

Unofficial translation of 'Memorie van Toelichting Rijkswet financieel toezicht Curaçao en Sint Maarten'. Only the official text in the Dutch language as published in the 'Staatsblad' (Dutch Bulletin of Acts, Orders and Decrees) is decisive. No rights can be derived from this translation.

Translation

Lower Chamber of the States General

2

Parliamentary year 2008 - 2009

32 026 (R 1888)

Rules for the financial supervision on the countries of Curacao and Sint Maarten (Kingdom Act financial supervision Curacao and Sint Maarten)

No. 3

EXPLANATORY MEMORANDUM

GENERAL

1. Objective and tenor

This bill provides for the financial supervision as this will be exercised as per the moment of the change in constitutional relations within the Kingdom with regard to the new countries of Curacao and Sint Maarten. By means of the Decree on Temporary Financial Supervision Netherlands Antilles, Curacao and Sint Maarten, financial supervision has been established on the national budget of the Netherlands Antilles and on the budget of the island territories of Curacao and Sint Maarten. That general State measure becomes null and void not later than on January 1, 2011. This bill shapes the financial supervision in the new constitutional relations for the new countries of Curacao and Sint Maarten.

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The supervision will be exercised by the council of ministers of the Kingdom, while the Board of financial supervision Curacao and Sint Maarten (hereinafter: the Council) will have an observatory and advisory role in this regard. More generally, the financial supervision as this is provided for in this bill, has as its objective that the institutions and administrative manner of working of the new countries make this supervision redundant in the future. Five years after the effective date of this bill, the supervision will be assessed based on the criteria that have been set forth in this bill and the council of ministers of the Kingdom will decide to what extent that supervision may be fully or partially terminated for both or for one of the countries. If necessary, that assessment will be repeated at least once every three years.

For a further explanation in this regard, refer to the explanation under Article 33.

This bill is based on Article 38 of the Charter for the Kingdom of the Netherlands. That article provides for the possibility for the Netherlands, the Netherlands Antilles and Aruba to make arrangements amongst themselves, if so desired, laid down in a Kingdom Act or in a general State measure (consensus Kingdom Acts or consensus general State measures).

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The State legislation based on that provision, other than the State legislation on affairs of the Kingdom, can only be established and amended if the countries concerned agree. Just as it is the case with most other regulations on the grounds of Article 38 of the Charter, the most important agreements and principles on which this bill is based are set forth in a preamble.

2. Background and cause

The peoples of the islands of the Netherlands Antilles, in 2000 and 2005, using the right of self-determination, expressed themselves through referendums to reach a new constitutional status of those islands within the Kingdom of the Netherlands. Those expressions of the peoples of the five islands are respected by the Netherlands and have given the impetus for the process of constitutional reform.

In that process of constitutional reform, the joint point of departure for the Netherlands, the country of the Netherlands Antilles, the island territories of Curacao and Sint Maarten as upcoming countries, and Bonaire, Sint Eustatius and Saba as the future public bodies within the Dutch government, is that the intended new entities end up in a financially healthy position at the start of the new constitutional relations.

At the start of the Round Table Conference of November 26, 2005, it was ascertained that the debt position of the Netherlands Antilles, that of the country and that of the island territories, presented an obstacle to

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reach a healthy financial starting position of the intended new entities. The country of the Netherlands Antilles and the island territories of the Netherlands Antilles have been experiencing problems in the field of government finances for years. Budgets are still functioning inadequately as the financial policy instrument and the debt positions and arrears in payments are a problem. It has been agreed that the Netherlands will offer a solution for the debt issue. Furthermore, it has been ascertained that, for a healthy financial starting position, it is of importance that the financial household is put in order and maintained and that, to prevent new financial problems, joint agreements must be made for a proper budget policy, organization of the financial management and effective financial supervision to prevent a new accumulation of debt.

In the Closing Statement of November 2, 2006 of the administrative consultation between the Netherlands, the country of the Netherlands Antilles and the island territories of Curacao and Sint Maarten, with regard to the constitutional renewal process, it has been agreed that the Netherlands will take upon them the obligation to take over an important share of the debts. In this regard and with regard to making the government finances healthy, it has also been agreed that, for the transitional period towards the new constitutional relations, a form of financial supervision would be established based on consensus.

In the transitional agreement of February 12, 2007 between the Netherlands, the country of the Netherlands, the country of the

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Netherlands Antilles and the island territories of Curacao and Sint Maarten, Bonaire, Sint Eustatius and Saba, further agreements have been made on the manner in which the process towards constitutional change would be given substance and directed, on socio-economic initiatives and debt restructuring. Further agreements have been set forth in the administrative agreement of August 28, 2007 on the accession of the island territory of Curacao to the transitional agreement of February 12, 2007.

The Decree on Temporary Financial Supervision Netherlands Antilles, Curacao and Sint Maarten, as this is currently valid, sets forth the details regarding the agreed financial supervision on the national budget of the Netherlands Antilles and on the budgets of the island territories of Curacao and Sint Maarten in order to bring about that the country of the Netherlands Antilles and the island territories work towards stable budgets and debt control during the transitional period. During the transitional period towards new constitutional relations, it must guarantee that the budgets are balanced within the agreed boundaries, that this remains so within the scope of the financial management in the implementation of the budget and that, in this regard, the total of the money loans does not exceed an agreed limit (the interest charge norm). Given the agreements made and in view of the autonomy of the Netherlands Antilles and the island territories of Curacao and Sint Maarten, the budget authorities will, however, remain responsible for their own budgets. The Board of financial supervision that is now in effect on the grounds of the Decree on Temporary Financial Supervision

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Netherlands Antilles, Curacao and Sint Maarten will make its assessments exclusively based on technical budgetary aspects. It does not venture into an assessment of the budget based on policy.

