



Parliament of Sint Maarten <griffiersxm@gmail.com>

## Fwd: Q&A CC-meeting 12-08-2019

2 messages

Ligia Stella <director.fiu@fiu.gov.sx>  
To: griffiersxm@gmail.com

Mon, Aug 12, 2019 at 2:16 PM

Verstuurd vanaf mijn iPad

Begin doorgestuurd bericht:

**Van:** Vidjai Jusia <vidjai.jusia@justice.gov.sx>  
**Datum:** 12 augustus 2019 om 13:50:21 GMT-4  
**Aan:** "Mw. mr. Nancy R. Guishard-Joubert" <nancy.joubert@sxmparliament.org>  
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**Onderwerp:** Q&A CC-meeting 12-08-2019

STATEN VAN SINT MAARTEN	
Ingek. 12 AUG 2019	
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Dear Nancy,

I send you this email c.a. on behalf of the Minister of Justice.  
Please see the attached Q&A c.a. for this afternoon's CC-meeting on 'amending WvSr, nw. WvSv and BW Boek 2'.  
Could you please disseminate the attached documents digitally among the CC-Members?  
The Q&A has hyperlinks, so it would be easier for the MPs to look up the extra info on the internet.

Vriendelijke groet / Kind Regards  
Vidjai Jusia



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## 6 attachments

-  **4. ANNEX TO THE Q&A\_Coop. Agreement Uniform Procedure Law AUA, CUR and SXM.pdf**  
191K
-  **1a. 20190802 Slides for Presentation on legislation\_wijz. Sr-nw. Sv-BW Boek 2.pdf**  
258K
-  **2. ANNEX TO THE Q&A\_Crown Witnesses.pdf**  
402K
-  **1. 20190802 Presentation on legislation\_wijz. Sr-nw. Sv-BW Boek 2.pdf**  
754K
-  **3. ANNEX TO THE Q&A\_Scheme of Pre-Trial Detention.pdf**  
686K
-  **0. Q&A CC-meeting 20190802\_v1.2.docx**  
51K

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Vriendelijke groet / Kind Regards  
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**ONDERLINGE REGELING, zoals bedoeld in artikel 38, eerste lid, van het Statuut voor het Koninkrijk regelende de samenwerking tussen Aruba, Curaçao en Sint Maarten (Samenwerkingsregeling eenvormig procesrecht Aruba, Curaçao en Sint Maarten)**

Aruba, Curaçao en Sint Maarten,

Overwegende,

dat de landen Aruba, Curaçao en Sint Maarten in het belang van de rechtsprekende taak van het Gemeenschappelijk Hof van Justitie en de Hoge Raad uit vrije wil zijn overeengekomen om bepaalde onderdelen van het procesrecht in de landen eenvormig te regelen.

Zijn overeengekomen als volgt:

**Artikel 1**

1. Aruba, Curaçao en Sint Maarten, zo nodig gezamenlijk in het vervolg aan te duiden als de landen en elk afzonderlijk als land, werken samen met betrekking tot de aangelegenheden en op de wijze bij deze onderlinge regeling bepaald.
2. De aangelegenheden, die niet tot de in artikel 3 bedoelde onderwerpen behoren, voor zover zij niet aangelegenheden van het Koninkrijk zijn en onverminderd het bepaalde in artikel 37, 38 en 39 van het Statuut vallen onder de uitsluitende en volledige bevoegdheid van elk land afzonderlijk.

**Artikel 2**

De landen nemen bij hun wetgeving en bestuur de bepalingen van deze onderlinge regeling in acht. De landen kunnen regelingen treffen met betrekking tot onderwerpen waarin bij deze onderlinge regeling of bij eenvormige landsverordening is voorzien, mits de regelingen daarmee niet in strijd zijn.

**Artikel 3**

Aangelegenheden die bij eenvormige landsverordeningen worden geregeld zijn:

- a. het strafprocesrecht;
- b. het burgerlijk- en het bestuursprocesrecht, voorzover het betreft het procesrecht bij het Gemeenschappelijk Hof van Justitie;
- c. de regeling betreffende de beroepsprocedure inzake de kennismeming, behandeling en beslissing betreffende de rechtstoestand van ambtenaren;

- d. de regeling betreffende de beroepsprocedure inzake de kennismeming, behandeling en beslissing van geschillen betreffende heffing en invordering van belastingen.

#### **Artikel 4**

Er is een Ministeriële Samenwerkingsraad van Aruba, Curaçao en Sint Maarten.

#### **Artikel 5**

1. De Ministeriële Samenwerkingsraad bestaat uit de Minister-president en twee ministers van elk van de landen. De ministers worden door de Raad van Ministers van de landen uit hun midden aangewezen.
2. De Ministers-presidenten van de landen worden opeenvolgend telkens voor een periode van zes maanden belast met het voorzitterschap. De voorzitter wordt door de Ministeriële Samenwerkingsraad aangewezen.
3. Als Secretaris van de Ministeriële Samenwerkingsraad treedt op de Secretaris van de Raad van Ministers van het land belast met het voorzitterschap.

#### **Artikel 6**

1. De Voorzitter roept de Ministeriële Samenwerkingsraad zo dikwijls bijeen als hij of de Minister-president van een van de andere landen het nodig acht.
2. De vergaderingen worden gehouden ter plaatse door de voorzitter bepaald.

#### **Artikel 7**

1. De Ministeriële Samenwerkingsraad kan niet besluiten indien van elk land niet ten minste twee ministers, onder wie de Minister-president of degene die hem vervangt, ter vergadering waarin het besluit genomen moet worden, aanwezig zijn.
2. De Ministeriële Samenwerkingsraad besluit met eenparigheid van stemmen.
3. Wordt bij het stemmen over een besluit de eenparigheid niet bereikt, dan wordt de beslissing uitgesteld tot een volgende vergadering welke, behoudens een gemeenschappelijk besluit van de Minister-president van de landen tot een uitstel van langere duur, binnen twee weken wordt gehouden.
4. Indien in de tweede vergadering de eenparigheid wederom niet bereikt wordt, wordt het voorstel geacht te zijn verworpen.

#### **Artikel 8**

1. De Ministeriële Samenwerkingsraad stelt bij besluit het reglement van orde voor zijn vergaderingen vast.
2. Het reglement voorziet in de mogelijkheid, dat een onderwerp van bespreking of besluitvorming op verzoek van de Minister-president van een land van de agenda van de vergadering waarop het behandeld zou worden, wordt afgevoerd. Betreft het aangelegenheden, waarover door de raad een besluit dient te worden

genomen, dan is voor een afstel alsmede voor een uitstel van langere duur van de behandeling een besluit van de Ministeriële Samenwerkingsraad in de zin van artikel 7 vereist.

#### **Artikel 9**

1. Op verzoek van de Ministeriële Samenwerkingsraad stelt elk land een of meer ambtenaren of personen met wie door de overheid van het land een arbeidsovereenkomst naar burgerlijk recht is aangegaan ter beschikking van de raad, hetzij tijdelijk ter voorbereiding van of advisering inzake een of meer bepaalde onderwerpen, hetzij voor onbepaalde tijd ter voorbereiding van of advisering inzake alle onderwerpen of alle onderwerpen van eenzelfde soort waarover de Ministeriële Samenwerkingsraad dient te beraadslagen.
2. Bij het doen van dergelijke verzoeken wordt het beginsel van pariteit zoveel mogelijk in acht genomen.
3. Op de ter beschikking gestelde ambtenaren of andere personen blijven de in het land dat hen ter beschikking stelt geldende rechtspositionele regelingen van toepassing.
4. De kosten worden gedragen door het land, dat de terbeschikkingstelling verricht.

#### **Artikel 10**

1. In bijzondere gevallen kan de Ministeriële Samenwerkingsraad besluiten een persoon, die niet in dienst is van een van de landen, aan te wijzen ter voorbereiding van of advisering inzake een of meer bepaalde onderwerpen.
2. Een dergelijk besluit houdt tevens in de aanwijzing van het land, dat met de betrokken persoon terzake een rechtsverhouding zal aangaan en de verdeling van de daaraan verbonden kosten tussen de landen.

#### **Artikel 11**

Eenvormige landsverordeningen komen tot stand door de vaststelling daarvan in elk van de landen met inachtneming van de bepalingen van deze onderlinge regeling.

#### **Artikel 12**

1. Over alle ontwerpen van eenvormige landsverordeningen, al dan niet door de Staten van een der landen aan de Ministeriële Samenwerkingsregeling toegezonden, wordt door de Ministeriële Samenwerkingsraad beraadslaagd.
2. Bij besluit van de Ministeriële Samenwerkingsraad wordt de tekst van de ontwerpen van eenvormige landsverordeningen vastgesteld, waarna deze door de regering van elk land aan de Staten van elk van de landen wordt toegezonden.

#### **Artikel 13**

1. Indien tijdens de schriftelijke of mondeling behandeling in de Staten van een of elk van de landen wijzigingen van een ontwerp-eenvormige landsverordening worden voorgesteld welke door de betrokken Staten worden aanvaard, wordt de behandeling, zodra de mogelijkheid tot het voorstellen en aanvaarden van zulke wijzigingen volgens de orde van behandeling niet langer bestaat, geschorst en de ontwerp- eenvormige landsverordening met de aanvaarde wijzigingen aan de Ministeriële Samenwerkingsraad is toegezonden.
2. De griffier van de Staten waarin zich in het eerste lid bedoelde geval heeft voorgedaan, verwittigt daarvan en van de inhoud van de aanvaarde wijzigingen onverwijd de voorzitters van de Staten van de andere landen.
3. De voorzitters van de Staten van de andere landen doen na ontvangst van het bericht van de griffier de behandeling, indien die nog niet is voltooid, voortgang vinden, totdat ook in die Staten de mogelijkheid als bedoeld in het eerste lid niet langer bestaat. Met aanvaarde wijzigingen wordt verder gehandeld als in het eerste en het tweede lid van dit artikel voorgeschreven.

#### **Artikel 14**

1. De Ministeriële Samenwerkingsraad beraadslaagt over de teruggezonden ontwerp-eenvormige landsverordening en over de door de Staten van een of meerdere landen aanvaarde wijzigingen en beslist of en in hoeverre en op welke wijze deze wijzigingen in het oorspronkelijke ontwerp zullen worden opgenomen.
2. Vervolgens stelt de Ministeriële Samenwerkingsraad bij besluit opnieuw de tekst van de ontwerp-eenvormige landsverordening vast. Artikel 13, tweede lid, is van overeenkomstige toepassing.

#### **Artikel 15**

Een voor de tweede maal, al dan niet gewijzigd aan de Staten van de landen toegezonden ontwerp- eenvormige landsverordening kan door deze colleges slechts worden goedgekeurd of verworpen.

#### **Artikel 16**

Het ontwerp van een eenvormige landsverordening wordt in alle landen als verworpen beschouwd, indien het door de Staten van een van de landen verworpen is.

#### **Artikel 17**

Een in de Staten van elk van de landen in ontwerp goedgekeurde eenvormige landsverordening wordt door de regering van elk land niet bekrachtigd voordat door de Ministeriële Samenwerkingsraad besloten is dat zulks dient te geschieden.

#### **Artikel 18**

De regering van elk land bekrachtigt vervolgens de eenvormige landsverordening.

## **Artikel 19**

De inwerkingtreding wordt in de eenvormige landsverordening zelf geregeld.

## **Artikel 20**

1. Met betrekking tot de aangelegenheden, bedoeld in artikel 3, hebben de Staten van de landen het recht om ontwerpen van eenvormige landsverordeningen aan de Ministeriële Samenwerkingsraad voor te stellen.
2. Het reglement van orde van de Staten van de landen regelt de wijze waarop voorstellen van eenvormige landsverordeningen door de Staten aan de Ministeriële Samenwerkingsraad gedaan worden.

## **Artikel 21**

De toezending van een ontwerp-eenvormige landsverordening aan de Staten van elk van de landen, de behandeling en de goedkeuring ervan en de vaststelling en de bekendmaking geschieden zoveel mogelijk in alle landen gelijktijdig.

## **Artikel 22**

1. Wijziging van deze onderlinge regeling geschiedt bij onderlinge regeling zoals bedoeld in artikel 38, eerste lid, van het Statuut. Het ontwerp voor zulk een onderlinge regeling wordt al dan niet op voorstel van de Staten van een der landen door de Ministeriële Samenwerkingsraad vastgesteld.
2. De ontwerp-onderlinge regeling krijgt de status van onderlinge regeling zoals bedoeld in artikel 38, eerste lid van het Statuut, nadat het door de landen bij landsverordening is goedgekeurd.
3. Het voorstel van een landsverordening tot goedkeuring van een dergelijke onderlinge regeling wordt behandeld op dezelfde wijze en als goedgekeurd of verworpen beschouwd in dezelfde gevallen als in het betreffende land voor een wijziging van de Staatsregeling bepaald is.

## **Artikel 23**

De bepalingen van de landsverordeningen waarin de aangelegenheden genoemd in artikel 3 zijn geregeld die bij de inwerkingtreding van deze onderlinge regeling van kracht zijn behouden hun rechtskracht, totdat zij gewijzigd worden overeenkomstig de bepalingen van deze onderlinge regeling.

