

## **TRANSLATION OF THE OFFICIAL PUBLICATION OF SINT MAARTEN (AB 2010, GT no. 22)**

### **National ordinance promotion of the integrity of ministers<sup>1</sup>**

#### **Chapter 1. Definitions**

##### **Article 1**

The following definitions apply for the purposes of this national ordinance and the provisions based on it:

- a. secondary position: every position, paid or unpaid, performed in addition to the office of minister;
- b. secondary activity: an activity in addition to the main occupation, which cannot be qualified as an occupation;
- c. commercial interests: all rights – direct or indirect – of a person to the proceeds of undertakings;
- d. partner: the person with whom the minister has consecutively maintained a joint household for at least one year;
- e. clerk: the clerk of the Common Court of Justice or a person designated by him;
- f. children: minor children of the minister's marriage and minor children born out of wedlock and not recognised, in respect of whom the minister has been ordered by a court to provide for their maintenance or for whom the minister has acknowledged the maintenance obligation by an authentic deed.

#### **Chapter 2. Written declarations and notifications**

##### *§ 1 Obligation to submit written declarations and notifications*

##### **Article 2**

1. Within 30 days of accepting appointment as a minister, the minister shall submit a written declaration as referred to in paragraph 4, to the prime minister. The date of receipt shall be noted on the declaration referred to in the preceding sentence without delay.
2. The minister is required to complete and sign the written declaration clearly, emphatically and without reservation. The minister guarantees the reliability of the information in the declaration concerning his spouse or partner, to the extent that he was, or should have been aware of this.
3. The minister's spouse or partner is required to provide the minister, on request, with the information that he reasonably requires in order to complete the written declaration.
4. The written declaration must in any event include the following concerning the minister and his spouse or partner:
  - a. a detailed description of the commercial interests that they hold or manage;
  - b. a detailed description of their other asset elements;
  - c. a detailed description of the nature of their secondary positions and secondary activities;
  - d. a statement of whether any income or benefits are associated with their secondary positions and secondary activities, in any form whatsoever, and, to the extent that these are associated with financial remuneration, the extent thereof;
  - e. a detailed description of the children's commercial interests and other asset elements.
5. Asset elements, not including immovable property, that do not exceed a threshold value of ANG 20.000,-- need not be reported.
6. For the purposes of paragraphs 4 and 5, the term asset elements is deemed to refer to immovable property, moveable property, rights capable of being expressed in money, as well as to receivables and debts. The term moveable goods in the preceding sentence is deemed to refer to all goods that are not covered by the categories of immovable property, rights capable of being expressed in money, receivables and debts.
7. The model for the written declaration shall be laid down by national decree, containing general measures.
8. The permissibility of submitting a written declaration by electronic means, and the conditions for this, may be laid down by national decree, containing general measures.
9. Paragraph 1 does not apply to a reappointed minister who submitted a written declaration in accordance with Article 5 at the end of his previous term of office, provided that no changes need

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

to be made therein. If no changes need to be made in the written declaration, the prime minister shall request the clerk to send him a copy of the declaration submitted previously.

10. If a minister fails to submit a signed declaration as referred to in paragraph 4 to the prime minister within 30 days of accepting his appointment as minister, the prime minister shall notify the Parliament in that regard without delay.

### **Article 3**

1. Having heard the minister, the prime minister shall decide which commercial interests, secondary positions and secondary activities are undesirable in the interests of proper performance of the office of minister or the preservation of the impartiality and independence, or of confidence therein.
2. With regard to the decision, referred to in paragraph 1, to be taken, the prime minister shall obtain the advice of the Council of Advice and the General Audit Chamber. The advice shall be issued within two weeks of the receipt of the request from the prime minister.
3. If, in the view of the prime minister, an undesirable combination of interests, secondary positions or secondary activities as referred to in paragraph 1, occurs, the minister is required to make the necessary provisions in his asset management or to resign from the relevant secondary position or discontinue the relevant secondary activity. The previous sentence is likewise applicable to the minister's spouse or partner.
4. Within 30 days of the provisions, referred to in paragraph 3, having been made, the minister shall submit a new written declaration as referred to in Article 2(4) to the prime minister. Article 2, paragraphs 1 to 8, are likewise applicable.
5. In the event of an undesirable combination of interests, secondary positions or secondary activities as referred to in paragraph 1, and if the minister does not make the necessary provisions in his asset management regarding the relevant commercial interest or resign from the relevant secondary position or discontinue the relevant secondary activity, the prime minister shall notify Parliament without delay.
6. If the minister is also the prime minister, for the purposes of the application of this Article in his regard, the term 'prime minister' shall be read as 'Council of Advice' on each occasion. By way of derogation from the preceding sentence, in the case, referred to in paragraph 5, the vice chairman of the Council of Advice shall act in the place of the prime minister.

