



To His Excellency the Governor of Sint Maarten
drs. E.B. Holiday
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Harbour View
Sint Maarten

RvA No. SM/07-15-LV

Subject: Draft National Ordinance amending the National Ordinance on the Notarial Profession for the exercise of the notarial powers in Saba and Sint Eustatius by the civil-law notaries of Sint Maarten (your reference number LV-15/0006).

Advice: With reference to your request dated July 3, 2015 for the opinion of the Council of Advice on the abovementioned subject and the discussion thereof at the meeting of the Council on August 18, 2015, and the adoption thereof at the meeting of the Council on August 18, 2015, the Council informs you as follows.

The purpose of the draft is to regulate explicitly that civil-law notaries of Sint Maarten can exercise their function in the public bodies of Saba and Sint Eustatius. The support of the Dutch public bodies by the civil-law notaries of Sint Maarten is deemed of great importance, because there is a large need for a civil-law notary in Saba and Sint Eustatius, but not sufficient notarial work for one full-time position as a civil-law notary for both public bodies.

Examination of the draft and the Explanatory Memorandum gives the Council reason to make comments regarding the deletion of the obligation to actually hold office in Sint Maarten and to eliminate the principle of a maximum number of civil-law notary practice locations. The Council is of the opinion that, in this regard, it is desirable to adjust the proposal.

Number of civil-law notary practice locations

The current Article 4, first paragraph, of the National Ordinance on the Notarial Profession stipulates that a practice location will be designated in the appointment decision of the civil-law notary, within which the civil-law notary has to exercise his office. The explanatory notes on Article I of the draft state that, in actual practice, the practice location in the first paragraph of Article 4 is



always Sint Maarten. The number of civil-law notary practice locations may not exceed three under the current Article 4, second paragraph. The Council notes that, with the proposed amendment to the second paragraph, the principle of a maximum number of civil-law notary practice locations for Sint Maarten is abandoned.

With the proposed amendment, the Government could appoint countless civil-law notaries in the future. Having regard to the far-reaching consequences thereof, the Council advises to substantiate why the principle of a maximum number of civil-law notary practice locations for Sint Maarten is abandoned.

Transitional arrangements

The Explanatory Memorandum to the draft states that, at present, the regulations of Sint Maarten do not prevent the performance of notarial work in Saba and Sint Eustatius in a duly authorized manner. Nevertheless, the civil-law notaries of Sint Maarten attach value to explicitly providing for this in the National Ordinance. The Council notes that, under the law as it stands, a civil-law notary of Sint Maarten may not perform notarial work in Saba and Sint Eustatius, if the public bodies of Saba and Sint Eustatius have not been designated as practice locations in his appointment decision. For Article 4, first paragraph, of the National Ordinance on the Notarial Profession stipulates that the civil-law notary exercises his function within the practice location as designated in the appointment decision. The explanatory notes on Article I of the draft state that, after the constitutional reforms of October 10, 2010, the public bodies of Saba and Sint Eustatius cannot be designated as a practice location for civil-law notaries of Sint Maarten. Thus, the practice location of Article 4, first paragraph, will always be Sint Maarten.

The Council advises to adopt transitional arrangements with regard to any notarial work performed without authorization by civil-law notaries of Sint Maarten in Saba and Sint Eustatius. With such transitional arrangements, the civil-law notaries of Sint Maarten could still be declared authorized to perform the previous notarial work performed by them in Saba and Sint Eustatius.

Holding actual and uninterrupted office

With the proposed amendment to Article 4, third paragraph, of the National Ordinance on the Notarial Profession, the words “actual and uninterrupted” are deleted in the sentence: The civil-law



notary is obligated to hold actual and uninterrupted office in the practice location assigned to him and to keep his protocol there.

In the opinion of the Council, only the words “and uninterrupted” should be deleted. In the opinion of the Council the obligation of the civil-law notary to hold actual office in Sint Maarten does not prevent him from also providing services in Saba and Sint Eustatius. Therefore, the Council advises not to delete the word “actual”.

The Disciplinary Board

The Disciplinary Board supervises the civil-law notaries and junior civil-law notaries and is composed of two members of the Joint Court of Justice and one member appointed by the minister for a period of three years from among the civil-law notaries and junior civil-law notaries in possession of an internship certificate. Therefore, one member of the Disciplinary Board should be elected from among the few civil-law notaries and junior civil-law notaries in Sint Maarten. Taking into account the small scale and the problems occurring in actual practice, the Council advises to amend Article 55 of the National Ordinance on the Notarial Profession with a view to the structure of the Disciplinary Board. Consideration could be given to expanding the number of members or the possibility of appointing retired civil-law notaries or civil-law notaries working outside Sint Maarten as a member of the Disciplinary Board.

Conclusion

In conclusion, the Council asks the Government to send the draft National Ordinance to Parliament after observations of the Council have been considered.

Thus adopted at the meeting of the Council of August 18, 2015.

The Secretary
[was signed:]

Mr. *mr.* A.G. Baly

The Vice-Chair
[was signed:]

Ms. *mr. drs.* M.C.C. Brooks-Salmon

[Stamp:]
COUNCIL OF ADVICE
St. Maarten