In connection with this, as agreed, on the occasion of the Decree on Temporary Financial Supervision Netherlands Antilles, Curacao and Sint Maarten becoming effective, the Netherlands has begun restructuring the debts of the Netherlands Antilles, Curacao and Sint Maarten. It concerns the existing debts per December 31, 2005 of these three entities, including the refinancing of those debts and the financing of the interest on those debts up to the level of the interest charge norm valid for the year 2005, and the arrears in payments as per December 31, 2005. Upon the effective date of the new constitutional relations, the Netherlands will take over the then remaining principal sum of the above described debts. On November 26, 2008, further agreements were made in this regard in the meeting of the political steering group held in Sint Maarten.

3. The content of the regulation

3.1. Powers

In view of the autonomy of Curacao and Sint Maarten, the Netherlands, Curacao and Sint Maarten have made agreements on a method that is based on efforts on the part of their own budgetary authorities to make the government finances healthy. The Board consisting of experts has an observatory and advisory role. As the case may be, in consultation and through recommendations, the Board will have to convince the

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parties involved in the budget to bring this in line with the standards agreed upon for the financial supervision, and maintain it. The Board will refrain from giving an assessment based on policy. The administrations are not bound by the recommendations, but do need to notify the Board if and to what extent those recommendations will be taken into consideration. Pursuant to this bill, only the State council of ministers may issue instructions to the administrations after notification by the Council.

In case of a continuing difference of opinion between the Board and a national government with regard to the implementation of this bill, the Board will notify the State council of ministers in this regard. This guarantees that provisions that can be made at that time are given an acceptable administrative legitimacy. The Board cannot step in. Only the State council of ministers can. If a proposal is made to issue an instruction, the administration involved will get the opportunity to

present its view before that proposal is submitted to the council of ministers of the Kingdom. Against this royal decision on the grounds of this regulation to issue an instruction to the administration, the administration may file an appeal with the Crown.

3.2. The composition and duty of the Council

The Board consists of four persons. The members of the Board are expected to possess broad expertise in administration, policy and finance. The Board will be supported by a secretary and expert staff.

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Secretary and staff are made available on recommendation of the Board on behalf of the Minister of Home Affairs and Kingdom Relations. Secretary and staff will be under the management of the Council.

The duties of the Board will be aimed at the adoption and implementation of the budgets that are balanced in accordance with the boundaries agreed upon and at the management of the total of the money loans. It is guaranteed that sufficient expertise is present in the Council, that specific contribution from Curacao and Sint Maarten is possible and that sufficient capacity is available for the activities and consultations with the countries.

For the financial supervision on the new public bodies Bonaire, Sint Eustatius and Saba, a separate Board of financial supervision Bonaire, Sint Eustatius and Saba will be established. In practice, the two councils will have a common secretariat.

The Council of State, in its recommendations on the bill finances public bodies Bonaire, Sint Eustatius and Saba (hereinafter: FinBES – Senate documents II 2008/09, 31 958, no. 4) advised to replace the Board of financial supervision with regard to the supervision on Bonaire, Sint Eustatius and Saba with an organizational unit of the ministry of Home Affairs and Kingdom Relations and have this unit exercise the financial supervision pursuant to a mandate from the minister. This in view of the direct inter-administrative relation between the three public bodies and the State government, and the desirability for a form of direct

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democratic accountability. In its recommendation on this bill now under consideration, the Council of State of the Kingdom calls this advice to mind. The Board wonders if, in the bills under consideration with the Council, the proposed far-reaching form of connection and cooperation between both councils of supervision, the individuality of the separate fields of supervision would still be sufficiently guaranteed, including from a constitutional point of view.

In the FinBES bill as this was recently submitted to the Lower Chamber, the government partially observed the advice of the Board on this matter. The Board of financial supervision Bonaire, Sint Eustatius and Saba will continue to exist as such, but will perform its duties partly pursuant to a mandate of the minister of Home Affairs and Kingdom Relations. In addition, the Board of financial supervision Bonaire, Sint Eustatius and Saba will retain its own duties such as providing recommendations to the public bodies and to the minister and supporting the public bodies in their daily management. Therefore, we do not fear for the individuality of the two fields of supervision. It concerns two different councils that operate under a (partially) different name and that each has its own duties. In addition, factual decisions within the scope of the supervision, with regard to Bonaire, Sint Eustatius and Saba, will be made by the minister of Home Affairs and Kingdom Relations of the Netherlands and, with regard to the countries Curacao and Sint Maarten, by the council of ministers of the Kingdom. Having a common secretariat results, in our opinion, in a practical surplus value in view of the desirable administrative expertise but we

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are convinced that this does not pose an obstruction to the individuality of the two supervisory regimes either.

