



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

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

STATEN VAN SINT MAARTEN	
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Reference no.: 20170728-01-JvD  
Subject: Draft National Ordinance updating and harmonizing supervision National Ordinances Central Bank of Curacao and Sint Maarten  
Annex(es): 1

**Postadres:**  
Government of Sint Maarten  
Ministry of Finance

Government Administration  
Building

Post Office Box 943  
Philipsburg  
Sint Maarten

**Bezoekadres:**  
Soualuga Road #1  
Pond Island, Great Bay,  
Sint Maarten.

Dear Excellency,

Please find attached the note following the final report on the above-mentioned proposal.

I trust to have informed you sufficiently and in a timely manner.

Sincerely,

MINISTER OF FINANCE

Richard F. Gibson Sr.



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**National Ordinance amending the National Ordinance supervision of banking and credit, the National Ordinance monitoring insurance business, the National Ordinance monitoring stock exchanges, the National Ordinance supervision of investment institutions and administrators, the National Ordinance monitoring trust, and the National Ordinance insurance broking business (National Ordinance updating and harmonizing supervision National Ordinances Central Bank of Curaçao and Sint Maarten)**

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NOTE FOLLOWING THE FINAL REPORT

In the meetings of the Central Committee of May 18<sup>th</sup>, 2017 and June 29<sup>th</sup>, 2017, Parliament has exchanged its views with the Government on the Draft National Ordinance amending the national ordinance supervision of banking and credit, the national ordinance monitoring insurance business, the national ordinance monitoring stock exchanges, the national ordinance supervision of investment institutions and administrators, the national ordinance monitoring trust, and the national ordinance insurance broking business (National Ordinance updating and harmonizing supervision national ordinances Central Bank of Curaçao and Sint Maarten).

In order for Parliament to consider the present draft to be sufficiently prepared, so that the draft can be discussed in a public meeting, Parliament is hereby provided with the answers to the questions stated in its final report.

The text of the questions as stated in the final report is expressed in black, while the text of the answers is provided in red.

**The National Alliance-faction** has taken note of this draft. The faction acknowledges that this draft is a uniform national ordinance but asks what the procedure would be if Sint Maarten would like to make changes to the draft. Is it correct that this draft creates the possibility for a customer of a bank or insurance company to appeal a transaction with the relevant institution?

The faction notes that notaries are not mentioned in the draft. Are the notaries covered by this draft?

The faction indicates that property can be auctioned. This can usually only take place if there is synchronization between the bank, the notary, Kadaster and the court. If an error is made by one of these institutions, can the citizen appeal this? Does this Harmonization national ordinance make this possible? Furthermore, the faction observes that the Central Bank of Curaçao and Sint Maarten oversees local banks. The Central Bank of Curaçao and Sint Maarten has a complaint form with a disclaimer, which reads as follows: "The Bank

considers it important to receive complaints, tips and signals from the public regarding supervised institutions. However the Bank cannot mediate on your behalf or determine if your complaint is well founded. Any report or complaint will be taken seriously and properly reviewed. The Bank cannot provide a direct personal solution for the situation since the Bank is bound by confidentiality. The Bank cannot give feedback on the complaints and signals filed with the Bank". This sounds contradictory as the main task of the Central Bank of Curaçao and Sint Maarten is to oversee local banks. Where should the customer then go? How is something like this solved? Can Parliament make a change in the draft with the intention of introducing the possibility of appeal to customers?

No, the law is clear the purpose of the law is clear, the law is attempting to harmonize the laws regarding the financial institutions which a notary is not, and based on article 8 of the statutes of the Central Bank, which requires that the Central in its attempt to exercise its prudential and regulatory task, that it does so on a basis and based on laws that are the same in Sint Maarten and the same in Curacao. So it does not have nothing to do with notaries it has nothing to do with complaints by peoples who feel that one of the organizations involving either in lending money or in executing on a mortgage, that is not the aim and the attempt of this law. It attempts to comply with article 8 of the existing statutes of the Central Bank, requires any decision made by Central Bank in exercising its prudential tasks that that be done based on laws that are uniform, it is as simple as that. And then it spells out and incorporates all of the laws, that is involved in such prudential tasks of the Central Bank and they are mentioned specifically, which laws they are. I went through them in my opening statement, these are the laws they are trying to make uniform, and these are the laws trying to establish and harmonize. And only based on these laws will the central bank able to act and exercise it supervisory tasks and prudential tasks.

