



## SINT MAARTEN

### MINISTERIAL DECREE:

November 26<sup>th</sup> 2010- NO. /2010:

Minister of Tourism Economic Affairs Transport and Telecommunications  
In accordance with the National Ordinance Regulating the Post

Having considered:

The decision of the Executive Council of the Island Territory of St. Maarten of October 6<sup>th</sup>, 2010  
To incorporate the limited liability company named: "Postal Services St. Maarten NV";  
To task the aforesaid Company with the execution of Postal- and Postal related services on St. Maarten;  
To award to the aforesaid company the concession required by the Postal ordinance, for the execution of the Postal- and Postal related services;

That on October 8<sup>th</sup> 2010 by Notarial deed the limited liability company: Postal Services St. Maarten NV, was established;

That on October 18<sup>th</sup> 2010 the pertinent business license in accordance with the "Vestigingsregeling op Bedrijven" was requested;

That Postal Services St. Maarten NV hereinafter referred to as: "PSS" has as its aim:

- a. *" to establish and operate a postal service for the collection, transmission and delivery of messages, information, funds and goods including but not limited to:  
1] receipt, transport/dispatch and delivery of postal packages, in which postal packages shall be interpreted to have the most expanded meaning of the word, therein included every form of dispatch, transport of messages, information, funds or goods, to be carried from one point to another through physical, electronic, optical means or a combination of the mentioned means;  
2] the transfer and payment of funds through postal money order, postal giro and related activities;*
- b. *to manufacture and provide such products, as well as to provide such services as are necessary or incidental to the postal services provided;*
- c. *to render any such services as deemed required for an adequate execution of the activities and other matters relating to a postal company. In particular the postal company is permitted to expand her products and services and to adjust same to the applicable technical standards and to modernize, to maintain a good competitive position, in light of developments in the communications field;*
- d. *to safeguard a due development and adaptation of the services offering to the technical, economic and social needs of the consumers, considering the need to safeguard the financial balance of the company, in order to guarantee permanent, trustworthy and general postal services, through which a minimum and qualitatively sound package of services is offered against affordable prices for the benefit of all in the community;*
- e. *The company is permitted to undertake all that is deemed required or necessary to attain her aim or that which is related thereto in the widest sense of the word, therein included the provisioning of guarantees for debts and other obligations of the company and companies with which the company collaborates or participates in and to provide securities and other guarantees, in surety of payments of debts of the company or said third parties."*

The decision of the Council of Ministers on November 23<sup>rd</sup> 2010 on the issuance of the concession to PSS NV;

That it is desirable to grant a concession to PSS, as referred to in Section 2, first paragraph of the National Ordinance Regulating Postal Services 1998 as accepted by St. Maarten.  
In view of the requirements set forth in the National Ordinance Regulating Postal Services afore mentioned;

Has decided:

## § 1. Granting of the concession

### Article 1

1. To the limited liability company established and operational on St. Maarten, by the name of "Postal Services St. Maarten NV", with the exclusion of any and all other entities, a concession is hereby granted, subject to the following terms and conditions:
  - a. the transportation against payment of letters, each of which separately not exceeding a weight of 2000 grams;
  - b. in accordance with the stipulations set by the Government of Sint Maarten, the right to place mail-boxes and pillar-boxes intended for public use, at, or in the vicinity of, public roads, as well as to place other postal equipment for sending and receiving messages and vending machines for postal stamps and other similar automated vending equipment, necessary to enable an adequate access to the network of the concessionary and to enable an efficient rendering of its services;
  - c. the issuance of postage stamps and postal registration stamps, and postal values of a different nature, displaying the image of the King/Queen, or mentioning the term: "Sint Maarten", or any other images as may be deemed appropriate and in line with the operations.
2. The concession is granted for a period of Twenty (20) years.
3. As long as the concession is operative, no other, similar concession shall be granted.

## § 2. Definitions

### Article 2

In this Ministerial Decree the following terms shall have the meaning thereby given, to:

- a. general terms and conditions : the general terms and conditions determined by the concessionary, pursuant to article 6 of this national resolution;
- b. concession : the concession referred to in section 2 of the national ordinance;
- c. concessionary : the limited liability company by the name of Postal Services St. Maarten NV;
- d. service point : the places available for use by the public, where postal services are rendered;
- e. international reply form : a special form, approved by the UPU, having a specified sale and exchange value, by which the addressee reimburses the price of a specified message in reply;
- f. national ordinance : the National Ordinance regulating Postal Services (Official Gazette 1997, no. 319), as adopted by St. Maarten;
- g. Minister : the Minister of Tourism Economic Affairs Transportation and Telecommunications;
- h. mandated services : the services, referred to in article 1, first paragraph;
- i. PSS : Postal Services St. Maarten NV the legal entity incorporated with the aim and tasked to provide Postal and Postal related services on Sint Maarten;
- j. PSS-possessions : All assets of PSS acquired through transfer out of the division and partition of the Netherlands Antilles estate or otherwise acquired;
- k. Postal consignments : letters and other dispatches mailed to addressees, as referred to in section 1 sub d of the national ordinance;
- l. Regulator : the body instituted by the Government of Sint Maarten entrusted with the task of regulating the rendering of Postal services;
- m. Transportation : transportation as described in section 1 sub e of the national ordinance;
- n. UPU : Universal Postal Union;

## § 3 Rendering of services

### Article 3

1. The concessionary shall be responsible for rendering services concerning the transportation of postal consignments, which reasonably meet present-day requirements, to the satisfaction of the Minister.
2. The concessionary is obliged to offer similar services to each and every one, on similar conditions and against similar rates.
3. The services referred to in the first paragraph shall comprise at least:
  - a. the transportation of letters, printed matter, goods and other consignments capable of postal transportation, throughout the country, up to the weight and measurements as stated in the national regulation with general operation, referred to in section 2, paragraph 2 of the national ordinance, as well as to and from countries abroad, in accordance with the relevant international treaties;
  - b. a differentiated offer for the rendering of services for transportation stated in sub a;

c. to make service points available to enable the public to submit postal consignments for transportation and to render other services related to postal transportation;

d. to put mailboxes or similar facilities at the disposal of the public for presenting consignments, suitable for postal transportation;

e. to deliver postal consignments;

f. to return to sender postal items that are undeliverable;

g. to ensure that each service point of the concessionary complies with and supports the mandated services and provides access to same;

h. to display the following information in a clearly visible manner in all post offices:

**1° opening and closing hours;**

**2° collection and delivery time;**

**3° the tariffs for the various products and services**

**4° the points of departure for the delivery service and the quality standards for the actual performance of postal deliveries;**

**5° the procedure by which the clients may submit complaints;**

i. to accept international reply forms as payment for rendering international postal services .

4. Respective to the rendering of services referred to in article 3, the concessionary must meet the requirements set forth in this resolution.
5. The concessionary is entitled to conclude agreements with third parties, in order to temporarily provide one or more components of the mandated services on behalf of the concessionary. The concessionary remains accountable for the actual and proper performance of the components of the mandated services agreed upon with such third party.

#### **Article 4**

1. Annually the concessionary shall develop a thematic plan for the issuance of postal stamps for Sint Maarten and postal values for the subsequent year. This plan is subject to the approval of the Minister of Traffic and Transportation, which approval shall not be unreasonably withheld.
2. The Minister of Traffic and Transportation shall inform the concessionary within 30 days after receipt of the plan. If the Minister does not prescribe changes to the concessionary, the plan shall be considered approved. If the Minister does prescribe changes, the plan is deemed approved, provided that the concessionary inserts the changes.

#### **Article 5**

1. Postage stamps and postal values, which have not yet been invalidated, may only be sold by the concessionary or by persons authorized by contract to that purpose by the concessionary.
2. This national resolution is not applicable to invalidated postage stamps intended as collectors' items.

#### **Article 6**

1. The concessionary shall take reasonable care to ensure the safe transportation of the postal consignments entrusted to its care, in accordance with the value that sender attaches to these postal consignments, as appears from his choice of the mode of transportation, evidenced by the level of services elected by the sender and by the fact whether or not the latter availed himself of optional services such as registration, insurance or both.
2. The differentiation to be made available in the mode of transportation of postal consignments, should be attuned to the needs of the users, to the extent possible. With this purpose in mind, the concessionary shall in any case offer the possibility to have postal items registered, in the manner as referred to in section 7 of the national ordinance and shall likewise offer the possibility of an accelerated mode of transportation for postal consignments. Furthermore the concessionary is permitted to offer the possibility to have certain registered items insured in accordance with the General Terms and Conditions.
3. Whenever postal stamps are issued with a surcharge, intended for cultural or for social purposes, or else for the benefit of institutions with a general humanitarian objective, the concessionary shall take into account all the rules and regulations applicable to fundraising for such purposes and institutions.
4. To enable the public to submit postal consignments for transportation and to make use of other services related thereto, the concessionary shall utilize the network of service points in existence at the time these terms and conditions applicable to the concession, enter into force.
5. The concessionary is authorized, however, to adapt this network of service points, in order to adjust same to changing technical, economic and social circumstances.
6. The concessionary is bound to maintain and equip the mail-boxes intended for depositing suitable postal items and to locate them strategically, so as to render them accessible and easy to recognize.
7. The concessionary shall carry out at least one mailing daily on Sint Maarten, on each day not being a Sunday or holiday, unless extraordinary circumstances should prevent it from performing its tasks.

