

To:

The President of the Parliament of St. Maarten

STATEN VAN SINT MAARTEN	
Ingek.	11 OCT 2019
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Par.	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>

Philipsburg, October 11, 2019

Your ref.: UV/130/2018-2019

Our ref.: 443-19B/JUS

Re: Draft Revision National Ordinance Book 2 of the Civil Code

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Government hereby sends Parliament its response to the report No. 5 of the Central Committee meeting of September 12, 2019 on the Draft Revision National Ordinance Book 2 of the Civil Code – *Landsverordening tot wijziging van Boek 2 van het Burgerlijk Wetboek (Herzieningslandsverordening Boek 2 BW)* - hereafter referred to as: the Draft Ordinance.

Parliament in its meeting of the Central Committee has exchanged views with the Government on the Draft Ordinance and considers the present draft to be adequately prepared when the questions in aforementioned report are answered in time for the public meeting so that the Draft Ordinance can be discussed in a public meeting.

Government has taken good note of these questions. It must be understood that almost if not all questions have already been answered, both orally and in writing and also substantiated with other documents, during and after the sessions with Parliament's Central Committee. This reaction of Government to Parliament's report should therefore be read, understood and comprehended together with all the spoken (which have been on record) and written material of the former sessions with Parliament on this Draft Ordinance. This material should be regarded as entirely inserted and repeated here.

Government want to take this opportunity to inform Parliament that it has carefully listened to all the critique posed by the factions - and also by the Chamber of Commerce and Industry - concerning Article 25, paragraph 1, section c, of the Draft Ordinance. Therefore an amendment is proposed to this provision.

The new text of Article 25, paragraph 1, section c, is stipulated in a so called memorandum of amendment ('Nota van wijziging') to the Draft Ordinance and is in accordance with the wishes of the factions, especially of the United St. Maarten Party-faction and the National Alliance.<sup>1</sup> If Parliament approves this 'memorandum of amendment' then the Chamber no longer should dissolve a legal person on a mere suspicion of carrying out suspicious unusual transaction, but only when the legal person is irrevocably convicted of money laundering or terrorism financing.

It is Government's hope that Parliament will soon approve this Draft Ordinance in the public meeting. With the approval St. Maarten will be one step closer to be fully compliant with the FATF

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<sup>1</sup> The proposed new text of Article 25, paragraph 1, section c, reads as follows:

"c. de rechtspersoon bij onherroepelijke uitspraak is veroordeeld ter zake van witwassen of terrorismefinanciering;"

recommendations and, therefore, may be able to avoid being publicly listed as a jurisdiction with weak measures to combat money laundering and terrorist financing (AML/CFT). Pursuant to FATF Recommendation 19, there are two (potential) consequences of being publicly listed.

This recommendation reads as follows:

*“Financial institutions should be required to apply enhanced due diligence measures to business relationships and transactions with natural and legal persons, and financial institutions, from countries for which this is called for by the FATF. The type of enhanced due diligence measures applied should be effective and proportionate to the risks. Countries should be able to apply appropriate countermeasures when called upon to do so by the FATF. Countries should also be able to apply countermeasures independently of any call by the FATF to do so. Such countermeasures should be effective and proportionate to the risks.”*

Government wants to emphasize that these enhanced due diligence measures and/or countermeasures can have far reaching financial-economic consequences for not only individuals or financial and non-financial companies, but also for government and, therefore, for society as a whole.

Yours Sincerely,  
Minister of Justice

a.i.  
