

## TRANSLATION OF THE OFFICIAL PUBLICATION OF SINT MAARTEN

### **EXPLANATORY MEMORANDUM** **for the Regulation on a Common Monetary System for Curaçao and Sint Maarten**

#### **Purpose and objective**

The purpose of this draft is the introduction of a new Common Monetary System for the Countries of Curaçao and Sint Maarten. This draft is based on the agreements in principle described below, as well as the 1989 Regulation concerning the Monetary System of the Netherlands Antilles (PB 1989, No. 70).

#### **Background and reasons**

In connection with the new political status for the island territories forming part of the Netherlands Antilles, which will take effect on 10 October 2010, it is necessary to replace the 1989 Regulation concerning the Monetary System of the Netherlands Antilles by a new regulation in which new coins and banknotes for the new Countries of Curaçao and Sint Maarten are introduced.

In the final agreement of 2 November 2006, the island territories of Curaçao and Sint Maarten agreed that there would be a common central bank for Curaçao and Sint Maarten when they obtained the status of 'country' within the Kingdom of the Netherlands. At the same time, it was agreed that there would be a single supervisory authority (i.e. a common central bank) for the monetary supervision, business economic supervision and supervision of integrity and that uniform legislation on the central bank and supervision would apply in the future Countries. Curaçao and Sint Maarten then reached further agreements on a joint central bank and the relevant regulations.

These agreements, taking account of the fact that two different countries are involved here, included the following:

- a joint central bank would be set up as a public legal person;
- there would be a single currency region with a common currency, in a fixed exchange rate relationship to the US dollar;
- the primary task is supervision of the financial sector (i.e. monetary supervision, business economic supervision and supervision of integrity) in both countries;
- this supervision serves to maintain the external value of the currency and the health of the financial system;
- decision-making by the countries will take place on a parity basis.

In order to prepare for the introduction of a common central bank and a common currency, the island territories formed a commission known as the Common Central Bank Commission, consisting of representatives of each island territory and the Bank of the Netherlands Antilles (BNA). This commission has prepared legal regulations for the introduction of the Central Bank of Curaçao and Sint Maarten, as well as the common currency: the Central Bank Charter of Curaçao and Sint Maarten and this Regulation on a Common Monetary System for Curaçao and Sint Maarten.

#### **Legal basis**

Article 88 of the Constitution of Curaçao provides that the monetary system shall be regulated by national ordinance. Article 100(1) of the Constitution of Sint Maarten provides that there shall be a central bank that supervises the monetary system. Other tasks may be assigned to this central bank by national ordinance. Paragraph 2 provides that the monetary system shall be regulated by or pursuant to national ordinance.

Agreements needed to be reached with regard to the structure of this monetary system, which are laid down in a mutual arrangement (as referred to in Article 38(1) of the Charter for the Kingdom of the Netherlands).

A mutual arrangement is effective only between the countries that reach the agreements, but is not automatically effective in the legal system of each of the countries involved in the arrangement. In order to be effective, the mutual arrangement must be embedded in law.

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The mutual arrangement concerning the monetary system will be embedded in the legal system of each country by providing in a national ordinance that the common monetary system will be regulated by mutual arrangement and that the mutual arrangement is realised only if that regulation is laid down by national ordinance (by each of the countries concerned).

In principle, this procedure for establishment by national ordinance is less rigid and time-consuming than uniform national ordinances in which the regulation is laid down in an integrated manner. The establishment national ordinance ensures that the national legislator is involved in the establishment of the mutual arrangement. With an establishment national ordinance, therefore, the relevant mutual arrangement gains the force of law. As a result, it will automatically enter into force within the national legal system of each Country.

Other matters relevant to the monetary system, namely the common central bank, foreign exchange and the exchange rates will also be regulated in the above manner, in a mutual arrangement that will be adopted by a national ordinance in both Countries.

The Central Bank Charter for Curaçao and Sint Maarten (hereinafter referred to as 'the Charter') also provides that the Countries will ensure that their national legislation, to the extent that this concerns the objectives of the Bank, and the implementing provisions based on this, are uniform and consistent with the Charter and that they contain the same commencement date. This therefore also applies for the national decrees referred to in this draft. With regard to the realisation of national decrees with the same content, it is noted that no 'uniform national decree, containing general measures' exists. However, the countries can each adopt a national decree with the same content, which in fact achieves the same result. Finally, the national legislation and the implementing provisions based on it must contain the same commencement date. The reason for this is that it is necessary to ensure that the national decrees, in particular, enter into force at the same time, in the event that they are not announced or published at the same time.

### **Content of the regulation**

The main aspects of the common monetary system are discussed in more detail below:

#### The unit of account

One of the agreements in principle was that there should be a single currency area with a common currency, in a fixed exchange rate relationship to the US dollar. According to the agreements in principle, this common currency would be the 'Dutch Caribbean guilder'. However, because in geographical terms, the Dutch Caribbean also includes Bonaire, St. Eustatius, Saba and Aruba, the name 'Caribbean guilder' was chosen in this regulation.

