TRANSLATION OF THE OFFICIAL PUBLICATION OF SINT MAARTEN (AB 2010, GT no. 23)

EXPLANATORY MEMORANDUM

National accountability ordinance

General section

This national ordinance serves to implement Articles 100 to 102 of the Constitution. These provisions lay down the principles for the government's financial administration. The budget is of course key. The income and expenses foreseen in the relevant service year are laid down here. The budget is based on the government's policy intentions and the annual plans of Parliament and the advisory bodies. Via the budget, Parliament allocates the resources to the government to realise these policy intentions.
Budget law is an essential tool for parliamentary control of the government. How the budget is implemented is shown in the course of the service year. The implementation of the budget is assessed at three points in time. Twice during the service year, through the submission of statements to Parliament on 15 August and 15 November. And finally, on the submission of the financial statements for approval. These statements may show that the government's policy requires adjustment. Any changes in the budget must therefore be presented to Parliament for approval at the same time. The process of drawing up and implementing the budget and the accounting for this is covered by the term 'budget cycle'. This is a continuous process that is coordinated and monitored by the Minister of Finance. His or her task is to ensure compliance with the principles for the government's financial management, as laid down in the Constitution. For the time being, advice by the Financial Supervision Committee, pursuant to the Financial Supervision Kingdom Act, forms part of this process. This Kingdom Act, a mutual arrangement within the meaning of Article 38(2) of the Charter for the Kingdom, regulates the role of the committee in the budget cycle. The Kingdom Act not only contains procedural provisions. It also substantively regulates the interest cost standard and the contracting of financial loans.
The role of the Financial Supervision Committee is not included in the national ordinance. This in the interests of the durability of the legislation. After all, the mutual arrangement is finite. The times and the way in which the committee is involved in the budget process are laid down in the Kingdom Act.

Article by Article section

The first paragraph contains general provisions. These general provisions refer to the principles for the budget. These principles relate to the structure of the budget, the accounting methods used for the financial administration and the valuation of assets and liabilities.

Article 2 lays down the reason for the regulation. The documents drawn up in relation to the budget cycle serve to provide a sound insight into the financial position of the public sector. As shown by the definition of 'public sector' in Article 1(g), the public legal person of the country of Sint Maarten forms part of the public sector. Other legal persons that perform government tasks also form part of the public sector. Since the public sector as a whole is included in the determination of the interest cost standard pursuant to the Financial Supervision Kingdom Act, it is important for the determination of the scope for the regular service that financing of the other entities in the public sector is supervised.

Article 6 merits special attention. This Article provides that Parliament allocates the resources to the different ministries or advisory bodies. With regard to the advisory bodies, this Article corresponds with the provisions laid down in the national ordinances regulating the structure and organisation of the various advisory bodies, in that Parliament allocates sufficient resources for the proper performance of the assigned tasks. The discussion concerning the level of financing that each advisory body requires is therefore conducted openly between Parliament and the government. In that regard, reference is also made to Article 40, which provides that the explanatory memorandum to the budget for an advisory body must state which level of financing the advisory body itself regarded as adequate on submission of the estimate.

Article 8 provides for the possibility of setting up separate accounts for a specific government task. This also covers an advisory body. Separate accounts, together with the powers pursuant to Article 41(6) and Article 42(8) ensure that an advisory body is not left short of the resources necessary for the proper performance of its statutorily assigned duties.

Articles 9 and 10 lay down the principle of budget discipline. This principle refers to the inherent link between policy proposals and their financing. After all, without financing, the government cannot implement any policy proposals. The policy considerations that led to a particular allocation of resources to the functions in the budget must be taken into account if a policy proposal is considered that is not yet included in the budget. After all, cover must also be provided for additional costs in connection with the general requirement laid down in Article 100(1) of the Constitution that the budget must be balanced and must remain so.

Section 2 regulates the structure of the budget and the information that the government must attach to the budget for compliance with Article 2, i.e. the provision of a true and fair view of the financial position of the country. This position covers many more elements than the cash position at a given time alone.
Through the long-term budget, the effects of policy over several years can be developed. After all, the effects of new or adjusted policy are not confined to a single service year. Measures introduced in one service year will have effects over the years that furthermore, are not static and must be continually monitored. This function of the budget is closely related to the preparation and implementation of the annual plans of the ministries. After all, these must record which policy is desirable, its effects and the extent to which the resources have led to the required effect. The General Audit Chamber, after all, audits the government's financial management not only with regard to the legitimacy of spending, but certainly also in terms of its effectiveness. Society has a right to effective expenditure of the resources that it raises for the government. The role of Parliament is to supervise this, with the aid of the General Audit Chamber.