#### **§ 4. Confidentiality**

##### **Article 7**

1. The concessionary shall see to it that in its operational activities related to the transportation of postal items, the confidentiality of the mail, as constitutionally guaranteed by law, shall be strictly adhered to. Opening of closed postal items as referred to in article 10 of the national ordinance, ought to be effected by an employee, specifically designated for that purpose by or on behalf of the concessionary.
2. The concessionary shall see to it, that in its operational activities related to the transportation of postal items, the statutory provisions in the law, pertaining to the protection of privacy, shall be duly observed and is under obligation, if such becomes necessary for the protection of privacy, to provide further guarantees, concerning the care and management of information regarding the users of its postal services.
3. The concessionary is under obligation to insert in the labor conditions for its Staff-members, stipulations for the protection of the privacy of the users, including the maintenance of secrecy concerning information about their postal traffic.

4. To the extent that third parties are involved in carrying out activities related to the transportation of postal items, the concessionary shall see to it that similar stipulations as stated in this article shall be made towards such third parties and their personnel.

## **§ 5 General terms and conditions**

### **Article 8**

1. The concessionary shall draw up general terms and conditions for every service, for everyone and everywhere in St. Maarten, which terms and conditions shall be in accordance with the provisions of this resolution.
2. The general terms and conditions shall comprise, apart from a description of the service to be rendered, at least the rules concerning delivery, revocation, payment, **service, liability and the** limitation thereof, non-payment, abuse, grounds for refusal, settlement of disputes and termination of the services.
3. The general terms and conditions shall be published in such a manner as to enable all interested parties to take cognizance thereof.

## **§ 6 Rates**

### **Article 9**

1. Regarding the tariff-structure the following guidelines shall apply:
  - a. Respective to domestic postal transportation:
    - for this type of transportation, uniform tariffs shall be applicable throughout St. Maarten for similar services, whereby objective, qualitative and quantitative criteria shall apply, such as weight, class, measurements, velocity of transport, as well as requested special services.
    - In the event the postal items are simultaneously offered for transportation in numbers exceeding a limit, such minimum to be determined by the concessionary, the price-structure may furthermore be determined by criteria such as numbers, manageability, manner and time of submission to the post office, the service point where the consignment is offered etc.
  - b. Respective to international postal transportation:  
for international postal transportation, the tariff-structure shall be determined subject to the relevant provisions given in the instruments of the Universal Postal

Union, concerning international postal transportation, or else in treaties or resolutions of organizations according to the law of nations.

- c. The tariffs referred to sub a and b for transportation services, as well as those quoted for supplementary and specific services, *which* are offered by the concessionary in connection with such transportation services, shall be announced to the public in a manner to be determined by the concessionary.
  - d. In order to accommodate clients who offer large quantities of postal consignments for transportation, or else clients, who spend huge amounts annually for postal services, the concessionary is authorized to enter into agreements with them, concerning specific rates and conditions, deviating from the regular tariffs. The minimum quantities and the minimum amount that has to be exceeded shall be announced by the concessionary
2. Modifications of the tariff-structure shall be effected in accordance with the guidelines to be given by the Minister.
  3. In the event the concessionary should be under obligation, pursuant to statutory provisions of the law or by ruling of the court to send mail through, it is entitled to charge the standard tariff in so doing.

#### **§ 7 Financial aspects**

#### **Article 10**

1. In the event, after this concession has become operative, the government should require from the concessionary to make certain provisions or to carry out a given activity, which is not or not yet deemed feasible for reasons of sound business economics, the activity shall be carried out by PSS based on its submitted to and approved plan of approach by the Minister. The expenses involved in same shall be borne by PSS. In the event the Governments deviate from the plan of approach submitted by PSS and requires an immediate execution of the activity, whilst PSS cannot feasibly execute same, the Government shall bare the expenses for the execution and implementation of such an activity or provisioning.
2. The concessionary shall make its services, as referred to in section 2, second paragraph of the national ordinance, available to its subsidiary companies or subdivisions against similar rates and tariffs as are charged to third parties.

