

TRANSLATION OF THE OFFICIAL PUBLICATION OF SINT MAARTEN (AB 2010, GT no. 16)

National ordinance parliamentary inquiry¹

Chapter 1. General provision

Article 1

1. The following definitions apply for the purposes of this national ordinance:
 - a. commission: a commission as referred to in Article 2(2);
 - b. document: written document or other material containing data.
2. For the purposes of this national ordinance, 'civil servant' refers to a person employed or who has been employed under an employment contract under civil law.

Chapter 2. The institution of a parliamentary inquiry

Article 2

1. Parliament may resolve to conduct a parliamentary inquiry on the proposal of one or more members.
2. A parliamentary inquiry shall be conducted by a parliamentary commission.
3. The decision to conduct a parliamentary inquiry shall contain a description of the subject to which the parliamentary inquiry shall relate. On the proposal of the commission conducting the parliamentary inquiry or otherwise, Parliament may alter the description.
4. Parliament shall appoint the members of the commission from among its members. Parliament may dismiss a member of the commission from his capacity as a commission member, on his request or otherwise.
5. The President of Parliament shall provide for the notification of the decisions, referred to in this Article in the National Gazette.

Article 3

1. Parliament shall draw up an estimate of the expenditure that, in its view, is necessary for a parliamentary inquiry, analysed by budget years, and shall notify the Minister of General Affairs of this.
2. The expenditure will be processed in the budget, referred to in Article 1(1)(a) of the National accountability ordinance.

Chapter 3. The powers of the commission

Section 1. General provision

Article 4

1. The commission may exercise the powers granted to it by this national ordinance from the day following the date of the National Gazette in which the decision to conduct a parliamentary inquiry is announced until the date from which Parliament ends the inquiry.
2. The commission shall exercise the powers assigned to it by this national ordinance only to the extent that, according to the reasonable view of the commission, is necessary for the performance of its task.
3. The commission's powers and activities are not terminated through the expiration of the term or dissolution of Parliament.

Section 2. The powers of the commission of inquiry

Article 5

1. The commission may require written information.
2. The commission may determine the manner in which the written information is provided.

Article 6

1. The commission may require access to, copies of or notification of documents by other means.

¹ This issuance takes place on the basis of the additional Article II of the Constitution.

2. The commission may determine the manner in which the notification is provided.

Article 7

1. The commission may conduct preliminary interviews behind closed doors with persons that they may hear as witnesses or experts.
2. No-one is obligated to cooperate in a preliminary interview. Article 13 does not apply.
3. The members of the commission shall preserve the confidentiality of the matters of which they become aware in a preliminary interview.
4. A confidential report shall be drawn up on a preliminary interview, which shall be signed by the chairman or another member of the commission and the person that the commission interviewed in the preliminary interview.

Article 8

1. The commission may hear persons as witnesses or experts.
2. The commission may hear a witness or an expert only if at least three members are in attendance.

Section 3. Special provisions regarding the powers of the commission to hear witnesses and experts

Article 9

1. The chairman of the commission shall summons a person that it wishes to hear as an expert or witness by registered mail delivered either in person, or to the person's residential address or work address. The chairman may provide for the summons to be delivered by bailiff's writ.
2. The hearing shall not take place before the eighth day following the receipt of the summons.
3. The summons shall state the date, time and location of the hearing, the facts concerning which information is required and the consequences of failure to appear for the hearing.
4. By way of derogation from the second paragraph, the commission may provide that the hearing shall take place before the eighth day following the receipt of the summons, if:
 - a. in the reasonable view of the commission, an earlier hearing is necessary in the interests of the parliamentary inquiry, or
 - b. the witness or expert in question consents to a shorter term.

Article 10

1. A witness or expert shall be heard at a public hearing of the commission.
2. At the request of the witness or expert or otherwise, the commission may decide for serious reasons that no audio or visual recordings may be made by third parties at a public hearing.
3. A public report shall be drawn up on a public hearing, which must be signed by the chairman or another member of the commission and the person that the commission heard. As soon as possible following its signature, the report may be viewed by the public at the Department of the Clerk to the Parliament.

Article 11

1. At the request of the witness or expert or otherwise, the commission may decide for serious reasons to conduct the hearing or part of the hearing of that witness or expert at a private hearing of the commission.
2. The members of the commission shall preserve the confidentiality of the matters of which they become aware at a private hearing.
3. A confidential report shall be drawn up on a private hearing, which shall be signed by the chairman or another member of the commission and the person heard by the commission.

