

## **TRANSLATION OF THE OFFICIAL PUBLICATION OF SINT MAARTEN (AB 2010, GT no. 11)**

### **National ordinance registration and finances of political parties<sup>1</sup>**

#### **§ 1. General provisions**

##### **Article 1**

1. The following definitions apply for the purposes of the application of this national ordinance and the regulations for its implementation:
  - a. Parliament: the Parliament of Sint Maarten;
  - b. residents: persons who are domiciled in Sint Maarten;
  - c. Electoral Council: the Council as referred to in section 2 of this national ordinance;
  - d. political party: an association with full legal capacity established in Sint Maarten, with the objective of contributing towards the formation of views on political and social developments, the promotion of the political interest of the citizens and the selection and nomination of candidates for the election of Members of Parliament.
2. For the purposes of the application of this national ordinance and the regulations for its implementation, persons registered as residents with an address in the national population records database are deemed to be domiciled in Sint Maarten.

##### **Article 2**

Political parties may take part in the election of the Members of Parliament only if they observe the provisions of section 3 of this national ordinance.

#### **§ 2. The Electoral Council**

##### **Article 3**

There is an Electoral Council. The Electoral Council functions independently of Parliament and the government.

##### **Article 4**

1. The Electoral Council is responsible for the tasks assigned to it by or pursuant to this national ordinance.
2. Following consultation of the Electoral Council, Parliament shall provide all facilities for proper and independent performance of its tasks.
3. The chairman manages the budget in accordance with further rules laid down for that purpose by the Minister of Finance.

##### **Article 5**

1. The Electoral Council comprises three members, including a chairman and an alternate chairman. In addition, there are two alternate members.
2. The chairman, the alternate chairman, the members and the alternate members are appointed by national decree on the nomination of the appointments committee, on the basis of expertise and experience.
3. They shall be appointed for a term of seven years and may be reappointed on one occasion.
4. The appointment committee consists of the President of the Common Court of Justice of Aruba, Curaçao, and Sint Maarten, Bonaire, and Sint Eustatius and Saba, the vice-chairman of the Council of Advice and the chairman of the General Audit Chamber.

##### **Article 6**

1. In order to be appointed as a member of the Electoral Council, candidates must be domiciled in Sint Maarten, must hold Dutch nationality and must not be disenfranchised.
2. Members and alternate members of the Electoral Council cannot simultaneously be:
  - a. members of the General Audit Chamber;
  - b. ministers;
  - c. minister plenipotentiary;

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<sup>1</sup> This issuance takes place on the basis of the additional Article II of the Constitution.

- d. civil servants in active service;
  - e. members of the judiciary;
  - f. Attorney-General or Solicitor-General of the Common Court of Justice;
  - g. Members of Parliament;
  - h. Ombudsman;
  - i. members of the central electoral committee.
3. For the purposes of this Article, a 'civil servant', referred to in paragraph 1(d) is equated with persons who are employed in the service of the national administration under a civil law employment contract.
  4. A member or alternate member of the Electoral Council shall also hold no position or office, the performance of which is undesirable with a view to proper performance of his office or the maintenance of his impartiality and independence or of confidence therein.

**Article 7**

1. Spouses and relatives by blood or affinity to the second degree may not serve as members or alternate members of the Electoral Council at the same time.
2. If the marriage is entered into after the appointment, the youngest spouse shall resign from his or her office.
3. In the case of kinship arising after the appointment, a person whose kinship arises through marriage shall resign from his office.
4. The kinship ceases through dissolution or nullification of the marriage that gave rise to it.

**Article 8**

Before accepting their appointment, members and alternate members of the Electoral Council shall take the following oath of office (declaration or affirmation) before the Governor:

'I swear (declare) that I shall not accept any pledge or gift of any reference from any person whatsoever, directly or indirectly, in order to take or refrain from any action of any reference in this position. I swear (affirm) my loyalty to the Monarch and the Charter for the Kingdom, that I shall always help to uphold the Constitution of Sint Maarten and shall support the welfare of Sint Maarten to the best of my ability.  
So help me God Almighty.  
(This I declare and affirm)!'

