for the transfer or property of the person who committed the offence.</p> <p>Section 41(a) allows for the same application to be made but post-conviction.</p> <p>An order under subsection (5)(a) shall not be made in respect of accounting records used in the ordinary business of banking including ledgers, day-books, cash books and account books.</p> <p>Production orders are both pre and post investigative tools that allows access to and production of records by persons to a designated person, in a specific form.</p>
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			<p>ii. There should be explicit legal provisions for the investigators of predicate offences to be able to obtain search warrants which would enable them seize and obtain business transaction records.</p>	<p>Section 46 of POCA #4 of 1993 makes provisions that i) where a person is convicted of a scheduled offence or ii) where the police officer has reasonable grounds for suspecting that a person has committed a scheduled offence, for a police officer to apply to the Judge of the High Court for a search warrant to seize necessary documents in an effort to facilitate an investigation.</p>
<p>Rec. 29 Supervisors</p>	<p>PC</p>	<ul style="list-style-type: none"> FSU does not have the authority to conduct inspections of financial institutions, including on-site inspections to ensure effective monitoring and compliance. 	<p>i. The FSU should be legally entrusted with the authority to monitor and ensure compliance with the AML/CFT requirements. As well the Unit should be able to conduct on-sites, request off site information and should be entrusted also with adequate powers of enforcement against its licensees and registrants that are not subject to the Off Shore Banking Act or the Banking Act.</p>	<p>Section 1 (3) of the FSU Act No. 18 of 2008 as amended by Section 3 of the FSU (Amendment) Act No. 10 of 2011</p> <p>Section 7 of the MLP Act No. 8 of 2011 of the Act establishes the FSU as the Money Laundering Supervisory Authority. Section 8 of the MLPA Act No. 8 of 2011 outlines the functions of the Authority. Section 9 of the Act provides the FSU with the authority to issue guidelines in respect of standards to be observed and measures to be implemented by financial institutions.</p> <p>Section 10-12 entrusts the FSU with adequate powers of enforcement against scheduled entities and financial institutions which include the powers to issue directives as contained in section 10; the power to impose administrative sanctions as captured by section 11; and to provide for the suspension of activities and suspension and</p>

				<p>revocation of licensees as <i>contained</i> in section 12 of the Act.</p> <p>Section 9 of the FSU Act No. 18 of 2008 entrusts the FSU with the authority to monitor and ensure compliance with the AML/CFT requirements. Sections 9(1) (a-d) specifically deal with monitoring compliance.</p> <p>Section 9 as amended by section 6 of the Financial Services Unit (Amendment) Act 10 of 2011 makes provision for on site monitoring.</p> <p>A proposed amendment has been tabled in front of Parliament to make provision for offsite surveillance. Section 9 of the Act will be amended in paragraph (b) by inserting the words “and offsite surveillance” immediately after the word “examinations.”</p>
<p>Rec. 30</p> <p>Resources, integrity and training</p>	NC	<ul style="list-style-type: none"> • The staff of the FIU consists of only four persons where the Senior investigator functions as the systems administrator who in the absence of the Director also has to take on those duties. • There is not a sufficient staff compliment in the Police, the FIU and the 	<p>i. The staff of the Unit should be expanded to include a database administrator.</p> <p>ii. The FSU is not adequately staffed. The Unit’s request for additional staff should be adhered to. It is also recommended that a restructuring of the Unit should be considered so that its regulatory and supervisory functions can be discharged effectively.</p>	<p>As at August 1, 2012; the FIU has a permanent staff of 6 officers. A primary responsibility of one of these officers is data base management.</p> <p>The FSU currently has a staff compliment of 3 Senior Examiners, 4 Junior Examiners and a Secretary. There are two (2) dedicated Examiners with exclusive responsibility for AML/CFT supervision. However, all other Examiners perform AML/CFT supervision of their respective</p>

		<p>Supervisory Authority to be able to completely deal with issues relating to ML, FT and other predicate offences.</p> <ul style="list-style-type: none"> • There is also only limited continuous vetting of officers to ensure that the highest level of integrity is maintained. • The FSU should be adequately staffed to discharge its functions. • The staff, and budget and Anti-money laundering/combating of terrorist financing training of the staff in the DPP Office is in adequate 	<p>iii. The FSU should consider the establishment of databases to allow for effective off-site supervision.</p>	<p>sectors during their on-site and off-site inspections.</p> <p>In October of 2013, a database which was created by the Information Communication and Telecommunication Unit was installed and handed over to the FSU to assist them in storing and analysing AML/CFT data.</p> <p>Additionally, in February 2014, a Financial Services Unit website was handed over to the FSU, which will be used to assist in its outreach and supervisory functions. Training is ongoing with the officers of the FSU. Training of the FSU staff in the use of the website is currently ongoing prior to the launching of the website.</p> <p>The FIU continues to maintain comprehensive and secured databases on the Microsoft SQL Server Platform in accordance with essential criteria 32.2 of Recommendation 32.</p> <p>In 2012, The FIU received technical assistance from ECFIAT in case management and capacity building and from NAS of the US Embassy in capacity building.</p> <p>OAS CICAD and CICTE and UNODC had given the FIU technical assistance in</p>
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			<p>iv. Technical resource- The Police Force should be provided with better communication equipment.</p> <p>v. With the increased demand on the Police the numbers in the police contingent should be increased.</p> <p>vi. Special training in money laundering and terrorist financing should be provided to magistrates and judges to ensure they are familiar with the provisions for dealing with the seizure, freezing and confiscation of property</p> <p>vii. There should be a group of officers who would be trained in investigating the proceeds of crime, perhaps in the NJIC, who would supplement the efforts of the FIU.</p>	<p>October 2011 and is considering the delivery of further technical assistance</p> <p>The establishment of the Commonwealth of Dominica Police Force was increased to five (500) hundred by a Cabinet decision dated March 2, 2010 by the creation of fifty (50) new Police Constables positions. The present strength is four hundred and sixty with forty (40) vacancies which is mostly due to attrition. Some thirty eight (38) Police Recruits commenced training at the Police Training School at Morne Bruce on March 1, 2013 and are expected to join the ranks of the Police Force by September 2013. The Government of Dominica has given a commitment to further increase the establishment of the Police Force by the creation of an additional one hundred (100) new positions.</p> <p>As part of its strategic approach to assist in the efforts to deter, prevent and thwart money laundering, the CDPF has trained a cadre of police officers in financial investigations, money laundering, terrorist financing and cyber-crime investigations. Between 2008 and 2012</p>
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			<p>viii. There should be regular inter agency meetings among all the agencies that are charged with ensuring the effectiveness of the AML/CFT regime.</p>	<p>some twenty eight (28) police officers have been trained to facilitate the detection, prevention and deterrence of money laundering and the financing of terrorist activities.</p> <p>Recently, some of these trained police officers were able to provide support for the FIU during a major money laundering investigations.</p> <p>As part of Dominica Police Force's approach to effective criminal intelligence gathering, the NJIC is charged with the responsibility to deal with intelligence gathering as it pertains to national security issues and not the investigations of money laundering and terrorist financing cases.</p> <p>The Commonwealth of Dominica Police Force established a Major Crimes Unit within the police force to augment and enhance the investigations of serious crimes in the Commonwealth of Dominica in September 2013.</p> <p>The Unit's current complement is 21 police officers stationed at various sections and departments of the Police Force and are called on a needs basis. It is headed by an Assistant Superintendent of Police and includes officers that have benefited from ongoing training at REDTRAC in</p>
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			<p>ix. There should be put in place some measures to vet the officers in these agencies to ensure that they maintain a high level of integrity</p>	<p>Jamaica. Thus far, six (6) officers have benefited from computer forensics and financial investigations training at REDTRAC.</p> <p>As the name suggest, this Unit focuses on the investigation of major crimes in the jurisdiction and compliments the work of the Financial Intelligence Unit with the investigation of predicate offences (major crimes) to money laundering.</p> <p>Custom and Excise personnel is also an important part of the law enforcement apparatus. There are several units in this department that are responsible for investigations into money laundering, terrorism financing and FATF 20 designated categories of offences. These units are the Intelligence Unit, Investigation Unit, Mobile Unit, Risk Management Unit and the Canine Unit.</p> <p>The Dominica Police Force introduced polygraph testing as part of its vetting process of persons who work in sensitive or specialized sections such as the CID, Anti-crime Task Force, Drug Squad, Special Branch, and NJIC in 2011. The polygraph testing of the ranks of the</p>
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			<p>x. Databases should be established which can be shared by all authorities responsible for monitoring and ensuring compliance with the AML/CFT regime in Dominica.</p>	<p>Police Force is being done on a voluntary basis.</p> <p>The vetting process is coordinated by the Regional Security System (RSS) and funded by the US Embassy in Barbados. The US only provides funding for the vetting of persons in specialized sections or areas.</p> <p>Between November 2012 and February 2013 some sixty eight (68) police officers were vetted comprising of senior managers, middle managers and lower ranks. Other sensitive personnel and other ranks will be vetting if funding is available. Outside funding will have to be sourced for personnel not in specialized or sensitive areas and new entrants into the Police Force.</p> <p>In February 2014, the Dominica Police Force installed a new database at its headquarters in Roseau. It is currently in the process of conducting data entry activities at the Administration Section, The Criminal Investigation Department and the Charge Office.</p> <p>Data on personnel, outstanding warrants, land and sea patrols, motor vehicle licenses, firearm license among other data types are among some of the information that is being populated in the new database.</p>
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				<p>All district police stations will be given access to the database via the Police Wide Area Network (WAN).</p> <p>It is envisioned that in the future, the database will be able to connect to the Regional Integrated Ballistic Information Network (RIBIN). The Regional Integrated Ballistic Information Network, also known as RIBIN, is a network that can capture, store, and rapidly compare digital images of bullets and cartridge casings. It generally supports the sharing of ballistic information.</p> <p>The staff, and budget and Anti-money laundering/combating of terrorist financing training of the staff in the DPP Office is in adequate</p> <p>The permanent staff of the Office of the Director of Public Prosecutions consists of the Director of Public Prosecutions and two State Attorneys.</p>
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<p>Rec. 31</p> <p>National co-operation</p>	<p>PC</p>	<ul style="list-style-type: none"> • There are no joint meetings dedicated to developing policies and strategies relating to AML/CFT • The Supervisory Authority does not adequately supervise the DNFBPs and other entities in the financial sector at this time. • There should be measures in place so that the authorities can coordinate with each other concerning the development and implementation of policies and activities to combat ML and FT. 	<ol style="list-style-type: none"> i. There should be regular inter agency meetings among all the agencies that are charged with ensuring the effectiveness of the AML/CFT regime. ii. The Supervisory Authority needs to expand its activity so as to ensure that all entities who may be susceptible to be used for Money laundering or Terrorist Financing are aware of these dangers and take the necessary precautions. iii. There should be established and maintained regular inter-agency meetings where policies and actions are developed. iv. There should be a closer link between the Supervisory Authority and the DNFBPs. v. There should be measures to allow the authorities to coordinate in Dominica with each other concerning developments with regards to money laundering and terrorist financing. 	<p>Section 15 (1) of the MLP Act No. 8 of 2011</p> <p>There is effective cooperation / coordination among local agencies such as the Customs, Police, FIU in regards to money laundering. Terrorism financing and other designated category of offences. The Customs is part of the Technical Working Group which also comprises of Police, FIU, FSU, and Legal. There has been frequent coordination between the police, Customs and FIU as is highlighted in Recommendation 32 where exercises were carried out between the Customs and various units in the Police Force</p>
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<p>Rec. 32</p> <p>Statistics</p>	<p>NC</p>	<ul style="list-style-type: none">• Competent authorities appear to have limited opportunity to maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing specifically in relation to Money Laundering & Financing of Terrorist investigations-prosecutions and convictions- and on property frozen; seized and confiscated.• Competent authorities appear to have limited opportunity to maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing specifically in relation	<p>i. The competent authorities should maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing.</p> <p>ii. With respect to MLA and other international request the Commonwealth Dominica should maintain statistics on the nature of such requests and the time frame for responding.</p>	<p>The police have installed a brand new database system that captures all reports from inception to completion. It is currently installed at police headquarters and is being rolled out to other departments within the police force and outstations.</p> <p>The CA has a new system that allows it to capture all incoming and outgoing requests. It tracks all information pertaining to the requests including the date the request was received, the actions taken, the time the action was taken and the status of the matter.</p> <p>In 2012, the FIU has commenced two new cases in the Magistrate’s Court under the aegis of the Proceeds of Crime Act No. 4 of 1993 in collaboration with the Dominica Police Force and conducted to cash seizure investigations in consonance with the Customs and Excise Division. Currently, the FIU has six cases involving fourteen persons before the Magistrate’s</p>
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		<p>to Terrorist financing freezing data.</p> <ul style="list-style-type: none"> • In the Commonwealth of Dominica the Competent authorities do not maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing. Annual statistics are however maintained on Mutual legal assistance or other international requests for co-operation and all mutual legal assistance and extradition requests (including requests relating to freezing, seizing and confiscation) that are made or received, relating to ML, the predicate offences and FT, including whether it was granted or refused but no statistics maintained on the nature of the request 	<p>Court. An application for Paper Committal has been made at the Magistrate's Court for one of these cases. The FIU continues to maintain comprehensive and secured databases on the Microsoft SQL Server Platform in accordance with essential criteria 32.2</p> <p>The Statistics for Customs as maintain and generated from their ASYCUDA world computer program system indicates the following: 2010/2011 the currency seizure amounted to EC\$20,158.50 for that same period there were fines imposed by Custom for various offences amounted to \$239,701.40. In the period 2011/2012, there were currency seizures amounted to \$736,375.70. For that same period, a total of EC\$461,467.33 was received as fines imposed for various offences. For the period 2012 to date there have been currency seizures amounted to \$269,038.93 and fines imposed for various offences for that period amounted to \$413,874.25.</p> <p>The statistics compiled by the Canine Unit of the Customs which was established in April 2011 indicates that, from July 2011 to present there have been twenty two (22) joint operations with the police which resulted in over ninty (90) kilograms of cocaine, Two Thousand One Hundred and Sixty Two (2162) pounds of Cannabis, Two Thousand Seven Hundred and Eighty Five (2785) Cannabis trees, seven</p>
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		<p>and the time frame for responding.</p> <ul style="list-style-type: none"> • While the examiners found that statistics were kept, the examiners finds that the competent authorities should maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing. • There are no statistics kept on formal requests made or received by law enforcement authorities relating to ML and FT, including whether the request was granted or refused. • No statistics are kept on on-site examinations conducted by supervisors relating to AML/CFT and the sanctions applied. 		<p>firearms and large quantities of ammunition have been detained.</p>
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		<ul style="list-style-type: none"> • There is no statistics available on formal requests for assistance made or received by supervisors relating to or including AML/CFT including whether the request was granted or refused. • Lack of databases to facilitate sharing of information between authorities responsible for discharging AML/CFT requirements. • The Supervisory Authority is not effective in relation to some entities in the financial sector. • The effectiveness of the money laundering and terrorist financing system in Dominica should be reviewed on a regular basis. • No comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for 		
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		combating money laundering and terrorist financing.		
Rec. 33 Legal persons – beneficial owners	PC	<ul style="list-style-type: none"> Lack of ongoing monitoring and compliance. The FSU should implement such a programme for AML/CFT purposes as well as general supervision and regulation. Measures should be in place to make sure that the bearer shares are not misused for money laundering 	<p>i. There is a need to ensure that licensed agents are subjected to ongoing monitoring and supervision in such areas as maintenance of up-to-date information on beneficial owners, licensing and registration, particularly for IBC's incorporated by the agent.</p> <p>ii. It is recommended that the FSU institute the process of ongoing monitoring and compliance for both AML/CFT purposes and for general supervisory and regulatory purposes.</p>	<p>The requirement of ensuring that licensed agents maintain up to date information on beneficial owners and other controllers is addressed in section 28(2) of the AML/CFT code; which provides that an entity or professional 'shall in any case take reasonable measures to verify the beneficial owners or controllers of a legal person and update information on any changes to the beneficial ownership or control'.</p> <p>Subsection 3 ensures compliance with and enforcement of this provision by further providing that where any entity or professional fails to comply with this requirement, he commits an offence and is liable to be proceeded against under section 60(5) of the Proceeds of Crime Act.</p> <p>To facilitate and ensure continuous monitoring and supervision as required by this recommendation, section 29(3) of the said code provides as follows:</p> <p><i>"An entity or professional shall ensure that –</i></p> <p><i>a) A change in an underlying principal or beneficial owner or controller of</i></p>