#### Coins and banknotes

In contrast to the 1989 Regulation concerning the Monetary System of the Netherlands Antilles, the series of coins proposed in this draft does not include a two-and-a-half guilder coin. Furthermore, instead of a twenty-five guilder note, a twenty-guilder note has been included and instead of a two hundred and fifty guilder note, there is a two hundred guilder note. The reason for this is that these amounts are a better match with what is customary in international payments, such as for the euro and the US dollar.

With regard to the coins referred to in Article 4(1) and the banknotes referred to in Article 5, it is up to the Bank to determine whether these will be produced and brought into circulation. The Bank will let this depend on the need for the coins and banknotes in the economy and will make a cost assessment in that regard.

In the Charter, the Central Bank of Curaçao and Sint Maarten ('the Bank') is charged with the issue of coins with the capacity of legal tender, as well as the issue of banknotes. This was previously a task of the country of the Netherlands Antilles; the BNA was only authorised to issue banknotes. As two Countries are now involved, a choice was made to also transfer the issue of coins to the Bank.

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In contrast to the 1989 Regulation concerning the Monetary System of the Netherlands Antilles, in which the materials of which the coins with the capacity of legal tender are produced, as well as the weight, the content and the diameter of these coins are determined by national decree, containing general measures, in this draft a choice was made for the Bank to determine these features.

However, the principal images of the coins (with the exception of the coins issued to commemorate special occasions) are laid down in this regulation. Any other elements of the images of the coins (e.g. stars, crowns etc.) will be determined by the Bank. The Bank holds full responsibility for the design and printing of the banknotes.

#### Coin notes

The Explanatory Memorandum of the 1989 Regulation concerning the Monetary System of the Netherlands Antilles noted that 'coin notes' are no longer used and that there are probably very few still in circulation. For that reason, coin notes are no longer included as legal tender in this draft. The coin notes produced before this draft takes effect shall retain their capacity as legal tender pursuant to the 1989 Regulation concerning the Monetary System of the Netherlands Antilles until the date on which they are jointly taken out of circulation by the countries. The coin notes can then be exchanged for Caribbean guilders on a one-to-one basis, in accordance with Article 16.

#### Coin fund and Coin notes fund

In the BNA Bank Charter (PB 1985, No. 183), the BNA held the exclusive right to issue banknotes in the Netherlands Antilles pursuant to Article 7(1). At the time, the Country was responsible for the issue of coins and coin notes, but it had mandated the BNA to implement this. On the basis of these responsibilities, the circulation of banknotes was processed in the general administration of the BNA and the circulation of coins and coin notes was processed via separate funds with their own administration, the Coin fund and the Coin notes fund. However, pursuant to Article 6(1) of the Charter, the Bank holds the exclusive right to issue banknotes and coins in the Countries. Coin notes are no longer issued and the issue of coins is no longer a task of the Countries. This means that the circulation of coins, like the circulation of banknotes, will be processed in the Bank's general administration, as a result of which the circulation of cash can be administered more efficiently.

Following the expiration of the term for the exchange referred to in Article 16, the share of the Countries in the balance of the existing Coin fund and the Coin notes fund, referred to in Article 6(1) and 6(2) of the 1989 Regulation concerning the Monetary System of the Netherlands Antilles will be added to the Bank's operating result, after which the funds will be closed.

### **Article by Article Section**

#### Re Article 2

In contrast to the 1989 Regulation concerning the Monetary System of the Netherlands Antilles, the monetary system in this draft no longer includes coin notes. This is explained in more detail in the general section of this Explanatory Memorandum.

#### Re Article 3

A new unit of account for the monetary system of the countries is introduced in this provision. The Caribbean guilder is designated in amounts shown in figures by the letters 'CMg'.

#### Re Article 6

In contrast to the 1989 Regulation concerning the Monetary System of the Netherlands Antilles, where the power to monetise is attributed to the Minister of Finance and circulation takes place by the BNA, the coins referred to in Article 4(1) and the banknotes referred to in Article 5 are now minted or printed and circulated as needed exclusively by the Bank, at its own expense. The Bank is therefore the circulation bank and as such, to the exclusion of all others, has the right to issue banknotes and coins in the Countries and to provide for the circulation of cash.

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#### Re Article 7 in conjunction with Article 19

The general section of this Explanatory Memorandum explains when and for which reasons the Coin fund and the Coin notes fund, referred to in Article 6(1) and 6(2) of the 1989 Regulation concerning the Monetary System of the Netherlands Antilles will be dissolved.

This draft therefore states that the profits obtained on minting and issued banknotes and losses arising from the withdrawal and demonetisation of coins or the withdrawal of banknotes will be taken to the operating result of the Bank.

#### Re Article 11

The procedure for the issue of commemorative coins has been amended in relation to the 1989 Regulation concerning the Monetary System of the Netherlands Antilles, in the sense that the image, the amount, the coin material, the dimensions, the weight and the volume of the commemorative coins will now be laid down by national decree, containing general measures, of one of the Countries and the costs and revenues from the commemorative coins referred to in paragraph 1 will also be attributed to the relevant Country.