## **Artikel 24**

1. Deze onderlinge regeling treedt voor Curacao en Sint Maarten in werking op het tijdstip van inwerkingtreding van de artikelen I en II van de Rijkswet wijziging Statuut in verband met de opheffing van de Nederlandse Antillen.

2. Deze onderlinge regeling treedt voor Aruba in werking op het tijdstip van inwerkingtreding van de artikelen I en II van de Rijkswet wijziging Statuut in verband met de opheffing van de Nederlandse Antillen, nadat deze onderlinge regeling door een tweederde meerderheid van de Staten van Aruba bij landsverordening is goedgekeurd.

### **Artikel 25**

Deze onderlinge regeling wordt aangehaald als: Samenwerkingsregeling eenvormig procesrecht Aruba, Curaçao en Sint Maarten.

Aruba,

Curaçao

Sint Maarten,

**ONDERLINGE REGELING, zoals bedoeld in artikel 38, eerste lid, van het Statuut voor het Koninkrijk regelende de samenwerking tussen Curaçao, Aruba en Sint Maarten**

**Nota van toelichting**

**Algemeen**

**De Samenwerkingsregeling**

Ingevolge artikel 38 van het Statuut voor het Koninkrijk der Nederlanden kunnen de landen onderling regelingen treffen. Het is dit artikel en dan in het bijzonder zijn eerste lid waarin de onderhavige Samenwerkingsregeling haar juridische grondslag vindt.

Voor een beschouwing over de rechtsgrond van deze procedure en de verhouding van de Samenwerkingsregeling tot eventueel nog tot stand te brengen andere onderlinge regelingen tussen de beide Caribische Koninkrijkspartners, moge worden verwezen naar de toelichting bij de wettelijke regelingen tot goedkeuring van de ontwerp-Samenwerkingsregeling.

De Samenwerkingsregeling neemt onder de voor de drie landen geldende regelingen een zeer voorname plaats in. Het bijzondere karakter van de Samenwerkingsregeling komt onder meer tot uiting in artikel 22 waarin de procedure tot wijziging van de regeling is neergelegd. Zulk een wijziging geschiedt bij onderlinge regeling ex artikel 38, eerste lid, van het Statuut.

Een voorstel daartoe moet door de parlementen van de landen bij landsverordening worden goedgekeurd. Voor de aanvaarding van een voorstel van een zodanige landsverordening gelden dezelfde vereisten welke gelden voor wijziging van de Staatsregelingen van de landen. Gezien de betreffende bepalingen in de Staatsregelingen betekent dit dat voor de aanvaarding van de voorstellen tot goedkeuring van wijzigingen van de Samenwerkingsregeling vereist is dat twee derden van de aanwezige Statenleden van de drie landen hun stem hierover uitbrengen.

Het bovengeschetste karakter van de Samenwerkingsregeling in aanmerking genomen, spreekt het voor zich dat de landen bij hun wetgeving en bestuur de bepalingen ervan in acht dienen te nemen, zoals in artikel 2 welhaast ten overvloede wordt voorgeschreven. Wel is het elk der landen toegestaan in zijn regelgeving terreinen te bestrijken waarop de Samenwerkingsregeling of, krachtens deze, de eenvormige landsverordening voorzieningen bevat, mits de landswetgever geen daarmee strijdige bepalingen maakt, aldus is bij het tweede lid van artikel 2 bepaald.

**Totstandkoming van de Samenwerkingsregeling**

Bij de totstandkoming van de onderhavige Samenwerkingsregeling is gebruikgemaakt van artikel 60c van het Statuut. Ontwerp-onderlinge regelingen die door de Bestuurscolleges van Curaçao en Sint Maarten zijn getroffen met elkaar en één of meer regeringen van de landen van het Koninkrijk krijgen door deze bepaling de status van onderlinge regeling in de zin van artikel 38 van het Statuut op het moment dat de Nederlandse Antillen worden opgeheven. Dit betekent dat de onderhavige regeling in

ontwerp kon worden getroffen voordat Curaçao en Sint Maarten de hoedanigheid van land binnen het Koninkrijk verkregen. Tegelijkertijd is in de ontwerp-Staatsregelingen van Curaçao en Sint Maarten bepaald dat eenvormige landsverordeningen tot stand komen op de wijze die is voorgeschreven in de onderhavige Samenwerkingsregeling.

#### De Ministeriële Samenwerkingsraad

Het centrale orgaan bij deze samenwerking tussen Aruba, Curaçao en Sint Maarten is de Ministeriële Samenwerkingsraad. Deze raad is, wanneer hier de bestaande Koninkrijksorganen buiten beschouwing worden gelaten, het enige geïnstitutionaliseerde ontmoetingspunt van de drie landen.

De Ministeriële Samenwerkingsraad bestaat uit de Minister-president en twee ministers van elk van de drie landen. In dit college van negen ministers wordt beraadslaagd en besloten over de aangelegenheden die ingevolge deze Samenwerkingsregeling gemeenschappelijk worden behartigd. Kort samengevat komt een en ander hierop neer, dat de Ministeriële Samenwerkingsraad beraadslaagt en besluit over de totstandkoming van eenvormige landsverordeningen.

Uiteraard bevat de Samenwerkingsregeling geen uitputtende regeling van het functioneren van de raad. Alleen de belangrijkste elementen zijn in de Samenwerkingsregeling opgenomen.

Wat het voorzitterschap betreft, dit is als roulerend tussen de Minister-presidenten van de landen gedacht, en wel met een regelmaat van een half jaar. Van politiek belang is deze roulering evenwel niet, aangezien aan de voorzitter geen prerogatieven zijn toegekend; zelfs tot het bijeenroepen van een vergadering van de raad zijn zo nodig ook de Ministers-presidenten van de andere landen bevoegd. De voorzitter heeft niet de mogelijkheid om de uitslag van de stemming over een voorstel te beïnvloeden.

In dit verband dient een belangrijk aspect van de besluitvorming in de Ministeriële Samenwerkingsraad nader te worden beschouwd, en wel het voorschrift dat de Ministeriële Samenwerkingsraad met eenparigheid van stemmen besluit. Dit voorschrift ligt voor de hand. Wanneer partijen samenwerken, zal over de inhoud van de te maken afspraken overeenstemming worden bereikt. Het voorstel wordt dan in een volgende vergadering nog eens aan de orde gesteld. Indien ook daarin geen besluit met eenparigheid van stemmen valt, wordt het voorstel geacht te zijn verworpen.

Tot slot wordt de aandacht gevestigd op enige kenmerken van de Ministeriële Samenwerkingsraad – en daarmee van het samenwerkingsverband als geheel – die van primordiaal belang zijn.

In de eerste plaats draagt de Ministeriële Samenwerkingsraad geen politieke verantwoordelijkheid, en hetzelfde geldt voor de ministers die daarvan als leden deel uitmaken in hun kwaliteit van leden. De parlementaire verantwoordelijkheid van elke minister ligt geheel ingebied in de landelijke relaties tussen regering en volksvertegenwoordiging.

In de tweede plaats, en met het voorgaande samenhangend, is er het kenmerk dat de raad geen naar buiten opererend staatsrechtelijk orgaan is. Hij bestaat slechts als noodzakelijk ontmoetingspunt van de Regeringen van de landen.

Er is geen directe lijn van de raad naar de landsparlementen, en evenmin van de Koninkrijksregering naar de raad: voor deze beide is de Regering het orgaan tot wie zij zich richten. Evenmin gaat er van de besluiten van de raad een direct de departementen

en diensten der landen rakkende werking uit, en dit geldt a fortiori ten opzichte van de burgers.

In de derde plaats is de opsomming van de bevoegdheden van de Ministeriële Samenwerkingsraad limitatief. Een uitbreiding van die bevoegdheden kan niet anders dan door een wijziging van de Samenwerkingsregeling worden gerealiseerd.

#### Totstandkoming van eenvormige landsverordeningen

In de Samenwerkingsregeling zijn de bepalingen neergelegd over de totstandkoming van eenvormige landsverordeningen. Deze bepalingen strekken ertoe te bereiken dat de wetgeving ter zake gelijkluidend is en blijft. Het orgaan dat hiervoor zorg dient te dragen is de Ministeriële Samenwerkingsraad, te weten voordat zij bij de Staten van de landen worden ingediend en nadat de parlementaire behandeling heeft plaatsgevonden.

Nadat de ambtelijke en politieke voorbereiding van een ontwerp van eenvormige landsverordening al dan niet in gezamenlijk overleg heeft plaatsgevonden, beraadslaagt en besluit de Ministeriële Samenwerkingsraad over het ontwerp.

De raad stelt de tekst van het ontwerp vast, dat vervolgens door de Regeringen van de drie landen, na raadpleging van de betrokken Raad van Advies aan de respectieve Staten wordt toegezonden en de bij of krachtens de Staatsregelingen van de landen neergelegde procedure volgt, met inachtneming van de bepalingen van deze Samenwerkingsregeling. Is het voorstel door de Staten van de drie landen aanvaard, dan besluit de Ministeriële Samenwerkingsraad of het ontwerp al dan niet moet worden vastgesteld. De vaststelling geschieht overeenkomstig de normale in elk van de landen geldende regels.

Wordt een ontwerp-eenvormige landsverordening in de Staten van een der landen verworpen, dan wordt zij in alle landen als verworpen beschouwd. Dit ligt voor de hand, omdat het in dat geval niet meer mogelijk is voor beide landen een gelijkluidende landsverordening vast te stellen.

Het ongewijzigd aanvaarden van een ontwerp door de drie parlementen dan wel het verwerpen van een voorstel door een of meer van hen, levert in procedureel opzicht weinig problemen op. Er is of een gelijkluidend ontwerp of niets tot stand gekomen. Complicaties treden eerst op wanneer bij de parlementaire behandeling gebruik wordt gemaakt van het recht van amendement en dergelijke wijzigingsvoorstellen worden aanvaard. Op dat ogenblik gaat de inhoud van de voorstellen uiteenlopen, terwijl voorwaarde voor de totstandkoming van de eenvormige landsverordening nu juist is, dat de inhoud in de landen gelijkluidend is. Om het gestelde doel te bereiken bepaalt de Samenwerkingsregeling in de eerste plaats dat de Staten, waarin wijzigingsvoorstellen zijn aanvaard, het ontwerp met de aanvaarde wijzigingen terugzenden – langs de constitutionele weg, dat wil zeggen door bemiddeling van de betrokken Regering – aan de Ministeriële Samenwerkingsraad, ten einde deze in staat te stellen over de tijdens de parlementaire behandeling aanvaarde wijzigingen te beraadslagen en te beslissen of deze al dan niet zullen worden overgenomen.

In de tweede plaats schrijft de Samenwerkingsregeling voor dat, wanneer in een Staten wijzigingsvoorstellen worden aanvaard, dit aan de Staten van de andere landen wordt bericht. Daardoor wordt de mogelijkheid geschapen dat de laatstbedoelde colleges, indien het de behandeling van het ontwerp nog niet heeft afgerond, de wijzigingsvoorstellen in zijn beraadslagingen betrekt. Het kan daarmee, uiteraard zonder dat het hiertoe verplicht

is, rekening houden. Op deze manier kan worden bevorderd dat de drie parlementen gelijk gewijzigde voorstellen aan de Ministeriële Samenwerkingsraad terugzenden. Ongeacht of de Ministeriële Samenwerkingsraad van een of van meerdere parlementen, en, in het laatste geval, verschillende of gelijke amendementen bereiken, is het de aan hem opgedragen taak opnieuw – en definitief – de tekst van de ontwerp-eenvormige landsverordening vast te stellen. Aangenomen mag worden dat hij daarbij terdege rekening zal houden met de in de Staten naar voren gekomen wensen. Het is voor ministers nimmer gemakkelijk aanvaarde amendementen terzijde te schuiven, zeker niet wanneer deze met ruime meerderheid zijn aanvaard.

De Staten van de landen kunnen een hun voor de tweede maal toegezonden ontwerp-eenvormige landsverordening slechts goedkeuren of verwerpen. Wijzigingen kunnen in het ontwerp niet meer worden aangebracht. Zou die mogelijkheid wel bestaan, dan zou dit een te langdurige – in theorie zelfs eindeloze – wetgevingsprocedure met zich mee brengen. Op een bepaald ogenblik dienen de knopen te worden doorgehakt.

De hierboven geschetste wetgevingsprocedure verschilt in enige opzichten niet onaanzienlijk van de in de Staatsregeling als normaal vastgestelde. De nadruk wordt er evenwel op gelegd dat het verschil alleen de procedure betreft. De status van een eenvormige landsverordening is in elk land geen andere dan een landsverordening die slechts in een land, op de normale wijze, tot stand is gekomen: de eenvormige landsverordening is als wetgevingsproduct noch anders, noch hoger dan laatstbedoelde.

Het onderscheidend vermogen van het predikaat “eenvormige” gaat niet verder dan tot de aanduiding dat de betreffende landsverordening in beide landen een gelijkluidende tekst heeft en moet blijven behouden.

