

Constitutional reform of the Dutch Antilles

Having the emblematic date '10-10-10' as its juncture, the recent constitutional reforms have reshaped the structure of The Kingdom of the Netherlands ("the Kingdom"). During a 10 year process of contemplation and self-determination, the islands of the former Dutch Antilles had the opportunity to design their own role within the Kingdom. As a result, the former Netherlands Antilles have been split into two separate countries (Curaçao and Sint Maarten) with the remaining islands (Bonaire, Sint Eustatius and Saba, the BES Islands) becoming public bodies (*gemeenten*) of the Netherlands. Aruba had already achieved the same status as Curaçao and Sint Maarten in 1986. The following is a brief overview of the main changes to what used to be Netherlands Antilles law and its judicial system.

Reforms

The Netherlands Antilles have been dissolved as of 10 October 2010. The Kingdom of the Netherlands (the Kingdom) now consists of four independent countries; Aruba, Curaçao, Sint Maarten and the Netherlands, each country having its own jurisdiction. The BES Islands fall under the jurisdiction of the Netherlands.

Although Curaçao and Sint Maarten have become autonomous countries within the Kingdom, their financial independence might actually be lessened because of the reforms. During the preparatory stage of the reforms, the Board of financial supervision (*College financieel toezicht, Cft*) has been entrusted with the supervision on government spending in the former Dutch Antilles, a role it will retain for the coming years. This budgetary supervision is a result of a compromise whereby the Netherlands promised to pay off the majority of government debt of Curaçao and Sint Maarten.

Applicable laws

Until 10 October 2010, the Netherlands Antilles formed a single jurisdiction. For the most part, the pre-existing Antilles laws and regulations have been adopted in their entirety by Curaçao en Sint Maarten while only changing references to reflect the new constitutional order. The Dutch legislator has transferred the former Antilles legislation into special (materially identical) regulations applicable to the BES Islands. On the BES Islands, Dutch legislation will gradually replace these former Antilles rules. In principle, agreements between foreign parties and Antilles parties that were governed by Antilles law are now governed by the law of the relevant jurisdiction (Curaçao law, Sint Maarten law or the law of the BES Islands).

Financial regulation

The Central Bank of the Netherlands Antilles has been renamed The Central Bank of Curaçao and Sint Maarten (*Centrale Bank van Curaçao en Sint Maarten*). The BES Islands now fall under the supervision of the Dutch Central Bank (*De Nederlandse Bank, DNB*). The former Antilles islands had a web of sector specific financial regulatory acts and regulations. For the post 10-10-10 era, these have been transposed into similar regulations governing Curaçao, Sint Maarten and the BES Islands respectively. On the BES Islands, these regulations will gradually be replaced by two acts: the Financial Markets (BES Islands) Act (*Wet financiële markten BES*) and the Money Laundering and Terrorism Financing (BES Islands) Act (*Wet ter voorkoming van witwassen en financieren van terrorisme*). It is expected that these two acts will contain

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tighter regulation in comparison to the previous Antilles financial regulatory regime. The BES Islands will retain a system of financial supervision that is different from the supervision of the European part of the Netherlands.

Currency

The dissolution of the Netherlands Antilles will also mean the end of the Netherlands Antilles Guilder (“NAF”). Curaçao and Sint Maarten will replace the NAF with the Caribbean Guilder in 2012. The Caribbean Guilder will have the same fixed exchange rate with the US Dollar as the NAF had. On the BES Islands, the US Dollar will be introduced as the official currency. This transition to the US Dollar will take place by the end of January 2011.

Aruba will retain the Aruban Guilder as its legal tender, which will also have the same fixed exchange rate with the US Dollar as the NAF and, as from 2012, the Caribbean Guilder.

Judicial system

The reforms do not bring about material changes to the former Antilles judiciary system. As before the constitutional reforms, all disputes on Aruba, Curaçao, Sint Maarten and the BES Islands are resolved by the Combined Court of Justice. A court of first instance will reside on each of the islands. Appeal is possible with the Combined Court of Justice. This court also has authority on the BES Islands as a foreign court. In last resort, all cases can be reviewed by the Supreme Court of the Netherlands in The Hague. ■

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