3.3. Manner of supervision

In order to have the financial supervision function optimally, the Board must have an idea of the budget cycle and the financial management of the countries and, furthermore, it must have all information that it deems necessary for its duties. In this explanation, the following will be successively discussed:

- the submission and adoption of the budget (Chapter 3 of the proposal);
- the standards of assessment for the budget and the money loans (Chapter 4 of the proposal);
- the implementation and accountability of the budget, including the financial management (Chapter 5 of the proposal).

3.3.1. The adoption of the budget

The regulation of the budget supervision provides for an adopted budget or budget adjustment to be submitted to the Board immediately after adoption. The Board assesses the budget based on Article 15 and, if necessary, provides it with a recommendation. If the Board finds grounds thereto, the budget may be submitted to the State council of ministers for assessment. In this regard, the Board may advise the State council of ministers to decide to issue an instruction for adjustment of the budget. The procedure guarantees that, before it comes to that, the administration involved is given the opportunity to

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make the necessary adjustments to its own insights or to present its own point of view. The State council of ministers can eventually decide differently from the advice of the Council.

3.3.2. Recommendations in the budget preparation

The Board may provide recommendations on the draft budget, be it solicited or unsolicited. If necessary, the documents in question may be requested from the countries. If such a solicited or unsolicited recommendation is provided on the draft budget, the draft submitted to the States of the country in question must be accompanied by that recommendation and the party submitting must indicate to what extent and how this recommendation has been taken into consideration.

3.4. The financial standards

3.4.1. The financial standards for the budget

The estimates of the expenditure and income included in the budget must be in accordance with the standards set forth in Article 15, paragraph 1. In the assessment whether or not the standards have been met, the aspects listed in paragraph 2 of Article 15 are observed. The Board conducts a technical test of the budget: it assesses if the budgets are balanced within the boundaries agreed upon (no deficit on the regular service and no excess of the interest charge norm). In view of that assessment, the Board will consider if the budgets also meet the basic aspects of a full, orderly and verifiable budget.

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Article 15 sets forth the standard for a balanced regular service and the interest charge norm. In case of a balanced regular service, the estimated expenditure is covered by the funds entered for that expenditure. . Also for the capital service an equal amount of funds must be available for the amount of the expenditure. The difference with the regular service is that, for the capital service, expected income from money loans may be taken into consideration. The interest charge norm, however, imposes a limit on the amount of the money loans that can still be attracted at the expense of the countries.

3.4.2. The interest charge norm

The interest charge norm sees to it that for both countries, for each one separately, the annual interest charges do not exceed a certain limit. In the assessment whether or not the interest charge norm is exceeded, the entire collective sector of the country in question is considered. The annual expenditure in interest by a collective sector as a whole may not exceed 5% of the average realized income in the previous three years in that collective sector. In this manner, the countries have a great interest in the development of the interest charges in their own collective sector.

For a description as to what belongs to the collective sector, refer to the explanation under Article 23.

The *interest charge norm* is based on the three years (t-4 up to and including t-2) that preceded the year (t-1) in which the budget is submitted and not on the three years (t-3 up to and including t-1) directly preceding the budgetary year (t). After all, the year preceding the

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budgetary year is not yet closed at the time the budget is submitted as a consequence of which the information on the income and expenditure of the collective sector is absent.

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For the assessment of the interest charge norm, not all interest charges are important. For that norm, only the expenditure in interest on the consolidated debt is of importance. The definition of *consolidated debt* has been worded in such a manner that the debts of legal persons (government, companies, institutions, organizations) to one another within a collective sector are disregarded. In the consolidation, these debts to one another cancel each other out.

Debts include both proof of debt in the form of, for example, bond loans, and treasury notes as private loan and credit agreements. Also, (formal and factual) supplier's credit (accounts receivable), if the term thereof is longer than is customary in society at large.

In the assessment of the interest charge norm, the current account credits extended by the State of the Netherlands for temporary liquidity deficits are also taken into consideration (see Article 22 and the explanation thereof).

During the first years after the effective date of this bill, the interest charge norm cannot yet be determined based on this definition. After all, at that time the realized income over the previous three years is not yet known. In this regard, Article 29 sets forth a transitional provision. For an explanation hereof, refer to the explanation under that Article.

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3.5. The implementation of the budget and the financial management

3.5.1. The implementation and adjustment to the budget and the accountability regarding the implementation of the budget

During the budgetary year, the Board must have an idea of the implementation of the adopted budgets in order to be able to determine whether or not there is a deficit on the regular service or an excess of the interest charge norm. For this purpose, the administrations will send implementation reports to the Board every quarter and, if necessary, provided with a statement of the intended measures to compensate the deficit or excess. The Board will analyze the figures of the depletion of the budget and of the obligations that have been entered into. Drafts for national ordinances for adjustment of the budget will go through the same procedure as a draft budget. On the grounds of Article 8, the Board may request additional information.

Article 20 pertains to concluding financial obligations. This can only take place insofar as a valid budget permits this. The Minister of Finance of each of the countries must see to it that this rule is observed. If necessary, he may establish prior supervision on concluding financial obligations in the sense that his approval is required in this regard. If, in a specific case, where expenses are made without a valid budget providing therefor, where prior supervision remains forthcoming or is insufficient, the Board may provide a recommendation to the minister in that regard. If it subsequently turns out that the supervision by the minister of Finance in question still remains forthcoming or remains insufficient, the Board may recommend to the council of ministers of the

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Kingdom to establish preventive supervision on concluding financial obligations themselves by means of the issue of an instruction. In that case, the supervision will be exercised by the Council.

