

## **TRANSLATION OF THE OFFICIAL PUBLICATION OF SINT MAARTEN (AB 2010, GT no. 30)**

### **EXPLANATORY MEMORANDUM**

#### **NATIONAL ORDINANCE TRANSITIONAL LEGAL AND ADMINISTRATIVE PROVISIONS**

##### *General section*

This national ordinance is consistent with the additional Article I of the Constitution. Additional Article I regulates the adoption of the current legislation of the Netherlands Antilles and the island territory of Sint Maarten. It also regulates the transfer of rights and obligations of the public legal entity of the island territory of Sint Maarten to the new public legal entity of the country of Sint Maarten.

##### *The draft in outline*

The draft is divided into three chapters, making a distinction between provisions relating to legislation and provisions relating to the administration. The first chapter is also sub-divided into two sections. The first section concerns the basis for the appendices and the second section regulates the realisation of consolidated texts of the legal regulations that have been altered on the basis of the national ordinance. The second chapter contains provisions relating to the transfer of the administration. Finally, a chapter on final and transitional provisions has been included.

The appendices belonging to this national ordinance form a key part of it. There are two appendices. The first appendix contains the regulations that will be altered by the entry into force of the national ordinance. The second Appendix contains the regulations that will be repealed.

The entry into force of the national ordinance is linked to the entry into force of the Constitution pursuant to additional Article II thereof.

##### *Financial consequences*

No direct financial consequences are associated with this national ordinance.

##### *Article by Article section*

Article 1 is consistent with additional Article I of the Constitution and, in order to be entirely clear, regulates the indication and status of the new legal regulations of Sint Maarten.

Article 2 includes the grounds for the alteration or repeal of legal regulations that will apply as legal regulations of Sint Maarten pursuant to additional Article I of the Constitution. After all, this Article of the Constitution grants the legislator the power to repeal or alter regulations that have come to apply for the Country of Sint Maarten pursuant to that Article. Additional Article I(2) also provides that rules will be laid down by national ordinance for the further application of the legal regulations that have come to apply as regulations of Sint Maarten pursuant to additional Article I(1).

The regulations for which repeal is proposed are in particular regulations relating to the structure of the Netherlands Antilles. But there are also regulations of the island territory that will be replaced with new regulations that broadly regulate the same subject matter, but then in the context of the new country status. Such as the Organisation ordinance. On the basis of the Constitution, a National ordinance must be laid down. This is the National ordinance organisation and structure of the national government. The Rules of Order of the Island Council are another example. Furthermore, a considerable number of national ordinances are not included in Appendix II, because there are no officials that can invoke the regulation or because the regulation cannot be applied due to the altered political relationships, such as the regulation concerning the official uniform of holders of authority. These regulations

Article 2 contains the grounds for the alteration of the adopted regulations (paragraph 1) and for the repeal of adopted regulations (paragraph 2).

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Articles 3 and 4 regulate the publication of the altered texts of the enacted legal regulations. The Minister of General Affairs is assigned to provide for placement in the Official Publication of the national decree adopting the consolidated text. This refers to the possibility included in the National ordinance publication and entry into force of a regulation that the Official Publication can also be made available in an electronic version. Article 4 contains concrete instructions for the preparation of the consolidated texts. In addition, Appendix I contains a general section in which the general alterations of all regulations are laid down. These general alterations relate to the replacement of indications, powers and the choice of particular procedures. Finally, in the special section of Appendix I, specific alterations of defined regulations are implemented.

Since consolidated texts did not pass through the parliamentary procedure, they do not, in principle, contain the authentic text of a regulation. However, it has since proved impossible in practice to work only with authentic texts. After all, over the years these may have been altered many times. It is certainly not feasible for the public to keep pace with all these alterations. Furthermore, in this case there is the special situation in which the regulations were realised through the effect of additional Article I of the Constitution. In this national ordinance, therefore, in contrast to what is normally the case in the preparation of consolidated texts, this text is classed as authentic.

Following the publication of a consolidated text, the year and sequence number of the Official Publication of the Country of Sint Maarten in which it is published are used further as a reference, with the code (GT) placed after the sequential number for the purpose of distinction.

With regard to the spelling, the spelling contained in the Dutch Language Glossary, as laid down by the relevant ministers of the territories associated in the Language Union (*'Taalunie'*) (the Netherlands, Flanders and Surinam) shall be used in the preparation of the Dutch texts. The lexicon is published by SDU publishers in the Green Booklet (*'Groene Boekje'*). The word-list is updated every ten years, lastly in 2005.