**Article 9**

1. Members and alternate members of the Electoral Council shall be suspended by national decree, at the proposal of the appointment committee, stating the reasons:
  - a. if they are held in pre-trial detention;
  - b. if a pre-trial judicial investigation is opened against them in relation to a criminal offence;
  - c. if they are convicted of a criminal offence by a court decision that has not become final, or if a measure resulting in the deprivation of their liberty is imposed by such a decision;
  - d. if they are placed in receivership, declared bankrupt, are granted a moratorium on payments or are committed in relation to debt by a court decision that has not become final.
  - e. the members and alternate members of the Electoral Council may be suspended by national decree, at the proposal of the appointment committee, stating the reasons, if there are serious suspicions of the existence of facts or circumstances that could lead to their dismissal, other than the cases as referred to in Article 10(1)(a) and 10(1)(b) and Article 10(2).

**Article 10**

1. Members and alternate members of the Electoral Council shall be dismissed by national decree, at the proposal of the appointment committee, stating the reasons:
  - a. at their own request;
  - b. on reaching the age of 70;
  - c. if they are convicted of a criminal offence by a court decision that has become final, or if a measure resulting in the deprivation of their liberty is imposed by such a decision;
  - d. if they are placed in receivership, declared bankrupt, are granted a moratorium on payments or are committed in relation to debt by a final court decision;
  - e. if they become permanently unable to perform their official duties due to illness or a disorder;

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- f. on acceptance of an office or position that is incompatible with membership of the Electoral Council pursuant to Article 6;
  - g. on the loss of domicile or Dutch nationality.
2. Members and alternate members of the Electoral Council may be dismissed by national decree, stating the reasons, if they are unable to perform their official duties properly due to persistent illness or geriatric complaints.

#### **Article 11**

If there is an intention to suspend or dismiss a member or alternate member of the Electoral Council, other than in the cases as referred to in Article 10(1)(a) and 10(1)(b), the person concerned shall be given an opportunity to present his view on this.

#### **Article 12**

The financial provisions for members and alternate members of the Electoral Council shall be regulated by national decree, containing general measures.

#### **Article 13**

Resolutions of the Electoral Council shall be carried by a majority of the votes cast.

### **§ 3. Registration of political parties**

#### **Article 14**

1. A political party wishing to take part in the elections for Parliament must be registered by the Electoral Council in observance of the provisions of this section.
2. The Electoral Council shall maintain a register of political parties and of references to political parties, including authorised representatives and alternate authorised representatives.

#### **Article 15**

1. In order to be registered by the Electoral Council a political party must be formed by notarised deed containing the Articles of the association.
2. The Articles of Association shall in any event contain provisions concerning:
  - a. the name of the political party;
  - b. the objective of the political party;
  - c. the names and the towns of residence of the senior managers and the other officials required by law or by the Articles of Association;
  - d. the obligations of the members to the party, or the way in which such obligations can be imposed;
  - e. the way in which membership is obtained and terminated;
  - f. the method for convening the general meeting;
  - g. the powers of the general meeting;
  - h. the method of appointment and dismissal of the managers;
  - i. the regulations for representative authorisation;
  - j. the financial resources and their management;
  - k. a restriction on membership authorised to vote to persons who are authorised to vote in elections for Members of Parliament;
  - l. the obligation to publish a political programme in good time before the elections;
  - m. the procedure for drawing up lists of candidate for the parliamentary elections;
  - n. the power to amend the Articles of Association;
  - o. the dissolution of the association;
  - p. the beneficiary of any surplus following settlement in the event of the dissolution of the association and the manner in which that beneficiary shall be determined.

#### **Article 16**

1. An application for registration must be submitted to the Electoral Council in writing.
2. An application for registration submitted less than six weeks prior to the nomination date shall not be processed for the next election.

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**Article 17**

The following shall be submitted with the application for registration:

- a. a copy of the notarised deed containing the Articles of Association.
- b. a declaration from the political party, containing the appointment of its authorised representative and alternate representative to the Electoral Council, which applies until the declaration is replaced.

**Article 18**

1. The political party's authorised representative and alternate representative to the Electoral Council must be entitled to vote in parliamentary elections.
2. An authorised representative or alternate representative may act as such for one political party only.
3. The authorised representative may act as an observer at meetings of the Electoral Council at which the registration of the relevant political party and its finances are discussed and at which decisions on this are taken.