3.5.2. Improvement of the financial management

The financial management of the countries must be in order. Efforts are put into making the necessary improvements to the financial management. In this regard, the work group General Financial Position has drawn up implementation plans. These plans have been adopted by the island territories of Curacao and Sint Maarten and the Netherlands. Where in Article 19 of this Act implementation plans are mentioned, these plans are meant. The Council, based on the quarterly reports, supervises the implementation of those plans and, if necessary, may provide recommendations with regard to that implementation. Also, findings of accountants and the General Auditor's Office as well as one's own findings, may be cause for the Board to provide recommendations in the field of financial management.

The implementation plans financial management are specific plans of action for the Country and the island territories respectively to solve bottlenecks observed in the financial management and pertain to the body of compatibility, budget infrastructure and administrative organization.

The plans are especially aimed at the following improvements:

1. timely completion of the financial accountability (catch up annual accounts);
2. timely drawing up of the budget;

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3. drawing up a multi-year policy plan and multi-year figures;
- 4 strengthening the financial function;
- 5 organizing a budget administration and obligations administration;
- 6` imposing and collecting back taxes;
- 7 organizing the tax machinery;
- 8 drawing up corporate governance code for government-owned companies and foundations.

3.6. Corporate Governance

It is of great importance that constructions under private law are carefully used in the execution of the governmental task. In cases where the government may exercise influence on a private legal person, for example, based on a participation of that legal person, it is also of great importance that that possibility of exercising influence is carefully used. Within the scope of the realization of the Decision on temporary financial supervision Netherlands Antilles, Curacao and Sint Maarten, it has been agreed that care should be taken in drawing up rules for the following areas:

- procedures for alienating and obtaining participations in legal persons by the Country and the island territories respectively;
- guidelines for the dividend policy of legal persons in which the Country and the island territories respectively participate;
- procedures and requirements regarding the appointment and dismissal of administrators of legal persons in which the Country and the island territories respectively participate.

In the administrative consultation of January 22, 2008, it was agreed that, in the country and both island territories, regulations would be

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effective in abovementioned fields that meet internationally accepted standards. This bill confirms that this agreement also applies to the new countries of Curacao and Sint Maarten.

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4. Implementation of policy intentions

The implementation of the policy with financial consequences announced in the budget, both for the income and the expenditure items must be set forth in a provision. This can be a formal ordinance or regulation, or an internal rule, dependent on what type of policy measure has been prescribed. If adoption or introduction of such a provision remains forthcoming, the Board may report on this matter. After all, the implementation of the budget may be put at risk. In the extreme case, based on a decision of the State council of ministers in this field, instructions may be issued for adjustment of the budget. This provision is deemed necessary by the Netherlands, Curacao and Sint Maarten to ensure that the budgets are, indeed, implemented. If, for example, tax measures are announced in the budget, these must be given legitimacy in tax ordinances amended in that regard. If the adjustment does not take place, the estimated taxes cannot be levied and an item of income in the budget may not be realized. Such a situation must be avoided.

5. Legal protection

Pursuant to this decision, the government of the Kingdom is allocated a number of far-reaching powers that may cause disputes. Therefore, it is reasonable to put in place a form of dispute resolution at Kingdom level. In this regard, various possibilities have been considered, such as appeal to the Council of State of the Kingdom and appeal to the Crown. Finally a choice was made for appeal to the Crown whereby the Council of State of the Kingdom is charged with the preparation. The advantage of this option is that this administrative appeal procedure offers the

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possibility to test legitimacy and efficiency. In addition, the possibility of provisional relief is provided for.

In order to prevent the administrative court in the Netherlands to declare itself authorized in an appeal against the decision on the Crown appeal, Article 26, paragraph 12, stipulates that, on the grounds of this bill, decisions will not be susceptible to appeal to the administrative court.

6. Financial consequences for the Netherlands

The debt acquisition by the Netherlands involves a substantial budgetary burden. In the interim budget report 2007, an amount of 2.2 billion euro was reserved for this purpose up to and including 2010.

The annual costs pertaining to the Council, in view of the estimated size of the Board and the staff, in case of full occupation, are about 3 million euro.

Both items are funded from Chapter IV of the State budget.

Per Article

Article 1

This article sets forth a number of definitions of terms that are used elsewhere in the bill.

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Article 2

The members of the Board are exclusively appointed on the grounds of their expertise in the field of the activities of the Council.

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Article 3

The Board is independent. In view of its powers, it is of great importance that the members do not have additional jobs or fulfill other positions that may harm their independence. For that reason, a system was put in place whereby any additional jobs or other positions must be reported prior to accepting them. With regard to transparency, all additional jobs and other positions of members of the Board will be made public. In case of an additional job one should think in this context of an administrative post, and suchlike; in case of another position one should think of another employment.

Article 4

Since certain activities of the Board are included in the responsibilities of several ministers and these ministers may be called to account for them in the representative organs of the Netherlands and the countries, the Board has an obligation to provide information to these ministers. With regard to that responsibility, the Minister of Home Affairs and Kingdom Relations, after approval of the council of ministers of the Kingdom and in agreement with the governments of the countries, may establish policy rules (such as procedural rules) and issue general and special instructions for the exercise of the duties of the Council.

Article 5

In order to see to it that it is clear in what manner the Board makes internal decisions and organizes its internal activities, the Board itself will draw up an administrative regulation and publish that regulation.