			<p>iii. There should be measures to ensure that bearer shares are not misused for money laundering.</p>	<p><i>the underlying principal is properly recorded; and</i></p> <p><i>b) The identity of the new underlying principal or the beneficial owner or controller of the principal is appropriately verified.</i></p> <p>The Evidence of the ongoing monitoring conducted by the FSU based on their structured work programme is attached.</p> <p>The FSU has developed a set of revised Anti-Money laundering Guidelines to give practical guidance to financial Institutions and other Scheduled entities in Dominica ;</p> <p>Aimed specifically at the prevention, detection and reporting of money laundering activities.</p> <p>This document is attached and includes clear guidance to entities to avoid bearer shares being misused for money laundering purposes. <u>See</u>: paragraphs 47, 62 71 and 72 of the said attached document which are all aimed at addressing this deficiency.</p>
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<p>Rec. 34</p> <p>Legal arrangements – beneficial owners</p>	<p>NC</p>	<ul style="list-style-type: none"> • The Authorities should include current and accurate information of the beneficial ownership and control as part of the register information on international trusts. • Registration of Trusts does not include information of the settler and other parties to a Trust. • Competent Authorities do not have access to information on the settler, trustees or beneficiaries of a Trust. 	<p>i. Information on the settlors, trustees and beneficiaries of Trusts should be made available to the Registrar or if not recorded there should be available from the registered agent on request without the written consent of the Trustee.</p>	<p>The Proceeds of Crime Act has been amended by the Proceeds of Crime (Amendment) Act 2014 which by virtue of section 72A gave the Attorney General the power to provide Regulations for –</p> <ul style="list-style-type: none"> a) The designation of a person or body as the registration and supervisory body for trusts; b) The functions, duties and powers of the Trusts Supervisor, including with respect to the supervision, the gathering and disclosure of information ; c) The registration of trusts including by electronic means or otherwise; d) Enforcement of actions that may be taken by trusts for failure by trusts to comply with the regulations and code of practice e) The maintenance of records by trusts; f) The monitoring by the Trusts and NPO Supervisor; g) The circumstances in which the Trust and NPO supervisor may conduct or employ an examiner to conduct an investigation of a trust. <p><u>Regulations (Non-Profit Organisations Regulations SRO No..... 2014)</u> have been created pursuant to this provision and the Financial Services Unit (FSU) has been designated as the supervisory authority for trusts. The Said SRO is attached for your perusal.</p>
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			<p>ii. Competent Authorities should be able to gain access to information on beneficial ownership of Trusts in a timely fashion.</p>	<p>The FSU is thereby made responsible for the registration, supervision and enforcement of trusts. The unit is also charged with the responsibility of monitoring compliance with FATF recommendations and the effectiveness of trusts legislation in ensuring that trusts registered in Dominica are not being used for the financing of terrorism.</p> <p>The Regulations which are now legally enforceable, also clearly stipulate how each of the matters listed above (Para. a-g) will be carried out in respect to Trusts registered in Dominica. They also provide in detail, the manner in which all relevant information regarding trusts will be gathered upon registration, stored, updated and disclosed where necessary.</p> <p>Since the Regulations provide that the Trusts and NPO Supervisor shall also perform the functions of Registrar of Trusts, there will not only be a system of central registration but all trust information will be centrally located. This will inevitably facilitate access to such information by Competent Authorities such as the FSU as the Registrar of Trusts.</p> <p>This deficiency is cured by virtue of the Fact that the said SRO provides for access to information by competent authorities such as the FSU and the FIU to be facilitated rather than hindered as follows:</p>
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				<p>Firstly, by virtue of Regulation 6(4) access is allowed to the entire public as follows:</p> <p><i>“A person may during normal business hours, require the Trusts and NPO Supervisor to provide details of the information entered on the Trusts and NPO Register in respect of a registered Non-profit Organisation.”</i></p> <p>Additionally, Regulation 15 further provides special access to the Trust and NPO Supervisor as follows:</p> <p><i>“The Trust and NPO Supervisor may –</i></p> <p><i>A. On the grounds specified in paragraph (b), by written notice to a registered trust or non-profit organisation, require it to produce any record that the trust or non-profit organisation is required to keep under regulation 14(above).</i></p> <p><i>B. Give notice only where it reasonably requires the records specified in the notice to assess the extent, of any to which the registered trust or non-profit organisation is being used, or may in future be used, for or to assist in financing of terrorism.</i></p> <p>There is no legislative requirement to obtain the consent of the trustee.</p> <p>Likewise, the Financial Investigative Unit (FIU) which possesses a combination of</p>
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			<p>iii. Even though currently there are no trust activities in Dominica, the authorities in Dominica should include adequate, accurate and current information on the beneficial ownership and control of legal arrangements as part of the register information on international trust.</p>	<p>investigative, law enforcement, regulatory and supervisory powers, is also guaranteed access to information on trusts registered in Dominica by virtue of the Money Laundering (Prevention) Act 2011:</p> <p>“Trust Business” is a scheduled business in accordance with Part 1 of the schedule to the MLPA. Section 17 of the MLPA gives power to the FIU for the purpose of securing assistance with its analysis and investigations, to request that a person carrying on a scheduled business allow any member of the Unit or a person authorised by the Unit to enter its business premises during working hours to examine, take notes, make copies or make enquires as they deem fit. This provision in addition to the FIU’s power to obtain in respect of a scheduled business, a Search Warrant (Sec. 24) and a Monitoring Order (Sec. 26) ensures that competent authorities possess sufficiently strong compulsory powers for the purpose of obtaining relevant information on Trusts registered in Dominica.</p> <p>Regulation 14 of the Trusts and Non-Profit Organisations Regulations provides that a registered trust shall keep a record of its type, purpose, objectives and activities. Each registered trust is also</p>
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				mandated to keep a record of the identity of the persons who benefit from, control or direct its activities including the settlors, trustees, beneficiaries and protectors.
International Co-operation				
Rec. 35 Conventions	PC	<ul style="list-style-type: none"> The Commonwealth of Dominica is not a party to The 2000 UNC Against Transnational Organized Crime – (<i>The Palermo Convention</i>). In The Commonwealth of Dominica many but not all of the following articles of the Vienna Convention (Articles 3-11, 15, 17 and 19) have been fully implemented. 	i. The Commonwealth of Dominica should become a party to The 2000 United Nation Convention Against Transnational Organized Crime – (<i>The Palermo Convention</i>) and fully implement article Articles 3-11, 15, 17 and 19) of the Vienna Convention, Articles 5-7, 10-16, 18-20, 24-27, 29-31, & 34 of the Palermo Convention, Articles 2- 18 of the Terrorist Financing Convention and S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001)	<p>Consideration of becoming a party to the Palermo Convention and analysis of domestic legislation to determine deficiencies in the satisfaction of the Palermo, Vienna and Terrorist Financing Conventions.</p> <p><u>Palermo Convention</u></p> <p><u>Article 5</u></p> <p>With the passage of the Transnational Organized Crime (Prevention and Control) Bill 2013, Dominica is in compliance with Article 5. Part II of the Transnational Organizsx Crime Act 13 (Prevention and Control) of 2013 criminalizes organized criminal activity. Section 3 of the Act particularly deals with the criminalization of organized crime.</p>

