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## **Bulletin of Acts, Orders and Decrees of the Kingdom of the Netherlands**

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### **334**

#### **Kingdom Act of July 7, 2010 on the rules for the financial supervision on the countries of Curaçao and Sint Maarten (Kingdom Act Financial Supervision Curaçao and Sint Maarten)**

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We Beatrix, by the Grace of God, Queen of the Netherlands, Princess of Orange-Nassau, etc. etc. etc.

Greetings to all who shall see or hear this! Be it known:

Whereas We have considered that the governments of the Netherlands Antilles and the Netherlands and the administrative councils of Curaçao and Sint Maarten have agreed

- that, based on cooperation between equal partners, financial supervision shall be established in the countries of Curaçao and Sint Maarten that is aimed at those countries structurally meeting the budget standards set forth in this Act and that are also anchored in their own legislation so that supervision in the long run becomes redundant,
- that, in this regard, provisions have been set forth in this Kingdom Act that provide for the evaluation of the preparation of decisions on the continuation, limitation and termination of the supervision,

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- that the Netherlands will contribute to these developments by taking over the remainder of the principal of the total debt to be taken over by the Netherlands upon the new political relations taking effect,
- that they wish to provide for this cooperation amongst themselves in a Kingdom Act on the grounds of Article 38, paragraph 2 of the Charter for the Kingdom,
- that the governments of the Netherlands Antilles and the Netherlands and the administrative councils of Curaçao and Sint Maarten agree with the content of this Kingdom Act;

We, therefore, having heard the Council of State of the Kingdom, and in consultation with the States General, with due regard for the Charter for the Kingdom, have approved and decreed as We hereby approve and decree:

## **CHAPTER 1. DEFINITIONS**

### **Article 1**

In this Act the following terms shall have the following meaning:

- *budget*: budget as meant in the various State Regulations of the countries;
- *administration*: council of ministers of the country of Curaçao and the council of ministers of the country of Sint Maarten respectively;
- *collective sector*: the country of Curaçao and the country of Sint Maarten respectively together with the legal persons that have been appointed as such by application of Article 23;

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- *council*: The Board of financial supervision Curaçao and Sint Maarten as meant in Article 2, paragraph 1;
- *countries*: the countries of Curaçao and Sint Maarten;
- *country*: the country of Curaçao or the country of Sint Maarten;
- *consolidated debt*: joint debt of the collective sector of a country in the form of loans and overdue payments with the exception of the mutual debts within the collective sector concerned;
- *capital expenditure*: expenditure that is charged to the capital service of the government account in accordance with the valid definition of the System of National Accounts of the United Nations;
- *Our Minister*: Our Minister of Home Affairs and Kingdom Relations;
- *Interest charge*: expenses in interest attributable to a budgetary year over the consolidated debt of a country;
- *Interest charge norm*: interest charge that corresponds to 5% of the average realized joint income of the collective sector of a country over a period of three years prior to the year in which the budget is or will be submitted;
- *States*: the States of a country.

## **CHAPTER 2. THE BOARD OF FINANCIAL SUPERVISION CURAÇAO AND SINT MAARTEN**

### **Article 2. Organization and legal position**

1. There shall be a Board of financial supervision Curaçao and Sint Maarten.
2. The Board shall consist of four members including a President.

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3. The President and other members shall be appointed based on their expertise. The council of ministers of the Kingdom shall decide on the appointment according to the following procedure:
  - a. the President on recommendation of Our Prime Minister in his capacity of President of the council of ministers of the Kingdom;
  - b. one member in accordance with the sentiment of the council of ministers of Curaçao on recommendation of Our Prime Minister of that country;
  - c. one member in accordance with the sentiment of the council of ministers of Sint Maarten on recommendation of Our Prime Minister of that country;
  - d. one member in accordance with the sentiment of the Dutch council of ministers on recommendation of Our Prime Minister of that country.
4. The members shall be appointed by royal decree on recommendation of Our Minister.
5. The members of the Board shall perform their duties without burden or consultation.
6. The members shall be appointed for a period of three years. They shall be eligible for re-election.
7. A member shall be dismissed on his own request.
8. A member may be suspended or dismissed for unsuitability to fulfill the position or for other weighty reasons regarding his person or for accepting an office, employment or position as meant in Article 3, paragraphs 1 and 2.

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9. The council of ministers of the Kingdom shall decide on the suspension and dismissal. Suspension and dismissal shall take place by royal decree on recommendation of Our Minister. The recommending administration shall be consulted prior to dismissal.
10. Prior to dismissal or suspension as meant in paragraph 8, the Board shall be heard unless the circumstances regarding the dismissal or suspension prevent this hearing.
11. Our Minister, in consultation with Our Minister of Finance of the countries, shall determine a fixed fee for the members of the council. In this regard, the applicable salaries scale of Annex B of the Remuneration Decree for Civil Servants and the applicable part-time factor shall be indicated. Furthermore, the members shall be entitled to compensation of travel and accommodation costs in accordance with the National Traveling Decree and the International Traveling Decree. In addition, members shall be entitled to compensation of international phone calls made within the scope of their duties for the Board based on presentation of detailed accounts.