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A member may have himself represented, but only by another member and by means of a written power of attorney. The validity of this power of attorney will be assessed by the Chair.

Article 6

The availability in paragraph 3 entails that the staff selected by the Board through the Minister of Home Affairs and Kingdom Relations is made available to the Council.

Article 7

For the performance of their duties, it is necessary for the members of the Board and their staff to have free access to the territories of both countries and to be permitted to work there.

Article 8

The obligation of the administrations to provide information on the grounds of paragraph 1 of this Article also includes the supply of information of the legal persons that belong to the collective sector. The requested information on the grounds of this article can also pertain to the application of the regulations meant in Article 28 of this bill insofar as it has consequences for the purpose of Article 15. The information that an administration does not have and cannot have can obviously not be requested by the Council. As for information that an administration has or can have, the obligation to provide information is limited insofar that the Board can only request information that is directly of importance to the performance of its duties. Individual medical and

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fiscal dossiers, for example, do not come under the obligation to provide information. Naturally, the Board will have to observe the valid confidentiality clauses that pertain to natural persons and legal persons.

Article 9

This article sets forth which budget will bear the expenses of the implementation machinery of the Council. In this regard, it concerns Chapter IV (Kingdom Relations) of the State budget.

Article 10

Provisions regarding the serious failure of the Board can only be established in agreement with the parties that have direct dealings with the Council, namely the governments of the countries.

The provisions meant in paragraph 1 are of a temporary nature and may regard both one member of the Board and the entire Council. For a structural provision, the conditions for appointment meant in Article 2 apply.

Article 11

The council of ministers of a country may request the Board to provide recommendations on a draft budget or draft decision for adjustment of the budget. The Council, if so desired, may provide unsolicited recommendations in this regard. Providing recommendations by the Board does not prevent the submission of the draft budget to the States of the country in question. The administration does have to notify the States of the recommendations and must indicate in what manner these recommendations have been taken into consideration.

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Translation

Pursuant to paragraph 3, the Board may provide recommendations, solicited and unsolicited, in an earlier stage of the budget preparation.

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Article 12 and 13

These articles provide for the procedure regarding the recommendations by the Board and the possibility for the council of ministers of the Kingdom to step in on the recommendation of the Board if, despite observations and recommendations, in the opinion of that council, there continues to be a deviation from the standards of Article 15.

In paragraph 3.3. of the general section of this explanation, it has already been indicated that the Board is authorized in this regard to provide recommendations to the administrations. These pertain to the manner in which a draft budget or an adopted budget may be brought in line with the Article 15. The administrations are not bound to those recommendations but must notify the Board to what extent and in what manner these recommendations are taken into consideration. If the Board continues to be of the opinion that an adopted budget or budget adjustment is not in accordance with Article 15, it may turn to the council of ministers of the Kingdom with a well-founded recommendation. This may eventually lead to the issue of an instruction by the council of ministers of the Kingdom to the administration in question to adjust the budget.

The administration in question receives a certified copy of the well-founded recommendation to the council of ministers of the Kingdom. This may be cause for the implementation of the budget or part thereof to be suspended. As such, the administration in question will be given the opportunity to assess the risk that an instruction may be issued and the implications thereof.

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Translation

Article 14

The aim is, of course, to have a legitimate budget per January 1 of each year. This is necessary to give the administration the power to make expenses. Article 14 offers the Board the option to provide the council of ministers of the Kingdom with a recommendation to issue an instruction to accelerate the realization of the budget. If, despite this, a budget is not timely realized, the financial management is performed based on the budget of the previous year to keep the service going.

Article 15

This article is explained in section 3.4. of the general part of this explanation.

Article 16

The money loan policy and management must also meet the standards of Article 15. The procedure set forth in paragraphs 1 up to and including 5 enables the Board to make an assessment in this regard.

From paragraph 6, the manner of attracting loans is provided for. In this regard, a distinction is made between the possibility of attracting loans by means of an open bidding procedure and the private attraction of loans. The procedures that must be observed are aimed at contracting loans for the account of a country on the most favorable conditions.

In attracting a loan via an open bidding procedure, the subscriptions of potential loan providers will proceed through the central bank of Curacao and Sint Maarten due to its role in the capital market. The Dutch State has a standing subscription for the requested loan at the

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Translation

current return on state loans of the term in question. The central bank compares the result of this bidding procedure to the requested amount and makes recommendations to the country in question with regard to the subscriptions to be accepted. In case of equal loan conditions, subscriptions via commercial banks established in Curacao or Sint Maarten will have preference in the allocation. The country in question follows the recommendations of the central bank.

Contrary to the open bidding procedure, in privately attracting loans, it concerns a direct contact between a country and the potential loan providers. In all cases, the Dutch State is given the opportunity to make an offer. This is, in accordance with paragraph 9 of this article, the same offer as is meant above in the open bidding at the central bank in question. That opportunity must, each time, also be given to one or more third parties. The most favorable offer will be accepted but not before the Board has been requested by the administration in question to provide a recommendation based on the comparison of the loan conditions. In this regard too, local parties will have preference in case of equal loan conditions.

If a country deviates from the recommendation, this takes place by means of a well-founded decision and the Board is notified in this regard. The Board may see in this deviation cause to notify the council of ministers of the Kingdom and recommend the issue of an instruction with regard to the private contracting of loans. If so desired, that Board may decide to issue an instruction. This takes place by royal decree on

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the recommendation of the Minister of Home Affairs and Kingdom Relations.