		<ul style="list-style-type: none"> • In The Commonwealth of Dominica some but not all aspects of Articles 5-7, 10-16, 18-20, 24-27, 29-31, & 34 of the Palermo Convention have been implemented. • In The Commonwealth of Dominica many but not all of Articles 2- 18 of the Terrorist Financing Convention are fully implemented. • In the Commonwealth of Dominica, S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001) are not fully implemented. 	<p>Dominica is now a party to the Palermo convention. Also, legislative amendments have been made which facilitate the objectives of the Convention. Section 4(a) of the Money Laundering (prevention Amendment) Act of 2013 has made concealing, disguising, transferring, converting, disposing of and engaging in transaction which involves property that is the proceeds of crime, knowing or believing the property to be the proceeds of crime, a criminal offence. This section meets the requirement of article 6 (1) (a&b) of the Palermo Convention.</p> <p><u>Article 7</u> Dominica is already in compliance with Article 7 of this convention as the FSU and FIU work hand in hand to provide a supervisory regime for banks and non-bank financial institutions. Further the FIU is the central authority for reporting of STRs and the FSU is responsible for onsite and offsite monitoring of financial institutions. The Money Laundering Regulation on a whole effectively deals with customer due diligence, customer identification, record-keeping in keeping with requirements of article 7(a).</p> <p>In relation to article 7(b), information sharing and cooperation amongst law enforcement and other authorities on the domestic plain, Dominica is compliant as there is networking and sharing of information between the FIU, FSU,</p>
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				<p>Customs and Police, being the main entities involved in combating money laundering and terrorist financing.</p> <p>Article 7(1) (b) – Section 19(1) and 20 of the Mutual Assistance in Criminal Matters Act 18 Chap: 12:19 provides for law enforcement and other authorities dedicated to combating money-laundering to be able to cooperate and exchange information at the international level.</p> <p>Section 3 of the FIU Act establishes the FIU unit and section 4 details the function of the FIU unit which is to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.</p> <p><u>Article 8.</u></p> <p>Corruption has already been criminalized in Dominica. Section 38, 39 and 40 of the Integrity in Public Office, Act 6 of 2003 creates the offence of bribery.</p> <p>Section 45 of the Act deals with the presumption of corruption.</p> <p>Section 41 of the Act makes it an offence for a person to aid, abet or facilitate another person in the commission of any offence under this Act in accordance with Article 8(3) of the Convention.</p> <p><u>Article 9</u></p>
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				<p>The IPO is designed to deal with the requirements of Article 9(1). Section 9(3) deals with the functions of the commission, section 11 deals with the powers of the commission which are necessary for combatting corruption. As it relates to article 9(2), section 43-48 of the Act deals with the penalties associated with breach of the Act.</p> <p>Section 13 of the IPO Act provides the commission with the necessary adequate independence to deter the exertion of inappropriate influence on their actions.</p> <p><u>Article 10.</u> Section, 39 and 40 of the Integrity in Public Office, Act 6 of 2003 creates the offence of bribery, which by virtue of the Interpretation and General Clauses Act Chapter 3:01 applies to legal persons. According to the Act “person includes a company.” Further, the Money Laundering (Prevention) Act also puts it beyond doubt that a “person” for the purpose of the Act includes a company. Article 6 and 8 offences also apply to legal persons.</p> <p>The Transnational Organized Crime (Prevention and Control) Act 13 of 2013 also refers to the liability of “a person” engaged in organized criminal activity. Section 3 of the Act establishes the liability of a person involved in organized crime. vAs explained above, the word</p>
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				<p>‘person’ refers both to natural and legal persons. As such liability of legal person is captured as it relates to organized crime.</p> <p>Provision is made for the criminalization of laundering of proceeds of crime as stated in Article 6 of the Convention in Section 3 of the MLPA 8 of 2011.</p> <p>Section 3(3) of the Act provides for the sanctions associated with Article 6. The severity of the sentence implies that the gravity of the offence was taken into consideration.</p> <p>Section 43 of the IPO Act provides sanctions for the offence of corruption.</p> <p><u>Article 11</u></p> <p>Part iv section 11 of the Transnational Organized Crime (Prevention and Control) Act 13 of 2013 provides the penalty for the commission of a section 3 offence(which is the criminalization of participation in an organized group) which is an Article 5 offence. It states “A person who is convicted of an offence under section 3 is liable on conviction on indictment to a fine of \$3,000,000 or to imprisonment for 25years or to both.” Given the harsh nature of the penalty it is safe to say that the penalty has taken into account the gravity of the offence.</p> <p>Section 3(3) of the Money Laundering (Prevention) Act 8 of 2011 provides the sanction for an Article 6 offence</p>
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				<p>(criminalization of laundering proceeds of crime). The section takes into consideration the gravity of that offence and states:” <i>A person who commits an offence under subsection (10 or (2) is liable, on conviction, to a fine not exceeding five million dollars, and to imprisonment for a term not exceeding ten years.</i>”</p> <p>Section 43 of the IPO Act provides sanctions for the offence of corruption which is an Article 8 offence. It states “ <i>A person who commits an offence under this Part is liable-</i></p> <ul style="list-style-type: none"> (a) On conviction on indictment to a fine of twenty-five thousand dollars or to imprisonment for a term of ten years or to both such fine and imprisonment; and (b) On summary conviction, to a fine of five thousand dollars or to imprisonment for a term of two years or to both such fine and imprisonment, <p>And shall be ordered to pay to such public body and in such manner as the Court directs, the amount or value of any advantage received by him, or such part thereof as the Court may specify.” Further, section 44 of the Act makes provisions for alternative convictions and amending particulars.</p> <p>As it relates to the offence of obstruction of justice which is an Article 23 offence,</p>
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				<p>Section of 12 of the Transnational Organized Crime (Prevention and Control) Act 13 of 2013 takes into account the gravity of the offence in establishing the sanction. It states “<i>A person who is convicted of the offence of obstruction of justice under section 6 is liable on conviction on indictment to a fine of \$700,000 or to imprisonment for 10 years or both</i>”.</p> <p><u>Article 12</u> In relation to Article 12(1-5), Section 17-23 of the Proceeds of Crime Act N0. 4 of 1993 outlines the procedures that deal with confiscation of the proceeds of crime of the offences listed in the Convention.</p> <p>Section 30 of the Proceeds of Crime Act No. 4 of 1993 provides for the Director of Public Prosecutions to apply to the Court for a restraining order against any realisable property held by the defendant or specified realisable property held by a person other than the defendant.</p> <p>Article 12(6)- Section 41 of the Proceeds of Crime Act No. 4 of 1993 gives police officers the authority to compel the production of documents by way of production order from any person. It must also be noted that the word “person” in this section also refers to legal persons.</p> <p>Section 59 of the Act makes provisions for the D.P.P to apply to the courts for an</p>
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				<p>order enabling Government departments to disclose information and documents held by them which the Court considers relevant to any into, or proceedings relating to a scheduled offence.</p> <p>Section 47 of the Act also makes provision for monitoring orders which can be used to obtain information held by financial institutions for a particular period.</p> <p>Further, section 48 of the Money Laundering Act No.8 of 2011 overrides secrecy obligations.</p> <p>Section of 17 of the MLPA 8 of 2011 allows the Director of the FIU to make a written requests to financial institutions and persons carrying on a scheduled business to obtain access to and make copies of (if necessary) all information held by the institution.</p> <p>The provision of Article 12(7) has been satisfied by section 18(3) of POCA Act 4 of 1993 and section 31(2) of the MLPA No.8 of 2011 which places the onus on the person who has benefited from the commission of the scheduled offence to prove the lawful origin of the property.</p> <p><u>Article 13</u></p> <p>Article 13(1)- Sections 27-28 of the Mutual Assistance in Criminal Matters adequately deals with providing assistance to designated foreign countries in relation to confiscation orders.</p>
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				<p>In addition, section 71 of POCA Act 4 of 1993 deals with the execution and registering of external forfeiture and confiscation orders.</p> <p>Also section 16 of the Transnational Organized Crime (Prevention and Control) Act 13 of 2013 specifically states that the Mutual Assistance in Criminal Matters Act applies to the Transnational Act in “relation to an offence under this Act as if the offence were a serious offence within the meaning of section 2 of the Act; and the assistance to be afforded may be requested for any of the purposes specified in Article 18 of the Convention”</p> <p>Article 13(2)- Section 20 of the Mutual Assistance in Criminal Matters Act generally provides for the giving of assistance to a designated country in obtaining evidence or information relevant to a criminal matter.</p> <p>Section 22 of the Act provides for assistance to a country in obtaining article or thing, by search and seizure if necessary once the request is accepted.</p> <p>Section 26 of the Act provides for assistance to a designated country in identifying, locating, tracing or assessing the value of property derived or obtained, directly or indirectly from the commission of a specified serious offence.</p> <p><u>Article 14</u></p>
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				<p>The Money Laundering Prevention Act 8 of 2011 as amended by Section 36 of the Money Laundering (Prevention) Act 8 of 2013 makes provisions for sharing funds derived from the sale of confiscated proceeds of crime with other states. Section 36 of the Money Laundering (Prevention) Act makes it clear that property, assets, funds seized under the Proceeds of Crime Act will be deposited into the assurance fund. Sections 36(b) of the Act specifically provides for the payment of money out of the fund to satisfy an obligation to a foreign state in respect of confiscated assets. Section 36(c) provides for the sharing of confiscated property with another State. However, our domestic law does not give priority consideration to the returning the confiscated proceeds of crime to the requesting State.</p> <p><u>Article 15</u></p> <p>Section 14 of the Transnational Organized Crime (Prevention and Control) Act 13 of 2013 deals with jurisdiction for offences under the Act. This would mean that the section applies to Article 5,6 &23 offences.</p> <p>Article 15 (1) (a)-</p> <p>Section 14 (e) & (f) corresponds to Article 15(1)(b)</p> <p>Section 14(b) corresponds to Article 15(2)(a)</p>
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				<p>Section 14(a)&(d) corresponds to Article 15(2)(b)</p> <p>Section 59 of the International Maritime Act No. 9 of 2000 Section 59 states- “59(2) At all times during the period that a vessel has the right to fly the Flag of Dominica, the vessel shall be subject to the exclusive jurisdiction and control of Dominica the Flag State, in accordance with the applicable international conventions Agreements and with provisions of this Act and any Regulation made thereunder.</p> <p>In relation to Article 15 normally principles of international law pertaining to jurisdiction will apply.</p> <p>Article 16(3) of the Convention has been addressed in Schedule 3 of the Transnational Organized Crime Act 13 (Prevention and Control) Act No.13 of 2013. The offences under this Act have been made extraditable offences.</p> <p><u>Article 16</u> Section 6 of the Extradition Act of Dominica makes provision for the apprehension and surrender of a fugitive. Section 14(1) of the Extradition Act makes provision for the detention of a fugitive apprehended in Dominica</p>
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				<p>pending determination of extradition proceedings.</p> <p>All references made to the “Act” in this section refers to the Mutual Assistance in Criminal Matters Act Chap. 12:19.</p> <p><u>Article 18</u> The Mutual Assistance Criminal Matters Chap. 12:19 deals with Article 18. Division 2 of the Act makes provisions for general assistance under the Act, particularly sections 20-25.</p> <p>Section 19 deals with the acceptance or refusal of requests under the Act. Further, section 16 of the Transnational Organized Crime (Prevention and Control) Act 13 of 2013 states that the Mutual Assistance in Criminal Matters Act applies to the Transnational Organized Crime Act.</p> <p>Article 18 (3) (a)- section 7(a) & (c) of the Mutual Assistance in Criminal Matters Act deals with the taking of evidence or statements from persons.</p> <p>Section 12 of the Act deals with effecting service of judicial documents.</p> <p>Section 9 of the Act addresses the issue of executing searches and seizures, and freezing. It states “<i>where there are reasonable grounds to believe that an</i></p>
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				<p><i>article or thing is in a Commonwealth Country could give or provide evidence or assistance relevant to any criminal matter, a request may be transmitted requesting that assistance be given by the country in arranging the attendance of the person in Dominica to give or provide that evidence, or, as the case may be, assistance.”</i></p> <p>Section 7(f) of the Act deals with obtaining samples of any matter or thing taken, examined or tested. Subsection (g) of that section makes provision for obtaining any information relevant to building, place or thing viewed or photographed.</p> <p>Section 7 (d) of the Act makes provisions for the obtaining of copies of judicial records or official records which have been examined.</p> <p>Section 15 of the Act deals with providing assistance to a designated foreign country in identifying, locating or assessing the value or amount of any property derived or obtained directly or indirectly from the commission of a serious offence.</p> <p>Section 10 of the Act deals with the giving of assistance in arranging the attendance of person who could give or provided evidence or assistance relevant in a criminal matter.</p>
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				<p>Article 18(11) & 18(12) is met by section 24(3) of the Mutual Assistance in Criminal Matters Chap. 12:19 which provides the central authority of Dominica with the authority to set conditions subject to which a prisoner is transferred, including conditions with respect to the custody, release or return of the prisoner.</p> <p><u>Article 23</u> Section 6 of the Transnational Organized Crime (Prevention and Control) Act 13 of 2013 establishes the criminal offence of obstruction of justice. The section states “A person, who, in relation to a witness or justice system participant involved in criminal proceedings to which this Act applies-</p> <ul style="list-style-type: none"> a) Uses or threatens to use physical force; b) Intimidates; or c) Promises or offers a financial or other material benefit, <p>For the purpose of interfering with the judicial process and in the case of witness, of the purposes specified in subsection (2), commits an offence.</p> <p><u>Article 24</u> Protection of Witnesses Act No. 4 2013 which will assist in that regard to protection of witnesses. Section 4 of the Act is geared at securing witness anonymity. Section 6 of the Act assists in meeting the objectives of section 4 by</p>
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				<p>providing for the application for a witness anonymity order.</p> <p>Section 11 of the Act caters to the need of keeping the address of the witness private.</p> <p>Section 12 provides for the eligibility of witnesses to be given assistance on the grounds of fear or distress in testifying.</p> <p>Section 16 makes provision for a witness to give evidence by 'live link'. Section 17 makes provision for witness to give evidence in private, section 18 provides for video recorded evidence and section makes 19 allows for video recorded cross examinations or re-examinations.</p> <p>Section 20 provides for examination of witness through an intermediary.</p> <p><u>Article 27</u></p> <p>Article 9 of the Security Assistance Among Caricom States Act 6 Of 2007 addresses the provisions of this Article. It provides for contracting parties to agree to cooperate in the areas of combating threats to national and regional security, minimizing the incidence of serious crimes etc.</p> <p>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.</p> <p><u>Article 5</u></p>
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				<p>Section 8 of the Transnational Organized Crime Act no.13 of 2013 creates the offences relating trafficking in persons.</p> <p><u>Article 6</u></p> <p>Section 10(3) of the Transnational Organized Crime (Prevention and Control) Act 13 f 2013 states that “Notwithstanding the provisions of any other law, all legal proceedings conducted in relation to the offence of trafficking in persons shall be conducted in camera.” This is a measure taken in an attempt to protect the privacy and identity of victims of trafficking in persons.</p> <p><u>Article 6(6)</u></p> <p>Section 13(3) of the Transnational Organized Crime Act makes provision for this. It states (Where a person is convicted of the offence of trafficking in persons, the court may, in addition to any penalty imposed under this section, order that person to pay restitution to the victim.”</p> <p>Section 13(4) indicates what the restitution must compensate for and section 13(5) states that (Notwithstanding subsection (3), where the property of a person convicted under this Act is forfeited, under the Proceeds of Crime Act or any other relevant Act, restitution shall be paid to the</p>
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				<p>victim as far as possible, from that property or the proceeds thereof.”</p> <p><u>Article 8</u></p> <p>In relation to Article 8(1) section 17 of the Immigration and Passport Act of Dominica makes provisions for prohibited immigrants to leave the state.</p> <p>Section 33 and 35 of the Act can also be of assistance.</p> <p><u>Article 9</u></p> <p>Sections of the Immigration and Passport Act listed below deal with Article 9.</p> <p>Section 6 of the Act deals with passports.</p> <p>Section 8 deals with the prohibition of immigrants from entering the state.</p> <p><u>Article 10</u></p> <p>Provisions of this article can be dealt with using the mutual assistance in criminal matters Act.</p> <p><u>Article 11</u></p> <p>Section 3 of the Immigration and Passport Act which deals with the power to search and section 12 deal with the provisions of article 11(2)-11(4).</p> <p>Section 12A as amended by section 4 of the Act which deals with power to board and search ships.</p> <p>Section 20</p> <p>Protocol against the illicit Manufacturing of and Trafficking in Firearms, Their</p>
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				<p>parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime.</p> <p><u>Article 5</u></p> <p>Section 9 of the Firearms Act Chap. 15:31 deals the offences relating to selling or transferring firearms or ammunition</p> <p>Section 15 deals with the prohibition on manufacture and of firearm or ammunition.</p> <p>Section 10 deals with special offences as to possession of firearms in certain circumstances.</p> <p><u>Terrorist Financing</u></p> <p>Dominica is in compliance with this Article. Section 4 of the Suppression of the Financing of Terrorism (Amendment) Act , 2011 Act No.9 of 2011 amended section 2 of the Act. The definition of the word “terrorist” is “an individual who performs a terrorist act or engages in a terrorist activity.”</p> <p>Article 2-</p> <p>Dominica is in compliance with Article 2 by virtue the SFTA notably by section 4 of the Act which provides for the act of terrorist financing.</p>
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				<p>Section 4(1) of the Suppression of the Financing Act of Terrorism Act 3 of 2003 as amended by Suppression of the Financing of Terrorism (Amendment) Act 6 of 2013, with the offence of terrorist financing. The section now reads:</p> <p>“A person commits an offence within the meaning of 1999 Convention, if that person by means, directly or indirectly, unlawfully and wilfully provides or collect funds with the intention or in the knowledge that such funds shall be used in full or part -</p> <p style="padding-left: 40px;">A) in order to carry out a terrorist act</p> <p style="padding-left: 40px;">B) by a terrorist group; or</p> <p style="padding-left: 40px;">C) by a terrorist.”</p> <p>Section 4 (3) is in compliance with Article 2(5)(a)&(b).</p> <p>“A person commits an offence within the meaning of subsection 1 if that person knowingly or intentionally-</p> <p style="padding-left: 40px;">a) attempts to commit the offence</p> <p style="padding-left: 40px;">b) participates as an accomplice in the commission of the offence referred to in paragraph (a) of this subsection</p> <p style="padding-left: 40px;">c) organizes or directs others to commit the offence or to participate as an accomplice in the commission of an offence under this subsection; or</p> <p style="padding-left: 40px;">d) contributes to the commission of an offence referred to in paragraph (a), (b), or(c).</p>
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				<p>Section (4) of the Act is in compliance with section 3(5) (c). Section 14 of the Act further stipulates activities which are forbidden.</p> <p>Article 4- Section 4 establishes as criminal offences under its domestic law the offences set forth in article 2.</p> <p>Section 5 of the Act deals with the penalties for a person convicted of a section 4 offence. Section 7 deals with penalties for a body of persons convicted of a section 4 offence. According to section 5(1). (b), an entity who commits a terrorist act commits an offence and is liable to a fine of 1 million dollars.</p> <p><u>Article 5</u> Section 5(1) (b) of the Act deals with the liability of section 4 offence in relation to legal entities. Section 5(2) states that the liability is incurred without prejudice to the criminal liability of individuals having committed the offence. Sections 45 of the SFTA No.3 of 2003 deals with the general penalties and section 46 deals with offences committed by entities. By virtue of our Interpretation a person covers legal entity and the definition section of SFTA defines a person as a legal entity.</p>
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				<p>In accordance to section 7 of the Act, as amended by Act No. 9 of 2011, upon the conviction of a financial institution of an offence under this Act the court may order a written warning be imposed on the directors or employees of the institution, the financial institution's license is liable to be suspended cancelled and a fine not exceeding one million dollars may be imposed on the financial institution.</p> <p><u>Article 7</u> Section 10(1) and 10(2) of SFTA Act No. 3 of 2003 deals with provisions of Article 7. This Articles addresses the issue of jurisdiction. Dominica has jurisdiction to try offences under this Act when it is committed - <i>(a) in Dominica;</i> <i>(b) by a national or citizen of Dominica;</i> <i>(c) on board a vessel flying the flag of Dominica or an aircraft registered under the laws of Dominica at the time of the commission of the offence.</i> Section 10(3) deals with the provisions of Article 7(2)(d)&(e).</p> <p>Article 7(4) is dealt with by section 33 of the Suppression of Financing of Terrorism Act 3 of 2003 which states: <i>“Where a person who commits an offence under this Act is present in Dominica and that person is not extradited to a State which establishes jurisdiction over that</i></p>
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				<p><i>person, the Director of Public Prosecutions shall prosecute the person for the commission of the offence.”</i></p> <p><u>Article 8</u></p> <p>Section 12 of the Act addresses the concerns of Article 8(1`) in terms of freezing assets. It states; “ <i>The Attorney General shall, on the publication of a designation order, in writing issue an order to a financial institution in the State requiring it to freeze any account, funds or property held by that financial institution on behalf of a person who or terrorist group which is the subject of a designation Order.</i>”</p> <p>Section 23(1)of the Act provides the police with power to seize property used in the commission of terrorist act. It states: “<i>The Commissioner of Police may seize any property where he has reasonable grounds for suspecting that the property has been or is being used to commit the offence under this Act.</i>”</p> <p>In respect of the identification of funds used or allocated for the purpose of committing the offences set forth in article 2 section 11B (a) &(b)of the Suppression of the Financing of Terrorism (Amendment) Act 9 of 2013 can be utilized. The section outlines to the financial institutions the procedures which ought to be applied when they have received the list of designated entities and they realize that individuals on the list have funds with the financial institutions.</p>
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				<p>Section 11C of the Act deals with detention in that upon receipt of information from the financial institutions in accordance with 11B, the Financial Investigative “Unit shall immediately conduct necessary investigations to verify the accuracy of the information provided by the financial institution.”</p> <p>Section 30 of the Proceeds of Crime Act Chap. 12:29 as amended by section 12 of the Proceeds of Crime (Amendment) Act 7 of 2013 states: <i>“The director of Public Prosecutions may apply to the Court for a restraining order against any realisable property held by a defendant or specified realisable property held by a person other than the defendant.”</i></p> <p>Section 32 of the Act as amended by section 13 of the Proceeds of Crime (Amendment) Act No.7 of 2013 also deals with restraining orders which can be made ex parte.</p> <p>Further, section 59 B -59I of the Act make it possible for the State to recover in civil proceedings before the Court, property which is, or represents property obtained through unlawful conduct . Section 59L states that the “Attorney General may apply to the Court for a recovery order against any person who the Attorney General believes holds recoverable property.”</p> <p>Article 8(2)</p>
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				<p>Section 8. (1)Where a person is convicted of an offence under this Part, in addition to any penalty the Court may impose, the Court may order forfeiture to the State of -</p> <p>(a) the funds collected or retained by that person or by any other person on behalf of the convicted person for the commission of the offence;</p> <p>(b) any property used for, or in connection with the commission of the offence; and</p> <p>(c) any funds, property or asset derived from any transaction by the convicted person or in relation to which the offence is committed.</p> <p>(2) Before making an order under subsection (1), the Court shall give every person appearing to have an interest in the funds, property or assets in respect of which the order is proposed to be made, an opportunity of being heard.</p> <p>(3) Property, funds and assets forfeited to the State under subsection (1) shall vest automatically in the State -</p> <p>(a) if an appeal has been made against the order, on</p> <p>the final determination of the appeal; and</p> <p>(b) if no appeal has been made against the order, at the end of the period within which an appeal may be made against the order. It must be noted that section 8 is complimented by section 37 of the Act.</p> <p>Section 38(1) further states: “ The Attorney General may apply to a Judge for an order of forfeiture in respect of-</p>
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				<p>(a) property owned or controlled by, or on behalf of a terrorist or terrorist group; or</p> <p>(b) property that has been, is being or will be used, in whole or in part to commit or facilitate the commission of a terrorist act.</p> <p>Section 4 of the Proceeds of Crime Act Chap:12:29 as amended by section 5 of the Proceeds of Crime (Amendment) Act 7 of 2013 states: <i>“Where a person is convicted of a scheduled offence committed after the coming into force of this Act, on the application of the Director of Public Prosecutions or if the Court considers it appropriate to do so, the Court may make one or both of the following orders-</i></p> <p><i>(a) a forfeiture order against property that is tainted property in respect of a scheduled offence;</i></p> <p><i>(b) a confiscation order against the person in respect of benefits derived by the person from the commission of a scheduled offence or any other criminal conduct.”</i></p> <p>Section 17 (1) of the Proceeds of Crime Act as amended by section 6 of the Proceeds of Crime (Amendment) Act No. 7 of 2013 which states that: <i>“Subject to this section, where the Director of Public Prosecutions applies to the Court for a confiscation order against a person in respect of that person’s conviction for a scheduled offence, the Court shall, if it is satisfied that the person has benefited from</i></p>
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				<p><i>the scheduled offence or any other criminal conduct, order him to pay to the State an amount equal to the value of the benefits, or such lesser amount as the Court certifies in accordance with section 20 to be the amount that might be realised at the time the confiscation order is made.”</i></p> <p>Section 7 & 8 of that Act makes provision for the Court to determine whether or not a person has benefited from a scheduled offence or any other criminal conduct and for assessing the value of that benefit.</p> <p><u>Article 8(4)</u></p> <p>Section 12C of the Suppression of the Financing of Terrorism (Amendment) Act 9 of 2011 goes a step further than provision 8(1) of the Article in that it makes provision for the court, upon application, by the competent authority, to receive a request from the court of another State to freeze the accounts, funds or property connected to a terrorist, terrorist group, that was the subject of the freezing mechanism of the requesting state.</p> <p><u>Article 9</u></p> <p>Part 6 of the Act adequately provides provisions to deal with investigations of alleged offences under the Act. Section 20</p>
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				<p>of the Act empowers the “Unit” with the authority to investigate certain dealings.</p> <p>Where the Commissioner of Police receives information that a person who committed or is alleged to have committed an offence under this Act or an offence under the corresponding Act of any other State, and that person is present in Dominica, section 21 of the Act empowers the Commissioner of Police to investigate the facts contained in such information.</p> <p>Section 21 of the Act adequately addresses the provisions of Article 9 of the Convention as its sections deal with –</p> <ul style="list-style-type: none"> i) the investigation and presence of offenders in Dominica ii) ensuring the presence of the person present in Dominica for the purpose of prosecution and extradition iii) entitlement of person regarding whom the measures referred to in paragraph 2 of Article 9 of the Convention <p>section 22 of the Act deals with the notification to appropriate states in accordance with the convention.</p> <p><u>Article 10</u></p>
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				<p>Section 33 of the Act fully addresses provisions of this Article as it provides for offenders who are present in Dominica who have not been extradited to be prosecuted.</p> <p><u>Article 11 (1)-</u> Section 25 of this Act amends the schedule to the Extradition Act which sets out the extradition crimes by the insertion of “ 29. An offence against the law relating to the suppression of financing of terrorism.”</p> <p>Section 27 as amended by the Suppression of Financing of Terrorism (Amendment) Act 9 of 2011 makes provisions for the request for extradition to be considered whether or not there is an extradition treaty between Dominica and the requesting state.</p> <p>Section 29 of the SFTA states- “Notwithstanding anything in the Extradition Act or in any other enactment, all extradition treaties entered by Dominica with any State or extended to Dominica shall be deemed amended to the extent necessary to give effect to the 1999 Convention.”</p> <p>Article 11 (4)- Section 28 of the SFT Act 3 of 2003 deals with the scope of</p>
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				<p>jurisdiction for extradition. The offences set forth in article 2 shall be deemed as if it had been committed not only in the place in which it occurred but also in any state or territory which establishes jurisdiction in accordance with the provisions of this Act in respect of the offence.</p> <p><u>Article 12</u> Article 12 (1) Section 34 of the Act governs the exchange of information relating to terrorists, terrorist groups and terrorist acts and activities provided that a request is made by the appropriate foreign state for the necessary information.</p> <p>Section as amended by section 36B of the Suppression of the Financing of Terrorism (Amendment) Act makes provision for information sharing with foreign counterpart agency in relation to the commission of an offence under the Act. Section 36C allows for the Unit to use memorandum of understandings with foreign counterpart agencies that perform similar functions to that of the Unit where the Director considers it necessary for the discharge or performance of the functions of the Unit.</p> <p>Section 14(2) of the Suppression of the Financing of Terrorism (Amendment) Act 9 of 2011 provides for the sharing of</p>
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				<p>information notwithstanding any obligations as to secrecy , confidentiality or other restriction upon disclosure of information imposed by any law.</p> <p><u>Article 13</u> Section 31 SFTA 3 of 2003 of the Act corresponds with this Article</p> <p><u>Article 14</u> Section 30 SFTA 3 of 2003 of the Act corresponds with this article.</p> <p><u>Article 16</u> Section 32 of the SFTA 3 of 2003 deals with conditions for transfer of persons detained in the requested state. It adequately deals with Article 16 (1) (a&b).</p> <p><u>Article 17</u> Section 8 of the Constitution of the Commonwealth of Dominica enshrines the principle of natural justice which guarantees fair treatment .</p> <p><u>Article 18</u> A new Part VA has been included in the SFTA No.9 of 2011 which places an obligation on financial institutions to report to the Unit all complex, unusual or large business transactions whether completed or not.</p>
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				<p><u>Protection of Victims of Trafficking in Persons</u></p> <p><u>Article 5</u></p> <p>Section 8 of the Transnational Organized Crime (Prevention and Control) Act 13 of 2013 establishes as criminal offences the conduct set forth in article 3 of this Protocol.</p> <p><u>Article 6(1)</u></p> <p>Section 10(3) of the Transnational Organized Crime (Prevention and Control) Act No.13 of 2013 makes provisions for all legal proceedings conducted in relation to the offence of trafficking in persons</p> <p><u>Article 6(6)</u></p> <p>Section 13(3) of the Transnational Organized Crime (Prevention and Control) Act No.13 of 2013 offers the victims of trafficking persons the possibility of obtaining compensation for damaged suffered. The section states: “<i>Where a person is convicted of the offence of trafficking in persons, in addition to any penalty imposed under this section, order that person to pay restitution to the victim.</i>”</p> <p>Section 13(4) speaks to the type of restitution which may be obtained by the victim.</p> <p>Subsection 13(5) makes it possible to pay a victim from the forfeited funds and or property of the convicted person.</p> <p><u>Article 8</u></p>
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				<p>Section 17 of the Immigration and Passport Act to some extent provides for repatriation of prohibited immigrants.</p> <p><u>Article 9(a)</u></p> <p>In an attempt to prevent and combat trafficking in persons, Dominica has take legislative action which involves:</p> <ol style="list-style-type: none"> 1. the criminalization of human trafficking by section 27B(1) of the Immigration And Passport (Amendment) Act No. 19 of 2003 and the imposition of a fine of \$100,000. By section 27B(2) upon conviction. 2. The criminalization of :- <ol style="list-style-type: none"> a) Providing false or misleading information on a passport b) Omitting of a matter or thing without which a statement or information is misleading in a material particular c) Furnishing of a document which is false or misleading in a material particular to an immigration officer, or department in connection with an application for extension or renewal of a passport d) Intentionally defacing or damaging a passport issued under this Act
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				<p>e) The forging of a passport</p> <p>f) Being in possession of a passport which a person knows to be forged or fraudulently or illegally obtained</p> <p>g) The selling, exchanging, or giving to another or dealing with a forged passport by virtue of section 28C(1) of the Immigration and Passport (Amendment) Act No. 19 of 2010.</p> <p>Section 28C(2) of the Act provides for the sanctions to imposed where an offence has been committed. Further, section 35A makes it an offence to assist unlawful immigration to another state and provides the penalties for the offence.</p> <p>3. The imposition of restrains on persons who are not citizens of Dominica by section 27C of the Act.</p> <p>4. The granting of powers of search to immigration officers which allows them to board and search any vessel arriving in the State.</p> <p>5. Deeming persons who enter the State without a passport as prohibited immigrants by virtue of section 6 of the Immigration and Passport Act Chap. 18:01.</p> <p>6. Prohibiting the entrance of prohibited immigrants into the state</p>
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				<p>by virtue of section 8 of the Immigration and Passport Act Chap. 18:01. Section 20 the Act goes further to require a person held to be a prohibited immigrant or to whom a permit is issued to, if so required by the immigration officer, submit to his finger-prints and photograph being taken by the immigration officer.</p> <p>7. Requiring the master of a vessel arriving from any place outside the State or departing from the State to furnish to the competent authority the relevant advance passenger information data set out in Schedule 1, in respect to the vessel and each person on board in accordance to section 12 of the Immigration and Passport Act Chap. 18:01 as amended by section 4 of the Immigration and Passport (Amendment) Act No.11 of 2007.</p> <p><u>Article 11 (3)</u> Section 3 of the Immigration and Passport Act Chap. 18:01 as amended by section 4 of the Immigration and Passport (Amendment) Act No. 11 of 2007 and section 35 of the Act establishes the offence and section 36 of the Act as amended by Immigration and Passport (Amendment) Act No. 19 of 2003 deals with the appropriate sanctions.</p> <p><u>Vienna Convention</u> <u>Article 3</u></p>
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				<p>The provisions of Article 3 are dealt with in the Drugs (Prevention of Misuse Act) Chap. 40:07.</p> <p><u>Article 3</u></p> <p>Sections 3-10 of the Act deals with Article 3(1)</p> <p>Section 2 of the Money Laundering Prevention Act deals with Article 3(b)</p> <p>Sections 17 & 20 of the Misuse Act deals with Article 3(c).</p> <p><u>Article 3(2)</u></p> <p>Sections 7-8 of the Misuse Act deals with the restriction of the possession of controlled drugs and the restriction of cultivation of cannabis plant respectfully.</p> <p><u>Article 3(3)</u></p> <p>Section 2(2) of the Money Laundering Prevention Act deal with this.</p> <p><u>Article</u></p> <p>Provisions of this Article have already been provided in Proceeds of Crime Act No. 4 of 1993 and has been explained earlier and has also been dealt with by the “Central Authority Procedure”</p> <p>Amendments have also been made to the central authority procedure in attempt to bring it up to date with the requirements of CFATF. A copy of the document is attached.</p>
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				Article 7 This is dealt with by the Act
Rec. 36	LC	<ul style="list-style-type: none"> The Commonwealth of Dominica has not considered devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country. 	i. To avoid conflicts of jurisdiction, the Commonwealth of Dominica should consider devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country.	Administrative Consideration Determined by court practice
Rec. 37 Dual criminality	C			