**Article 19**

1. The Electoral Council decides on a complete application within three weeks of its receipt.
2. If the application or accompanying documents require improvement, instead of giving its decision on the application, the Electoral Council shall grant the applicant an opportunity to improve the application or the accompanying documents within one week of notification thereof. In that case, the Council shall issue a decision within three weeks of the receipt of the additions or improvements.
3. The Electoral Council shall reject an application for registration if the requirements of this national ordinance are not met.

**Article 20**

1. An application for the registration of a political party includes an application for registration of the reference that shall be placed above the lists of candidates to be submitted by the political party.
2. Without prejudice to Article 19(3), the Electoral Council shall reject an application if the reference
  - a. contains more than 15 letters or other characters;
  - b. is fully or primarily consistent with a reference of another political party that is already registered, or with a reference for which an application for registration has already been submitted earlier pursuant to this Article and confusion is to be feared as a result;
  - c. is misleading for voters in another sense;
  - d. is counter to public order.

**Article 21**

A political party may submit an application to the Electoral Council in writing for an amendment of a registered reference. Articles 16(2) and 20(2) are likewise applicable to the application.

**Article 22**

1. The Electoral Council shall resolve to cancel the registration of a political party if:
  - a. the party has submitted a request for this;
  - b. the party has ceased to exist;
  - c. the Articles of Association of the party have been amended in such a manner that they no longer comply with the requirements of this national ordinance;
  - d. the association is dissolved.
2. The Electoral Council shall resolve to scrap the registered reference of a political party:
  - a. in the cases referred to in paragraph 1;
  - b. if the party failed to submit a list of candidates for the last parliamentary election.

**Article 23**

On the amendment of its Articles of Association, a registered political party shall send the Electoral Council a copy of the notarised deed in which the amendment is laid down.

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#### **Article 24**

1. The decision of the Electoral Council on an application from a political party for registration and regarding an application to register a reference of a political party or to alter a reference shall be issued to the applicant and the central electoral committee, referred to in Article 12 of the Election Ordinance in writing without delay, and shall be published as soon as possible in the publication in which the country publishes official notices, as well as in one or more national daily newspapers.
2. The Articles of Association of a political party, as well as amendments to these, shall be published at the party's expense in the publication in which the country publishes official notices.

#### **Article 25**

1. An interested party may file an appeal against a decision pursuant to this section of the Electoral Council with the Court of First Instance.
2. The appeal must be submitted no later than the sixth day following the date of the publication in which the country publishes official notices and in which the decision is included.
3. No appeal is open against the decision of the Court of First Instance.

### **§ 4. The financial administration of political parties**

#### **Article 26**

1. The management of a registered political party shall keep financial accounts such that all rights and obligations and the payments and receipts can be ascertained at all times.
2. The accounts and the accompanying documents shall be kept for at least five years.

#### **Article 27**

Each year before 1 April, the registered political party shall send the Electoral Council an annual report including at least the following information:

- a. the composition of the management during that year;
- b. the number of contributing members at the start and end of that year;
- c. the amount of the contribution during that year;
- d. the activities performed by the party during that year.

#### **Article 28**

1. The annual report shall be accompanied by financial statements, at least including:
  - a. the financial position at the start and end of the year;
  - b. a specified statement of income and expenditure, as well as an auditors report by a chartered accountant concerning whether the financial statements present a true and fair view;
  - c. donations of ANG 5,000 or more from a source other than a natural person;
  - d. the total donations, other than contributions from party members.
2. On the disclosure of donations as referred to in paragraph 1c, the amount, the date on which the donation was made and the name of the donor shall be reported. If the donor has objected to the disclosure of its name, this may be omitted, on the understanding that in that case, a reference shall be provided of the category of institutions to which the donor belongs.

#### **Article 29**

The Electoral Council shall send the financial report to the General Audit Chamber in order to verify the accuracy of the information in the aforementioned report. The General Audit Chamber shall send its advisory report to the Electoral Council.

#### **Article 30**

The Electoral Council shall ensure that the annual report and the financial statements are available for public inspection.

#### **Article 31**

The Electoral Council may impose further rules regarding the financial accounts, the annual report and the financial statements. Before taking effect, these rules require approval by national decree.