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Translation

The nature of the instruction will be dependent on the gravity of the cause thereto and may vary from issuing guidelines with regard to loan conditions for loans to be privately attracted in the future to establishing preventive supervision on the private contracting of loans. In preventive supervision, intentions to privately contract loans based on a comparison of loan conditions will be tested against the criterion of paragraph 9 that the loan must be contracted there where the loan conditions are the most favorable. In the instruction to establish preventive supervision, it must also be indicated on what conditions the supervision becomes null and void again. Those conditions may only pertain to the circumstances that gave cause for the instruction.

Article 17

It is necessary that the provisions that are intended for the implementation of the budget are taken timely. Without those provisions, the feasibility of the expenses and income estimates is put at risk. The Board observes and advises the administration in question if the threat is real.

The Board may also turn to the council of ministers of the Kingdom with the recommendation to issue an instruction. In this regard, the Board will, in any case, devote attention to the implementation of intentions in the field of alienating and obtaining participations and the implementation of the dividend policy insofar as these pertain to meeting the standards of Article 15.

Article 18

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Translation

During the implementation of the budget as well there is supervision on the compliance with the standard of a balanced regular service and the interest charge norm. In order to make this possible, the Board will receive quarterly reports and the annual accounts. If the latest quarterly report on a budgetary year or the annual accounts shows that there is a deficit on the regular service or that there is an excess of the interest charge norm, the administration in question will indicate what measures are taken to compensate this. The Board assesses those proposals based on the standards set forth in Article 15. The procedures of Articles 12 and 13 also apply. This means that, in the extreme case, the council of ministers of the Kingdom may decide to issue an instruction on the recommendation of the Council.

Article 19

This article is explained in paragraph 3.5.2. of this explanation.

Article 20

The point of departure for proper financial management is, of course, that only financial obligations are concluded that are entered in a legitimate budget. Therefore, the rules for financial management mean that the persons authorized to conclude obligations on behalf of a country cannot go any further than a certain limit that is derived from the budget. In order to have a better idea of the financial obligations that are concluded, it is stipulated that the Permanent Secretary of Finance and, in his absence, his first or second replacement, with regard

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Translation

to an intention to conclude obligations, must factually confirm if those obligations have a foundation in the budget or not.

It is, however, not necessary to request advice from the Permanent Secretary of Finance in all cases. Mostly, departments of the organization have their own limited budget. With that, they may conclude obligations independently up to a certain limit. Advice as meant above must then be requested from someone within that department who is appointed for that purpose. Advice from the Permanent Secretary of Finance is only required in cases where that limit is exceeded. The point of departure in this regard is the limits as they apply on the effective date of this bill. These may be adjusted after consultation with the Council.

If the Permanent Secretary of Finance is of the opinion that the intended obligation has no foundation in the budget, he will not give positive advice. If an administration decides to conclude an obligation without prior positive advice, the Minister of Finance of the country in question may establish prior supervision in the sense that concluding financial obligations will, in future, require his approval. The Board will be notified on matters via the implementation reports meant in Article 18. If the Board concludes that this supervision by the Minister of Finance wrongfully remains forthcoming or is insufficient, the Board may advise the minister on the application of paragraph 3 of Article 20.

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If, subsequently, that supervision still remains forthcoming or is still insufficient, the Board may, if so desired, recommend to the council of ministers of the Kingdom to issue an instruction that decisions for concluding certain financial obligations will require the prior approval of the Board itself. In practice, this will be limited to situations involving substantial risk with regard to budgetary control. This is the realization of a balanced regular service, not exceeding the interest charge norm or the control of the financial management. The Board will, in any case, grant approval if concluding the obligation meets the requirement of paragraph 1 of this article. The foundation for this act of the Board is found in the instruction of the State council of ministers.

Article 21

Article 21 must be understood in conjunction with Article 20. Both provisions aim to safeguard that the budget is observed. Article 20 stipulates that only obligations that arise from the budget may be concluded. Article 21 adds to this that financial obligations that are concluded by persons not authorized thereto, are null and void.

Concluding financial obligations takes place legally, among others, in the form of private legal acts, namely entering into contracts. The administration decides to conclude financial obligations. The private legal act that arises from that decision is performed by the person who is authorized thereto by the administration in question. The Minister of Finance of the country in question will maintain a public register for this

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Translation

purpose, which can be perused, if so desired, to determine the power of a person to enter into a certain legal act.

The government, pursuant to Article 21, in entering into contracts, can only be bound by the parties authorized thereto by the administration and who are registered in a public register. In incidental cases, a written authorization may be issued. For example, this may prove necessary in a court case where a settlement with financial consequences must be reached. It is in the interest of the contracting citizens and the business community that they can trust that the contract does not bind the government legally in cases where the contract is entered into with parties other than the authorized parties registered in the public register or with a party carrying a written authorization as meant above. This creates more clarity and security for those citizens and businesses than a system where they have to wait till after the contract has been entered into to know if a binding contract has been established. For this reason one did not choose a system whereby afterwards, by ratification, a binding contract may still be realized.