Het is in verband met het voorgaande uitgesloten dat een gewone, in slechts een land geldende, landsverordening aan een eenvormige getoetst zou kunnen worden, want zij hebben gelijke kracht en zijn bovendien van dezelfde wetgever afkomstig. Dit betekent echter niet dat het niet zou kunnen voorkomen dat een gewone landsverordening of bepaling daarvan moet wijken voor een (bepaling van een) eenvormige landsverordening. Een dergelijk geval zal zich voordoen telkens wanneer strijd tussen de beide wettelijke regelingen of bepalingen is terug te voeren tot strijd tussen de gewone landsverordening en de Samenwerkingsregeling.

Dat aan de eenvormige landsverordening zeer zeker producten van lagere wetgevers kunnen en moeten worden getoetst, spreekt, naar mag worden aangenomen, vanzelf.

## **Artikelsgewijs**

### **Artikel 1**

Op het niveau van de samenwerking bestaat geen eigen wetgevend orgaan. De regelgeving tot uitvoering van de Samenwerkingsregeling geschiedt bij eenvormige landsverordening, die zoals in het algemeen deel is uiteengezet, een wettelijke regeling is van de landelijke wetgevers, met dien verstande, dat zij in de landen gelijkluidend dient te zijn.

## **Artikel 2**

Deze bepaling laat de mogelijkheid open dat de wetgever van een land zich op het terrein van de samenwerking begeeft, zolang zijn wetgevingsproduct niet in strijd komt met deze samenwerkingsregeling.

## **Artikel 3**

In dit artikel worden de aangelegenheden die eenvormig dienen te worden geregeld opgesomd. Deze regeling is op grond van artikel 38, eerste lid van het Statuut ten behoeve van de rechtsprekende taak van het Gemeenschappelijk Hof van Justitie, de Raad van Beroep in Ambtenarenzaken en de Raad van Beroep in belastingzaken vrijwillig tussen de landen Aruba, Curaçao en Sint Maarten overeengekomen. De eenvormigheid is beperkt tot het procesrecht bij de bovenvermelde rechterlijke instanties. Rekening is gehouden met de mogelijkheid dat de landen in de toekomst andere bijzondere rechterlijke colleges in het leven roepen.

## **Artikel 4**

De Ministeriële Samenwerkingsraad is een besluitvormingsorgaan bij de samenwerking tussen Aruba, Curaçao en Sint Maarten. Deze Raad is, wanneer hier de bestaande Koninkrijksorganen buiten beschouwing worden gelaten, het enige ontmoetingspunt van de drie landen.

## **Artikel 5**

Het lidmaatschap van de Ministeriële Samenwerkingsraad is noch aan de persoon, noch aan bepaalde ministeriële functies gebonden, dit laatste evenwel met uitzondering van de Minister-President die permanent lid is. Voor het overige is elke Raad van Ministers vrij in de aanwijzing en deze aanwijzing kan ook per geval of per tijdsperiode variëren.

## **Artikel 7**

Voorgeschreven wordt dat van de landen de meerderheid van de afgevaardigde ministers ter vergadering aanwezig is. Een situatie waarin consensus bereikt wordt in een vergadering waarin tegenover drie ministers uit het ene slechts één minister uit het andere land aan de stemming deelneemt, is ongewenst en wordt door de voorgestelde quorumbeleid vermeden.

Over het consensusvereiste, dat met betrekking tot de besluitvorming in de Ministeriële Samenwerkingsraad gesteld wordt, is in het algemene deel van de toelichting reeds gesproken.

Wordt eenstemmigheid niet bereikt, dan vindt enige tijd later – in het normale geval na twee weken – een behandeling in tweede lezing plaats. De periode van uitstel kan, zoals vanzelf spreekt, voor politiek overleg in informele sfeer, tussen de drie Regeringen en/of met de parlementsvoorzitters, politieke partijen of anderszins, worden benut ten einde een oplossing te zoeken. Geen consensus in tweede lezing betekent: geen besluit.

## **Artikel 8**

Het reglement van orde dient de uitwerking te bevatten van de bepalingen van de onderlinge regeling waarbij aan de raad bevoegdheden worden verleend.

### **Artikel 11**

Aangezien aan de eenvormige landsverordening in het algemene deel van de toelichting uitvoerig aandacht is besteed, kan in het volgende met enige detailopmerkingen worden volstaan.

Met nadruk wordt herhaald dat de eenvormige landsverordening zoveel mogelijk de procedure van de gewone landsverordening volgt. Bepalingen omtrent de raadpleging van de Raad van Advies, de formulieren van aanbieding, goedkeuring, vaststelling en afkondiging (enz.), en de bekendmaking in het Publicatieblad komen daarom in de Samenwerkingsregeling niet voor.

### **Artikel 13**

Twee belangrijke parlementaire bevoegdheden vragen bij de regeling van de procedure van de totstandkoming van de eenvormige landsverordeningen ter uitvoering van de Samenwerkingsregeling de aandacht, het recht van initiatief en dat van amendement. In het onderhavige artikel wordt het amendementsrecht aan de orde gesteld, het initiatiefrecht volgt in artikel 20.

De noodzaak tot waarborging dat eenvormige landsverordeningen tot stand zullen komen, leidt tot een van de normale afwijkende procedure voor de parlementaire behandeling van amendementen. Het resultaat van de totale behandeling moet in dit geval immers zijn een gelijkluidende tekst. Wijzigingen in het ene land voorgesteld moeten dus ook voor de andere landen aanvaardbaar zijn of, zo niet, teruggenomen worden. Het is daarom weliswaar van belang te inventariseren welke wijzigingen elke Staten in de ontwerp-eenvormige landsverordening wenst te zien opgenomen, doch daarna dient de behandeling te worden geschorst. Voor die inventarisering is het nodig over de amendementen te stemmen zonder dat het ontwerp zelf in al dan niet gewijzigde vorm in stemming wordt gebracht. Het Reglement van Orde voor de Staten zal in de mogelijkheid daartoe dienen te voorzien.

### **Artikel 19**

Voor de gewone landsverordening behelst de Staatsregelingen van de landen een bepaling omtrent de inwerkingtreding die toepasselijk is, indien de landsverordening zelf daaromtrent niets bepaalt.

Met betrekking tot eenvormige landsverordeningen is het daarentegen gewenst – ten einde de kans op discrepanties in de beide landen weg te nemen – te bepalen dat daarin steeds de inwerkingtreding moet worden geregeld.

### **Artikel 20**

Het recht van initiatief met betrekking tot de gewone landsverordening is neergelegd in de Staatsregelingen van de landen. De procedure is als volgt geregeld, dat een initiatiefontwerp eerst volledig behandeld wordt in de Staten (uitwisseling van schriftelijke stukken tussen de indieners van het ontwerp en de Centrale of een Vaste Commissie; algemene en artikelsgewijze beraadslaging tijdens de openbare behandeling; stemming) en vervolgens ter vaststelling aan de Regering wordt toegezonden.

Deze procedure is met betrekking tot aangelegenheden van samenwerking in overleg volstrekt onbruikbaar, want zij laat geen ruimte voor het tot stand komen van een gelijkluidende regeling in de andere landen. Na de vaststelling is het daarvoor te laat, dan zouden de andere landen voor een fait accompli gesteld worden. Maar ook toezending van het ontwerp aan de andere landen na de stemming is onpassend. Want wat nu, als de Staten van de andere landen het ontwerp niet of niet ongewijzigd wensen te accepteren? Hieruit volgt dat een initiatief-ontwerp in een eerder stadium, wanneer ook in het land van de voorsteller(s) de behandeling nog "open" is, aan de Staten van de andere landen dient te worden voorgelegd.

De uitgewerkte regeling van de behandelingsprocedure van initiatief-ontwerpen is aan het Reglement van Orde voor de Staten overgelaten, maar het is duidelijk dat zij in ieder geval de bovengeschetste elementen dient te bevatten.

Nog een verdere constatering kan worden gemaakt: er moet een instantie zijn die ervoor kan zorgen dat de aan alle drie de Staten voorgelegde initiatief-ontwerpen niet alleen gelijk zijn, maar ook tijdens de behandeling gelijk blijven. Die zorg is, evenals in het geval van amendementen, bij de Ministeriële Samenwerkingsraad gelegd. De Ministeriële Samenwerkingsraad heeft daarom ook bij de behandeling van initiatief-ontwerpen een functie te vervullen. Het eerste lid van artikel 20 schrijft voor dat elk initiatief-ontwerp aan de Ministeriële Samenwerkingsraad wordt aangeboden. De Ministeriële Samenwerkingsraad is op zijn beurt verplicht erover te beraadslagen en een besluit te nemen. Dat besluit kan uiteraard negatief zijn, doch ook met betrekking tot normale initiatief-ontwerpen heeft de Regering het laatste woord, in zoverre dat zij kan weigeren een goedgekeurd initiatief-ontwerp vast te stellen.

Indien het besluit van de Ministeriële Samenwerkingsraad over het ontwerp positief uitvalt, volgt het verder de voor ontwerp-eenvormige landsverordeningen ter uitvoering van de Samenwerkingsregeling gebruikelijke gang: het wordt via de Regeringen bij de Staten van de landen ingediend en daar behandeld en in stemming gebracht. Het verschil met een normaal initiatief-ontwerp is gelegen in het moment waarop de Regering erover beslist: niet na, maar vóór de goedkeuring van de Staten.

### **Artikel 22**

Aangezien de Samenwerkingsregeling een onderlinge regeling in de zin van artikel 38, eerste lid, van het Statuut is, dient ook het instrument waarmee zij gewijzigd wordt diezelfde status te bezitten.

In het onderhavige artikel zijn deze vereisten neergelegd. In de eerste twee leden wordt de status van onderlinge regeling voor een wijziging van de Samenwerkingsregeling voorgesteld. Uit de bewoordingen van de tweede volzin van het eerste lid blijkt dat een initiatief-ontwerp mogelijk is.

De procedurele vereisten komen in het derde lid aan de orde. Aangezien de Samenwerkingsregeling een gebied bestrijkt dat normaliter door de Staatsregeling zou worden beheerst, en aangezien bij strijd tussen beide regelingen de eerste voorrang heeft, is de procedure voorgeschreven die bij wijziging van de Staatsregeling geldt.

### **Artikel 23**

Deze bepaling beoogt te verzekeren dat de bepalingen van de landsverordeningen die de onderwerpen regelen die genoemd worden in artikel 3 de status verkrijgen van

eenvormige landsverordeningen in de zin van deze Samenwerkingsregeling. Zoals bekend, zijn de landsverordeningen die de administratieve rechtspraak in de drie landen regelen (LAR) op dit moment niet geheel met elkaar in overeenstemming. De inspanningen zullen erop gericht zijn om deze landsverordeningen, voorzover van belang voor de genoemde rechterlijke instanties, op termijn met elkaar in overeenstemming te brengen via de procedure van artikel 11 tot en met 21.

#### **Artikel 24**

Deze onderlinge regeling treedt voor Curaçao en Sint Maarten in werking op het tijdstip van inwerkingtreding van de artikelen I en II van de Rijkswet wijziging Statuut in verband met de opheffing van de Nederlandse Antillen. Hierdoor wordt de beoogde eenvormigheid van het in deze onderlinge regeling genoemde procesrecht gerealiseerd tussen Curaçao en Sint Maarten op het moment dat deze eilanden de hoedanigheid van land binnen het Koninkrijk verkrijgen. Deze Samenwerkingsregeling verkrijgt via de grondslag die daarvoor is voorzien in de ontwerpen voor Staatsregelingen van Curaçao en Sint Maarten de status van wettelijke regeling in Curaçao en Sint Maarten.

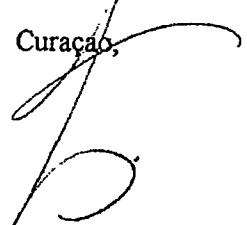
De inwerkingtreding van deze onderlinge regeling voor Aruba is geregeld in het tweede lid van deze bepaling. Deze onderlinge regeling treedt voor Aruba in werking op het tijdstip van inwerkingtreding van de artikelen I en II van de Rijkswet wijziging Statuut in verband met de opheffing van de Nederlandse Antillen, nadat deze onderlinge regeling door een tweederde meerderheid van de Staten van Aruba bij landsverordening is goedgekeurd. De Staatsregeling van Aruba kent geen bepalingen over de Samenwerkingsregeling Nederlandse Antillen en Aruba, die in 1985 bij eilandsverordening met een tweederde meerderheid is aanvaard door de Arubaanse eilandsraad. De Arubaanse regering kiest er daarom voor om de onderhavige Samenwerkingsregeling goed te keuren via een vergelijkbare procedure.

