



**MINISTER OF FINANCE - SINT MAARTEN**  
**MINISTER VAN FINANCIËN - SINT MAARTEN**

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To Parliament of Sint Maarten  
Attn President of Parliament, Mrs. Sarah A. Wescot-Williams  
Wilhelminastraat #1  
Philipsburg, Sint Maarten

STATEN VAN SINT MAARTEN	
Ingek.	29 JUN 2017
Volgnr.	IS/864/16-17
Par.	VB nky

Date 28<sup>th</sup> of June, 2017  
Your Ref no. UV/250/2016-2017  
Subject Invitation continuation Central Committee meeting no. 20

Excellency,

During the Central Committee meeting no. 20 of the 18<sup>th</sup> of May, 2017, the honorable members of Parliament Mr. Frans Richardson, Mr. Franklyn Meyers and Mr. Perry Geerlings requested more clarity on the Supervision Ordinances for the Central bank of Curacao and St. Maarten.

At the adjournment of the meeting Parliament recommended to provide an elucidation on the differences of the National Ordinances between Curacao and St. Maarten.

This letter serves to provide Parliament with an elucidated overview of the differences between the Ordinances of Curacao and St. Maarten. And provides a short summary on the comments and recommendations of the International Monetary Fund and the Caribbean Financial Action Task Force.

1. Differences Curacao and St. Maarten
  - 1.1. Landsverordening actualisering en harmonisatie toezichtlandsverordeningen Centrale Bank van Curaçao en Sint Maarten

The main objective of this draft National Ordinance is the updating and harmonization of the National Ordinances under which the Bank supervises the financial institutions, the so-called supervisory National Ordinances. These are the following National Ordinances:

- a. 'de Landsverordening toezicht bank- en kredietwezen' (hereinafter: Ltbk);

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- b. 'de Landsverordening toezicht verzekeringsbedrijf' (hereinafter: Ltv);
- c. 'de Landsverordening toezicht effectenbeurzen' (hereinafter: Lte);
- d. 'de Landsverordening toezicht beleggingsinstellingen en administrateurs' (hereinafter: Ltba);
- e. 'de Landsverordening toezicht trustwezen' (hereinafter: Ltt) and
- f. 'de Landsverordening assurantiebemiddelingsbedrijf' (hereinafter: Lab).

This is an uniform National Ordinance and went already into effect in Curacao on the 5<sup>th</sup> of December 2015. Although Uniform Ordinances have to be in general content wise the same, the version of St. Maarten has the following differences.

#### Difference one

Based on article 98 of our Constitution, regulatory powers may be granted to independent administrative bodies, like our Central Bank. Based on said article, only on the grounds of conflict with the law ('recht'), the Government can overturn or withhold endorsement of the regulations an independent administrative body has put in place.

Based on the Constitution of Curacao overturning or withholding endorsement of regulations of an independent administrative body, is only possible on the grounds of conflict with legislations ('de wet'), a treaty or a binding decision of a human right organization, or conflict with the public interest.

If you compare the harmonization Ordinance of St. Maarten with the version of the Harmonization Ordinance of Curacao, you will find the above differences of the Constitution reflected. Please compare the articles 6b, paragraphs three and five of the Ltbc, 18b, paragraphs three and five of the Ltv, 3b, paragraphs three and five of the Lte, 9a, paragraphs three and five of the Ltba, 11a, paragraphs three and five of the Ltt and 8c, paragraphs three and five of the Lab.

Article 98 of our Constitution stipulates that the Council of Advice has to be heard before the Government can overturn a regulation of an independent body as per the articles of the National Ordinances quoted above. This stipulation is not found in the Harmonization law of Curacao.

#### Difference two

Based on article 1, paragraph two of our Constitution, the official languages in St. Maarten are Dutch and English.