This audit takes place partly on the basis of a comparison of the financial statements and the budget for a particular service year. Section 3 therefore regulates the financial statements.
For the purpose of transparency, the section is divided into several paragraphs, each concerning an aspect of the structure of the financial statements and the information that must be included in this. This section also contains the regulations for the day-to-day financial management. This management is crucial for tracking the expenditure of the resources.

Section 4 then lays down the procedures for the realisation of the budget and the financial statements. This highlights the very active role of the Minister of Finance, as the coordinator of the process and the guardian of the country's resources. Articles 34(3), 37, 41(5), 43, 44, 46, 52 and 53 play a key role here.

The process for drawing up the budget starts with the submission of an estimate of the resources required by each minister to the Minister of Finance, no later than 1 May of each year. Pursuant to Article 34(3), the Minister of Finance will object to proposed expenditure that is not consistent with a sound financial policy. This means that this expenditure cannot be included in the budget as proposed. Negotiation on the allocation of the resources to the ministries will take place in the Council of Ministers, with the Minister of Finance firstly playing a coordinating role and secondly monitoring the feasibility and soundness of the budget.

With regard to Parliament, the Presidium sends an estimate to the Minister of Finance before 1 May, on the basis of Article 14 of the Rules of Order. The Minister of Finance will present his findings in relation to the estimates of the ministries and the advisory bodies. The Presidium will then present a draft national ordinance to Parliament for the approval of the budget for Parliament, to which the findings of the Minister of Finance and the advice of the Council of Advice are attached. In that way, Parliament decides on its budget independently, but the necessary coordination with the government's other financial needs is secured.

Article 36, which lays down provisions for the financing of bodies instituted on the basis of mutual arrangements contracted in relation to the political reform of the Kingdom, calls for special attention. The Article is formulated generally, in view of the diversity of the bodies, but primarily provides for the bodies in the legal enforcement chain.

Articles 46 and 47 also merit special attention.

Article 46 regulates the contracting of financial loans. The Minister of Finance is granted sole powers to contract financial loans. These powers must always be laid down in the national ordinance on the approval of the budget. These powers will be exercised within the frameworks laid down by the Financial Supervision Kingdom Act.

Article 47 regulates the invitations to tender for supply contracts for goods and services to the government. The principle remains that all expenditure should take place in public. Exceptions are possible with regard to the expenditure, referred to in paragraph 3. Paragraph 4 grants the Minister of Finance the authorisation to derogate from the public spending rule in certain cases. These cases are confined to expenditure as a result of a disaster and expenditure for which further delays are counter to the public interest. It should be noted that this expenditure, too, is subject to control after the event, via the approval of the financial statements. The Minister of Finance must therefore account for this. Article 47(6) contains the order to the government to impose further rules regarding the design of the tendering procedure, among other things. In this way, government tendering is designed uniformly, which benefits potential suppliers. After all, this concerns spending of public funds, which should take place honestly and openly. The further rules not only concern public tenders, but also private ones. These may include rules concerning the tendering method, the requirements set for suppliers and the extent to which specifications can still be adjusted in response to the bids received. Rules may also be imposed with regard to the preparation of the specifications, in which special attention is devoted to certain elements such as the durability of the goods or services to be provided, types of jobs and working conditions. As an important client, the government can start and support trends in society that are consistent with overall government policy via a well thought-out tendering policy.

Article 48 supports budget discipline by requiring that overruns are prevented as far as possible by appropriate and timely measures. This Article refers back to Articles 9 and 10, which provide that policy proposals are not reported in public without adequate financial cover.
Article 50 does provide for limited possibilities for derogation without prior parliamentary approval.

Finally, paragraph 4 lays down rules concerning the financial statements. Article 52 provides that the financial statements must be presented to Parliament before 1 September of the service year following that to which the financial statements relate. This means that in the debate on the budget for a service year, Parliament also has access to the financial statements for the previous year. In combination with the long-term budget, Parliament then has sufficient instruments to assess the spending of resources for effectiveness and to actually realise the function of control over the government. The General Audit Chamber, as an advisory body of Parliament, plays a key role here. It is of great importance that the General Audit Chamber is sufficiently well-equipped to be able to play this role satisfactorily.

The final section contains final and transitional provisions. The most important of these being the transitional provision. This contains a temporary derogation from Article 1 of the national ordinance. This Article provides that the budget must be designed in accordance with a number of appendices attached to the national ordinance. In connection with the shortage of time, these appendices have yet to be realised. The transitional provision concerns the government’s powers to design the budget for the country of Sint Maarten for 2011 as it sees fit. For the budget for the 2012 service year, the appendices, referred to in Article 1 must be submitted to Parliament for approval, by means of a draft national ordinance altering the National accountability ordinance. Perhaps superfluously, it is noted that this draft national ordinance need not confine itself to the addition of the appendices, but may also contain other amendments of the national ordinance that prove to be desirable in relation to the experience gained in the first months after the new status comes into force.

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