*Deze onderlinge regeling wordt binnen 30 dagen na de ondertekening geplaatst in de Landscourant van Aruba en de Curaçaosche Courant.*

Aruba,



Curaçao,

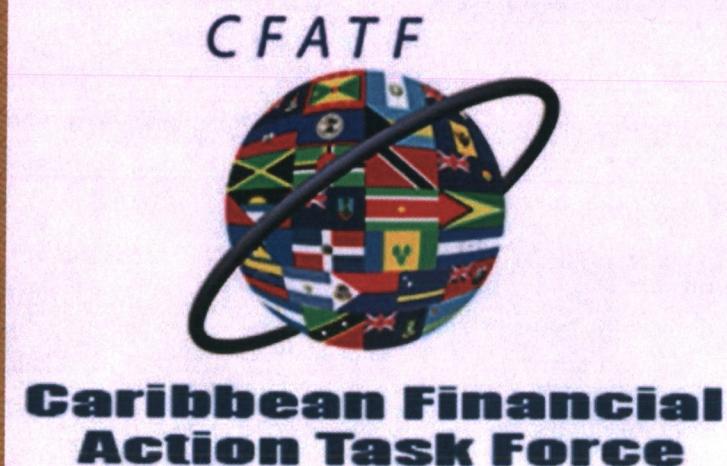


Sint Maarten,





# Implementation of (C)FATF recommendations in national legislation





## (C)FATF Public Statement



**The (C)FATF may call on its members and urges all jurisdictions to:**

- A. apply counter-measures to protect the regional and international financial system from the ongoing and substantial money laundering and financing of terrorism (ML/FT) risks; or
- B. apply enhanced due diligence measures proportionate to the risks arising from the jurisdiction (i.c. Sint Maarten), including:
  - 1. obtaining information on the reasons for intended transactions; and
  - 2. conducting enhanced monitoring of business relationships, by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination.



## **Enacted legislation in which most of FATF-recommendations are implemented**

1. Landsverordening toezicht bank- en kredietwezen
2. Landsverordening toezicht verzekeringsbedrijf
3. Landsverordening toezicht effectenbeurzen
4. Landsverordening toezicht beleggingsinstellingen en administrateurs
5. Landsverordening toezicht trustwezen
6. Landsverordening assurantiebemiddelingsbedrijf
7. Landsverordening actualisering en harmonisatie toezichtlandsverordeningen Centrale Bank van Curaçao en Sint Maarten



## **Enacted legislation in which most of FATF-recommendations are implemented**



8. Landsverordening toezicht geldtransactiekantoren
9. Sanctielandsverordening
10. Landsverordening bestuurlijke handhaving
11. Wetboek van Strafvordering



## **Enacted legislation in which most of FATF-recommendations are implemented**



12. Landsverordening Meldpunt Ongebruikelijke Transacties
13. Landsverordening bestrijding witwassen en terrorismefinanciering
14. Landsverordening melding grensoverschrijdende geldtransporten



**Pending for approval  
Legislation in which FATF-recommendations are implemented**

- Landsverordening tot wijziging van het Wetboek van Strafrecht in verband met het doorvoeren van enkele dringende internationale verplichtingen
- Landsverordening, houdende vaststelling van een nieuw Wetboek van Strafvordering
- Landsverordening tot wijziging van Boek 2 van het Burgerlijk Wetboek  
(Herzieningslandsverordening Boek 2 BW)



## FATF Recommendations 3 and 5:



Countries should criminalise money laundering and terrorist financing. The crime of money laundering should apply to all serious offences, with a view to including the widest range of predicate offences. Countries should criminalise not only the financing of terrorist acts but also the financing of terrorist organisations and individual terrorists even in the absence of a link to a specific terrorist act or acts. Countries should ensure that such offences are designated as money laundering predicate offences.

Countries should ensure (i.a.) that:

- Effective, proportionate and dissuasive criminal sanctions should apply to natural persons convicted of money laundering.
- Criminal liability and sanctions should apply to legal persons. All sanctions should be effective, proportionate and dissuasive.
- Parallel criminal, civil or administrative proceedings with respect to both natural persons and legal persons are excluded.



## FATF Recommendations 4, 38, and 40



### 4. Confiscation and provisional measures

Countries should adopt measures, including legislative measures, to enable their competent authorities to freeze or seize and confiscate: : (a) property laundered, (b) proceeds from, or instrumentalities used in or intended for use in money laundering or predicate offences, (c) property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations, or (d) property of corresponding value.

### 38. Mutual legal assistance: freezing and confiscation

Countries should ensure that they have the authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate property laundered; proceeds from money laundering, predicate offences and terrorist financing; instrumentalities used in, or intended for use in, the commission of these offences; or property of corresponding value.

### 40. Other forms of international cooperation

Countries should ensure that their competent authorities can rapidly, constructively and effectively provide the widest range of international cooperation in relation to money laundering, associated predicate offences and terrorist financing.



## FATF Recommendation 8



Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:

- by terrorist organisations posing as legitimate entities;
- to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and
- to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.



Thank You!





## ANNEX TO THE Q&A

### CROWN WITNESSES / KROONGETUIGEN:

#### **Article 261f et seq.**

The public prosecutor shall notify the examining magistrate of the agreement he intends to make with a suspect who is prepared to give a witness statement in the criminal case against another suspect in exchange for a promise of the public prosecutor.

The agreement shall exclusively relate to a witness statement to be given in the context of a criminal investigation into serious offences, as defined in Article 100, par. 1, (of the Criminal Procedure Code), which are committed by an organised group and in view of their nature or the relation to other serious offences committed by the suspect constitute a serious breach of law and order or into serious offences which carry a statutory term of imprisonment of at least eight years. The agreement may not relate to full immunity of the suspect who is prepared to give the witness statement.

The witness who consults with the public prosecutor about making an agreement may have the legal representation of a lawyer. A lawyer shall be assigned to the witness who does not yet have legal representation.

The intended agreement shall be put in writing and shall contain the most precise description possible of:

- a. the serious offences about which and where possible, the suspect against whom, the witness, referred to in par. 1, is prepared to give a witness statement;
- b. the criminal offences for which the witness in the case in which he is a suspect will be prosecuted and to which that promise relates;
- c. the conditions which are set for the witness who is also a suspect and with which said witness is prepared to comply;
- d. the substance of the promise of the public prosecutor.

The examining magistrate shall hear the witness on the intended agreement and shall review the lawfulness of the agreement.

The public prosecutor shall provide the examining magistrate with the information he requires for his review. The examining magistrate shall review the lawfulness of the agreement and shall take into account the urgent necessity and the importance of obtaining the statement to be given by the witness. He shall also give an opinion on the credibility of the witness. His opinion shall be given in the form of a decision.

If he judges the agreement to be lawful, said agreement shall be concluded.

The decision of the examining magistrate shall be reasoned, dated and signed and shall be promptly notified to the public prosecutor and the witness.

The public prosecutor may file an appeal against the decision of the examining magistrate in which the intended agreement is judged unlawful with the Court (of Appeal) within fourteen days after the date of the decision. The Court shall decide as soon as possible.

The public prosecutor shall not add the official records and other objects from which data can be derived, which were obtained by making an agreement to the case documents until the examining magistrate has judged the agreement to be lawful.

After the agreement has been judged lawful, the witness referred to in Article 261f shall be heard by the examining magistrate.

This witness may not be heard under application of Articles 261 to 261e inclusive.

As soon as the interest of the investigation permits, the examining magistrate shall notify the conclusion of the agreement and its substance to the suspect against whom the statement has been made, on the understanding that no notification of the measures referred to in section 226l shall be required to be given. The examining magistrate may, in the interest of the investigation, ex officio or on application of the public prosecutor or the witness, order that the identity of the witness be concealed from the suspect for a certain period. The order shall be revoked by the examining magistrate before the conclusion of the investigation.

#### **Article 261i**

Articles 261f to 261h inclusive shall apply mutatis mutandis if the public prosecutor intends to make an agreement with a convicted offender who is prepared to give a witness statement.

## Opening Slide

**Introduction to the handling by Parliament of the:**

- National Ordinance amending the Penal Code
- New Penal Procedure Code
- Revision Ordinance of Book Two of the Civil Code

We all are again here due to the fact that SINT MAARTEN is not only part of the Kingdom of the Netherlands and a regional and international player in the global community, but also a member of the CFATF: the Caribbean Financial Action Task Force.

As you may know, the CFATF is a regional inter-Governmental organization which follows and ensures its Members comply with the FATF standards. It does not issue standards on its own. The *FATF* - the Financial Action Task Force - is the global standard setting body for anti-money laundering and combating the financing of terrorism (AML/CFT).

These standards, which go by the name of 'recommendations', are set to increase transparency and to enable countries to successfully take action against illicit use of their financial system. The standards or recommendations provide a complete set of counter-measures against money laundering covering the criminal justice system and law enforcement, the financial system and its regulation, and international co-operation.

The Government is working on the premise that if by November 2019, SINT MAARTEN has not enacted its legislation in line with FATF Standards, then the country will be put on the CFATF/FATF Public Statement.

The (C)FATF Public Statement will list the shortcomings in the country's AML/CFT regime and advise member countries to take appropriate measures to safeguard against the shortcomings of the identified country.

## Slide

This means that the (C)FATF may call on its members and urges all jurisdictions to:

- A. apply counter-measures to protect the regional and international financial system from the ongoing and substantial money laundering and financing of terrorism (ML/FT) risks; or
- B. apply enhanced due diligence measures proportionate to the risks arising from the jurisdiction (i.c. SINT MAARTEN), including:
  1. obtaining information on the reasons for intended transactions; and
  2. conducting enhanced monitoring of business relationships, by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination.

The FATF has recognized the progress of our legislative efforts, but as with any country, the FATF only considers fully enacted legislation to determine whether the measures contained therein are in line with the FATF standards. In other words, legislation by which the FATF standards are implemented on a national level should not only have passed parliament, but must be fully in force.

## Slide

The proof is out there. Successive governments were, notwithstanding the limited legal and administrative means of government, also busy in bringing SINT MAARTEN legislation in line with the FATF Standards. Here is an overview of all enacted legislation (with their original Dutch titles) in which most of the FATF-recommendations are already implemented:

1. Landsverordening toezicht bank- en kredietwezen
2. Landsverordening toezicht verzekeringsbedrijf
3. Landsverordening toezicht effectenbeurzen
4. Landsverordening toezicht beleggingsinstellingen en administrateurs
5. Landsverordening toezicht trustwezen
6. Landsverordening assurantiebemiddelingsbedrijf
7. Landsverordening actualisering en harmonisatie toezichtlandsverordeningen Centrale Bank van Curaçao en Sint Maarten (This National Ordinance amended aforementioned legislation in order to bring them completely in line with FATF Standards.)

## Slide

In effect are also:

8. Landsverordening toezicht geldtransactiekantoren
9. Sanctielandsverordening
10. Landsverordening bestuurlijke handhaving
11. Wetboek van Strafrecht

## Slide

And of course there are these National Ordinances, which were approved, ratified and published in June and has come into force in July:

12. Landsverordening Meldpunt Ongebruikelijke Transacties
13. Landsverordening bestrijding witwassen en terrorismefinanciering
14. Landsverordening melding grensoverschrijdende geldtransporten

## Slide

These are the remaining legislative products by which the remaining FATF recommendations will be implemented:

15. Landsverordening tot wijziging van het Wetboek van Strafrecht in verband met het doorvoeren van enkele dringende internationale verplichtingen  
**Wijzigingslandsverordening Wetboek van Strafrecht**
16. Landsverordening, houdende vaststelling van een nieuw Wetboek van Strafvordering  
**nieuw Wetboek van Strafvordering**
17. Landsverordening tot wijziging van Boek 2 van het Burgerlijk Wetboek  
(Herzieningslandsverordening Boek 2 BW)

## **Herzieningslandsverordening Boek 2 BW**

With the passing of these last 3 pieces of legislation this month, Government may be able to prevent SINT MAARTEN from being identified as a high-risk and non-cooperative jurisdiction and thus from being put on the (C)FATF Public Statement.

### **National Ordinance amending the Penal Code**

As part of the fight against the financing of terrorism and, therefore, terrorism the financial world places demands on criminal legislation. Certain offenses committed with a terrorist intent or purpose should be more explicitly mentioned in the legislation. One of the requirements from international regulations is that the financing of terrorism must be made explicitly punishable. That already happened with the modernization of criminal legislation in 2015 with the coming into force of the new Criminal Code, but probably not good enough, so it has to be tightened up in order to bring it completely in line with FATF Recommendations 3 and 5.

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### **FATF Recommendations 3 and 5:**

Countries should criminalise money laundering and terrorist financing. The crime of money laundering should apply to all serious offences, with a view to including the widest range of predicate offences. Countries should criminalise not only the financing of terrorist acts but also the financing of terrorist organisations and individual terrorists even in the absence of a link to a specific terrorist act or acts. Countries should ensure that such offences are designated as money laundering predicate offences.

Countries should ensure (i.a.) that:

- Effective, proportionate and dissuasive criminal sanctions should apply to natural persons convicted of money laundering.
- Criminal liability and sanctions should apply to legal persons. All sanctions should be effective, proportionate and dissuasive.
- Parallel criminal, civil or administrative proceedings with respect to both natural persons and legal persons are excluded.

### **3. Money laundering offence**

**Countries should criminalise money laundering on the basis of the Vienna Convention and the Palermo Convention. Countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences.**

### **5. Terrorist financing offence**

**Countries should criminalise terrorist financing on the basis of the Terrorist Financing Convention, and should criminalise not only the financing of terrorist acts but also the financing of terrorist organisations and individual terrorists even in the absence of a link to a specific terrorist act or acts. Countries should ensure that such offences are designated as money laundering predicate offences.**

*Also, the 2016 Trafficking in persons (TIP) report of the US Department of Foreign Affairs, in which the ranking of Sint Maarten was risen to Tier 1, contained a recommendation which was more or less similar to FATF recommendation 3. It was stated that SINT MAARTEN should amend the anti-trafficking penal code provision to ensure penalties are sufficiently stringent.*

The legislator did not and could not consider aforementioned recommendations in their entirety at the time the Penal Code was approved (in 2012) and came in effect (in 2015). But with this draft-National Decree amending the Penal Code will be brought completely in line with these recommendations.