### **Article 3. Additional jobs**

1. A member of the Board shall not also be:
  - a. Governor;
  - b. minister or state secretary;
  - c. a commissioner of the King or member of the provincial executive;

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- d. member of the States or a similar authority of the Netherlands;
  - e. mayor or alderman or person in authority or island member of the provincial executive;
  - f. member of the Advisory Board of one of the countries;
  - g. member of the Council of State of the Kingdom;
  - h. member of the Chamber of Audit of one of the countries or of the Netherlands;
  - i. ombudsman or substitute ombudsman of one of the countries or of the Netherlands;
  - j. civil servant in a ministry or an institution, service or company that comes under that ministry.
2. A member shall also not fulfill any other job or additional position that is otherwise undesirable in view of the proper fulfillment of his position or for maintaining his independence or trust therein.
  3. A member shall notify the Board of his intention of accepting another job or additional position. The Board shall notify Our Minister and the administrations.
  4. The Board shall publicly announce the additional positions of a member. Publication shall take place upon his appointment and, thereafter, by means of annual publication of a list of these additional positions in the Government Gazette, the Curaçao Gazette and the National Gazette of Sint Maarten.

#### **Article 4. Duties**

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1. Without prejudice to the duties set forth in other articles of this Act, the duties of the Board shall be:
  - a. to supervise the application by the countries of the standards set forth in Article 15 in implementing and accounting for the budget and flow of payments;
  - b. to test whether or not the countries observe the conditions set forth in this Act with regard to entering into interest-bearing loans and interest-bearing credits;
  - c. to report to and advise Our Ministers of Finance of the countries, both States, the administrations and, through Our Minister, the council of ministers of the Kingdom;
  - d. to supervise the progress of the implementation of the improvement of the financial management.
2. Once every six months, through Our Minister, the Board shall submit to the council of ministers of the Kingdom and to the administrations, to both Chambers of the States General, and to both States, a written report on its activities.
3. On request, the Board shall provide information on its activities to Our Minister, to Our Minister of Finance of the Netherlands, and to the administrations.
4. Our Minister, after approval of the council of ministers of the Kingdom that acts in consultation with the administrations, may establish policy rules and issue general and special instructions with regard to the implementation of the duties and powers allocated to the Board by this Act.

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### **Article 5. Performance of the duties**

1. The council, for the purpose of the duties set forth in Article 4, shall establish a management regulation setting forth, in any case, the rules regarding decision-making, work method and procedures. This regulation shall also include rules on the division of the duties in preparing the decisions and recommendations of the council.
2. The management regulation shall be announced in the Government Gazette, the Curaçao Gazette and the National Gazette of Sint Maarten.
3. The President and secretary of the Board shall see to an efficient and practical performance of the duties of the council.
4. A member may have himself represented, provided a written power of attorney has been given to another member for this purpose. The President shall assess the validity of the power of attorney. A member can act as authorized representative for only one other member.
5. In making decisions, the Board shall strive for consensus. If, in making decisions by the council, there are tie votes, the President shall have the deciding vote.

### **Article 6. Implementing authority**

1. The Board shall have a secretary.
2. The secretary may be supported by assistants.
3. The secretary and the assistants shall be made available to the Board on recommendation of the Board on behalf of Our Minister.

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4. The secretary and the assistants shall come under the authority of the Board and shall be accountable exclusively to the council.
5. The secretary and the assistants shall not be members of the council.
6. The secretary and the assistants of the Board shall also support the Board of financial supervision Bonaire, Sint Eustatius and Saba as set forth in the Act on financial relations public bodies Bonaire, Sint Eustatius and Saba.

#### **Article 7**

The members, the secretary and the assistants of the Board as well as their spouses or registered partners and minor children, insofar as they maintain a common household, shall be legally admitted to the countries. The members, the secretary and the assistants of the Board as well as their spouses or registered partners shall not be subject to any further conditions for the exercise of a profession or performance of labor.

#### **Article 8. Obligation to provide information**

1. The administrations shall provide the Board with all information that it deems necessary for the proper performance of its duties. This shall include information on the relevant collective sector of the countries.
2. The administrations shall, at all times, allow the Board or the representatives appointed by the Board for that purpose access to

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or perusal of all goods, books, documents and other information carriers.

3. The Board shall observe the provisions on confidentiality with regard to natural persons and legal persons in the relevant countries.

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### **Article 9. Funding and financing**

The remuneration of the members, the secretary and the assistants of the Board as well as the costs of the other expenses of the authority shall come at the expense of the budget of Our Minister.

### **Article 10. Insufficient performance of duties**

1. If, in the opinion of the council of ministers of the Kingdom, the Board is severely failing in the performance of its duties, Our Minister may take the necessary measures in consultation with the administrations.
2. These measures, except for urgent cases, shall be taken only after the Board has been given the opportunity to still perform its duties properly within a term to be established by the council of ministers of the Kingdom.

## **CHAPTER 3. BUDGET SUPERVISION**

### **Article 11. Recommendations of the Board on the draft budget and the draft ordinance for adjustment of the budget**

1. On request of an administration, the Board shall provide a recommendation within fourteen days after that request with regard to a draft budget or draft ordinance for adjustment of a budget. The Board may also provide unsolicited advice to an administration with regard to the draft budget or draft ordinance for adjustment of a budget in question.
2. If a recommendation has been provided on a draft budget or draft ordinance for adjustment of a budget, upon submission of the

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draft to the States, it shall be accompanied by the recommendation. In that case, the submitting party shall indicate in the draft to what extent and how this recommendation has been taken into account.