### **§ 5. Donations to registered political parties and candidates**

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**Article 32**

1. For the purpose of the application of this section, 'donations' refers to all sums of money received by a registered political party or a candidate and goods and services provided that are valuable in money, for which no consideration, or no equivalent financial consideration or consideration valuable in money is paid.
2. With a non-equivalent consideration, the amount of the donation is deemed to be the difference between the usual market price and the price actually paid.

**Article 33**

1. A political party shall maintain permanent chronological records of all donations received.
2. Candidates for membership of Parliament shall maintain records of all donations that they receive from the date of their appointment by the party management to the date of the election.

**Article 34**

1. The record of each donation shall state:
  - a. the name and address of the person, company or institution that made the donation;
  - b. the amount or value of the donation;
  - c. the date of the donation.
2. Paragraph 1 applies to returned donations in cash that exceed a sum of ANG 5,000.

**Article 35**

1. A political party or a candidate shall accept donations of a sum or a value in excess of ANG 5,000 only if these originate from:
  - a. enfranchised residents of Sint Maarten;
  - b. non-Dutch residents of Sint Maarten who were residents for at least five years prior to the date on which the donation was made;
  - c. legal persons and social organisations registered in Sint Maarten.
2. A political party and a candidate shall not accept donations from legal persons in which the country participates or from institutions subsidised by the government.

**Article 36**

Donations made to a natural person, legal person or organisation with the intention that such donations shall benefit a political party or candidate are regarded as donations to the relevant party or candidate.

**Article 37**

1. Each year before 1 February, a party shall submit to the Electoral Council a copy of the section of the records kept by the party concerning the preceding year, accompanied by a declaration signed by the party.
2. Within a month following the date of the parliamentary elections, a candidate shall submit to the Electoral Council a copy of the records of donations kept by the candidate, accompanied by a declaration signed by the candidate.

**Article 38**

1. At the request of the Electoral Council, the General Audit Chamber shall examine the accuracy of the statements made.
2. The political parties and the candidates shall provide all information required for the examination as referred to in paragraph 1 and shall provide access to their financial accounts.

**Article 39**

1. The General Audit Chamber shall record the outcome of its examination referred to in Article 38(1), in a report.
2. The Electoral Council shall make an anonymised summary of the report available for public inspection.

**Article 40**

1. Political parties and candidates shall keep the records of donations for at least five years.

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2. Copies of sections of records transferred to the Electoral Council shall be destroyed at the end of five years.

#### **Article 41**

1. In any calendar year, donations as referred to in Article 32, made to the same political party by a person, company or institution shall not exceed a total sum or value of ANG 30,000.
2. In any calendar year, donations as referred to in Article 32, made to a candidate of a political party by a person, company or institution shall not exceed a total sum or value of ANG 20,000.
3. In any calendar year, donations made to the same political party and to candidates of that same political party by a person, company or institution shall not exceed a total sum of ANG 50,000.
4. Donations in excess of the maximum set in paragraphs 1, 2 or 3 shall not be accepted or shall be returned to the donor.

#### **Article 42**

1. Cash donations to a political party or a candidate in excess of ANG 5,000 are prohibited.
2. Donations as referred to in paragraph 1 shall not be accepted by a political party or candidate, or shall be returned to the donor.

### **§ 6. Supervision and enforcement**

#### **Article 43**

1. The Electoral Council is responsible for supervision of compliance with the rules laid down by or pursuant to this national ordinance.
2. The Electoral Council is authorised, to the extent that this can reasonably be deemed to be necessary for the performance of its duties:
  - a. To request all information;
  - b. To require access to all books, documents and other data carriers and to take copies of these or to temporarily remove them for that purpose.
3. All persons shall provide the assistance required by the Electoral Council.

#### **Article 44**

1. The Electoral Council may impose an order subject to penalty with regard to infringements of a regulation imposed by Articles 26, 27, 28, 33, 34, 35, 37, 38(2), 40, 41, 42 and 43.
2. An order subject to penalty serves to reverse the infringement or to prevent further infringement or a repetition of the infringement.

#### **Article 45**

The Electoral Council shall fix the penalty either as a lump sum or as an amount per unit of time in which the order is not implemented or per infringement of the order. The Council shall also fix an amount in excess of which no further penalty is due. The fixed amount shall be in reasonable proportion to the seriousness of the interest breached and the envisaged effect of the imposition of the penalty.