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Money laundering is criminalized in the Penal Code. The most important provisions here are Articles 2:404, 2: 405 and 2:406.

### Article 2:404

#### 1. Any person who:

- a. *hides or conceals the real nature, the source, the location, the transfer or the moving of an object, or hides or conceals the identity of the person entitled to an object or has it in his possession, while he knows that the object derives - directly or indirectly - from any serious offence;*
- b. *obtains an object, has an object in his possession, transfers or converts an object or makes use of an object, while he knows that the object derives - directly or indirectly - from a serious offence;*

*shall be guilty of laundering and shall be liable to a term of imprisonment not exceeding six years or a fine of the fifth category.*

2. *Objects shall mean all property of any description, whether corporeal or incorporeal.*

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### Article 2:405 Penal Code

*Any person who engages in habitual laundering shall be liable to a term of imprisonment not exceeding nine years or a fine of the fifth category.*

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### Article 2:406 Penal Code

#### 1. Any person who:

- a. *hides or conceals the real nature, the source, the location, the transfer or the moving of an object, or hides or conceals the identity of the person entitled to an object or has it in his possession, while he has reasonable cause to suspect that the object derives - directly or indirectly - from any serious offence;*
- b. *obtains an object, has an object in his possession, transfers or converts an object or makes use of an object while he has reasonable cause to suspect that the object derives - directly or indirectly - from any serious offence;*

*shall be guilty of negligent laundering and shall be liable to a term of imprisonment not exceeding four years or a fine of the fourth category.*

2. *Objects shall mean all property of any description, whether corporeal or incorporeal.*

Via the draft-National Decree amending the Penal Code several ‘terrorist offences’ will be mentioned more explicitly in the Penal Code and the punishment for financing terrorism will

be more strict. But to fully live up to the FATF recommendations a new Titel - Titel XXXII Financing of Terrorism – will be added to Book Two of the Penal Code. (*See Part Q of the draft-National Decree amending the Penal Code*)

Titel XXXII consist of two new articles: one criminalizing the financing of terrorism (new Article 2:408), and the other making it possible to disqualify a person, who is convicted for terrorism financing, from certain rights (Article 2:409).

Also the term of imprisonment for money laundering will be raised from six to eight years (*see Part O of the draft-National Decree amending the Penal Code*).

To put an end to all doubt as to if in the Penal Code “means” also money entails, a new provision (paragraph 2) will be added to Article 2:54, stipulating that means shall be understood to mean all property of any description, whether corporeal or incorporeal, including money. This will also be the case in the Articles 2:404 and 2:406. (*See Parts F, O and P of the draft-National Decree amending the Penal Code*)

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In Article 1:127 it is already stipulated with so many words that not only natural persons but also legal persons can commit crimes.

### *Artikel 1:127 Penal Code*

1. *Criminal offences can be committed by natural persons and legal persons.*
2. *If a criminal offence is committed by a legal person, criminal proceedings may be instituted and such punishments and measures as prescribed by law, where applicable, may be imposed:*
  - a. *on the legal person; or*
  - b. *on those persons who have ordered the commission of the criminal offence, and on those persons who actually directed the unlawful acts; or*
  - c. *on the persons referred to in a and b jointly.*
3. *In the application of paragraphs 1 and 2 the following shall be considered as equivalent to the legal person: the unincorporated company, the partnership, the shipping company and the special purpose fund.*

## **Penal Procedure Code**

The draft National Ordinance, establishing a new Code of Criminal Procedure, aims, among other things, to modernize the Code and to rectify all defects in the Code according to the CFATF.

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### **FATF Recommendations 4, 38, and 40**

Countries must have mechanisms that enable their competent authorities to effectively manage and, if necessary, alienate goods that have been frozen, seized or confiscated. These mechanisms must be applicable both in the context of national procedures and in accordance with requests from other countries.

With regard to freezing and confiscation, this recommendation has been implemented, *inter alia*, in articles 119 and 119a of the Penal Procedure Code.

With regard to the confiscation, this recommendation has been implemented, *inter alia*, in Articles 1:74, 1:75, 1:76 and 1:77 of the Penal Code.

These articles can be applied at the request of other countries, but the draft of the new Penal Procedure Code contains more detailed regulations for international cooperation, as referred to in recommendation 38. The purpose of the draft is among other things to comply with all the provisions in the recommendations regarding international cooperation and international legal assistance.

The Kingdom of the Netherlands has international legal assistance treaties with almost all countries. The most important exception is the countries that are mentioned on the list of high-risk and non-cooperative jurisdictions, as published on the website of the FATF.

These treaties usually contain a rule concerning confiscation and freezing or seizure at the request of the other country. The draft of the new Penal Procedure Code contains a more detailed set of rules for international cooperation than the present Code.

In practice, international legal assistance is also provided to countries with which no treaty has been concluded. The procedures take a little longer in such a case.

Also, it is pointed out that the new Penal Procedure Code contains a new regulation of international joint investigation teams in Book Seven, Title VIII - International Legal Assistance. Incidentally, this is already customary in practice in cooperation with the authorities of the French part of Sint Maarten.

#### **4. Confiscation and provisional measures**

**Countries should adopt measures similar to those set forth in the Vienna Convention, the Palermo Convention, and the Terrorist Financing Convention, including legislative measures, to enable their competent authorities to freeze or seize and confiscate the following, without prejudicing the rights of bona fide third parties:** (a) property laundered, (b) proceeds from, or instrumentalities used in or intended for use in money laundering or predicate offences, (c) property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations, or (d) property of corresponding value.

**Such measures should include the authority to:** (a) identify, trace and evaluate property that is subject to confiscation; (b) carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property; (c) take steps that will prevent or void

**actions that prejudice the country's ability to freeze or seize or recover property that is subject to confiscation; and (d) take any appropriate investigative measures.**

**38. Mutual legal assistance: freezing and confiscation**

**Countries should ensure that they have the authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate property laundered; proceeds from money laundering, predicate offences and terrorist financing; instrumentalities used in, or intended for use in, the commission of these offences; or property of corresponding value. This authority should include being able to respond to requests made on the basis of non--conviction---based confiscation proceedings and related provisional measures, unless this is inconsistent with fundamental principles of their domestic law.**

**40. Other forms of international cooperation**

**Countries should ensure that their competent authorities can rapidly, constructively and effectively provide the widest range of international cooperation in relation to money laundering, associated predicate offences and terrorist financing. Countries should do so both spontaneously and upon request, and there should be a lawful basis for providing cooperation. Countries should authorise their competent authorities to use the most efficient means to cooperate. Should a competent authority need bilateral or multilateral agreements or arrangements, such as a Memorandum of Understanding (MOU), these should be negotiated and signed in a timely way with the widest range of foreign counterparts.**

I Will now highlight the most important changes to the existing Penal Procedure Code:

The Dutch Act on the revision of rules concerning procedural documents in criminal cases has been transposed into the Code. This makes it clear that the public prosecutor is the compiler of those documents and that also includes a complaint procedure (Articles 4, 50a and *passim*).

Further changes in Book One:

- creating the possibility to make use of tele-hearing (Article 5a);
- rewriting the chamber of rules of procedure procedure (Article 38 and beyond);
- clarifying the regulation of the summary injunction proceedings by expressly accepting requests in the execution phase and creating an appeal in all cases (Article 43).

The consequences of the so-called Salduz judgment of the European Court of Human Rights are also included. Namely, the possibility to consult a lawyer for the first (usually police) interrogation and to include a right for the defence counsel to attend police hearings (Article 48. It is pointed out here that in the future all police hearings of crime suspects, for which temporary custody is possible, must be included (Article 186). The assigning of a defence counsel shall, as a result, be made at a slightly earlier time (Article 62).

A separate title (Book Two, Title II) is dedicated to the victim, in which all rights are collected. Including his options to exercise the so-called speaking right at the hearing and to obtain compensation. The expert witness has also received his own title, although provisions regarding the expert witness can also be found elsewhere in the Code.

It is important that foreign investigative officers also have the power to apprehend a suspect in SINT MAARTEN - even if that person is not caught red-handed in the commission of a criminal offence – but only if these officers act on an international basis: think of the French-side police officers who act in Sint Maarten in accordance with the Island-wide police cooperation in Sint Maarten. Or - more generally - acts in the context of the Convention on Drug Smuggling by Sea.

Article 78 elaborates more on the search on body and clothing.

The DNA legislation has been revised. The police and the examining magistrate can order DNA testing of found objects (article 79), while the order in question can only be given for suspects through mediation of the examining magistrate/judge of instruction (article 235a and beyond). The possibility of detaining persons for identification is introduced (Article 80) and the known six-hour period has been extended to nine hours, due to the introduction of the consultation of lawyers. The issuing of a (writ of) summons is, in so many words, arranged under the interest of the investigation, as a possible reason for police custody (Article 83).

The term of police custody will be two times three days instead of the current two and 10 days respectively (Article 87). The public prosecutor may appeal a negative decision on the legality of keeping a person in police custody. The legal position of a person in custody at a police station has been strengthened (Article 90).

The system of pre-trial detention (Article 92 and further) is amended. The time limits are different: for remand in custody (bewaring) a maximum of fourteen days (Article 93), instead of the current 16 days (two times eight days). The remand detention (gevangenhouding) can be given in one go for a maximum of 90 days (Article 98). The situations and grounds for pre-trial detention are narrowed in order to reduce pre-trial detention (Articles 100 and 100a). However, suspects convicted by the court will have to serve their sentence earlier (Article 104a).

The possibilities to proceed with seizure are broadened.

All objects that may serve to reveal the truth or demonstrate unlawfully obtained gains shall be liable to seizure. Also, all objects whose confiscation or withdrawal from circulation may be ordered shall be liable to seizure. (Article 119)

Furthermore objects intended to preserve the right of redress to pay the unlawfully obtained benefit or the purpose of preserving the right of recovery for payment of a fine or of a victim-measure can be seized. (Article 119a)

The seizure regulation has been extensively adjusted (Article 120 and further). The possibility of freezing the situation until the authorized persons have arrived is added (Article 121). "House search" is replaced by "search". The search can take place without the physical presence of the examining magistrate on the condition that he has granted an authorization in the event that a home or other privacy-sensitive space must be searched (Article 122).

The consideration for demanding extradition of documents and searching for offices or houses of journalists requires special attention (for example, Article 125 (3)). In appropriate cases, the examining magistrate may conduct a search himself (Article 130).

The complaint procedure has also been extended, partly in connection with the special investigative powers and the emergence of the digital age (Article 150). The latter also requires an adjustment of the search powers in automated works/computersystems (Article 167).

The special investigative powers (Article 177h and further) were already introduced by separate national ordinance. The proposed changes are therefore minor in these articles:

- included is an adjustment to the provisions about procedural documents (Article 177k);
- also included is a regulation of the telephone tap if the user of the device is in another State and therefore outside the Kingdom (Article 177ra);
- and finally, a special title (Title XXII) is added for the situation where there is a need to investigate objects, means of transport or clothing when there are indications of terrorist activities (Article 178).

Article 186 includes the obligation to include a hearing by police officers in more serious cases with audio and, if possible, visual equipment.

The public prosecutor can appoint an expert witness (Article 190); the suspect can request a counter investigation.

Assistant public prosecutors can in principle be appointed only with the approval of the Attorney General (Article 191).

The position of examining magistrate is being changed from an active to a more judicial and somewhat supervisory and wait-and-see role.

The pre-trial investigation as such is abolished: the public prosecutor and the suspect can ask the examining magistrate, as long as the trial has not started in substance, to perform certain investigative acts (article 221 and further), in which case he may also act ex officio.

The examining magistrate can organize a consultation session with the requester(s) (Article 225). He is the authority that can determine whether a DNA test will be carried out (Article 235a and further).

The rules for sworn hearing before the examining magistrate has been expanded (article 250) and provisions have been included for requesting the cooperation of journalists (article 252a).

Furthermore, the regulation of the threatened witness is revised (Article 261) and rules pertaining to crown witnesses are included (Article 261f) and protected witnesses (Article 261).

As a follow-up to the general provisions regarding the expert witnesses, the relationship between the examining magistrate and the expert witness is revised (Article 262). With the removal of the preliminary judicial investigation from the law, the complicated regulation of the closure of that investigation could also be abolished (Article 272). If the Public Prosecution Service is considering a prosecution, such prosecution must start immediately (Article 276). Also if it is not seeking prosecution, the public prosecutor must send a notice of non-further prosecution as soon as possible. A possible new investigation can only be permitted in exceptional cases (Article 282).

The hearing is also somewhat streamlined: the chairman is given more opportunities to take measures in advance, so that the chance of time-consuming arrests is reduced (Article 284).

The victim is also summoned to court (Article 287a). The possible reasons for the public prosecutor to refuse to call witnesses or expert witnesses are now enumerated in the law (Article 289a).