3. In addition to the cases mentioned in paragraph 1, the Board may provide solicited and unsolicited advice in the budget preparation.

### **Article 12. Recommendations of the Board to the administration**

1. The administration shall send a budget or ordinance for adjustment of the budget to the Board immediately after this has been adopted.
2. If the Board is of the opinion that the adopted budget meant in paragraph 1 or the adopted ordinance for adjustment of the budget meant in that paragraph is not or not entirely in accordance with the standards set forth in Article 15, the Board shall provide a recommendation to the relevant administration within fourteen days after receipt of that adopted budget or the adopted ordinance for adjustment of the budget.
3. The recommendation meant in paragraph 2 shall contain well-founded findings with regard to the assessment meant in Article 15 and, if necessary, suggestions as to the manner in which the adopted budget or the adopted ordinance for adjustment of the budget may be brought in line with the standards mentioned in Article 15.

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4. If a recommendation as meant in paragraph 2 contains suggestions as meant in paragraph 3, the administration in question, within fourteen days after receipt of that report, shall notify the Board to what extent and how these suggestions have been taken into account and, if relevant, state the terms that shall be observed in this regard.
5. If, in the opinion of the council, with the notification meant in paragraph 4, the administration does not or does not sufficiently meet the standards set forth in Article 15, or if the administration fails to submit this notification to the council, within fourteen days after receipt of the notification or the absence thereof, the Board shall notify the administration in question as well as the States in this regard.

### **Article 13. Appointment of the council of minister of the Kingdom**

1. If, after at least seven days after sending the notification meant in Article 12, paragraph 5, the Board is still of the opinion that a budget or ordinance for adjustment of the budget does not or does not entirely meet the standards mentioned in Article 15, after the lapse of that period, the Board shall notify the council of ministers of the Kingdom in that regard through Our Minister.
2. A notification as meant in paragraph 1 may be accompanied by a well-founded recommendation to issue an instruction as meant in paragraph 5.
3. The council, together with the recommendation meant in paragraph 2, shall send a certified copy thereof to the

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administration in question after which that administration shall decide whether or not the budget or part thereof shall be suspended. The Board shall notify the States in question that the recommendation has been sent.

4. During the period that the budget or part of the budget is suspended with the application of paragraph 3, the budget or part of the budget of the year prior to the budgetary year in question shall apply. The administration shall submit this previous budget or the relevant part thereof immediately to the Board for assessment. Article 12, paragraphs 2 up to and including 5, as well as paragraphs 1 up to and including 3, and paragraphs 5 and 6 of this Article, insofar as is possible, shall apply *mutatis mutandis* to this previous budget or part thereof.
5. With regard to a recommendation as meant in paragraph 2, the council of ministers of the Kingdom may decide to issue an instruction to the administration in question to adjust the budget in such a manner that it meets the standards set forth in Article 15. Before issuing an instruction, Our Minister shall give the administration in question the opportunity to put forward its vision in this regard.
6. An instruction as meant in paragraph 5 shall take place by royal decree on the recommendation of Our Minister in accordance with the decision of the council of ministers of the Kingdom.

#### **Article 14. No adoption of budget**

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1. If the Board has not yet received an adopted budget by December 15 and, in its opinion, there is no prospect of a draft budget or adopted budget being submitted within any reasonable period of time, the Board shall notify the council of ministers in this regard through Our Minister.
2. A notification of the Board as meant in paragraph 1 may be accompanied by a well-founded recommendation to issue an instruction.
3. The council, together with the recommendation meant in paragraph 2, shall send a certified copy thereof to the administration in question and notify the States that the recommendation has been sent.
4. With regard to a recommendation as meant in paragraph 2, the council of ministers of the Kingdom may decide to issue an instruction to the administration in question to still submit to the Board a draft budget or adopted budget for assessment. Before a recommendation to issue an instruction is submitted to the council of ministers of the Kingdom, Our Minister shall give the administration in question the opportunity to put forward its vision in this regard.
5. The instruction shall take place by royal decree on the recommendation of Our Minister in accordance with the decision of the council of ministers of the Kingdom.
6. If, at the start of a budgetary year, no budget relating to that year has been adopted, the budget of the year prior to the current budgetary year shall be the basis for the administration.

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## **CHAPTER 4. ASSESSMENT OF BUDGETS AND MONEY LOANS**

### **Article 15. The financial standards for budgets**

1. For the assessment of the adopted budget of a country and an adopted ordinance for adjustment of the budget, the Board shall apply the following standards:
  - a. the expenses for the regular service entered in the budget and the multi-year budget shall be covered by the funds entered for the coverage of those expenses;
  - b. the expenses for the capital service entered in the budget and the multi-year budget shall be covered by the funds entered for the coverage of those expenses taking into account the expected income from money loans;
  - c. the interest charge norms shall not be exceeded.
2. In the assessment meant in paragraph 1, the following aspects shall apply:
  - a. in the budget and the multi-year budget all expected expenses and all expected income are entered;
  - b. the income and expenditure entered in the budget shall be adequately explained;
  - c. the budget is organized in such a manner that it meets the criteria of orderliness and verifiability.