In the Harmonization Ordinance of St. Maarten, it is stipulated that a report from the Central Bank has to be written in Dutch or English, and in case the violator due to his lack of knowledge of the Dutch or English language insufficiently understands

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the decision of the Bank, on his request the Bank shall ensure that the content of the decision is communicated to the person concerned in an understandable language. In the Harmonization law of Curacao there is a reference made to a separate National Ordinance of official languages 'Landsverordening officiële talen'.

Please compare the articles 48p, paragraph five, and 48s, paragraph two of the Ltbk, 79q, paragraph five, and 79t, paragraph two of the Ltv, 12p, paragraph five, and 12s, paragraph two of the Lte, 32p, paragraph five, and 32s, paragraph two of the Ltba, 22f, paragraph 5, and 22i, paragraph two of the Ltt, and 23o, paragraph five, and 23r, paragraph two of the Lab.

#### Difference three

The relationship with the Financial Intelligence Unit of St. Maarten is more concrete. In the Harmonization Ordinance of St. Maarten it is stipulated that acting in violation of the Harmonization Ordinance or the Ordinance of Unusual Financial Transactions is reason for withdrawal of the license. In the Harmonization law of Curacao it is stipulated that acting in violation of the Harmonization Ordinance is reason for withdrawal of the license.

Please compare the articles 9, paragraph one, clause h, and 22, paragraph one of the Ltbk, 5, paragraph one, clause j of the Lte, 11, paragraph one, clause j, and 22, paragraph one, clause h of the Ltba, 5, paragraph one, clause g, and 9, paragraph one, clause g of the Ltt, and 7, paragraph one, clause n of the Lab.

#### Differences four and five

Two differences are caused by the synchronization of the Harmonization Ordinance of St. Maarten with the Administrative Enforcement Ordinance of St. Maarten, which is also tabled at the Staten.

In the Harmonization law of Curacao, the ceiling has to be fixed by National Decree, containing general measures above which no further penalty payments are forfeited and the amount of the administrative fines are determined. In St. Maarten this will be done via the Administrative Enforcement Ordinance.

The Harmonization Ordinance of St. Maarten makes a connection with the Administrative Enforcement Ordinance of St. Maarten. This connection is that the amounts of an imposed penalty payment must be proportional to the gravity of the violation. It will prevent exorbitant high coercive penalties.

Please compare articles 48b, paragraph seven, and 48k, paragraph two of the Ltbk, 79c, paragraph seven, and 79l, paragraph two of the Ltv, 12b, paragraph seven,

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and 12k, paragraph two of the Lte, 32b, paragraph seven, and 32k, paragraph two of the Ltba, 21b, paragraph seven, and 22a, paragraph two of the Ltt, 23a, paragraph seven, and 23j, paragraph two of the Lab.

The other difference is that a supervisor always has to fill in a report about his findings. In the version of Curacao this is not compulsory, but left up to the supervisor to decide if he will or not.

Please compare the articles 48p, paragraph one of the Ltbk, 79q, paragraph one of the Ltv, 12p, paragraph one of the Lte, 32p, paragraph one of the Ltba, 22f, paragraph one of the Ltt, and 23o, paragraph one of the Lab.

Finally, there are some legal adjustments, associated with the common legislation techniques in St. Maarten. For example, nowhere in the legislation of St. Maarten the words "hier te lande" (in this country) are used, which in the Curacao legislation often occurs. Instead, the country "St. Maarten" is mentioned. Or the fact that in St. Maarten the National Gazette is legally regulated, while in Curacao legislation the words "the Country's official journal in which the messages are posted" are commonly used.

#### 1.2. Landsverordening toezicht geldtransactiekantoren

This is an uniform National Ordinance and went already into effect in Curacao on the 1<sup>st</sup> of March 2015. Although Uniform Ordinances have to be in general content wise the same, the version of St. Maarten has the following differences.

##### Difference one

Based on article 98 of our Constitution, regulatory powers may be granted to independent administrative bodies, like our Central Bank. Based on said article, only on the grounds of conflict with the law ('recht'), the Government can overturn or withhold endorsement of the regulations an independent administrative body has put in place.