<p>Rec. 38</p> <p>MLA on confiscation and freezing</p>	<p>PC</p>	<ul style="list-style-type: none"> • Unclear legislation regarding request relating to property of corresponding value. • Unclear legislation regarding arrangements for co-ordinating seizure and confiscation actions with other countries. • No consideration of the establishment of an asset forfeiture fund into which all or a portion of confiscated property will be deposited. • No consideration of authorising the sharing of assets confiscated when confiscation is directly or indirectly a result of co-ordinate law enforcement actions. 	<p>i. Commonwealth of Dominica should consider establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education or other appropriate purposes.</p> <p>ii. The Commonwealth of Dominica should consider authorising the sharing of confiscated assets between them when confiscation is directly or indirectly a result of co-ordinate law enforcement actions.</p> <p>iii. The laws should clarify whether the requirement in Criterion 38.1 is met where the request relates to property of corresponding value.</p>	<p>Sec. 36 of the MLP Act of No. 8 of 2011 “There shall be established an Asset Forfeiture Fund under the administration and control of the Minister of Finance in consultation with the Director.</p> <p>The Asset forfeiture fund has been created and is currently being utilised. Subsection 3 of the said section of the MLPA deals with the purposes for which the funds would be used which is in accordance with recommendation 38. This deficiency has been wholly addressed.</p> <p>Sec. 37 of the MLP Act No. 8 of 2011 “The Government of Dominica may share with another State, on terms and conditions to be agreed in writing, property which has been directly or indirectly confiscated or forfeited as a result of coordinated law enforcement action between Dominica and the other State.”</p> <p>Section 39 of the Money Laundering Prevention Act No. 8 of 2011 provides for the requirement in 38.1 where the request relates to property of Corresponding value. The section states “ The Court or the central authority may receive a request form the court of another State to identify, trace, freeze, seize, confiscate or forfeit</p> <ul style="list-style-type: none"> a) the property; b) any property of corresponding values; c) proceeds;
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				<p>d) instrumentalities, Connected to money laundering offences, and may take appropriate action including those specified in sections 30 and 31.</p> <p>The criterion in 38.1 is met. Section 27 (1) (a)(ii) of the Mutual Assistance in Criminal Matters states “This section applies where- (a) An order is made in a commonwealth country ii) imposing on the person against whom the order is made a pecuniary penalty calculated by reference to the value of property so derived or obtained;” section 27(b) goes on further to state that “property available for the satisfaction of the order or the pecuniary penalty under the order, or to which the order would apply, as the case may be, is suspected on reasonable grounds, to be in Dominica;” Section 28 outlines the procedure to be taken for the assistance to the foreign country spoken of in section 27. Further, section 71 of the Proceeds of Crime Act should be read in conjunction with section 14 of the Proceeds of Crime Act No.4 of 1993 as amended by Act No. 4 of 2010. The Act has included terrorism and financing of terrorism as scheduled offences. This would now mean that in certain situations where the court is satisfied that a forfeiture order should be</p>
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			<p>iv. The laws should clarify whether the Commonwealth of Dominica could have arrangements for co-ordinating seizure and confiscation actions with other countries.</p>	<p>made in respect of property of a person convicted of a scheduled offence the Court may, instead of ordering the property or part thereof or interest therein to be forfeited, order the person to pay to the State an amount equal to the value of the property, part of interest. Section 14 of the of the Proceeds of Crime Act.</p> <p>Section 41 of the MLPA makes provision for coordinating seizure and confiscations actions with other countries. It states the purpose of section 40 the Unit may enter into an agreement or arrangement in writing, with a foreign counterpart, agency, that performs similar functions and is subject to similar secrecy obligations which the Director considers necessary or desirable for the discharge or performance of the functions of the Unit.</p> <p>This section (S.41) is complimented by section 39 of the Act (above) which allows the Central Authority of Dominica to receive requests to provide assistance to foreign jurisdictions. It states “ The Court or the central authority may receive a request from the court of another State to identify, trace, freeze, seize, confiscate or forfeit-</p> <ul style="list-style-type: none"> a) Property; b) Any property of corresponding values; c) Proceeds; or
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				<p>d) Instrumentalities, Connected to money laundering offence, and may take appropriate action, including those specified in sections 30 and 31.</p>
<p>Rec. 39 Extradition</p>	<p>LC</p>	<ul style="list-style-type: none"> • The Commonwealth of Dominica do not have specific measures or procedures adopted to allow extradition requests and proceedings relating to Money Laundering to be handled without undue delay 	<p>i. There should be in the Commonwealth of Dominica measures or procedures adopted to allow extradition requests and proceedings relating to money laundering to be handled without undue delay.</p>	<p>The Central Authority Procedures which are attached adequately outlines the procedure which must be undertaken to deal with extradition requests which ensures that requests are handled with undue delay.</p> <p>Time limits for every step of the process have been instituted which ensure that the requests are handled efficiently. The procedures can be found in Part B of the document on pages 37-47.</p>