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3. In the budget, an account shall be given regarding the financial situation of the country.

### **Article 16. Money loans**

1. The budgets meant in Article 15 shall include the intentions to attract money loans.
2. The attracted loans shall be stated in the implementation reports meant in Article 18.
3. The administrations shall notify the Board if, in the implementation of the budget, there is a risk of the amount of a loan exceeding the budgeted loan amount.
4. Based on the intentions to attract money loans meant in paragraph 1, the statement meant in paragraph 2 and the information provided meant in paragraph 3, the Board shall evaluate whether or not the administration meets the standards mentioned in Article 15.
5. The Board shall also evaluate if the agreements for improvement of the financial management are met insofar as these relate to attracting loans.
6. If money loans are attracted for the account of a country within the scope of an open bidding procedure at the central bank of Curaçao and of Sint Maarten, this attracting of loans shall be in accordance with a recommendation in this regard from that bank.
7. The Dutch State has a running subscription for the loans meant in paragraph 6, each time for the requested loan amount, at the current yield on state loans of the relevant term.

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8. In an open bidding procedure as meant in paragraph 6, in case of equal loan conditions, local subscribers shall have preference.
9. If money loans are attracted privately for the account of a country, in addition to the Netherlands, each time one or more third parties shall be given the opportunity to make an offer at the same time and, subsequently, the attracting of loans shall take place there where the loan conditions are most favorable. In this regard, for the Dutch State, the offer meant in paragraph 7 applies. Paragraph 8 shall apply *mutatis mutandis*.
10. The administration shall notify the Board regarding the intention to attract a money loan privately and attach the conditions of the offered money loans. Within fourteen days after receipt of that notification the Board shall provide a recommendation based on a comparison of all the loan conditions. If an administration deviates from the recommendation of the council, it shall do so with a well-founded decision. The administration shall notify the Board of the decision made.
11. The Board may notify the council of ministers of the Kingdom through Our Minister if it becomes evident that an administration deviates from the recommendation meant in paragraph 10. In that notification, the Board may recommend to make a decision as meant in paragraph 12. The council, at the same time of sending the recommendation, shall send a certified copy thereof to the administration in question and notify the States that the recommendation has been sent.

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12. With regard to a recommendation as meant in paragraph 11, the council of ministers of the Kingdom may decide to issue an instruction with regard to entering into loans privately. Before a proposal for an instruction is submitted to the council of ministers of the Kingdom, Our Minister shall give the administration in question the opportunity to give its vision in this regard.
13. The issuance of the instruction shall take place by royal decree on recommendation of Our Minister in accordance with the decision of the council of ministers of the Kingdom.

## **CHAPTER 5. THE IMPLEMENTATION OF THE BUDGET AND ACCOUNTABILITY**

### **Article 17. Implementation of policy intentions**

1. If the administration fails to make a provision for the implementation of a policy intention or establishes, implements or executes it at such a time that the feasibility of the estimates of expenditure and income is at risk, the Board shall provide a recommendation in this regard in accordance with Article 12, paragraph 3.
2. The Board shall also provide a recommendation in accordance with Article 12, paragraph 3 if the representing body does not agree with a proposed provision or agrees therewith at such a time that the feasibility of the estimates of expenditure and income is at risk.
3. To a recommendation as meant in paragraphs 1 and 2, Article 13 shall apply *mutatis mutandis*.

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### **Article 18. Accountability information**

1. The administrations shall submit to the Board and the States an implementation report not later than six weeks after the lapse of every quarter.
2. For the purpose of the implementation report, the Board and the administrations shall jointly establish a model that indicates what subjects are reported on. This includes, in any case, information on budget depletion and the relevant remaining room for commitments, any new policy intentions with financial consequences and any windfalls and setbacks in the implementation of the budget.
3. If the implementation report over the fourth quarter shows a deficit in the regular service or an excess of the interest charge norm, the administration shall indicate in that report what measures will be taken to compensate for the deficit or excess.
4. Not later than on August 31 of every year, the administrations shall submit to the Board a certified copy of the adopted annual accounts of the previous year.
5. If the annual accounts have not yet been adopted at the time mentioned in paragraph 4, the administrations shall submit the annual accounts in preparation in accordance with the circumstances at that time. The administration shall provide the findings of that Chamber of Audit in question and of the internal accountant on the draft of the annual accounts to the Board immediately after the receipt of those findings.

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6. If the adopted annual accounts show a deficit in the regular service or an excess of the interest charge norm, the administration shall indicate in the annual accounts what measures will be taken to compensate the deficit or excess.
7. The Board shall assess the intended measures meant in paragraphs 3 and 6 based on the standards mentioned in Article 15 and, within fourteen days after the receipt of the implementation report in question, shall send the administration a recommendation in accordance with Article 12, paragraph 3.
8. To a recommendation as meant in paragraph 7, Article 12, paragraphs 4 and 5, and Article 13, shall apply mutatis mutandis.