### **Article 4**

1. During his term of office, the minister shall submit any intention of his own or of his spouse or partner to acquire commercial interests and to accept secondary positions and secondary activities to the prime minister in writing. Article 3(1), 3(2) and the first sentence of Article 3(6) are likewise applicable.
2. Within 30 days of the acquisition of new commercial interests or the acceptance of secondary positions or secondary activities by the minister himself or by his spouse or partner, the minister shall submit a new written declaration as referred to in Article 2(4) to the prime minister. Article 2, paragraphs 1 to 8 and paragraph 10 are likewise applicable.
3. The minister may not acquire commercial interests or accept secondary activities or secondary positions that, in the view of the prime minister, are undesirable. If the minister acts in contravention of the preceding sentence, the prime minister shall notify the Parliament thereof without delay.
4. Article 3 is likewise applicable to interests that arise through inheritance, donations and other sources of income.

### **Article 5**

1. The minister shall notify the prime minister without delay if any of the following facts or circumstances arises after the acceptance of his position as minister, which was not taken into account in his latest written declaration, as submitted to the prime minister:
  - a. if the minister enters into a marriage or a cohabitation relationship has lasted for at least one year;
  - b. with regard to a child for which no obligation to make a report in accordance with Article 2(4)(e) existed prior to the acceptance of the position as minister.
2. Within 30 days of one of the facts or circumstances, referred to in paragraph 1, arising, the minister shall submit a new written declaration as referred to in Article 2(4) to the prime minister. Article 2, paragraphs 1 to 8, are likewise applicable.

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3. If the minister is also the prime minister, for the purposes of the application of this Article in his regard, the term 'prime minister' shall be read as Council of Advice on each occasion.

#### **Article 6**

Within 30 days of the date on which he ceases to be a minister, a former minister shall submit a written declaration as referred to in Article 2(4) to the prime minister. Article 2 is likewise applicable.

#### **Article 7**

Articles 1 to 6 are likewise applicable to the minister plenipotentiary, with the exception of Article 2(10), the second sentence of Article 3(5) and the second sentence of Article 4(3).

#### *§ 2 Access to, custody and destruction of written declarations and notifications*

#### **Article 8**

1. The written declarations, referred to in Articles 2(4), 3(4), 4(2), 5(2), and the notifications, referred to in Articles 4(1) and 5(1), as well as the other documents, referred to in Articles 3(1) and (2), 4(1), shall be submitted to the clerk by the prime minister or the Council of Advice immediately on receipt or settlement thereof.
2. The clerk shall maintain a register. By agreement with the Council of Ministers, the Minister of Justice shall draw up regulations for the register. This minister is responsible for its correct operation.
3. The register shall contain only the data necessary for the purposes for which it was created.
4. The register shall in any event contain the following data:
  - a. the date of receipt of the documents, referred to in paragraph 1, and the name of the minister;
  - b. the date on which the documents, referred to in paragraph 1 and in Article 10, are destroyed and the reason for their destruction;
  - c. the date on which the request as referred to in Article 10 is received and the date on which the request is settled.
5. On the proposal of the Minister of Justice, by agreement with the Council of Ministers, requirements with which the register must comply, other than those laid down in paragraph 4, may be laid down by national decree, containing general measures.
6. A model registration form may be laid down by national decree, containing general measures.

#### **Article 9**

1. The clerk shall keep a written declaration and the related notifications, as well as the other documents as referred to in Article 8(1) for a term of five years from the date of the termination of the term of office as minister or minister plenipotentiary. By way of derogation from the preceding sentence, the said documents shall be kept for longer than the custody term referred to in the preceding sentence if, on the date on which the custody term expires, the person to whom the documents relate still holds the office of minister or minister plenipotentiary. In the latter case, the relevant documents shall be kept for five years from the date on which the term of office expires.
2. The clerk shall destroy a written declaration and the related notifications, as well as the other documents, referred to in Article 8(1), on the expiration of the custody term, referred to in paragraph 1.
3. Rules concerning the custody and destruction of the documents, referred to in Article 8(1), shall be laid down by national decree, containing general measures, on the proposal of the Minister of Justice, by agreement with the Council of Ministers.

#### **Article 10**

1. On the demand of the public prosecutor, the examining judge may request the clerk in writing to grant access to or to provide a copy of documents, referred to in Article 8(1), for the detection and prosecution of one or more of the following criminal offences described in the Criminal Code if a suspicion exists that the minister, minister plenipotentiary or former minister committed these:
  - a. the criminal offences described in Title X of Book 2;
  - b. the criminal offences described in Title XI of Book 2;
  - c. the criminal offences described in Articles 230, 231, 232 and 239;