The procedure for handling a notice of objection against the writ of summons will subsequently be dealt with by the court of first instance (Article 293). As a consequence an appeal has been created in the event of a prosecution (Article 298).

The possibility has been created for a summoned suspect to authorize his defence counsel to represent him (Article 306).

Witnesses or experts witnesses who have not been summoned can still be summoned by the Court on grounds stated by law (Article 318).

A possibility is introduced to anonymised interrogate a witness (Article 323).

A victim's right to speak can also be exercised by others (Article 352a).

The public prosecutor is given a broader opportunity to change the indictment and the possibility is opened that one of the sitting judges will act as examining magistrate to interview one or more witnesses or experts after the start of the public hearing and then to act again as court judge (Article 359).

In order to streamline the handling of criminal cases, it has also been determined that decisions given in criminal cases will in principle be upheld, even after a possible suspension (Article 365).

The possibility of drawing up a summary report of a court hearing is regulated by law and linked to Article 402 (Article 370a).

The rules of evidence (*bewijsrecht*) are not fundamentally changed.

The obligation to state reasons after using statements of persons whose identity are concealed, is included in the law (Article 387a).

The admissibility of an injured party is expanded (Article 404). The injured party (*benadeelde partij*) will on request also receive a copy of the judgment (Article 410).

The judges can more easily rectify apparent errors in their judgment (Article 411a).

By the legal remedies (*rechtsmiddelen*) it is stated that the examining magistrate may, after the appeal has been lodged, again be able to carry out investigative actions (Article 439a).

The position of the injured party on appeal is further regulated (Article 440a).

The lodging of an appeal is amended in the sense that the notice to appear at the hearing can be issued directly to an authorized representative (Article 446).

The Attorney General is authorized to revoke an appeal brought by the public prosecutor (Article 450).

The review of appeal judgments and judgments is substantially amended, including the review to the detriment of the former suspect. The latter modality, however, is limited to deliberately killing another person, in other words: to murder and manslaughter (Article 475).

Criminal proceedings against juveniles have been tailored to the above-mentioned Salduz case.

Rules for the excusal (*verschoningsregeling*) of judges has been simplified (Article 504 and further).

So are the recusal rules (*wrakingsregeling*): unwelcome decisions cannot lead to recusal (Article 512, paragraph 2).

Rules have been included for a separate application for withdrawal from circulation (Article 554a). International legal assistance has been slightly revised: the emphasis on the actual handling of these cases has shifted from the ministries of justice to the public prosecutor (Article 556, paragraph 3).

The primacy of the treaties is underlined by the cancellation of the leave procedure at the Court (for example Article 562a) when the results of the desired investigation are made available.

The setting up of int. joint investigation teams has been regulated (Article 565a).

Rules concerning the enforcement of judgments rendered in absentia in the country where the judgement was rendered are also included (Article 593a and further), also concerning the enforcement of a decision rendered in absentia in a foreign state (Articles 596a and 596b).

Furthermore, the transfer and taking over of criminal proceedings is regulated (Article 604a and further).

The final book (Book Eight) deals with enforcement and costs.

There are no spectacular changes in the rules of remission or commutation (*gratie*) (article 610 and further).

Special investigative powers are introduced in the section on the enforcement of sentences (Articles 620 and 634a and further). The procedure for the giving of judicial notices to natural persons is slightly modernized (articles 642 and 643) and finally the compensation for damages is included in full in articles 648 and further.

## **Revision National Ordinance Book 2 of the Civil Code**

This Revision National Ordinance aims to re-establish Book 2 of the Civil Code and to abolish bearer shares.

### **FATF Recommendation 8**

#### **8. Non-profit organisations**

**Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:**

- by terrorist organisations posing as legitimate entities;
- to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and
- to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.

Book 2 of the Civil Code of Sint Maarten already contains a number of provisions that are relevant against the background of FATF Recommendation 8

- Article 4: A notarial deed is always required for the establishment of a legal person. The notary also has the function of a public official, which implies that he/she guards the formation of legal persons by criminals.
- Article 5: The notary is obliged to have the legal person registered in the trade register, a public register, immediately after incorporation.
- Article 15: Every legal person has a bookkeeping obligation and must prepare an annual statement within at least eight months consisting of a balance sheet and a statement of income and expenditure.
- Article 24: The court may dissolve the legal person if its activities are wholly or partly contrary to good morals or public order.
- Article 55: The director of a foundation can be dismissed at the request of the Public Prosecution Service or an interested party if he does or fails to do something that is contrary to the law.
- Article 272, second paragraph: For reasons of public interest, the Public Prosecution Service can request a court to investigate the policy and course of affairs at a legal entity. If the request is granted, the court can take drastic measures.

Article 25 of the Revision National Ordinance on Book 2 of the Civil Code contains two amendments to Book 2 of the Civil Code in order to comply fully with recommendation 8.

The first is to grant the Chamber of Commerce and Industry the obligation to cancel an inactive legal person. Article 25 of the National Ordinance on Book 2 of the Dutch Civil Code provides that a public limited company, private limited company, cooperative society, mutual insurance company, association, foundation or private fund foundation is dissolved by a decision of the Chamber of Commerce and Industry if the Chamber it has been found that at least one of the following circumstances occurs:

- a. for a period of at least one year no directors of the legal person are registered in the register, nor has a specification of registration been made, or if there are directors registered, one of the following circumstances occurs:

- 1 °. all directors have died;
  - 2 °. all directors have not been available at the address of the legal entity stated in the register.
- b. according to the administration of the Chamber, the legal person has not fulfilled the obligation to pay the amount due for registration in the trade register for at least one year.

The second change extends this authority; tThe Chamber of Commerce is also authorized to cancel a legal person if the FIU has informed the Chamber that the legal person has carried out suspicious unusual transactions. The Chamber of Commerce and Industry is also authorized to terminate a legal person if it does not meet the new requirements for drawing up and publishing an annual report and annual accounts that meet the requirements of recommendation 8.

Another change is the inclusion of new requirements for the preparation and publication of an annual report and annual accounts for foundations and associations. (Articles 59 and 89, par. 4)

The annual report must state:

- a. the identity of the persons who are responsible for the activities of the foundation and who control or manage these activities, including senior officials and managers, as well as members of a Supervisory Board if they exist within the foundation;
- b. the means of control available to the board to ensure that funds are fully accounted for and spent in a manner consistent with the objectives of the foundation; and,
- c. the means of control available to the board to check the identity of its major donors and the identity and good name of its beneficiaries.

The annual financial statement must contain a detailed breakdown of income and expenditure, as well as an overview of all transactions to or from a person or legal entity abroad above a value of NAF 25,000 or the equivalent thereof in foreign currency.

**Abolishing bearer shares:**

The Organization for Economic Cooperation and Development (OECD) calls for the abolition of bearer shares and traceability. Tax and related considerations play a role in this. If this call is to be ignored, it will have an adverse effect on Sint Maarten's name as a reliable country in the international fight against tax abuse and money laundering practices.

**ANNEX to the Q&A: (Scheme of Pre-Trial Detention)**

Schema strafrechtelijke vrijheidsbeneming (nieuw WvSv)				
Soort:	Door:	Locatie:	Duur:	
Aanhouding	- Politie; - (hulp)OvJ; - Iedereen (heterdaad)	- Politiebureau; - Overal	Niet langer dan nodig voor:  - Vaststelling identiteit verdachte, Onderzoek aan lichaam en kleding	<i>Bij heterdaad dient de verdachte z.s.m. aan een opsporingsambtenaar of (hulp) OvJ te worden overgedragen.</i>
Ophouding voor onderzoek/verhoor	Politie (in het belang van het onderzoek)	- Politiebureau; - Plaats van onderzoek	9 uren (periode tussen 22 00 – 08 00u niet meegeteld). Eventueel verlengd met 6 uren	<i>Tegen de verdachte kunnen o.m. de volgende maatregelen door de (hulp) OvJ worden bevolen:</i> a. <i>het maken van fotografische opnamen of video-opnamen en het nemen van lichaamsmaatoren;</i> b. <i>het nemen van vingerafdrukken;</i> c. <i>de toepassing van een confrontatie;</i> d. <i>de toepassing van een geuridentificatieproef;</i> e. <i>het scheren of knippen dan wel het verbod tot scheren of knippen van snor, baard of hoofdhaar;</i> f. <i>het dragen van bepaalde kleding of bepaalde attributen ten behoeve van een confrontatie;</i> g. <i>plaatsing in een observatiecel;</i> h. <i>onderzoek naar schotresten op het lichaam.</i>
Inverzekeringstelling	OvJ (hulpOvJ eerste 24 uur)	Politiecel	Max. 3 dagen, te verlengen met max. 3 dagen (dus totaal max. 6 dagen)	<i>Verdachte dient onverwijd voor de RC te worden geleid. (i.c. voor de OvJ).</i>
<i>Voorlopige hechtenis</i>				
Bewaring	RC	HvB, tenzij RC anders beslist	Max. 14 dagen, te verlengen met in totaal max. 14 dagen (dus totaal max. 28 dagen)	
Gevangenhouding /gevangenneming	RC	HvB	Max. 90 dagen, te verlengen met in totaal max. 90 dagen (dus totaal max. 180 dagen)	<i>Wanneer het bevel tot gevangenhouding/-neming is gegeven ter terechtzitting of de terechtzitting binnen de eerste 90 dagen-termijn is aangevangen blijft het bevel voor onbepaalde tijd geldig en van kracht totdat het is opgeheven. Voor een <u>verdachte van een terroristisch misdrijf</u> kan het bevel na negentig dagen gedurende ten hoogste twee jaren worden verlengd met periodes die een termijn van max. 90 dagen niet te boven gaan.</i>
Max. periode van vrijheidsbeneming:			214 dagen en 9 (tot 15) uren	Langer in de hierboven onderstreepte gevallen

In the A{answers}-parts of the Q&A below, the blue underlined text (sometimes turned into red) are hyperlinks. If clicked upon when pressing the Ctrl-button the reader will see the respective document(s) popping up in the web browser.

## Parliament Central Committee's Questions (d.d. 02-08-2019) and Government's Answers on:

### I: National Ordinance amending the Penal Code

*Landsverordening tot wijziging van het Wetboek van Strafrecht in verband met het doorvoeren van enkele dringende internationale verplichtingen*

#### MP Christopher Emmanuel:

**Q: Is it true that the Top 5 terrorist organizations are not in St. Maarten; and ISIS is the more known, only Trinidad and Tobago has people supporting ISIS, however Trinidad is not on that black list?**

**A:** FATF compliance is not about supporting ISIS or other terrorist organizations. It is about each self-respecting country belonging to the international family of nations having legislation in place which would avoid its financial and other designated non-financial institutions being abused by money launderers, terrorists, terrorist's organizations, or supporters wherever they may be in the world.

In terms of Trinidad, this country has a history of being listed by the FATF and only after hard work on their legislative structures it was concluded during last CFATF Plenary in May this year, that Trinidad has now sufficiently accepted all of the recommendations of the FATF, and is now considered to have exited the enhanced scrutiny imposed previously on it due to no compliance with FATF standards. However, if you visit the FATF website today, you will still see Trinidad as a listed country.

**Q: Has MOT seen illegal MLTF transactions to one of these top 5 groups in the world?**

**A:** To date there have been unusual transactions from St. Maarten to 'blacklisted' and 'high risk' countries carried out; these transactions were reported to the FIU. After analysis of a selection of the unusual transactions, the FIU did conclude that there was a suspicion of terrorism financing.

**Q: Does St. Maarten have ISIS Fighters (like Trinidad)?**

**A:** Not to my knowledge, but we have to stay vigilant.

**Q: Are there any unusual money transactions related to terrorism financing: is there any semblance of terrorist funding within the 30 billion of unusual transactions figure provided by MOT previously?**

**A:** The reports submitted by the service providers to the FIU are mainly unusual money transaction reports. The FIU analyses these reports and based on the findings, a suspicion of money laundering or terrorism financing can arise. Incidentally, there were findings that gave rise to a suspicion of terrorism financing; these findings were reported to the relevant authorities.

The FATF Standard are also (or better: primarily) aimed at combatting money laundering: by combatting money laundering in general, government can also be effective in preventing and combating potential financing of terrorism.

Also, the CFATF is at the moment screening St. Maarten, not on its engagement in alleged terrorist activities or involvement with violent extremist groups, but on the compliance of its legislation with the FATF standards. If the legal framework of St. Maarten is not living up to the FATF standards or recommendations to combat money laundering and terrorism financing then St. Maarten will be 'black listed'.

**Q: What are the consequences if St. Maarten is Black listed?**

In the A(answers)-parts of the Q&A below, the blue underlined text (sometimes turned into red) are [hyperlinks](#). If clicked upon when pressing the Ctrl-button the reader will see the respective document(s) popping up in the web browser.

**A:** In short: this action could result in hardship for everybody in St Maarten, due to the fact that St. Maarten is an import-economy and an one pillar economy. Sint Maarten is not self-sufficient on food and other products and is heavily reliant on tourism.

Black listing will not only put more pressure on St. Maarten to take steps to ensure that it addresses its AML/CFT deficiencies, but we all should be more concerned about the impact that any adverse action by the CFATF will have on the St. Maarten economy, and by extension the business community and the common man in the street.