#### **Article 19. Improvement of the financial management**

1. The administrations shall report to the Board not later than six weeks after the lapse of every quarter on the realization of the implementation plans for the improvement of the financial management. The Board and the administrations, for the purpose of this report, shall jointly establish a model that indicates what subjects are reported on.
2. The Board may provide recommendations to the administrations with regard to the realization of the implementation plans.
3. The Board may provide recommendations in the field of financial management taking into account the findings of the internal accountant and of the Chambers of Audit of Curaçao and Sint Maarten.

#### **Article 20. Entering into financial obligations**

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1. The administrations shall only conclude financial obligations insofar as these are entered into a budget that has not been suspended pursuant to Article 13.
2. The administrations shall put their intention for entering into a financial obligation, insofar as this exceeds the limits for financial self-management as these are valid upon the effective date of this Act, before an official to be appointed for this purpose by Our Minister of Finance of the country in question or, in his absence, his first or second replacement for a recommendation. A positive recommendation shall be provided if the financial obligation arises from the implementation of the budget. The limits meant in the first sentence may be changed after consultation with the council.
3. If the administration enters into financial obligations without or in deviation of a positive recommendation as meant in paragraph 2, Our Minister of Finance of the country in question may impose prior supervision on entering into financial obligations in the sense that, at the expense of the budget in question or certain items of that budget, financial obligations may be entered into only after he has approved them. At the same time of imposing prior supervision, the minister shall notify the States in question hereof with a certified copy to the council.
4. In the implementation reports meant in Article 18, paragraph 1, reporting shall also take place on cases in which the administration has entered into financial obligations without or in deviation of a positive recommendation as meant in paragraph 2 as well as on cases to which paragraph 3 has been applied.

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5. If the administration enters into financial obligations without or in deviation of a positive recommendation as meant in paragraph 2 and the prior supervision by Our Minister of Finance of the country in question remains forthcoming or is not sufficient, the Board may recommend to Our Minister of Finance of the country in question to make a decision or a further decision as meant in paragraph 3. The Board shall notify the relevant States that the recommendation has been sent.
6. If, after the recommendation meant in paragraph 5, it is evident that the supervision by Our Minister of Finance of the country in question still remains forthcoming or is not sufficient, the Board may notify the council of ministers of the Kingdom hereof through Our Minister. In this notification, the Board may recommend the issue of an instruction as meant in paragraph 7. At the same time the recommendation is sent, the Board shall send a certified copy thereof to the administration in question and shall notify the relevant States that the recommendation has been sent.
7. With regard to a recommendation as meant in paragraph 6, the council of ministers of the Kingdom may conclude that, at the expense of the budget in question or certain items of that budget, no financial obligations may be entered into before the Board has approved them. Before submitting a proposal for an instruction to the council of ministers of the Kingdom, Our Minister shall give the administration in question the opportunity to put forward its vision in this regard.

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8. The instruction shall take place by royal decree on the recommendation of Our Minister in accordance with the conclusion of the council of ministers of the Kingdom.
9. The approval meant in paragraph 3 and the one meant in paragraph 7 shall be granted if the financial obligation in question meets the provisions of paragraph 1.
10. In case of entering into financial obligations and performing private legal acts that have been decided upon by the States of a country, this Article shall apply mutatis mutandis.

#### **Article 21. Authorization to perform legal acts**

1. Our Minister of Finance of the country in question shall maintain a register of the names and positions of the parties authorized to perform private legal acts arising from a decision to conclude financial obligations. In this regard, he shall indicate to what legal acts and amounts they are authorized to. He shall publish this register after every change but, in any case, every six months. Publication shall take place on the website of Our Minister of Finance of the country in question.
2. In applying Article 20, paragraph 7, after the effective date of a royal decree as meant in Article 20, paragraph 8, a note shall be made in the register regarding the persons in question that prior approval of the Board is required for entering into obligations.
3. Private legal acts pertaining to entering into financial obligations as meant in paragraph 1 shall be null and void if they are entered

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- into by persons who, as appears from the register meant in paragraphs 1 and 2, are not or not sufficiently authorized thereto.
4. In deviation of paragraph 3, a legal act as meant in that paragraph is valid if the power to conclude the obligation is apparent from a written authorization for the purpose of that legal act. This authorization shall be issued only in incidental cases.
  5. The administration shall issue to the Board certified copies of the authorizations meant in paragraph 4.
  6. The Board may provide recommendations to Our Minister of Finance of the country in question with regard to the manner in which the register meant in this Article is managed.

## **Article 22. Bank accounts**

1. The administrations shall see to it that, in consultation with the council:
  - a. the Board receives copies of the bank accounts of the country in question;
  - b. the country in question has a bank account with the central bank of Curaçao and of Sint Maarten;
  - c. the country in question has a principal bank account for the purpose of liquidity management, which bank account may be maintained at the central bank of Curaçao and of Sint Maarten or at a commercial bank;
  - d. credit balances on the accounts at the commercial banks are transferred daily to the principal bank account of the country in question;

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- e. debit balances on the accounts at the commercial banks are settled daily from the principal bank account of the country in question.
2. A debit balance in the principal bank account of a country, if necessary, shall be settled by the Dutch State via the bank account of that country at the central bank of Curaçao and of Sint Maarten. This shall create a loan of the country in question from the Dutch State.
3. The interest percentage on the loan as meant in paragraph 2 shall be equal to the Euro Overnight Index Average.
4. The interest compensation on this loan shall be relevant for the standards mentioned in Article 15.
5. The Board shall consult periodically with the administrations regarding the expected liquidity development with regard to the possible application of paragraph 2.