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- d. the criminal offences described in Title XXII of Book 2, with the exception of the criminal offences described in Articles 327 and 328;
  - e. the criminal offences described in Articles 330 and 331;
  - f. the criminal offences described in Articles 334, 335 and 336;
  - g. the criminal offences described in Articles 339, 340 and 341;
  - h. the criminal offences described in Title XXVI of Book 2;
  - i. the criminal offences described in Articles 375, 376, 377, 378, 379 and 382;
  - j. the criminal offences described in Articles 431, 432 and 432bis;
  - k. the criminal offences described in Articles 1, 2 and 3 of the National ordinance criminalisation of money laundering (P.B. 1993, No. 52).
2. On the demand of the public prosecutor, the examining judge may request the clerk in writing to grant access to or to provide a copy of documents, referred to in Article 8(1), for the detection of offences criminalised in Article 15 or in Articles 230, 231, 232 and 239 of the Criminal Code, if a suspicion exists that the spouse or partner of a minister, minister plenipotentiary or former minister committed these.
  3. The request, referred to in paragraphs 1 and 2, shall in any event contain the following information:
    - a. the identity of the person concerning whom the Department of Public Prosecutions requires information;
    - b. the period about which the Department of Public Prosecutions requires information;
    - c. the offence concerning which there is a suspicion that this was committed by the person, referred to in sub-paragraph a;
    - d. the phase of the criminal investigation;
    - e. the form of the information;
    - f. the term within which the request must be met.
  4. The clerk is required to meet the request, referred to in paragraph 1 or 2, within the term set by the examining judge.
  5. No costs shall be charged for the provision of information, including the submission of copies.
  6. Rules concerning the provision of information from the register to the Department of Public Prosecutions may be laid down by national decree, containing general measures.
  7. The requests, referred to in paragraphs 1 and 2, shall be kept for the term mentioned in Article 9(1). Following the expiration of the custody term referred to in the preceding sentence, the clerk shall destroy the requests referred to in the preceding sentence.
  8. Three weeks prior to the date on which the custody term, referred to in Article 9(1), expires, a former minister or minister plenipotentiary and his spouse or partner may address a written request to the clerk for access to the requests, referred to in paragraphs 1 or 2. The clerk, having heard the examining judge, shall decide on the request referred to in the preceding sentence within two weeks of its receipt.
  9. A request for access may be rejected only if the documents to which the request relates contain data which could impede a preparatory investigation and subsequent investigations if accessed by the minister or minister plenipotentiary or by his spouse or partner.
  10. The request, referred to in paragraph 8, shall be destroyed on expiration of the custody term for the documents to which the request relates.

### *§ 3 Security measures for the register*

#### **Article 11**

1. The clerk shall take measures to secure the data recorded in the register. These measures shall at least contain provisions against:
  - a. damage to or loss of the data as a result of fire or other disasters or as a result of malicious action or negligence by third parties or the court's own employees;
  - b. unauthorised alteration of the data;
  - c. theft of the data;
  - d. access to the data by unauthorised persons.
2. The Minister of Justice may give instructions concerning the security of the register.

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## **Chapter 3. Decision-making**

### **Article 12**

1. Without prejudice to Article 35 of the Constitution, the minister shall not take part in decision-making at the meetings of the Council of Ministers concerning:
  - a. matters that concern his secondary activities and secondary positions;
  - b. matters that concern commercial interests that he manages;
  - c. matters in which he is involved as a representative; or
  - d. matters that concern interests of his spouse or partner and his relations by blood or affinity to the third degree.
2. The minister shall transfer a matter on which he is to decide to the Council of Ministers for decision-making if a case arises as referred to in paragraph 1 in which case the minister is excluded from participation in such decision-making.
3. Paragraph 1 is likewise applicable to the minister plenipotentiary with regard to the casting of an advisory vote in the Council of Ministers on matters in which he is involved. The minister plenipotentiary shall also refrain from issuing advice to the prime minister in the event of a case as referred to in paragraph 1.

## **Chapter 4. Special provision**

### **Article 13**

All persons involved in the implementation of this national ordinance who obtain access in the course thereof to data which they know or should reasonably assume to be confidential, and who are not already subject to a confidentiality obligation on the grounds of their office, occupation or legal provision concerning such data, are required to preserve the confidentiality thereof, unless and to the extent that they are required to disclose these data by any legal provision or if the need for disclosure arises from their duties in the implementation of this national ordinance.

## **Chapter 5. Penal provisions**

### **Article 14**

A minister plenipotentiary who acts in contravention of Article 12(3) shall be penalised with a prison sentence of a maximum of three years.

### **Article 15**

The spouse or partner of a minister or minister plenipotentiary who is required to provide information pursuant to Article 2(3) and who, in contravention of the said obligation to provide information, deliberately provides information that is inaccurate or fails to disclose information, shall be penalised with a prison sentence of a maximum of three years.

### **Article 16**

A former minister or minister plenipotentiary who fails to comply, within the set term, with the obligation imposed pursuant to Article 6 shall be penalised with a prison sentence of a maximum of three years.

### **Article 17**

1. A person who deliberately breaches the confidentiality obligation laid down in Article 13 shall be penalised with a prison sentence of a maximum of two years or a financial penalty of a maximum of one hundred thousand guilders.
2. Prosecution shall not take place other than in response to a complaint from the party regarding which confidentiality was breached.

### **Article 18**

The offences mentioned in Articles 14 to 17 are offences.

## **Chapter 6. Final provisions**

### **Article 19**

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This national ordinance may be referred to as National ordinance promotion of the integrity of ministers.

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

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