Based on the Constitution of Curacao overturning or withholding endorsement of regulations of an independent administrative body, is only possible on the grounds of conflict with legislations ('de wet'), a treaty or a binding decision of a human right organization, or conflict with the public interest.

If you compare the supervision on money transaction offices Ordinance of St. Maarten with the supervision on money transaction offices Ordinance of Curacao, you will find the above differences of the Constitution reflected. Please compare the

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articles 76, paragraph three and 77 of said Ordinance.

Article 98 of our Constitution stipulates that the Council of Advice has to be heard before the Government can overturn a regulation of an independent body is reflected in the article 77 of the supervision on money transaction offices Ordinance. This stipulation is not found in the Ordinance of Curacao.

#### Difference two

Based on article 1, paragraph two of our Constitution, the official languages in St. Maarten are Dutch and English.

In the supervision on money transaction offices Ordinance of St. Maarten, it is stipulated that a report from the Central Bank has to be written in Dutch or English, and in case the violator due to his lack of knowledge of the Dutch or English language insufficiently understands the decision of the Bank, on his request the Bank shall ensure that the content of the decision is communicated to the person concerned in an understandable language. In the supervision on money transaction offices Ordinance of Curacao there is a reference made to a separate National Ordinance of official languages 'Landsverordening officiële talen'.

Please compare the articles 43, paragraph five, and 46, paragraph two.

#### Difference three

The relationship with the Financial Intelligence Unit of St. Maarten is a more concrete. In the supervision on money transaction offices Ordinance of St. Maarten it is stipulated that acting in violation of the supervision on money transaction offices Ordinance or the Ordinance of Unusual Financial Transactions is reason for withdrawal of the license. In the supervision on money transaction offices Ordinance of Curacao it is stipulated that acting in violation of the supervision on money transaction offices Ordinance is reason for withdrawal of the license.

Please compare article 8, paragraph one, clause g.

#### Differences four and five

Two differences are caused by the synchronization of the supervision on money transaction offices Ordinance of St. Maarten with the Administrative Enforcement Ordinance of St. Maarten, which is also tabled at the Staten.

In the supervision on money transaction offices Ordinance of Curacao, the ceiling has to be fixed by National Decree, containing general measures above which no further penalty payments are forfeited and the amount of the administrative fines

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are determined. In St. Maarten this will be done via the Administrative Enforcement Ordinance.

The supervision on money transaction offices Ordinance of St. Maarten makes a connection with the Administrative Enforcement Ordinance of St. Maarten. This connection is that the amounts of an imposed penalty payment must be proportional to the gravity of the violation. It will prevent exorbitant high coercive penalties.

Please compare articles 29, paragraph seven, and 38, paragraph two.

The other difference is that a supervisor always has to fill in a report about his findings. In the version of Curacao this is not compulsory, but left up to the supervisor to decide if he will or not.

Please compare paragraph one of article 43.

Finally, there are some legal adjustments, associated with the common legislation techniques in St. Maarten. For example, nowhere in the legislation of St. Maarten the words "hier te lande" (in this country) are used, which in the Curacao legislation often occurs. Instead, the country "St. Maarten" is mentioned. Or the fact that in St. Maarten the National Gazette is legally regulated, while in Curacao legislation the words "the Country's official journal in which the messages are posted" are commonly used.

## 2. Comments and Recommendations IMF and CFATF

### International Monetary Fund

In 2002, the International Monetary Fund (hereinafter: IMF), at the request of the Dutch-Antilles government, conducted an evaluation of the Dutch-Antilles supervision regime and the regulations of the Dutch-Antilles financial sector. The research has resulted in the reports entitled Assessment of the Supervision and Regulation of the Financial Sector.