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### **Article 23. Establishment collective sector**

1. Every two years, Our Minister and the administration in question, after recommendation of the central bureau of statistics of that country in cooperation with the Netherlands Central Bureau of Statistics, shall indicate jointly before April 1 which legal persons belong to the collective sector in question as from the start of the next budgetary year.
2. For this indication, the System of National Accounts of the United Nations shall be the guiding principle.
3. The administration shall notify the legal persons concerned of the indication in writing.
4. The administration shall report annually, before April 1, to the Board on the preliminary annual figures for the previous calendar year of the collective sector in question.

### **Article 24. Developments in the collective sector**

1. The central bureau of statistics of Curaçao and Sint Maarten respectively shall report to the administration in question not later than on September 1 on the expenditure, income, deficits and debts of the previous year of the collective sector concerned. In this regard, the definitions of the System of National Accounts shall be the guiding principle. The Dutch Central Bureau of Statistics shall advise the central bureau of statistics of the country in question.
2. The administration shall send the report meant in paragraph 1 to the Board within two weeks. If it is evident from that report that

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there is a risk of excess of the interest charge norm, the administration shall notify the Board under simultaneous submission of the report on the policy that shall be pursued to control the interest charges.

3. If, after perusal of the report meant in paragraph 1, in the opinion of the council, the administration does not or does not sufficiently eliminate the risk of excess of the interest charge norm, within fourteen days after receipt of the report, the Board shall provide the administration in question with recommendations on the measures to be taken to control the interest charges.
4. If, after at least fourteen days after having provided the recommendations meant in paragraph 3, in the opinion of the council, there is still a risk of excess of the interest charge norm, after the lapse of that period, the Board shall notify the council of ministers of the Kingdom in this regard through Our Minister.
5. Article 13 paragraphs 2, 5 and 6 shall apply mutatis mutandis to the notification meant in paragraph 4.

## **CHAPTER 6. SPECIAL CIRCUMSTANCES**

### **Article 25. Damage due to unusual events**

1. If this is necessary with regard to the restoration of damage caused by unusual events, including natural disasters, the administration, in accordance with a decision in this respect of the council of ministers of the Kingdom, may decide to deviate from the standards mentioned in article 15.

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2. If, in urgent cases, a decision of the council of ministers of the Kingdom cannot be awaited, the administration, in consultation with the President of the council of ministers of the Kingdom, may conclude obligations that do not arise from the implementation of the budget.
3. If no contact is possible with the President of the council of ministers of the Kingdom, the administration may take the necessary measures that may lead to deviation from the standards mentioned in Article 15.

## **CHAPTER 7. APPEAL**

### **Article 26**

1. A royal decree as meant in this Act holding one or more instructions, or a royal decree as meant in Article 33, shall be open to appeal for an administration to Us for a period of thirty days after having sent the decision. The Council of State of the Kingdom shall be charged with preparing the draft decree on the decision of the appeal. Our decision shall be announced in the publication bulletin of the country in question used for the announcements of state ordinances and shall be brought to the knowledge of the administration in question and the States.
2. The Council of State of the Kingdom, in preparing the draft decree meant in paragraph 1, may call stakeholders, witnesses, experts and interpreters to be heard in the hearing. The Council shall, in any case, provide the administration in question with the opportunity to be heard.

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3. Articles 32 up to and including 35 of the Council of State Act shall apply mutatis mutandis.
4. Articles 6:5, 6:6, 6:14, 6:15, 6:17, 6:21, 8:24, 8:25, 8:27 up to and including 8:29, 8:31, 8:32, 8:33 up to and including 8:36 paragraph 1, 8:39, 8:50, 8:61 and 8:62 of the General Administrative Law Act shall apply mutatis mutandis. Official messages and other documents designated by Our Minister shall not be public.
5. The draft decree with regard to the decision on the appeal as meant in paragraph 1 shall not be public.
6. Article 18a of the Council of State Act shall apply mutatis mutandis. The hearing shall be public.
7. The appeal shall not suspend the effect of the decision that is appealed.
8. The Council of State of the Kingdom shall establish procedural regulations for the hearing of the appeal meant in paragraph 1 and for the request for provisional relief meant in Article 27.
9. Within two months after the receipt of the draft decree Our Minister, stating the concerns raised, may request the Board to take his draft under further consideration. Within the scope of that further consideration, the Board shall provide the administration in question again with the opportunity to be heard.
10. Our decision shall not deviate from the draft or, if this is the case, the more specific draft, insofar as the recommendation of the Board is exclusively based on the grounds of lawfulness and, otherwise, exclusively if weighty grounds related to the

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supervision provided for in this Act, give cause thereto. If Our decision deviates from the draft or the more specific subject matter, this shall be put in the Bulletin of Acts, Orders and Decrees with a report of Our Minister. This report shall, in any case, include the arguments on the grounds of which is proposed to deviate from the draft or the more specific draft as well as the draft itself and, if this is the case, the more specific subject matter.