Of course what we have is that financial institutions especially banks, and especially when actions are been taken to foreclose on properties, you get complaints from peoples of all kinds. And those complaints are sometimes legitimate and sometimes are not legitimate. But any execution of any property of any form has to be in accordance with the laws that are stipulated and reigns. Those laws if anybody did not act according those laws, every citizen based on common law has the courts that they can approach for resolution of any dispute that might exist, relative to those things. That is not the role of the Central Bank, and should not be confused. And that role the Central Bank in its disclaimer that you referred to is saying, look we would like to hear what the complaints are, so here is a form, not that we want to take the place of the court, because we cannot, but if we hear the complaints where it is possible and whenever possible. We want to know to see if from where we sit, we can take steps to correct. But not that we can take the place of the court, and decide and adjudicate all disputes that is in the community relative to these kind of issues. The single most forum for that is the court system.

What does "conduct supervision" mean?

Conduct supervision is concerning the behavior of financial institutions. The intent is that, if financial institutions gives information to the public that is not correct or accurate, it is part of the task of a Central Bank to take steps to make sure that the information that is being disseminated by those financial institutions is correct. In that regard that is what is meant with conduct supervision.

'Ik zal het ook in het Nederlands voor gemakshalve oplezen: het gedragstoezicht richt zich op de vraag of deelnemers aan de financiële markten correct behandeld en juist

geïnformeerd worden, waardoor een ordelijk en transparant marktproces, een zuivere verhouding tussen marktpartijen en de bescherming van de consument gewaarborgd zijn.'

That is what being aimed, it is meant to make sure that the consumer is being treated properly and gets the correct information, and is not misled by promotional activities otherwise by financial institutions.

The faction asks what changes have been made by means of the draft to the current legislation? Curacao adopted this national ordinance in 2015. What about Aruba?

An elucidation on the differences between the National Ordinances of Curacao and Sint Maarten, and a summary on the comments and recommendations of the International Monetary Fund and the Caribbean Financial Action Task Force will be submitted to Parliament in writing.

These laws are not applicable to Aruba, at least we are talking about the Central Bank of Curacao and Sint Maarten. That is the subject of this law, not the Central Bank of Aruba or the Central Bank of the Netherlands.

What is the value of Sint Maarten's share in the gold reserve?

The value of the gold reserve is depending on the value of gold, which fluctuates, it goes down or goes up. Currently the value of the gold reserve is in total 944 million guilders<sup>1</sup>. Based on the distribution key between the countries, the value of Sint Maarten's share in the gold reserve is approximately two hundred million guilders<sup>2</sup>.

**The United Sint Maarten Party-faction** with interest has taken note of this draft and observes that the draft is quite voluminous. The faction asks if an overview can be provided of the differences between the draft that was adopted by the Parliament of Curaçao and went into effect in the meantime and the draft that is currently before the Parliament of Sint Maarten. Furthermore the faction requests if representatives of the Central Bank of Curaçao and Sint Maarten and the commercial banks can be invited for a meeting of Parliament to exchange views on the draft.

Furthermore the faction asks which changes were made in the draft as a result of the recommendations of the IMF and CFATF.

An elucidation on the differences between the National Ordinances of Curacao and Sint Maarten, and a summary on the comments and recommendations of the International Monetary Fund and the Caribbean Financial Action Task Force will be submitted to Parliament in writing.

Further, I welcome, and I think it will be very productive and it has to be done, that someone from the Central Bank comes and gives its own presentation.

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<sup>1</sup> Condensed balance sheet Centrale Bank van Curacao en Sint Maarten, February 2017, National Gazette, jaargang 2017, nummer 8, 13 april 2017.

<sup>2</sup> This value was not mentioned during the Central Committee meeting, but added for the sake of completeness.

**The Democratic Party-faction** has taken note of the draft and observes that Curaçao has chosen for a different approach where the implementation and enforcement is concerned. Will this cause problems (for example in interpretation) in the future, especially seeing the problems and the relationship between Curaçao and Sint Maarten where the Central Bank is concerned of recent years? Does the Government have a position on the continuation of the joint Central Bank of Curaçao and Sint Maarten? Or has the possibility for Sint Maarten to have its own Central Bank been looked into?

Article 8 of the Statute of the Central Bank says, that the rules regarding supervision, not the execution, has to be uniform. Strictly taken, supervision have to be uniform, the execution in Sint Maarten can be different.