As a result of being blacklisted, St. Maarten stands to face hindrance with on line-shopping, with remittances from money transfer agencies, and with the transfer of money from local to external banks. Additionally, the aviation and business sectors that depend on the flow of goods and services from overseas will also face challenges while St. Maarteners overseas - (GevMin and her cabinet) and scholarship students - who depend on salaries and regular stipends are likely to face problems.

FATF recommendation 19 stipulates that its members must take counter measures against a jurisdiction that is not in compliance with the recommendations. These counter measures are, amongst others, the following.

- a. Requiring financial institutions to apply specific elements of enhanced due diligence.
- b. Introducing enhanced relevant reporting mechanisms or systematic reporting of financial transactions.
- c. Refusing the establishment of subsidiaries or branches or representative offices of financial institutions from the country concerned, or otherwise taking into account the fact that the relevant financial institution is from a country that does not have adequate AML/CFT systems.
- d. Prohibiting financial institutions from establishing branches or representative offices in the country concerned, or otherwise taking into account the fact that the relevant branch or representative office would be in a country that does not have adequate AML/CFT systems.
- e. Limiting business relationships or financial transactions with the identified country or persons in that country.
- f. Prohibiting financial institutions from relying on third parties located in the country concerned to conduct elements of the CDD process.
- g. Requiring financial institutions to review and amend, or if necessary terminate, correspondent relationships with financial institutions in the country concerned.
- h. Requiring increased supervisory examination and/or external audit requirements for branches and subsidiaries of financial institutions based in the country concerned.
- i. Requiring increased external audit requirements for financial groups with respect to any of their branches and subsidiaries located in the country concerned.

**MP Rolando Brison:**

**Q: Can I get an overview of which article in the legislation corresponds with which FATF-recommendation?**

**A:** Government refers Parliament kindly to the Explanatory Memorandum of the draft legislation(s), especially the per-article explanation. It should be pointed out that the FATF recommendations are set up in general terms and should be read in conjunction with their respective Interpretive Notes. Also, recommendations are implemented spread over more than one provision, due to the system of the specific legislation.

**Q: Has there been a discussion with stakeholders about the Penal Process Code?**

**A:** The draft of the new Penal Process Code was prepared by a joint Committee on the Revision of the Penal Process Code, led by prof. Hans De Doelder (professor of criminal law EU Rotterdam) and his team. For St. Maarten the following were represented in the committee: the Ministry of Justice, the judiciary, the public prosecutor service, the police and the legal profession.

**Q: Was the legislation screened against the constitution?**

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**A:** In setting up legislation, the constitution is always taken into consideration, as are the decisions of the European Court of Human Rights. The decision if a statutory provision is unconstitutional or infringes a person's fundamental human rights is in the end for the judge.<sup>1</sup>

In addition and pertaining to the customers policies of banks: Banks are private institutions that create their own risk based approaches towards their clients. These risk based approaches are also mostly based on interpretations of the risk of doing businesses internationally or in the Caribbean region. These interpretations are done at the head offices, which have their seat in other FATF Member States.

**Q: Who is the main contact of CFATF?**

**A:** Ms. Dawne Spicer: she visited and gave information to the Central Committee of St. Maarten Parliament on February 7, 2019.

The contact information of the CFATF Secretariat is as follows:

*CFATF Secretariat  
21st Level, Nicholas Tower  
63-65 Independence Square  
Port of Spain, Trinidad & Tobago, W.I  
Tel: 1(868) 623-9667 | Fax: 1(868) 624-1297  
Email: [cfatf@cfatf.org](mailto:cfatf@cfatf.org)  
Website: <https://www.cfatf-gafic.org>*

Please note that Ms. Spicer is only the executive director of the Secretariat and that decisions on listing or delisting are being made by all countries together in plenary session through voting.

**MP Tamara Leonard:**

**Q: What are the immediate positive effects of these laws to the public and the businesses of St. Maarten?**

**A:** St. Maarten will have modernized and up-to-date laws in which the FATF recommendations are fully implemented, in order to avoid the FATF Public Statement with its detrimental effects on the financial transaction of government, individuals and companies; thus on the economy of St. Maarten.

Having laws that are consistent with international standards may attract good business to the country instead of potential shady businesses, which may try to use weak compliance structures in St. Maarten to conduct illegal or suspicious transactions. This will hopefully promote St. Maarten as a country where transparent business could be conducted. On the flip side, a negative FATF list is a signal to banks globally to take precautionary measures with respect to their dealings with banks, clients, and transactions from territories on the FATF list. This will certainly place St. Maarten businesses in a disadvantageous position when negotiating with their international counterparts. St. Maarten will also be given a higher country risk ranking and all wire and other international transactions from and the operations of local banks will be subject to greater scrutiny. This may lead to further pressures on an already tenuous correspondent banking relationships and a greater threat of loss of same. There will be higher cost of doing international/ cross border transactions, which will translate into higher cost of doing business locally. A challenging situation in already challenging economic times.

**Q: Does MOT do due diligence on these Laws, to look for positive impacts for the people of St. Maarten?**

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<sup>1</sup> In Article 119 of our Constitution it is stipulated that the judge has the authority to assess the compatibility of any effective statutory regulation (except for uniform national ordinances = eenvormige landsverordeningen), with the Constitution. Also, that the judge is entitled to declare that an effective statutory regulation, is fully or partially inapplicable. In so doing, the judge may specify that the consequences of the statutory provision that has been declared fully or partially inapplicable shall remain in effect, fully or partially.

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If clicked upon when pressing the Ctrl-button the reader will see the respective document(s) popping up in the web browser.

**A:** The anti-money laundering and counter terrorism financing (AML/CTF) laws were approved by the Parliament of the Netherlands Antilles in 1986 and have been amended over the years as the FATF recommendations changed. The service providers are the gatekeepers and therefore the ones who have to carry out the requirements of the AML/CTF laws. To date aforementioned laws have not have a negative impact on law-abiding citizens. On the contrary, the AML/CTF laws have provided the basis for law enforcement and the FIU to investigate and analyze sometimes complex money laundering and terrorism financing schemes, in which the integrity of service providers, being natural and legal persons, was compromised. A country that is technically in compliance with the 40 FATF recommendations implemented in its AML/CTF laws and that is effective in the implementation of these laws can expect the other member countries to reciprocate in their interaction with it, resulting in optimal service for its citizens.

**Q: Are there records of terrorism financing in St. Maarten?**

**A:** *This is more or less equal to MP Emmanuel's (already answered) question if there are any unusual money transactions related to terrorism financing. I kindly refer to the answer given to this MP.*

**Q: What will happen negatively if these laws are not accepted by businesses etc.?**

**A:** The service providers are the gatekeepers and therefore the ones who have to carry out the requirements of the AML/CTF laws. If the service providers, who do business with other countries (for example businesses buy produce in other countries or commercial banks that channel their foreign payments via a correspondent bank in designated countries, etc.) do not carry out the AML/CTF laws, then in a foreseeable period of time the counter measures kick in. I kindly refer to the measures, mentioned in answering the question of MP Emmanuel on what consequences of being blacklisted.

**MP Sylveria Jacobs:**

**Q: Will the passing of these laws enhance bank's due diligence?**

**A:** This is not the main purpose of these laws. The laws are aimed at updating the legal framework of St. Maarten and making it more compliant with the FATF standards in order to effectively prevent and combat money laundering and financing of terrorism. Also, these laws are also meant for the non-financial institutes and non-profit legal persons (for examples foundations) and natural persons.

**Q: Are banks compliant with International regulations?**

**A:** Most banks and their satellite offices in St. Maarten are already working on the basis of the international regulations, mostly imposed by their own international organizations such as: Wolfsburg, BASEL, IAIS for insurance companies, etc.

**Q: Are we – as being non-compliant – not already in a tight spot; is St. Maarten financial and socio economic system already impacted by our (non-)compliance so far?**

**A:** St. Maarten has not yet been blacklisted. But will be if the CFATF concludes that St. Maarten's legislation is in non-compliance with the FATF standards: thus if the legal (paper) framework of St. Maarten is not living up to the FATF standards to combat money laundering and terrorism financing.

Yes, a sword of Damocles hangs over these legislation debates, in the shape of the CFATF Public Statement or blacklist.

International standards impose a level playing field between countries. It is a fact that international financial institutions, or other financial institutions located in St. Maarten continuously have to comply with international standards as indicated above. An example: a news article last Thursday indicated how ABN AMRO was flagged as

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having a weak compliance regime and was fearing to be fined for huge amounts, comparable to the ING which was fined to 900 million Euro's in September last year due to compliance breaches.

**Q: What will be the consequences?**

**A:** *This question was also asked by MP Emmanuel's and MP Leonard and also already answered. I kindly refer to the answer given to these MPs.*

**Q: Who is at the moment fitting the bill of financing terrorism?**

**A:** *This is more or less equal to MP Emmanuel's and MP Leonard's (already answered) question if there are any unusual money transactions related to terrorism financing. I kindly refer to the answer given to these MPs.*

**MP Jules James:**

**Q: Are there any known terrorist activities on St. Maarten?**

**A:** *This is more or less equal to MPs Emmanuel's, Leonard's and Jacobs' (already answered) question on terrorism (financing) activities. I kindly refer to the answer given to these MPs.*

## **II: New Penal Procedure Code**

*Landsverordening, houdende vaststelling van een nieuw  
Wetboek van Strafvordering (Wetboek van Strafvordering)*

**MP Emmanuel:**

**Q: What laws are now being used by the authorities for seizure: e.g. the seizure of gold bars on board a private plane in St. Maarten?**

**A:** In the presentation on the new Penal Procedure Code it wasn't said that the seizure of goods et cetera was a new created power for the enforcement authorities. It was stated that the possibilities to proceed with seizure are broadened and that the seizure provisions were adjusted.

**Q: What is a 'crown witness'?**

**A:** A crown witness is a suspect or a convict who is willing to testify in a criminal case against another suspect in exchange for a promise of the public prosecutor. (See article 261f and 261i.)

**Q: Does this include 'bribing' or paying of suspects for their testimony?**

**A:** The agreement between the crown witness and the prosecutor regards the prosecution of the crown witness in his own criminal case. Usually the prosecutor will promise the 'crown witness' to demand a lower penalty than usual in his criminal case. It is explicitly stipulated in the draft Penal Procedure Code (art. 261f) that the prosecutor may under no circumstances promise full immunity to the crown witness. Also, it is the judge in court who ultimately determines the penalty. The regulation on crown witnesses in the Penal Process Code is explained in a separate annex to these Q&A.

It is advisable to point out that the use of crown witnesses is not a new phenomenon that is introduced by the new Penal Procedure Code. It already existed in practice under the Netherlands Antilles and was also allowed by the Dutch Supreme Court (Hoge Raad), which is also the highest Court for the Caribbean Kingdom Countries. The first time in St. Maarten in 1994, This case made it to the Supreme Court ([HR 15 februari 1994, NJ 1994, 322](#)) and even to the European Commission on Human Rights. In 2003 a crown witness case in Curacao was also handled by the

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Supreme Court. It follows from the jurisprudence of the Supreme Court and of the European Court of Human Rights that the use of crown witnesses is allowed in certain criminal cases and under certain conditions to effectively combat crime. The crown witness was, however, never regulated in the Caribbean Kingdom countries. From a rule of law point of view this is less than ideal. Regulation is necessary in order to make the use of a crown witness more transparent, controllable and testable by the courts and the defence counsels.

**Q: Minister are you being forced to approve these legislations by Dutch representatives?**

**A:** No I am not. I am being confronted with legislation that other ministers did not do and I am obligated to do what is right for St. Maarten – understanding the consequences that will be forced on us.

**Q: Can the minister confirm or indicate show of any transaction or activity here in St. Maarten that stems from terrorism or grass root growing here in St. Maarten?**

**A:** To date there have been unusual transactions from St. Maarten to ‘blacklisted’ and ‘high risk’ countries carried out; these transactions were reported to the FIU. After analysis of a selection of the unusual transactions, the FIU did conclude that there was a suspicion of terrorism financing.

**Q: On which grounds (based on what) were the ‘Cubans’ incarcerated?**

**A:** The Cubans were detained, tried and convicted of being illegal on St. Maarten and awaiting deportation.

**Q: On what basis is the ‘Afpakteam’ operating now?**

**A:** The ‘Afpakteam’ is a multidisciplinary team, in which the OM, Police, Customs, Tax Office and Coast Guard (assisted by the Royal Marechaussee) have joined forces to combat crime. They work as a joint team on the basis of a policy paper and make use of their legal powers to confiscate and seize the proceeds of crime pursuant to their specific legislation.

Probably this question was triggered because in the presentation it was mentioned that “the setting up of int. joint investigation teams has been regulated.” But this regard International Joint Investigation Teams (Article 565a et seq. of this draft law), based on the UN Treaty Against Transnational Organized Crime ([Trb. 2001,68](#)).