11. Furthermore, Our decision shall deviate from the draft only after application of paragraph 9, first sentence. If a request as meant in the first sentence of paragraph 9 has not been made within two months, We shall decide in accordance with the draft of the Council of State of the Kingdom.
12. Decisions of Our Minister on the grounds of this Act shall not be susceptible to appeal to the administrative court on the grounds of the state ordinances of the countries that provide for the administrative justice, or the General Administrative Law Act. This shall also apply to Our decision as meant in paragraph 1.

## **Article 27**

1. If, on the grounds of Article 26 paragraph 1, an appeal has been filed against a decision, a state council appointed by the Vice President of the Council of State for that purpose may, on request thereto, make provisional arrangements if, in view of the interests involved, immediate urgency requires this.

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2. A request for provisional relief may be submitted by the administration that filed the appeal.
3. Articles 32 up to and including 35 of the State Council Act shall apply mutatis mutandis.
4. Articles 6:5, 6:6, 6:14, 6:15, 6:17, 6:21, 8:68, 8:72 paragraph 5, and 8:83 paragraphs 1, 3 and 4 of the General Administrative Law Act shall apply mutatis mutandis.
5. The state council meant in paragraph 1 shall give a ruling as soon as possible in writing or orally.
6. The ruling shall pertain to:
  - a. the incompetence of the state council meant in paragraph 1,
  - b. the dismissal of the request,
  - c. the rejection of the request,
  - d. the full or partial granting of the request.
7. The state council meant in paragraph 1 may cancel or change the provisional arrangement on request and officially after having heard the parties or, at least, after having duly summoned them. Articles 6:4 paragraph 3, 6:5, 6:6, 6:14, 6:15, 6:17, 6:21 and 8:83 paragraphs 1, 3 and 4 of the General Administrative Law Act shall apply mutatis mutandis.
8. The provisional arrangement shall become null and void as soon as We so decide, insofar as no other time has been set forth in Our decision.

## **CHAPTER 8. TRANSITIONAL AND FINAL PROVISIONS**

### **Article 28. Participations**

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The countries shall have legislation that meets the internationally accepted standards in the field of:

- a. procedures for alienating and obtaining shares in legal persons by the countries;
- b. guidelines for the dividend policy of legal persons in which the countries participate, and
- c. procedures and requirements regarding the appointment and dismissal of managers of legal persons in which the countries participate.

#### **Article 29. Temporary arrangement interest charge norm**

1. For the purpose of the current budgetary year upon the effective date of this Act, interest charge norm shall be understood to mean the interest charge that corresponds to 5% of the budgeted joint income of the collective sector of a country.
2. For the purpose of the second budgetary year starting after the effective date of this Act, interest charge norm shall be understood to mean the interest charge that corresponds to 5% of the average budgeted joint income of the collective sector of a country for the year to which the budget pertains and for the budget of the previous year after adjustment.
3. For the purpose of the third budgetary year starting after the effective date of this Act, interest charge norm shall be understood to mean the interest charge that corresponds to 5% of the average joint income of the collective sector of a country as it has been realized in the first year after the effective date of this Act

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and as it has been entered in the budget, after adjustment, of the second year after the effective date of this Act and in the budget of the current year.

4. For the purpose of the fourth budgetary year starting after the effective date of this Act, interest charge norm shall be understood to mean the interest charge that corresponds to 5% of the average realized joint income of the collective sector of a country in the first two years after the effective date of this Act and as it has been entered in the budget, after adjustment, of the third year after the effective date of this Act.

### **Article 30. Current budget upon start of supervision**

1. Immediately after the effective date of this Act, the administrations shall send to the Board a certified copy of the budget for the year in which the Act becomes effective.
2. The Board shall assess that budget in accordance with the assessment meant in Article 12 paragraph 2 and shall report not later than four weeks after receipt of that budget to the administration in accordance with Article 12, paragraph 2. Article 12, paragraph 3 up to and including 5, and Article 13 shall apply *mutatis mutandis*.

### **Article 31. Accountability in Dutch budget**

1. The expenditure and income related to the extension of loans as meant in Articles 16 and 22 by the State of the Netherlands to

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the countries shall be at the expense or to the credit of the budget of Our Minister.

2. The foreign currency risks related to the extension of loans as meant in Articles 16 and 22 by the State of the Netherlands to the countries shall be at the expense or to the credit of the budget of Our Minister.
3. The State of the Netherlands, as per December 31, 2005, shall purge the current debts of the Netherlands Antilles, Curaçao and Sint Maarten 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 per December 31, 2005. On the effective date of this Act, the State of the Netherlands shall take over the remaining principal of the debts to be purged and described in this paragraph.

### **Article 32. Document management**

The management of the documents pertaining to the duties of the Board shall be provided for in the management regulation meant in Article 5, paragraph 1. After termination of the activities of the Board the documents shall be stored in the archives of the Ministry of Home Affairs and Kingdom Relations. Certified copies of the documents shall be made available to Curaçao and Sint Maarten.