#### Re Article 12

The purpose of this provision is to prevent citizens from being required to accept every form of legal tender in unlimited amounts; only the Bank and foreign exchange banks authorised by the Bank are obliged to do so. In contrast to coins, banknotes are accepted without limitation.

#### Re Article 13

The second and third paragraphs of this Article explain what is not meant by 'damaged' coins and banknotes. Examples of what is meant by the damaged coins and banknotes referred to in paragraph 1 include banknotes that have been written on, coins to which stickers have been applied, chipped coins and coins in which initials have been carved.

#### Re Article 14

Like Article 13, the first three paragraphs of this Article concern both the protection of the coin and the protection of the public in the use of the coin. The Article attempts to provide sufficient guarantees for taking steps if coins or banknotes are suspected of being counterfeit. Publication of the further rules issued by the Bank pursuant to paragraph 4 for the protection of coins and banknotes must in any event take place on the Bank's website and in the main national daily newspapers of the Countries.

#### Re Article 16, 17, 18, 19 and 20

Articles 16, 17, 18, 19 and 20 are transitional provisions; these regulate the transition from the Netherlands Antillean guilder to the Caribbean guilder. The Caribbean guilder will not be ready on 10 October 2010, the date on which the new political status comes into effect for the island territories forming part of the Netherlands Antilles. It is therefore necessary to regulate the required action in the meantime.

The Netherlands-Antillean guilder will remain legal tender after 10 October 2010, until it is taken out of circulation by the Countries by national decree. It will be taken out of circulation within three months of the issue of the Caribbean guilder. During this period of no more than three months, the Caribbean guilder will therefore be used alongside the Netherlands Antillean guilder.

From the date on which the Caribbean guilder is issued, the public can exchange Netherlands Antillean guilders for Caribbean guilders at commercial banks for a period of one year. In total, the public can exchange Netherlands Antillean guilders for Caribbean guilders for a period of 30 years at the Bank from the date on which the Caribbean guilder is first issued. As at the commercial banks, exchanges at the bank will take place on a one-to-one basis.

The conversion of the balances referred to in Article 17 concerns both credit balances that are payable on demand (demand deposits, for example in the form of a current account) and balances that are not payable on demand (savings deposits, term deposits, etc.).

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In order to avoid the need to adjust contracts, decisions of administrative bodies, court decisions etc. everywhere in the countries in connection with the introduction of the Caribbean guilder, Article 18 provides for conversion of all amounts in Netherlands Antillean guilders into amounts in Caribbean guilders automatically by law. This means that from the time referred to in this Article, all amounts referred to in a contract or other legal instrument (naturally, to the extent that an obligation or right to payment arises from this) must be deemed to be denominated in Caribbean guilders. The Article is derived from the European regulation concerning the introduction of the euro and the Monetary System Bill for Bonaire, St. Eustatius and Saba, which also opts for statutory conversion of amounts.

The region in which the Caribbean guilder will become legal tender (Curaçao and Sint Maarten) does not coincide with the region in which the Netherlands Antillean guilder was legal tender (the five islands of the Netherlands Antilles). In view of this, Article 18 contains the restriction that the statutory conversion applies only for the legal instruments that are subject to the law of the Countries after the transition. Naturally, Article 18 does not relate to the legal instruments that are subject to the law of Bonaire, St. Eustatius and Saba from that time. For contracts between residents of the Countries and non-residents, the determining factor will be which legal system applies to those contracts after the transition. If this is the law of one of the countries, in principle it applies that all the amounts denominated in Netherlands Antillean guilders in those contracts have been converted automatically by law into Caribbean guilder amounts.

There are two exceptions to the principle that all amounts must be converted by law (see Article 18(3)). The first exception is that it may follow from the nature or purport of a legal instrument that an amount shown therein need not, or even cannot be converted. In such cases, automatic conversion will not take place. The second exception relates specifically to agreements. Parties to an agreement are free to agree that the original amounts in Netherlands Antillean guilders in the agreements will be maintained. They are also free to opt to replace the Netherlands Antillean guilder by a currency other than the Caribbean guilder. It is always required however that all parties to the agreement consent to this. Their consent must furthermore be explicit; in order to avoid any misunderstandings, tacit consent is not sufficient.

It should also be noted that the statutory conversion also applies for all amounts shown in Netherlands Antillean guilders in legislation (see Article 18(2)). In principle, the aim is to replace all amounts in legislation in good time. However, it must be taken into account that it will not be possible to exchange all the amounts appearing in legislation in time. For these cases, Article 18 serves as a safety net.

Article 19 has already been explained in the general section of this Explanatory Memorandum.

As already explained in the general section, the entry of this regulation into force will be regulated separately. With the exception of the Articles referred to in Article 20(2), the regulation will enter into force at the same time as the new political status. However, until these Articles enter into force, the Articles of the 1989 Regulation concerning the Monetary System of the Netherlands Antilles (PB 1989, No. 70) referred to in that same paragraph shall remain in effect. However, where Article 5 of the 1989 Regulation concerning the Monetary System of the Netherlands Antilles refers to 'the Netherlands Antilles', this should be read as 'the Countries' and references to an 'administrative decision of the Minister of Finance' should be read as 'national decree'.

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