

## **TRANSLATION OF THE OFFICIAL PUBLICATION OF SINT MAARTEN (AB 2010, GT no. 17)**

### **EXPLANATORY MEMORANDUM**

#### **1. General section**

Article 69(1) of the draft Constitution of Sint Maarten provides that the institution and powers of the Council of Advice shall be regulated by national ordinance. This regulation serves that purpose. Like Parliament, the Audit Chamber and the national Ombudsman, the Council of Advice is a High Council of State and is responsible for advising the government (and Parliament, in the case of draft national ordinances submitted by Members of Parliament) on legislation and administration. The Council is independent and is the final advisor. The expertise of the Council lies mainly in the legal field and in general administrative and legislative techniques.

With its choice to become a country in the Kingdom, Sint Maarten opted to primarily create its own institutions. Experiences with joint institutions showed that the problems and frames of reference of the largest participant often become dominant, at the expense of the smaller participants. The concentration of joint institutions in only one of the participants led, among other things, to shortages of knowledge and reduced opportunities for the smaller participants. As a result, Sint Maarten opted for its own Council of Advice, without undervaluing the relationships in connection with the Kingdom in this way. The aim for concordance in important legal provisions reflects this. The fact that there are different countries with their own legislative responsibilities reflects the realities of the existence of key differences and circumstances, including in the field of standards and values, which call for their own development. With regard to cooperation, the existing cooperation between the Councils of Advice of the Netherlands Antilles and Aruba and the Council of State provide sufficient leads for the continuation of this after the dissolution of the Netherlands Antilles and the formation of the new countries of Curaçao and Sint Maarten. In addition to the general cooperation, Sint Maarten intends to enter into a special protocol for cooperation with the Council of State of the Netherlands. Talks for that purpose have reached an advanced stage.

The proposed regulation is based on the Rules of Order of the Council of Advice of the Netherlands Antilles and the National ordinance Council of Advice of Aruba.

#### **Costs**

For the formation of the Council of Advice, ANG 1 million was included in the IVB resources that are managed by USONA.

#### **2. Article by Article section**

##### *Article 1*

The Council consists of five members, including the vice chairman. As in Article 28(4) of the Constitution of the Netherlands Antilles, the Governor may act as the chairman; he then has an advisory vote. The provision that the Council consists of 'at least' five members has been scrapped. Five members is an appropriate number for the small-scale society of Sint Maarten. The Aruban National ordinance Council of Advice is also based on five members. Like the Antillean regulation, this draft also provides for the possibility of appointing associate members of the Council of Advice, whose task is to issue preliminary advice and to alternate for members.

##### *Articles 2 and 3*

According to Article 68(3) of the draft Constitution, the vice chairman and the other members and associate members are appointed by national decree. They are appointed for a term of

---

*This is an English translation of the Dutch source text.*

*In the event of any discrepancy between the Dutch language version and the translation, and in case of any disputes, the Dutch version prevails. No rights can be derived from the English translation.*

*October 2013*

seven years and may be reappointed immediately. Unlike the regulation of the Netherlands Antilles, in which the Governor appointed the members of the Council, the members are appointed on the nomination of the Minister of General Affairs, by agreement with the Minister of Justice, for a term of seven years. According to Article 28(2) of the Constitution of the Netherlands Antilles, the members of the Council do not hold office for longer than five years, but may be reappointed immediately. The reason for extending the term by two years is to promote continuity and consistency. No limit has been set for the number of terms of office. The Council is consulted on the appointment of the vice chairman; the Council makes recommendations for the appointment of the other members.

#### *Article 4*

This provision was not found in the Rules of Order of the Council of Advice of the Netherlands Antilles. In connection with the tasks and activities of the Council, it is reasonable that a member should be a resident of Sint Maarten. Members should know the standards and values of the society well in order to be able to give expert advice on draft legislation. It is not required that members of the Council also hold Dutch nationality. The current regulation does not contain this requirement either. This requirement is included for the associate members. In this way, the best possible use can be made of the available expertise, for instance of a Dutch national living in Curaçao.

#### *Article 5*

This regulation concerning family ties is also included in the 2002 Antillean National ordinance General Audit Chamber, the draft National ordinance General Audit Chamber for the country of Sint Maarten and the Aruban National ordinance Council of Advice, among others.

#### *Article 6*

According to Article 68(5) of the draft Constitution, the legal position of the members of the Council of Advice is regulated by or pursuant to national ordinance. This regulation is divided over a number of provisions. Article 6 contains the grounds for the suspension of Council members. If one of the circumstances referred to in paragraph 1 arises, the person concerned must be suspended; paragraph 2 is a discretionary power. The Antillean regulation does not contain any explicit rules on the suspension and dismissal of members of the Council of Advice. The Aruban regulation referred to the institution of preliminary judicial investigations regarding a criminal offence as the sole grounds for suspension (Article 8(b)). The said grounds are consistent with the reasons for the

suspension of judges of the Common Court of Justice in the Kingdom Act on the Common Court of Justice.