Chapter II contains the provisions relating to the transfer of administration. It is noted that the Order concerning the legal succession of civil rights and obligations of the Netherlands Antilles and the Order concerning the legal succession of the Social Insurance Bank and the Mutual arrangement concerning settlement also make legal provisions for the legal succession of the Netherlands Antilles, the Netherlands Antilles General Pension Fund and the Netherlands Antilles Social Insurance Bank by the new countries. The aforementioned orders are mutual arrangements, as referred to in Article 38(2) of the Charter for the Kingdom. Both the new countries of Sint Maarten and Curaçao and the Country of the Netherlands, with regard to Bonaire, Sint Eustatius and Saba, are involved in the legal succession of the Netherlands Antilles. As the provisions to be made have an external effect, it was also an obvious step to create a legal basis at the Kingdom level.

This national ordinance regulates the legal succession of the island territory of Sint Maarten. The island legislator is competent for that purpose.

Article 5 concerns the private law obligations that the island territory has contracted. These could include tenancy agreements, service contracts or contracts for the delivery of goods. These obligations will be adopted by the new country. The civil-law obligations of the Country of the Netherlands Antilles relating specifically to Sint Maarten will also transfer to the country of Sint Maarten pursuant to the Order concerning the civil-law legal succession of the Netherlands Antilles.

Articles 6, 7 and 8 contain provisions for administrative decisions. These provisions assure the legal security of the citizens and investors on the transfer to the new political status.

Article 6 regulates the continued validity of administrative decisions issued on the basis of the legal regulations that will form part of the legal instruments of the Country of Sint Maarten pursuant to additional Article I of the Constitution in conjunction with Appendix I of this national ordinance. A distinction is made here between administrative decisions issued by the competent authorities of the Country of the Netherlands Antilles and the competent authorities of the island territory of Sint Maarten, generally the Administrative Board. This distinction is desirable in order to be able to specify that the provision relates to administrative decisions concerning interests in Sint Maarten. This broad formulation anticipates administrative decisions relating to businesses registered in Sint

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Maarten, such as a concession issued for offering telecommunication services in or from Sint Maarten, as well as administrative decisions issued to persons residing in Sint Maarten, such as diplomas and competency certificates.

Article 6(3) regulates the issue, at the request of the interested party, of a declaration by the competent authority that the validity of the administrative decision has been extended. Naturally, the extension of the validity does not apply with regard to administrative decisions within the legal framework of which the interested party does not operate. The issue of such declarations shall be confined to those administrative decisions relating to activities in an international sphere. For instance in relation to aviation or shipping. The issue of such declarations for administrative decisions with an internal effect is not necessary, as the change in the political structure is sufficiently well-known.

In view of the potential teething troubles on the start-up of the new government organisation, it is also advisable to extend the validity of administrative decisions that are still in force. Article 7 contains a regulation for that purpose. This avoids a system that is still being built up from immediately facing a flood of applications for the extension of administrative decisions. However, this practical approach must not jeopardise the security of citizens or public order. Finally, Article 7(2) grants authority to the competent minister to further determine the term of the extension in view of the general interest, and thus in fact to reduce it. The minister must also take account of the interests of the interested party in the administrative decision here. The restriction of the term of validity must not have disproportionately adverse effects for the interested party.

Article 8 contains a provision for the adoption of procedures for applications for administrative decisions, reconsiderations and administrative appeals. These are continued in their status at the time at which the Constitution enters into force. This could involve applications for building permits, as well as notices of objection against placements in the machinery of government or procedures before the Island Council pursuant to the Business establishment regulation. As the Island Council will no longer exist as an administrative authority, it is desirable to make provision for the cases that still need to be settled. It is proposed that the power to settle the case be assigned to the minister responsible. However, the interested party is entirely free to file an appeal against the contested decision with the administrative courts. This freedom of choice must be regulated explicitly, in order to avoid the administrative courts feeling called on to refer the interested party back to precisely the institution that can be regarded as having made the contested decision. This provision serves solely as a safety net to avoid the non-existence of institutions that are responsible for the file and that a lack of clarity therefore arises for the interested party.

Article 9 contains a specific regulation for the continuation of the work of the tax authority and the rights and obligations of the citizens pursuant to the fiscal legislation that applied in Sint Maarten at the time when the Constitution entered into force. This regulation is specific to taxation and should be considered separately from Article 8, which provides for other types of administrative decisions.

Chapter III contains transitional and final provisions.

Article 10 contains a generally-formulated safety net provision. This provision concerns rights and obligations in general, which arise from the regulations that now apply pursuant to additional Article I of the Constitution as legal regulations of the country of Sint Maarten.

Article 11 concerns the public legal entities that were instituted on the transfer of the legal regulations on the basis of which they were instituted by the Country of the Netherlands Antilles or the island territory of Sint Maarten. This Article extends the term which must be accounted for by the months in 2010 following the entry into force of the new political relationships (the period from 11 October up to and including 31 December 2010).

Article 12 regulates the continuation of the validity of the identity cards and driving licences issued by the Country of the Netherlands Antilles and the island territory of Sint Maarten. Provision is also made for the use of the stock of blank documents still available at the Civil Affairs Department. It is expected that the new identity cards and driving licences will be available from 1 January 2011.