3. The financial results of the postal activities of the concessionary shall be reported separately from the financial results derived from its other non-postal activities. In order to achieve same, the annual costs shall be stated on the basis of the actual or assessed costs in connection with the mutual fixed overhead expenses, the long term incremental costs in connection with the execution of mandated postal services and the long *term incremental* costs in connection with the execution of non-postal services, as well as the annual income on the basis of the actual or assessed income derived from, on the one hand, the postal services and, on the other hand, the non-postal services.
4. In order to testify the adherence to this provision, the concessionary shall annually submit a statement from an expert as referred to in Section 74 of the Code of Commerce, to be designated by the Minister.
5. The concessionary shall see to it, that its activities for the execution of its mandated services shall not be subsidized from the proceeds of its other activities.

### **§ 8 Provision of information**

#### **Article 11**

1. The concessionary shall submit a report annually within four (4) months after the close of the financial year, to the Minister, as well as to the Regulator, providing at least the following information:
  - a. a list stating the most important assets in use for the rendering of postal services;
  - b. numbers, yield and development respective to the mandated services
  - c. numbers, yield and development regarding other services rendered with the aid of the postal network
  - d. financial performance;
  - e. results of an audit of the performance;
  - f. a summary of the efforts with regard to improvement processes during the past year;
  - g. efforts respective to the extension of the internal and regional activities, as well as of new potentialities.
2. The Minister is authorized to require additional information, to be provided in the report.
3. The Minister will treat the report confidentially and publicity thereof in whole or in part is subject to the consent of the concessionary.
4. The concessionary shall submit a statement to the Minister from an expert as referred to in Section 74 of the Code of Commerce, to be designated by the Minister, concerning the accuracy and the completeness of the data referred to in the first and second paragraph.

#### **Article 12**

1. At least once annually, the concessionary shall have the execution of the concession audited, for its own account, including the quality of the performance of the mandated services and a comparison thereof to a standard of performance of the mandated services at the time this concession was obtained. In so doing the concessionary shall adhere to a method **and** procedure approved by the Minister.
2. The concessionary shall provide the Minister with a copy of the report of the audit.
3. The Minister is authorized to appoint a representative to participate in the process of auditing.



## § 9 Miscellaneous Items

### Article 13

The concessionary renders support to the Minister, if so requested, respective to policy preparation and technical matters. The expenditure involved shall be reimbursed.

### Article 14

1. In the framework of article 13, the concessionary shall support the Minister, if so requested, relative to current international obligations concerning international organizations, inclusive of the working groups and other committees **in which the Sint Maarten together with Curacao, Aruba and the BES may participate** as a member in the Universal Postal Union, the Postal Union of the Americas, Spain and Portugal and the Caribbean Postal Union.
2. Government of Sint Maarten shall not assume any new obligations, unless this is done in consultation with the concessionary.
3. The concessionary shall arrange its own representation, inclusive of **the expenses involved, when attending international and regional conferences regarding postal matters, unless to the extent this should be in consequence of a request as stated in article 13.** In such a case the second clause of the latter article shall apply.

### Article 15

The following matters are furthermore entrusted to the concessionary, to wit:

- a. the planning of inter-insular and international postal services for St. Maarten;
- b. participation in the preparation for entering into treaties or international agreements with foreign countries or international organizations with which Sint Maarten also maintains a formal relationship;
- c. the financial settlement of the international traffic with **foreign administrations and companies, starting from the date on which this national resolution becomes operative;**
- d. The development of a policy with regard to quality for the inter-insular and international postal traffic and the safeguarding of same.

### Article 16

1. The concessionary owes a concession fee for the expenses involved in the granting hereof, in the supervision of the observance due by the concessionary of the stipulations given by or on behalf of the national ordinance and the provisions derived therefrom, as well as for the execution of competencies regarding postal matters by the national government. The concession fee shall be determined in accordance with the applicable laws/guidelines/policies by the authority so dictated by said laws/guidelines/policies. The pertinent decision in this regard shall be made known to the concessionary by the Minister. The applicable concession fee shall be made known to the concessionary by January of the year over which the concession fee shall be due with payment being due by March 1 of the concession year in advance.
2. This article shall only become applicable as of the fifth (5<sup>th</sup>) year after this Ministerial Decree has entered into force.

## § 10 Final provisions

### Article 17

The concessionary has the status of a Postal Administration in the sense of the instruments of the UPU.

### Article 18

This Ministerial Decree shall become operative on a date of publication.

A copy of this Ministerial Decree shall be sent to:

- The Parliament of St. Maarten
- The General Audit Office
- The Attorney-General
- The Director of the Department of Finance
- The Director of the Bureau of Telecommunications and Post
- Post Sint Maarten N.V.

Sint Maarten November 26<sup>th</sup>, 2010

The Minister of Tourism Economic Affairs Transport and Telecommunications.

Franklin A. Meyers.