**MP Leonard:**

**Q: Will this law strengthen the presumption of innocence?**

**A:** The presumption of innocence is laid down in Article 14, par. 2, of the [International Covenant on Civil and Political Rights \(ICCPR\)](#) and Article 6, par. 1, of the [European Convention for the Protection of Human Rights and Fundamental Freedoms \(ECHR\)](#). The new Penal Procedure Code does not infringe upon these most fundamental documents on human rights.

**Q: What is a “redelijke termijn”? Who decides how long a person can be considered a suspect or be prosecuted?**

**A:** It follows from Article 14, par. 3, section c, of the ICCPR and Article 6, par 1, of the ECHR that a suspect should be tried without undue delay and within a reasonable time. This is regulated more in detail in Articles 55 and 56 of the existing and (draft) new Penal Procedure Code. What a reasonable time is, will be decided by the judge/court on a case by case basis and on the basis of criteria given by the Supreme Court (See [HR 17 juni 2008, NJ 2008, 358](#)).

**Q: What is a crown witness? / Do they get paid, what is the limit?**

**A:** These are more or less equal to MP Emmanuel’s (already answered) questions on the crown witness. I kindly refer to the answer given to this MP.

**Q: Is there a law that the Prosecutor should present files to the suspect and his defence counsel?**

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**A:** Yes, this follows from the right to a fair trial pursuant to Article 14, par. 1, of the ICCPR and Article 6, par 1, of the ECHR. This is regulated more in detail in Articles 4 et seq. and 50a et seq. of the new Penal Procedure Code.

*[In the presentation to Parliament/Central Committee it was mentioned that these provisions in the new Penal Procedure Code were based on a Dutch Act: i.e. the Act on the revision of rules concerning procedural documents in criminal cases -'Wet herziening regels betreffende de processtukken in strafzaken'.]*

**MP Brison:**

**Q: Can the presentation and aforementioned Dutch Act be provided?**

**A:** Yes. The presentation is attached as an Annex to this Q&A. Aforementioned Dutch Act is digitally available and can be found here (when you click on this hyperlink): [Wet herziening regels betreffende de processtukken in strafzaken](#).

**Q: Is there no sufficient legal basis for the TBO according to the FATF?**

**A:** The TBO itself has sufficient legal basis for their actions in St. Maarten legislation. The FATF Recommendations are aimed to effectively and efficiently investigate, prosecute and try money laundering and the financing of terrorism. These recommendations concern the 'how to' and not the 'who' combat these criminal acts. The latter is an internal matter of the countries.

**Q: Is there a cap on the pre-trial detention?**

**A:** Yes. A scheme of the pre-trial detention according to the new Penal Process Code is attached as an Annex to this Q&A.

**Q: What is the basis of the definition of "terrorist"?**

**A:** The Penal Code nor the Penal Process Code make mention of 'Terrorist'. As such this term is not defined in these laws. The same goes for the FATF Recommendations. These documents only make mention of 'terrorist act'.

**Q: Is 'bail' addressed in the Penal Process Code.**

**A:** Yes. (See Article 111, par. 1 and 3, of both the present and the new Penal Process Code)

**Q: Is the use of anonymous witnesses (un)constitutional?**

**A:** Please see the answer to the question above of this MP pertaining to the Penal Code: "*Was the legislation screened against the constitution?*"

Also, it follows from the jurisprudence of the Supreme Court and of the European Court of Human Rights that the use of anonymous witnesses is allowed under certain conditions to effectively combat crime.

**Q: Do Curacao and Aruba agree with this law?**

**A:** The governments of Curacao and Aruba do. The governments of the Caribbean Kingdom Countries had sent the draft to their respective Council of Advice for advice and all three advices were considered in the final draft of the Penal Process Code. The governments of Curacao and Aruba than also decided to send the final draft to their respective Parliaments for approval.

The parliament of Aruba will start handling this draft legislation in September (so I have been told). It is not clear when Curacao's parliament will start the discussions.

It is good to mention that the draft Penal Process Code is a so called 'uniform national ordinance'. To make sure that the individual parliaments of Aruba, Curacao and St. Maarten approve uniform (texts of) procedures laws

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(procesrecht) to the benefit of the Joint Court of Justice of Aruba, Curacao, St. Maarten and of Bonaire, St. Eustatius and Saba aforementioned Kingdom countries signed the Cooperation Agreement uniform process law / Samenwerkingsregeling eenvormig procesrecht Aruba, Curaçao en St. Maarten (this document is attached to this Q&A). Both St. Maarten and Curacao Parliament have approved this Agreement but the Parliament of Aruba has not. In 2014 it was concluded that the 'Uniform Procedure' could not be followed, so it was decided that each country would continue individually to have the final draft of the Penal Process Code approved by their parliament.

**MP James:**

**Q: What part of the amendments are needed to satisfy the FATF**

**A:** I would say: all! The updating (in accordance with i.a. international agreements/obligations and jurisprudence) and the modernization of the Penal Process Code serves the effective, diligent and transparent investigation, prosecution and trying of i.a. money laundering and terrorism financing cases.

**Q: Why is Dutch law added to St. Maarten law.**

**A:** The Kingdom Countries have a common legal system and also have the Dutch Supreme Court as their highest national court in criminal law, civil law and also tax law cases. Almost all legislation of the Caribbean part of the Kingdom is based on Dutch laws and its interpretations by the Supreme Court. Most of the time the Netherlands are (way) ahead of the Caribbean Kingdom Countries in updating or amending there laws in accordance with international obligations, court decisions of the Supreme Court or of the European Court of Human Rights, with common international standards and recommendations and with the needs of the local crime fighters and judiciary to effectively and efficiently investigate, prosecute and try criminal acts. So, instead of reinventing the legislative wheel, we copy-paste or translate Dutch law (provisions) into our national legislation. Of course keeping in mind the (Caribbean) national context.

**Q: What is shifted from the Ministry of Justice to the Public Prosecutor Service?**

**A:** This pertains to the international legal assistance in criminal cases (Article 555 et seq.) and the 'shift' is more a formalization of the practice. In practice – since, but also before 10-10-'10 – the judicial branch (Public Prosecutor Service and the Joint Court of Justice) are mainly involved in requests from other countries for legal assistance in criminal cases. The Minister will (and should) only be involved if there are (sensitive) international political aspects in play. This is regulated.

**Q: How can foreign police officers apprehend someone on St. Maarten soil?**

**A:** Only when St. Maarten has signed a treaty to this purpose foreign police officers (for example the police of the French side of St. Maarten) may apprehend a wanted criminal and always with the assistance or knowledge of the local authorities.

**Q: Why is the Examining Magistrate (RC) not needed (anymore) by a house search?**

**A:** It is not that the RC is no longer needed or involved to have the investigative authorities to do a search. The RC's physical presence at a search in a house or office is no longer a requirement, but he still needs to authorize the search before this takes place. (See Article 122.)

**Q: What does the Bar Association finds of this law?**

**A:** The advocacy was also represented in the workgroup to set up this draft law. As far as I know no Bar Association of the island have not criticized or openly spoken out against this draft. Nor did individual attorneys.

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### **III: Revision of the Civil Code, Book 2**

*Landsverordening tot wijziging van Boek 2 van het Burgerlijk Wetboek  
(Herzieningslandsverordening Boek 2 BW)*

**MP Brison:**

**Q: What does the Bar Association thinks of this law?**

**A:** In June 2017, on invitation of and sponsored by both the Bar Association of St. Maarten and the Ministry of Justice, the experts and main advisers on the draft of Book 2 of the Civil Code – the professors Jan de Boer and Peter van Schilfgaarde – have given a presentation and lecture on the draft to the legal field of St. Maarten. We did not receive any critical feedback on the draft. In general it was positively received.

**Q: Pertaining to bearer shares: what is the retroactive nature of the law, is there a transition measure?**

**A:** They are not retroactive by nature and the existing holders of bearers share may keep these shares but have to make their identity known before they can effectuate their shares. The transitional provisions for holders of existing bearer shares can be found in Article III of this draft legislation.

**Q: Why should the Chamber of Commerce and Industry be the one to cancel or terminate a legal person if that legal person is involved in suspicious transactions (this should be the Minister of TEATT)?**

**A:** The Chamber, more or less a ZBO , and not the minister of TEATT is by law (i.e. Handelsregisterverordening) the keeper of the Trade Register and is the sole authority who may remove legal persons from the registry. The grounds, mentioned in Article 25, par. 1, sections c en d, of this draft legislation are included pursuant to Article 36, section A, of the National Ordinance on combatting money laundering and terrorism financing. This ordinance was recently (May 14<sup>th</sup>) approved by Parliament.

Also, The Chamber is put on a distance from the politics/government. The director (secretaris) of the Chamber is appointed by its democratically chosen members, who all have to be registered in the Trade register. Introducing the minister of TEATT with regard to legal persons who are involved in suspicious money transactions is i.m.o. an unnecessary politalization of the Chamber. Also, removing such a legal person from the Trade Register is not a facultative or discretionary power of the Chamber. It is compulsory ('gebonden beschikking').

**Q: What is the status of the CBP (Personal Data Protection Committee)?**

**A:** We are busy finalizing the committee members by National decree and the National Decree containing general measures to establish their authority.

**MP Emmanuel:**

**Q: Is the government co-conspirative of ML; does the FIU monitors government?**

**A:** No.

**Q: Who gave local bank the authority to ask information or close their accounts?**

**A:** Banks have their own risk-based approach, which clients to accept, and which not. Government has no grip on private banks risk appetite. They (banks) are bound to KYC (know your customer) general directives provided mostly by their head offices and international organizations they are members off, including local or international, regulators. The commercial banks are service providers that fall under the scope of the AML/CTF laws and are therefore obligated to carry out aforementioned customer due diligence and record keeping as stipulated in

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Chapter II, article 3 up to and including article 17, of the National Ordinance combatting money laundering and terrorism financing ([AB 2019 no. 25](#))<sup>2</sup>.

**Q: Why do banks ask for a person's 'source of wealth'?**

**A:** This is a requirement of the Central Bank of Curacao and St. Maarten.

**MP Luuk Mercelina:**

**Q: Did you take a stance against the "Eenvormigheid": does country St. Maarten want to accept strengthening unification? Or more Autonomy?**

**A:** Pursuant to Article 39 of the Kingdom Charter i.a. Civil and commercial law, the law of civil procedure, criminal law and the law of criminal procedure should be regulated as far as possible in a similar manner in the Kingdom Countries. See also the Samenwerkingsregeling eenvormig procesrecht which St. Maarten has agreed to.

**MP James:**

**Q: Can you give more clarity on article 25?**

**A:** I kindly refer to the answer above, which was given to MP Brison on this issue.

**Q: NPO must provide annual reports: may be draconian to soccer clubs, churches and community councils. Can you give more clarity?**

**A:** For the purposes of FATF-recommendation 8, an NPO refers to a legal person or arrangement or organization that primarily engages in raising or disbursing funds for charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of "good works". This recommendation only applies to those NPOs which fall within the FATF definition of an NPO. It does not apply to the entire universe of NPOs.

Furthermore, NPOs play a vital role in the world economy and in many national economies and social systems. Their efforts complement the activity of the governmental and business sectors in providing essential services, comfort and hope to those in need on a national level and around the world. The FATF recognizes the vital importance of NPOs in providing these important charitable services, as well as the difficulty of providing assistance to those in need, often in high risk areas and conflict zones, and applauds the efforts of NPOs to meet such needs. The FATF also recognizes the intent and efforts to date of NPOs to promote transparency within their operations and to prevent terrorist financing abuse, including through the development of programs aimed at discouraging radicalization and violent extremism. The ongoing international campaign against terrorist financing has identified cases in which terrorists and terrorist organizations exploit some NPOs in the sector to raise and move funds, provide logistical support, encourage terrorist recruitment, or otherwise support terrorist organizations and operations. As well, there have been cases where terrorists create sham charities or engage in fraudulent fundraising for these purposes. This misuse not only facilitates terrorist activity, but also undermines donor confidence and jeopardizes the very integrity of NPOs. Therefore, protecting NPOs from terrorist financing abuse is both a critical component of the global fight against terrorism and a necessary step to preserve the integrity of NPOs and the donor community. Measures to protect NPOs from potential terrorist financing abuse should be targeted and in line with the risk-based approach. It is also important for such measures to be implemented in a manner which respects countries' obligations under the Charter of the United Nations and international human rights law.

Some NPOs may be vulnerable to terrorist financing abuse by terrorists for a variety of reasons. NPOs enjoy the public trust, have access to considerable sources of funds, and are often cash-intensive. Furthermore, some NPOs

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<sup>2</sup> Based on FATF recommendation 10, 'Customer due diligence', and recommendation 11, 'Record keeping'.

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have a global presence that provides a framework for national and international operations and financial transactions, often within or near those areas that are most exposed to terrorist activity. In some cases, terrorist organizations have taken advantage of these and other characteristics to infiltrate some NPOs and misuse funds and operations to cover for, or support, terrorist activity.

Notwithstanding the requirements of recommendation 1, not all NPOs are inherently high risk (and some may represent little or no risk at all), the procedure is to identify which subset of organizations fall within the FATF definition of (vulnerable to terrorism financing) NPO. In carrying out this exercise, all relevant sources of information will be consulted in order to identify features and types of NPOs, which, by virtue of their activities or characteristics, are likely to be at risk of terrorist financing abuse.