### **Article 33. Evaluation and termination of supervision**

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1. Five years after the effective date of this Act, the council of ministers of the Kingdom shall decide if and, if so, the effective date on which one or both of the countries shall no longer have to observe one or more obligations arising from this Act on a permanent basis.
2. As long as one or more obligations on the grounds of this Act remain effective for a country, after a decision meant in paragraph 3, a new decision shall be made three years later and, thereafter, each time within a period of three years after every decision.
3. A decision as meant in paragraphs 1 and 2 shall be made by royal decree on the recommendation of Our Minister.
4. The council of ministers of the Kingdom, whether or not as a result of a recommendation thereto of the evaluation committee meant in paragraph 7, or of a well-founded request from that country, may decide that a decision as meant in paragraph 2 shall be made at an earlier time.
5. If the council of ministers of the Kingdom does not follow a recommendation or request as meant in paragraph 4, it shall state the reasons for this decision.
6. A decision as meant in paragraphs 1 and 2 shall be made only after an evaluation committee as meant in paragraph 7 has made a recommendation to the council of ministers of the Kingdom. The council of ministers of the Kingdom can only deviate from the recommendation of the evaluation committee by stating its reasons on grounds derived from the standards mentioned in Article 15.

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7. Our Minister, in consultation with the council of ministers of the Kingdom, not later than six months prior to a decision as meant in paragraphs 1 and 2, and as the occasion arises after application of paragraph 4, shall establish an evaluation committee.  
The evaluation committee shall consist of four independent members who shall be appointed on the grounds of their expertise and in accordance with the following procedure:
  - a. the President in agreement with Our Minister of Finance of the countries;
  - b. one member in agreement with Our Minister of Finance of the country Curaçao;
  - c. one member in agreement with Our Minister of Finance of the country Sint Maarten;
  - d. one member to be appointed by Our Minister.
8. An evaluation committee may have itself assisted in the performance of its duties.
9. An evaluation committee shall provide a recommendation to the council of ministers of the Kingdom through Our Minister not later than three months after it has been established. The recommendation shall contain well-founded assessments and recommendations.
10. The recommendation of the evaluation committee shall, in any case, include:
  - a. an assessment regarding the issue if the country in question structurally meets the standards mentioned in Article 15 and if the decision meant in paragraph 1 or paragraph 2 to be

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- made may mean that the obligations on the grounds of this Act shall no longer have to be observed by the country in question on a permanent basis.
- b. an assessment as to whether or not there are circumstances not attributable to the country in question including those mentioned in Article 25 that have posed an obstacle in meeting the standards;
  - c. an assessment as to whether or not the application of the standards mentioned in Article 15 is such that it is justified that one or more obligations on the grounds of this Act no longer need to be observed on a permanent basis and, in that case, which obligations these may be;
  - d. a recommendation as to the time of the next evaluation;
  - e. if the evaluation committee is of the opinion that continuation of this Act is necessary, be it in whole or in part, recommendations to the country in question as to the measures that may be conducive to meeting the standards;
  - f. if necessary, in view of the optimal implementation of this Act, recommendations to the countries with regard to the supervision to be exercised pursuant to this Act.
11. A country shall structurally meet the standards mentioned in Article 15 if it has at least met these standards in full in the past three consecutive years and has anchored these standards in its legislation. In the recommendation meant in the first sentence, the evaluation committee shall take the recommendations and reports submitted by the Board during the evaluation period as

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well as any instructions issued on the grounds of this Act, into consideration.

12. Before submitting its recommendation, the evaluation committee shall hear the administration in question. The administration shall respond within one week. In case the administration objects to one or more sections of the draft recommendation and these objections are not responded to in the recommendation, the evaluation committee shall mention these objections in the recommendation as well as the reasons why these objections have not been responded to.
13. With regard to the evaluation committee, Article 8 shall apply mutatis mutandis.

### **Article 33a**

If the bill on the amendment to the Council of State Act with regard to the restructuring of the Council of State (30 585) submitted by Royal Message of June 6, 2006 is voted into law and has become or becomes effective, this Act shall be amended as follows:

A

Article 26 shall be amended as follows:

1. In paragraph 3 "Articles 32 up to and including 35" shall be replaced by: Article 45.
2. In paragraph 6 "Article 18a" shall be replaced by: Article 27d.

B

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In Article 27, paragraph 3 "Articles 32 up to and including 35" shall be replaced by: Article 45.

**Article 34. Effective date**

This Act shall become effective on a date to be determined by royal decree.

**Article 35. Ineffective Act**

This Act shall become ineffective on a date to be determined by royal decree. This date shall be the date on which all obligations on the grounds of this Act pursuant to article 33 shall no longer have to be observed by both countries on a permanent basis.

**Article 36. Official title**

This Act may be referred to as the Kingdom Act Financial Supervision Curaçao and Sint Maarten.

Proclaim and declare that this Kingdom Act shall be published in the Bulletin of Acts and Decrees, in the Publication Bulletin of the Netherlands Antilles and the Proclamation Bulletin of Aruba and that all ministries, authorities, councils and civil servants whom it may concern observe the exact execution thereof.

Drawn up in The Hague on July 7, 2010

Beatrix

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

The Minister of Finance,  
J.C. de Jager

Issued on September 1, 2010

The Minister of Justice,  
E.M.H. Hirsch Ballin