#### **Article 46**

The following shall in any event be stated in the decision to impose an order subject to penalty:

- a. the name of the offender, and
- b. the content of the order and the term for which it applies.

#### **Article 47**

In the decision to impose an order subject to penalty serving to reverse an infringement or to prevent further infringement, a term will be fixed during which the offender can carry out the order without a penalty being due.

#### **Article 48**

1. On request, the Electoral Council shall give the offender an opportunity to view the information on which the intention to impose an order subject to penalty is based, and to make copies of this.
2. The Electoral Council shall give the offender an opportunity to present his views and the offender may submit an appeal against the imposition of the order.

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#### **Article 49**

1. The power to collect forfeited amounts lapses six months after the date on which they are forfeited.
2. The prescription period is suspended through bankruptcy or compulsory winding up and every statutory impediment to collection of the penalty.

#### **Article 50**

1. At the request of the offender, the Electoral Council may cancel an order subject to penalty that it has imposed, suspend it for a particular term or reduce the penalty in the event of the permanent or temporary inability of the offender to meet its obligations, partially or in full.
2. At the request of the offender, the Electoral Council may cancel an order subject to penalty that it has imposed if the decision has been in effect for one year without the penalty being forfeited.

#### **Article 51**

1. In the absence of compliance with the order within the term, referred to in Article 46, the Electoral Council may provide for collection of the penalty plus the costs relating to collection by a writ of execution, unless an appeal has been submitted against the imposition of the order pursuant to the National ordinance administrative jurisdiction.
2. A writ of execution as referred to in paragraph 1, shall be served by bailiff's writ at the expense of the offender and gives rise to entitlement to enforcement within the meaning of the Code of Civil Procedure.
3. For six weeks following the date of service, an appeal against the writ of execution may be filed by a summons of the Electoral Council. The appeal suspends the execution. At the request of the Electoral Council, the court may cancel the suspension of the execution.

#### **Article 52**

Forfeited penalties shall be deposited in the national treasury.

#### **Article 53**

1. With his credentials, a candidate who has been elected as a Member of Parliament submits to Parliament a declaration signed by him that he did not act in contravention of the provisions of this national ordinance during the election campaign.
2. Within 30 days of accepting an appointment as minister, a minister must submit a declaration signed by him to the Electoral Council that he did not act in contravention of the provisions of this national ordinance during the election campaign.

#### **Article 54**

1. Actions in contravention of Articles 26, 33, 34, 35, 40, 41, 42 and 53 shall be penalised by detention of no more than three months or a financial penalty of no more than ANG 10,000, or by both penalties.
2. The offences referred to in paragraph 1 are violations.
3. With a conviction for the violations referred to in paragraph 1, withdrawal of the rights referred to in Article 32(1.1) of the Criminal Code may be ordered.

### **§ 7. Confidentiality obligation**

#### **Article 55**

1. Every person involved in the implementation of this national ordinance who gains access in that regard to information which he knows to be, or should reasonably assume to be of a confidential nature and for whom a confidentiality obligation does not already apply on the grounds of their office, profession or pursuant to statutory provisions, is required to protect the confidentiality of that information.
2. Paragraph 1 does not apply:
  - a. in relation to the offences described in Articles 198 and 200 of the Criminal Code;
  - b. to the extent that any statutory provision requires him to disclose information or the need to disclose information arises from his duties.
3. Prosecution for a breach of confidentiality shall be instituted only in response to a complaint by the person regarding whom confidentiality is breached.

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## **§ 8. Transitional and final provisions**

### **Article 56**

1. This national ordinance enters into force from the date on which Articles I and II of the Kingdom Act amending the Charter in connection with the dissolution of the Netherlands Antilles enter into force.
2. If candidates for parliamentary elections are appointed within six months of the term referred to in paragraph 1, this national ordinance shall not apply for that election, with the exception of section 2, and the provisions of the Ordinance on elections apply, with 'the Electoral Council' being read as 'the central electoral committee'.

### **Article 57**

This national ordinance may be referred to as the National ordinance the registration and finances of political parties.

Issued on the *twentieth* of December 2010  
The Minister of General Affairs,  
S.A. Wescot-Williams