			<p>ii. In the Commonwealth of Dominica the laws should not prohibit the extradition of nationals.</p> <p>iii. There should be measures or procedures adopted in the Commonwealth of Dominica that will allow extradition requests and proceedings relating to terrorist acts and the financing of terrorism offences to be handled without undue delay.</p>	<p>The laws do not prohibit the extradition of nationals. There is no section in the Extradition Act which prohibits the extradition of Dominican nationals.</p> <p>Guidelines have been established to deal with this area. This has been dealt with in the Central Authority Procedures which thoroughly addresses the issue of extradition. This document is attached.</p> <p>Sec. 27 of the SFTA 3 of 2003 as amended by Section 13 of the SFT (Amendment) Act No. 9 of 2011</p>
<p>Rec. 40</p> <p>Other forms of co-operation</p>	LC	<ul style="list-style-type: none"> There is no evidence that in The Commonwealth of Dominica requests for cooperation would not be refused on the sole ground that the request is also considered to involve fiscal matters. 	<p>i. In the Commonwealth of Dominica it should be made clear that a request for cooperation would not be refused on the sole ground that the request is also considered to involve fiscal matters.</p>	<p>Section 40 of Act No. 8 of 2011 provides for international cooperation and states that the FIU shall not refuse a request on the ground that it involves matters of a fiscal nature.</p> <p>Section 19 (2) of the Mutual Assistance in Criminal Matters Act No. 9 of 1990 states the conditions where requests for cooperation can be refused. Fiscal matters are not cited in this Section.</p> <p>Section 36B of the Suppression of the Financing of Terrorism Act as amended by section 8 of the Suppression of the Financing of Terrorism (Amendment) Act No.9 of 2013 makes provision for information sharing. The section states: <i>“The Unit may, on request, share</i></p>