#### *Article 7*

Article 7 contains the grounds for the dismissal of members of the Council. The regulation is consistent with Article 4 of the Aruban National ordinance Council of Advice and the Draft of the Kingdom Act on the Common Court of Justice. The loss of domicile has been added.

#### *Article 8*

If there is an intention to suspend or dismiss a member of the Council, the person concerned will be given an opportunity to give his opinion on this, unless no discussion is possible on the intention, such as when the age of 70 has been reached. The regulation is consistent with Article 6 of the Aruban National ordinance Council of Advice.

---

*This is an English translation of the Dutch source text.*

*In the event of any discrepancy between the Dutch language version and the translation, and in case of any disputes, the Dutch version prevails. No rights can be derived from the English translation.*

*October 2013*

#### *Article 9*

The financial provisions for the members of the Council are regulated by national decree, containing general measures. A part-time position is assumed. Regulation at the national ordinance level is not required by the Constitution, as Article 67 of the draft Constitution explicitly allows delegation. As a result, remuneration can be applied more flexibly.

#### *Article 10*

If the vice chairman is unable to attend or is absent, he is replaced by the longest-serving member present, in terms of order of appointment. 'Absent' provides for the case that a vacancy arises. The Article is based on Article 11 of the Rules of Order of the Council of Advice of the Netherlands Antilles.

#### *Article 11*

A secretariat will be attached to the Council, headed by a secretary. The aim is a secretariat consisting of three lawyers and a documentalist, which will support the Council in drawing up advisory reports. Particularly in the start-up phase, the aim will be to cooperate at the official level with the legislative department of the Council of State for the Kingdom. Cooperation with a secretariat of another Sint Maarten advisory council, such as the Social and Economic Council, can also be considered.

Unlike membership, the position of secretary of the Council of Advice is a full-time job. The secretary need not be a lawyer. A relevant university degree is required. In this way, it will be possible to make use of a larger circle of potentially suitable persons. Although, in view of the nature of the work of the Council, it is highly preferable that members of the Council of Advice should be lawyers, it is possible to vary from this, for example for reasons of special administrative experience.

#### *Article 13*

Article 32(1) of the Constitution of the Netherlands Antilles provides that the Council of Advice must be consulted by the Governor regarding all draft national ordinances that the Governor wishes to present for the approval of Parliament or that Parliament has submitted to the Governor for adoption. In the case of government drafts, advice will be provided before the draft is submitted to Parliament. If a draft is presented by a Member of Parliament, advice will be provided before it is adopted by the Governor. This was problematic. After all, there are no means to amend the draft after it has been approved by Parliament. Through the new formulation, which is drawn from the Aruban regulation, the problem with draft legislation submitted by Members of Parliament is now avoided.

The possibility for the Council to take decisions in administrative disputes in accordance with rules to be laid down by national ordinance (Article 35 of the Constitution of the Netherlands Antilles) has been omitted. No use was ever made of that possibility.

#### *Article 14*

This provision is based on Article 67(4) of the draft Constitution. The Netherlands Antillean regulation also provided for the possibility of issuing advice at the Council's own initiative and providing advice at the initiative of Parliament.

#### *Article 17*

This regulation is derived from Article 14 of the Rules of Order of the Council of Advice of the Netherlands Antilles.

#### *Article 21*

---

*This is an English translation of the Dutch source text.*

*In the event of any discrepancy between the Dutch language version and the translation, and in case of any disputes, the Dutch version prevails. No rights can be derived from the English translation.*

*October 2013*

This provision is derived from Article 15 of the Rules of Order of the Council of Advice of the Netherlands Antilles.

*Article 24*

According to Article 24, the Council adopts Rules of Order. This could include the work of the meeting and other matters. The Rules will be disclosed in the official publication.

*Article 25*

The description of the tasks of the associate members is derived from Article 17(1) of the Rules of Order of the Council of Advice of the Netherlands Antilles. According to paragraph 3, the member for Sint Maarten of the Council of State is also a member of the Council of Advice and may attend the meetings of the Council. In this way, expertise can be exchanged.

*Article 26*

For the Council to perform its tasks well, it is essential that it has sufficient resources. For that reason, it is proposed that Parliament, by agreement with the Council and the minister concerned, will provide the Council with all facilities for the proper and independent performance of its tasks.

*Article 27*

Because it is considered necessary that the Council of Advice should already be operational as of the date on which Sint Maarten gains the status of a country, it is necessary to provide for a transitional regulation that allows for this. Only the existing bodies of the Island Region of Sint Maarten can provide for this. As far as possible, the working methods provided for in this national ordinance have been followed here. This transitional provision legitimises the working methods provided for in Article 2 of the island ordinance concerning the adoption of this national ordinance.

\*\*\*

---

*This is an English translation of the Dutch source text.*

*In the event of any discrepancy between the Dutch language version and the translation, and in case of any disputes, the Dutch version prevails. No rights can be derived from the English translation.*

*October 2013*