See below the internet addresses where the IMF Country Report No. 04/271, Kingdom of the Netherlands—Netherlands Antilles: Assessment of the Supervision and Regulation of the Financial Sector Volume I—Review of Financial Sector Regulation and Supervision can be found:

<https://www.imf.org/external/pubs/ft/scr/2004/cr04271.pdf>

See below the internet addresses where the IMF Country Report No. 04/272, Kingdom of the Netherlands—Netherlands Antilles: Assessment of the Supervision

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and Regulation of the Financial Sector Volume II—Detailed Assessment of Observance of Standards and Codes can be found:

<https://www.imf.org/external/pubs/ft/scr/2004/cr04272.pdf>

In the IMF reports, recommendations have been given to the Dutch-Antilles authorities to comply with the international criteria for adequate supervision. These recommendations are often subjects to be updated and harmonized, such as the legal basis for the integrity assessment of (co) policy makers and beneficial owners and the introduction of administrative sanctions such as administrative fines and penalty payments. These recommendations are processed as far as possible in this National Ordinance both in the version of Curacao and in the version of St. Maarten.

Please see the following articles of the "Landsverordening actualisering en harmonisatie toezichtlandsverordeningen Centrale Bank van Curaçao en Sint Maarten": 4, paragraph one, clauses c, f and i, 6a, paragraph one, clause a, 18, paragraph one, clause a of the Ltbk, 18a, paragraph one, clause a of the Ltv, 2, paragraph three, clause a, 3a, paragraph one, clause a of the Lte, 9, paragraph one, clause a, 15, paragraph one, clause a, 18, paragraph one, clause a, of the Ltba, 3, paragraph two, clause a, 11, paragraph one, clause a of the Ltt, 8, paragraph one, clause a of the Lab. And the chapters on the administrative fines and penalty payments.

With regard to the 'Landsverordening toezicht geldtransactiekantoren', please see articles 3, paragraph three, clause a, 5, paragraph one, clauses c, e and i, 9, paragraph one, clause a. And the chapters on the administrative fines and penalty payments.

#### Caribbean Financial Action Task Force

In addition, to the IMF evaluation, the Caribbean Financial Action Task Force (hereinafter: CFATF) evaluation of Curacao executed in 2011, should be mentioned. This evaluation has led to the Mutual Evaluation Report on Curacao of 25 June 2012. The recommendations indicated in the Mutual Evaluation Report have been taken up in this Ordinance as much as possible in both the version of Curacao and the version of St. Maarten.

The CFATF is reviewing progress every six months. The fifth Follow-Up Report addressing the identified shortcomings in all laws and regulations in St. Maarten of May 2015 is stating the following:

"38. Regarding Recommendation 40, the Authorities indicated that domestic laws, with the exception of the Regulations for Foreign Exchange Transactions for Curaçao

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and Sint Maarten (RFETCSM) do not allow for the CBCS to undertake investigations on behalf of their foreign counterparts. For the second follow-up report the Authorities updated that the draft Harmonization Law (supervision of financial institutions) provides for foreign supervisors to operate under CBCS supervision. The Supervision Law on MTC's also provides for this."

"41. For this report, the Authorities updated that the draft laws are being finalized for submission to the Minister of Justice (law of supervision of financial institutions/MTC and the Harmonization of the supervision to allow the CBCS to carry out investigations on behalf of their foreign counterparts)."

From the above cited conclusions of the CFATF, it can be concluded that the present regulations of the St Maarten will comply with the comments of the CFATF.

The Mutual Evaluation report of Curacao can be found via the internet address:  
<https://www.cfatf-gafic.org/index.php/member-countries/a-d/curacao>

The Follow-Up Reports of St. Maarten can be found via the internet address:  
<https://cfatf-gafic.org/index.php/member-countries/s-v/sint-maarten>

I trust to have provided Parliament with a sufficient elucidation, and I am looking forward to the continuation of the Central Committee meeting.

Yours sincerely,

  
Richard F. Gibson Sr.  
Minister of Finance