				<p><i>information relating to the commission of an offence under this Act with aq foreignn counterpart agency, subject to reciprocity, and any conditions as may be considered appropriate by the Director, but the Unit shall not refused a request on the ground that it involves matters of a fiscal nature.”</i></p> <p>As it relates the sharing of information which relates to terrorist financing section 14(2) of the Suppression of the Financing of Terrorism (Amendment) Act 9 Of 2011 provides for the sharing of information notwithstanding any obligations as to secrecy , confidentiality or other restriction upon disclosure of information imposed by any law. This section states: “Subject to the provisions of the Constitution, requests for information under this Part, shall be fulfilled, notwithstanding any obligations as to secrecy, confidentiality or other restriction upon disclosure of information imposed by any law of otherwise, except where the information sought under subsection(1) is held in circumstances where legal professional privilege exists.” Section 29 of the Money Laundering (prevention) Act 20 of 2000 also makes allowance for the overriding of secrecy obligations. It states: “Subject to the provisions of the Constitution, the visions of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of</p>
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				information imposed by any law or otherwise.”
Nine Special Recommendations	Rating			
SR. I Implementation UN instruments	PC	<ul style="list-style-type: none"> • The Commonwealth of Dominica is not a party to The 2000 UNC Against Transnational Organized Crime – (<i>The Palermo Convention</i>). • In the Commonwealth of Dominica many but not all of the following articles of the Vienna Convention (Articles 3-11, 15, 17 and 19) have been fully implemented. • In The Commonwealth of Dominica some but not all aspects of Articles 5-7, 10-16, 18-20, 24-27, 29-31, & 34 of the Palermo Convention have been implemented. • In The Commonwealth of Dominica many but not all of Articles 2- 18 of the Terrorist Financing Convention are fully implemented. 	<p>i. The Commonwealth of Dominica should become a party to The 2000 United Nation Convention Against Transnational Organized Crime – (<i>The Palermo Convention</i>) and fully implement article Articles 3-11, 15, 17 and 19) of the Vienna Convention, Articles 5-7, 10-16, 18-20, 24-27, 29-31, & 34 of the Palermo Convention, Articles 2- 18 of the Terrorist Financing Convention and S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001)</p>	<p>Consideration of becoming a party to the Palermo Convention and analysis of domestic legislation to determine deficiencies in the satisfaction of the Palermo, Vienna and Terrorist Financing Conventions</p> <p>Dominica is now a party to the Palermo convention, the Terrorist Financing Convention and the successor resolutions. Also, legislative amendments have been made which facilitate the objectives of these Conventions.</p> <p>The procedures for the freezing of assets of designated terrorists or terrorist organizations in accordance with S/RES 1373 has been dealt with in the Central Authority Procedures. The new section has been highlighted in red in the Procedure for ease of reference on pages 12-13.</p>

		<ul style="list-style-type: none"> • In the Commonwealth of Dominica, S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001) are not fully implemented. 		
SR. II Criminalise terrorist financing	PC	<ul style="list-style-type: none"> • The law is not clear that Terrorist financing offences apply, regardless of whether the person alleged to have committed the offence(s) is in The Commonwealth of Dominica or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur . • The law does not specifically permit the intentional element of the Terrorist financing offence to be inferred from objective factual circumstance. • The law does not specifically speak to the possibility of parallel criminal, civil or 	The laws should be amended to: i. State that Terrorist financing offences do not require funds be linked to a specific terrorist act(s); ii. State that Terrorist financing offences apply regardless of whether the person alleged to have committed the offence(s) is in The Commonwealth of Dominica or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur ;	Section 4 of the SFTA No. 3 of 2003, as amended by section 4 of the SFT (A) Act No. 6 of 2013, is amended to allow for the offence of terrorist financing to occur even if there is no nexus to a specific terrorist act. Sec. 2 of the SFTA 3 of 2003 as amended by Section 3 of the SFT (Amendment) Act No. 9 of 2011. Section 2(b) states: “terrorist act means- an act or omission, whether committed in or outside Dominica, which constitutes an offence within the scope of a counter terrorism contention;” The cited section references acts or omissions whether committed in or outside of Dominica but constitutes an offence within the scope of the counter terrorism convention. These acts or omissions can be fully investigated at section 20 (4) of the SFTA No. 3 of 2003 as amended by the Suppression of Financing of Terrorism Act No. 9 of 2011.

		<p>administrative proceedings where more than one form of liability is available.</p> <ul style="list-style-type: none"> • No civil or administrative penalties are defined in law. • The effectiveness of the regime has not been tested by actual cases. • The definition of terrorist, terrorist act and terrorist organization are not in line with the Glossary of Definitions used in the Methodology as the terms does not refer to the Convention for the Suppression of Unlawful Seizure of Aircraft (1970) and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971) 	<p>iii. Permit the intentional element of the Terrorist financing offence to be inferred from objective factual circumstance;</p> <p>iv. To permit the possibility of parallel criminal, civil or administrative proceedings where more than one form of liability is available.</p> <p>v. To address civil or administrative penalties; and;</p>	<p>Section 20 of Act no. 3 of 2003 as amended by section 12 of No.9 of 2011 by inserting a new subsection 4 that allows for the investigation by the Unit (Financial Intelligence Unit) of a person authorised by the Unit of an offence under this SFTA whether it occurred in Dominica or in any other territorial jurisdiction.</p> <p>Sec. 2 of the SFTA 3 of 2003 as amended by Section 3 of the SFT (Amendment) Act No. 9 2011. It states “The knowledge, intent purpose required as an element of any offence under this Act may be inferred from objective, factual circumstances.”</p> <p>Not in accordance with normal jurisprudence in our jurisdiction Not in accordance with normal jurisprudence in our jurisdiction.</p> <p>Sec. 2 of the SFTA 3 of 2003 as amended by Section 3 of the SFT (Amendment) Act No. 9 of 2011. This section provides for a new definition of terrorist & terrorist act in keeping with definitions of FATF. The Financial Services Unit (FSU), having been designated as the regulator for terrorism financing at section 9 of the the Financial Services Unit Act No. 18 of 2008,</p>
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				<p>have been given additional regulatory enforcement powers under the Suppression of Financing of Terrorism (Amendment) Act No. 9 of 2011.</p> <p>Section 47 of Act No. 3 of 2003 as amended by Section 17 of Act No. 9 of 2011 provides for sanctions which may be imposed on a financial institution who fails to comply with guidance notes issued by the Financial services Unit. Some of the sanctions now available to the FSU include the issuance of written warnings, issuance of specific instructions to institutions or persons who may be in possession of targeted funds and the suspension or revocation of the institution’s licence.</p> <p>In addition to the new SFTA enforcement powers given to the FSU, additional inherent powers from the FSU Act are still available to the FSU when carrying out its functions. Some of the powers include a requisition for the production of documents, inspections, requiring the FIs and DNFBPs to submit periodic reports in the form and with the content to be determined by the Director of the FSU.</p> <p>Under Section 48 of the Act as amended by section 18 of the Suppression of the Financing of Terrorism (Amendment) Act No.9 of 2011 the Minister may</p>
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			<p>vi. Ensure that the definition of terrorist, terrorist act and terrorist organization are in line with the term terrorist act as defined by the FATF</p>	<p>prescribe sanctions and/ or penalties, to be imposed on a financial institution by the FSU and</p> <p>Sec. 2 of the SFTA 3 of 2003 as amended by Section 3 of the SFT (Amendment) Act No. 9 of 2011</p> <p>Sec. 2 of the SFTA 3 of 2003 as amended by Section 3 of the SFT (Amendment) Act No. 9 2011 provides for a new definition of terrorist and terrorist act which is in keeping FATF recommendation. The definition given to “terrorist” is consistent with the definition found in the Glossary of Definitions in the FATF 2009 Methodology. The same approach has been taken for “terrorist act”.</p> <p>However, the term “terrorist organisation” is not as referenced by the Examiners. This term is not used throughout our SFTA and amendments thereto. Instead, the term “terrorist group” is used but is given a definition</p>
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				<p>consistent with the definition of “terrorist organisation” found in the Glossary of Definition of the FATF 2009 Methodology.</p> <p>This new term and definition can be found at section 2 of the SFTA as amended by section 3 of the Act No. 9 of 2011. It means a group of terrorist that (a) commit, or attempt to commit terrorist acts by any means, directly or indirectly, unlawfully and wilfully; (b) participates as an accomplice in terrorist acts; (c) organizes or directs others to commit terrorist acts; or (d) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act with knowledge of the intention of the group to commit a terrorist act.</p> <p>Hence, the substance of the definition of terrorist group is the same as per the definition of terrorist organisation.</p> <p>FSU has developed appropriate Guidance Notes.</p> <p>The sections referenced, both in the parent Act and the Amendment Act penalises terrorism financing activities by a person who directly or indirectly, unlawfully and wilfully provides or</p>
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				<p>collects funds with the intention or in the knowledge that such funds shall be used in full or part</p> <ul style="list-style-type: none"> • in order to commit a terrorist act • by a terrorist group; or • by a terrorist. <p>This amendment removes the previous limitation of section 4 of the parent Act No. 3 of 2003 and criminalises the activity of providing funding to a terrorist group or terrorist, irrespective of whether the funds were used to carry out a terrorist act.</p>
<p>SR. III</p> <p>Freeze and confiscate terrorist assets</p>	PC	<ul style="list-style-type: none"> • The Commonwealth of Dominica has limited and need adequate laws and procedures to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions. 	<p>The Commonwealth of Dominica should:</p> <p>i. Strengthen their legislation to enable procedures which would examine and give effect to the actions initiated under the freezing mechanisms of other jurisdictions</p>	<p>Sec. 12C of the SFTA 3 of 2003 as amended by Section 10 of the SFT (Amendment) Act No. 9 of 2011. This section allows for the Central Authority of Dominica to receive a request from the Court of another state to freeze the accounts, funds or property connected to a terrorist, terrorist act or terrorist group, that was the subject of the freezing mechanism of the requesting state.</p> <p>The “Central Authority Procedures” document at page 20, provides the procedure for giving effect to the actions initiated under the freezing mechanisms of other jurisdictions. A copy of this document is hereto attached.</p>