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Article 13 regulates the transfer of the pension rights of retired, serving and former civil servants. The rights built up are maintained in full and benefit payments will continue. The Mutual arrangement concerning the succession and partition of the property of the Netherlands Antilles General Pension Fund and the succession of a number of other related regulations is of importance here. After all, this regulates the Country to which a person should report.

Article 14 regulates the transfer of entitlements from social insurance and the insurance of exceptional medical expenses. A mutual arrangement has also been contracted on this level, namely the Mutual regulation concerning the partition of the property of the Netherlands Antilles Social Insurance Bank.

Article 15 contains a transitional provision whereby both appendices can be altered by national decree, containing general measures, for two years after the national ordinance enters into force. This delegation of powers to the government is desirable in order to adjust more regulations to the altered legal system, or to withdraw them, than is foreseen at present. The delegation included in paragraph 1 is limited to making changes relating to the new legal system.

As a regulation that has been withdrawn can only be made valid through renewed adoption, the alteration powers relating to Appendix II only concern the addition of new regulations to the Appendix and not the withdrawal of regulations from the Appendix. Once withdrawn, a regulation remains withdrawn. The withdrawal also extends to the implementing orders pursuant to the national ordinance.

#### *Explanatory Notes to Appendix I*

Appendix I contains two sections. The first section contains general alterations of all legal regulations that will attain the status of legal regulations of Sint Maarten pursuant to additional Article I of the Constitution read in conjunction with Article 1 of this national ordinance. The second section contains specific alterations of regulations defined in more detail. To the extent necessary, an explanation of these specific alterations follows below.

The alterations of the National ordinances concerning the Council of Advice, the General Audit Chamber and the Social-Economic Council involve the insertion of grounds for the regulation of the structure and organisation of the secretariats.

The alterations of the Election Ordinance and the National ordinance parliamentary inquiries involve both editorial and substantive points. Both types of alteration serve to clarify the text. For example, the alteration of Article 12 of the Ordinance on elections proposes a more uniform formulation of the composition of the central electoral committee.

The National ordinance promotion of the integrity of ministers contains a reporting obligation for the aforementioned ministers, involving the submission of a declaration of their secondary activities and commercial interests to the prime minister. Compliance with the reporting obligation is not subject to criminal sanctions for ministers. Article 3(5) does provide that the prime minister shall immediately inform Parliament in the event an undesirable conflict of interests in secondary positions or activities arises and the minister fails to solve this conflict adequately. Parliament may attach consequences to this, possibly through a vote of no confidence. Further to this, the prime minister must also notify Parliament without delay if a minister fails to submit a signed declaration, as referred to in Article 2(4), to the prime minister within 30 days of the acceptance of his position or after accepting new secondary positions or acquiring new commercial interests. The alteration makes provision for this.

The alteration of the National ordinance establishing the framework for the central bank, monetary system, foreign exchange and exchange rates is necessary in view of the structure and the powers provided for the central bank, as laid down in the mutual arrangements regulating the structure and powers of the Central Bank. In these mutual arrangements, the power to establish generally binding regulations is attributed to the central bank. In view of the Constitution and of Article 81 in particular, the central bank cannot be assigned the power to impose rules without the designation

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of the bank as a public body or independent administrative authority, as referred to in the Constitution. After all, only the ordinances issued by these bodies and authorities form part of the current legal regulations of Sint Maarten.

The insertion of Article 1a provides for the award of legal status to the rules issued by the Bank of the Netherlands Antilles before the transition.

#### *Memorandum to Appendix II*

The regulations for which withdrawal is proposed generally relate to the organisation of the political system of the Netherlands Antilles.

It is not considered necessary to withdraw regulations that are so interwoven with the political organisation of the Netherlands Antilles that there is no doubt that these need not be implemented, such as the Islands Regulation for the Netherlands Antilles and the national ordinances issued for its implementation.

The repeal of the National ordinance centrally organised civil service consultation concerns a policy consideration regarding how the relationship between the public legal entity as an employer and the trade unions should be organised. Although the Netherlands Antilles based the national ordinance on international agreements in relation to the International Labour Organisation (ILO), it is emphasised that these agreements were not binding on either the Netherlands Antilles or, therefore, on Sint Maarten. Whether and to what extent affiliation to the relevant treaty is desirable after all is left to the government.

The repeal of the 1944 Workers ordinance is consistent with the structure of the government organisation of Sint Maarten. Employees in the service of the island territory were employed under civil law employment contracts, without making use of the Workers ordinance. This national ordinance is therefore not relevant for Sint Maarten.

Regulations relating to the establishment and calculation of pension rights shall not be withdrawn. These require a careful inventory and assessment in terms of possible individual cases.

The possibility exists to withdraw more regulations by national decree, containing general measures, for two years after the national ordinance enters into force. This power, laid down in Article 15, offers the possibility of drawing up a more detailed inventory of the regulations that have come to apply as regulations of Sint Maarten and to assess these in terms of the organisation and functioning of the country.

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