Article 12

1. Prior to a hearing, a witness, if he or she has reached the age of 16, shall take an oath or make a solemn affirmation before the chairman that he shall tell the truth, the whole truth and nothing but the truth, unless the commission decides to conduct the hearing without a prior oath or solemn affirmation being taken or made.
2. Prior to a hearing, an expert shall take an oath or make a solemn affirmation before the chairman that his statement will be unbiased and delivered to the best of his knowledge.

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Chapter 4. The position of persons required to cooperate in a parliamentary inquiry

Section 1. General provisions

Article 13

1. Every resident of Sint Maarten, every natural person staying in Sint Maarten, every legal person registered in Sint Maarten and every legal person that performs its business activities partially or fully in Sint Maarten is required to provide every assistance to the commission that it requires, within the term that it requires, in the exercise of the powers granted to it by this national ordinance, barring the possibility of immunity in compliance with Articles 18 up to and including 23.
2. For the application of the first paragraph, persons who are registered as residents with an address in the population records of Sint Maarten are deemed to be residents of Sint Maarten.

Article 14

1. The obligation to assist also applies for persons with an obligation to preserve confidentiality, including if that obligation is imposed by national ordinance, barring the possibility of immunity in compliance with Articles 18 up to and including 23.
2. Persons required to preserve confidentiality by national ordinance and who work or have worked for another party are required to assist only to the extent that the person for whom they work or have worked have relieved them of their obligation to preserve confidentiality in writing, on the demand of the commission. If the commission demands relief from the confidentiality obligation, the person for whom they work or have worked is required to grant that relief, barring the possibility of immunity in compliance with Articles 18 up to and including 23.

Article 15

1. A former minister shall provide assistance for demands of the commission as referred to in Articles 5 or 6, regarding information that relates to his term of office only through the intermediary of the Prime Minister.
2. A civil servant who works or has worked for a minister shall provide assistance for demands of the commission as referred to in Articles 5 or 6, regarding information that relates to his term of official service only through the intermediary of the minister concerned.

Article 16

1. All persons may engage support in their dealings with the commission.
2. The commission may decide for serious reasons that a person may not engage support during a preliminary interview or a hearing.
3. The commission shall notify the person concerned of a refusal without delay.

Article 17

The following qualify for remuneration from the commission in accordance with the provisions laid down pursuant to Article 14 of the National decree rates in civil cases:

- a. persons with whom the commission has conducted a preliminary interview, and
- b. persons that the commission has heard.

Section 2. Immunity rights and grounds

Article 18

1. A minister, a former minister, a member or manager of a national body, a former member or manager of a national body and a civil servant working or manager formerly working for a national body are not required to provide information to the commission, to the extent that such provision is counter to the interests of the country or the Kingdom.
2. If a member or manager of a national body, a former member or manager of a national body or a civil servant working or formerly working for a national body invoke the interests of the country or the Kingdom, the commission may require the minister concerned to confirm the grounds for that invocation of immunity.
3. If a former minister invokes the interests of the country or the Kingdom with regard to information relating to his term of office, the commission may require the Prime Minister to

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confirm the grounds for his invocation of immunity.

Article 19

1. A minister, former minister and a civil servant who works or formerly worked for a minister, are not required to provide information to the commission concerning discussions in a meeting of the Council of Ministers, nor is a civil servant who works or formerly worked for a minister required to provide information to the commission concerning decisions taken at a meeting of the Council of Ministers or the grounds on which these were based.
2. Without prejudice to Article 18, a minister or a former minister shall provide the commission with information on decisions taken at that meeting and the grounds on which they are based, on its demand. To the extent that this information is required in writing, this shall be provided by the Prime Minister.

Article 20

1. No-one is obliged to provide information to the commission, to the extent that such information concerns the discussions at a meeting of a board and an obligation to protect confidentiality regarding those discussions has been imposed by national ordinance.
2. At the commission's request, the board in question may decide to grant dispensation from the obligation to protect confidentiality.
3. Paragraph 2 does not apply with regard to judges' chambers.

Article 21

No-one is obliged to provide information to the commission, to the extent that such information concerns confidential business and production information or other confidential and competition-sensitive business information of a company and the interests of the acquisition of information by the commission are outweighed by the interest of the confidentiality of that information.

Article 22

No-one is obliged to provide information to the commission, to the extent that such information concerns privacy and the interests of the acquisition of information by the commission are outweighed by the interest of the protection of personal privacy.