				<p>Additionally, the Minister of National Security has been given legal authority pursuant to section 11 of the SFTA Act No. 3 of 2003, to designate any person a terrorist or terrorist group. Having so designated the person a terrorist or terrorist group, the Attorney General can, after publication of the Designation Order, order financial institutions in Dominica to freeze any account, funds or property held by that financial institution on behalf of a person designated a terrorist or a terrorist group.</p> <p>The law at section 13 of the SFTA No. 3 of 2003, further provides for a mechanism that would allow for the varying and if necessary discharging of the Order if an applicant proves that the person who is subject of the designation order is not a terrorist or terrorist group, or the funds or the property which is the subject of the freezing order is legally and beneficially owned by him and is not subject to any interest held by the terrorist group named in the designation order.</p> <p>Section as amended by section 4 of Act No. 10 of 2010, provides for terrorism in the schedule as an offence.</p> <p>Pursuant to section 71 of the POCA No. 4 of 1993, the Attorney General may apply to the Court in Dominica for the registration of an external confiscation or forfeiture order from a designated</p>
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		<ul style="list-style-type: none"> • The laws of the Commonwealth of Dominica do not speak to having an effective system for communicating actions taken under the freezing mechanisms (to financial institutions) 	<p>ii. Implement effective mechanisms for communicating actions taken under the freezing mechanisms</p>	<p>country. In giving effect to an external forfeiture and confiscation order under this section, sections 30 to 37 of the POCA No. 4 of 1993 shall have effect, subject to such modifications as may be specified in the Order.</p> <p>Section 36A(1) of the Suppression of the Financing of Terrorism Act as amended by section 8 of the Suppression of the Financing of Terrorism (Amendment) act No.9 of 2013 states that <i>“The Court or the competent authority may receive a request from the court of another State to identify, freeze, seize, confiscate or forfeit-</i></p> <ul style="list-style-type: none"> <i>. a)the property;</i> <i>b)any property of corresponding values;</i> <i>c) proceeds; or</i> <i>d)instrumentalities,</i> <p><i>connected to offences under this Act, and may take appropriate action under this Act or any other enactments, including those specified in sections 8,12 and 38 or any other enactment.”</i></p> <p>Under section 11 of the SFTA 3 of No.3 the Minister is given the authority to designate a person a terrorist or a terrorist group. Section 11 of the Act has been amended by section 5 of the Suppression of the Financing of Terrorism (Amendment) Act No.9 of 2013 by inserting a new section 11A(1) which provides a definition to the term ‘designated entities’. Section 11A (2)</p>
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		<ul style="list-style-type: none">• The Commonwealth of Dominica do not have appropriate procedures for authorising access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses.	<p>outlines the responsibilities of the FIU as it relates to ‘designated entities’. Special attention should be paid to section 11A(2) (e) which states that the FIU must maintain “a consolidated list of all Orders issued by the Minister under section 11 and circulating the same by facsimile and any other electronic transmission to all financial institutions and listed businesses immediately at intervals of three months”. This ensures that all financial institutions will be made of aware of persons designated as terrorist or terrorist groups.</p> <p>Reference is also made to the Central Authority Procedures Document which</p> <p>Sec. 12 (1) and (2) of the SFTA 3 of 2003 as amended by Section 9 of the SFT (Amendment) Act No. 9 of 2011. Section 12 of the parent Act no. 4 of 1993 has been repealed and replaced with a new section 12 that allows for the publication of a designation order by the Attorney General and in writing allows him to issue an order to financial institutions in the State to freeze any account, funds or property held by that financial institution on behalf of a person who or terrorist group which has been subject to a designation Order. Failure by the financial institution to freeze the account results in the commission of an offence by the financial institution.</p>
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		<ul style="list-style-type: none">• No guidance has been issued.	<p>iii. Create appropriate procedures for authorizing access to funds or other assets that were frozen pursuant to S/RES/1267 (1999)</p> <p>iv. issue clear guidance to financial institutions and persons that may be in possession of targeted funds or assets or may later come into possession of such funds or assets.</p>	<p>The holder of the account shall as soon as possible be notified in writing after the fact that their account has been frozen.</p> <p>Sec. 12B of the SFTA No. 3 of 2003 as amended by Section 10 of the SFT (Amendment) Act No. 9 of 2011. Access to funds frozen pursuant to a freeze order is allowed under section 12B of the SFTA No. 3 of 2003 as amended by Act No. 9 of 2011, and allows the Court to give directions relative to any dispute, ownership of accounts or property or any part thereof; the administration of the property during the period of freezing; the payment of debts due to creditors prior to the order; and the payment of money to a person for reasonable subsistence of that person and his family.</p> <p>Sec. 47 (1) of the SFTA No. 3 of 2003 as amended by Section 17 of the SFT (Amendment) Act No. 9 of 2011 provides the Financial Services Unit with the authority to issue guidance to financial institutions or persons who may be in possession of targeted funds or assets.</p> <p>Sec. 36 of the SFTA No. 3 of 2003 places a duty on persons to disclose information in regards to property in their possession or control which is to their knowledge owned or controlled by terrorist groups. Sub-</p>
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				<p>section 3 also places a duty “on financial institutions to report to the Commissioner of Police every transaction which occurs within the course of its activities and in respect of which there are reasonable grounds to suspect that the transaction is related to the commission of a terrorist act.”</p> <p>Section 19A (2) of the SFTA 3 of 2003 as amended by Section 11 of SFT (Amendment) Act No. 9 of 2011 provides for the reporting of suspicious business transactions to the Financial Intelligence Unit.</p> <p>N.B. Section 47 of Act No. 3 of 2003 as amended by Section 17 of Act No. 9 of 2011 applies to funds and assets inclusive of funds and assets related to the freezing regime.</p> <p>Section 10 of the Suppression of the Financing of Terrorism (Amendment) Act 2013 amends Section 47 (a) (ii) of the Suppression of the Financing of Terrorism Act to make it applicable to funds which are subject to the Freezing regime</p> <p>There is a proposed Bill to amend the SFTA. Clause 11B and 11C of this Bill proposes to outline the procedures which ought to be applied by financial institutions where they receive the list of designated entities.</p>
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SR. IV Suspicious transaction reporting	NC	<ul style="list-style-type: none"> The reporting of STRs does not include suspicion of terrorist organizations, terrorism, terrorist acts or those who finance terrorism. 	i. The reporting of STRs with regard to terrorism and the financing of terrorism should include suspicion of terrorist organizations or those who finance terrorism.	<p>Section 19A (2) of the SFTA No. 3 of 2003 as amended by Section 11 of SFT (Amendment) Act No. 9 of 2011</p> <p>“A financial institution shall pay attention to-</p> <ul style="list-style-type: none"> (a) All complex, unusual or large business transactions, whether completed or not; (b) All unusual patterns of transactions; (c) Relations and transactions with person, including business and other <p>2. where a financial institution suspects or has reasonable grounds to suspect that-</p> <ul style="list-style-type: none"> a) a transaction, proposed transaction or attempted transaction, is related to offences of terrorist financing; b) funds which are the subject of a transaction referred to in paragraph (b) are linked or related to, or to be used for terrorism, terrorist acts or by terrorist groups, it shall promptly report transaction to the unit.” <p>Presentation of Bill to Parliament to correct typographical error at 19 A (2) (b) Section 6 of the Suppression of the Financing of Terrorism (Amendment) Act of 2013 was intended to correct this typographical error at Section 19 A (2) (b) of the SFTA No 3 of 2003. Unfortunately,</p>

				this Section contains a simple error which will be corrected before the May Plenary
SR V International Cooperation	PC	<ul style="list-style-type: none">• Factors in Recommendations 37 and 38 are also applicable.	ii. The examiner could find no evidence that a requests for cooperation would not be refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBP (except where the relevant information that is sought is held in circumstances where legal professional privilege or legal professional secrecy applies).	<p>As it relates the sharing of information which relates to terrorist financing Section 14(2) of the Suppression of the Financing of Terrorism (Amendment) Act 9 Of 2011 provides for the sharing of information notwithstanding any obligations as to secrecy , confidentiality or other restriction upon disclosure of information imposed by any law. This section states: “Subject to the provisions of the Constitution, requests for information under this Part, shall be fulfilled, notwithstanding any obligations as to secrecy, confidentiality or other restriction upon disclosure of information imposed by any law of otherwise, except where the information sought under subsection 1) is held in circumstances where legal professional privilege exists.”</p> <p>Section 29 of the Money Laundering (prevention) Act 20 of 2000 also makes allowance for the overriding of secrecy obligations. It states:</p> <p>“Subject to the provisions of the Constitution, the provisions of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise.”</p>

		<p>i. Unclear laws as to whether the requirement in Criterion 38.1 is met where the request relates to property of corresponding value.</p>		<p>MR. LANDER COMMENTS: states that where the Court is satisfied that a forfeiture order should be made in respect of the property of a person convicted of scheduled offence but that the property or any part thereof or interest therein cannot be made subject to such an order, the Court may, instead of ordering the property or part thereof or interest therein to be forfeited, order the person to pay to the State an amount equal to the value of the property, part or interest.</p> <p>The Proceeds of Crime (Amendment) Act No. 10 of 2010 at Schedule 1 list Terrorism and Financing of Terrorism as scheduled offences.</p> <p>Section 12C of the SFTA 3 of 2003 as amended by Section 10 of the SFT (Amendment) Act No. 9 of 2011 MR. LANDER COMMENT: states that the Court may, on an application, by the competent authority, receive a request from the Court of another State to freeze the accounts, funds or property connected to a terrorist, terrorist act or terrorist group , that was the subject of the freezing mechanism of the requesting State.</p>
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		<p>i. Unclear as to whether Dominica could have arrangements for co-ordinating seizure and confiscation actions with other countries.</p>	<p>Section 4 of the Proceeds of Crime Act No. 4 of 1993 states that where a person is convicted of a scheduled offence committed after the coming into force of this Act, the DPP may apply to the forfeiture and confiscation orders. Sections 27 and 28 of the Mutual Assistance in Criminal Matters Act No. 9 of 1990 sets out the arrangements for co-ordinating actions with other countries. Section 30 (1) (b) of the Mutual Assistance in Criminal Matters (Amendment) Act No. 16 of 2002 extends the application of this Act to all parties of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.</p> <p>Section 27 of the SFTA 3 of 2003 as amended by Section 13 of the SFT (Amendment) Act No. 9 of 2011 MR. LANDER COMMENT: states that where the Competent Authority in Dominica receives a request from another State to extradite a person over whom that other State establishes jurisdiction in accordance with the provisions of this Act for the commission of an offence in that other State, the request shall be considered whether or not there is an extradition treaty between Dominica and that State. Where the Competent Authority receives a request for</p>
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		<p>ii. No measures or procedures adopted to allow extradition requests and proceedings relating to terrorists acts and the financing of terrorism to be handled without undue delay</p>	<p>extradition that request should be fulfilled without undue delay.</p> <p>Sections 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 of the Extradition Act No. 6 of 1981 describes the extradition procedure.</p> <p>Section 31 of the Suppression of the Financing of Terrorism Act No. 3 of 2003 states that notwithstanding anything in any other law, no offence under this Act shall be regarded as a fiscal offence for the purposes of extradition or mutual legal assistance.</p> <p>Sec. 35 (2) of the SFTA 3 of 2003 as amended by Section 14 of SFT (Amendment) Act No. 9 of 2011.</p> <p>N. B. Section 27 and 28 of the Mutual Assistance in Criminal Matters Act Chap. 12:19 together with Section 14 of the Proceeds of Crime Act No. 4 of 1993 as amended by Act No. 10 of 2010 addresses requests by foreign countries where the requests relate to property of corresponding value.</p> <p>Act No. 10 of 2010 includes terrorism and financing of terrorism as Scheduled Offences falling within the ambit of the Proceeds of Crime Act No. 4 of 1993.</p> <p>Sections 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 of the Extradition Act Chap. 12:04 (Act No. 6 of</p>
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				1981) of the Revised Laws of Dominica address the Extradition Procedure.
SR. VI AML requirements for money/value transfer services	NC	<ul style="list-style-type: none"> • Lack of an effective supervisory or regulatory regime. • No requirements for licensing and registration by the authorities. 	<p>i. With the exception of MVT service providers that are supervised and regulated under the Baking Act, the Off Shore Banking Act and the Cooperative Societies Act, there is no specific requirement for these entities to be licensed or registered. The FSU is charged with the responsibility of supervising and regulating these institutions, however the Unit has no legal basis to enforce or discharge its functions.</p> <p>ii. There is no specific regulatory authority charged with the responsibility of monitoring and ensuring compliance with the provisions of the AML/CFT regime.</p> <p>iii. The FSU does not license or register these entities, nor does it provide ongoing supervision or monitoring. It is recommended that the FSU be entrusted with the responsibility of ensuring monitoring and compliance with the requirements of the AML/CFT regime.</p> <p>iv. The FSU should be required to institute a programme of on-going onsite and off site monitoring for other regulatory and supervisory purposes.</p>	