The introduction of the public register has far-reaching consequences for citizens and the business community. It is of importance that they make sure, prior to entering into a contract with the government, who is authorized to legally bind the entity involved. In order to point out the importance thereof to them, upon the effective date of this bill, the administrations will give extensive information about the function of the register. In view of the importance, Article 21, paragraph 1, stipulates that

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publication of the register will take place on the website of the Ministry of Finance.

Article 22

In the new constellation, Curacao and Sint Maarten will have an account with the central bank of Curacao and of Sint Maarten. In addition, they may also have bank accounts with commercial banks. One of those accounts must be selected as the principal bank account. If the available funds of a country are not sufficient, the Netherlands will replenish the debit balance in the principal bank account daily via aforementioned central bank. On the loan from the Netherlands that is thus created interest will be charged. This is also taken into consideration in the test against the standards set forth in Article 15.

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Article 23

In the financial supervision, the entire collective sector is considered. Financial obligations via legal persons that belong to a country may be of great importance for their financial position. In establishing whether or not the interest charge norm has been exceeded, the entire collective sector of the country in question is considered. The Minister of Home Affairs and Kingdom Relations and the administration in question will jointly establish what belongs to that collective sector. In the description of what belongs to the collective sector, the definitions that the United Nations uses for international statistics (the so-called System of National Accounts) will be used. In essence, the definition entails that an institution is considered part of the collective sector if the income is mainly earned from collective levies, such as taxes and premiums. If more than half of the income is earned from the market, then this is a market party and not part of the collective sector. This approach is observed because standardization is only useful if it is indisputably proven to what the standardization pertains; the definitions must be clear.

Article 24

For the assessment of the financial situation of a country, the entire collective sector must be considered. It may occur that the interest charge norm is exceeded due to developments in the collective sector not being the country itself. In order to assess that, it is not sufficient to look only at the annual accounts of the country in question but also to the relevant information about the rest of the collective sector. Article

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24 sets forth a procedure in view of the possibility that, for a collective sector, the interest charge norm is exceeded. In this regard, the responsibility lies primarily with the administration in question. That administration is provided with the relevant information by the central statistics bureau of Curacao or Sint Maarten. The Dutch Central Statistics Bureau provides recommendations in this regard. The administrations, in turn, notify the Board and must indicate, if so required, what policy will be pursued to control the interest charges. If, in the opinion of the Council, an administration does not take away the risk of exceeding the interest charge norm to a sufficient degree, the Board may provide that administration with recommendations as to the measures to be taken. In the extreme case, the Board may recommend to the council of ministers of the Kingdom to issue an instruction. In view thereof, Article 13, paragraphs 2, 6 and 7, have been declared to apply *mutatis mutandis*. If, in that regard, an instruction is issued, it will have to be focused on counteracting the excess of the interest charge norm.

Article 25

In exceptional cases, there can be reasons to deviate from this bill. In this regard, it concerns in particular the standards set forth in Article 15. This article stipulates on what grounds the Board assesses a budget. In case of a natural disaster or other exceptional event it may, however, become necessary that an administration, in deviation of the stipulated criteria, still makes decisions that result in a deviation from those criteria. The point of departure is that the administration concerned

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comes to an agreement with the council of ministers of the Kingdom. If, in urgent cases, it is not possible to wait for this, consultation with the President of the council of ministers of the Kingdom will be sufficient. If no contact with him is possible, the administration may take the necessary measures independently.

Article 26

Article 26 provides for the legal protection by making appeal to the Crown possible. It creates the possibility of appeal to the Crown against instructions issued on the grounds of this bill and against decisions with regard to the termination or not, or limitation, of the supervision provided for in this bill.

Article 26 sets forth the necessary guarantees for the quality of the protection that is offered to the administrations with regard to the appeal to the Crown that is the subject here. The Council of State of the Kingdom establishes a recommendation in the form of a draft royal decree. The administration in question will be given the opportunity by the Board to be heard in the preparation of the recommendation, and again when the Board is requested to take the draft under further consideration.

With the guarantees set forth in paragraphs 9 up to and including 11, the possibility for the Crown to make a decision that deviates from the draft decree – the so-called decision to the contrary – is substantially limited. Paragraph 10 stipulates that no decision to the contrary will be made insofar as the recommendation of the Council of State of the Kingdom is exclusively based on the grounds of legitimacy. In this

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regard, the recommendation of the Board will be followed each time. Otherwise, decisions to the contrary will only be made on very weighty grounds pertaining to the supervision provided for in this decree. What grounds these may be specifically will have to become evident in practice. The gravity of the concerns of the minister regarding the draft decree or the further draft will also be put forward in the correspondence with the Board regarding the request to take the draft under further consideration as well as in the argument, if it should come to making a decision to the contrary. In order to avoid misunderstandings, paragraph 10 sets forth that the grounds for making a decision to the contrary must pertain to the supervision provided for in this bill.

Another guarantee is that terms are attached to that possibility of the so-called decision to the contrary. In addition, in case it is the intention to make a decision to the contrary, the Council of State of the Kingdom will have to be consulted once again with a well-founded request. If a decision to the contrary will be made, together with the decision on the appeal, the reasons for making a decision to the contrary and the recommendations of the Board that have been given in that matter, must be published.

Paragraph 12 stipulates that decisions on the grounds of this Kingdom Act are not open to court proceedings on the grounds of the National Ordinance Administrative Justice and the General Administrative Law.

Article 27

This article provides for the possibility of provisional relief.

