



Legal Update

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Curaçao and St. Maarten have become independent countries within the Kingdom of the Netherlands on October 10, 2010

Netherlands Antilles dissolved on 10.10.2010

The Netherlands Antilles dissolved on October 10, 2010. Prior to that date, the Netherlands Antilles consisted of Curaçao, St. Maarten, Bonaire, St. Eustatius, and Saba, and formed, together with the Netherlands and Aruba, the Kingdom of the Netherlands.

Curaçao and St. Maarten have become independent countries within the Kingdom. They stand on equal footing with the Netherlands and with Aruba, each country with its own set of laws.

Civil, corporate and banking laws of Curaçao and St. Maarten are substantially the same as Netherlands Antilles' law before the dissolution.

The dissolution of the Netherlands Antilles does not negatively affect the legal status of companies in the Netherlands Antilles. Companies seated in Curaçao are now governed by Curaçao law, and companies seated in St. Maarten are now governed by St. Maarten law. Licenses and exemptions granted by Netherlands Antilles' authorities, including the Central Bank of the Netherlands Antilles, remain valid in Curaçao and St. Maarten. Treaties that were applicable to the Netherlands Antilles are now applicable to Curaçao and St. Maarten as legal successors to the Netherlands Antilles.

Curaçao and St. Maarten have agreed that going forward their corporate and financial laws will remain uniform. The (successor to) the Central Bank of the Netherlands Antilles has become the financial supervisory authority for both countries. For now, Curaçao and St. Maarten continue to use the Netherlands Antilles guilder but will replace it in due course with a new currency, the Caribbean guilder.

Bonaire, St. Eustatius and Saba, also referred to as the BES islands, have, as public entities, become part of the Netherlands. Most, but not all

Netherlands Antilles' laws are initially applicable on the BES islands. The BES laws will only gradually, and in certain cases only partially, be replaced with Dutch legislation. As little changes as possible will be made until 2016, although new tax laws will be introduced on January 1, 2011 and new financial laws are expected to be enacted sometime in 2012. The Dutch Central Bank and the Dutch Authority for the Financial Markets have replaced the Central Bank of the Netherlands Antilles as financial supervisory authority on the BES islands.

The judicial system remains essentially the same. Curaçao, St. Maarten, Aruba and the BES islands each has its own Court of First Instance. The Common Court of Appeals continues to act as the competent appeals court for all six Caribbean islands being part of the Kingdom, whereas the Dutch Supreme Court in The Hague remains the highest appeals court. Judgments from any of these courts rendered prior to October 10, 2010 remain valid.

It depends on the circumstances whether a contract expressed to be governed by Netherlands Antilles' law should now be understood to refer to Curaçao law, St. Maarten law or the law of the BES islands. In deciding this matter, a Dutch Caribbean court can be expected to take into consideration all relevant circumstances, including a possible choice of forum for a specific island in the contract, the location of the parties or the location of assets involved in the contract. Thus, a Netherlands Antilles' governed contract between an American and Curaçao company would most likely be deemed to now be governed by Curaçao law. The same analysis applies *mutatis mutandis* to forum choices for Netherlands Antilles' courts. There will therefore in most cases not be a need to amend a contract with respect to these matters.

KEY POINTS:

- **Civil, corporate and banking laws of Curaçao and St. Maarten are substantially the same as Netherlands Antilles' law before dissolution and are intended to remain uniform in the future**
- **Licenses and exemptions granted by Netherlands Antilles' authorities remain valid in Curaçao and St. Maarten**
- **Tax treaties and other international treaties that were applicable to the Netherlands Antilles are applicable to Curaçao and St. Maarten**

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Who we are

Sprenger & Associates is a Netherlands and Dutch Caribbean boutique law firm based in New York and founded by Helena Sprenger. Helena was a partner at the international law firm Allen & Overy LLP and headed its Dutch and Netherlands Antilles law practice in New York for over 10 years.

We advise our clients, including large international corporations and financial institutions, including UBS, Morgan Stanley, Credit Suisse, Goldman Sachs, Bank of America, Banco Santander and Rabobank, on matters of Dutch Caribbean and Dutch law in the context of international capital markets, corporate and cross-border finance transactions.

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