<p>SR. VII</p> <p>Wire transfer rules</p>	<p>NC</p>	<ul style="list-style-type: none"> • No measures in place to cover domestic, cross-border and non-routine wire transfers. • There are no requirements for intermediary and beneficial financial institutions handling wire transfers. • No measures in place to effectively monitor compliance with the requirements of SR VII. 	<p>i. It is recommended that the review of Dominica's legislative and regulatory provision take consideration of all requirements of the Recommendation and appropriate legislation be enacted as soon as possible.</p>	<p>PART V of the AML/CFT Code of Practice which is not legally enforceable, addresses the deficiencies identified by the Examiners. It provides for among other things:</p> <ul style="list-style-type: none"> • The regulation of the transfer of funds in any currency which are sent or received by a payment service provider that is established in Dominica. • Mandatory requirements for payment service providers to ensure that every transfer of funds is accompanied by full originator information. • Maintenance of records of full originator information on the payer that accompanies the transfer of funds for a period of seven years. • The requirement that domestic wire transfers be accompanied by an account number or unique identifier that allows the transactions to be traced back to the payer, where the payer does not have an account. • The creation of an offence for non-compliance with the requirements to keep and provide full originator information when requested by the payment service provider of the payee and when requested by the Financial Services Unit. • Filing of an STR where full originator information is absent from a wire transfer or is not provided. • Mandating that the absence of full originator information be a factor in
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				<p>the risk-based assessment of the payment service provider.</p> <ul style="list-style-type: none"> • Rules regarding the responsibilities of the intermediary service provider to ensure that the full originator information accompanies a wire transfer that is received by the payment service provided. • A mechanism that mandates that payment service providers of the payee and payer shall communicate with each in the event that a wire transfer is received with missing originator information. <p>The FSU through its onsite monitoring carries out sample testing of incoming and outgoing wire transfers to include full originator information as well information to identify the payee of the said wire transfer.</p>
SR. VIII Non-profit organisations	NC	<ul style="list-style-type: none"> • NPOs not subject to AML/CFT regime. • There is no proper supervision of NGOs. • There are no sanctions in place for non-compliance with the reporting requirements. • There are no guidelines to aid the NGO in 	<p>i. The Social Welfare Department should be charged with the supervision of the NGOs and be adequately staffed to take on this task.</p> <p>ii. Sanctions should be put in place for non-compliance as it relates to the annual reporting requirements.</p> <p>iii. NGOs should be required to report unusual donations to the Supervisory Authority</p>	<p>By virtue of Section 72A of the Proceeds of Crime (Amendment) Act No.2 2014 the Minister of Finance has the authority to issue Regulations for the governance of Trusts and Non-Profit Organisations.</p> <p>The Trust and Non-Profit Organisations Regulations, SRO 2014 have been drafted and it is expected that the document will be signed by the Minister and gazetted before the May Plenary. No further parliamentary approval is required and as such, once the Regulations have been signed and gazetted, they become legally enforceable.</p>

		<p>selecting its management.</p> <ul style="list-style-type: none"> • There are no requirements for the NGO to report unusual donations. • The NGOs have not been sensitized in issues of AML/CFT. • No review of the laws and regulations that relate to NPOs by the authorities. • No measures for conducting reviews of or capacity to obtain timely information on the activities, size and other relevant features of non-profit sectors for the purpose of identifying NPOs at risk of being misused for terrorist financing. • No assessments of new information on the sector's potential vulnerabilities to terrorist activities are conducted. 	<p>iv. NGOs should be sensitized to the issues of AML/CFT including how they could be used for terrorist financing.</p> <p>v. NGOs should be encouraged to apply fit and proper standards to officers and persons working in and for the NGO.</p> <p>vi. The requirements of the MLPA, its Regulations and the Guidance Notes should be extended to NPOs and their activities.</p> <p>vii. The Authorities should undertake a review of the domestic laws and regulations that relate to Non-profit organizations.</p> <p>viii. Measures for conducting domestic reviews of or capacity to obtain timely information on the activities, size and other relevant features of non-profit sectors for the purpose of identifying NPOs at risk of being misused for terrorist financing should be implemented.</p> <p>ix. Reassessments of new information on the sector's potential vulnerabilities to terrorist activities should be conducted.</p> <p>x. The Authorities should monitor the NPOs and their international activities.</p>	<p>These Regulations are aimed at addressing some of the deficiencies identified under this recommendation as well as others. The said SRO is attached for your perusal.</p> <p>NPOs were made subject to the AML/CFT regime by virtue of the said Non-Profit Organisations Regulations.</p> <p>Regulation 3 provides that the Financial Services Unit (FSU) is designated as the Trust and NPO supervisor. The duties and functions of the Trust and NPO Supervisor are laid out in Regulation 4 and are in addition to and not in derogation of any other powers or duties conferred or imposed on the NPO supervisor by any other Act.</p> <p>Regulation 15(1) places an obligation on NPOs to report to and produce records to the NPO Supervisor upon receipt of a written Notice. The Regulation also provides for sanctions to be imposed in the event that there is non-compliance with these provisions on reporting. Regulation By virtue of Regulation 15(5), a registered Non-Profit Organisations that fail to comply with a notice issued under sub regulation (1) commits an offence and is liable on summary conviction, to a fine not exceeding fifty thousand dollars.</p>
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		<ul style="list-style-type: none"> • No efforts at raising the awareness in the NPO sector about the risks of terrorist abuse and any available measures to protect NPOs from such abuse. • No sanctions for the violations of the rules in the NPO sector. • No monitoring of NPOs and their international activities. 	<p>xi. Training sessions should be implemented to raise the awareness in the NPO sector about the risks of terrorist abuse.</p> <p>xii. There should be measures to protect NPOs from terrorist abuse.</p> <p>xiii. There should be sanctions for violation rules in the NPO sector</p>	<p>Regulation 12(1) also provides for the De-registration of a registered Non-profit organisation if the organisation is convicted of an offence under the Proceeds of Crime Act, the Suppression of Financing of Terrorism Act 2003 or the Regulations</p>
<p>SR. IX</p> <p>Cross Border Declaration & Disclosure</p>	PC	<ul style="list-style-type: none"> • No authority to conduct further investigations pursuant to false declaration. • No dissuasive criminal civil or administrative sanctions are available for application where persons make false declarations. • No dissuasive criminal civil or administrative sanctions are available for application where persons are carrying out a physical cross-border transportation of currency or bearer 	<p>i. Customs should be given the authority to request further information relative to the origin of currency or bearer negotiable instruments.</p>	<p>Section 19 of the Customs Act 2010- Requirement to answer questions</p> <p>A passenger on a vessel or aircraft which has arrived in Dominica or which is Departing Dominica is required to answer any questions put to him by a proper officer and at the request of the proper officer, produce any documents within that person's possession or control relating to any person or goods which are or have been carried by the vessel or aircraft. (Section 19(1) and (2) Customs Act 2010)</p> <p>A person who refuses to answer a question posed under section 19(2) or who knowingly gives a false answer to the question or fails to comply with a request made commits an offence. (section 19(3))</p>

		<p>negotiable instruments related to ML or TF.</p> <ul style="list-style-type: none"> The declaration system does not allow for the detention of currency or bearer negotiable instruments and the identification data of the bearer where there is suspicion of ML or TF. There is no evidence that there are formal arrangements in place for the sharing of information with international counterparts in relation to cross border transactions. 	<p>ii. Some formal arrangements should be entered into for the sharing of information on cross border transportation and seizures with International counter-parts and other competent authorities.</p>	<p>Section 160 Customs Act 2010- Detention of goods suspected to be illegally obtained.</p> <p>160 (1) Where a customs officer or an authorised person has reasonable grounds to believe that goods were obtained in contravention of any law, the customs officer or authorised person may, without warrant, seize and detain such goods if the goods-</p> <ul style="list-style-type: none"> a) Are in Dominica and the customs officer or authorised person is satisfied that the goods- <ul style="list-style-type: none"> i) Are being imported or have been imported; or ii) Are being imported or have been imported; or b) Come to the attention or into the possession of the customs officer or authorised person, during a search, inspection, audit or examination under this Act or any enactment which related to the reporting of imports or exports of currency. <p>(2) a proper officer may use reasonable force if it is necessary to seize or detain goods under this section.</p> <p>(3) if the person from whom goods have been seized and detained under this section is identified but is not present when such seizure and detention occur,</p>
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			<p>iii. Provide the legislative provisions that would allow cash or bearer negotiable instruments and the identification data of the bearer to be retained in circumstances involving suspicion of ML of TF.</p>	<p>the Comptroller shall, as soon as practicable-</p> <p>a) notify that person of the detention and seizure of the goods; and</p> <p>b) issue to that person a receipt in respect of the seized and detained goods.</p> <p>(4) Subject to section 163, the proper officer or authorised person shall-</p> <p>a. Take any goods detained under this section; or</p> <p>b. Cause any goods detained under this section to be taken, To a secure place for safekeeping as directed by the proper officer or authorised person.</p> <p>Section 2 Customs act- “goods” includes currency.</p> <p>Although there is no legislative provisions that would allow the identification data of the bearer of cash or bearer negotiable instruments to be retained in circumstances involving suspicion of ML or TF, this is already being done in Dominica. What obtains in Dominica is that where a suspicion arises at customs in relation to ML and TF it is automatically transferred to the FIU. The FIU inputs all the information into their database and then they will proceed to commence their investigations into the</p>
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			<p>iv. Make available a range of effective proportionate and dissuasive criminal, civil or administrative sanction, which can be applied to persons who make false declarations.</p> <p>v. Make available a range of effective proportionate and dissuasive criminal, civil or administrative sanctions, which can be applied to persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments related to ML or TF.</p>	<p>matter. The information is stored for an indefinite period. As long as the FIU system/database is operational, the information is kept.</p> <p>Section 186 of the Customs Act 20 of 2010 provides for effective proportionate and dissuasive criminal, civil or administrative sanction, which can be applied to persons who make false declarations. The section states:</p> <p>(1) Notwithstanding anything contained in any enactment to the contrary, where a person, in connection with an assigned matter, knowingly or recklessly-</p> <p>(a) Makes or signs, or causes to be made or signed, any declaration, notice, certificate or other document which is false in a material particular;</p> <p>(b) Submits, or causes to be submitted, to the Comptroller or a proper officer, any declaration, notice, certificate or other document which is false in a material particular; or</p> <p>(c) Makes any statement, in an answer to any question put to him by a proper officer which the person is required under any written law to answer, which is false in a material particular.</p>
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