Article 23

No-one is obliged to provide information to the commission, to the extent that they are obliged to protect confidentiality on the grounds of their office or occupation and the relevant information was entrusted to them in that capacity.

Chapter 5. Means of coercion

Article 24

1. At the request of the commission, a judge of the Court of first instance may, in interim injunction proceedings, order a person who refuses to assist in the exercise of the commission's powers as granted by this national ordinance to nevertheless provide such assistance. The request shall be submitted by petition.
2. The commission's petition shall state which assistance is required of the person concerned.
3. The commission may submit the petition without the support of a prosecutor.
4. The provisional relief section of the court shall hand down a decision no later than the seventh day following the date on which the petition is received, unless the commission has requested an immediate decision.
5. The provisional relief section shall grant the request, unless:
 - a. the request is not founded in law;
 - b. the person concerned has statutory grounds for refusal; or
 - c. the commission cannot reasonably conclude that the required assistance is necessary for the performance of its task.
6. The decision of the court in interim injunction proceedings is enforceable with immediate effect.

Article 25

At the request of the commission, the provisional relief section can attach a penalty to an order as referred to in Article 24(1). Chapter 3 of Title 5, Book 2 of the Code of Civil Procedure applies.

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Article 26

At the commission's request, the provisional relief section may rule that an order as referred to in Article 24(1) can be enforced with the aid of the public authorities.

Article 27

1. If a witness or expert has appeared before the commission but refuses without statutory grounds to make a statement, the provisional relief section may order, at the commission's request, that the person will be committed at the expense of the state until his obligations have been met. The request will be submitted by petition.
2. The commission may submit the petition without the support of a prosecutor.
3. The commission may keep the witness or expert in custody until the provisional relief section has handed down a decision. It may call on the aid of the public authorities in that regard.
4. The provisional relief section shall hand down a decision without delay, and no more than three days after the receipt of the petition.
5. The provisional relief section shall grant a petition as referred to in this Article, unless:
 - a. the witness or expert has statutory grounds for refusal; or
 - b. the commission cannot reasonably conclude that the commitment is necessary for the performance of its task.
6. The provisional relief section's decision is enforceable with immediate effect.
7. During custody or commitment, the witness or expert may consult a lawyer. The lawyer has free access to the witness or expert, may speak with him alone and may exchange letters with him without the contents being viewed by other parties, subject to the required supervision and in observance of the rules and regulations.
8. Commitment may last for no more than 30 days. The provisional relief section shall terminate the commitment ex officio, at the request of the commission or at the request of the witness or expert, if, in the view of the court, its continuation is no longer justified by the interest served by the application of commitment, or the court finds that the witness or expert has statutory grounds for refusal.

Article 28

This Chapter does not apply to Members of Parliament or ministers.

Chapter 6. Relationship with other proceedings

Article 29

In civil, criminal, administrative law or disciplinary proceedings, statements and documents that are submitted on demand from the commission or are provided may not be used in evidence. Nor may disciplinary measures, administrative sanctions or administrative measures be based on such statements and documents.

Article 30

1. The commission shall not provide any information to other persons or bodies for the purposes of criminal, disciplinary or civil proceedings or for proceedings for the imposition of disciplinary measures, administrative sanctions or administrative measures, including if the commission or member is required to provide information pursuant to a statutory regulation.
2. By way of derogation from paragraph 1, the commission shall provide information to other persons or bodies if the party that provided the information and the party to which the information relates have granted consent for this in writing.

Article 31

1. By way of derogation from Article 29, statements and documents submitted or provided in relation to a parliamentary inquiry may be used in evidence in criminal proceedings concerning perjury, bribery of a witness or expert in a parliamentary inquiry or concerning the offences, referred to in Articles 198 up to and including to 198c of the Criminal Code.
2. By way of derogation from Article 30, the commission shall provide the Department of Public Prosecutions the information that can reasonably be deemed to be necessary for criminal investigations into perjury, bribery of a witness or expert in a parliamentary inquiry or concerning the offences referred to in Articles 198 up to and including 198c of the Criminal Code,

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including if this concerns information regarding which a confidentiality obligation applies for the members of the commission pursuant to this national ordinance.

Chapter 7. Closure of a parliamentary inquiry and the end of membership of the commission

Article 32

The commission shall record its findings in a public report that it shall present to Parliament.

Article 33

1. After the commission has accounted to Parliament for its work, Parliament shall close the inquiry.
2. Parliament may resolve to close an inquiry before its completion.
3. The President of Parliament shall notify an order to close an inquiry in the National Gazette.