In the past we had discussions about the possibility for Sint Maarten to have its own Central Bank here in Parliament, discussions on when the budget was handled. Other than that no discussions are taking place. Other than that the decision that has been made at 10-10-10 to have a joint Central Bank that stands. There have been people who expressed ideas, but that are only ideas expressed, and no concrete steps or decisions have been taken to do any different than what has been done right now.

**The United Peoples Party-faction** has taken note of the draft and refers to its size. The faction points to the Gaming Board Commission that has to be created still. This body will exercise supervision on the lotteries and casinos. The reason why this is brought forward is because banks are closing the accounts of lottery owners and casinos to comply with legislation. This has consequences for our people.

The faction asks what the state of affairs is of the dismantling of the monetary union with Curaçao. Did the faction understand correctly that the monetary union with Curaçao will remain for now? What is the state of affairs of dollarization?

Dollarization also remain at a discussion, there is no decision has been made to dollarize. So we do not stand anywhere with dollarization, because that decision was never made nor by Government nor by Parliament, so it is not being pursued. That decision is also tight in and connected to the decision of whether you going to continue to have a joint Central Bank or whether or not you are pursuing your own Central Bank. So the answer specially to that question is nobody is pursuing dollarization at this point of time.

How will "compliance" affect us?

Compliance is a vexing problem, because indeed we are a small stip on the globe, but the world is speeding a head with or without us. And if you do not play ball, the way the world wants you to play ball, you are left behind. You will be left behind, when I say left behind, you will be excluded from certain services, certain privileges, certain activities. Because small or big you are not playing ball.

I mention that specifically as far as the Common Reporting System, that goes into effect January 1<sup>st</sup>, 2018. Common Reporting system or standards, is a standard that requires that countries, all over the world, banks all over the world, automatically, not upon request, automatically reports to tax departments from the country of origin of any account holder, of any moneys, that bank when it is in Timbuktu or in New York is holding for any individual, That information automatically will be reported to tax departments. If you don't

the consequences will be that you get cut off from the international financial system. Those are consequences we cannot afford.

Right now we have an issue as far as compliance is concerned with corresponding banking, the ability to make international payments, a vexing problem, and a problem that is little we can do about it. It has to do with international banks who have branches on Sint Maarten. Who assesses in their headquarters, whether it is in Toronto, whether in Trinidad or elsewhere, why should I take a risk, of being fined, because somebody in a branch office of mine on the Caribbean makes a mistake, and I gonna get a 10 million dollar fine. Those banks will say to you, you know one it is too risky, the amount I make from it is not making it worth to wait the while. So what they inform their local banks to do is, close the accounts.

The local banks are not making this decision, it is being made in headquarters that are elsewhere, that you have no control upon. Who made a risk assessment, that if I see well what can I make by continuing that relationship, what can I risk by continuing that relationship, and then makes a business decision it isn't worth it, that's it. That's the new order that's the new world, and that is also the *raison d'être* from the document you have before you. It is not geared specifically only directly what is that document doing for us, it is geared to: you wanna be left behind or not. I think this is the best comfort level that I can give at this moment of time. We do not like it, but we are in a new world order and we have to respect.

As far as the gaming board, this discussion is going on for more than twenty years. I am not aware that a Gaming Board stands in the way of the corresponding banking problem. As a fact this is the first time I hear about this. And I have been lobbying, not only here, in Washington with department, and department and this was not the source of it. The source of it is fining the banks, and their decision to take these fining risks.

What is the value of Sint Maarten's share in the gold reserve?

The value of the gold reserve is depending on the value of gold, which fluctuates, it goes down or goes up. Currently the value of the gold reserve is in total 944 million guilders<sup>3</sup>. Based on the distribution key between the countries, the value of Sint Maarten's share in the gold reserve is approximately two hundred million guilders<sup>4</sup>.

Which are the pros and cons of this?

I can only conclude that these laws is a *conditio sine qua non*. In other words, you aint got a choose, unless you want to be left behind. You have not to do it, but if you don't there is a price to pay, and that price, we cannot pay, we don't want to pay, we cannot afford to pay.

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<sup>3</sup> Condensed balance sheet Centrale Bank van Curacao en Sint Maarten, February 2017, National Gazette, jaargang 2017, nummer 8, 13 april 2017.

<sup>4</sup> This value was not mentioned during the Central Committee meeting, but added for the sake of completeness.