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Article 28

The Decree on temporary financial supervision Netherlands Antilles, Curacao and Sint Maarten, by means of Article 32 of that decree, aims to ensure that, in the Netherlands Antilles and the island territories of Curacao and Sint Maarten, rules apply in the field of corporate governance that meet internationally accepted standards. Article 28 of this bill now under consideration confirms that, for the countries of Curacao and Sint Maarten, such rules must also apply.

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Article 29

Upon the effective date of this bill, the interest charge norm cannot be established for some years in the manner defined in Article 1. Because it concerns new countries, there is, after all, no realized income over the three years prior to the year in which the budget is submitted. In view thereof, Article 29 provides for a transitional provision. In first instance, only the budgeted income for the current year is taken into consideration. In the years thereafter, the income of the past years is also considered and, insofar as the realized income is not yet known, the income that was budgeted for the year in question after all adjustments to that budget. From the fifth year after the effective date of this bill, the realized income on the previous three years will be known and the interest charge norm can be applied as defined in Article 1.

Article 30

Upon the effective date of this bill, the existing Board of financial supervision will not start up again. A new Board will be established that will make a new beginning. This article creates a starting position for the assessment of the financial position of the countries by that new council. As soon as possible after the effective date of this decree, the administrations will send a certified copy of the budget for the current year to the Council. The Board will assess this in the same manner as it was the case in the regular supervision.

Article 31

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Translation

The first two paragraphs of this article provide for the budget that will bear the costs pertaining to the extension of loans by the Dutch State as meant in Articles 16 and 22. It concerns Chapter IV (Kingdom Relations) of the State budget. The third paragraph stipulates in what manner the debt restructuring that has been agreed upon, will be wound up.

Article 33

The supervision as provided for in this bill is not an objective in itself. It is aimed at having the institutes in the new countries function in such a way and organize their administrative work method in such a manner that the supervision becomes redundant in time. That is why Article 33 sets forth provisions on evaluation, continuation, limitation and termination of the supervision. The supervision must promote that the countries structurally meet the standards set forth in Article 15. These standards must also be anchored in the legislation of the countries.

Decisions on continuation, limitation or termination of the supervision are made by the council of ministers of the Kingdom after prior evaluation. That evaluation is conducted by a committee consisting of independent experts. The committee consists of four members, including the President. The Netherlands, Curacao and Sint Maarten jointly nominate the President for appointment and, in addition, each appoints one of the other members.

Five years after the effective date of this bill, for the first time, a decision will be made regarding continuation, limitation or termination of the supervision. As long as the supervision is not entirely terminated, at least every three years, a new decision must be made. The council of ministers of the Kingdom, as a result of a recommendation to that effect of the evaluating committee or well-founded request from Curacao or

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Translation

Sint Maarten, may decide on a period shorter than three years. Decisions to maintain a period of three years must be well-founded.

The decisions on continuation, limitation or termination of the supervision are made separately for Curacao and Sint Maarten. The council of ministers of the Kingdom may only deviate from the recommendation of the evaluating committee by stating its reasons based on grounds derived from the standard set forth in Article 15 of this bill. Extra protection is provided in that Curacao or Sint Maarten may file an appeal to the Crown against decisions on whether or not to continue and limit the supervision.

The evaluating committee hears the administration of Curacao or Sint Maarten before giving its recommendation. The committee states these objections and, as the case may be, states the reasons why these have been disregarded.

With regard to decisions on continuation, limitation or termination of the supervision, the council of ministers of the Kingdom makes an assessment as to the question if the standards set forth in Article 15 of this bill are structurally met. Paragraph 11 of Article 33 stipulates how those standards can be structurally met. This will be the case if, during at least the last three consecutive years, the standards have been fully met and those standards have been anchored in their own legislation. In its assessment, the evaluating committee takes into consideration any circumstances that may have caused an obstruction in meeting those standards insofar it concerns circumstances that are not attributable to

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Curacao and Sint Maarten respectively. Also, the evaluating committee will consider, in its assessment, to what extent countries have met the standards of Article 15 independently. This may be evident from the recommendations and reports from the Board and from any instructions issued on the grounds of this bill.

In addition to an assessment on the continuation, limitation or termination of the supervision, the evaluating committee, if necessary, provides a recommendation with regard to the time of the next evaluation. The evaluating committee may also provide recommendations, as the case may be, on measures that stimulate Curacao and Sint Maarten to meet the standards and, if necessary, in view of an optimal implementation of this law, on the supervision to be exercised. The latter may be cause for using the possibility to establish policy rules or issue general or special instructions as provided for in paragraph 4 of Article 4.

In case the evaluating committee is of the opinion that the supervision cannot be terminated, it will also give an assessment regarding the question if the application of one or more provisions of this law may be canceled and which ones these would be.

Article 34

The law will become effective on a date to be determined by royal decree. This will be the same date as the date on which Articles I and II of the Kingdom Act on the Amendment of the Charter regarding the discontinuation of the Netherlands Antilles becomes effective.

Article 35

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As a result of Article 33, this law will not be applied at some moment in time. In order to ensure that this law has then become null and void, it shall then be declared null and void by royal decree. In practice, this may be the same royal decree as the one on the grounds of which the supervision pursuant to this law will no longer be applicable.

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Translation

The State Secretary of Home Affairs and Kingdom Relations,
A.Th.N. Bijleveld-Schouten

The Minister of Finance,
W.J. Bos