Article 34

The documents held by the commission shall by operation of law transfer to Parliament on the date on which Parliament closes the inquiry.

Article 35

Membership of the commission shall end on the date from which:

- a. the relevant commission member's membership of Parliament ends and such membership does not recommence immediately;
- b. the member of the commission is heard by the commission as a witness or expert;
- c. Parliament closes the inquiry; or
- d. Parliament dismisses the member of the commission from the position of a commission member, at his own request or otherwise.

Chapter 8. Public access to and confidentiality of documents

Article 36

1. Without prejudice to Article 10(3), until the date on which the commission presents its report to Parliament, no-one has the right to view documents held by the commission.
2. The commission may grant access to documents provided to it on its demand to experts and persons who perform work on the instructions of the commission. Persons who view the documents shall preserve the confidentiality of the contents of those documents.

Article 37

1. From the date following that on which the commission presents its report to Parliament, every Member of Parliament may view the documents submitted to the commission on its demand.
2. Members of Parliament shall preserve the confidentiality of the contents of the documents that they are permitted to view, to the extent that the commission has imposed restrictions on public access pursuant to Article 39.
3. From the date following that on which the commission presents its report to Parliament, every Member of Parliament may view a confidential report on a private hearing. Members of Parliament shall preserve the confidentiality of the contents of the report.

Article 38

1. Subject to the restrictions that the commission has imposed on public access pursuant to Article 39, from the date following that on which the commission presents its report to Parliament, everyone has the right to view the document held by the commission or, after these documents transfer to Parliament pursuant to Article 34, that were held by the commission. This right to view the documents applies for as long as the documents are held by the commission or by Parliament.
2. Parliament may resolve to withdraw a restriction imposed on public access pursuant to Article 39 or, with regard to an applicant with a special interest in viewing the documents, not to apply the restriction. Parliament may impose confidentiality requirements on an applicant with regard to the contents of the documents to which he is granted access.

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Article 39

1. The commission may impose restrictions on public access to documents held by the commission, or that were held by the commission until these documents were transferred to Parliament pursuant to Article 34, for the period following the date on which it presents its report to Parliament. These restrictions apply for as long as the documents are held by the commission or by Parliament.
2. The commission shall impose restrictions on public access to the extent that:
 - a. disclosure of a document could jeopardise the unity of the government;
 - b. disclosure of a document could be detrimental to state security;
 - c. the document contains business or production data notified to the government in confidence by natural or legal persons;
 - d. the document contains information concerning an identified or identifiable natural person, unless the disclosure apparently does not breach personal privacy or the person to whom that information relates has granted consent to the disclosure;
 - e. the document entails a report on a preliminary interview or a private hearing.
3. The commission may also impose restrictions on public access to the extent that the interests of public access to the document are outweighed by the following interests:
 - a. the relations of Sint Maarten or the Kingdom with other countries or with international organisations;
 - b. the economic or financial interests of the country;
 - c. investigations into and prosecution for criminal offences;
 - d. inspection, control and supervision by administrative bodies;
 - e. respect for personal privacy;
 - f. the prevention of disproportionate advantages or disadvantages of natural or legal persons involved in the matter, or of third parties.
4. Restrictions on public access may also be imposed to the extent that a document was drawn up for internal discussion by the commission.
5. The members of the commission shall preserve the confidentiality of the contents of documents, to the extent that the commission has imposed restrictions on public access.

Chapter 9. Final and transitional provisions

Article 40

The Criminal Code shall be amended as follows:

- A In Article 5(1)(1), 198(a), 198(b) and 198(c) shall be inserted before «212».
- B Four Articles shall be inserted in Article 198, reading as follows:

Article 198a

A person who deliberately fails to comply with the demand of a parliamentary commission of inquiry to view, take copies of or take cognisance of documents by other means shall be penalised with a prison sentence of no more than four months.

Article 198b

A person who deliberately fails to comply with a demand of a parliamentary commission of inquiry to provide written information shall be penalised with a prison sentence of no more than three months.

Article 198c

A person who deliberately obstructs or restricts a parliamentary commission of inquiry or persons appointed by that commission, or prevents them from entering a location, shall be penalised with a prison sentence of no more than three months.

Article 198d

No action shall be instituted for the criminal offences referred to in Articles 198 up to and including 198c if they are committed by a Member of Parliament, a minister or Minister Plenipotentiary.

Article 41

This national ordinance may be referred to as the National ordinance parliamentary inquiry.

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The Minister of General Affairs,
S.A. Wescot-Williams